

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 7 | Issue 3

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2024

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# E-Commerce Beware: The Rising Tide of IP Infringement

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## ABSTRACT

*Due to tremendous increase in e-commerce all over the world, IP infringement, particularly in the field of e-commerce, has witnessed huge growth. It has put pressure on enforcement mechanisms and also created a need to ensure strong legal regimes. This article would focus on the complex issue of IP infringement in the context of e-commerce in India. The article encompasses different types of IP infringement such as abetting manufacture and sale of counterfeit products, copyright infringements, trademark infringement, patent infringements and the role of e-commerce platforms in IP protection. The article also summarizes national laws and international treaties that govern IP enforcement. Additionally, it provides a case study of how the judiciary is responding to these challenges and conclude with salient points on the need for international cooperation by all concerned stakeholders; the need for new legal regimes to deal with digital infringements, and the need of technology in ensuring robust IP protection in the marketplace.*

**Keywords:** Intellectual Property, Infringement, E-commerce, Counterfeit Products, India.

## I. INTRODUCTION

The digital realm pushed traditional marketplaces to go online and become top notch global e-commerce markets that surpassed the growth expectations of how businesses could operate to reach their customers. The enabling factor of the internet, in terms of creating platforms for businesses to reach out to customers globally, without crossing through geographic space, is an unprecedented development that we have ever witnessed. India is at the crossroads of this growth, with an increasing number of internet users and explosively growing digital infrastructure. India's e-commerce sector is likely to witness huge growth as it is fuelled by a young population, rising internet penetration and increased smartphone users.

This online presence brought an even wider array of goods and services for the middle and lower classes to access anytime from anywhere. The e-commerce industry in India has witnessed spectacular growth in the past 10 years with millions of Indians shopping online and

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billions of dollars of investments into technological and digital payments infrastructure. This reflects trends on a much larger canvas, as e-commerce has come to play a critical role for most modern economies and is redefining how consumers and businesses interact.

This shift from measured change to uncontrolled commerce tolls a new bell for the protection and enforcement of the intellectual property (IP) rights of product and service marketers. Today, with more business conducted online than ever before, IP has a special role to play in securing the competitive advantage derived from innovation.

Intellectual Property (IP) lays the foundation of establishing a unique market position in the market and building brand value. E-commerce businesses can use their IP rights (such as brand names, logos, designs, products and the product's technology) as a barrier to exclude others from unlawfully using or reproducing them, and so good IP management helps to make the business more competitive in the market and more trustworthy for consumers.

IP rights help e-commerce businesses distinguish their offerings and attract a loyal following, by protecting their visual identity (such as the appearance of a website), originality of content, originality of product design, and innovations in services or processes. This is because copying and distribution without limitation can be easily conducted online, in digital space.

The distinct IP challenges of e-commerce are borne from the digital nature of the industry, which offers numerous advantages, but also grants perpetrators ample opportunity to infringe IP rights. Digital marketplaces have made it easy for buyers to find anything they desire online – and often to do so illicitly. Many of these marketplaces exist not to assist businesses directly, but instead cater to individuals looking to satisfy their whims and fancies by salaciously taking what they consider to be their due.

In the context of e-commerce, which involves the digital reproduction and distribution of goods and services, understanding the bedrock of IP law becomes more fundamental than ever. This section explains both the definitions and categories of IP, and also the underpinning principles of IP law most central to the realm of e-commerce. What are the different types of IP? IP is a product of legislation. It is a special type of asset owned by creators which gives them certain rights and entitlements. Copyright is a type of IP derived from legislative grounds, which is the principle governing the reproduction and distribution of original works or materials such as articles, novels, films, music or software.

Intellectual Property (IP) refers to a class of property rights that are related to creations of the mind: inventions; literary and artistic works; and symbols, names, images and designs used in commerce. The primary function of intellectual property law is to grant rights to the creators of

these works, allowing them to restrict others from making copies of the work without permission, thereby creating an incentive to produce new ideas and creations.

The role of IP in e-commerce is indeed not to be underestimated. The ability to differentiate in a highly competitive environment such as e-commerce, where primarily intangible products and services are marketed, often is key to success. And IP rights help the businesses build and protect their positions and their brand identities.

## **II. TYPES OF INTELLECTUAL PROPERTY**

- **Copyrights:** Copyright law provides exclusive rights of authorship to those who create original literary, dramatic, musical, artistic works and certain other creations such as computer software programs and databases. The law protects the expression of an idea, rather than the idea itself. Copyright is critical for digital-content creators like artists and sculptors, software-designers and developers, publishers, sharing sites and search engines on e-commerce/e-commerce platforms. It prevents unauthorised reproduction and distribution or adaptation of their original works and keeps the creator in control of their original work of authorship. Copyright protection in India is governed by the Copyright Act, 1957, which offers a protection term of generally lifetime of the author plus 60 years from the author's death.
- **Trademarks:** They are signs capable of being represented graphically and of distinguishing the goods or services of one enterprise from those of other enterprises. In e-commerce, trademarks play a key role because it's a generally accepted marketing practice to use trademarks to identify companies to the consumer and build a reputation for the company and its goods. In India, the registration and protection of trademarks is governed by the Trademarks Act, 1999, which grants legal remedy in cases of trademark infringement and passing off (a type of trademark infringement that refers to unfairly using the reputation of a trademark belonging to someone else to attract customers).
- **Patents:** Such inventions are protected by patents. The proprietor thereby gets the statutory right to exclude others from working the patented invention (i.e. from selling, offering for sale, importing etc) for the period of 20 years, reckoned from the date of filing of the patent application. For e-commerce businesses acting as retailers of novel products or technologies, patent protection is paramount since such technologies should have a 20-year monopoly. The Patents Act, 1970, are statutory rules specifying the conditions for grantable inventions under the heading of novelty, inventive step and industrial applicability.

- **Trade Secrets:** A trade secret is any confidential business information that provides an enterprise an advantage over its competition or harm if disclosed. Examples include a formula, practice, process, design, instrument, pattern, or compilation of information. There is no unified statute in India for the protection of trade secrets, though businesses usually include them in a contract or confidentiality agreement to protect them. E-commerce depends on the digital transmission of data, which heightens the danger of unauthorised disclosure of trade secrets.

### **III. PRINCIPLES OF IP LAW RELEVANT TO E-COMMERCE**

There are a number of principles that inform the application of IP law in e-commerce to strike the right balance between the demand to secure IP owners' interests and promote innovation and competition:

- **Territoriality:** Intellectual property rights are territorial in nature – that is, they are enforceable only within the boundaries of the jurisdiction granting rights. This principle raises difficulties in the e-commerce world where, to protect their property, businesses must comply with the IP laws of multiple jurisdictions.
- **Exclusivity:** IP gives owners the exclusive right to use their products and creations, as well as the exclusive right to reproduce or sell them without permission, something absolutely crucial to the operation of e-commerce.
- **Limited Duration:** IP protection is only for a limited period of time. This limits the duration of exclusivity while rewarding creators.
- **Public Interest:** At the core of IP law are exceptions and limitations, i.e. the use of copyrighted material under certain conditions (such as fair use), which serve the public interest. Again, these exceptions are particularly significant in the digital environment, such that the dissemination of knowledge and culture is not prevented.

The delicate balance here involves the protection of IP rights without restraining trade to a free and open marketplace, and it's this intricate dance that makes e-commerce so difficult – and just great. The more we conduct business online, the more indispensable it is to know and understand IP law to legally protect business interests, prevent piracy of intellectual property while encouraging innovation and competition in ecommerce.

### **IV. E-COMMERCE PLATFORMS AND IP INFRINGEMENT RISKS**

As many e-commerce platforms build their databases, businesses have plenty of opportunities to reach consumers in greater numbers, and from different markets, while consumers also utilize

greater diversity of products and services. However, there is also the other side of coin in which the vastness of the e-commerce platform can become an epicentre of growth for intellectual property (IP) infringement, which can directly affect businesses and consumers. Here's what you need to know about the role of e-commerce platforms in keeping IP safe, whether there are any common types of IP infringements and what's going on behind the scenes when products like iPhone or Lamborghini can be seen in pop-up shops on major e-commerce platforms such as Shopee and Lazada.

### **(A) Role of E-commerce Platforms in IP Protection**

E-commerce platforms are at the intersection between technology and commerce, and are in the middle, bringing supply and demand together. Enforcement of IP rights on these platforms is a mix of legal obligations and voluntary action that could be tailored to their business model. E-commerce platforms are often in an excellent position to take pre-emptive action to suppress the sale of infringing goods, as they are in control of the marketplace infrastructure and can monitor the transactions taking place.

Indian law, namely the Information Technology (IT) Act, 2000 and its amendments including the Intermediaries Guidelines, prescribe the 'due diligence' requirements that an intermediary including e-commerce companies have to comply with for availing of the safe harbour protection. This includes the duty to create a mechanism for receiving and actioning complaints relating to IP infringements. The effectiveness of this would, however, depend on the service provider's commitment to make IP protection meaningful by investing in stringent monitoring and enforcement systems.

### **(B) Types of IP Infringements in E-commerce**

As E-commerce is algorithmically driven, products are easily distributed online, a matter made worse by the high-risk nature of the sector. The most common types of third-party infringement include:

- **Fake goods:** Advances in printing technology have seen an upsurge in fake goods being sold on e-commerce platforms. These goods are imitations of genuine goods and are sold without the permission of the maker of the original product. Such imitations infringe the trademark right of the maker of the authentic product. Not only do such goods mislead consumers, they also harm the reputation and sorry of the maker of the authentic product. Case in point: in India, in 2020, the court's direction in *Amway India Enterprises Pvt. Ltd. v. IMG Technologies Pvt. Ltd.* made news across India. The matter concerned a Nagpur-based woman who was led to believe that she was buying Lizol

floor cleaner from IMG Technologies. When she received the product, it turned out to be a fake product – neither original nor authorised. The direction can be summed up thus: where a platform allows third-party vendors to display and sell goods on its platform without proper scrutiny and quality checks, it will not be able to escape responsibility if such third-party vendors indulge in activities that are in violation of IP law.

- **Unauthorised Use of Copyrighted Material:** This refers to the sale or distribution of copyrighted material without the permission of the copyright holder. E-commerce websites hosting goods created by their users and those that sell digital content are particularly susceptible to copyright infringements, and use technology such as digital rights management (DRM) and content identification systems to reduce copyright infringement.
- **Trademark Infringement and Brand Impersonation:** a trademark (brand name or logo) that is either identical with or confusingly similar to a famous brand name may cause consumer confusion and result from a trademark infringement that either dilutes or tarnishes the distinctiveness or reputation of the mark in question. India, for example, recently decided the landmark case of *Christian Louboutin SAS v. Nakul Bajaj* in which the Court held that a company providing an e-commerce platform to millions of merchants, and enabling or facilitating the sale of products by trademark infringement, cannot escape liability just because they themselves do not directly violate trademark rights by direct Infringement.
- **Patent Infringements** The online offering of products belonging to a category of patented inventions presents a particular challenge for patent owners. In many instances, it is not enough to spot and address patent infringements; the patent owner may be forced to rely on the courts to stop third parties from marketing their patented products on online marketplaces.

### **(C) Legal Frameworks Governing IP Infringement in E-commerce**

Navigating IP infringement in e-commerce also requires familiarity with the substantive legal regime – that is, the codified understanding of the rights, obligations and responsibilities of each actor, and prescribing the means to enforce the rules and redress injury. Certainly, India possesses a sophisticated legal architecture to govern rights protecting different forms of intellectual property in the digital economy. Even on a global scale, international agreements embody notions of cooperative norms for IP through various multi-lateral and bi-lateral treaties,

which create a framework to protect open markets by way of ‘reciprocity’ and solidarity.

#### **(D) National Laws and Regulations**

India’s approach to IP in e-commerce is based on a robust, multi-pronged framework of laws and regulations that protects creators, innovators and digital commerce, underpinned by laws covering copyright, trademarks, patents and trade secrets.

- Copyright Act, 1957: literary, dramatic, musical and artistic works; cinematograph films; sound recordings This document governs copyright law. The legislation has been modified numerous times since 1957, as the world has changed, to include works created in a digital environment. It gives owners the exclusive right to use, copy, make adaptations, and distribute their work and levies penalties, including fines or imprisonment, on anyone who violates those rights.
- Trademarks Act, 1999: To protect the names, labels or packaging, etc, of e-commerce brands that are used as indications of source of the goods or services offered on the platform, including the means of delivery, etc of the competitor: to facilitate registration and protection of trademark rights and to award the remedies of injunction and damages for infringement.
- Patents Act, 1970: As the title suggests, it is an Act dealing with patents protecting inventions by granting exclusive rights to the patent holder. For e-commerce businesses dealing in patented products, the Act is indispensable in the prevention of unauthorised use of patented technology or processes.
- Information Technology (IT) Act, 2000: This is an important omnibus law but it’s not a law dealing specifically with IP. It has bearing on e-commerce platforms because it outlines the intermediary liability regime (also applicable to e-commerce platforms) regarding IP infringement. It provides a framework for intermediaries, including e-commerce platforms, to respond to claims of IP infringement.

#### **(E) Enforcement Mechanisms and Limitations**

Civil and criminal remedies – such as injunctions preventing further infringement, awards of damages for losses suffered, and in some cases criminal prosecution of infringers – facilitate enforcement of e-commerce IP rights under the applicable IP laws. The digital format creates some specific challenges, including certain jurisdictional issues, anonymity of infringers, and the rapid turnaround in online commerce.

The strength of the legal framework has been undermined by enforcement restrictions created



by the global nature of e-commerce platforms and by the operating beyond the jurisdictional reach of national laws. Furthermore, the incentives for platforms to police IP infringements have been called into question, particularly in relation to their notional ability (if not willingness) to do so.

### **(F) International Agreements and Treaties**

In order to deal with IP infringement taking place in the online market in a global context, India is a signatory to various international conventions and treaties that help the cross-border cooperation and harmonisation of IP laws.

- **World Intellectual Property Organization (WIPO):** A self-funding body of the United Nations, WIPO is a leading global forum for IP services, policy, information, and cooperation. India is a member of WIPO and subscribes to its numerous multilateral treaties and conventions related to the availability, protection, and enforcement of IP rights across the world. As the WIPO Arbitration and Mediation Centre is open to all members of the World Trade Organization, it is one of several options available for resolving IP disputes, including those arising out of e-commerce.
- **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):** As a member of the World Trade Organization (WTO), India is bound by the TRIPS Agreement, which lays down minimum standards to protect and enforce IP rights in member countries. TRIPS has far-reaching consequences for e-commerce too, as it requires member countries to provide efficient and expeditious procedures and effective remedies against the infringement of IP rights, including measures for the prevention of the infringement of intellectual property by goods in transit across the digital commerce platform.

However, these international legal frameworks, by setting the rules and norms for global intellectual property, help to guide Indian IP laws and policies as they come into line with these standards, and help the country to join forces with others to tackle the transnational challenges that lie at the heart of IP grief in e-commerce.

### **(G) Challenges in Enforcing IP Rights in E-commerce**

The growing scope for IP rights violations within the confines of this e-commerce platform is further enabled by the structural or inherent features of the internet that are not within the control of law. These include the cross-border nature of the internet, along with the anonymity that it provides. The rise of e-commerce in India propelled by advances in technology and massive

increase in internet use in India suggests that IPR enforcement in India faces the imminent threat of several challenges. These include jurisdictional problems, difficulty in tracing infringers, inherent limitations to current legal frameworks, and the changed role of ISPs and e-commerce platforms in enforcing IPR.

### **(H) Jurisdictional Issues and Cross-Border Enforcement**

A fundamental issue with IP rights related to e-commerce is the complex problem of jurisdiction. The global nature of the internet means that e-commerce transactions and the IP infractions arising from them very often cross over two or more states, and each such state will have its own system of law, and set of IP rules. The cross-border nature of many e-commerce transactions and infractions hinders enforcement. IP rights-holders must litigate in these varying systems of laws to bring action and litigate against those accused of IP infringements. For example, a product might be sold via an e-commerce platform located in one state, manufactured in a different state, and bought by consumers in several different states.

In coordination with the World Trade Organization (WTO), the World Intellectual Property Organization seeks to bring about greater uniformity in the protection and enforcement of IP rights as agreed under the TRIPS (or the Agreement on Trade-Related Aspects of Intellectual Property Rights). But due to the very real differences between national IP laws and the procedural difficulty and costs in international legal cooperation, exercising IP rights abroad is not always easy. For example, enforcing IP rights in India against a foreign entity would generally entail lengthy litigation and reliance on international treaties, which can be expensive and time consuming.

### **(I) Identifying Infringers in the Digital Space**

This anonymity stems from the fact that the internet serves as a platform for selling goods and providing services under a variety of pseudonyms or false identities. As Internet intermediaries, e-commerce platforms facilitate the sale of counterfeits for sellers by masking their true identity from purchasers. After a sale is made and a trademark holder, for example, seeks to ascertain the true identity of the individual infringing their IP, the platforms often refuse to disclose the identity unless they are provided with a specific order from the court. The anonymity inherent to the internet undermines the ability to commence court proceedings not only by obscuring the purchaser's true identity but also the perpetrator. Moreover, it hampers enforcement of a judgment by those trying to seize IP infringing goods.

Finally, practices of coding, duplication and dissemination that render digital content volatile and ethereal make it difficult at best to trace, detect and attribute the offline manifestation of

infringing activity online. The implication is that IP owners and e-commerce infrastructures are looking more forcefully to technological solutions in the form of digital fingerprinting and blockchain to trace products and content from source to market. But these technologies are still in their infancy and cannot address the problem of anonymity.

### **(J) The Role of Internet Service Providers (ISPs) and E-commerce Platforms**

As intermediaries, they play a pivotal role in the digital ecosystem, and consequently in the IP enforcement regime in cyberspace. In fact, an ISP or an e-commerce platform can either become a conduit for copyright infringement or an ally in the fight against it. The Indian IT Act, 2000, together with the Intermediary Guidelines, 2021, defines the due diligence to be exercised by an intermediary, including an ISP or an e-commerce platform, in respect of addressing IP infringements.

But the capacity of these entities to help enforce IP rights depends on their willingness to cooperate with rights owners and their investment in systems of surveillance and disincentives for infringement. In most cases, platforms have adopted rules and tools to address IP (e.g., takedown notices and anticounterfeiting technologies). These have all come up against familiar problems: the challenges of false claims, abuses of the process, and the political minefield of balancing limits on content with free speech and trade.

Consequently, IP rights enforcement in ecommerce in India is truly a multi-stakeholder problem. IP owners, e-commerce platforms (and ISPs), and the government will need to work together to address the issue. Robust cross-border legal cooperation, more use of technological measures for identifying the infringers, better legal frameworks to counteract the peculiarities of digital infringement, and fostering a culture of compliance and cooperation among digital intermediaries – these are all important steps that should be taken to enhance IP rights enforcement in ecommerce.

### **(K) Preventative Measures and Best Practices**

For a business operating in the fast-paced world of e-commerce, IP is highly important. As businesses evolve their online commerce activities, the most effective strategy to avoid IP infringement is a preventative one, and where possible, with the collaboration of the proper e-commerce platform taking appropriate steps at all stages of e-commerce activity. In this section, we cover the preventative strategy of how a business can avoid IP infringement from happening in the first place, and practical points of collaboration between a brand and an e-commerce platform to protect IP rights.

### **(L) IP Protection Strategies for Businesses**

Critical to robust protection of IP in the context of e-commerce will be a dependence on registration and monitoring of IP assets. With the exponential growth in intellectual creation, the legal protection of all forms of intellectual outputs will be essential for businesses to ensure that they are not unfairly deprived of their rights by unauthorised use and infringement.

**Monitoring and registering intellectual property:** Your business must register its IP assets in the relevant categories – trademark, copyright, patents and designs. In India, these are registered by the Office of the Controller General of Patents, Designs and Trademarks (CGPDTM) for all categories except copyright, where the Copyright Board registers IP rights. Once registered, IP rights serve a deterrent function apart from acting as a legal shield against third-party use of your IP.

Your business must monitor use at a minimum once a month to detect any unauthorised use of its IP. This can be done through setting up Google alerts for new domain registrations, social media mentions and using online marketplaces.

**Optimising Technological Tools for IP Protection:** Adopting technology for IP protection purposes will provide important tools for businesses to monitor and enforce their IP rights and to replace human involvement in reviewing and monitoring potential infringement activities. Such tools include the use of digital watermarking, blockchain for traceability, AI for automatic infringement detection system, automated takedown services, reviewing for takedown, and other related tools. This will provide business with the ability to protect their IPs in real time so as to mitigate damages that may arise if IP rights are infringed.

## **V. ROLE OF E-COMMERCE PLATFORMS IN PREVENTING IP INFRINGEMENT**

Simply put, providing an e-commerce platform that enforces IP rights, that has strong policies and technologies to do so, that stands up to threats of legal action from rights-holders, helps to keep infringement down.

**Policies and technologies aimed at detection and deterrence:** The majority of marketplaces developed seemingly sophisticated policies for responding to infringement cases, outlining procedures for the submission, review and processing of IP infringement complaints, and for dealing with sellers and buyers found guilty of repeat violations. Beyond policies, many sites employ a range of high-tech means to detect fakes, spot copycats, and police the various ways in which violations may occur, including image-matching software that allows for the computerised detection of fakes, as well as automated tools for processing complaints and dealing with IP-infringement claims. Such mechanisms constitute a large part of the ‘secondary regime’ that marketplaces deploy to ensure the integrity of the system and the rights of IP-

owners.

Cooperative Partnership Between Brands and Platforms: e-commerce platforms and large brands tend to enjoy a mutually beneficial partnership. Many platforms now feature programmes that enable brands to register IP rights to safeguard greater control over the listing and sale of their goods. Frequently, these programmes grant brands access to administrative tools to report infringing listings, leverage sales data to detect and stop unauthorised sales or distribution channels, and work with the e-commerce portal to design bespoke enforcement plans. Cooperation of this kind creates a generative and participatory space to address IP infringement.

It can help cut off the supply through education and awareness programmes targeting traders and consumers about the benefits of respecting IP rights and the consequences of infringement. And third, it can be used to help platforms and brands to reiterate these benefits and consequences by working together on campaigns to draw attention to the impacts of counterfeit goods on innovation, business growth and consumer safety.

#### **(A) Case Law Analysis**

Due to the fast-paced nature of e-commerce, the border lessness and instantaneity of the internet and the ever-evolving nature of dynamic websites, the problem of IP infringement through e-commerce poses its own unique challenges. The role of the judiciary in framing the contours of IP rights of protection through e-commerce leaving its enormous imprint in the field of jurisprudence, for itself, and in the context of e-commerce, in India as well as internationally has been immense. In the context of e-commerce, landmark judgments have been rendered by courts which provide a roadmap for future litigation by clarifying existing laws, and establishing precedents by interpreting the judged meaning of statutory laws – indicating the route to be followed by future judiciaries and other regulators – where existing laws have not kept pace by digitalisation. This section dwells on the case law of infringement of Intellectual Property Rights through e-commerce, the reasoning behind the decisions arrived at by the judiciary in the judgments, and the impact of these rulings on future IP rights protection in the digital marketplace.

#### **(B) Landmark Cases in IP Infringement within E-commerce**

*Christian Louboutin SAS v. Nakul Bajaj*: This case established a precedent on trademark violations on an e-commerce platform. The plaintiff, a luxury products brand, had grants for its red-soled Christian Louboutin shoes. The defendant was carrying out an online luxury platform offering goods of various brands, including, of course, Christian Louboutin shoes. The plaintiff

argued that Third World Luxury (TWL) was not an authorised trademark and was diluting its brand value. TWL's defence was that they enjoyed certain 'safe harbour' provisions and could not be held liable for every infringement that occurred on their platform. The Delhi High Court held that when e-commerce platforms started showing an active participation in the process of advertising or acknowledging sales of 'alleged' or 'infringing' products of these brands, they may lose the immunities provided under 'safe harbour' provisions. It advised e-commerce players to ensure minimum diligence before listing the products on their portal to avoid trademark infringements.

*Amway India Enterprises Pvt. Ltd. V. IMG Technologies Pvt. Ltd.:* In this case, the court of Delhi dealt with the unauthorised sale of Amway products on e-commerce platforms. A temporary injunction was granted against the platforms and the court outlined direct selling guidelines along with the fact that the e-commerce players must ensure that the third-party sellers do not sell products illegally, which would violate the IP rights of the manufacturers of the genuine products.

*eBay Inc. v. MercExchange, L. L.C.:* This case before the Supreme Court of the United States concerned patent infringement in respect of online auctions: MercExchange alleged that eBay had infringed patents for online auction technology it owned. The Supreme Court ruled that a court should not make an order of injunction merely by finding that a patent was infringed, but rather that the four-factor test should be applied and balanced to the individual circumstances.

## **VI. CONCLUSION**

There is no question that brick-and-mortar retail has been transformed more by the rise of e-commerce than any other development in history. E-commerce is merely a virtual, online space to do business and has created unprecedented opportunities for businesses to increase their growth exponentially. This rise in e-commerce has brought new challenges for the protection of rights in Intellectual Property (IP) whether in India or elsewhere. With ease of replication in digital life and the anonymity of the internet, instances of infringement of IP are on the rise, threatening the credibility of e-commerce marketplaces and infringing upon the rights of IP owners. This has shown that the e-commerce sector is particularly affected by a variety of IP infringements: counterfeit goods, copyright-infringing content, trademark infringement and the distribution of products infringing patents. These infringements undermine the revenue and reputation of right holders, but can also have negative consequences for consumers, such as issues of health and safety, and for the reputation of the e-commerce platform. Given this vital role of e-commerce platforms, they are at the forefront of developing measures to detect, deter

and respond to IP infringements. Empowered by national laws and by treaties, e-commerce platforms are increasingly deploying technological and policy measures to help combat infringement activities. India has a robust legal regime that codifies rights such as copyright, trademarks, patents and the IT Act. However, enforcement of such rights has been found wanting, especially where jurisdiction is an issue and it is difficult to identify the infringers online. The cases discussed in this article – *Christian Louboutin SAS v. Nakul Bajaj*, and *Amway India Enterprises Pvt Ltd v. IMG Technologies Pvt Ltd* – have seen the judiciary define the duties of e-commerce platforms towards preventing IP rights infringement, and leave case law for enforcement going forward. This requires a multifaceted solution for IP enforcement in the e-commerce context, including ‘stop, collaborate and listen’ between the IP rights holders and e-commerce platforms, enabling the latter to facilitate the swift removal of infringing listings and prophylactic steps. Ongoing technological developments such as digital watermarking and AI-powered detection will be able to significantly enhance the monitoring and enforcement abilities of businesses and platforms, allowing them to become more effective in adapting to new and innovative forms of infringement. In turn, the efforts to foster consumer awareness in respect of the harms caused by products bearing infringing marks but also of the benefits of consuming genuine products need to be stepped up so as to eliminate as much as possible the end-user demand for infringing products. Meanwhile, we also need to revolutionise the laws that deal with the nuances of digital infringements, particularly in an e-commerce landscape where laws and regulations will never be static but must instead be open to ongoing change and interpretation to ensure they are fit to protect IP in the digital space. This will inevitably mean revising current laws and including new forms of IP rights, as well as increasing international cooperation to handle and combat cross-border infringement. Finally, it is evident that the volatile sphere of e-commerce in India uniquely projects chances and challenges for IP protection. In order to adopt a firm stand on this, businesses, e-commerce platforms, lawyers, policymakers, educational institutions and all other relevant parties must come together to formulate and implement an effective IP enforcement policy. Employing a mix of legal, technical and pedagogic measures, these elements can be combined to create a safe, sound and fairly productive digital marketplace where intellectual property rights are appropriately valued and respected.

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