

CHALLENGES FACED BY LAW ENFORCEMENT AUTHORITIES

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29 July, 2020, 07:40 PM IST |

A third of ecommerce buyers get counterfeit products

BENGALURU: Sale of counterfeit products still remains a significant problem for online shoppers across many ecommerce sites, with two recent surveys saying that over a third of the customers have faced this problem.

A survey conducted by LocalCircles shows that 38% consumers out of 6,923 respondents have received a counterfeit product from an ecommerce site in the past one year.

- Nothing worse can happen to a brand, its value and goodwill if a fake/ counterfeit item is sold on a reputed e-commerce site
- It will not only dent the reputation of a brand but that of the e-commerce site
- May also lead to several regulatory and legal issues both for the brand and e-commerce site
- Brand protection and trust of an e-commerce site are serious issues.

Counterfeiting:

- Manufacturing and sale of fake products under some reputed brand name or without Intellectual Property Rights
- Imitate the brand with similar sounding names/ logos or packing that makes it difficult to differentiate between real and fake
- Medicines, beauty-products, software are common items which are counterfeited

Copyright infringement:

- Copying of a work product protected by copyright

Trademark infringement:

- Unauthorized use of trademark , logos, packing that differentiate genuine product from others.

Design infringement

- Manufacturing and sale of similar goods as that of the patented IPR
 - Fashion Clothes, copy cat watches, electronic goods

Prevention

- Key word monitoring
- Image recognition
- Artificial Intelligence and Machine Learning
- Advertising monitoring

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
(Department of Consumer Affairs)
NOTIFICATION

New Delhi, 23rd July, 2020

5. Liabilities of marketplace e-commerce entities

(2) Every marketplace e-commerce entity shall require sellers through an undertaking to ensure that descriptions, images, and other content pertaining to goods or services on their platform is accurate and corresponds directly with the appearance, nature, quality, purpose and other general features of such good or service.

(5) Every marketplace e-commerce entity shall take reasonable efforts to maintain a record of relevant information allowing for the identification of all sellers who have repeatedly offered goods or services that have previously been removed or access to which has previously been disabled under the Copyright Act, 1957 (14 of 1957), the Trade Marks Act, 1999 (47 of 1999) or the Information Technology Act, 2000 (21 of 2000)

7. Duties and liabilities of inventory e-commerce entities:

(3) Every inventory e-commerce entity shall ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services;

(5) Any inventory e-commerce entity which explicitly or implicitly vouches for the authenticity of the goods or services sold by it, or guarantees that such goods or services are authentic, shall bear appropriate liability in any action related to the authenticity of such good or service.

Criminal Offences under the Trade Marks Act, 1999

- **Section 101 Meaning of applying trademarks and trade descriptions**
- **Section 102 Meaning of falsifying and falsely applying trade marks**
- **Section 103 Penalty for applying false trademarks, trade descriptions, etc.**
 - Imprisonment for a term which **shall not be less than six months but which may extend to three years** and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.
- **Section 104 Penalty for selling goods or providing services to which false trade mark or false trade description is applied**
 - Imprisonment for a term which **shall not be less than one year but which may extend to three years** and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees

- **Section 105 Enhanced Penalty on second or subsequent conviction**
Imprisonment for a term which **shall not be less than one year but which may extend to three years** and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees
- **Section 114 Offences by Companies**

Criminal Offenses under the Copyright Act, 1957

Section 63 Intentional infringement or abetment of the infringement of the copyright in a work

Imprisonment for a term which **shall not be less than six months and may extend to three years** and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

Section 63A Second and subsequent convictions

Imprisonment for a term which **shall not be less than one year but which may extend to three years** and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees

Section 63B Knowing use of infringing copy of computer program

Imprisonment for a term which **shall not be less than seven days but which may extend to three years** and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

Criminal offences under the Indian Penal Code, 1860

Section 481: Using a false property mark: Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark

Section 482: Punishment for using a false property mark: Imprisonment of either description for a term **which may extend to one year, or with fine, or with both**

Section 483: Counterfeiting a property mark used by another.—Whoever counterfeits any property mark used by any other person shall be punished with imprisonment of either description for a term **which may extend to two years, or with fine, or with both.**

Section 484: Counterfeiting a mark used by a public servant.—Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished **with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.**

Search and Seizure Power of Police in IP Crimes

Trade Marks Act, 1999

Section 115 (4) Cognizance of certain offences and the powers of police officer for search and seizure

Any police officer not **below the rank of deputy superintendent of police or equivalent**, may, if he is satisfied that any of the offences referred to in sub-section (3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before a Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be: I Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained.

Copyright Act, 1957

Section 64 Power of police to seize infringing copies

Where a magistrate has taken cognizance of any offence under section 63 in respect of the infringement of copyright in any work, it shall be lawful for any police officer, not below the rank of sub-inspector, to seize without any warrant from the magistrate, all copies of the work wherever found, which appear to him to infringing copies of the work and all copies so seized shall, as soon as practicable, be produced before the magistrate.

Any person having an interest in any copies of a work seized under sub-section (1) may, within fifteen days of such seizure, make an application to the magistrate for such copies being restored to him and the magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

CHALLENGES

- Police officers are not familiar with these laws
- These offences are not on the priority list of Police-complaints' take back seat
- No specialized enforcement wing in police
- Offences are bail able- deterrence is not there
- Trademark Act- Investigation can be done only by Police Officer of a Deputy Superintendent of Police- less in number

POSSIBLE REMEDIES

- IMPART TRAINING TO POLICE IN TRAINING ACADEMIES
- OFFER REFRESHER COURSES AT INTERVALS
- SET UP SPECIALIZED UNITS IN POLICE DEDICATED TO DEAL WITH COUNTERFEITING AND VIOLATION OF IPR
- BRING IN CHANGES IN TRADEMARK ACT, IPR RELATED LEGISLATIONS – LAW MUST KEEP PACE WITH CHANGING SCENARIO
- RATHER THAN TINKERING WITH EXISTING LAWS- FRESH THINKING IS REQUIRED KEEPING IN VIEW EVER INCREASING E-COMMERCE
- MAKE OFFENCES COGNIZABLE AND NON-BAILABLE

- PROSECUTORS AND JUDGES NEED TO BE SENSITIZED ON THE SUBJECT
- TIME TAKEN FOR TRIAL MUST BE REDUCED AND APPEALS TO BE DISPOSED OF WITHIN SHORT TIME IF THE LAW HAS TO BE MADE EFFECTIVE