

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is resting on the desk. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

THE ROLE OF TRADEMARKS IN E-COMMERCE

AUTHORED BY - PRIYAL JAIN

BA LLB. (Hons)

Amity Law School, Amity University Uttar Pradesh

ABSTRACT

Over the world the internet has changed the way people talk to each other buy things and sell things. Trademarks are very important for businesses that operate on the internet. When people shop online they use trademarks like names, logos and slogans to figure out if a product's real or not. This is different from shopping in a store, where people can see the product and check if it is real. This essay is about trademarks and how they work in shopping. It looks at how trademarks used for marketing making sure online platforms are responsible building trust with customers protecting brands from people who might copy them and helping businesses grow all over the world. The essay uses laws from countries like the European Union, India, the United Kingdom and the United States to make the point that trademarks are necessary for online businesses to succeed. It also looks at court cases to support this idea. The essay ends by talking about some problems with how trademarks enforced and suggests some ways to make things better, in the future.

Keywords: *Trademarks; E-Commerce; Brand Protection; Intellectual Property; Consumer Trust; Platform Liability; Online Counterfeiting; Trademark Enforcement.*

INTRODUCTION

A new era for intellectual property law has begun with the emergence of internet commerce, especially in the area of trademark protection. E-commerce, which includes a huge network of websites like Amazon, Flipkart, Alibaba, eBay, and Etsy, has created previously unheard-of chances for companies to connect with customers in different places and time zones. In a marketplace where consumers cannot physically inspect goods, trademarks perform the critical function of standing in for direct sensory experience¹—communicating origin, quality, and

¹ Irene Calboli & Jane C. Ginsburg, Trademarks and the Internet: Evolving Jurisprudence in the Digital Age, in Cambridge Handbook of International and Comparative Trademark Law 375–392 (Cambridge University Press 2020).

authenticity through visual and symbolic cues alone. Therefore, the legal and commercial aspects of trademark protection in e-commerce are interconnected imperatives rather than separate issues. The main legislative framework that defines, registers, enforces, and upholds trademark rights is comprised of the Trade Marks Act, 1999 (India), the Lanham Act, 1946 (USA), the Trade Marks Act, 1994 (UK), and the EU Trade Mark Regulation. Yet these legislative frameworks, designed in an earlier era, are being continually stress-tested by the realities of digital commerce—anonymous sellers, automated listings, cross-border transactions, and algorithmically curated advertising² Examining six interconnected dimensions—identification and brand differentiation; consumer trust and loyalty; legal protection against infringement and counterfeiting; enhancement of platform accountability; digital marketing effectiveness through SEO; and facilitation of international commercial expansion, this paper focuses specifically on the role and functions of trademarks in e-commerce. An integrated explanation of why trademark protection is the cornerstone of a robust digital economy is provided by analysing each dimension through the prism of applicable legislation and pertinent jurisprudence.

II. IDENTIFICATION AND BRAND DIFFERENTIATION

Trademarks function as instruments of identification at the most fundamental level. A trademark, whether it is a word mark, logo, color, design, or a combination of these, allows consumers to identify the commercial source of a product or service. This identification function has been recognized as the primary purpose of trademark law across all major jurisdictions. Section 1(1) of the Trade Marks Act, 1994 (UK) defines a trade mark as "any sign capable of graphical representation which is capable of distinguishing goods or services of one undertaking from those of other undertakings."³ The identification function becomes much more important in the context of e-commerce.

The trademark is frequently the only trustworthy indicator that separates an authentic product from a knockoff when a customer peruses listings on websites like Amazon or Flipkart. In the real world, a buyer can examine products, read packaging, or speak with a salesperson. The brand name, emblem, and product images on the listing page are nearly all that consumers rely on while shopping online. The commercial importance of trademark identification in digital

² John J. Schleier, *Online Trademark Enforcement in the E-Commerce Age*, 78 *Fordham L. Rev.* 1895, 1896 (2010).

³ Trade Marks Act, 1994, § 1(1) (UK).

environments is highlighted by research that regularly demonstrates that brand-identified products obtain much higher conversion rates and consumer trust than unbranded listings.⁴

In a market that is extremely saturated, brand differentiation—the ability of a trademark to distinguish one seller’s goods from those of rivals—is equally important. Millions of product listings, frequently in the same or nearly related categories, can be found on a typical e-commerce site. Customers would find it nearly impossible to evaluate rival products solely on the basis of their merits without the distinguishing force of a trademark.

The uniqueness requirements established in trademark law, which stipulate that a mark must have some innate or acquired distinction in order to be eligible for registration, plainly reflect this business reality. The Indian Trade Marks Act of 1999 defines a trademark as “a mark capable of being represented graphically and which is capable of identifying the goods or services of one person from those of others and may include shape of items, their packaging and combination of colors” (Section 2(1)(zb)). In order to account for the different brand signals that operate in the digital marketplace, such the distinctive blue of Tiffany & Co. and the Nike swoosh, this definition is intentionally broad. Trademarks are increasingly being utilized in e-commerce in non-traditional ways, such as motion marks⁵.

III. LEGAL PROTECTION AGAINST INFRINGEMENT AND COUNTERFEITING

In the context of e-commerce, the legal protection of a trademark is arguably the most contentious and regulated component of the business. The owner of a registered trademark has the right to use it only on certain goods or services and to take legal action against any unlawful use of the trademark that could lead to confusion. “Whoever uses a mark which is identical or deceptively similar to a registered trademark without the authorisation of the proprietor shall constitute an infringement,” states Section 29 of the Trade Marks Act, 1999 (India), which establishes the fundamental basis for bringing an infringement lawsuit. When it comes to e-commerce transactions, trademark infringement can happen in a number of ways.⁶

⁴ David M. Higgins, Consumer Trust and Trademarks in the Online Marketplace, 17 J. Intell. Prop. L. & Prac. 253, 255 (2022).

⁵ Trade Marks Act, 1999, § 2(1)(zb) (India)

⁶ Trade Marks Act, 1999, § 29 (India).

When fake items are marketed as authentic products of a recognised brand, it is the most obvious and damaging type of trademark infringement. The Organisation for Economic Cooperation and Development (OECD) estimates that commerce in pirated and counterfeit goods was worth \$464 billion in 2019, or 2.5% of global trade. Online sales accounted for the majority of this activity.⁷ The scope of the issue demonstrates how important it is to create safeguards against this danger. Apart from counterfeiting, other types of trademark infringement that occur in electronic commerce include bidding by the competitor on trademarked terms in search engines, use of trademarks without authorisation in product names or descriptions in order to generate more traffic through search engines, keyword advertising, whereby the competitor bids on trademarked terms as sponsored search terms, and cybersquatting, whereby fraudulent individuals register domains containing trademarks for the purpose of deception or ransom. A significant amount of case law has been produced by each of these practices.

A major advancement in the application of trademark law to digital media was made when the United States Court of Appeals for the Second Circuit ruled in *Rescuecom Corp. v. Google, Inc.* that Google's sale of Rescuecom's registered trademark as a keyword trigger for rival advertisements constituted "use in commerce" sufficient to ground a Lanham Act claim. For systemic cases involving extensive counterfeiting operations, platform liability disputes, and the creation of legal precedent, judicial enforcement is still crucial. A thorough deterrence framework is provided by the remedies available under trademark law, which include injunctions, damages, account of profits, delivery up and destruction of infringing items, and in certain jurisdictions, criminal prosecution. For example, Section 103 of the Indian Trade Marks Act, 1999 creates significant deterrence for organised counterfeiting rings by imposing fines and a maximum sentence of three years in jail for criminal infringement.

IV. FACILITATING INTERNATIONAL EXPANSION IN GLOBAL E-COMMERCE

E-commerce has eliminated many of the practical barriers to international trade, enabling businesses of all sizes to access clients anywhere in the world with a single online storefront. However, this global reach also exposes businesses to the challenges of trademark infringement and multi-jurisdictional enforcement in areas where they may not have sought registration. As

⁷ OECD, E-Commerce Challenges in Trademark Protection 14 (OECD Publishing, Paris 2019).

a result, trademarks are essential for both enabling legal action in overseas markets and offering the strategic foundation for global brand management to support global business growth. WIPO oversees the Madrid System of the International Registration of Marks in accordance with the Madrid Protocol of 1989, which offers a simplified process for obtaining trademark protection in several nations with a single application submitted to the applicant's national trademark office.

As of 2023, 130 nations were part of the Madrid System, which accounts for a sizable share of international e-commerce transactions. Businesses that do international e-commerce would benefit greatly from obtaining trademark protection in several nations through a single administrative procedure, which will allow them to establish a consistent brand presence and enforcement capacity in important markets⁸. The licensing and franchising of cross-border e-commerce operations is another facet of global development made feasible by trademark protection. A registered trademark provides the legal foundation for licensing agreements that grant regional partners the right to use the brand in exchange for royalties or other remuneration, according to quality control standards established by the brand owner.

While the trademark licensing agreement offers contractual means for upholding brand standards and revoking authorization in the event of non-compliance, these arrangements allow scalable worldwide expansion without the capital needs of wholly-owned subsidiaries. One of the most difficult issues in international trademark law is the difficulty of enforcing laws across borders against internet infringers, who may be found in countries with weak legal systems or little ability to enforce intellectual property. WTO member nations are required by the TRIPS Agreement of 1995 to implement minimum criteria for IP enforcement, including border procedures that allow customs agents to confiscate counterfeit goods. The rapidity of e-commerce logistics, where commodities are frequently processed through customs as small mail packages before inspection can take place, generates structural enforcement gaps that current legal procedures have yet to fill, and the effectiveness and implementation of these measures varies greatly.⁹

⁸ Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, June 27, 1989, 828 U.N.T.S. 389.

⁹ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, arts. 51–60

V. CONCLUSION

This article has shown that trademarks serve a variety of essential purposes in the context of online commerce, all of which are supported by the law, important from a business standpoint, and reinforce one another. Trademarks serve a variety of purposes in the digital commercial ecosystem, including the fundamental identification and differentiation function that helps consumers navigate an information-rich marketplace, the quality assurance function that maintains consumer trust and brand loyalty, the legal protection function that discourages counterfeiting and infringement, the platform accountability function that outlines the obligations of digital intermediaries, the marketing function that permits investment in digital brand-building, and the international expansion function that facilitates global. The way forward necessitates the convergence of international cooperation, technical innovation, and legislative modernisation.

Priority measures that should be pursued include requiring seller verification across platforms, strengthening data-sharing frameworks between operators and enforcement agencies, harmonizing treaty obligations for digital trademark enforcement, and investing in AI-powered brand monitoring tools. The legal and policy community must, first and foremost, acknowledge that trademark protection in e-commerce is a systemic necessity for the integrity of the digital economy and the protection of consumers who depend on brand signals to navigate an increasingly complex marketplace, rather than a specialized concern of luxury brand owners.

Additional Keywords: Lanham Act, Trade Marks Act 1999, EUTMR, TRIPS Agreement, Madrid Protocol, UDRP, ACPA, Safe Harbour, Contributory Infringement, Platform Liability, CJEU, Keyword Advertising, Brand Registry, Anti-Counterfeiting, Trade Dress, Dilution, Cybersquatting, Digital Economy