



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.

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A STUDY ON LEGAL REMEDIES FOR THE INFRINGEMENT OF REGISTERED TRADEMARKS IN INDIA

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ABSTRACT

This article evaluates the legal remedies available in India for infringement of registered trademarks under the Trade Marks Act, 1999, allied procedural statutes and evolving case law. It examines the civil, criminal and administrative tracks, together with border enforcement, and tests them against contemporary challenges such as e-commerce counterfeiting and cross-border trade. The analysis finds that civil remedies under Sections 134 and 135, reinforced by judicial innovations including interim injunctions, Anton Piller orders, John Doe orders and punitive damages, remain the most effective avenue for registered proprietors. Criminal enforcement under Chapter XII is under-utilised, partly because Section 115(4) requires police to obtain the Registrar's opinion. The abolition of the Intellectual Property Appellate Board in 2021 has created institutional uncertainty in cancellation and rectification, and border enforcement remains constrained by recordation and resourcing hurdles. Comparison with the TRIPS Agreement, the US Lanham Act and the UK Intellectual Property Enterprise Court suggests that India's enforcement deficit lies in institutional and procedural implementation rather than in the statutory text. The article proposes codified statutory damages, police training, dedicated High Court intellectual property divisions and a capped-cost track for MSMEs.

Keywords – Trademark Infringement; Registered Trademarks; Trade Marks Act, 1999; Civil Remedies; Injunction; Damages; Account of Profits; Punitive Damages; Anton Piller Order; John Doe Order; Criminal Remedies; Chapter XII; Intellectual Property Appellate Board; Border Enforcement; Customs; Intermediary Liability; E-Commerce; Deceptive Similarity; TRIPS; Comparative Study.

I. INTRODUCTION

A trademark is a badge of commercial origin. It lets consumers distinguish the goods or services of one trader from another's, and it lets a trader who has built goodwill under a mark prevent others from appropriating it. In an economy that is digitising its retail channels and integrating with global trade, the trademark has become a central item of intangible property for enterprises of every size. Registration under the Trade Marks Act, 1999 gives the proprietor the exclusive right to use the mark and the right to seek relief for infringement. Infringement strikes at consumer confidence, erodes distinctiveness and, in the case of counterfeit goods, can endanger public health, most visibly in the pharmaceutical and food sectors.

A substantive right has limited value unless it is backed by effective, accessible and proportionate remedies. India's regime, governed principally by the Trade Marks Act, 1999 read with the Trade Marks Rules, 2017, the Code of Civil Procedure, 1908, the Specific Relief Act, 1963 and the Commercial Courts Act, 2015, offers civil, criminal and administrative remedies, supplemented by border measures under the Customs Act, 1962. The regime has a long lineage: the first dedicated statute, the Trade Marks Act, 1940, was modelled closely on the United Kingdom's Trade Marks Act, 1938. Yet proprietors still face real obstacles. Civil suits are protracted, criminal provisions are invoked inconsistently, and the abolition of the Intellectual Property Appellate Board (IPAB) in 2021 has unsettled administrative remedies, while none of the three tracks was designed with online, cross-border and marketplace-mediated infringement in mind.

This article asks how far India's remedies are adequate to protect registered proprietors. It advances the hypothesis that India's remedial architecture is formally robust and TRIPS-compliant, but that its practical efficacy is diminished by procedural delay, inconsistent use of criminal provisions, institutional gaps after the abolition of the IPAB, and the absence of provisions tailored to digital and cross-border infringement. It further hypothesises that targeted legislative and institutional reform, rather than wholesale redrafting, can substantially improve outcomes. The analysis uses two conceptual frames: the consumer-protection rationale, under which trademark law shields the public from confusion and deception, and the property-rights rationale, under which it protects the proprietor's investment in goodwill.

The study is doctrinal and analytical. It relies on the statutes and rules named above, the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, reported judgments of the Supreme Court and the High Courts, and the leading secondary literature. It draws on no empirical data on disposal times or enforcement statistics, so its conclusions on practical

efficacy rest on structural reasoning and the literature reviewed. Part II outlines the statutory framework; Part III examines civil remedies; Part IV covers criminal, administrative and border remedies; Part V analyses judicial trends; Part VI offers a comparative perspective; Part VII evaluates the framework critically; and Part VIII proposes reforms and concludes.

II. STATUTORY FRAMEWORK OF INFRINGEMENT

2.1 RIGHTS CONFERRED AND THE DEFINITION OF INFRINGEMENT

Section 28(1) is the foundational provision conferring substantive rights on the registered proprietor: it grants the exclusive right to the use of the trademark in relation to the goods or services in respect of which it is registered, and the right to obtain relief in respect of infringement of the trademark in the manner provided by the Act.¹ It is this statutory right of relief that anchors every remedy discussed in the subsequent parts of this study; the remedies available under Sections 134 and 135 are not free-standing but flow directly from the right conferred by Section 28(1).

Section 29 of the Trade Marks Act, 1999 is the operative provision defining what amounts to infringement of a registered trademark, and its nine sub-sections between them cover a wide spectrum of infringing conduct.² Section 29(1) provides that a registered trademark is infringed when a person, not being a registered proprietor or a permitted user, uses in the course of trade a mark which is identical with, or deceptively similar to, the registered mark in relation to the goods or services for which it is registered, in such a manner as to render the use likely to be taken as being use as a trademark.³

Section 29(2) extends protection to cases involving similar, though not identical, marks and similar goods or services, where the resemblance is likely to cause confusion on the part of the public, including a likelihood of association with the registered mark.⁴ Section 29(3) creates a presumption of likelihood of confusion where the mark and the goods or services are both identical to the registered mark and its specification, relieving the plaintiff of the burden of independently proving confusion in such cases.⁵ Section 29(4) provides an anti-dilution remedy available to marks having a reputation in India, permitting an infringement action even where the goods or services are dissimilar, provided the use of the mark without due cause takes unfair

¹The Trade Marks Act, No. 47 of 1999, § 28(1), India Code (1999).

²*Id.* § 29.

³*Id.* § 29(1).

⁴*Id.* § 29(2).

⁵*Id.* § 29(3).

advantage of, or is detrimental to, the distinctive character or repute of the registered mark.⁶

2.2 PASSING OFF

Section 27(1) of the Act expressly denies a statutory right of action for infringement in respect of an unregistered trademark, but Section 27(2) equally expressly preserves the common-law right of action against any person for passing off goods or services as those of another, and the remedies available in respect thereof.⁷ Although the present study is confined to registered trademarks, the continued vitality of passing off is significant for two reasons germane to this study: first, a registered proprietor frequently combines a statutory infringement claim with a common-law passing off claim in the same suit, since the latter allows recovery even where a defect in registration is later discovered; and second, the doctrinal tests developed in passing off litigation, particularly the classical trinity of goodwill, misrepresentation, and damage, have substantially influenced the judicial elaboration of the deceptive similarity standard under Section 29, as discussed in Part V.

III. CIVIL REMEDIES

3.1 JURISDICTION

Section 134 of the Trade Marks Act, 1999 confers jurisdiction to entertain a suit for infringement, or a suit in which relief for infringement and passing off are combined, exclusively upon a District Court, which, under the Commercial Courts Act, 2015, in practice translates to the Commercial Court or the Commercial Division of the High Court where the specified value of the suit exceeds the prescribed threshold.⁸ A distinctive feature of Section 134(2) is that it permits the plaintiff to institute the suit in the court within whose local limits the plaintiff actually and voluntarily resides, or carries on business, or personally works for gain, irrespective of the place where the defendant resides or the cause of action arose, in effect displacing the ordinary rule under Section 20 of the Code of Civil Procedure, 1908.⁹ This plaintiff-friendly jurisdictional rule was designed to reduce the litigation burden on registered proprietors, who are often unwilling to travel to the defendant's forum, particularly in cases of large-scale, geographically dispersed counterfeiting.

⁶*Id.* § 29(4).

⁷*Id.* § 27.

⁸The Trade Marks Act, No. 47 of 1999, § 134(1), India Code (1999); Commercial Courts Act, No. 4 of 2016, §§ 3, 4, India Code (2016).

⁹The Trade Marks Act, No. 47 of 1999, § 134(2), India Code (1999).

3.2 INJUNCTIVE RELIEF

Interim or interlocutory injunctions, sought pending final disposal of the suit, are governed procedurally by Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908, read with the court's inherent powers under Section 151 of the Code, and substantively by the principles under Sections 36 to 42 of the Specific Relief Act, 1963.¹⁰ Indian courts have consistently applied the three-fold test of prima facie case, balance of convenience, and irreparable injury in determining whether to grant an interim injunction in a trademark suit, and, given the urgency typically involved, applications are frequently granted ex parte, that is, without notice to the defendant, particularly where delay in granting relief would allow the infringing goods to be dispersed into the market or the evidence to be destroyed.¹¹ An ex parte interim injunction, however, is granted only for a limited period and is invariably subject to the plaintiff's duty of full and honest disclosure of all material facts to the court.

3.3 DAMAGES AND ACCOUNT OF PROFITS

Section 135(1) permits the court to award, at the plaintiff's election, either damages or an account of profits, these being mutually exclusive and alternative remedies rather than cumulative ones, since to award both would amount to double recovery for the same wrong. Damages compensate the plaintiff for the actual loss suffered as a consequence of the infringement, typically measured by reference to lost sales or diminished licensing revenue, whereas an account of profits requires the defendant to disgorge the profits actually made from the infringing use, on the equitable rationale that the defendant ought not to be permitted to retain a gain wrongfully derived from the plaintiff's mark. In practice, plaintiffs frequently opt for damages, since proving the defendant's profits requires discovery of the defendant's accounts and can be a more onerous and time-consuming exercise, whereas an assessment of damages permits a degree of judicial estimation where precise proof is unavailable.

A significant judicial development has been the willingness of Indian courts, notwithstanding the absence of an express statutory basis, to award punitive or exemplary damages in trademark infringement suits, particularly where the defendant has failed to appear or contest the suit despite due service, treated by courts as indicative of a deliberate and continuing infringement warranting deterrent damages over and above compensatory damages.¹² This trend, examined

¹⁰Code of Civil Procedure, 1908, Order XXXIX, rr. 1-2, § 151, India Code; Specific Relief Act, No. 47 of 1963, §§ 36-42, India Code (1963).

¹¹See *Wander Ltd. v. Antox India (P) Ltd.*, 1990 Supp SCC 727 (India) (laying down the governing principles for the grant of interlocutory injunctions and the scope of appellate interference therewith).

¹²See *Time Inc. v. Lokesh Srivastava*, 2005 SCC OnLine Del 558 (India) (awarding punitive damages in a

further in Part V, represents a judicially innovated supplement to the statutory remedy of damages under Section 135, and its doctrinal basis and consistency across different High Courts remain a live issue for the study's evaluative analysis in Parts VII and VIII.

3.4 ANTON PILLER AND JOHN DOE ORDERS

Indian courts, drawing upon English equitable practice, have also developed the practice of granting Anton Piller orders, which are search-and-seizure orders permitting the plaintiff's representatives, accompanied by a court commissioner, to enter the defendant's premises to inspect, document, and secure evidence of infringing activity before the defendant has an opportunity to destroy or conceal it.¹³ Complementing this, in cases of large-scale or anonymous infringement, most notably counterfeiting operations conducted through numerous unidentified traders or online sellers, Indian courts have granted so-called "John Doe" or "Ashok Kumar" orders, being injunctions issued against unnamed and unidentified defendants, which are then enforced against any person subsequently discovered to be engaged in the infringing conduct.

IV. CRIMINAL, ADMINISTRATIVE AND BORDER REMEDIES

4.1 CRIMINAL OFFENCES UNDER CHAPTER XII

Chapter XII of the Trade Marks Act, 1999, comprising Sections 101 to 121, creates a set of criminal offences that operate as a parallel and cumulative track alongside civil remedies. Section 101 defines when a trademark or trade description is deemed to be "falsely applied" or a false trade description is deemed to be "applied" to goods, this definitional provision underpinning the substantive offences that follow.¹⁴ Section 103 penalises the falsification of a trademark, the false application of a trademark to goods or services, the making or possession of instruments for falsifying a trademark, and the application of a false trade description, prescribing a minimum sentence of six months' imprisonment extending up to three years, together with a fine of not less than fifty thousand rupees which may extend to two lakh rupees.¹⁵

Section 115(4) is of particular practical significance: it renders offences under Sections 103, 104, and 105 cognizable, empowering any police officer not below the rank of Deputy

trademark and copyright infringement suit against a defendant who failed to contest the proceedings).

¹³See *National Garments v. National Apparels*, AIR 1990 Ker 119 (India) (recognising the utility of search and seizure orders in protecting evidence of infringement).

¹⁴The Trade Marks Act, No. 47 of 1999, § 101, India Code (1999).

¹⁵*Id.* § 103.

Superintendent of Police to search premises and seize infringing goods without a warrant, provided the officer first obtains the opinion of the Registrar of Trade Marks on facts involved in the alleged offence and is bound by that opinion in deciding whether or not the article in question constitutes a false trademark.¹⁶ This requirement of obtaining the Registrar's opinion, intended as a safeguard against frivolous or mistaken criminal proceedings, has in practice also been identified as a source of delay and unfamiliarity that discourages police officers from readily invoking the cognizable-offence machinery, a point taken up further in Parts VII and VIII.

Although the criminal remedy is, on paper, a potent deterrent, given that it does not require the proprietor to bear the cost and delay of a civil suit and instead invokes the machinery of the State, its practical invocation in India has historically been inconsistent. Police stations frequently lack specialised knowledge of intellectual property statutes, treating counterfeiting complaints as a low priority relative to conventional crime, and the statutory requirement of obtaining the Registrar's opinion before undertaking a search or seizure introduces a procedural step that many investigating officers are unfamiliar with or reluctant to pursue. As a consequence, registered proprietors, particularly larger corporate entities, have tended to rely on privately organised raids conducted with the assistance of local commissioners appointed by civil courts, as described in Part III, rather than on the criminal process, notwithstanding that the criminal process alone carries the deterrent value of custodial punishment.

4.2 ADMINISTRATIVE REMEDIES AFTER THE IPAB

Prior to 2021, appeals from orders of the Registrar in opposition and rectification proceedings, as well as original rectification petitions in certain circumstances, lay to the Intellectual Property Appellate Board, a specialised tribunal established in 2003 with both judicial and technical members possessed of subject-matter expertise.¹⁷ The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, subsequently enacted as the Tribunals Reforms Act, 2021, abolished the IPAB with effect from 4 April 2021, on the stated ground that the Board had not achieved its objective of speedier and less expensive adjudication, and transferred its pending matters and future jurisdiction to the respective High Courts, with rectification petitions and appeals from the Registrar now being maintainable before the High Court exercising jurisdiction, generally through its Commercial Division under

¹⁶*Id.* § 115(4).

¹⁷Trade Marks Act, No. 47 of 1999, § 91 (India) (as it stood prior to the 2021 amendment, providing for appeals to the Appellate Board).

the Commercial Courts Act, 2015 where applicable.¹⁸

4.3 BORDER ENFORCEMENT

Recognising that a substantial proportion of counterfeit goods enter the domestic market through importation, Section 11 of the Customs Act, 1962 empowers the Central Government to prohibit the import or export of goods for the protection of, among other things, trademarks, and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, framed thereunder, establish a mechanism by which a registered proprietor may record its trademark with Indian Customs, enabling customs officers to suspend the clearance of suspected infringing goods at the point of entry and to notify the rights holder for confirmation before the goods are released or destroyed.¹⁹

V. JUDICIAL TRENDS

5.1 THE TEST FOR DECEPTIVE SIMILARITY

The foundational modern authority on the test for deceptive similarity is **Amritdhara Pharmacy v. Satya Deo Gupta**, in which the Supreme Court, comparing the marks "Amritdhara" and "Lakshmandhara" for medicinal preparations, held that the marks must be judged by their overall structural and phonetic similarity, and by the impression such marks leave on the mind of a person of average intelligence and imperfect recollection, rather than by placing the marks side by side and comparing them syllable by syllable.²⁰ This "average consumer with imperfect recollection" standard has remained the touchstone of Indian trademark infringement analysis for over six decades.

The most detailed elaboration of the deceptive similarity test came in **Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.**, where the Supreme Court, adjudicating a dispute between two pharmaceutical companies over the marks "Falcigo" and "Falcitab" for anti-malarial drugs, laid down a comprehensive, non-exhaustive list of factors to be weighed in assessing deceptive similarity, including the nature of the marks, the degree of resemblance, the nature of the goods, the similarity in the nature, character, and performance of the goods of the rival traders, the class of purchasers likely to buy the goods, the mode of purchasing, and any other surrounding circumstances.²¹ Significantly, the Court held that in the case of medicinal products, an even

¹⁸Tribunals Reforms Act, No. 33 of 2021, §§ 3-4 & Sch., India Code (2021).

¹⁹Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, G.S.R. 300(E) (India).

²⁰*Amritdhara Pharmacy v. Satya Deo Gupta*, AIR 1963 SC 449 (India).

²¹*Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73 (India).

stricter standard of scrutiny is warranted, since confusion between pharmaceutical products carries the risk of serious, even fatal, harm to public health, a consideration that has since guided courts to apply heightened caution in pharmaceutical trademark disputes.²²

5.2 TRANSBORDER REPUTATION

A distinctive contribution of Indian jurisprudence to global trademark doctrine has been the recognition of transborder reputation, under which a mark may be protected in India even though its proprietor has not commenced actual use or sale of goods within Indian territory, provided its reputation has, through advertising, media exposure, or the mobility of international consumers, spilled over into India. In **N.R. Dongre v. Whirlpool Corporation**, the Delhi High Court, in a decision affirmed by the Supreme Court, restrained an Indian company from using the mark "Whirlpool" for washing machines, holding that Whirlpool Corporation's reputation as a manufacturer of washing machines had reached India through advance publicity and international magazine advertisements notwithstanding that Whirlpool products were not, at the relevant time, being sold in the Indian market.²³

5.3 PUNITIVE DAMAGES

As noted in Part III, the Trade Marks Act, 1999 does not expressly provide for punitive or exemplary damages, Section 135 speaking only of damages and account of profits. Nonetheless, in **Time Incorporated v. Lokesh Srivastava**, the Delhi High Court awarded punitive damages of five lakh rupees, over and above compensatory damages of five lakh rupees, against a defendant who had infringed the plaintiff's "TIME" trademark and had failed to appear and contest the suit, the Court reasoning that punitive damages serve a necessary deterrent function, since compensatory damages alone often amount to no more than a licence fee for continued infringement, leaving unscrupulous infringers undeterred.²⁴

5.4 E-COMMERCE INFRINGEMENT

The growth of online marketplaces has generated a new and increasingly significant category of trademark litigation concerning the liability of e-commerce platforms for infringing listings posted by third-party sellers. In **Christian Louboutin SAS v. Nakul Bajaj**, the Delhi High Court held that an e-commerce platform which goes beyond a passive, neutral role, for instance

²²*Id.*

²³*N.R. Dongre v. Whirlpool Corp.*, 1996 PTC (16) 583 (Del) (India), *aff'd*, (1996) 5 SCC 714 (India).

²⁴*Time Inc. v. Lokesh Srivastava*, 2005 SCC OnLine Del 558 (India).

by actively promoting, warehousing, or providing quality assurance in respect of products bearing a registered mark without the proprietor's authorisation, cannot claim the safe-harbour exemption from liability ordinarily available to intermediaries under Section 79 of the Information Technology Act, 2000, the Court laying down an illustrative list of factors relevant to determining whether a platform's role is active or passive.²⁵

VI. COMPARATIVE PERSPECTIVE

6.1 THE TRIPS AGREEMENT

India's remedial framework for trademark infringement must be understood against the backdrop of the Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, to which India is bound as a member of the World Trade Organization. Part III of the TRIPS Agreement, comprising Articles 41 to 61, obliges member States to make available civil, administrative, and, in cases of wilful trademark counterfeiting on a commercial scale, criminal enforcement procedures, and further requires the availability of provisional measures and border measures to prevent the entry of infringing goods into the channels of commerce.²⁶ The Trade Marks Act, 1999 was substantially enacted to bring India's domestic law into compliance with these obligations, and, as the analysis in Parts III and IV demonstrates, India's civil remedies, criminal offences under Chapter XII, and border enforcement mechanism under the 2007 Enforcement Rules broadly track the specific requirements of Articles 44, 45, 46, 51, and 61 of the Agreement, concerning injunctions, damages, disposal of infringing goods, border suspension of clearance, and criminal penalties respectively.²⁷

6.2 THE UNITED STATES

The principal United States federal trademark statute, the Lanham Act, provides remedies broadly analogous to those under the Trade Marks Act, 1999, including injunctive relief, damages, and an accounting of the defendant's profits, but with two notable points of contrast. First, Section 35 of the Lanham Act expressly permits a court, in cases involving the use of a counterfeit mark, to award statutory damages of up to two million dollars per counterfeit mark per type of goods sold, at the plaintiff's election, in lieu of proving actual damages or profits, a codified statutory damages regime that dispenses with the evidentiary difficulty of proving loss

²⁵*Christian Louboutin SAS v. Nakul Bajaj*, 2018 SCC OnLine Del 12215 (India).

²⁶Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 41-61, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

²⁷*Id.* arts. 44-46, 51, 61.

or profit with precision.²⁸ India, by contrast, has no equivalent statutory damages provision, and the judicially developed practice of awarding punitive damages discussed in Part V, while achieving a broadly similar deterrent objective, does so without the predictability and consistency that a codified statutory formula would provide.

6.3 THE UNITED KINGDOM

The United Kingdom's Trade Marks Act, 1994 provides a remedial structure similar in substance to the Indian Act, including injunctions, damages or an account of profits, and an order for erasure or destruction of infringing material, reflecting the shared historical lineage of the two statutes noted in Part I. A structural feature of particular relevance to the present study's evaluation of Indian civil remedies, however, is the existence in the United Kingdom of the Intellectual Property Enterprise Court, a specialised division of the High Court offering a streamlined procedure, capped costs recovery, and a small claims track for lower-value intellectual property disputes, designed specifically to make enforcement accessible to small and medium-sized enterprises that might otherwise be deterred by the cost of full High Court litigation.²⁹

6.4 LESSONS FOR INDIA

The comparative analysis undertaken in this Part, though necessarily brief, points to two specific institutional lessons of direct relevance to the reform suggestions developed in Part VIII: first, that a codified statutory damages provision, of the kind found in the Lanham Act, could inject greater consistency and predictability into Indian courts' existing practice of awarding punitive damages; and second, that a dedicated, cost-capped forum or track for lower-value trademark disputes, of the kind found in the United Kingdom's Intellectual Property Enterprise Court, could meaningfully improve access to civil remedies for India's smaller registered proprietors, who presently make disproportionately little use of the civil remedial framework relative to large corporate rights holders.

VII. CRITICAL ANALYSIS

7.1 CIVIL REMEDIES

The civil track is the strongest limb of the framework, but three weaknesses qualify it. First, the strength of the civil track depends heavily on the discretion of individual judges,

²⁸Lanham (Trademark) Act § 35(c), 15 U.S.C. § 1117(c) (2018).

²⁹See Practice Direction 63 (Intellectual Property Claims), Civil Procedure Rules 1998 (Eng.).

particularly in relation to ex parte relief and punitive damages. The plaintiff's duty of full and honest disclosure, while a necessary safeguard, means that the success of an application often turns on the quality of drafting and preparation, an advantage that well-resourced corporate proprietors enjoy far more readily than small traders. Second, the requirement under Section 135(1) that the proprietor elect between damages and an account of profits places the plaintiff in a difficult position at the outset, since the defendant's true profits are ordinarily unknown until discovery, and an election made without that knowledge may prove to have been the less rewarding one. Third, the commercial court structure has introduced case management and time-bound procedures, but it has not removed the underlying cost and duration of a contested suit, a fact that explains why the civil track is used disproportionately by large rights holders.

7.2 CRIMINAL REMEDIES

The criminal track suffers from a gap between formal power and actual use. The requirement that the police officer first obtain the Registrar's opinion is defensible as a safeguard against misuse of the criminal process in what may be a genuine civil dispute over a mark. In practice, however, it adds a step that officers are unfamiliar with and that has no clear timeline, so that the speed which the cognizable-offence status was meant to secure is lost. The result is a perverse allocation of enforcement: corporate proprietors bypass the criminal process in favour of privately organised raids under court-appointed commissioners, while small proprietors who cannot afford such raids cannot rely on the police either. The criminal remedy thus fails both the consumer-protection rationale, since counterfeit goods that endanger health continue to circulate, and the property-rights rationale, since the proprietor's goodwill remains unprotected.

7.3 ADMINISTRATIVE REMEDIES

Whether the transfer of jurisdiction to the High Courts has improved the speed and quality of administrative remedies is uncertain, and the answer is probably negative in the short term. Rectification and cancellation proceedings are frequently the defensive counterpart of an infringement suit, since a defendant commonly counterclaims for cancellation of the plaintiff's registration. The transfer of jurisdiction places both the infringement claim and the rectification claim before the same court, which may improve coherence and reduce parallel proceedings, but it also means that rectification now competes for judicial time with every other matter on the High Court's commercial docket. The study has no empirical data with which to measure disposal times, and this limitation must be acknowledged; the conclusion that the transition has produced uncertainty rather than clear improvement rests on structural reasoning and on the

literature reviewed, not on statistical findings. The appropriate response, discussed in Part VIII, is to build specialised capacity within the High Courts rather than to restore a separate tribunal.

7.4 BORDER ENFORCEMENT

Border enforcement is conceptually the most efficient remedy, since it intercepts counterfeit goods before they enter the market, where the harm becomes diffuse and difficult to trace. The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 give the proprietor a workable mechanism through recordation with Customs. Its weakness is that it relies on the proprietor to record its mark in advance and on customs officers, who are not trademark specialists, to identify infringing goods among very large volumes of cargo. The comparison with the International Trade Commission's exclusion order procedure in the United States, which offers a specialised adjudicatory forum, shows that the Indian mechanism places a heavier burden on the frontline officer and a lighter burden on any adjudicating body. The mechanism also remains more useful to large rights holders that can afford systematic recordation and monitoring than to small proprietors.

7.5 ONLINE INFRINGEMENT

The judicial response to online infringement has limits, however. First, it is judge-made and therefore depends on the High Court in which the suit is filed, so that the outcome for a proprietor may vary with the forum. Second, the active-versus-passive test is fact-intensive and produces uncertainty for platforms and proprietors alike until the facts are adjudicated. Third, the doctrine of transborder reputation, which once offered wide protection to foreign marks, has been qualified by the requirement in *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd.* that goodwill be proved within India, which may make it harder for the proprietor of a foreign mark that is well known online but has not yet entered the Indian market to obtain relief. Finally, none of these decisions addresses the practical problem that infringing sellers online can reappear under new identities within hours, which the existing John Doe jurisprudence only partly answers.

VIII. SUGGESTIONS AND CONCLUSION

8.1 SUGGESTIONS

The analysis points to the following reforms. First, Parliament may consider introducing a codified statutory damages provision within Section 135 of the Act, prescribing a defined range

of damages that a court may award in cases involving counterfeit marks without requiring detailed proof of actual loss or profit, thereby lending consistency to the presently ad hoc judicial practice of awarding punitive damages. As noted in Part VII, the provision should preserve judicial discretion within the prescribed range. Second, the Central Government and the Bureau of Police Research and Development should institute structured training modules for police officers on the recognition and investigation of offences under Chapter XII of the Act, with a view to increasing the consistency and frequency with which the cognizable-offence machinery under Section 115(4) is actually invoked, and the procedure for obtaining the Registrar's opinion should be supported by a fixed, short timeline.

Third, in view of the transitional difficulties identified following the abolition of the IPAB, the High Courts may consider establishing dedicated intellectual property divisions, staffed by judges with relevant subject-matter experience and assisted by scientific or technical advisers where necessary, along the lines already adopted by the Delhi High Court through its Intellectual Property Division, so as to preserve a measure of the specialised adjudicatory capacity that the IPAB previously offered. Fourth, the Commercial Courts Act, 2015 may be amended to introduce a capped-cost, summary track for trademark disputes below a specified monetary threshold, modelled on the United Kingdom's Intellectual Property Enterprise Court small claims track, so as to improve access to civil remedies for micro, small, and medium enterprises. Fifth, the Central Board of Indirect Taxes and Customs should be encouraged to expand outreach and simplify the trademark recordation process under the 2007 Enforcement Rules, particularly for smaller rights holders, and to strengthen risk-based screening at high-volume ports of entry, so as to enhance the practical reach of border enforcement discussed in Part IV. Sixth, the High Courts may consider issuing consolidated practice directions on dynamic and John Doe injunctions against online sellers, so as to reduce the variation in outcomes noted in Part VII.

8.2 CONCLUSION

In conclusion, the study's findings confirm the hypothesis advanced in Part I: the principal deficiencies in India's trademark remedial regime lie not in the substantive text of the statute but in the institutional and procedural conditions of its implementation, namely the under-utilisation of criminal remedies, the unsettled transitional consequences of the abolition of the IPAB, the absence of a codified statutory damages regime, and the limited accessibility of civil remedies to smaller registered proprietors. The suggestions offered in this Part are accordingly directed not at wholesale legislative redrafting but at targeted, implementable reforms capable

of closing the gap between the law as written and the law as experienced by registered proprietors seeking to vindicate their rights, a gap that, if narrowed, would considerably strengthen the practical value of trademark registration as an instrument of commercial protection in India.

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