

TRADEMARK TALK

E-commerce in India

V Mohini and **Udayvir Rana** analyse consumer protection in India



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With 451m active internet users reported at the end of 2019, India is now only second to China in this regard. Penetration of the internet and the number of users have been rising exponentially in recent years, offering a lucrative business opportunity for e-commerce entities. But convenient as they are, digital markets also bring with them the increased peril of counterfeit and substandard products. Disputes involving brand owners, e-commerce platforms and consumers have proliferated and in turn have led to several judicial rulings on the determination and extent of liability of players in this space.

The government too has been looking into regulating online marketplaces and practices of e-commerce sites and has enacted various new rules and regulations to this end.

The new rules

In February 2019, the Department for Promotion of Industry and Internal Trade of the Government of India released a draft national e-commerce policy and invited comments from stakeholders. The draft policy proposed a technological and legal framework empowering brand owners by helping them effectively protect intellectual property rights qua e-commerce platforms.

The draft policy envisages that all complaints of counterfeiting are to be communicated to brand owners within 12 hours. Once the brand owner confirms counterfeiting, the relevant seller on the e-commerce platform is to be notified and the listing taken down if the seller is unable to defend the genuineness of the product. Further, a seller found to be selling counterfeit products on e-commerce platforms shall be blacklisted by the marketplace for a specified period. The draft policy is by no means exhaustive and after

deliberating on various issues that have arisen during consultations with stakeholders, the government in November 2019 introduced the draft Consumer Protection (E-Commerce) Rules, 2019 to safeguard the interests of consumers and brand owners online.

Digital markets operated by third parties do attract a risk avoidance approach vis-à-vis online business activities of international brand owners in light of the increased peril of counterfeit products, hefty discounting schemes offered by e-commerce platforms, alterations to return/refund policies of brands etc. Imposing stringent checks and balances, the draft rules ensure that e-commerce entities (and in turn, sellers) conduct business in a transparent and impartial manner and hold them liable if they fail to:

- Provide complete information about sellers supplying goods of brand owners.
- Ensure advertisements are consistent with the actual characteristics, access and usage conditions of goods.
- Clearly state all safety and health warnings.
- Address data privacy concerns.
- Tackle the issue of fake customer reviews.
- Conduct due diligence to ensure that no counterfeit products are sold and take down listings if goods are found to be not genuine.
- Clearly provision for deadlines for return of goods and subsequent refund to consumers.
- Outline breakdown of costs in a transparent manner.
- Maintain a level playing field by ensuring prices of products are not exorbitant; and
- Frame an effective grievance redressal policy etc.

What these guidelines seek to do is to prevent any negative fallout on the business of brand

owners on account of the inherent nature of the e-commerce industry.

Comment

Significantly, the draft rules complement existing statutes including, the Companies Act, 2013, the Sale of Goods Act, 1930, the Legal Metrology Act, 2009, the Information Technology Act, 2000 and the Information Technology (Intermediaries Guidelines) Rules, 2011 – the last two are particularly significant in terms of fixing liability for IP violations with regard to e-commerce.

Thus, when one takes a broad view of e-retail in India, the new guidelines are beneficial for brand owners as they seek to keep all transactions fair and transparent and offer the goodwill and reputation of brands an added layer of protection. Not to forget consumers of course, as the title of the draft rules suggests, the aim is to eliminate negative brand experiences for consumers and effectively redress harm to their interests.

While the cohesive intent of the government to regulate the digital marketplace is apparent, the key will lie in a well-considered implementation of the draft rules balancing the interests of all parties. Stakeholder comments to the draft rules ended in December 2019 and given the robust nature of e-commerce in India, extensive feedback was received. When finalising the rules, it must be kept in mind that all guidelines (and liabilities) if too burdensome would disrupt the ease of doing business in the online sector. Though the number of online consumers in India is impressive, internet penetration is only 36% –so there is tremendous room for expansion and government efforts ought not to stymie this potential. Let's look forward to vibrant days ahead for online shopping!

V Mohini is a partner at Remfry & Sagar. Mohini is a disputes specialist with close to a decade and a half of experience. She counsels clients on trademark infringement, unfair competition, copyright and design infringement, and domain name disputes. Udayvir Rana is an associate at the firm and part of its IP litigation team. He assists clients in contentious matters involving trademark, copyright, domain name and design law violations and also focuses on IP enforcement issues.