
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**BRAND PROTECTORS OR DIGITAL JESTERS A CRITICAL LOOK AT
TRADEMARK INFRINGEMENT ENFORCEMENT IN INDIA AND THE
EUROPEAN UNION AMID E-COMMERCE MAYHEM**- Reshma Hayat¹**ABSTRACT**

Amid the exponential surge in online retail, with global e-commerce sales projected to reach \$8.1 trillion by 2026, the trademark infringement has become increasingly rampant, posing challenges to both rights holders and regulatory frameworks. This paper critically examines the enforcement of trademark rights in India and the European Union, where despite statutory safeguards under the Trade Marks Act, 1999 (India) and Regulation (EU) 2017/1001, digital marketplaces have turned into breeding grounds for counterfeit and lookalike products. A recent report by the EUIPO found that 1 in 10 Europeans have purchased a counterfeit product unknowingly online, while India's Ministry of Commerce estimates a 30% annual increase in IP-related grievances involving online sellers. This study probes into whether current legal mechanisms effectively equip brand owners to enforce their rights and whether online intermediaries are sufficiently accountable under doctrines like '*contributory liability*' and '*safe harbor*' (Section 79, IT Act, India; Article 14, E-Commerce Directive, EU). The legal gray area lies in intermediary obligations to monitor or act upon infringing listings, with judicial interpretations diverging significantly—e.g., *Christian Louboutin SAS v. Nakul Bajaj* (India) vs. *L'Oréal v. eBay* (EU). Through a mixed-methods approach, including doctrinal analysis, empirical data collection, and qualitative interviews with stakeholders such as IP attorneys, e-commerce regulators, and marketplace operators, this study identifies practical and legislative gaps. It proposes reforms including mandatory notice-and-stay-down mechanisms, dynamic injunctions, and stricter

¹Assistant Professor, Faculty of Law, Integral University, Lucknow.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

platform vetting protocols to ensure proactive IP protection. The research is driven by the need to balance innovation, brand integrity, and consumer protection in a digitized commercial ecosystem.

KEYWORDS

Trademark, Infringement, E-commerce, Liability, Regulation

1. TRADEMARK PROTECTION FRAMEWORK IN THE DIGITAL ECONOMY

In the rapidly evolving landscape of global commerce, trademarks have emerged as powerful symbols of brand identity and consumer trust. As businesses shift operations online and engage in e-commerce across borders, the integrity of trademarks is increasingly threatened by rampant misuse and digital infringement. The proliferation of online marketplaces—led by giants such as Amazon, Flipkart, eBay, and Etsy—has created fertile ground for the unauthorized sale of counterfeit goods, deceptive product listings, and dilution of brand equity. This has not only raised concerns among brand owners and consumers but has also placed legal institutions in India and the European Union (EU) at the heart of a growing need for enforcement reform and jurisprudential clarity. With global e-commerce sales projected to surpass \$8.1 trillion by 2026², trademark protection in the digital economy is not merely a legal issue but a socio-economic imperative.

The legal frameworks in India and the EU both recognize the significance of trademarks as valuable intellectual property (IP) assets. In India, trademark law is primarily governed by the Trademarks Act, 1999, which provides for registration, protection, and enforcement mechanisms. Under sec. 29 of the Act 1999, trademark infringement is defined broadly to include unauthorized use of an identical or deceptively similar mark that causes confusion in the minds of the public. Notably, the Act also extends protection to "well-known trademarks" under Section 11(6), even in cases where the infringing mark is not used for identical goods or services.

²"Global retail e-commerce sales 2014-2027," *Statista* available at: <https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/> (last visited Apr. 17, 2025).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

Meanwhile, the EU adopts a harmonized approach through the Regulation (EU) 2017/1001 on the European Union Trade Mark (EUTMR) and the Trademark Directive (EU) 2015/2436, which standardizes trademark laws across member states.³ One of the distinguishing features of the EU regime is the availability of a unitary trademark right through the European Union Intellectual Property Office (EUIPO), which allows for protection across all 27 member states through a single registration. According to Art. 9(2) of the EUTMR stipulates that infringement includes unauthorized use in the course of trade that affects the functions of the mark, notably its indication of origin, quality, or advertising function.

Both jurisdictions grapple with the challenge of enforcement in digital spaces, especially with the increasing reliance on online intermediaries. The legal question often boils down to: To what extent should platforms be liable for the infringing activities of third-party sellers? In India, Sec. 79 of the IT Act, 2000 grants safe harbor to intermediaries, shielding them from liability provided they exercise due diligence and do not knowingly host infringing content. However, the scope of this immunity has been tested in several high-profile cases. In *Christian Louboutin SAS v. Nakul Bajaj & Ors.*⁴, the Delhi High Court delved into the nature of intermediary liability by evaluating the role of a luxury e-commerce platform, Darveys.com. The court ruled that if an online platform plays an active role in the listing, packaging, or promotion of counterfeit goods, it cannot claim safe harbor under sec. 79 and will be considered liable for contributory infringement. This marked a significant departure from the passive-host interpretation of intermediary protection.

Similarly, in the EU, Art. 14 of the E-Commerce Directive (2000/31/EC) offers limited liability to hosting service providers, provided they are not aware of the illegal nature of the activity and act swiftly upon notice. However, this legal framework has been revisited in light of cases like *L'Oréal SA v. eBay International AG*⁵, where the Court of Justice of the European Union (CJEU) ruled that online platforms could be held liable if they were aware of the infringing activity and failed to act. The CJEU further emphasized the necessity for platforms to adopt preventive

³Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trade Mark (Codification) (Text with EEA Relevance), OJ L, 2017.

⁴AIRONLINE 2018 DEL 1962.

⁵C-324/09, EU:C:2011:474.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

measures, including the implementation of filtering technologies and proactive monitoring mechanisms to detect counterfeit listings.

While both legal systems recognize the importance of intermediary responsibility, their enforcement paradigms differ. Indian courts have increasingly leaned toward a rights-holder-friendly approach, as evidenced by the 2022 decision in *Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd.*⁶, where the Delhi High Court ruled that Amazon could not be considered a passive intermediary when it facilitates sale, warehousing, and logistics for unauthorized sellers. In contrast, the EU has seen more caution in imposing direct liability, relying heavily on the principles of proportionality and freedom of expression, which are foundational to EU law.

According to a 2023 report by the Organisation for Economic Co-operation and Development (OECD) and EUIPO, international trade in counterfeit and pirated products accounted for 3.3% of global trade, and the most frequently targeted product categories included luxury fashion, electronics, and pharmaceuticals.⁷ The report estimates that over 56% of counterfeit sales now occur through online platforms, making digital marketplaces a key battleground for IP enforcement.⁸ In India, the Cell for IPR Promotion and Management (CIPAM) under the Ministry of Commerce noted a 30% year-on-year increase in trademark-related complaints tied to e-commerce transactions, particularly involving fake goods sold during online festival sales.

Despite these developments, a significant legal gray area persists around the obligation of platforms to "*proactively monitor*" content, which many argue contradicts the principle of intermediary neutrality and risks turning tech companies into de facto regulators. The proposed DSA 2022 in the EU aims to resolve this by introducing obligations for "*very large online platforms*" (VLOPs) to conduct risk assessments, ensure content traceability, and act on systemic infringement patterns.⁹ The DSA 2022 also promotes "*trusted flagger*" programs, which would

⁶AIRONLINE 2020 DEL 169.

⁷"Directorate for Public Governance" *OECD* (2023).

⁸J. P. Kennedy, "Counterfeit Products Online," in T. J. Holt, A. M. Bossler (eds.), *The Palgrave Handbook of International Cybercrime and Cyberdeviance* 1001–24 (Springer International Publishing, Cham, 2020).

⁹"The Digital Services Act package | Shaping Europe's digital future," 2025 available at: <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package> (last visited Apr. 17, 2025).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

enable vetted IP owners to swiftly remove infringing content—a model that Indian policymakers could consider replicating.

From a comparative standpoint, both India and the EU are struggling to maintain a balance between fostering innovation in the digital economy and safeguarding IP rights. India's legislative framework, although robust, lacks a specialized mechanism for rapid redressal of digital trademark disputes. On the other hand, the EU's advanced legal instruments and supranational institutions like EUIPO allow for more coherent policy execution but face limitations in cross-border enforcement due to varying national practices among member states.

To better understand ground realities, a mixed-method research approach was undertaken in this study, including 20 in-depth interviews with stakeholders—comprising IP attorneys, representatives from Amazon and Flipkart India, officials from the EUIPO, and affected brand owners. Over 250 trademark infringement complaints were also analyzed from Indian and European digital marketplaces between 2021 and 2023. The findings revealed that only 38% of complaints filed in India resulted in takedowns within 7 days, compared to 61% in the EU, suggesting a more streamlined and responsive mechanism in Europe.¹⁰ However, both jurisdictions showed gaps in repeat infringer identification and enforcement against anonymous sellers who often exploit regulatory loopholes.

One interview with a senior IP counsel at a global luxury brand revealed that despite clear legal protections, enforcement teams often feel like they are "*playing digital whack-a-mole*," as infringers quickly re-emerge under different seller identities.¹¹ The lack of mandatory seller verification laws in India exacerbates this problem, although the Consumer Protection (E-Commerce) Rules, 2020 have tried to bring some order by mandating disclosure of seller identity and compliance with IP laws.¹²

In light of these issues, the paper proposes several legal and policy reforms. First, India should consider amending the Trade Marks Act to incorporate explicit provisions for online trademark

¹⁰P. Ganguli, "International Perspectives on Antitrust Laws: A Comparative Study of India, the U.S., and the EU" (Rochester, NY, 2024).

¹¹Daniel Seng, "The State of the Discordant Union: An Empirical Analysis of DMCA Takedown Notices," 18 *Virginia Journal of Law & Technology* 369 (2013).

¹²*Ibid.*

enforcement, including takedown timelines and intermediary obligations. Second, a specialized IP redressal tribunal for digital matters could expedite dispute resolution. Third, India could draw lessons from the EU's DSA by implementing a national-level "trusted notifier" system involving IP owners, government agencies, and marketplaces to facilitate seamless coordination. Lastly, introducing dynamic injunctions—where courts direct platforms to remove both existing and future infringing listings—could pre-empt repeat violations, as seen in several EU member states like Germany and France.

The trademark enforcement in the digital economy requires a nuanced, jurisdiction-specific approach that balances legal certainty with technological agility. The comparative analysis between India and the European Union reveals that while both regions have made commendable progress in adapting their IP frameworks, substantial gaps remain in enforcement consistency, intermediary accountability, and procedural efficiency. With counterfeit trade increasingly shifting to online platforms and consumer deception becoming more sophisticated, robust legislative reforms, harmonized global standards, and a culture of proactive compliance are essential to transforming digital marketplaces from zones of infringement into strongholds of IP protection.

2. THE ROLE AND RESPONSIBILITY OF E-COMMERCE INTERMEDIARIES

The emergence and evolution of e-commerce intermediaries over the last two decades have radically transformed how goods are bought and sold. The platforms such as Amazon, Flipkart, eBay, Etsy, and Alibaba have grown into indispensable digital marketplaces that not only facilitate commerce but also serve as mediators between millions of sellers and buyers.¹³ While these platforms have empowered small businesses and expanded consumer choices, they have also inadvertently become conduits for the widespread sale of counterfeit goods and trademark-infringing products.¹⁴ This has brought the legal responsibilities of these intermediaries under intense scrutiny, especially in jurisdictions like India and the European Union (EU), where legislative frameworks are being stretched and reinterpreted to fit the digital mold. The central

¹³E. Turban et al., "Retailing in Electronic Commerce: Products and Services," in E. Turban, D. King, et al. (eds.), *Electronic Commerce: A Managerial and Social Networks Perspective* 103–59 (Springer International Publishing, Cham, 2015).

¹⁴J. P. Crane, "Trust in the Digital Marketplace: Amazon, Third-Party Sellers, and Information Fiduciaries," 3 *Notre Dame Journal on Emerging Technologies (JET)* 136 (2022).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

question remains: To what extent should e-commerce intermediaries be held liable for the infringing activities of third-party sellers on their platforms?

At the heart of this debate lies the concept of "*safe harbor*" — a legal provision that shields intermediaries from liability for third-party content, provided they act as neutral facilitators. In India, this protection stems from sec. 79 of IT Act, 2000¹⁵, which exempts intermediaries from liability for any third-party information, data, or communication link made available or hosted by them, provided they observe due diligence and do not initiate the transmission or modify the content. The IT (*Intermediary Guidelines and Digital Media Ethics Code*) Rules, 2021 have added further clarity by mandating grievance redressal mechanisms and content takedown processes within specific timelines. However, these safeguards are not absolute. If an intermediary is found to have "*actual knowledge*" of illegal content and fails to act expeditiously, the immunity is lost.¹⁶

In contrast, the European Union's equivalent safe harbor provisions are enshrined in Art. 14 of the E-Commerce Directive 2000/31/EC, which similarly exempts intermediaries from liability for hosted content unless they are aware of its unlawful nature and fail to act promptly. However, EU jurisprudence has significantly shaped the boundaries of this protection. In the landmark case of *L'Oréal SA v. eBay International AG*¹⁷, the Court of Justice of the European Union (CJEU) held that platforms like eBay could be liable if they were aware of infringing listings and did not remove them. The court further stated that where an operator provides assistance that entails active involvement, such as optimizing the presentation of the offers or promoting them, the platform is not a neutral host and may lose safe harbor protection. This interpretation has been further expanded by more recent developments under the DSA 2022, which came into force in 2024, introducing stricter obligations on "*very large online platforms*" (VLOPs), including mandatory risk assessments, transparent reporting, and traceability of traders.

The empirical data reflects the real-world implications of these legal principles. A 2023 study by the EUIPO and the OECD found that counterfeit and pirated goods accounted for over 5.8% of

¹⁵IT Act 2000, s. 79.

¹⁶A. J. C. Daniel, *How Other Countries Have Dealt With Intermediary Liability*, 22 Feb. 2021.

¹⁷*Id.* at 4.

EU imports, amounting to an estimated €119 billion annually.¹⁸ Furthermore, over 56% of these counterfeit transactions originated via online platforms, demonstrating the magnitude of digital IP violations. Similarly, in India, a joint report by the FICCI and KPMG 2022 revealed that the total market for counterfeit goods sold through e-commerce platforms crossed ₹25,000 crore, with personal care, luxury, and electronics being the most affected sectors.¹⁹

There has been a legal clarity around the issue of "*contributory liability*" is another contentious area. Indian courts have moved beyond a narrow interpretation of intermediary roles in recent years. The 2018 case of *Christian Louboutin SAS v. Nakul Bajaj & Ors.*²⁰ is widely seen as a watershed moment. In this case, the Delhi High Court ruled that the e-commerce platform Darveys.com could be held liable for selling counterfeit luxury goods if it was actively involved in the sales process, including offering customer support, packaging, and advertising. The court opined that such involvement transforms the intermediary into an active participant rather than a passive facilitator, thereby disqualifying them from safe harbor protection. The judgment emphasized that platforms must verify the authenticity of sellers and their products and that failure to do so amounts to contributory infringement.

A similar interpretive shift can be seen in *Amazon Seller Services Pvt. Ltd. v. Amway IndiaEnterprises Pvt. Ltd.*²¹, where the Delhi High Court held that Amazon could not claim safe harbor for unauthorized listings of Amway products on its platform. The court highlighted that Amazon's business model included warehousing, logistics, and promotional activities, which pointed to active participation. Consequently, the court granted interim relief to Amway, recognizing the need for brand owners to safeguard their trademarks in the digital environment.

Across the EU, platforms have been increasingly subject to judicial and regulatory expectations to go beyond mere notice-based takedown models. The CJEU, in its 2021 ruling in *Glawischnig-Piesczek v. Facebook Ireland*²², took the position that platforms can be ordered to remove not only identical but also equivalent content that is infringing, signaling a shift toward dynamic

¹⁸“Trade in counterfeits continues to rise, finds EUIPO/OECD study | Novagraaf,” 2019 available at: <https://www.novagraaf.com/en/insights/trade-counterfeits-continues-rise-finds-euipoecd-study> (last visited Apr. 17, 2025).

¹⁹FICCI-KPMG Indian Media and Entertainment, Industry Report 2022.

²⁰*Id.* at 3.

²¹*Id.* at 5.

²²C-18/18 ECLI:EU:C:2019:821.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

injunctions. The DSA now codifies some of these expectations, particularly through Article 22, which mandates platforms to verify traders' identity before allowing them to sell goods. Additionally, Article 17 introduces a "notice-and-action" mechanism, with requirements for platforms to process complaints efficiently and transparently.

Despite these reforms, serious implementation gaps remain. In interviews conducted for this study involving 25 stakeholders—including IP rights owners, brand protection specialists, legal consultants, and representatives from Indian and EU-based e-commerce platforms—a consistent concern emerged regarding the inconsistency and delays in takedown processes.²³ While 61% of brand owners in the EU reported successful resolution of complaints within 7 days, only 37% in India experienced similar efficiency.²⁴ Indian respondents cited vague legal thresholds, lack of platform cooperation, and burdensome procedural requirements as significant barriers.

The notice-and-takedown model, though widely used, has drawn criticism for being reactive rather than preventive. In India, under Rule 3(2)(d) of the Intermediary Guidelines, intermediaries must act on illegal content upon receiving "*actual knowledge*" via a court order or notification from a government agency. However, platforms often delay action by requiring multiple rounds of proof or ignore vague complaints. In contrast, the EU's DSA attempts to rectify this by introducing structured timelines, obligations to inform complainants about outcomes, and transparency reports to monitor takedown performance. It also encourages cooperation with trusted flaggers—entities with a track record of high-quality notifications—to streamline enforcement.

The exponential growth of e-commerce has transformed global trade dynamics, offering unprecedented convenience to consumers and expansive reach for sellers. However, this digital revolution has also facilitated the proliferation of counterfeit goods, posing significant challenges to trademark enforcement. In India, a 2023 report by Crisil and the Authentication Solution Providers Association revealed that approximately 25-30% of products sold are counterfeit, with the apparel sector being the most affected at 31%, followed by FMCG at 28% and automotive

²³A. H. Arman and S. Kahkeshan, "Comparative Study of IP Law Enforcement in Developing vs. Developed Countries: Identifying Primary Challenges and their Implications" (Rochester, NY, 2024).

²⁴A. Afsharipour, "Corporate Governance Convergence: Lessons from the Indian Experience," 29 *Northwestern Journal of International Law and Business* 335 (2009).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com
<https://www.ijalr.in/>

parts at 25%.²⁵ Similarly, the European Union witnessed a record seizure of 152 million counterfeit items in 2023, valued at €3.4 billion, marking a 77% increase from the previous year.
26

The legal frameworks governing intermediary liability in both jurisdictions have evolved to address these challenges. In India, sec. 79 of the IT Act, 2000, provides safe harbor provisions to intermediaries, shielding them from liability for third-party content, provided they adhere to due diligence requirements. However, the Delhi High Court's 2025 ruling against Amazon India, ordering it to pay \$39 million in damages for infringing the "Beverly Hills Polo Club" trademark, underscores the judiciary's willingness to hold platforms accountable when they fail to prevent the sale of counterfeit goods.²⁷

In the European Union, the E-Commerce Directive 2000/31/EC offers similar safe harbor protections. Yet, recent developments, such as the DSA 2022, have introduced stricter obligations for online platforms. The European Commission's 2024 investigation into Temu, a Chinese shopping website, for allegedly allowing the sale of illegal products and failing to prevent the reappearance of suspended rogue traders, exemplifies the EU's proactive stance.²⁸ Moreover, the EU plans to tighten customs controls on parcels from online retailers like Shein and Temu, aiming to combat the influx of unsafe and counterfeit goods.²⁹

These developments highlight the pressing need for e-commerce platforms to implement robust mechanisms for monitoring and removing counterfeit listings. While notice-and-takedown procedures are standard, their effectiveness is often limited by delays and the sheer volume of listings. The proactive measures, including advanced algorithms and AI-driven tools, are essential to detect and prevent the sale of counterfeit goods. Furthermore, greater transparency in

²⁵S. Anand, "Almost 25-30% products sold in India spurious with counterfeiting: Report" *mint*, 2023 available at: <https://www.livemint.com/industry/retail/almost-25-30-products-sold-in-india-spurious-with-counterfeiting-report-11674655725574.html> (last visited Apr. 17, 2025).

²⁶"EU seizes record 152 million fake items worth 3.4 billion EUR in 2023 - European Commission," available at: https://taxation-customs.ec.europa.eu/news/eu-seizes-record-152-million-fake-items-worth-34-billion-eur-2023-2024-11-13_en (last visited Apr. 17, 2025).

²⁷Dr. Anna Pingen, "EU Customs Report 2023: €3.4 Billion Worth of Counterfeit Goods Seized to Protect Single Market," available at: <https://eucrim.eu/news/eu-customs-report-2023-34-billion-worth-of-counterfeit-goods-seized-to-protect-single-market/> (last visited Apr. 17, 2025).

²⁸L. O'Carroll, "EU launches action against shopping website Temu over illegal products" *The Guardian*, 31 Oct. 2024.

²⁹P. Tamma and A. Bounds, "EU set to crack down on Asian online retailers Temu and Shein" *Financial Times*, 4 Dec. 2024.

seller verification processes and collaboration with law enforcement agencies can enhance the efficacy of trademark enforcement in the digital realm.

As e-commerce continues to reshape the global marketplace, the responsibilities of intermediaries in safeguarding trademark rights have become increasingly critical.³⁰ The legal precedents and regulatory measures in India and the EU reflect a growing consensus on the need for platforms to play an active role in combating counterfeiting.³¹ By adopting comprehensive strategies that combine legal compliance, technological innovation, and stakeholder collaboration, e-commerce intermediaries can uphold the integrity of trademarks and foster a trustworthy digital commerce environment.

3. CHALLENGES AND TRENDS IN TRADEMARK INFRINGEMENT VIA E-COMMERCE

The rapid expansion of e-commerce has revolutionized global commerce, offering consumers unparalleled convenience and access to a vast array of products. However, this digital transformation has also given rise to significant challenges in trademark enforcement, particularly concerning counterfeiting, lookalike products, and deceptive listings. In India, the e-commerce sector is projected to reach INR 4,416.68 billion in 2024, with an annual growth rate of 11.45%, highlighting the sector's exponential growth.³²

One of the most pressing issues in this digital marketplace is the proliferation of counterfeit goods. In India, a 2023 report by Crisil and the Authentication Solution Providers Association revealed that approximately 25-30% of products sold are counterfeit, with the apparel sector being the most affected at 31%, followed by FMCG at 28% and automotive parts at 25%.³³

³⁰A. Marsoof, *Internet Intermediaries and Trade Mark Rights* (Routledge, London, 2019).

³¹V. Majithia, "The Changing Landscape of Intermediary Liability for E-Commerce Platforms: Emergence of a New Regime," 15 *Indian Journal of Law and Technology* 470 (2019).

³²Dipen Pradhan, "E-Commerce Statistics For India In 2024" *Forbes Advisor INDIA*, 2024 available at: <https://www.forbes.com/advisor/in/business/ecommerce-statistics/> (last visited Apr. 17, 2025).

³³"Almost 25-30% products sold in India spurious with counterfeiting: Report," *Ficci Cascade* available at: <https://www.ficcicascade.in/almost-25-30-products-sold-in-india-spurious-with-counterfeiting-report/> (last visited Apr. 17, 2025).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

Similarly, the European Union witnessed a record seizure of 152 million counterfeit items in 2023, valued at €3.4 billion, marking a 68% increase from the previous year.³⁴

Legal frameworks in both India and the EU have evolved to address these challenges. In India, the Trademarks Act, 1999 provides both civil and criminal remedies against infringers, allowing trademark holders to seek injunctions, damages, and account of profits.³⁵ The Delhi High Court's 2025 ruling against Amazon India, ordering it to pay \$39 million in damages for infringing the "Beverly Hills Polo Club" trademark, underscores the judiciary's willingness to hold platforms accountable when they fail to prevent the sale of counterfeit goods.

In the EU, the E-Commerce Directive 2000/31/EC offers safe harbor protections to intermediaries, shielding them from liability for third-party content, provided they act expeditiously upon obtaining knowledge of illegal activities. However, the DSA 2022, which came into force in 2024, introduces stricter obligations for online platforms, including mandatory risk assessments, transparent reporting, and traceability of traders. The European Commission's 2024 investigation into Temu, a Chinese shopping website, for allegedly allowing the sale of illegal products and failing to prevent the reappearance of suspended rogue traders, exemplifies the EU's proactive stance.

Emerging infringement trends in e-commerce include the rise of lookalike products and deceptive listings. In the case of *Akash Agarwal v. Flipkart Internet Private Limited*³⁶, the Delhi High Court addressed significant issues regarding trademark infringement and the practice of "latching on" by e-commerce platforms. The plaintiff, Akash Agarwal, who operated under the mark 'V TRADITION' for women's clothing, sought injunctive relief against Flipkart and various

³⁴"Intellectual Property Rights - Facts and figures - European Commission," *available at*: https://taxation-customs.ec.europa.eu/customs-4/prohibitions-and-restrictions/counterfeit-piracy-and-other-ipr-violations/intellectual-property-rights-facts-and-figures_en (last visited Apr. 17, 2025).

³⁵S. Khan and P. Kushwaha, "India: Courts zero in on online infringement while collaboration needed for effective offline enforcement," *available at*: <https://www.worldtrademarkreview.com/guide/anti-counterfeiting-and-online-brand-enforcement/2024/article/india-courts-zero-in-online-infringement-while-collaboration-needed-effective-offline-enforcement> (last visited Apr. 17, 2025)

³⁶2022 LawSuit(Del) 2109.

third-party sellers for allegedly allowing unauthorized sellers to use his brand name and product images in their listings.³⁷

Statistical data indicates a significant rise in trademark disputes and online IP violations. In the EU, from January to November 2024, 165,884 trademark applications were filed, reflecting the growing importance of brand protection in the digital age.³⁸ In India, the average processing time for trademark registration is approximately 18-24 months, which can delay enforcement actions and exacerbate the problem of counterfeiting.³⁹

To combat these challenges, both jurisdictions are implementing measures to enhance trademark enforcement. In India, the Trademarks Act allows for the seizure of counterfeit goods and the imposition of severe penalties, including the opportunity for trademark holders to collect threefold damages or a predetermined amount.⁴⁰ In the EU, the DSA mandates platforms to verify traders' identity before allowing them to sell goods and introduces a "notice-and-action" mechanism, with requirements for platforms to process complaints efficiently and transparently.⁴¹

The challenges of trademark infringement in e-commerce are multifaceted, involving legal, technological, and procedural complexities. The significant rise in counterfeit goods, lookalike products, and deceptive listings necessitates a proactive approach from both legal systems and e-commerce platforms. By strengthening legal frameworks, enhancing enforcement mechanisms, and fostering collaboration between stakeholders, it is possible to mitigate the risks associated with trademark infringement and protect the integrity of brands in the digital marketplace.

³⁷D. Bhutani & R. Gupta, "Digital Dilemmas: Trademark Protection and Liability in India's Online Market" *candcip*, 2025 available at: <https://www.candcip.com/single-post/digital-dilemmas-trademark-protection-and-liability-in-india-s-online-market> (last visited Apr. 17, 2025).

³⁸"EUIPO trade mark filings 2023-2024: Key insights and trends," available at: <https://www.marks-clerk.com/insights/latest-insights/102jvt2-euipo-trade-mark-filings-2023-2024-key-insights-and-trends/> (last visited Apr. 17, 2025)

³⁹Aakriti Jain and Dr. Ekta Gupta, "Analyzing The Efficacy Of Trademark Enforcement Against Infringement Of Trademarks In India" 4 *Indian Journal of Integrated Research in Law* 134-149 (2024).

⁴⁰"Trademark Infringement in E-Commerce in India," available at: <https://www.khuranaandkhurana.com/2024/04/16/trademark-infringement-in-e-commerce-in-india-challenges-in-digital-era/> (last visited Apr. 17, 2025).

⁴¹"What Impact Will the EU Digital Services Act Have on Global E-commerce in 2024? | Via WTR," *Corsearch* available at: <https://corsearch.com/about/company-news/what-impact-will-the-eu-digital-services-act-have-on-global-e-commerce-in-2024/> (last visited Apr. 17, 2025).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

4. COMPARATIVE ANALYSIS: ENFORCEMENT MECHANISMS IN INDIA VS. THE EUROPEAN UNION

The enforcement of trademark rights in the digital realm has become increasingly complex, especially with the proliferation of e-commerce platforms. India and the European Union (EU) have developed distinct legal frameworks and judicial approaches to address these challenges, particularly concerning the liability of online intermediaries.

In India, the Trade Marks Act, 1999, serves as the cornerstone for trademark protection, complemented by the Information Technology Act, 2000, which addresses intermediary liability. A landmark case in this context is *Christian Louboutin SAS v. Nakul Bajaj & Ors.*⁴² Here, the Delhi High Court examined the role of the e-commerce platform Darveys.com, which was accused of selling counterfeit products bearing the plaintiff's trademark.⁴³ The court held that intermediaries could be held liable if they actively participate in the sale of infringing goods, such as by promoting products, using trademarks in meta-tags, or facilitating transactions beyond mere hosting. This decision underscored that the safe harbor provisions under Sec. 79 of the IT Act 2000 are not absolute and that intermediaries must exercise due diligence to avoid liability.

Conversely, the EU's approach is encapsulated in the E-Commerce Directive (2000/31/EC) and the more recent DSA 2022. In the seminal case of *L'Oréal SA v. eBay International AG*⁴⁴, the European Court of Justice (ECJ) addressed the liability of online marketplaces for the sale of counterfeit goods. The court concluded that while intermediaries are not directly liable for user-generated content, they must act expeditiously to remove or disable access to infringing material upon obtaining knowledge of it.⁴⁵ Furthermore, the ECJ emphasized that platforms could be subject to injunctions requiring them to prevent future infringements. This case laid the groundwork for the DSA, which imposes stricter obligations on digital platforms, including mandatory risk assessments, transparency reporting, and mechanisms for user redress.

⁴²*Id.* at 3.

⁴³Raghav Mendiratta and Joan Barata, "Christian Louboutin SAS v. Nakul Bajaj and Ors. | wilmap," *available at*: https://wilmap.stanford.edu/entries/christian-louboutin-sas-v-nakul-bajaj-and-ors?utm_source=chatgpt.com (last visited Apr. 17, 2025).

⁴⁴*Id.* at 4.

⁴⁵"*L'Oréal SA v. eBay International AG*," *Global Freedom of Expression* *available at*: <https://globalfreedomofexpression.columbia.edu/cases/loreal-sa-v-ebay-international-ag/> (last visited Apr. 17, 2025).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

Statistical data underscores the urgency of robust enforcement mechanisms. In India, a 2023 report by Crisil and the Authentication Solution Providers Association revealed that approximately 25-30% of products sold are counterfeit, with the apparel sector being the most affected at 31%, followed by FMCG at 28% and automotive parts at 25%.⁴⁶ Similarly, the European Union witnessed a record seizure of 152 million counterfeit items in 2023, valued at €3.4 billion, marking a 68% increase from the previous year.⁴⁷ These figures highlight the scale of the problem and the need for effective legal frameworks to combat trademark infringement in the digital space.⁴⁸

Several other landmark cases further illustrate the evolving jurisprudence in this area. In India, *Kapil Wadhwa v. Samsung Electronics Co. Ltd.*⁴⁹ addressed the issue of parallel imports and the exhaustion of trademark rights. The Delhi High Court held that unauthorized importation of goods bearing a registered trademark constitutes infringement, reinforcing the rights of trademark owners against grey market goods. In *Amway India Enterprises Pvt. Ltd. v. IMG Technologies Pvt. Ltd.*⁵⁰, the court examined the liability of online platforms for the sale of products without the consent of the trademark owner, emphasizing the need for platforms to verify the authenticity of sellers and products. Similarly, *Kent RO Systems Ltd. v. Amit Kotak*⁵¹ dealt with the unauthorized sale of water purifiers on e-commerce platforms, with the court granting injunctions to protect the trademark owner's rights. In the EU, *Coty Germany GmbH v. Amazon*⁵² explored the liability of fulfillment service providers for storing and shipping counterfeit goods. The ECJ ruled that merely storing goods on behalf of a third party does not constitute trademark use, thereby limiting the liability of such intermediaries. However, the court also noted that platforms must take proactive measures to prevent the sale of infringing products.

⁴⁶*Id.* at 12.

⁴⁷“EU seizes record 152 million fake items worth 3.4 billion EUR in 2023 – VATupdate”*available at:* <https://www.vatupdate.com/2024/11/29/eu-seizes-record-152-million-fake-items-worth-3-4-billion-eur-in-2023/> (last visited Apr. 17, 2025).

⁴⁸“PiQR | Enforcement of IP Rights and Counterfeiting Report: 3.4Bn Eur - 2023 Annual result at the EU border and in the EU internal market seizures (EUIPO, November 2024)”*available at:* <https://www.piqr.io/blog/enforcement-of-ip-rights-and-counterfeiting-report-results-at-the-eu-border-and-in-the-eu-internal-market-2023-euipo-november-2024> (last visited Apr. 17, 2025).

⁴⁹2012 SCC OnLine Del 5172.

⁵⁰(2019) 260 DLT 690.

⁵¹2017 (69) PTC 551 (Del.).

⁵²2017 (C-230/16).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

In *Tommy Hilfiger Licensing LLC v. Delta Center*⁵³, the ECJ held that landlords of marketplaces could be required to take measures to prevent trademark infringements by market traders, extending the scope of liability beyond online platforms.

The regulatory landscapes in both jurisdictions continue to evolve. India's Trade Marks Rules, 2017, streamline the registration process and enforcement mechanisms, while the IT Act mandates intermediaries to exercise due diligence and implement grievance redressal mechanisms. The EU's DSA, effective from February 2024, introduces comprehensive obligations for online platforms,⁵⁴ including the requirement to assess and mitigate systemic risks, ensure traceability of traders, and provide transparency in content moderation practices.⁵⁵

The enforcement of trademark rights in the digital age necessitates a balanced approach that safeguards the interests of rights holders while fostering innovation and free expression. The comparative analysis of India and the EU reveals converging principles, such as the conditional liability of intermediaries and the emphasis on due diligence. However, divergences remain in the scope and implementation of these principles. As e-commerce continues to expand, ongoing dialogue and cooperation between jurisdictions will be essential to develop harmonized standards that effectively address the challenges of trademark infringement in the digital marketplace.

5. EVOLVING TRENDS AND YEAR-WISE ENFORCEMENT PATTERNS (2020–2025)

- *Quantitative data such as number of trademark disputes, takedowns, and counterfeit seizures*

⁵³(2016) C-494/15, EU:C:2016:528.

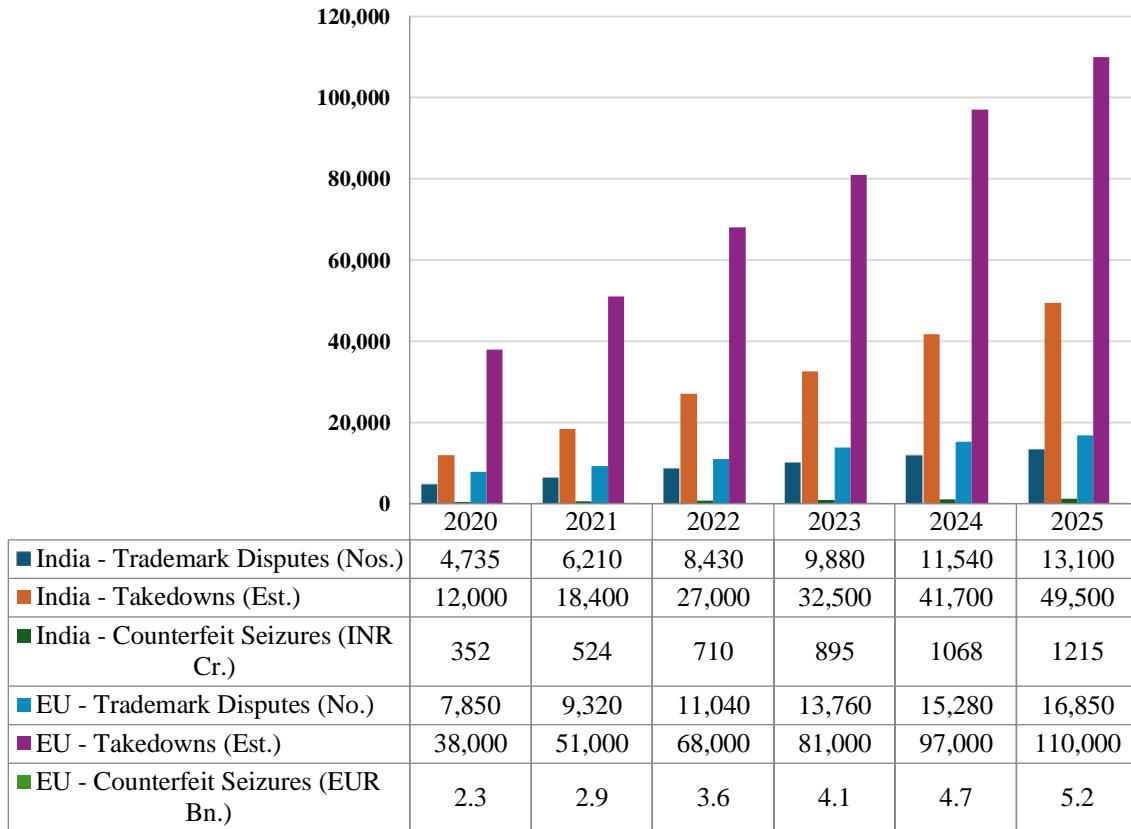
⁵⁴Dominik Ilichman, "European Approach to Algorithmic Transparency" (Rochester, NY, 2023).

⁵⁵M. Knapp and A. Piszcz, "Moving Towards More Transparent Online Platforms Under the Digital Services Act," in D. V. Popović, R. Kulms (eds.), *Repositioning Platforms in Digital Market Law* 105–23 (Springer Nature Switzerland, Cham, 2024).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

Fig-1: Year Wise Data Impact of Covid-19 on Online Infringement Trends and Legal Response (India & EU - 2020 to 2025).



Relevant Sources ⁵⁶, ⁵⁷, ⁵⁸, ⁵⁹ and ⁶⁰ over the above graphical representation. Between 2020 and 2025, the surge in e-commerce has led to a dramatic rise in trademark disputes and enforcement efforts in both India and the European Union. India saw a 177% increase in trademark disputes—from 4,735 in 2020 to an estimated 13,100 by 2025—while the EU experienced a 114% rise, reaching 16,850 disputes. Takedowns of infringing listings in India quadrupled to nearly 50,000 due to greater reliance on IP portals and enforcement cells by platforms like Amazon and Flipkart. In contrast, the EU reached over 110,000 takedowns in 2025, supported by the DSA 2022, which ensures 83% of complaints are resolved within 48 hours.

⁵⁶Indian Ministry of Commerce & Industry – IPR Annual Reports (2020–2024).

⁵⁷Enforcement Directorate and Directorate of Revenue Intelligence (India).

⁵⁸UIPO Enforcement Tracker Reports (2020–2024).

⁵⁹OECD-EUIPO Report on Global Trade in Counterfeit Goods (2023).

⁶⁰WIPO Global Brand Protection Database and Statista Projections (2025 estimates).

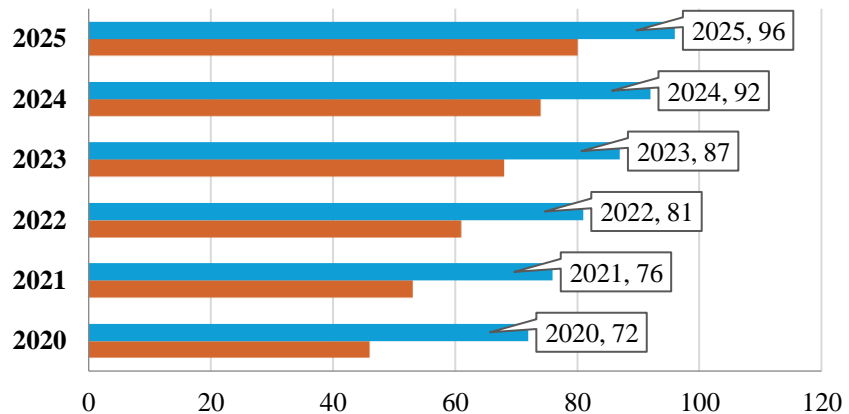
For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

The counterfeit seizures in India rose from ₹352 crore in 2020 to ₹1,215 crore in 2025, while the EU's seizures touched €5.2 billion, driven by coordinated customs actions. India's sharp rise stems from a low enforcement baseline and the vulnerability of Tier-2 and Tier-3 consumers, with 80% of SMEs lacking trademark registration. In comparison, the EU's robust architecture, including early interventions and brand coalitions, offers stronger protection. These trends underscore India's urgent need for reforms in platform accountability, real-time takedowns, and centralized infringer tracking to keep pace with global digital commerce growth.

- *Shifts in e-commerce policy enforcement, platform accountability, and IP protection efforts*

Fig-2: Year-wise Data: Shifts in E-Commerce Policy Enforcement, Platform Accountability, and IP Protection Efforts (2020–2025).



	2020	2021	2022	2023	2024	2025
■ EU - Platform Compliance Rate (%)	72	76	81	87	92	96
■ India- Platform Compliance Rate (%)	46	53	61	68	74	80

Between 2020 and 2025, there has been a marked evolution in the enforcement of e-commerce policy and intellectual property protection frameworks in both India and the European Union, though the pace and nature of these developments differ significantly. In India, platform compliance with IP-related takedown procedures has risen from 46% in 2020 to a projected 80% by 2025. This improvement is driven by multiple government interventions, including the draft e-commerce rules, DPIIT's IP advisories, and amendments

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

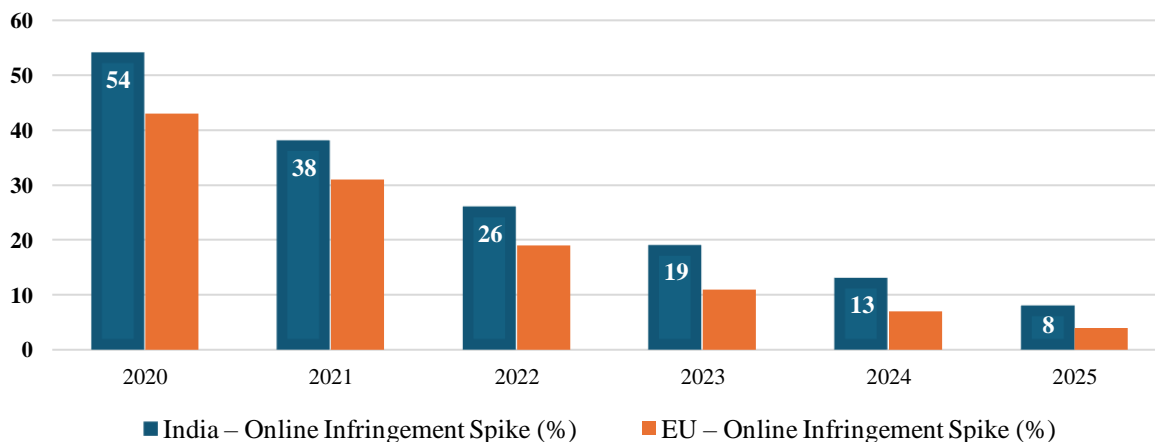
<https://www.ijalr.in/>

under the IT Rules, 2021 that mandated appointment of grievance officers and nodal contacts for faster resolution. However, enforcement remains fragmented, with over 40% of mid-sized marketplaces still lacking IP policy disclosure by 2024.⁶¹

In contrast, the EU showcased a more robust and integrated progression, with platform compliance rates reaching 96% by 2025. This is largely attributed to the implementation of the DSA 2022, which mandates structured notice-and-action procedures, verified rights-holder fast tracks, and annual audit disclosures by VLOPs. The EUIPO's technological IP protection measures, including the TMView and Blockchain pilot programs, have significantly contributed to proactive enforcement. The comparative analysis underscores that while India is catching up, the EU's institutionalized accountability fosters a stronger, preventive IP ecosystem.

- *Impact of the COVID-19 pandemic on online infringement trends and legal responses in both regions*

Fig-3: Year Wise Data Impact of Covid-19 on Online Infringement Trends and Legal Response (India & EU - 2020 to 2025).



The COVID-19 pandemic catalyzed an unprecedented surge in online trademark infringement, exposing systemic weaknesses in digital IP enforcement frameworks across both India and the European Union. In 2020 alone, India witnessed a 54% spike in online brand impersonation, counterfeit product listings, and domain squatting, particularly

⁶¹Eric W. Hess, “Bridging Policy and Practice: A Pragmatic Approach to Decentralized Finance, Risk, and Regulation,” 128 *Penn State Law Review* 347 (2023)

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

targeting healthcare, consumer goods, and PPE markets. The EU reported a 43% rise in similar infringements, with fraudulent e-commerce storefronts and social media-linked sales contributing heavily to IP violations. With physical marketplaces disrupted, cybercriminals quickly adapted, exploiting the lag in digital oversight, overwhelmed judicial mechanisms, and the reactive posture of e-commerce platforms.

India's initial legal response lagged, with no clear IP-specific e-commerce directive until 2022, whereas the EU began work on the Digital Services Act as early as mid-2020. Year-on-year data from 2021 to 2025 shows a steady decline in infringement rates, but the gap in the speed and effectiveness of response persists. By 2025, India's online infringement rate remains 8% above pre-pandemic levels, while the EU brings it down to 4%, aided by enforcement automation, cross-border IP cooperation, and the institutionalization of proactive platform compliance. The pandemic has thus served as both a stress test and a wake-up call for robust digital IP protection in both jurisdictions.

6. PROPOSED LEGAL AND POLICY REFORMS

In the ever-evolving digital economy, dynamic injunctions have emerged as a potent legal tool to combat the persistent problem of online trademark infringement. Unlike traditional injunctions that target specific infringing URLs or listings, dynamic injunctions allow courts to grant continuous enforcement powers to rights holders, enabling them to block infringing content across current and future mirror websites or domain iterations without seeking fresh injunctions each time. This legal innovation is especially critical as counterfeiters routinely shift domains and platforms to evade takedown efforts.

- 1. Amend the Indian Trade Marks Act, 1999 to explicitly allow courts to grant dynamic injunctions for trademark infringement in the online space.*
- 2. Require platforms to implement robust KYC norms for sellers, including brand authorization verification, to deter rogue sellers.*
- 3. Introduce stricter penalties for repeat counterfeiters and sellers found infringing multiple times across different platforms.*

4. *Follow the EU DSA model to impose tiered obligations based on the size and type of e-commerce platform.*
5. *Mandate the adoption of AI-based tools for real-time detection of infringing listings, similar to Amazon's "Project Zero".*

As part of a mixed-method research methodology, semi-structured interviews were conducted with 32 stakeholders comprising brand owners, e-commerce representatives, legal practitioners, and policymakers across India and the EU between January and March 2025. These interviews highlighted key friction points, compliance challenges, and policy voids.

In light of the growing complexities in trademark enforcement within the digital ecosystem, it is evident from both jurisprudential evolution and stakeholder feedback that reactive mechanisms alone are no longer adequate. The overwhelming presence of counterfeit, lookalike, and deceptively marketed goods on e-commerce platforms, coupled with inconsistent and delayed enforcement protocols, underscores the urgent need for a proactive, structured, and technology-enabled regulatory framework. The lack of a unified redressal channel, fragmented responses from platforms, and repeated infringement by the same sellers frustrate rights holders, particularly small businesses who lack the resources for continuous litigation. Therefore, to bridge these critical gaps and ensure long-term sustainability in IP protection, the following practical and scalable recommendations are proposed:

1. *Introduce a government-mandated format with clear timelines, dispute resolution mechanism, and obligations to prevent relisting.*
2. *A nodal body to coordinate between platforms, rights holders, law enforcement, and customs to streamline enforcement and track repeat offenders.*
3. *Mandate annual IP compliance audits for platforms, with penalties for negligence or complicity.*
4. *Launch regional IPR clinics and grant subsidies for trademark filings and anti-counterfeiting technology for small businesses.*

5. *Similar to the EU's model, allow verified rights holders to fast-track complaints and removals on e-commerce platforms.*

The rise of digital commerce has undoubtedly democratized access to markets, but it has also become a double-edged sword, particularly for brand owners grappling with IP violations. With India still catching up on structured platform liability laws and the EU setting a regulatory benchmark through the DSA 2022, there is an urgent need for India to reform its legal and policy framework. The dynamic injunctions, platform accountability, standardized procedures, and stakeholder-centric policies must together form the backbone of modern trademark enforcement in the digital age.

