

# Trade mark infringement in India's digital marketplace



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## ANALYSIS

This is an analysis of trade mark infringement in India's digital marketplace, examining counterfeit listings, keyword advertising, deceptive domain names, social media misuse, passing off, transborder reputation, and the application of established trade mark principles to online commerce.

The rapid expansion of India's digital economy has fundamentally changed the manner in which businesses build, market, and protect their brands. Electronic commerce platforms, online marketplaces, mobile applications, social media channels, and digital advertising have enabled enterprises to reach consumers across the country with unprecedented speed. Digital commerce has removed geographical barriers while creating immense commercial opportunities for businesses of every size.

This transformation has also generated new challenges for trade mark proprietors. Brand misuse is no longer confined to counterfeit products displayed in physical markets. Today, trade mark infringement frequently occurs through online product listings, deceptive domain names, sponsored advertisements, social media profiles, mobile applications, keyword advertising, counterfeit marketplace stores, and misleading digital promotions.

Indian Courts have gradually adapted established trade mark principles to address these evolving commercial realities. Judicial interpretation increasingly recognises digital infringement as capable of causing substantial commercial injury through consumer confusion, dilution of goodwill, and diversion of legitimate business. Understanding trade mark infringement within digital environments therefore requires appreciation of both statutory protection under the Trade Marks Act, 1999 and evolving judicial interpretation developed through landmark decisions of the Supreme Court of India.

### Digital marketplace has altered traditional trade mark risks

Conventional trade mark disputes generally involved physical products displayed in retail outlets. Digital commerce presents a substantially different environment. Consumers often purchase products without physically examining goods. Decisions frequently depend upon search results, marketplace rankings, advertisements, product descriptions, and visible branding. Under such circumstances, trade marks perform an even greater commercial function. Consumers rely upon recognised marks to distinguish authentic products from competing alternatives. Any unauthorised use capable of creating confusion may significantly influence purchasing behaviour. Consequently, digital infringement frequently affects commercial goodwill much faster than traditional market disputes.

### Trade mark protection extends beyond physical goods

Trade mark law protects commer-

cial identity rather than merely tangible products. Modern businesses develop valuable goodwill through websites, mobile applications, digital services, online education platforms, software solutions, and electronic commerce operations. Unauthorised digital use of protected marks may therefore constitute infringement where statutory requirements are satisfied. The expansion of commerce into virtual environments has broadened the practical application of trade mark principles without altering their fundamental legal objectives. Consumer protection continues remaining central.

### Consumer confusion remains the primary judicial test

Indian Courts consistently evaluate trade mark disputes through the likelihood of consumer confusion. The Supreme Court comprehensively explained relevant principles in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, the Court observed that determination of deceptive similarity requires consideration of the nature of marks, degree of resemblance, class of purchasers, surrounding circumstances, mode of purchasing, and nature of goods or services. Although the dispute concerned pharmaceutical products, the principles articulated by the court possess broader application across trade mark jurisprudence, including digital commerce. The judgment remains one of India's leading authorities governing deceptive similarity.

### Phonetic similarity continues applying within online commerce

Digital consumers frequently search products through spoken commands, mobile applications, and online search engines. Consequently, phonetic resemblance continues playing an important role within digital trade mark disputes. The Supreme Court in *Amritdhara Pharmacy v. Satya Deo Gupta* recognised that trade marks should be evaluated from the perspective of ordinary consumers possessing imperfect recollection rather than through meticulous comparison. This doctrine has particular significance within electronic commerce where purchasing decisions often occur rapidly and consumers frequently rely upon memory rather than detailed examination. Minor spelling differences may therefore fail to eliminate infringement.

### Essential features of registered marks continue receiving protection

Digital marketplaces often involve slight modifications of established trade marks. Sellers occasionally alter spellings, typography, or graphic presentation while retaining overall commercial identity. The Supreme Court addressed this issue in *Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceuticals Laboratories*, holding that infringement may arise where essential features of a registered trade mark have been appropriated despite minor variations. This principle continues applying within electronic commerce because digital presentation frequently emphasises overall commercial impression rather than technical differences. Substance prevails



over superficial alteration.

### Counterfeit listings have become a major commercial concern

Counterfeit goods represent one of the most significant challenges confronting trade mark proprietors within digital marketplaces. Unauthorised sellers frequently reproduce brand names, packaging, logos, and promotional material while offering inferior products through electronic commerce platforms. Consumers may believe such goods originate from legitimate businesses. Counterfeit products frequently damage commercial reputation because consumers associate poor quality with genuine trade mark proprietors. Trade mark law therefore protects both commercial interests and consumer confidence. Judicial intervention frequently becomes necessary where infringement persists.

### Keyword advertising raises complex trade mark questions

Search engine advertising has introduced additional trade mark concerns. Businesses occasionally purchase competitors' trade marks as advertising keywords to attract online consumers searching for established brands. Although keyword advertising presents complex legal issues, courts increasingly examine whether such conduct creates confusion regarding commercial origin or unfairly exploits established goodwill. The analysis generally focuses upon marketplace perception rather than technological mechanisms alone. Consumer understanding remains decisive.

### Domain names have acquired trade mark significance

Commercial identity increasing-

ly depends upon domain names. Businesses frequently establish consumer recognition through websites corresponding with trade marks. Unauthorised registration of confusingly similar domain names may therefore create significant commercial injury. Although domain names perform technical internet functions, courts increasingly recognise their commercial importance. Misleading domain registrations capable of diverting consumers frequently attract the judicial scrutiny. Brand identity now extends beyond conventional packaging.

### Social media has expanded trade mark misuse

Social media platforms permit rapid creation of commercial profiles. Fraudulent accounts may imitate legitimate businesses through unauthorised use of trade marks, logos, promotional images, or business names. Consumers encountering such profiles may mistakenly assume commercial association. Digital impersonation therefore represents another form of trade mark misuse capable of damaging reputation and consumer confidence. Businesses increasingly monitor social media alongside conventional marketplaces. Continuous vigilance has become commercially necessary.

### Passing off remains important within digital commerce

Registration strengthens statutory rights. Nevertheless, passing off continues protecting commercial goodwill acquired through use. The Supreme Court reaffirmed these principles in *Laxmikant V. Patel v. Chetanbhai Shah*, observing that no trader possesses entitlement to represent business activities as belonging to another. The judgment emphasised pro-



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The photo shows two drugs made by the similar-sounding Cadila Healthcare Ltd. and Cadila Pharmaceuticals Ltd., respectively, in India.  
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tection of commercial goodwill against deceptive conduct capable of misleading consumers. These principles remain highly relevant within online commerce where reputation frequently develops through sustained digital presence.

### International reputation receives judicial recognition

Digital commerce frequently eliminates geographical limitations. Consumers encounter international brands through online platforms regardless of physical market presence. The Supreme Court acknowledged protection of trans border reputation in *Milmet Oftho Industries v. Allergan Inc.*, recognising that internationally established goodwill may receive protection within India under appropriate circumstances. Electronic commerce has further strengthened practical relevance of this doctrine because information circulates globally without significant territorial restrictions. Commercial reputation increasingly transcends borders.

### Well-known trade marks receive broader judicial protection

Indian Courts have recognised enhanced protection available to famous trade marks. The Supreme Court considered these principles in *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd.*, examining transborder reputation and evidentiary requirements concerning goodwill existing within Indian markets.

Although every dispute depends upon its particular facts, the judgment illustrates judicial willingness to examine broader commercial realities surrounding internationally recognised trade marks. Well-known marks frequently require wider protection against dilution and deceptive commercial association.

### Importance of professional legal assessment

Digital trade mark disputes frequently involve sophisticated questions concerning marketplace liability, intermediary responsibility, deceptive similarity, passing off, and online commercial conduct. Businesses confronting infringement often consult trade mark infringement lawyers in India to evaluate enforcement strategies, preserve commercial goodwill, and obtain appropriate judicial remedies under applicable intellectual property laws. Professional legal analysis assists businesses in navigating increasingly complex digital trade mark disputes.

The expansion of digital commerce has fundamentally transformed trade mark infringement in India. Counterfeit marketplace listings, deceptive domain names, social media impersonation, keyword advertising, and unauthorised online branding now present challenges extending far beyond traditional retail markets. Indian Courts have responded by applying established trade mark principles to contemporary commercial realities while preserving emphasis upon consumer protection, commercial goodwill, and fair competition. As India's digital economy continues expanding, trade mark protection will remain an indispensable component of commercial strategy. Businesses capable of combining strong intellectual property management with proactive enforcement will be better positioned to preserve brand identity, maintain consumer confidence, and compete successfully within increasingly sophisticated digital marketplaces.

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