

Role of Judiciary in the Growth of E-Commerce

***Dr. Uma Shanker Sharma**

Introduction

Apart from those efforts with the aid of using the legislature, the judiciary has additionally exceeded several decisions that have ensured easy boom of E-Commerce in India. Some of such instances are as follows:

1. **ASHISH AHUJA V. SNAPDEAL.COM AND SANDISK CORPORATION¹**

This is a landmark judgment given with the aid of using the Competition Commission of India. In this case, the plaintiff Mr. Ashish Ahuja turned into engaged with inside the procurement and sale of diverse digital merchandise along with pen drives, hard-disks, CDs and different digital gadgets which aided withinside the garage of data. The plaintiff / informant used the channels of e-trade as a medium to execute such income and to have interaction new clients. One of such e-trade web sites turned into www.snapdeal.com. However, the e-trade website – www.snapdeal.com added this settlement with the plaintiff Mr. Ashish Ahuja.

The plaintiff / informant – Mr. Ashish Ahuja become interested by promoting u.s.b. port pendrives synthetic via way of means of Sandisk. When the plaintiff Mr. Ashish Ahuja confronted www.snapdeal.com, he become told via way of means of the group you bought a No Objection Certificate (N.O.C.) from Sandisk permitting him to promote the goods synthetic via way of means of them on e-trade web sites inclusive of www.snapdeal.com. This become one in every of the situations imposed www.snapdeal.com to permit the plaintiff / informant – Mr. Ashish Ahuja to turn out to be a certified supplier of Sandisk made u.s.b. pen-drives. The plaintiff / informant– Mr. Ashish Ahuja controlled you bought such No Objection. However, every other hurdle turned into created with the aid of using www.snapdeal.com to avoid the income with the aid of using Mr. Ashish Ahuja i.e. he turned into now no longer authorized with the aid of using the e-trade internet site to promote the ones u.s.b. pen drives at aggressive prices.

The principal contentions of the plaintiff / informant – Mr. Ashish Ahuja changed into that Sandisk and www.snapdeal.com has authorized severa different dealers to promote the goods such because the u.s.b. pen-drives at a fee a great deal lesser than that the plaintiff / informant – Mr. Ashish Ahuja changed into allowed to promote. The plaintiff / informant – Mr. Ashish Ahuja contended that those movements through the alternative dealers coupled through the approvals granted through Sandisk and www.snapdeal.com had been now no longer best arbitrary however additionally anti-aggressive in nature as such movements amounted to predatory pricing as consistent.

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The Competition Commission of India, on receiving this records pursued the count and finished its investigations and got here to the realization that no case of contravention to any of the provisions of the Competition Act, 2002 can be made. The Competition Commission of India concluded via way of means of mentioning that the act of Sandisk of authorizing most effective a constrained range of dealers to promote their merchandise isn't an anticompetitive act and isn't violative of Section three of the act. The CCI additionally stated that www.snapdeal.com and Sandisk's act of most effective permitting a few dealers to promote the product at lesser fee additionally does now no longer quantity to predatory pricing and isn't violative of any of the provisions of the Competition Act, 2002.

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2. **TIMBERLAND COMPANY VS. ROHIT BAJAJ** ²

This case revolves across the breach of the Intellectual Property Rights of a company via way of means of someone promoting their counterfeit merchandise on e-trade websites. Since the yr 1973, the plaintiff is engaged withinside the manufacture and advertising and marketing of branded clothing and shoes below the logos TIMBERLAND and TREE DEVICE. The trademark TIMBERLAND constitutes a key and important function of the buying and selling fashion and company identification of the plaintiff. The plaintiff's starting place dates returned to 1918.

The call TIMBERLAND became conceived in 1973 because the logo call for the plaintiff's unique water-proof leather-based boots. As the water resistant leather-based boots have become popular, the plaintiff's employer call became formally modified to "The Timberland Company". In the Seventies and Eighties the employer extended into global life-style with the aid of using expanding its product line to informal and boat shoes, apparel and women's footwear. Plaintiff has geographically extended its enterprise beneathneath the logos TIMBERLAND and TREE DEVICE thru a deliberate and extensive international advertising pressure.

By distinctive feature of precedence lengthy status use and tremendous publicity, the mark/name TIMBERLAND, TIMBERLAND PRO and the TREE DEVICE have acquired tremendous goodwill and popularity that is a valued asset of the plaintiff. The plaintiff has registered the TIMBERLAND trademark in Class 25 and some different lessons in about 123 nations inclusive of India.

In October, 2002, the plaintiff first have become conscious from the websites www.rohitfashions.com and www.stockgarments.com in which the defendants were imparting inventory lot, surpluses and cancelled order of each branded and unbranded garb from factories in India. Amongst the branded

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items the defendants were exporting and imparting to promote to diverse international locations items beneathneath the well-known logos of the plaintiff i.e. TIMBERLAND and TREE DEVICE.

The plaintiff commissioned an research of defendants' premises in October 2002 via a expert research business enterprise and a pattern pair of denims below the logo call TIMBERLAND changed into bought in conjunction with clothes of a few different brands.

When the samples have been examined, it became determined out that the samples have been counterfeits and have been a slavish reproduction of the originals as are synthetic through the plaintiff. Subsequently the plaintiff despatched a end and desist letter dated twelfth November, 2002. However, because the defendants did now no longer respond to the stated note, a comply with up note became despatched to the defendants on twelfth December, 2002 in which the plaintiff suggested the defendants that because it had now no longer responded to the end and desist note dated twelfth November, 2002, it became an admission of infringement and it became assumed that the defendants have to have stopped unauthorized and infringing use of the plaintiff's logos TIMBERLAND and TREE DEVICE. The plaintiff similarly advised that it might keep an eye on destiny violation. Both the notices have been served and obtained through the defendants. The defendants' items have been now no longer to be had with inside the neighborhood market.

The defendants' items have been now no longer to be had with inside the nearby markets and that they have been more often than not running and sporting on with their illicit enterprise sports via the medium of net via their web sites www.rohitfashions.com and www.stockgarments.com and www.brandedlots.com.

The plaintiff had proved that the defendants' acts of infringement and passing off are resulting, inter alia, in:

- (i) Dilution of the individuality of the plaintiff's emblems through distinctive feature of uncontrolled use of the marks through unauthorised entities
- (ii) Making undue income with out making an attempt or funding and through conducting illicit enterprise sports through deliberately the usage of and buying and selling upon TIMBERLAND and TREE DEVICE emblems of the plaintiff;
- (iii) Damage to the general public hobby as a consequence of counterfeits being siphoned off as genuine/approved TIMBERLAND products

The Hon'ble High Court of Delhi in this example offered a decree for permanent injunction in choose of the plaintiff in conjunction with a sum of Rs. 3,00,000/- to the plaintiff as compensatory damages and a sum of Rs. 2,00,000/- as punitive/exemplary damages in addition to damages attributable to lack of recognition and goodwill of the plaintiff. The plaintiff turned into additionally offered Rs. 50,000/- as prices of the suit.

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3. CHRISTIAN LOUBOUTIN SAS V. NAKUL BAJAJ

This case is pretty much like the preceding one i.e. Timberland Company Vs. Rohit Bajaj as this example additionally includes sale of counterfeit merchandise of a longtime logo on e-trade websites.

In this case, the plaintiff, a French organisation which derives its call from Mr. Christian Louboutin, the well-known designer, is famous for its high-quit luxurious products, in particular for women's footwear with its distinctive "Red Soles" and has additionally branched out into purses and men's footwear below the alternate mark/call Christian Louboutin. Plaintiff has presence in over 60 nations along with India.

The defendant - Nakul Bajaj became promoting counterfeit merchandise on his web sites i.e. www.darveys.com. The plaintiff had filed a fit for infringement of alternate marks, exposure rights, passing off, unfair competition, dilution, damages, rendition of money owed and shipping up towards defendant.

The Hon'ble Court in this example figuring out the case in desire of the plaintiff granted an exparte advert meantime injunction restraining Defendant from selling, providing for sale, advertising, or at once or in a roundabout way dealing in shoes and leather-based items consisting of shoes, handbags, purses, shoes or some other items bearing the registered logos of Plaintiff via their e-trade internet site www.darveys.com and/or any in their stores and/or throughout any occasions or exhibitions or in any way whatsoever.

As a result, this decision and the Timberland Company case⁷⁶ serve as precedents forbidding the infringement of an individual's intellectual property rights via ecommerce websites.⁶

4. Loreal v. Brandworld ⁷

This is another instance that adds to and strengthens the legal grounds established in the Timberland Company⁸ and Christian Louboutin Sas cases ⁹.

In this case, the plaintiff, based in France, has been using the well-known registered trade mark L'OREAL continuously and extensively since 1910. Defendant reportedly used the website www.shopclues.com to sell counterfeit goods.

The Hon'ble Court issued an ex parte advert intervening time injunction prohibiting Defendant from using, manufacturing, marketing, purveying, supplying, selling, soliciting, exporting, displaying, or marketing and marketing the exchange mark L'OREAL and its formative marks on the net marketplace vicinity via the internet site www.shopclues.com or every other mode.

5. State v. Mohd. Afzal & Others ¹⁰

This case isn't a case which relates to digital trade or maybe to trade with inside the conventional shape and sense. Yet it's far critical to talk about this situation because it became the primary time while the Indian Courts gave a proper popularity to the digital statistics as evidence.

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Apart from officially giving popularity to the admissibility of digital information as proof, the courtroom docket additionally gave strict pointers concerning the system and necessities if a person desires to assignment the accuracy of a pc proof or digital file. The courtroom docket had determined that if a person demanding situations the accuracy of a pc proof or digital file at the grounds of misuse of machine or running failure or interpolation, then the individual difficult it ought to show the equal past affordable doubts.

This Judgment dietary supplements the numerous provisions of the Information Technology Act 2000 and offers validity to the numerous digital files organized with the aid of using the ecommerce web sites on a each day foundation which includes however now no longer restrained to digital records touching on putting of orders, era of bills, payments, lawsuits with the aid of using clients etc.

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