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India: The Conflict Between E-Commerce Platforms and Companies Engaged in Direct Selling

Aditi Gupta · Thursday, August 1st, 2019

Are e-commerce websites allowed to sell products of companies engaged in direct selling? The Delhi High Court of India, in its judgment of 8 July 2019, [here](#), held platforms such as Amazon, Flipkart, Snapdeal, IMG and Healthkart guilty of tortious interference with the contractual relationship of the plaintiffs with their direct sellers. The court applied the old adage, “*with great power comes great responsibility*”, on e-commerce platforms which have entered into all forms of trade, commerce, and businesses.

A batch of seven suits raising overlapping issues was heard together. The plaintiffs include companies like M/S Amway India Enterprises Pvt Ltd, M/S Modicare Ltd., and M/S Oriflame India Pvt Ltd. The legal complexities in this conflict involve Constitutional issues, intellectual property rights, information technology laws, consumer protection laws, contractual laws, the law of torts, and other applicable guidelines.

What is Direct Selling?

Under the concept of direct selling, the products are sold through direct sellers under a Direct seller's contract. The said Direct sellers undertake to market, distribute and sell products of concerned companies and provide services thereto, directly to consumers. These direct sellers are provided training periodically and are bound by “Code of Ethics” which govern their conduct.

The companies engaged in direct selling business sells its products directly either through their official website or through the web of their direct sellers. The products of companies are not available for sale legitimately through any e-commerce or online portals or mobile apps. Sale on such platforms violates the ‘Code of Ethics’ of these companies.

The Direct selling entities are expected to enter into a specific agreement with the Direct sellers and are governed by the Direct Selling Guidelines issued by the government of India. **Clause 7(6) of Direct Selling Guidelines, 2016** requires that “*the sale of the products of the Direct Selling entity on any e-commerce platform or marketplace would have to be done by “any person” only with the prior consent of the Direct selling entity.*”

What Happened in the Case?

The plaintiffs in the above-mentioned case alleged that the products were being sourced through unauthorised channels and that the products were tampered, changed and impaired in violation of

Plaintiffs' statutory and common law rights. Further, non-disclosure of sellers' names and contact details constituted misrepresentation and were contrary to consumers' welfare. Product reviews on the e-commerce platforms confirmed that the products and brand reputation were severely jeopardized.

The defendants argued that they were mere intermediaries and entitled to safe harbour under [Section 79 of the Information Technology Act](#) which states that "*an intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by him.*" They further contended that they were mere 'facilitators' of transactions between the buyers and the sellers and in compliance with the IT Guidelines 2011 and that they did not play an active role in the sale transactions.

The Judgment:

The court affirmed the apprehensions of the plaintiff and ruled against the e-commerce platforms. It held that there was large scale impairment of the goods and misrepresentations being made on the platforms. The consumers were unaware that the seller was unauthorized and hence required investigative capabilities to trace the actual seller.

The court held that

"The Direct Selling Guidelines are law. While the Defendants' platforms and sellers insist on their Article 19(1)(g) rights being jeopardized, what is lost sight of is the fact that the Plaintiffs' right to carry on business is being affected. It is being jeopardized in view of the large-scale violations on the e-commerce platforms. Further, the rights of genuine consumers are being affected, as is evident from the various comments, which consumers have put up on these platforms, after purchasing the Plaintiffs' products from the said platforms."

The court further held that in absence of consent of the Plaintiffs' to use their marks for the purpose of advertising, promotion, and depiction of the source of the products, there was an infringement of the Plaintiffs' trademarks. On the issue of Section 79 of the IT Act, the court held that insufficient diligence on the part of the intermediaries took them out of the ambit of the safe harbour. Hence, the court opined that indirect interference with the contractual relationships of the Plaintiffs' constituted tortious interference and therefore, *"the e-commerce platforms have a duty to ensure that the contractual relationships are not unnecessarily interfered by their businesses."*

Conclusion:

Due to the court's decision, the defendants are required not only to take down all listings of and forsake commercial activity on the Plaintiffs' products but must also supply detailed seller data on all Plaintiff-approved products. The court rejected the Defendants' plea of exhaustion stating that this cannot give legitimacy to tampering and mutilation of the products and it cannot condone the unauthorized sale of such products by the Defendants.

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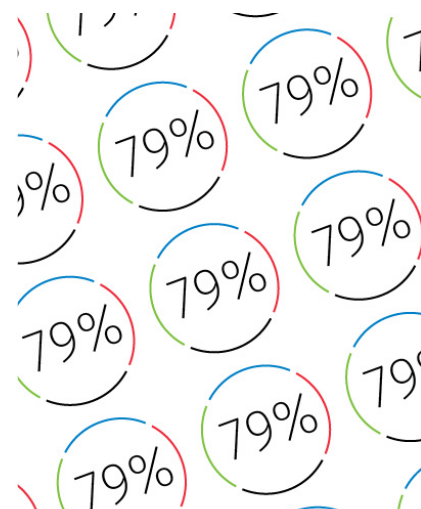
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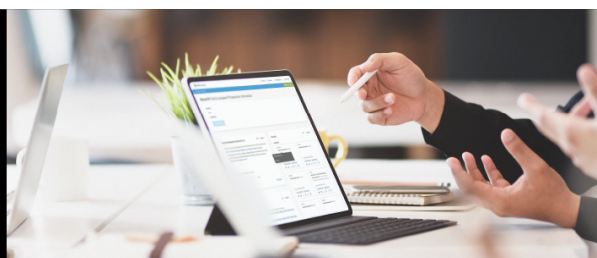
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