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## LIABILITY FOR TRADEMARK INFRINGEMENT ON E-COMMERCE MARKETPLACES

Ana Vladimirovna Pokrovskaya 

People's Friendship University of Russia, Moscow, Russian Federation

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### ABSTRACT

This article examines the issue of distribution of liability for infringement of exclusive rights to trademarks in the sale of goods through marketplaces. Examined the legislation and case law of Russia and other countries on the liability for selling counterfeit goods on marketplaces. International and Russian legal practice in resolving disputes over infringement of exclusive rights to trademarks on e-commerce platforms was examined. Models of legal regulation of e-commerce in foreign countries were analyzed. The conclusions have been formulated on the need for progressive development of legislation of the Russian Federation in the area under study, including regulation of e-commerce platforms, and measures to improve the liability of marketplaces and sellers for the sale of counterfeit products were developed.

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## 1. INTRODUCTION

The evolution of the internet and technology has led to the growth of e-commerce. As a result, the phenomenon of intellectual property rights infringement has become very prominent on the Internet. The use of the Internet and the vast array of digital technologies being created for commercial purposes has become a familiar reality for an overwhelming number of manufacturers. Today's global economy is influenced by so-called super-platforms, which accumulate a significant percentage of international trade and not only trade transactions. In the Russian Federation, these are Sber and Yandex, which are essentially independent digital ecosystems. Global super-platforms include Alibaba, TMall, eBay, Amazon, Europages, BBP. They have a number of competitive advantages: user-friendly interface, wide range and possible free delivery of goods, additional services, adapted payment system, etc. However, the area of online sales via marketplaces remains under-regulated. Obviously, newly created relationships also create potential pitfalls for market participants. Despite the benefits of online commerce, the risk of purchasing counterfeit goods increases considerably in today's environment. In view of the frequent infringement of exclusive intellectual property rights on e-commerce platforms, it becomes difficult to determine who will be liable in this case, whether it will be the e-commerce platforms (marketplaces) themselves when counterfeit goods are sold through them, or the infringer himself. This issue is treated differently in different jurisdictions. In some countries, such as Russia, e-commerce has just recently begun to develop in comparison with other countries such as the USA, Germany, etc. At present, neither Russian nor Western courts have developed a unified approach to assessing the actions of marketplaces. Much depends on the extent to which the operator of the internet marketplace is involved in the sale of goods. If the marketplace only provides technical assistance to sellers (enabling them to post information about the product) and does not participate in the sales process, it will usually be able to avoid liability for infringement of an exclusive right.

## 2. MODELS OF LEGAL REGULATION OF E-COMMERCE

*The first group* is characterised by minimal regular intervention. The e-commerce sector is considered to regulate itself. At the same time, the subjects of e-commerce are either not taxed or pay them at a reduced rate, which undoubtedly stimulates the corresponding entrepreneurial activity. This approach is followed by the United States, where, as is well known, the development of high technology is ahead of the global average. It should be considered that this economic stimulus policy leads to a reduction in

budget revenues, but if this policy is implemented consistently over a sufficiently long period of time, its change may entail a decrease in the rate of development of e-commerce.

*The second group* is represented by the European Union member states, which "practice the concept of maximum state intervention in the electronic market" [2]. At the same time, it should be borne in mind that a large amount of regulation has been moved to the supranational level. Thus, at the end of 2020 the European Commission approved two proposals: the adoption of the Digital Markets Act<sup>1</sup> and the adoption of the Digital Services Act<sup>2</sup>. In addition to these initiatives by the European Commission, the EU has a number of legal acts that have some impact on digital trade.

*The third group* is those countries that use total control of the information space. This group generally includes such countries, such as China and Russian Federation.

### 3. STATE LEGISLATIONS REGULATING DIGITAL (ELECTRONIC) COMMERCE

#### 3.1. Russian legislation

In the Russian Federation, there is currently no specific legislation regulating digital (electronic) commerce. In 2000, a draft Federal Law "On Electronic Commerce" was prepared, but it did not receive the necessary support in the State Duma of the Federal Assembly of the Russian Federation.

The Russian legislation provides different types of responsibility for the sale of counterfeit goods: civil, administrative and criminal. Within the framework of the civil law regulation in accordance with Articles 1515 and 1252 of the Civil Code<sup>3</sup> the right holder has the right to demand the removal from circulation and destruction at the expense of the infringer of counterfeit goods, and also, at his choice, the payment of compensation or compensation for damages. In accordance with Article 1253 of the Civil Code of the Russian Federation<sup>4</sup>, if the intellectual property rights have been systematically violated, it is possible to forcibly liquidate the legal entity or terminate the activities of a citizen as an individual entrepreneur. In

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<sup>1</sup> Proposal for a regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital markets act), available at: <https://eur-lex.europa.eu/legalcontent/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN> (last visited 05.03.2023)

<sup>2</sup> Proposal for a regulation of the European Parliament and of the Council on a single market for digital services (Digital services act) and amending Directive 2000/31/EC, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=>

<sup>3</sup> The Civil Code of the Russian Federation, Part Four. (as amended on December 5, 2022) (revision effective June 29, 2023).

<sup>4</sup> The Civil Code of the Russian Federation, Part Four. (as amended on December 5, 2022) (revision effective June 29, 2023).

addition, interim measures may be taken against the offender: seizure of tangible media, equipment and materials, prohibition of relevant activities in information and telecommunication networks.

The Law explains that if the exclusive right violation is committed by the actions of several persons jointly, such persons are liable to the right holder jointly (Article 1252 of the Civil Code of the Russian Federation)<sup>5</sup>. However, the law does not allow for a clear determination of whether the activities of the marketplace and the seller are joint. There is an opinion that the marketplace is only an information intermediary.

### 3.2. Chinese legislation

The adoption of the Law of the People's Republic of China on Electronic Commerce (hereinafter - PRC Law) has been followed by a number of related legal acts<sup>6</sup>. This document was the result of a systematisation of pre-existing legislation as well as a generalisation of existing jurisprudence. However, it has included numerous innovative provisions both for PRC legal regulation and for the regulation of electronic commerce in general.

Structurally, the PRC Law consists of seven chapters: "General provisions", "E-commerce operators", "Conclusion and performance of e-commerce contracts", "E-commerce dispute resolution", "E-commerce advertising and product promotion", "Liability of relationship participants", "Final provisions". E-commerce operators must also meet their tax obligations and are now required to issue a tax invoice (fapiao). The legislation also strengthens the protection of intellectual property and addresses the problem of counterfeiting. For example, it imposes liability on both counterfeiters and e-commerce operators who fail to take the "necessary measures" to prevent and stop infringement of intellectual property rights by sellers [8]. Further strengthens consumer protection and competition by requiring the e-commerce operator to disclose accurate product/service information and avoid the use of misleading and deceptive practices. E-commerce platforms will also have to establish a system for posting consumer comments and introduce other measures to ensure accurate information. Most of the measures in the PRC Law are aimed at protecting the rights of consumers. For example, according to Article 13, goods or services provided by e-commerce operators must comply with requirements for personal and property safety and environmental

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<sup>5</sup> The Civil Code of the Russian Federation, Part Four. (as amended on December 5, 2022) (revision effective June 29, 2023).

<sup>6</sup> E-commerce law of the People's Republic of China, available at: [https://ipkey.eu/sites/default/files/documents/resources/PRC\\_E-Commerce\\_Law.pdf](https://ipkey.eu/sites/default/files/documents/resources/PRC_E-Commerce_Law.pdf)

protection. E-commerce operators may not sell goods or provide services that are prohibited by laws or administrative regulations.

In China, e-commerce platforms are jointly and severally liable for the sale of counterfeit products by others on their websites [4]. Online retailers are obliged to immediately report violations and seize counterfeit products. Otherwise, the marketplace is fined between 50,000 and 2 million yuan (\$7200 to \$88,000). In addition, Chinese legislation regulates the sale of goods through social networks. India has drafted a bill that would require online retailers to compensate customers for posting and selling counterfeit products, rather than paying fines to regulators. Liability for counterfeit goods would be borne by the online retailer and the seller whose goods are complained about. If the seller fails to prove the authenticity of the goods within 48 hours of filing a complaint, their goods will be removed from the online shop's page. Legislation is being drafted in the US that would make US retailers liable for counterfeit products that pose a risk to the health or safety of consumers. As a penalty, retailers would have to pay fines [9].

Consequently, China, which levies significant fines for each infringement, takes the most categorical position on this issue. The Indian authorities are trying to exclude themselves from the disputes between retailers and consumers, hoping through consumer education to develop an effective system to combat counterfeit products. The USA, on the other hand, tries not to put pressure on business, increasing penalties only for those counterfeits that may cause direct harm to the health of customers.

#### **4. CASE PRACTICE IN THE RUSSIAN FEDERATION**

In the Russian court practice, there are different approaches to marketplace liability for infringement of exclusive rights. In some situations, the court imposes liability on the marketplace, such as in the case of *Veksel LLC v Kupishuz LLC*<sup>7</sup>, where the marketplace was ordered to pay compensation for using the **HIGHLANDER** designation on the pages of the site by displaying and offering for sale shoes marked with the designation. In other cases, courts can impose a liability on the selling company as an example, *IE Tatintsyan K.Y. sued LLC Zaslavskaya Confectionery Factory*<sup>8</sup>, *LLC Vallar* and *LLC Wildberriz* for violation of the exclusive rights to the trademark "LAFINEL". The court collectively recovered compensation from the first two entities, recognising that they had jointly infringed the entrepreneur's

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<sup>7</sup> Decision of the Court of Intellectual Rights of 21.10.2016 No. C01-903/2016 in case No. A40-26217/2015.

<sup>8</sup> Decision of the Ninth Arbitration Court of Appeal of 06.11.2020 № 09AP-48163/2020 in case № A40-302888/19.

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exclusive right to the trademark. However, the courts did not apply the rules on information intermediaries to the marketplace [5].

In the case of Divis LLC (right holder) v Internet Solutions LLC (online shop Ozon) and Sorso-Str LLC<sup>9</sup>, the court found both the marketplace and the specific seller to be infringers of exclusive rights to an industrial design (animal structure). The courts found that the defendants had posted information on the Internet (on Ozon's website) about goods whose design solution was identical to the named industrial designs.

Another interesting case is a dispute between an individual entrepreneur (IE) and three companies, including a marketplace, Wildberries LLC<sup>10</sup>. The plaintiff learned that the defendants were introducing into civil circulation (selling, offering for sale) goods marked "Lafinele" with the designation "Lafinele", which is confusingly similar to trademarks owned by the plaintiff. The court found Wildberrys LLC guilty of infringement of IP's exclusive rights. In doing so, the court pointed out that the seller was not exempt from liability either, as "the seller must examine the products it purchases to see whether the sale of the foreign goods in the Russian Federation would infringe the rights of third parties". Therefore, compensation was awarded jointly to the seller and the marketplace.

Moving on to the next case, which involves a very popular character of mass culture<sup>11</sup>. On 15 January 2020. The Moscow Court of Arbitration completed consideration of the dispute in the lawsuit against Internet Solutions LLC (Ozon marketplace) by C.D. Land Contact LLC. Under a licence agreement, Cee Dee Land Contact LLC holds exclusive rights to a work of fine art with the conventional designation "Zhdun". At the same time, soft toys - images of the "Zhdun" - were sold on the website [www.ozon.ru](http://www.ozon.ru). The toy manufacturer was involved in the dispute as a third party. The courts ruled that the marketplace had acted unlawfully in placing an offer to sell these toys. As a result, a very large sum of compensation, more than 2 million roubles by Russian standards, was recovered from Internet Solutions LLC.

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<sup>9</sup> Decision of the Arbitration Court of Moscow dated 13.08.2021 in case No. A40-92137/2021.

<sup>10</sup> Decision of the Ninth Arbitration Court of Appeal of 06.11.2020 № 09AP-48163/2020 in case № A40-302888/19.

<sup>11</sup> Decision of the Arbitration Court of Moscow of 15.01.2020 in case No. A40-182069/17-105-1266.

## 5. MARKETPLACE AS AN INFORMATION INTERMEDIARY

It is not always the case that compensation for infringement of exclusive rights is sought from the marketplace, as in the cases presented above. Legislation contains provisions on information intermediaries which may also be applicable to the marketplace. The information intermediary only provides an opportunity to post material on its platform, it is not liable for the infringement of intellectual rights that has occurred in connection with such posting [1].

The provisions on information intermediation shall apply to the marketplace subject to two conditions: the platform owner did not know and should not have been aware of the unlawful use of the result of intellectual activity; in the event that the right holder has received an application for intellectual property rights infringement, the platform owner has taken the necessary measures to cease the violation in good time (for example, by removing information on counterfeit goods from the website) [6].

Based on judicial practice, the marketplace is an information intermediary and is not liable for infringement of exclusive rights if it offers its partners the opportunity to publish information on their goods and services without in any way correcting such information [3].

In addition, it is important for the marketplace to promptly block pages potentially infringing copyrights when the rights holder lodges a claim. Application of rules on information mediation essentially excludes the responsibility of marketplaces, so practice in applying these rules is very important. Let us turn to a few cases.

"Blue Tractor" v Internet Solutions LLC An individual entrepreneur filed a claim against Internet Solutions LLC claiming compensation for infringement of exclusive rights to the work of art - the "Blue Tractor" drawing and several trademarks<sup>12</sup>. The courts recognised the company as an information intermediary and found that there were no grounds for holding it liable in the form of compensation. The trial court considered that the company had not introduced the disputed goods into civil circulation, had not determined their price or description of the goods and had not become the owner of those goods, which the sellers placed on the website. Furthermore, the company had taken the necessary steps to remedy the breach after receiving the complaint by contacting the seller of the disputed goods and blocking the pages that had been expressly mentioned in the complaint. The IP Court agreed with the arguments of the lower

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<sup>12</sup> Decision of the Intellectual Rights Court dated 12.11.2021, No C01-1706/2021 in case No. A40-64165/2021.

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courts and stated that the entrepreneur should contact the seller of the infringing goods and not the information intermediary.

SushiVesla LLC v. DeliVesla Club LLC SushiVesla Management Company filed a statement of claim against DeliVesla Club LLC in connection with a violation by the latter of exclusive rights to photo images owned by the plaintiff<sup>13</sup>. The courts explained that Delivery Club LLC only provides intermediary technical services, provides an opportunity to post information about restaurants and partners' products. The courts stressed that the defendant, due to the functionality of the service, could not check and did not verify whether the partners had rights to the results of intellectual activity posted on the website. Thus, Deliveri Club LLC was held to be an information intermediary that was not liable for the infringement of exclusive rights.

Hobby World Ltd. v. Internet Solutions Ltd. The next case also involves Internet Solutions Ltd. In this case, the court provides a detailed theoretical basis for the following decisions on information mediation<sup>14</sup>. Hobby World Ltd. approached Internet Solutions Ltd. in connection with an offer to sell counterfeit copies of the game "Imaginarium Junior" (the rights to the game belong to the plaintiff) that had been posted on the marketplace's website. However, the court found Internet Solutions LLC to be an improper defendant. The court noted that ozon.ru was an information and referral system that merely listed products from particular sellers. The defendant itself maintains the website, but does not interact with the information about the results of intellectual activity posted on it. So OOO "Internet Solutions" was held to be an information intermediary not responsible for the violation of exclusive rights.

## 6. OVERVIEW OF FOREIGN JUDICIAL PRACTICE

In foreign practice, there are also different approaches to the liability of marketplaces. In various cases, courts have held that the burden of tracing counterfeit goods lies with the rights holder and not with the marketplace. An example is the case of Tiffany v eBay in the US<sup>15</sup>, where the court decided that the marketplace was already doing enough to combat counterfeiting. In other cases, courts have held that the defendant has a duty to ensure that its business does not give rise to illegal activity, as in the Louis Vuitton

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<sup>13</sup>Decision of the Arbitration Court of Moscow dated 30.01.2020 in case No. A40-214785/19-134-1672.

<sup>14</sup> Decision of the Arbitration Court of Moscow dated 13.08.2021 in case № A40-92137/2021.

<sup>15</sup> Tiffany No.04 Civ. 4607 at 1.



and eBay situation in France. It has been held that the marketplace allowed third-party sellers to sell counterfeit goods on its site<sup>16</sup>.

In *Louis Vuitton v eBay (France)* the owner of the Louis Vuitton brand sued eBay for infringement of its exclusive trademark rights<sup>17</sup>. The defendant alleged that the marketplace allowed third-party sellers to sell counterfeit goods on its site. The software used by the defendant to combat counterfeiting had proved ineffective. The court sided with the right holder. It proceeded on the basis that the marketplace was a broker, an active intermediary, and not a holder. In such a case, the defendant was obliged to ensure that its business did not generate unlawful activity. In the meantime, it had failed to do so.

In the next case under consideration, *Hermes International v Cindy Feitz and eBay (France)*<sup>18</sup>, the court concluded that the marketplace should be jointly and severally liable with the offending seller because it had failed to prevent the violation.

A marketplace that provides information on a third-party product or service is not liable for the distribution of goods that infringe EU trademark law, unless as a seller it independently displays the goods with the intention of creating an offer for sale or lease. This was the conclusion reached by the Court of Justice of the European Union (ECJ) in case C-567/18 in a dispute between Coty Germany GmbH and Amazon group companies (Amazon Services Europe Sarl, Amazon Europe Core Sarl, Amazon FC Graben GmbH and Amazon EU Sarl).

### 5.1. Circumstances

The Amazon-Marketplace service allows third-party sellers to post offers to sell their goods. In the case of a sale, contracts relating to those goods are concluded between such third-party sellers and buyers. These sellers can also take advantage of the "fulfilment via Amazon" service, whereby goods are stored in Amazon Group warehouses (in a distribution centre) and shipped to buyers.

Coty Germany, a perfume distributor, has licensed the EU trademark (TM) to Davidoff. In 2014, one of Coty's test customers ordered a bottle of Davidoff perfume from Amazon, which was offered for sale by a third-party seller and shipped by the Amazon group as part of the said service. It turned out that Coty had not given permission for the product to be sold in the EU. After settling the dispute with the seller,

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<sup>16</sup> SA Louis Vuitton Malletier v eBay Inc and eBay International [2010] E.T.M.R.10.

<sup>17</sup> SA Louis Vuitton Malletier v eBay Inc and eBay International [2010] E.T.M.R.10.

<sup>18</sup> *Hermes International v Cindy Feitz and eBay*, RG No.06/02604.

Coty requested Amazon to retrieve the bottles of perfume from that seller stored in the distribution centre. This request was granted, but bottles of perfume from another seller's stock were also sent. Coty's request to reveal the name of this seller was refused by Amazon. Finding that Amazon had thereby infringed its rights to the Davidoff brand, Coty took the company to court in Germany - in its view, the e-commerce platform should be held liable for selling illegal products, even if it was not aware of it when it provided the service. The dispute has reached the German Federal Supreme Court, which has in turn sent a request to the EU Court of Justice asking for clarification of the European law relating to legal protection of trademarks in the context of the dispute between Coty Germany and Amazon.

## 5.2. Powers of the right holder

Pursuant to article 9 of the Community Trademark Regulation 207/2009 of 26 February 2009 (in force at the time when the legal relationship arose), the Community Trademark grants the proprietor a number of exclusive rights. In particular, the owner has the power to prevent third parties without his consent from using in trade any mark that is identical to the Community trademark in respect of goods and services identical to those for which the Community trademark has been registered, as well as any other mark that is likely to be confused by consumers. Part 2 of that Article establishes that, inter alia, the right holder may be prohibited from "offering or making available for sale or storing goods for that purpose under that mark or offering or providing services under that mark".

The current European Parliament and Council (EC) Directive 2017/1001 of 14 June 2017 on the European Union trade mark (which replaced Regulation 207/2009) also provides for the right of the owner of an EU trade mark to prevent all third parties without his consent from using in trade for goods or services any designation if it is identical to an EU trade mark and used for goods or services identical to the goods or services for which the EU trade mark is registered; or the designation is identical to the trade mark; or

Note that Directive 2001/29 (EC) of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society and Directive 2004/48 (EC) on the enforcement of intellectual property rights provide possibilities for right holders to obtain legal protection against intermediaries whose services have been used by third parties in violation of intellectual property rights.

### 5.3. Position of the EU Court of Justice

Responding to the question whether the actions of a person who stores goods on behalf of a third party infringing a trademark without knowledge of the infringement should be interpreted as falling within the scope of Article 9 of Regulation No 207/2009 and Article 9 of Directive 2017/1001, the ECJ referred to its previous practice in defining "use" in relation to an EU trademark.

Thus, according to the ECJ, the word "use" implies active conduct and direct or indirect control over the acts defined as use. In this respect, it is noted that the uses listed in Article 9 of Regulation No 207/2009 and Article 9(3) of Directive 2017/1001, which the trademark owner can prohibit, relate exclusively to active conduct by a third party.

The ECJ judgment also notes that these provisions are intended to provide the trademark owner with a legal instrument enabling it to prohibit and thereby prevent any use of its trademark by a third party without its consent. However, only a third party who "has direct or indirect control over the act" defined as use can effectively stop such use and therefore comply with the prohibition.

The EU Court of Justice also recalled that the use by a third party of a mark identical or similar to the owner's trademark implies at least that the third party uses the mark in its own commercial turnover.

Regarding the operation of e-commerce platforms (marketplaces), the use of marks identical or similar to trademarks in offers for sale displayed on an online marketplace is carried out by sellers who are customers of the operator of that marketplace and not by that operator itself.

In this case, the EU Court of Justice was convinced that the Amazon group companies were not themselves displaying or offering goods for sale, but merely exercising an intermediary function. This, in turn, shows that they were not using the Davidoff trademark.

At the same time, the EU Court of Justice notes that other provisions of EU law, in particular on e-commerce and the protection of intellectual property rights, allow for legal proceedings to be initiated against an intermediary who has allowed an unlawful sale of a product that illegally uses a trademark.

Similarly, the EU Court of Justice ruled that while the actions of a business entity which imports goods (protected by a TM which it has not obtained authorisation to use) or sends them to a warehouse operator for the purpose of placing them on the market may be regarded as "using" a mark identical to the relevant trade mark, this does not necessarily apply to a warehouse operator which provides a storage service in

relation to goods bearing another person's trade mark. "The fact that the technical conditions required to use the mark and receive payment for that service have been created does not mean that the party offering the service is itself using the mark," the EU Court of Justice said in the judgment.

Summarising, it can be said that the position of marketplaces and their liability for infringement of exclusive rights is not yet quite uniformly assessed by Russian courts. For example, in some cases, the potential status of the company as an information intermediary is not assessed at all. However, it is strange that the selling company or the producer is not always held jointly liable, i.e. sometimes the entire burden of responsibility is placed on the marketplace. In other cases, on the contrary, the marketplace company is immediately defined as an information intermediary and the courts have concluded that the marketplace is not liable for the violation of exclusive rights. It is curious that one and the same marketplace has not been recognized as an information intermediary in one case, while in two others it has. However, jurisprudence is building up quite quickly and the regulation should eventually become stable.

## 7. RECOMMENDATIONS

The following measures could be proposed to resolve the problem of liability for counterfeit goods sold through marketplaces:

1) Provide in legislation for liability of a marketplace for placing and selling counterfeit products on its trading platform;

2) Introduce a legal prohibition on the advertising of counterfeit goods and impose administrative liability for violations. For example, videos appear in some YouTube channels suggesting where to buy counterfeit goods and how to sell counterfeit products, including through marketplaces. In addition, bloggers often advertise through social media replicas that are often counterfeit as well;

3) Counteract the spread of counterfeit goods in online commerce by using artificial intelligence, which could be used to find sales of counterfeit goods by both the government and the trademark owners themselves. It is noted that the main disadvantages of automating the search of online sales of counterfeit goods are the high costs and the long development time of such search systems [7].

Having analysed the Russian legislation and judicial practice, the experience of other countries, are being proposed the following measures to deal with the distribution of counterfeit goods, related to the

introduction of regulations on the distribution of responsibility between the seller of such goods and the marketplace.

First, liability to the trademark owner. It is proposed to give the trademark owner the right to sue both the marketplace and the seller for damages or compensation in equal parts. We propose to impose an obligation on the marketplace to terminate the agreement with the seller and to disqualify the seller (ban the trade on the marketplace) if the exclusive rights to trademarks are violated by the sellers.

Second, responsibility to the consumer who has obtained counterfeit goods through the marketplace. It is suggested to impose an obligation on the marketplace to compensate the consumer for the price of goods and their delivery charges if the consumer has purchased a counterfeit item. The marketplace has the right to request 50% of the product price from the seller, with this condition to be included in the contract between the supplier and the marketplace at the time of its conclusion.

In addition, the regulations regarding administrative responsibility must be amended to impose it not only on the seller, but also on the marketplace. A system of fines must be put in place so that each subsequent sale of counterfeit goods would result in a higher fine, even if the counterfeit goods are no longer present on the marketplace.

Such measures could make it unprofitable to sell counterfeit products and thereby violate exclusive trademark rights not only for sellers but also for marketplaces.

## 8. CONCLUSIONS

This article has examined the issue of distribution of liability for infringement of exclusive rights for trademarks on marketplaces, analysed the legislation and judicial practice in Russia and foreign countries on liability for selling counterfeit goods through marketplaces, and developed measures to improve the liability of marketplaces and sellers for selling counterfeit goods.

Online commerce is rapidly gaining ground in the market for goods and services and is acquiring greater popularity due to its convenience for both buyers and sellers. Marketplace turnover reached record levels in 2022, opening an additional channel for counterfeit goods producers. Given the increasing scale of counterfeit trade in Russia, the problem of emergence and spread of counterfeit goods should be addressed systematically. The phenomenon of infringement of intellectual property rights in online

commerce can be solved and controlled with the involvement and participation of not only the state, copyright holders and consumers, but also the marketplaces themselves, which, obviously, are not quite interested in this so far.

Progressive regulation of e-commerce platforms is important for the Russian Federation, as these platforms enable the benefits of e-commerce. At this stage of global economic development, there is a dominance of super-platforms that accumulate large amounts of data, thereby strengthening their position and facilitating access of foreign super-platform companies to domestic markets. Stricter regulation restricting competition, banning large firms responsible for market monopolisation, and strict state-level monitoring and administration are some of the options for regulating ‘superplatforms’ for the development of the national digital economy sector. At the same time, the development of the national segment of e-commerce requires appropriate, and in a number of aspects anticipatory, development of legal regulation. In this connection, it seems necessary to study, generalize and consider options for the implementation of progressive foreign experience in the legislation of the Russian Federation.

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## ABOUT THE AUTHOR

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**Anna Vladimirovna Pokrovskaya** – PhD Candidate at the Department of Civil Law and Procedure and Private International Law, People's Friendship University of Russia, Moscow, Russian Federation. Patent Expert at the Intellectual Property Center Skolkovo.

Address: Street Nalichnaya, 5, Moscow, Russia, 111020

e-mail: [1142220181@pfur.ru](mailto:1142220181@pfur.ru)

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