Counterfeits, Safe Harbour and Takedowns

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E-commerce may have heralded plentiful choice, but cheaper prices don't always guarantee a quality or genuine product. Brand owners have been plagued with the sale of counterfeits being sold on e-commerce platforms for some time now. The only quick remedy are takedown notices, which is akin to swatting bees with a hammer. Sending takedown notices not only requires brand owners to be on a constant vigil, but sometimes proves ineffective due to the different safe harbour provisions provided under the different IP laws in India. In Shreya Singhal v. Union of India, the Supreme Court, while interpreting Section 79 in the context of certain allegedly defamatory remarks posted online, laid down that the "notice" of an illegal act on its platform can be brought to the attention of an intermediary only through a court order, as an intermediary is not equipped to determine the legality of the content hosted on its website. *Authored by Pravin Anand and Nishchal Anand. This article was published in Asia IP June/July 2016.* Read more

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