Counterfeits in the Cart: Greater E-Commerce Platform Accountability

By Lim Eng Leong

The Growth of E-Commerce and Online Counterfeiting

Malaysia's digital economy has expanded rapidly over the past decade, with e-commerce becoming an integral part of consumer purchasing behaviour. The convenience of online shopping, coupled with the growing popularity of mobile commerce and livestream selling, has significantly increased the volume of transactions conducted through digital platforms.

According to the Department of Statistics Malaysia (DOSM), the e-commerce sector contributed RM248.2 billion, or 13.6 per cent, to Malaysia's gross domestic product (GDP) in 2023. The sector's total revenue has continued to grow, increasing from RM1.1 trillion in 2021 to RM1.3 trillion in 2025.

Online marketplaces such as Shopee, Lazada and TikTok Shop have enabled businesses to reach millions of consumers with unprecedented ease. While legitimate businesses have benefited from this expansion, counterfeiters have also adapted their operations. The growth of digital commerce has created fertile ground for the sale of counterfeit goods, posing significant risks to trademark owners, consumers and regulators alike.

Recognising these developments, the Malaysian Government recently announced that it is developing a new regulatory framework to strengthen oversight of e-commerce platforms, particularly foreign digital service providers. Although the legislative details have yet to be finalised, the proposed reforms signal an important shift in Malaysia's approach to intellectual property enforcement by improving platform accountability, closing regulatory gaps and strengthening action against illegal online activities, including the sale of counterfeit goods.

Counterfeit goods are no longer confined to physical markets or street vendors. Today, infringing products ranging from luxury fashion items and cosmetics to electronics, automotive parts and pharmaceuticals are widely available through online marketplaces.

Unlike traditional retailers, online sellers can establish multiple accounts at minimal cost and operate across jurisdictions. Listings removed for trademark infringement may reappear within hours under different seller identities, creating a persistent enforcement problem for trademark owners. The sheer volume of listings on major marketplaces also makes proactive monitoring difficult, requiring rights holders to devote considerable resources to identifying and reporting infringing products.

Recent enforcement statistics illustrate the scale of the issue. The Ministry of Domestic Trade and Cost of Living (KPDN) reported receiving 38,503 complaints relating to online transactions between 2023 and June this year. Its Minister, Datuk Armizan Mohd Ali, stated that KPDN, together with e-commerce platforms, internet service providers (ISPs) and the Malaysian Communications and Multimedia Commission (MCMC), has strengthened cooperation to address online offences.

Between 01 January and 31 May this year, 412 websites were blocked for various offences, including the sale of counterfeit goods, while 57 online advertisements were removed through cooperation with e-commerce platforms. These figures demonstrate that online trademark infringement is no longer an isolated concern but a systemic issue requiring coordinated action by regulators, brand owners and platform operators.

The implications extend beyond the protection of trademark owners. Counterfeit goods may pose serious risks to consumers, particularly where products such as cosmetics, pharmaceuticals and electronic devices fail to meet applicable safety standards.

Trademark Enforcement Under the Trademarks Act 2019

Trademark protection in Malaysia is principally governed by the Trademarks Act 2019 ("TMA 2019"), which grants registered proprietors the exclusive right to use their registered marks and provides remedies against unauthorised use in the course of trade. Where infringement is established, trademark owners may seek injunctions, damages or an account of profits, delivery up or destruction of infringing goods, together with any other relief considered appropriate by the courts.

While the TMA 2019 provides a robust framework for pursuing infringing sellers, it offers limited guidance on the responsibilities of online marketplace operators. Consequently, enforcement frequently depends on cooperation between rights holders and platform operators through voluntary notice-and-takedown procedures.

Platform Liability in Malaysia

Perhaps the most significant unresolved legal issue is the extent to which e-commerce platforms should bear responsibility for counterfeit goods sold by third-party sellers.

At present, platforms such as Shopee, Lazada and TikTok Shop generally position themselves as intermediaries facilitating transactions between buyers and independent sellers. Most platforms operate notice-and-takedown mechanisms that allow trademark owners to report infringing listings for removal. Although these procedures remain an important enforcement tool, they do not always prevent repeat infringements, requiring trademark owners to maintain continuous monitoring and enforcement efforts.

The question, therefore, is whether platforms should assume more proactive obligations, such as enhanced seller verification, repeat-infringer policies, automated detection technologies and broader due diligence requirements. The Government's proposed reforms suggest that Malaysia is moving towards greater platform accountability for illegal online activities, including the sale of counterfeit goods.

The A & M Beauty Wellness v Shopee Decision

One of the few Malaysian decisions touching upon platform liability is ***A & M Beauty Wellness Sdn Bhd v Shopee Mobile Malaysia Sdn Bhd*** **[2023] MLJU 65.**

In that case, the plaintiff sought an interim injunction against Shopee in relation to allegedly infringing products offered for sale through the platform. The High Court declined to grant the injunction, holding that the evidential threshold for the interlocutory relief sought had not been satisfied.

Although the decision did not determine whether online marketplace operators may ultimately be liable for trademark infringement committed by third-party sellers, it highlights two important considerations. First, trademark owners seeking urgent relief against platform operators must present sufficiently strong evidence of infringement and the necessity for interlocutory relief. Secondly, Malaysian courts have yet to comprehensively define the legal responsibilities of marketplace operators where counterfeit goods are sold by independent sellers.

Recent Enforcement and Cross-Border Challenges

Accordingly, platform liability remains an evolving area of Malaysian trademark law. Although reported litigation remains relatively limited, enforcement activity has intensified.

In February 2026, KPDN seized more than 20,000 counterfeit perfumes and skincare products valued at approximately RM1.4 million during raids in Kuala Lumpur. According to enforcement authorities, the counterfeit goods had been imported from overseas and marketed throughout Malaysia via online sales channels.

The operation illustrates the increasingly cross-border nature of counterfeit trade. Sellers may operate from outside Malaysia while using domestic e-commerce platforms to reach Malaysian consumers, creating practical difficulties in identifying offenders and enforcing court orders. These challenges have prompted enforcement agencies to rely more heavily on digital monitoring, intelligence gathering and cooperation with platform operators.

What Greater Platform Accountability Could Involve

Several measures could strengthen protection for trademark owners while maintaining a balanced regulatory environment:

- introducing clearer statutory guidance on the responsibilities of e-commerce platforms in addressing trademark infringement;
- strengthening seller verification and repeat-offender policies across online marketplaces;
- enhancing collaboration between enforcement agencies, platform operators and trademark proprietors;
- leveraging artificial intelligence and digital monitoring technologies to identify infringing listings more efficiently; and
- increasing consumer awareness of counterfeit goods and methods of verifying genuine products.

Importantly, any reforms should seek to balance the legitimate interests of trademark owners, online businesses, consumers and platform operators without imposing disproportionate compliance burdens.

Practical Steps for Trademark Owners

Pending further legislative developments, trademark owners should continue adopting proactive brand protection strategies by:

- maintaining active online monitoring programmes to identify infringing listings promptly;
- registering trademarks in all relevant product categories before expanding into online markets;
- making full use of platform notice-and-takedown procedures;
- preserving evidence of infringing listings before requesting their removal; and
- coordinating civil enforcement strategies with complaints to the relevant enforcement authorities where appropriate.

Looking Ahead

Malaysia's proposed regulatory reforms represent an important development in the country's approach to online trademark enforcement. Although the TMA 2019 provides a strong legal foundation for protecting registered trademarks, the rapid growth of e-commerce has exposed enforcement issues that traditional mechanisms were not designed to address.

As Malaysia moves towards greater regulation of online marketplaces and enhanced platform accountability, trademark owners should continue to adopt proactive and technology-driven enforcement strategies. In today's digital economy, effective trademark protection depends not only on registration and legal enforcement, but also on continuous online monitoring, strategic engagement with platform operators and close attention to an evolving regulatory landscape.