

**Ministry of Science and Higher Education of
the Republic of Kazakhstan
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Liability of Marketplaces for Infringement of Trademark Rights

Educational program 7M04210 – “Intellectual Property and Business
Law”

Project for the academic degree of Master of Law

Astana, 2025

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the Republic of Kazakhstan
MAQSUT NARIKBAYEV UNIVERSITY**

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MASTER'S PROJECT

**On the topic: “Liability of Marketplaces for Infringement
of Trademark Rights”**

**according to the educational program 7M04210 – “Intellectual
Property and Business Law”**

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The calendar plan for the preparation of the master's project

Name of the project stages	Period	A note on the implementation of the project stages			
		Actual completion date	The degree of readiness of the completed stage of the project	Signature of the postgraduate	Signature of the scientific supervisor
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Legislation and court practice analysis					
Methodology development					
Analysis of the collected data					
Preparation of the first chapter					
Preparation of the second chapter					

Preparation of the introduction and conclusion					
Receiving feedback from the scientific supervisor					
Defence of the master's project					

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LIST OF ABBREVIATIONS

CJEU – Court of Justice of the European Union

DMCA – Digital Millennium Copyright Act

DSA – Digital Services Act

EAEU – Eurasian Economic Union

GDPR – General Data Protection Regulation

RK – Republic of Kazakhstan

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INTRODUCTION

The novelty of this master's project stems from a pioneering examination of the legal responsibility of marketplaces for trademark infringement within Kazakhstan's e-commerce landscape. It investigates the intricate interplay between online platforms and intellectual property rights, highlighting gaps in current legal frameworks. The study will analyze the practices of foreign jurisdictions to identify successful models and best practices. Additionally, it proposes actionable recommendations for enhancing legal protections and enforcement mechanisms, emphasizing the urgent need for comprehensive regulations. By addressing the implications of counterfeit goods, this research contributes to the development of a more robust intellectual property environment in Kazakhstan.

Relevance of the research issue. In the context of globalization and the rapid development of the digital economy, the issue of legal responsibility of marketplaces for trademark infringement is becoming increasingly significant. The President of the Republic of Kazakhstan, Kassym-Jomart Tokayev, in his recent speech at an expanded government meeting emphasized the global trend of rising electronic commerce, highlighting its importance for the country's economy.¹ This trend is reflected in the growing interest in online marketplaces, which provide the population with convenient opportunities for purchasing goods, emphasizing the need for legal regulation aimed at protecting intellectual property rights.

According to information provided by the Minister of Trade and Integration of RK, the growth of electronic commerce in the country has increased fivefold in recent years, reaching 2.44 trillion tenge as of 2024. Meanwhile, the share of online trading in the total retail trade volume amounted to 14%.² These figures underscore the importance of online platforms as an integral part of the modern trade landscape, but they also indicate existing risks related to the protection of trademark rights.

On trade online platforms (marketplaces) alongside original products, counterfeit goods are actively distributed, which can pose risks to both consumers and rights holders. According to Article 1032 of the Civil Code of RK, counterfeit goods are those products and their packaging that bear trademarks or signs similar to them to the point of confusion without

¹ Kassym-Jomart Tokayev, 'Vystuplenie Glavy Gosudarstva Kasym-Zhomarta Tokaeva na rasshirennom zasedanii Pravitel'stva' (Akorda, 7 February 2024) <https://www.akorda.kz/ru/vystuplenie-glavy-gosudarstva-kasym-zhomarta-tokaeva-na-rasshirennom-zasedanii-pravitelstva-2801458> accessed 2 April 2025.

² '2024 God: Rost Torgovli i Stabilizatsiya Tsen v Usloviyakh Global'nykh Vyzovov' (PrimeMinister.kz, 14 February 2024) <https://primeminister.kz/ru/media/video/2024-god-rost-torgovli-i-stabilizaciya-cen-v-usloviyah-globalnyh-vyzovov-3111522> accessed 2 April 2025.

the consent of the rights holder. This situation creates serious challenges for the protection of intellectual property, necessitating lawmakers and law enforcers to seek effective solutions.

In this context, discussing the legal responsibility of marketplaces becomes particularly important. At the recent XII International Forum "Anti-Counterfeit," held in Astana on December 5-6, a special session titled "Night Watch on Marketplaces: How Control Can Help Digital Trade in the Fight Against Counterfeiting and Falsification" took place. This panel session reaffirmed the need for protection and enforcement of intellectual property rights on marketplaces. Counterfeit goods not only violate the rights of rights holders but can also pose risks to the health and safety of citizens. In light of the growing consumption of goods online, it is vital to establish legal mechanisms that protect the interests of both consumers and legitimate producers.

Furthermore, the increasing volume of online sales necessitates the development of a clear legal framework regarding the responsibility of marketplaces for the actions of third parties. It is essential to consider that marketplaces often serve merely as intermediaries between sellers and buyers, raising the question of what degree of responsibility they bear for the products listed on their platforms. Within the scope of this study, it is advisable to analyze international practices that can be applied in Kazakhstan to more effectively protect intellectual property rights and eliminate counterfeit products.

The necessity for scholarly examination of this topic is also reinforced by the protection of consumer interests. Against the backdrop of rising e-commerce, consumers face risks of acquiring poor quality or even dangerous goods, which may negatively impact their health and safety. Therefore, the legal responsibility of marketplaces for the distribution of counterfeit products becomes a key component in the formation of a safe consumer environment.

Thus, this master's project is dedicated to a current and vital issue: the legal responsibility of marketplaces for trademark infringement. In light of the rapid growth of electronic commerce in Kazakhstan, the need for consumer protection, and the interests of rights holders, the study of this topic takes on particular significance. The findings and recommendations derived from this research may be beneficial not only for understanding current law enforcement practices but also for enhancing the legal framework surrounding the responsibility of marketplaces.

Purpose and Objectives of the Master's Project. The purpose of this research is to analyze the current national system of intellectual property rights enforcement in Kazakhstan, with a particular focus on the legal responsibility of marketplaces for trademark infringement. The study aims to examine the judicial practices of national courts concerning trademark

rights violations on online platforms, while also exploring the judicial practices of foreign jurisdictions.

To achieve this objective, the following tasks are set forth:

- To investigate and outline the legal framework of the national system of intellectual property rights enforcement on marketplaces.
- To analyze the judicial practice of national courts regarding cases of trademark rights violations on marketplaces, highlighting the trends and challenges faced.
- To examine foreign case law where secondary and direct liability of marketplaces was established, as well as instances where there were exemptions from liability.
- To identify gaps and issues within the existing judicial framework that complicate the enforcement of trademark rights.
- To propose recommendations for enhancing the legal mechanisms improving the protection of intellectual property rights on marketplaces in Kazakhstan based on international best practices.

Applied research methods. The methodology for this project centers on a comprehensive analysis of case law, academic literature, and legal frameworks surrounding marketplace liability for trademark infringements. The research employs both qualitative and comparative methods to explore the nuances of this complex topic.

To examine cases where marketplaces were found liable for trademark infringement, judicial decisions and legal opinions were analyzed to elucidate the criteria for liability. Additionally, instances where platforms successfully evaded liability were investigated, focusing on the legal arguments and interpretations that influenced these outcomes.

Moreover, a comparative-legal method was applied to understand the concept of trademark use and infringement across different jurisdictions, assessing how variations in legal definitions impact liability. This multifaceted approach, incorporating both practical case studies and theoretical frameworks, provides a thorough understanding of the responsibilities and risks that online marketplaces face regarding trademark rights.

Propositions submitted for defense. Based on a comprehensive analysis of international legal sources, scholarly research, and the national legislation of the RK, the following propositions have been formulated and submitted for defense:

1. To enhance legal certainty and trademark protection in e-commerce, it is necessary to legislatively establish clear criteria defining the "active role" of an online marketplace. Upon meeting these criteria, a marketplace should lose its neutral status as an electronic trading platform and consequently assume liability for trademark infringements committed by third parties.

2. To standardize and ensure consistency in legal practices and reduce intellectual property infringement risks, it is recommended to establish minimum statutory standards and mandatory provisions for agreements between marketplace operators and sellers, explicitly addressing obligations regarding intellectual property compliance and protection.

3. Online marketplaces should be held liable for trademark infringements in cases where they: (a) directly act as sellers of goods; (b) knowingly disregard trademark infringement committed by third-party sellers and fail to implement adequate and timely measures to cease such infringements; and (c) commercially exploit the trademark without obtaining authorization from the rightful trademark holder.

CHAPTER 1. Kazakhstan's Legal Framework in Tackling Trademark Infringements in E-Commerce

1.1. Legal Framework for Trademark Infringement in Kazakhstan

The rapid growth of e-commerce in recent years has posed new challenges for trademark protection. Online marketplaces have made it easier than ever for counterfeit goods (products bearing unauthorized trademarks) to reach consumers. This undermines brand owners' exclusive rights and can mislead or even endanger consumers (for example, when fake goods are of inferior or of unsafe quality).³ Kazakhstan is no exception to these global trends. Indeed, Kazakh officials have identified the internet as the largest channel for the distribution of counterfeit products in the country.⁴ This chapter examines the legal framework of the RK concerning trademark infringements and the sale of counterfeit goods on e-commerce platforms. It focuses on the unauthorized use of trademarks in online commerce and analyzes the relevant provisions of Kazakh law, including civil, administrative, and criminal measures, as well as the responsibilities of e-commerce platforms. It also discusses any official policies or interpretations regarding enforcement on online platforms and highlights gaps or challenges in effective enforcement.

1.1.1. Exclusive Trademark Rights and Unauthorized Use

Kazakhstan's legal framework provides trademark owners with exclusive rights to their marks and prohibits any unauthorized use by others. Accordingly, trademark rights arise upon registration of the mark in the Republic of Kazakhstan.⁵ The owner of a registered trademark enjoys the exclusive right to use the mark with respect to the goods or services for which it is registered. *No one may use a trademark protected in Kazakhstan without the consent of the owner.* This fundamental principle is established in Article 4(4) of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, Geographical Indications and Appellations of Origin of Goods" (hereinafter the *Trademark Law*) of July 26, 1999 (as amended).⁶ Similarly, the Civil Code of the RK underscores that the trademark owner has an exclusive property right in

³ Aigerim Sadykova, 'Most Counterfeit Products Sold in Kazakhstan Advertised via Internet' (The Astana Times, 22 February 2018) <https://astanatimes.com/2018/02/most-counterfeit-products-sold-in-kazakhstan-advertised-via-internet/>, accessed 2 April 2025.

⁴ *ibid.*

⁵ Trademark Law of the RK No 456-I 'On Trademarks, Service Marks and Appellations of Origin of Goods' (adopted 26 July 1999) art 4.

⁶ *ibid.*

the mark and that use of the mark by others without permission is unlawful.⁷

National law broadly defines what constitutes “use” of a trademark. Essentially, any introduction of the mark into civil circulation is considered use.⁸ This includes, for example, applying the mark to goods or packaging, manufacturing goods with the mark, importing or storing such goods, offering them for sale or actually selling them, or using the mark in relation to services or in advertising, signs, or business documentation.⁹ In other words, activities typical of e-commerce fall within the scope of trademark use (such as displaying a branded product for sale on a website or advertising a product using the mark). The law makes clear that such uses, when done without the trademark owner’s authorization, violate the owner’s exclusive rights. Notably, it is specifically considered an infringement when a trademark (or confusingly similar designation) is used without authorization on publicly accessible telecommunication networks, such as the Internet and social media. This provision includes online marketplace listings and social media ads as cases of trademark infringement if they use marks without permission of the rightsholder.

Since Kazakhstan follows a *registration-based* trademark system, the rights holder (registrant) can enforce their exclusive rights through various legal avenues when infringement occurs. The Trademark Law and the Civil Code provide that the unauthorized use of a registered trademark, or of a designation similar enough to cause confusion, is a violation of the trademark owner’s rights. In practice, this covers classic counterfeiting cases when on a marketplace a seller offers goods with a counterfeit label or brand logo without authorization of the brand owner. The Kazakh system also recognizes the concept of *exhaustion of rights*: once genuine goods have been put on the market by the rights owner or with consent, the owner’s control over further resale of those particular goods may be limited. Kazakhstan has adopted a regional exhaustion principle in line with the EAEU provisions, meaning that if goods were sold previously by the trademark owner, or by other person with proper consent, within the EAEU, subsequent resale in Kazakhstan is not infringement.¹⁰ In summary, using a trademark in commerce in Kazakhstan (offline or online) – requires the owner’s consent unless an exhaustion exception applies. Unauthorized use will trigger legal liability and remedies as discussed below.

⁷ Civil Code of the Republic of Kazakhstan (adopted 27 December 1994) art 1025.

⁸ Trademark Law of the Republic of Kazakhstan No 456-I Art.1(9).

⁹ *ibid.*

¹⁰ Trademark Law of the Republic of Kazakhstan No 456-I Art. 43-1.

1.1.2. Civil Remedies under the Trademark Law and Civil Code

Trademark owners in Kazakhstan can pursue civil remedies against infringers, including those selling counterfeit goods online. Civil enforcement is primarily governed by the Civil Code (particularly Article 1032) and the Trademark Law (Article 44). Under these provisions, any person who unlawfully uses a protected trademark or a confusingly similar designation is obliged to **cease the infringement immediately** and **compensate the trademark owner for the losses (damages) caused**. In other words, the trademark owner may file a civil lawsuit seeking an injunction to stop the unauthorized use (such as requiring an online listing to be taken down and sales halted) and to recover financial compensation for harm suffered (which could include lost profits, damage to brand reputation, etc.). Article 44 of the Trademark Law further provides that the infringer must **destroy infringing goods and their packaging** bearing the illegal trademark, or at least remove the unlawfully applied mark from the goods and packaging.¹¹ For example, a court could order that counterfeit merchandise be seized and destroyed so that it does not re-enter the market. Additionally, any materials or media that accompany the goods or services (advertisements, labels, brochures, etc.) and bear the infringing mark should have the mark removed.¹²

These civil remedies aim not only to halt the immediate infringement but also to prevent ongoing harm from counterfeit goods in commerce. In essence, the law requires the infringer to compensate the trademark owner for any losses and reverse the effects of the infringement (by removing the counterfeit marking from the market).

In practice, brand owners have used civil litigation to combat online infringement. For instance, in 2025 the American sportswear company New Balance filed a lawsuit in Kazakhstan against a local seller who was offering counterfeit “New Balance” shoes on an online marketplace.¹³ The case (filed in a specialized inter-district economic court) alleged unauthorized sale of goods bearing New Balance’s registered trademarks, and the evidence was gathered by making a test online purchase (with video and receipt documentation of the counterfeit item) commonly known as “trap order”.¹⁴ The case was ultimately settled amicably, with the seller agreeing to stop using the marks and to compensate the brand owner.¹⁵ This illustrates how civil enforcement can

¹¹ Trademark Law of the Republic of Kazakhstan No 456-І Art 44.

¹² *ibid.*

¹³ Kirill Zhdanov, ‘ZHDK Proigrala Sud Kompanii New Balance’ (Kursiv, 12 February 2025) <https://kz.kursiv.media/2025-02-12/zhdk-newbalance-sud/> accessed 3 April 2025.

¹⁴ Espie Angelica A. de Leon, ‘New Balance Trademark Case in Kazakhstan Ends with Amicable Settlement’ (Asia IP, 3 March 2025) <https://www.asiaiplaw.com/sector/ip-management/new-balance-trademark-case-in-kazakhstan-ends-with-amicable-settlement> accessed 3 April 2025.

¹⁵ *ibid*

be pursued for e-commerce infringements, and how the courts will accept modern forms of evidence (e.g. screenshots, purchase records) to establish the fact of infringement. Thus, civil litigation remains a key tool for trademark owners to enforce their rights online, often resulting in injunctions or settlements to remove counterfeit listings and deter future infringements.

1.1.3. Administrative Offences and Sanctions

Beyond civil lawsuits, Kazakh law provides administrative penalties for trademark infringement, which can be especially relevant for cracking down on counterfeit goods in marketplaces through regulatory enforcement. The Code of the RK On Administrative Infractions contains a specific provision – Article 158 – that prohibits the **illegal use of another's trademark** in commerce.¹⁶ This administrative offence covers using someone else's trademark (or a confusingly similar mark) for similar goods or services without permission, except in cases of exhaustion of rights and provided the act does not rise to the level of a criminal offence.¹⁷ Selling counterfeit goods bearing a protected mark would squarely fall under this offence. Importantly, Article 158 applies to both individuals and businesses (legal entities), and it imposes **graduated fines** depending on the offender's status. Currently, the prescribed fines are: 20 monthly calculation indices (MCI) for individuals; 30 MCI for small businesses or non-profits; 40 MCI for medium businesses; and 80 MCI for large businesses.

In addition to monetary fines, **confiscation of the infringing goods** is mandated in administrative cases. This means that if a seller is caught offering counterfeit products, the government can seize those products bearing the unlawful trademark and remove them from the marketplace by official order.

Enforcement of Article 158 is typically carried out by Kazakhstan's law enforcement and customs authorities, often initiated by a complaint from the trademark owner or ex officio investigations. The law authorizes agencies (such as the police, economic investigation service, or customs) to investigate and draw up administrative offence protocols for trademark violations. In practice, dozens of administrative cases are pursued each year against trademark infringers, including online counterfeit sellers.

In 2023 in Kazakhstan suspended the release of goods with signs of infringement of intellectual property rights in the amount of 37.1 million U.S. dollars. In 2024 the number of goods seized from illegal circulation has increased 10 times. This was reported during the plenary session

¹⁶ Code of the Republic of Kazakhstan on Administrative Infractions (adopted 5 July 2014, No 235-V) art 158.

¹⁷ *ibid.*

“Safe Space: the future of the EAEU without counterfeiting and falsification” on XII International Forum “Anti-counterfeiting” by the former Minister of Justice of the Republic of Kazakhstan Azamat Yeskaraev.¹⁸

These figures underscore that administrative enforcement is an active component of anti-counterfeiting efforts. Administrative sanctions serve as a faster, often more practical means to penalize counterfeiters (compared to lengthy civil litigation), and the confiscation power helps prevent further circulation of fakes.

It should also be noted that Kazakhstan’s competition law offers another angle for enforcement: the Entrepreneur Code of the RK treats the sale of goods with illegally used trademarks as an act of unfair competition (in accordance with Art. 177), which can be addressed by the antimonopoly authorities as a violation of fair market practices.¹⁹ This provision, though outside the traditional IP enforcement routes, reinforces that selling counterfeit-branded goods is considered harmful conduct subject to sanctions.

1.1.4. Criminal Liability for Counterfeiting

Kazakh legislation also criminalizes trademark infringement in more egregious cases, reflecting the view that willful counterfeiting can be a serious offense. Article 222 of the Penal Code of the RK establishes criminal liability for the **illegal use of another’s trademark** (as well as service mark, trade name, geographical indication or appellation of origin) or a confusingly similar designation for similar goods/services, *if the infringement is committed repeatedly or causes major damage*.²⁰ The monetary threshold for “major damage” in the context of trademark crimes within the text of Article 222 is indicated in the Art. 3(38) as damage to an individual that is 200 times greater than the monthly calculation index, or damage to a state or organization that is 2000 times greater than the monthly calculation index.

Under the current Penal Code provisions, an individual convicted of trademark infringement (counterfeiting) that caused substantial damage may be punished by a fine of up to 80 MCI, corrective labor (also up to the equivalent of 80 MCI), engagement in public works for up to 80 hours, or arrest for up to 20 days.²¹ These penalties might appear lenient in comparison to some jurisdictions – indeed, the maximum 20-day “arrest” is effectively a short-term detention. It suggests that Kazakh law treats trademark crimes as relatively low-level offenses unless accompanied by

¹⁸ ‘In Kazakhstan in 2024, the Number of Counterfeit Goods Seized Increased Tenfold’ (Antikontrafakt, 5 December 2024 <http://anticounterfeight.org/tpost/8bk5lvjvk1-v-kazahstane-v-2024-godu-kolichestvo-izy> accessed 3 April 2025).

¹⁹ Entrepreneur Code of the Republic of Kazakhstan (adopted 29 October 2015, No 375-V) art 177

²⁰ Criminal Code of the Republic of Kazakhstan (adopted 3 July 2014, No 226-V) ar 222.

²¹ *ibid*.

other aggravating factors. It is possible that in cases of extremely large-scale counterfeiting or other aggravating circumstances, harsher penalties (such as higher fines or imprisonment measured in years) could apply under different sections of the Penal Code (for instance, if the conduct also constitutes fraud, consumer endangerment, or involvement in organized crime). However, Article 222 itself, as applied, tends to address the intellectual property aspect specifically and is often invoked to impose these moderate penalties or to serve as a deterrent via the threat of criminal prosecution.

1.2. Legal Nature of E-Commerce Platforms (Marketplaces) in Kazakhstan

Kazakhstan does not have a single codified “E-Commerce Act”; instead, a network of laws governs various aspects of e-commerce platforms. The domestic legal framework spans general civil law, specific trade legislation, consumer protection statutes, tax laws, and regulations on data protection. Together, these laws delineate the obligations and liabilities of e-commerce platform operators (marketplaces) and related parties.

1.2.1. Definition and Classification of E-Commerce Platforms

Under national law, **electronic commerce (e-commerce)** is recognized as a form of entrepreneurial activity carried out through information and communication technologies. The Law “On Regulation of Trading Activities” (as amended) provides definitions for key terms. It defines “*e-commerce*” broadly as entrepreneurial activity involving electronic trade in goods or services via information technologies.²² Within this framework, Art.1(58) specifies “*electronic trading platform*” as an Internet resource that provides the infrastructure for participants of electronic commerce to conclude contracts for goods, works, or services by electronic means.²³ In essence, this term covers online marketplaces and similar platforms enabling third-party vendors and buyers to transact online. The law also identifies “*participants of electronic commerce*” to include the buyer, the seller, and the electronic trading platform itself.²⁴ This establishes that Kazakhstani legislation views e-commerce platforms as distinct legal actors facilitating transactions between sellers and consumers.

²² Law of the Republic of Kazakhstan No 544-II ‘On Regulation of Trading Activities’ (adopted 12 April 2004). art 1.

²³ *ibid.*

²⁴ *ibid.*

It is notable that Kazakhstan recently adopted the Law “On Online Platforms and Online Advertising”, but this normative act **excludes platforms intended for electronic commerce** from its scope.²⁵ “Online platforms” under that law refer mainly to social networks and content-sharing services, explicitly carving out e-commerce and financial service platforms. By excluding e-commerce platforms from the definition of general “online platforms,” Kazakh law signals that online marketplaces are governed by a separate legal regime. Thus, e-commerce platforms in Kazakhstan are principally regulated under trade and commerce laws rather than the general online platforms law. In practical terms, leading domestic marketplaces like *Kaspi.kz* or *Halyk Market* fall under the category of “electronic trading platforms” in the legal sense, whereas social media or content sites are regulated differently. This classification sets the stage for a specialized legal framework for e-commerce intermediaries.

1.2.2. Civil and Commercial Law Foundations

The foundation for electronic transactions in Kazakhstan is laid by general civil law and specialized amendments. In 2015, Kazakhstan introduced legal amendments to recognize and facilitate electronic commerce. Notably, Article 29-1 of the Law “On Regulation of Trading Activities provides a legal basis for e-commerce transactions. It ensures that **electronic contracts and communications are legally effective**, and it imposes certain duties on e-commerce platform operators. For instance, an electronic trading platform must enable the formation of contracts via exchange of electronic documents or messages, and must support cashless payment methods for online transactions. This means that Kazakhstani law explicitly validates contracts concluded online and requires platforms to provide the technical means for secure electronic contracting and payment.²⁶

Furthermore, the law outlines operational requirements for platforms. An e-commerce platform’s infrastructure should include internal rules for marketplace participants, facilitate order delivery logistics, and provide for settlement and refund mechanisms between buyers and sellers. In effect, in accordance with Art.29-1 of the same Law, platforms are expected to play an active role in supporting the full transaction cycle – from offering product listings to handling payments and even returns. Importantly, the law mandates that **electronic trading platforms ensure**

²⁵ Law of the RK No 18-VIII ‘On Online Platforms and Online Advertising’ (adopted 10 July 2023) art 1(10) <https://adilet.zan.kz/rus/docs/Z23000000018> accessed 3 April 2025.

²⁶ Law of the RK No 544-II ‘On Regulation of Trading Activities’ (adopted 12 April 2004) <https://adilet.zan.kz/eng/docs/Z040000544> accessed 3 April 2025.

the integrity and confidentiality of information used in e-commerce.²⁷ They must implement conditions to safeguard data (including commercial secrets) and to prevent unauthorized alteration of electronic documents. Correspondingly, platforms are prohibited from disclosing or transferring electronic transaction data to third parties without authorization, and from unilaterally modifying content of electronic communications, except as allowed by contract or law. These provisions establish the platform's duty as a neutral intermediary that must preserve the security and authenticity of the transactions it facilitates.

1.2.3. Consumer Protection and Platform Obligations

Kazakhstan's consumer protection legislation provides specific rules for e-commerce, reflecting the importance of safeguarding buyers on online marketplaces. The Law "On Protection of Consumer Rights" (hereinafter, Consumer Protection Law) contains dedicated provisions addressing e-commerce transactions. A core principle is that consumers are entitled to full and accurate information about goods and sellers when shopping online. Article 25 of this law requires that when goods or services are sold via e-commerce, the seller must clearly provide the **name of the product, its main properties, the price and purchase conditions, and any relevant warnings or contraindications, in the Kazakh and Russian languages**. This information can be delivered through the electronic interface, and links to detailed descriptions may be provided as long as they are accessible to the consumer.²⁸ The law thus mirrors traditional consumer rights (to information and to goods matching their description) in the online realm. Indeed, a seller is explicitly obliged to deliver goods that match the sample or description provided online, ensuring that consumers receive the purchase of the best quality.

Crucially, the Consumer Protection Law imposes responsibilities directly on **electronic trading platforms** in order to protect buyers. Article 33-1, in force since 2019, obliges e-commerce platform owners to institute internal procedures to prevent fraudulent or "incorrect actions" by sellers on their platforms.²⁹ In practice, this means marketplaces should monitor vendors and content to avoid the sale of illegal or counterfeit goods and false information that could mislead consumers. Additionally, the platform's IT systems must use secure communication links to protect e-commerce transactions, reinforcing the earlier noted duty of confidentiality in the trading law.³⁰ These requirements show that Kazakhstani regulators

²⁷ *ibid*, art 29-1.

²⁸ Law of the RK No 274-IV 'On Protection of Consumer Rights' (adopted 4 May 2010) art 25 <https://adilet.zan.kz/eng/docs/Z100000274>, accessed 4 April 2025.

²⁹ *ibid*.

³⁰ *ibid*.

view marketplaces as having a gatekeeping role in upholding fair commerce standards.

E-commerce platforms must also facilitate consumer redress. Amendments in 2020 introduced Article 33-2, which compels online sellers to inform consumers about their rights and the avenues for dispute resolution. Specifically, sellers engaged in e-commerce must display contact information for the state consumer protection authority and any mediation or pre-trial dispute resolution bodies, and notify consumers of their right to seek help or go to court. This information can be provided through the website or app.³¹ In sum, while direct litigation is always an option under civil law, the legislator encourages resolving e-commerce disputes through existing administrative channels or alternative dispute mechanisms, with the platform acting as a conduit for that information.

1.2.4. Internal Policy of Marketplaces

E-commerce companies operating in Kazakhstan are generally expected to **cooperate with rights owners and authorities** to combat counterfeit trade. Many platforms as a matter of internal policy prohibit the sale of illegal or infringing goods and will remove listings that are identified as counterfeit.

Kaspi Shop

In Kazakhstan, one of the most popular marketplaces is Kaspi Shop. This marketplace establishes legal relations with the future seller by means of an Agreement with Kaspi Shop, which is a contract of adhesion regulating relations on processing of orders, sale of goods and provision of other services. This Agreement states that the seller is responsible for the accuracy and compliance with the law of any information and data provided to the Shop, customers, or posted by the partner on the site for the quality of goods, compliance with the requirements of the law, for the availability of all permits, certificates necessary for the sale of goods and/or publication of information about the sold goods, including from the right holders of the “brand” or brand name, trademark and/or service mark and / or other objects of intellectual property rights.³²

Also, as stated in the User Agreement Rules, Kaspi Shop has the right to remove ads if they violate copyright.³³ The same Rules state that Kaspi is not responsible for the content of information provided by users,

³¹ *ibid.*

³² ‘Dogovor s Kaspi Magazinom’ [Kaspi.kz, PDF agreement] <https://guide.kaspi.kz/cdn/content/pay/product/documents/Dogovor-s-Kaspi-Magazinom.pdf> accessed 4 April 2025.

³³ ‘Voprosy i Otvety – Kaspi Gid’ (Kaspi.kz, undated) <https://guide.kaspi.kz/partner/ru/advertisement/sale/q3145> accessed 4 April 2025.

including the content of ads, the use of third party trademarks and logos by users. Additionally, on the Kaspi Ads portal the user is responsible for actions performed on the Internet resource provided in accordance with the current legislation of the RK, including responsibility for the content of the information posted by the user and violation of the rights of third parties in relation to goods and/or information posted on the marketplace.³⁴ Also, the Kaspi Ads User Agreement states that Kaspi has the right to request from the User the documents and information necessary to place the Ad and confirm the accuracy of the information provided and the legitimacy of the use/offer of goods/services specified in the Ad.³⁵

The Kaspi Marketplace has compiled a list of restricted goods, which contains a list of goods, for the sale of which the seller needs to provide the following documents: a supply contract, a document confirming the purchase of goods from the supplier, for the last 90 days - delivery note or invoice, certificate and declaration of conformity for the goods.³⁶ Also, in order to obtain authorization to sell restricted brand goods, different packages of documents are required depending on the method of obtaining the goods for sale. For example, if a brand owner wishes to sell its goods on the Kaspi Marketplace, it is necessary to provide a certificate for the trademark registered in Kazakhstan and photographs of the goods with the brand logo on the tag or packaging. In case a person is supplied with goods from a distributor who purchases goods from an official representative of the brand, it is required to provide an information letter from the trademark right holder, which confirms the distributor's rights to sell the goods, a contract of purchase of goods with the distributor or with the trademark right holder and delivery notes or receipts confirming the purchase of goods with the brand logo for the last 90 days.³⁷

It should be noted that Kaspi suppresses the sale of counterfeit products: if a person purchases goods from the official website of any brand in order to sell these goods on the Kaspi Store, it is necessary to provide a letter from the director of the company that he/she guarantees the sale of only original products. If the fact of selling counterfeit products is confirmed, the store with the seller's announcement will be disconnected from the Kaspi Shop.

Thus, internal rules and agreements with persons wishing to become sellers on Kaspi's marketplaces state that all responsibility for

³⁴ 'Pol'zovatel'skoe Soglashenie Kaspi Obyavleniya' [Kaspi.kz, PDF document] <https://guide.kaspi.kz/cdn/content/kkz/files/Document/polzovatel'skoe-soglashenie-kaspi-obyavleniya.pdf> accessed 4 April 2025.

³⁵ *ibid.*

³⁶ 'Kategorii i Brendy Tovarov, Ogranichenyykh k Prodazhe v Kaspi Magazine' [Kaspi.kz, PDF document] <https://guide.kaspi.kz/cdn/content/pay//product/documents/Magazin/Kategorii-i-brendy-tovarov-ogranichenyykh-k-prodazhe-v-magazine-na-kaspi-kz.pdf> accessed 4 April 2025.

³⁷ 'Voprosy i Otvety – Kaspi Gid' (Kaspi.kz, undated) <https://guide.kaspi.kz/partner/ru/shop/goods/q2618> accessed 4 April 2025.

violations of exclusive rights is borne by the seller, and Kaspi only provides an Internet site for placing goods.

Halyk Market

Halyk Market is another major marketplace that is gaining popularity in the Republic of Kazakhstan. Similarly to Kaspi Shop, Halyk Market provides an opportunity for sellers to sell goods on the marketplace platform by means of an adhesion agreement.

The adhesion agreement explicitly addresses critical aspects related to intellectual property rights. One of the primary provisions dealing with intellectual property concerns the requirement that partners rigorously respect intellectual property rights held by third parties.³⁸ The agreement obligates each partner to ensure that the products they list and sell on the platform are entirely compliant with relevant intellectual property regulations. Specifically, partners must secure and maintain permissions from holders of brands, trademarks, service marks, and other intellectual property entities. This explicit mandate underscores Halyk Market's proactive approach to minimizing infringement risks and preserving its reputation as a trustworthy marketplace.

Furthermore, the agreement requires partners to substantiate their adherence to intellectual property standards through appropriate documentation. Upon receiving a request from the platform operator, partners must provide comprehensive documentary evidence demonstrating their lawful right to sell products bearing trademarks or other intellectual property elements. Such documentation typically includes licenses, certificates, or explicit permissions from the respective intellectual property rights holders.³⁹ This provision effectively places a substantial burden of verification and legal diligence upon the partners, ensuring that Halyk Market can readily affirm the legitimacy of products offered through its services.

Additionally, *partners are unequivocally held accountable for violations related to intellectual property rights.* Partners must guarantee that their commercial offerings are genuine, authentic, and duly licensed, fulfilling all necessary regulatory conditions for sale within Kazakhstan. In cases where disputes arise regarding intellectual property infringements, *the marketplace explicitly stipulates that the responsibility for resolving such conflicts lies solely with the partner.* Consequently, the marketplace

³⁸ 'Dogovor Prisoedineniya dlya Partnerov, Razmeshchayushchikh Tovary i Uslugi na Elektronnoy Torgovoy Ploshchadke Halyk Market' [Halyk Market, PDF agreement] <[https://3327698262-files.gitbook.io/~files/v0/b/gitbook-x-prod.appspot.com/o/spaces%2FKoiWdfybhenugayt0OcL%2Fuploads%2FzOgNFGyCxp2zU9B98RiT%2FDogovor%20Prisoedineniya%20HM%20\(rus\).pdf?alt=media&token=3b05b91d-3493-4b85-a107-96d6297e37c4](https://3327698262-files.gitbook.io/~files/v0/b/gitbook-x-prod.appspot.com/o/spaces%2FKoiWdfybhenugayt0OcL%2Fuploads%2FzOgNFGyCxp2zU9B98RiT%2FDogovor%20Prisoedineniya%20HM%20(rus).pdf?alt=media&token=3b05b91d-3493-4b85-a107-96d6297e37c4)> accessed 4 April 2025.

³⁹ *ibid.*

isolates itself from potential legal repercussions by clearly attributing full liability for intellectual property violations to individual vendors.

The consequences of intellectual property infringements under this agreement are significantly stringent. If a partner breaches intellectual property norms or fails to comply with the marketplace's documentation requirements, Halyk Market is entitled to exercise several remedial measures. These measures may include suspension of the partner's activities or even unilateral termination of the partnership. Furthermore, the marketplace reserves the right to demand full compensation for documented losses incurred due to the partner's non-compliance or violation of intellectual property rules. By instituting these robust enforcement mechanisms, Halyk Market not only reinforces the seriousness of adherence to intellectual property rights but also aligns its operations with best practices designed to maintain market integrity and consumer confidence.

Comparison of IP provisions between Kaspi Shop & Halyk Market

Aspect	Kaspi Shop	Halyk Market
Type of Agreement	Adhesion agreement	Adhesion agreement
Seller's Responsibility	Sellers must ensure accuracy, compliance with laws, quality, and possession of all required permits/certificates, including IP rights (brand, trademark, service mark).	Sellers explicitly required to respect third-party IP rights, securing necessary permissions and licenses.
Platform Responsibility	Not responsible for the content of user-provided information or trademark/logo use. Only provides the platform for sellers to place goods.	Explicitly isolates itself from liability, attributing full responsibility for IP infringements to the sellers.
Documentation Requirements	Extensive documentation required for restricted goods: supply contracts, certificates, declarations, delivery notes, invoices, and letters confirming legitimate supply chain or original goods.	Partners must provide licenses, certificates, explicit permissions, or comprehensive documentary evidence proving their legal rights to sell branded products upon request.
Trademark and Brand Goods	Specific packages of documents required depending on the supply method (brand owner vs distributor). Requires trademark certificates for product card access restriction, official letters from rights holders, and	Clear obligations to maintain documented proof (licenses, permissions) of compliance with trademark/IP standards.

	invoices/delivery notes within last 90 days.	
Counterfeit Goods Policy	Requires sellers to submit guarantees from official brand representatives or original brand suppliers. Immediate removal from marketplace upon detection of counterfeit goods.	Marketplace reserves rights for suspension, termination of partnership, and demands full compensation for IP infringements or non-compliance.

1.3. National Court Practice in Addressing Trademark Rights Infringement on Marketplaces

This chapter examines judicial decisions in the Republic of Kazakhstan concerning trademark rights infringements on online marketplaces. Numerous cases were analyzed, however, unfortunately (*or luckily?*), to date, none of them have been on the issue of marketplace's liability. The courts practice shows that rightowners do not file a lawsuit against marketplaces when their rights are violated. This section provides an analysis of how Kazakhstani courts approach disputes involving trademark rights violations occurring on marketplaces, offering insights into judicial reasoning and the extent to which marketplaces are involved in the adjudication process.

In the case considered by the Alatau District Court of Almaty on 23 September 2024, the court considered whether seller could be held liable for trademark rights infringement regarding the unauthorized use of the trademark "Chudo Dom" on the Kaspi marketplace.⁴⁰

The claimant, Mr. Martynov, alleged that the seller, Jumabekov B.J., had unlawfully used his trademark by offering products under a product card branded using the "Chudo Dom" mark. However, the court found that the goods sold by the defendant, a set of car interior trim removal tools, were not actually marked with the claimant's trademark. The defendant's goods merely appeared under an existing product card that included the claimant's trademark, a consequence of the platform's automatic linking of similar or identical products according to Kaspi marketplace rules.

Importantly, Mr. Velyamov, representative of the Kaspi marketplace, emphasized that the marketplace operated through a public contract that allowed sellers either to create their own product cards or attach their goods to existing ones. As there was no evidence that the defendant used the trademark directly on the goods themselves, or that the goods fell within the trademark's registered classes under the Nice Classification, the court concluded that no unlawful use of the trademark had occurred.

⁴⁰ Case № 7575-24-00-2/2112, Alatau District Court of Almaty city, 23 September 2024.

Consequently, the court ruled to reject the claimant's demands for recognition of unlawful trademark use and for the award of compensation. The marketplace's general functionality (automatic linking of goods to existing product listings) and the nature of the platform's agreements with sellers were also seen as factors that excluded seller's liability for trademark infringement in this situation.

In another case, the claimant, Sellers LLP, filed a lawsuit against the defendant, Individual Entrepreneur Valeeva, seeking compensation for trademark infringement. The claimant alleged that the defendant had

unlawfully sold counterfeit goods under the **anyway. fitness** trademark on the Kaspi.kz marketplace without obtaining authorization.⁴¹

The claimant argued that their trademark **anyway. fitness** was officially registered under Certificate No. 87502 for goods classified under Class 28 of the Nice Classification, and that the defendant's use of this trademark on the platform constituted an infringement of their exclusive rights.

During the court proceedings, it was established that Kaspi.kz operates as a marketplace platform where sellers may attach their goods to existing "open product cards" created by other partners. According to Kaspi's rules, once a product card is open, other sellers on the platform are allowed to link their offers under the same product page, which automatically carries over the trademark or brand name associated with the original card.

The representative of Kaspi clarified that the automatic linking system resulted in the defendant's products being attached to the

claimant's original product card, causing the **anyway. fitness** trademark to appear in association with the defendant's listings. Kaspi further explained that to prevent such automatic associations, the trademark owner must either close access to the product card or obtain exclusive rights to sell goods under that registered trademark on the platform.

Taking into account these platform mechanisms and the absence of direct, intentional use of the trademark by the defendant beyond the technical operation of the marketplace, the court rejected the claimant's demands for compensation.

Thus, the court refused to hold the seller liable for trademark infringement, recognizing that the association of the defendant's goods with the claimant's trademark was due to the platform's automatic system

⁴¹ Case № 7113-24-00-2/10746, Specialized inter-district economic court of Astana city, 14 October 2024.

rather than the defendant's deliberate actions. The marketplace, again, was not questioned on liability, and its presence in the case was limited to giving technical clarifications.

One more case, where a marketplace was presented as a third-party in the lawsuit held place in Kostanay on 6 of January, 2025. In this case the trademark "Cute things" was used by a seller on a marketplace without rightholder's consent on Kaspi Shop.⁴² The representative of the marketplace, once again, highlighted the fact that the owner's of the trademark are able to restrict the access to the product card by presenting the registration certificate, and that the partner (seller) independently posts and sells their own goods on the platform.

A distinct feature of the next case is that Kaspi marketplace's representative outlined that Kaspi Shop is an integrative platform that provides a venue for online commerce. Responsibility for the posted information about the goods, the presence of licenses, trademarks is borne by partners (sellers) that place services of goods on the platform.⁴³ Hence, the marketplace specifically outlines that all the disputes considering trademark infringements are for the partners to deal with, as it was mentioned previously, in the analysis of the internal provisions.

In conclusion, the judicial practice in Kazakhstan illustrates how marketplaces are being robust on their position – being the technical providers of the platform for sellers to post their goods "at their own risk".

In Kazakhstan, trademark rights are protected through civil, administrative, and criminal proceedings. While electronic commerce is regulated by a number of legislative acts, issues concerning the protection of intellectual property rights are not directly addressed within these laws. Marketplaces function as platforms that provide sellers with the opportunity to offer their goods, with an obligation to comply with the legislation of the Republic of Kazakhstan, including intellectual property regulations. Leading marketplaces, in their internal policies and partnership agreements, expressly state that responsibility for respecting intellectual property rights rests with the partners themselves, thereby drawing a clear line regarding the scope of the platform's liability.

⁴² Case №3971-24-00-2/5011, Specialized inter-district economic court of Kostanay city, 6 January 2025.

⁴³ Case №5501-24-00-2/3992, Specialized inter-district economic court of Pavlodar city, 15 January 2025.

CHAPTER 2. International Landscape on Liability of Marketplaces

2.1. E-Commerce Platform Regulation in Foreign Jurisdictions

Kazakhstan's approach to regulating e-commerce platforms can be better understood in light of comparative examples. Many jurisdictions around the world have grappled with similar issues – how to define the legal role of online marketplaces, how to protect consumers, and what liabilities or duties to impose on platform operators. This chapter examines the frameworks in Russian Federation, the **European Union**, the **United States** to contextualize Kazakhstan's legal regime.

2.1.1. Russian Federation

In recent years, the issues of liability of marketplaces for infringement of intellectual property rights have become increasingly important in the Russian Federation. With the development of the digital economy and the increase in the volume of trade through online platforms, the number of incidents involving infringement of intellectual property rights is growing. The peculiarity of the situation in Russia is the absence of legally enshrined clear criteria of responsibility of marketplaces, which leads to ambiguous judicial practice. Courts of various instances often come to opposite conclusions regarding the degree of liability of these platforms, assessing the facts of providing services for the sale of goods without proper authorizations for the use of intellectual property. At the moment there is an unpredictable environment for both right holders and marketplace operators, which emphasizes the relevance of further development of the legislative framework and practical recommendations in this area.

The first step in determining the liability of a marketplace for violations of exclusive rights is to determine the legal status and the degree of participation in trade relations between the seller who placed the infringing goods and the owner of the intellectual property in question.

Marketplace can act as an “information intermediary” in the turnover of goods, providing various sellers with a platform (in the form of a site or program) for placing information about goods. The concept of “information intermediary” is enshrined in the Civil Code of the Russian Federation in Article 1253.1 “Special Liability Features of an Information Intermediary”. In this case, the role of a marketplace is limited to an online trading platform, which only provides information about goods and services and is not responsible for false information and low-quality goods.

At the same time, a marketplace may be bound to sellers by more complex civil legal relations. Sometimes marketplaces act on behalf of the seller and may also deduct a percentage of sales. In such situations, it is

incorrect to consider a marketplace as an “information intermediary”, as recommended by the Russian Supreme Court in Resolution of the Plenum of the Supreme Court of the Russian Federation No. 10 of April 23, 2019. If there is a sale that infringes intellectual property rights, the marketplace will also be liable.⁴⁴

According to the Civil Code of the Russian Federation, if the infringement of the exclusive right to a result of intellectual activity or a means of individualization is committed by the actions of several persons jointly, such persons are *jointly* and severally liable to the right holder.⁴⁵ Marketplace may be held civil jointly and severally liable with the seller if it influences the conclusion or execution of the contract by making substantial changes to the information about the goods, as well as if it uses the trademark for profit. If the marketplace does not influence the conclusion or performance of the contract and its actions do not reveal the fact of using the trademark for its own commercial purposes (profit-making), it will be liable as an information intermediary, but only in cases where it knew and should have known about the fact of unlawful use of the trademark or if it did not take timely and sufficient measures to stop the unlawful use.⁴⁶

The “Wildberries” marketplace has created a special service called “Digital Arbitration” for the purpose of pre-trial resolution of issues. This service helps to strengthen the fight against counterfeit products and simplifies the resolution of issues between the right holder and the seller related to intellectual property. Thus, if the rights of the right holder to copyright objects (photos/pictures, characters of literary works, use of text from a magazine, book, etc., except for the text in the description of the product card) are violated, in case of unauthorized use of a trademark and/or objects protected by a patent, the right holder can file an appeal on infringement of intellectual property rights. This service is very convenient for right holders who do not sell their goods on “Wildberries”, because they can file an appeal without registration in this marketplace. However, it should be noted that such an appeal does not replace the standard intellectual property rights dispute resolution process and does not ensure payment of compensation for infringement of exclusive rights.⁴⁷

⁴⁴ Darya Polyakova, ‘Narushenie Intellektualnykh Prav na Markpleisakh: Kak Naiti i Kak Borot'sya’ (Garant.ru, 20 December 2023) <https://www.garant.ru/gardium/guide/kontrafakt-na-markpleyce/> accessed 4 April 2025.

⁴⁵ Civil Code of the Russian Federation, Part Four, Federal Law No 230-FZ of 18 December 2006 https://www.consultant.ru/document/cons_doc_LAW_64629/ accessed 4 April 2025.

⁴⁶ Zhanna Sugirbekova, ‘Otvetsvennost' Markpleisov za Narusheniya Prav na Tovarnyi Znak’ (Zuykov & Partners, 10 May 2023) <https://zuykov.com/about/articles/otvetstvennost-markpleisov-za-narusheniya-prav-na-tovarnii-znak/> accessed 4 April 2025.

⁴⁷ ‘Tsifrovoy Arbitrazh’ (Wildberries PRO, 20 June 2024) <https://pro.wildberries.ru/pro/ru/lesson?unit=2024-06-20T16-51-32z03-00-2i98a9&pub=2tWkeTkApq4KPvieAIPvA4Vgcig> accessed 4 April 2025.

Turning to the judicial practice of the Russian Federation, it can be concluded that it is not uniform and the courts in each dispute individually consider the positions of the parties and the circumstances of the dispute.

For example, the joint liability of the direct seller and the Wildberries marketplace for infringement of the exclusive right to the Lafinelle trademark was established. In this dispute, the right holder of the trademark, indicated that the defendants (represented by the seller LLC “Vallar” and marketplace “Wildberries”) put on sale goods marked with a designation confusingly similar to the trademark “Lafinelle”.⁴⁸ In this case, the marketplace was jointly and severally held civilly liable, as Wildberries was not an information intermediary within the framework of the legal relationship between the marketplace and the seller, but only performed the function of an Internet site. Wildberries directly received money for the sold goods and, accordingly, commercially used the trademark. In addition, in the public offer, the Wildberries marketplace was listed as a seller.⁴⁹

In some decisions, it is also argued that if a marketplace removes illegal materials from its platform in a timely manner, even though it receives money and directly sells the goods, the marketplace is exempt from liability. Thus, “Internet Resheniya” LLC (Ozon) removed illegal publications on its platform and was subsequently released from liability as an information intermediary.⁵⁰

Summarizing the issue of responsibility of marketplaces for infringement of exclusive rights in the Russian Federation, the most important factor is to determine the legal status of a marketplace. Marketplace in legal relations with entrepreneurs can act as an “information intermediary” or enter into more complex legal relations with the seller, in which the marketplace assumes any responsibilities and, for example, sells goods, acting directly as a seller and directly receives money from purchases. In such cases, the marketplace will be held jointly and severally liable with the seller. In the case of liability of a person who has placed goods on the marketplace, infringing intellectual rights, he is civilly liable to the right holder.

2.1.2. European Union.

The European Union has one of the most developed regulatory regimes for e-commerce and online platforms. Traditionally, the EU’s **E-Commerce Directive 2000/31/EC** provided the baseline: it classifies e-

⁴⁸ Zhanna Sugirbekova, ‘Otvetstvennost’ Marketpleisov za Narusheniya Prav na Tovarnyi Znak’ (Zuykov & Partners, 10 May 2023) <https://zuykov.com/about/articles/otvetstvennost-marketpleisov-za-narusheniya-prav-na-tovarnii-znak/> accessed 4 April 2025.

⁴⁹ *ibid.*

⁵⁰ *ibid.*

commerce platforms generally as “intermediary service providers” and grants them conditional immunity for third-party content they host (the “safe harbor” principle), as long as they act as neutral conduits and remove illegal content upon actual knowledge.⁵¹ This meant that platforms like online marketplaces were not automatically liable for, say, a counterfeit item sold by a third-party vendor, unless they failed to remove it when notified or had an active role in the transaction. The E-Commerce Directive also required that e-commerce service providers disclose basic information (identity, contacts, terms) to ensure transparency.

In recent years, the EU has significantly updated its approach with the **Digital Services Act (DSA)**, which entered into force in 2023-2024. The DSA explicitly **regulates online intermediaries and platforms, including marketplaces**, with a focus on curbing illegal and harmful content and enhancing accountability.⁵² Under the DSA, online marketplaces in the EU have new obligations such as a “*Know Your Business Customer*” requirement – they must verify the identities of third-party sellers and collect their contact and banking details, to prevent anonymous bad actors from selling dangerous goods. They also must promptly remove illegal products (for example, products infringing safety standards or IP rights) when notified, and implement mechanisms for users to flag problematic listings. The DSA thereby tightens platform responsibility: while it preserves the general safe harbor from automatic liability, it requires active due diligence. The European Commission notes that the DSA’s goal is to “**protect consumers and their fundamental rights online by setting clear and proportionate rules**”, while maintaining a fair and open online environment. For instance, marketplaces must inform consumers if a product was removed for being illegal and cooperate with enforcement authorities.

In the realm of **consumer protection**, the EU has long granted strong rights to online shoppers via the Consumer Rights Directive (CRD) 2011/83/EU. Consumers in the EU who purchase goods remotely (including via platforms) have a right to withdraw from the purchase within 14 days for any reason, with a full refund. Platforms that facilitate sales must ensure that sellers honor this right when applicable. Additionally, under the Omnibus Directive (2019 amendments), marketplaces are required to inform users whether the seller is a trader or a private individual (important because consumer law protections apply only when buying from a business). They must also clarify how search results are

⁵¹ European Commission, ‘E-Commerce Directive’ (Digital Strategy, undated) <https://digital-strategy.ec.europa.eu/en/policies/e-commerce-directive> accessed 4 April 2025.

⁵² European Commission, ‘Digital Services Act (DSA)’ (Commission.europa.eu, undated) https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en accessed 4 April 2025.

ranked and if any paid advertising or payments influence search rankings – a transparency obligation to prevent misleading practices. These EU rules highlight consumer rights like transparency, the right of withdrawal, and remedies for faulty products, which go further than current Kazakh law (Kazakhstan may in future consider similar withdrawal rights to align with such standards).

Platform liability for product safety is another area where the EU is innovating. Under the new General Product Safety Regulation (2023) and related legislation, online marketplaces can be held accountable if they do not cooperate in recalls of unsafe products. European regulators have even conducted “sweeps” of websites to check compliance with safety rules. The EU’s approach thus increasingly treats major e-commerce platforms as quasi-regulated entities that must actively police their digital storefronts in collaboration with authorities.

In terms of data protection, the EU’s GDPR applies to e-commerce platforms, requiring stringent protection of personal data, clear privacy notices, and user rights (access, deletion, etc.). Kazakhstan has been moving toward these standards, as noted.⁵³ The EU also passed the **Digital Markets Act (DMA)** in 2022, which, while primarily about competition and fair business practices for the largest “gatekeeper” platforms, can indirectly affect e-commerce (for instance, by requiring large platforms like Amazon to allow businesses to access data and not self-preference their own products unfairly).

In summary, the EU model for e-commerce platform regulation is **characterized by comprehensive consumer rights, conditional platform liability with strong due diligence duties, and robust data protection**. Kazakhstan’s laws share some similar goals (consumer info, platform duties to prevent illegal trade, personal data rules) but the EU provides a more granular template, especially on issues like unconditional return rights and formalized notice-and-takedown systems for illegal content. As Kazakhstan refines its e-commerce laws, EU law often serves as a benchmark or inspiration, something evidenced by Kazakhstan’s efforts to gradually move toward GDPR-like personal data rules and its interest in ensuring product safety and quality online akin to EU practices.⁵⁴

⁵³ Nurzhan Nurakhmetov and Bauyrzhan Baizhumanov, ‘Kazakhstan Strengthens Personal Data Protection by Gradually Moving toward GDPR Standards’ (Dentons, 28 January 2021) <https://www.dentons.com/en/insights/alerts/2021/january/28/kazakhstan-strengthens-personal-data-protection-by-gradually-moving-toward-gdpr-standards#:~:text=Kazakhstan%20is%20undertaking%20a%20number.2018%20in%20the%20European%20Union> accessed 4 April 2025.

⁵⁴ *ibid.*

2.1.3. United States

The United States does not have an all-encompassing federal law devoted to e-commerce platforms; instead, regulation is piecemeal and driven by general consumer protection law, state laws, and judicial decisions. At the federal level, the **Federal Trade Commission (FTC)** is the chief regulator for online commerce issues. The FTC Act prohibits “unfair or deceptive acts or practices,” which applies equally to e-commerce, for example, false advertising of products online or failing to deliver products as promised can lead to FTC enforcement. Federal agencies thus handle e-commerce under existing laws: *“Federal policies and regulations related to e-commerce are generally handled by agencies such as the Federal Trade Commission (FTC),”* rather than a single e-commerce statute.⁵⁵ This means that an online marketplace must ensure that representations on its site are truthful and that it doesn’t facilitate fraud. The FTC has taken action against platforms in cases of clear consumer harm or misrepresentation. However, there is **no licensing or registration regime for e-commerce platforms at the federal level** in the US.

One distinctive feature of the U.S. legal landscape is **Section 230 of the Communications Decency Act (CDA)**, which grants online intermediaries broad immunity from liability for content published by third parties. This historically protected platforms like online marketplaces from being held liable for user-posted content (for instance, reviews, or even product listings provided by third-party sellers), treating the platform as a distributor rather than the speaker of that content. However, Section 230’s immunity is not absolute and does not typically apply to the sale of defective products (which are not just “speech”). In product liability law, U.S. courts initially tended to absolve marketplaces like Amazon by reasoning that Amazon was not the “seller” of products sold by independent merchants – it was just an intermediary (some courts likened Amazon to a mall owner leasing space to vendors). But this is changing through case law. In recent decisions, courts in states like California and Pennsylvania found Amazon could **be treated as a seller and held strictly liable for injuries from defective products sold by third parties**, especially when Amazon was deeply involved (e.g., handling warehousing and shipping via its “Fulfilled by Amazon” program).⁵⁶ Moreover, U.S. product safety regulators have started asserting authority: in 2021, the U.S. Consumer Product Safety Commission (CPSC) ruled

⁵⁵ Library of Congress, ‘E-Commerce: Law and Policy’ (Legal Research Guides, undated) <https://guides.loc.gov/e-commerce/law-policy> accessed 3 April 2025.

⁵⁶ Andrew Ackley, ‘The “Marketplace” Myth: Addressing Amazon’s Defense to Product Liability Claims’ (2025) 48 Seattle U L Rev Online 95 https://digitalcommons.law.seattleu.edu/sulr_supra/33/ accessed 3 April 2025.

that Amazon was a “distributor” of certain hazardous products sold on its marketplace and therefore responsible for recalling them.⁵⁷ This was a landmark move – *federal regulators determined that Amazon can be held responsible for defective goods sold by third-party merchants on its marketplace.*⁵⁸

So, while the U.S. lacks a comprehensive regulatory scheme comparable to the EU’s DSA, it is developing accountability for e-commerce platforms via enforcement and litigation. Key aspects of U.S. approach include:

- **Consumer Protection:** FTC monitoring of online business practices (e.g., ensuring online sellers honor refund policies and data privacy promises; the FTC also enforces specific rules like the Mail Order Rule which requires goods to be shipped within a certain time or the transaction refunded, applicable to online sales).
- **State Laws:** Many states have unfair trade practices acts and data breach notification laws that apply to e-commerce. California’s Consumer Privacy Act (CCPA) imposes data obligations that online retailers must heed, for instance.
- **Self-Regulation and Market Forces:** In absence of direct regulation, many U.S. e-commerce platforms have adopted voluntary measures. Amazon, eBay, et al. have “A-to-Z guarantee” or buyer protection programs, not due to a law requiring it, but to maintain consumer trust and preempt stricter regulation.
- **Executive Policy:** The U.S. government has shown concern about the influx of counterfeit and unsafe goods via e-commerce. A 2020 Executive Order on “*Ensuring Safe and Lawful E-Commerce*” declared it government policy to combat trafficking of counterfeit or dangerous items through online channels.⁵⁹ This policy pushes agencies like customs (CBP) to improve screening of small parcels and hold online sellers accountable for duties and compliance. While not a direct regulation on platforms, it reflects an orientation toward tougher scrutiny of e-commerce imports, somewhat

⁵⁷ U.S. Consumer Product Safety Commission, ‘CPSC Finds Amazon Responsible Under Federal Safety Law for Hazardous Products Sold by Third-Party Sellers on Amazon.com’ (30 July 2024) <https://www.cpsc.gov/Newsroom/News-Releases/2024/CPSC-Finds-Amazon-Responsible-Under-Federal-Safety-Law-for-Hazardous-Products-Sold-by-Third-Party-Sellers-on-Amazon-com> accessed 4 April 2025.

⁵⁸ Annie Palmer, ‘CPSC Says Amazon Responsible for Faulty Goods Sold on Its Marketplace’ (CNBC, 30 July 2024) <https://www.cnbc.com/2024/07/30/cpsc-says-amazon-responsible-for-faulty-goods-sold-on-its-marketplace.html> accessed 5 April 2025.

⁵⁹ Executive Order No 13904, ‘Ensuring Safe and Lawful E-Commerce for United States Consumers, Businesses, Government Supply Chains, and the United States Postal System’ (5 February 2020) 85 Federal Register 6725 <https://www.federalregister.gov/documents/2020/02/05/2020-02439/ensuring-safe-and-lawful-e-commerce-for-united-states-consumers-businesses-government-supply-chains> accessed 5 April 2025.

analogous to Kazakhstan's focus on product safety and tax compliance for foreign platforms.

In summary, the **U.S. model is more flexible and litigation-driven**. Online marketplaces are not formally regulated entities, but they can be subject to liability under product liability law and consumer protection enforcement if they engage in or facilitate wrongdoing. The U.S. has prioritized freedom for innovation, which allowed e-commerce to flourish, but is now contending with issues (counterfeits, unsafe products) through a mix of new interpretations of old laws and targeted actions. For Kazakhstan, the U.S. experience underscores the importance of clarity: lacking explicit laws, U.S. courts had to decide if Amazon is a "seller" – Kazakhstan's law, by defining "electronic trading platform" and delineating duties, avoids some of that ambiguity by legislatively affirming the platform's intermediary role but also its obligations.

2.2. Foreign Judicial Practice in Addressing Liability

The exponential growth of e-commerce over the last two decades has redefined the traditional boundaries of trade, shifting commerce into a digital realm where goods can be exchanged without any physical storefront or direct interaction between seller and buyer. Central to this transformation are online marketplaces such as Amazon, eBay, Wildberries, AliExpress, Etsy, and others, which enable millions of sellers to reach consumers across jurisdictions. However, the rise of these platforms has created an enforcement gap in trademark protection. The proliferation of counterfeit and infringing goods online has outpaced the ability of traditional legal doctrines to ensure accountability. Trademark holders are increasingly turning their attention not just to infringing sellers, but to the marketplaces themselves - powerful, centralized, and algorithmically driven entities that are often the only practical enforcement targets.

The question of whether (and to what extent) online marketplaces should be held liable for trademark infringements committed by third-party sellers is among the most contested in modern IP law. It raises broader concerns about intermediary liability, the burden of policing infringing activity, the balance between innovation and enforcement, and the changing nature of commerce. This part examines this question through the lens of comparative legal analysis, focusing on Russian Federation, the United States, the European Union, and selected national approaches, including Russia and Germany. Throughout, the text draws on judicial decisions, academic commentary, and evolving legislative initiatives, arguing that a functional, context-sensitive standard is needed,

one that aligns legal liability with actual market power and economic involvement.

2.2.1. Direct and/or Primary Liability in the European Union

In European Union law, the doctrinal anchor for direct liability in trademark cases is found in Article 9(2) of Regulation (EU) 2017/1001 on the European Union Trade Mark (hereinafter, EUTMR), which allows trademark owners to prevent third parties from using identical or similar signs in the course of trade without consent where such use affects or is liable to affect the functions of the trademark.⁶⁰ The key question for online marketplaces is whether their conduct constitutes “use” of the sign “in the course of trade.”

Historically, the CJEU interpreted this notion narrowly. In *Google France SARL v Louis Vuitton Malletier SA*, the Court held that Google did not “use” trademarks in the course of trade when it allowed advertisers to purchase keywords corresponding to registered trademarks.⁶¹ This decision emphasized the passivity of the platform and distinguished between technical facilitation and commercial exploitation. Similarly, in *L’Oréal v eBay*, the CJEU accepted that eBay’s role as a host of third-party content might enjoy exemption under the E-Commerce Directive, provided eBay remained a neutral intermediary.⁶²

However, the landmark ruling in *Christian Louboutin v Amazon* marked a jurisprudential shift. The CJEU held that Amazon could be directly liable where its role transcended mere hosting and extended to active presentation, advertisement, and distribution of infringing products.⁶³ Crucially, the Court stated that if a reasonably well-informed and observant internet user perceives the goods as being marketed by the platform itself, this may constitute “use” under Article 9(2).⁶⁴ This consumer-centric test represents a significant departure from formalistic analyses and emphasizes consumer perception over contractual delineations between platform and seller.

As van Leeuwen and Anemaet observe, the Court in *Louboutin* effectively imposed liability based on blended commercial communication - where Amazon’s own offerings were visually and structurally indistinguishable from those of third-party sellers, especially where

⁶⁰ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trade Mark [2017] OJ L154/1, art 9(2).

⁶¹ *Google France SARL v Louis Vuitton Malletier SA* (Joined Cases C-236/08 to C-238/08) EU:C:2010:159.

⁶² *L’Oréal SA v eBay International AG* (Case C-324/09) EU:C:2011:474.

⁶³ *Christian Louboutin v Amazon* (Joined Cases C 148/21 and C 184/21) EU:C:2022:1016.

⁶⁴ *ibid* [48].

Amazon fulfilled, packaged, and shipped the items.⁶⁵ This interpretation reflects a functional approach: *what matters is not whether the platform owns the product, but how the transaction appears to the consumer.*

The *Coty Germany v Amazon* case (2020) offered a narrower view. There, the CJEU held that merely storing goods in fulfillment centers - without offering them for sale or advertising - does not amount to “use” under the EUTMR.⁶⁶ While the judgment seemed to reassert limits on direct liability, it was heavily context-dependent. The decisive factor was Amazon’s lack of knowledge about the infringing nature of the goods and its non-participation in their marketing.

Taken together, *Coty* and *Louboutin* suggest that the scope of direct liability in the EU is now highly sensitive to factual nuance. The Court appears willing to impose liability when platforms visibly align themselves with the commercial act, and reluctant when their role is purely logistical or technical. This trajectory aligns with broader CJEU jurisprudence emphasizing proportionality and fair balancing between IP enforcement and freedom to conduct business.

2.2.2. The U.S. Case Law on Direct Liability

In contrast to the EU, U.S. trademark law does not recognize a formal doctrine of “use in the course of trade” as the threshold for direct liability. Instead, courts apply general tort principles and consider whether a party engaged in affirmative acts of infringement. U.S. courts are, however, more hesitant to impose direct liability on platforms for third-party content.

The most analogous U.S. case is *Bolger v Amazon.com*, where a California appellate court held that Amazon could be treated as a “seller” under strict product liability doctrine for a defective battery sold by a third-party vendor on its site.⁶⁷ Although the case addressed tort liability, its reasoning suggests a broader trend in American law toward recognizing that platforms cannot be shielded by contractual disclaimers when they control the conditions of sale.

In the case of *Oberdorf v. Amazon*, the Third Circuit initially ruled in favor of holding Amazon strictly liable due to its dominant role in the transaction, but later set aside the decision pending review by the court.⁶⁸ While these cases stop short of creating a general rule of direct liability in trademark law, they show a willingness among some U.S. courts to pierce

⁶⁵ Dania van Leeuwen, Mark Leiser and Lotte Anemaet, ‘Online Intermediaries and Trademark Owners’ (2024) 15 *JIPITEC* 56.

⁶⁶ *Coty Germany GmbH v Amazon Services Europe Sàrl* (Case C-567/18) EU:C:2020:267.

⁶⁷ *Bolger v Amazon.com LLC* (2020) 53 Cal App 5th 431.

⁶⁸ *Oberdorf v Amazon.com Inc* 930 F3d 136 (3d Cir 2019), vacated en banc 936 F3d 182 (3d Cir 2019).

the veil of platform immunity in the presence of commercial entanglement and control over the transaction.

Academic commentary diverges on the appropriateness of imposing primary liability on online marketplaces. Rosati and Gommers argue that consumer confusion and market integrity justify such liability where platforms act as hybrid sellers.⁶⁹ Conversely, critics such as Boone caution that expanding direct liability may lead platforms to over-censor and restrict legitimate commerce, particularly for small or new sellers.⁷⁰ The risk of chilling innovation must be balanced against the need for effective IP enforcement.

Yet, despite these concerns, there is a growing consensus that formalist distinctions between “seller” and “host” no longer reflect market realities. As Lev-Aretz writes, platforms that algorithmically curate listings, determine ad placements, and control fulfilment act as “market-constituting institutions”, not neutral conduits.⁷¹ The doctrine of direct liability, especially in the EU, is evolving to reflect this reality - though not without ambiguity and resistance.

2.2.3. Secondary Liability in European States

Unlike the U.S., EU trademark law does not expressly recognize secondary liability. However, many Member States impose it under national tort doctrines. For instance, Germany’s “Störerhaftung” (disturber liability) permits injunctive relief against entities that facilitate infringement even without intent or direct participation. In the *Coty* case, while the CJEU refused to find Amazon directly liable for merely storing infringing goods, it left open the possibility of national law applying where more active involvement is proven.⁷²

In the UK, secondary liability may arise under the Economic Torts or joint tortfeasor liability, particularly when platforms fail to act after receiving notice. Scholars like Gommers note that the lack of harmonization across the EU creates uncertainty, especially for cross-border platforms.⁷³ The *Louboutin* decision, by shifting the focus to consumer perception and platform presentation, may indirectly pressure Member States to revise national approaches to intermediary liability.

⁶⁹ Eleonora Rosati, ‘The Louboutin/Amazon Cases and Primary Liability Under EU Trade Mark Law’ (2022) 44(7) *EIPR* 435.

⁷⁰ Gina Boone, ‘Designing Dupes: Holding Online Marketplaces Contributorily Liable for Counterfeit Goods’ (2021) 31 *Fordham Intell Prop Media & Ent LJ* 1302 <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1786&context=ipj>> accessed 20 March 2025.

⁷¹ Yafit Lev-Aretz, ‘Combating Trademark Infringement Online: Secondary Liability v Partnering Facility’ (2014) 37 *Colum JL & Arts* 639.

⁷² *Coty* (n 64).

⁷³ Carina Gommers and Eva De Pauw, ‘Liability for Trademark Infringement of Online Marketplaces in Europe’ (2020) 15 *JIPLP* 276.

The problem of counterfeiting adds urgency to the debate. As the OECD notes, over 3.3% of global trade is now counterfeit.⁷⁴ Many of these goods are sold through platforms, particularly in sectors like cosmetics, electronics, and fashion.⁷⁵

In the case of cosmetics, counterfeit products pose serious health risks, as documented in regulatory reports and litigation.⁷⁶ In Russia, legal disputes concerning the sale of counterfeit perfumes and skincare products on Wildberries have underscored the difficulty of establishing intent and awareness when online platforms deny having direct control.⁷⁷ Nonetheless, courts have begun to question whether such disavowals are credible when platforms profit from advertising and fulfillment.

Economic analysis shows that platforms internalize the benefits of counterfeit sales (through commissions and ad revenue) but externalize the enforcement costs to rights holders.⁷⁸ This creates a perverse incentive structure, which, without legal accountability, leads to platform inertia. Secondary liability doctrines aim to rebalance this by creating shared responsibility.

2.2.4. Secondary Liability in the U.S.

In the United States, courts have historically been cautious in imposing direct liability on online intermediaries for third-party trademark infringements. Instead, they have applied the doctrine of contributory infringement, grounded in *Inwood Laboratories v Ives Laboratories*, which states that a party may be held liable when it intentionally induces another to infringe a trademark, or continues to supply its product or service to one whom it knows or has reason to know is engaging in trademark infringement.⁷⁹

The landmark decision in *Tiffany (NJ) Inc v eBay Inc* is the primary reference point. In that case, Tiffany alleged that eBay's facilitation of counterfeit jewelry sales amounted to contributory trademark infringement. The Second Circuit held that generalized knowledge of counterfeiting was insufficient, and that liability required specific knowledge of particular instances of infringement.⁸⁰ While the court

⁷⁴ OECD and EUIPO, 'Trends in Trade in Counterfeit and Pirated Goods' (2019) <https://www.oecd.org/en/publications/trends-in-trade-in-counterfeit-and-pirated-goods_q2q9f533-en.html>.

⁷⁵ *ibid.*

⁷⁶ Angela Daly, 'Responsibility for Harm from Counterfeit Cosmetics' (2020) 32 *IPQ* 101.

⁷⁷ Anastasiya V Sal'nikova and Yuliya A Kudimova, 'Counterfeit Goods in the Marketplace on the Example of Wildberries: Problem Statement' (2021) 2 *Vestnik Universiteta* 117.

⁷⁸ Boone (n 68) 1340.

⁷⁹ *Inwood Laboratories v Ives Laboratories* 456 US 844 (1982).

⁸⁰ *Tiffany (NJ) Inc v eBay Inc* 600 F3d 93 (2d Cir 2010).

acknowledged that willful blindness could satisfy the knowledge requirement, it found eBay's conduct fell short of this standard.⁸¹

Legal scholars have strongly criticized the decision. Boone argues that Tiffany creates a structural enforcement imbalance: while rights holders must notify platforms of every individual infringement, the platforms have superior information and technical capacity to detect and prevent infringement.⁸² Dunn similarly argues for the adoption of a constructive knowledge standard, under which platforms would be liable if they reasonably should have known of infringing activity - a standard more in line with tort law and copyright jurisprudence.⁸³

More recent U.S. cases, including *Williams-Sonoma v Amazon* and *Multi Time Machine v Amazon*, illustrate courts' growing discomfort with rigid knowledge requirements. In *Williams-Sonoma*, the plaintiff claimed that Amazon falsely advertised third-party products as if they were genuine *Williams-Sonoma* goods. The court refused to dismiss the complaint at an early stage, citing the platform's branding and advertising practices.⁸⁴ Though the case was ultimately settled, it highlighted a willingness to question platform neutrality in trademark contexts.

Besides contributory infringement, U.S. courts have also considered vicarious liability, which arises when the defendant and the infringer have an apparent or actual partnership or the defendant exerts control over the infringing activity. This doctrine, however, is rarely applied in online platform cases, as courts often find that marketplaces lack day-to-day control over third-party sellers.

Nevertheless, cases such as *Oberdorf v Amazon* suggest that courts are beginning to blur the line between control and facilitation. When a platform sets rules for seller behavior, retains the power to remove listings, and profits from every transaction, these factors may cumulatively amount to the kind of control required to sustain vicarious liability.⁸⁵

Lev-Aretz conceptualizes this evolution through the notion of "partnering facilities" - a grey zone between passive hosting and co-entrepreneurship.⁸⁶ Where a platform not only facilitates but benefits commercially from the infringement and enables it through infrastructure, liability becomes not only doctrinally justifiable, but normatively necessary.

2.2.5. Non-Liability in the EU Approach

The primary legal framework for online intermediary exemption in the European Union is Article 14 of Directive 2000/31/EC (E-Commerce

⁸¹ *ibid* 109-110.

⁸² Boone (n 68) 1325-1330.

⁸³ Hayley Dunn, 'What's in Your Box?' (2021) 29 *Cath U J L & Tech* 91.

⁸⁴ *Williams-Sonoma Inc v Amazon.com Inc* No 18-cv-07548 (ND Cal filed Dec 14, 2018).

⁸⁵ Oberdorf (n 66).

⁸⁶ Lev-Aretz (n 69) 644-645.

Directive), which provides that hosting providers are not liable for third-party content, provided they (1) do not have actual knowledge of illegal activity, and (2) act expeditiously to remove or disable access once they gain such knowledge.⁸⁷ This immunity is often referred to as the “hosting exemption” or safe harbour.

In *Google France*, the CJEU interpreted Article 14 narrowly, distinguishing between passive intermediaries and active participants.⁸⁸ The Court held that where a platform engages in content optimization, ad placement, or selection, it may lose its exemption.

The same principle was reaffirmed in *L'Oréal v eBay*, where the Court considered whether eBay had gone beyond a neutral intermediary role by helping sellers optimize listings and promoting offers. The CJEU held that these services may indeed disqualify eBay from safe harbour protection.⁸⁹

Most notably, in *Louboutin v Amazon*, the Court introduced consumer perception as a new standard for determining whether a platform is liable. If consumers believe the goods are sold by Amazon, despite technically being listed by third parties, then Amazon may not claim the protection of Article 14.⁹⁰ This redefinition of “neutrality” transforms the standard from a purely technical assessment into a contextual and visual evaluation of how goods are marketed.

Scholars like Rosati warn that the concept of neutrality is becoming less predictable.⁹¹ As the line between seller and platform blurs, the safe harbour becomes harder to navigate. This legal uncertainty can deter innovation - but it also reflects the growing accountability of platforms in a more integrated digital economy.

2.2.6. Exemption from Liability in the U.S.

Unlike the EU, the United States does not have a statutory safe harbour for trademark infringement akin to the DMCA for copyright. Instead, courts have created judicially implied boundaries on liability through rulings like *Tiffany v eBay*, which implicitly allows platforms to escape liability unless they have actual or constructive knowledge.

This absence of a clear safe harbour has generated academic concern. Powell argues that the current U.S. framework offers quasi-immunity by inertia - platforms face minimal legal risk unless courts interpret knowledge and intent more broadly.⁹² Moreover, as Boone

⁸⁷ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on electronic commerce [2000] OJ L178/1, art 14.

⁸⁸ *Google France* (n 59).

⁸⁹ *L'Oréal* (n 60).

⁹⁰ *Louboutin* (n 61) [49].

⁹¹ Rosati (n 67).

⁹² David Powell, ‘eBay Exemption: Restructuring the Trademark Safe Harbor’ (2016) 11 *J Bus L* 233.

highlights, the asymmetry between the burden on rights holders and the informational power of platforms leads to under-enforcement.⁹³

In response, scholars such as Liu propose that courts adopt a DMCA-like notice-and-takedown system for trademarks, giving platforms structured obligations and incentives to cooperate.⁹⁴ This approach would align with international trends and harmonize U.S. practice with emerging norms.

One of the core tensions in safe harbour regimes is the balance between enforcement and over-censorship. If platforms face liability for user content, they may adopt overbroad takedown policies, removing not only counterfeit goods but also legitimate listings out of fear of prosecution. This raises due process concerns, particularly in countries lacking judicial review or efficient appeal mechanisms.

In reality, platforms such as Wildberries and AliExpress often engage in excessive enforcement that unfairly impacts small businesses, which are typically unable to challenge wrongful takedowns. When platforms are motivated to remove content without proper assessment, they risk acting as private enforcers, relying on automated systems instead of adhering to legal due process.

This concern is especially acute in authoritarian regimes, where IP enforcement can serve as a pretext for political or economic censorship. A careful balance must be struck between empowering platforms to fight infringement and ensuring proportionate, transparent enforcement mechanisms.

The determination of marketplace liability for trademark infringement varies significantly across jurisdictions. In Russia, marketplace liability hinges on its legal status: mere "information intermediaries" typically avoid liability unless they knew or should have known about infringements, while marketplaces actively involved in transactions, such as directly receiving payment or significantly influencing sales, face joint and several liability. EU and US courts also adopt nuanced, context-dependent standards, often focusing on whether the platform's role surpasses passive hosting into active commercial involvement. Thus, marketplaces with significant commercial participation, control, or presentation of goods risk substantial liability, whereas strictly neutral intermediaries remain largely exempt.

⁹³ Boone (n 68) 1345.

⁹⁴ Shuchen Liu, 'A DMCA for Trademarks?' (2019) 24 *Fordham J Corp & Fin L* 401.

CONCLUSION

The protection of trademark rights in the context of e-commerce is becoming increasingly crucial, particularly given the rapid growth and widespread adoption of online trading platforms in Kazakhstan. The proliferation of digital marketplaces has dramatically reshaped traditional commercial interactions, expanding consumer access to goods and services while concurrently introducing new legal complexities, particularly regarding intellectual property rights. Within this evolving digital landscape, trademarks play a pivotal role, not merely as identifiers of origin but as fundamental tools ensuring consumer trust, market integrity, and fair competition. Consequently, effective trademark protection mechanisms have emerged as an essential priority for both market participants and policymakers in Kazakhstan.

However, alongside the positive expansion of e-commerce comes the significant challenge posed by counterfeit goods - products unlawfully bearing trademarks without the consent of legitimate right holders. The online environment has made it easier than ever for infringing goods to infiltrate the marketplace, often circumventing traditional regulatory and enforcement measures. The gravity of this issue extends far beyond mere economic consequences for trademark owners, encompassing serious health and safety risks for consumers. For instance, counterfeit pharmaceuticals, vitamins, dietary supplements, cosmetics, children's toys, automotive parts, and electronic components frequently sold online are often produced without adherence to safety and quality standards. The circulation of such products not only undermines consumer confidence but also poses substantial threats to public health and safety.

Given their role as digital intermediaries, online marketplaces have both the ability and responsibility to address the proliferation of counterfeit goods. By implementing effective verification mechanisms, monitoring listings, and enforcing compliance with intellectual property standards, marketplaces can significantly contribute to reducing trademark infringements.

International experience underscores the practical feasibility and legal precedent for holding marketplaces accountable in cases involving trademark infringements. Comparative analysis of various jurisdictions reveals that marketplaces can indeed be subject to liability under certain conditions. Specifically, marketplace liability tends to arise when platforms demonstrate an "active role" in commercial interactions. An active role is typically established when the marketplace directly participates in the sales process, exercises significant influence or control over seller activities, commercially benefits from trademarked products without authorization, or knowingly ignores evidence of trademark infringement.

Courts and legislators in jurisdictions such as the European Union, the United States, and the Russian Federation have increasingly recognized that passive hosting exemptions do not shield platforms that fail to act responsibly or engage actively in commercial exploitation of infringing goods.

Based on the analysis of international legal sources, scholarly research, and Kazakhstan's national legislation, the following recommendations are proposed:

- Define in legislation clear criteria for determining when a marketplace assumes an "active role" and thus loses its neutral status.
- Establish minimum statutory standards for agreements between marketplaces and sellers, ensuring mandatory clauses on intellectual property rights protection.
- Impose liability on marketplaces when they act as sellers, knowingly ignore infringements, or commercially benefit from unauthorized use of trademarks.

Implementing these measures will strengthen Kazakhstan's legal framework, align it with international best practices, and promote a safer and more reliable digital marketplace environment.

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