

# Dupe Culture and Digital Deception: Legal Challenges of Trade Mark Dilution in Influencer-Driven Comparative Advertising

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## Abstract

The article is about how ‘dupe culture’ evolves, with cheap items being sold as dupes or cheaper versions of higher brands, mostly by influencer comparative advertising within fashion, cosmetics, and lifestyle verticals. While such advertising appears to work in favor of the price conscious consumer, it does so at the cost of dilution of the brand identity of an established mark posing grave trade mark law concerns. The paper looks into how much digital marketing, especially through influencer advertisements, sets the stage for dilution and subliminal confusion amongst the consumers. Further, it looks into whether Indian trade mark law, especially Sections 29(2)(b) and 29(8) of the Trade Marks Act, 1999, is well placed to face these challenges and the possible defences under Section 30(2)(a) for honest comparative references. The tension between brand protection and competition in the marketplace has impacted certain areas of law where grey zones exist due to influencer hyper marketing and algorithmic targeting. Analysing this from a comparative perspective means analysing Indian statutory safeguards and emerging judicial trends vis-a-vis frameworks in the U.S., E.U., and accepted best practices globally, such as the FTC Endorsement Guidelines and the ASCI advertising code. Landmark judgments in *L’Oreal v. Bellure* and *Gucci v. Guess* are critically analysed and stand alongside Indian scenarios of influencer promotion for lookalike products. Re-considering the dilution of trade marks in the digital world is encouraged, along with recommendations on policy change such as tighter disclosure laws and charging of intermediaries for overseeing deceptive comparative advertising. It speaks to intellectual property scholarship by trying to tackle the rapidly evolving interface between trade mark law, consumer behaviour, and ethics in digital advertising as regards dupe culture.

**Keywords:** Dupe Culture, Trade mark Infringement, Comparative Advertising, Influencer Endorsements, Trade mark Dilution, Digital Consumer Confusion, ASCI Guidelines, FTC Endorsement Rules

## INTRODUCTION

After the turn of the twentieth century, white-collar crime blossomed. The founding variously defined as a crime against property, crime of trust, fraud, workers compensation fraud, extortion, embezzlement, misappropriation, scam, and equity offense. It was a complex and dynamic area with no set standards to differentiate one crime from the other. Even Jackson (1911) discusses that the existing body of penal law criminalizes a limited range of those white-collar acts, most of which fall within the offenses of theft, forgery, misrepresentation, and fraud. Those are the only forms recognized by the positive laws. Still,

many Acts or wrongdoings done in the course of business are immorally incorrect and socially damaging yet avoid penal sanctions. Regrettably, under international law, there is no provision regulating such crimes, to which categories rightly belong. Essentially, such crimes include trafficking in prohibited goods, bribery, corruption, vested interest of public officials, fraud, forgery, and product piracy, which the universal laws cannot categorize as offenses. However, note that the best way to understand white-collar crime is to see it as a category of crimes really defined by the type of perpetrator: an individual who is ‘respectable and well placed’ in the community.

The word dupe, originates from the French word, *duppe*, which comes from a modification of *huppe*, a ‘hoopoe,’ a bird thought to be dull witted. The original meaning was ‘a person easily deceived or tricked.’ It then came to also mean an item that ‘imitates’ or ‘duplicates’ a more expensive item, usually at a cheaper price. A dupe is short for duplicate, meaning that it is a product that is made with a lot of imitation or duplicate of a higher end or more expensive item for a smaller amount of money. Fashion dupes can be found in all categories of fashion, from clothing, shoes, bags and even accessories. Dupes are different from counterfeit products that illegally use brand names and or logos from luxury brands. A dupe may resemble the style of a luxury item, but does not say that it is a luxury item like counterfeit products do. Where social media and algorithms are ushering in a new consumer culture, the difference between inspiration and imitation is increasingly blurred. This is a phenomenon that has seen several different names ‘dupe culture,’ as consumers seek more affordable alternatives to luxury products and a trend common to many sectors from cosmetics, indeed, to fashion and fragrance. Heavy promotion through influencer propelled content on social networking applications such as Instagram, YouTube, and Facebook the so called ‘dupes’ are not illegal counterfeits but, instead, operated in a legal gray market area, enough visual or sensory similarity to luxury brands but just enough distinction to spare a direct infringement claim. Although comparative advertising is an accepted type of advertising in its right, that is undermined after an intersection between influencer marketing and dupe promotion, wearing resistance especially within the trade mark dilution sphere. Ad watchers are less passive now, they are actively engaging with digital creators who appear to endorse products with the utmost personalized tones, often very subtly persuasive. Such endorsements often imply equivalency with luxury brands, with or without adequate disclaimers or disclosures to the contrary. This results in somewhat implicit trade mark dilution that actually runs counter to the trade mark's purpose, which is to safeguard the uniqueness of exclusivity. While traditional trade mark law mostly considers aspects of confusion, infringement, and counterfeiting, dilution has become more pertinent in the case of dupe culture. Inversions of trade marks, as dilution is often called, usually refer to blurring which denotes a loss of distinctiveness and tarnishment which normally represents an association with inferior quality product and causes loss of reputation. Under Section 29(4) of the Trade Marks Act, 1999, Indian trade mark law deems dilution to be a valid defence against the trade mark in question. The jurisprudential threshold for establishing dilution is high, distortion of a mark must be well-known and the usage must be without due cause. In any enforcement of use in traditional spaces, all of the listed considerations above became particularly burdensome, and it becomes especially burdensome in digital space or social media instances, especially where the influencer place disclaimers with or in the ad or in their comparative references based upon the separation in positive use of a mark under what they provide as the fair use or consumer education.

Comparative advertising, which is permitted by both law and consumer jurisprudence in India for example, *Pepsi Co. v. Hindustan Coca Cola*, does not afford a mark used in a disparaging manner and

cannot unduly appropriate a competitor's goodwill. However, with just investments and no intermediary, the advertising in dupe culture does not present the same temptations for consumers and is dispersed across informal digital platforms and the dupe has varied uses. Thus it was and is difficult for a brand to establish and prevail in any legal suit for a claim of dilution or disparagement. The relationship between influencer culture, influencer content, and trade mark rights in India raises further questions in relation to comparative advertising, which remains an undefined space, and is sought to be refined in subsequent sections of this article. From an overarching point of view, the legal landscape has many facets. The United States offers dilution protection under the Lanham Act and includes both blurring and tarnishment within the potential causes of action. The European Union provides strong particular protection under the EU Trade Mark Regulation for marks with a reputation, but it also requires evidence of the unfair advantage or detriment. And, precedent cases, including the decisions in *L'Oreal v. Bellure* (ECJ) and *Moseley v. V Secret Catalogue*, US Supreme Court, allows for insights into the courts position on advertising that, while not 'passing off,' indirectly derives commercial benefit from the presence of a brand in the marketplace.

The Article follows with ten substantive parts, with a brief conclusion at the end. Part III establishes the conceptual framework for the discussion by defining both trade mark dilution and comparative advertising, as well as showing their development in the digital world. It considers how the fluid, rapid action environment of the internet unsettles established legal doctrines and principles. Part IV looks at the rise of dupe culture and the influencer economy. Influencers encourage imitation products from affordable luxury brands, via sponsored or affiliate content, to their followers. This exposes the lasting impact on brand and brand equity. Part V will provide a legal interpretation of digital deception in the Indian context by taking an in-depth look at statutory and judicial treatment of both trade mark dilution and comparative advertising in influencer marketing. It will identify the existing doctrinal and enforcement gaps all of which cannot effectively respond to new realities around brand misuse as these emerge. Part VI will set out an empirical construction that uses social media cases, identifiable consumer behaviour patterns and the legal reasoning to suggest an assessment of the practical implications of this dupe marketing and influencer behaviour recognition. Part VII specifically investigates the legal frameworks of comparative jurisdictions concerning influencer-induced trade mark risks using tools like the FTC Endorsement Guide, Sales Promotions and Direct Marketing to suggest how the United States and European Union respond to the different forms of influencer trade mark risks. In addition, Part VIII will discuss challenges and gaps in the policy space, specifically weak disclosure, algorithmic opacity regarding paid content, the inherent issues with enforcing cross-border digital infringements arising from influencer marketing, and the fundamental failure to account for misleading practices both creating ambiguity and diminishing protection. Part IX will provide recommendations and suggested reforms including an enhancement of policy followed by new disclosure requirements for influencers, to enable supervision of advertising material and to build on this work through the use of artificial intelligence and amending trade mark protections around brand identity in a digital economy. Finally, Part X will conclude the article and seek to construct the broader argument for thinkers of a legal discipline that advocates for determining a comprehensive, multidisciplinary and anticipatory framework to navigate between protecting a brand or value, preserving fair competition, and avoiding digital consumer desensitisation towards excessive social media influencer unsolicited advertising.

## Conceptual Foundation

### A. Trade Marks Law

The essence of trade marks law is the protection of distinctiveness, the legal form of protection, to assure a brand can protect and maintain its identity in the minds of the consumers. So, trade marks serve three main functions. Firstly, origin function, identifying the source of the goods or services, secondly quality function, maintaining standards and thirdly advertising function, creating brand loyalty. These main functions combine to achieve market efficiency, and ultimately brand equity, derived through a company's investment in goodwill and advertising in the minds of consumers. In this context, 'dupe culture' is an outright threat to these functions, most directly in the digital marketplace, which involves the social media influencers who help govern brand status and perception. While dupe products may not be technically counterfeiting branded products by simply mimicking look and/or sensory appeal, they in fact serve to diminish the advertising and origin functions of trade marks, by creating tie-in opportunities with unrelated products, often with much less quality than the original mark. Trade mark dilution and trade mark infringement have different focal points. Infringement generally focuses on consumer confusion and in particular, whether the general public could reasonably believe that the infringing product is affiliated with or endorsed by the original brand or trade mark. Dilution, on the other hand, focuses on whether distinctiveness is diminished or reputation is tarnished, regardless of confusion or competition. This means that dilution allows the trade mark owner to protect its trade mark even when the infringing use is non competing, or not confusing to consumers. This is an important doctrine in cases involving influencer endorsed dupes, in which there may not be direct confusion, but that brand identity is still disbursed. In India, the Trade Marks Act, 1999 Section 29(1) to Section 29(3) relates to traditional infringement based on confusion, while Section 29(4) relates to dilution and, requires that the mark be well-known, that the infringing use is without due cause and that the use takes unfair advantage of, or is, detrimental to the distinctive character or repute of the registered trade mark

### B. Comparative Advertising

Comparative advertising is a marketing or advertising strategy that compares one product with another, hopefully a competitor's, in order to highlight advantages from the comparison. As a general legal rule, such comparisons would not be challenged in law provided they are established to be truthful, non-deceptive and do not denigrate or exploit the goodwill of the same or other mark. Under Article 19(1)(a) of the Constitution of India, comparative advertising as a form of commercial speech is held as generally permissible provided it is honest, yet not absolute and not a license to exploit other's goods or reputation. Courts in India have drawn a distinction between permissible puffery and unlawful disparagement. In *Pepsi Co. v. Hindustan Coca-Cola Ltd.* (2003) the Delhi high court stated, while comparative advertising may claim one's own product as better, it may not use ridicule or denigrate the product being compared which, for trade marks, is permitted under Section 30(1) of the Trade Marks Act, 1999 for fair use and not taking unfair advantage of the others goodwill in the comparative references.

### C. Trademark Dilution

The dilution of trade marks extends protections to marks beyond traditional situations of confusion, as trade marks law recognizes the value of the identification of reputation and sales associated with its brand. The law focuses on protecting the unique link created between the brand and its efficiencies in its market perception. There are three basic forms of trademark dilution. Firstly blurring, which often occurs when a well-known trade mark begins to cease to reflect unique, distinctiveness due to unauthorized use of its mark on unrelated goods or services, until the mark has been watered down

because the mark is more associated with a collection of unrelated products. Secondly, tarnishment, which is a harm to the reputation of a famous mark, as when, for example, the famous mark is associated with inferior or inappropriate products. For influencers, where there will be promotions of ‘dupes’, it is difficult to protect the original brand while ensuring the influencer did not connect the original brand with its poor quality imitation or other lesser quality aspects that images or perceptions deem relevant. Thirdly, Free-riding (unfair advantage) which is something like a variation of blurring or as a separate category, free-riding refers to infringers taking advantage of the revenue generating potential associated with a reputed mark without offering anything in compensation or offsetting cost, or gaining the brand value without any of the costs or burdens of building the brand. Dupe marketing can often fall under blurring and free-riding. Nevertheless, there’s little possibility for this type of action to be upheld without the mark being well-known, the hand off mark using the dupe mark without due cause, and if there's no unfair advantage or detriment afforded to the claimant. These kinds of tests are mostly subjective and typically require extensive litigation for The plaintiff to achieve whatever relief is available, but on an ephemeral platform like Instagram Stories or YouTube Shorts, it can be uniquely complex, making any action costly and long. In India, Section 29(4) of the Trade Marks Act addresses these types of issues, but the internal bar on harmonisation required between the Trade Mark Act and the definitions are ultimately set high.

#### **D. Key Provisions India**

##### **Trade Marks Act, 1999:**

1. Section 29(2)(b): Infringement occurs as a result of use that is likely to confuse.
2. Section 29(4): Dilution protection will apply to marks that are well known.
3. Section 30(1)-(2)(a): Comparative statements are allowed provided they are honest and fair.

##### **Consumer Protection Act, 2019:**

Sections prohibit misleading ads, unfair trade practices, non-disclosure of paid articles through the E-commerce Rules 2020 and the Guidelines for Prevention of Misleading Advertisements and Endorsements (2022) now applies to digital influencers.

##### **ASCI Guidelines (Advertising Standards Council of India):**

1. Mandatory for influencers to disclose paid promotions and take into account transparent and ethical conduct or benchmarks under the 2021 Influencer Advertising Guidelines.

##### **International**

##### **United States – Lanham Act:**

1. Section 43(c) provides dilution by blurring and tarnishment.
2. FTC Endorsement Guidelines require disclosure of material connections for influencers which serves as an important limitation in dupes marketing.

##### **European Union – EU Trade Mark Regulation & Comparative Advertising Directive:**

1. Recognition of dilution of marks with reputation is provided for under Article 9(2)(c).
2. Article 11 outlines care of third parties using ads that may take unfair advantage of, or be detrimental to, the mark which is closely aligned with the provisions in India set out under Section 29(4)

#### **Rise of dupe culture and influencer economy**

In the last few years, a trend known as dupe culture, the enthusiastic search for and sharing of inexpensive knockoffs of luxury products has grown into the leading trend of digital consumerism. A dupe

is a duplicate product, so to speak, that replicates the look, smell, or function of an original designer product, but ideally bears a different brand name and is significantly cheaper. Dupes, unlike ‘counterfeit goods’, are not purporting to be the original, they do not make use of the mark of the brand being imitated, but they invoke the status of the original while presenting a copy or simulacrum of the look. This distinction places them somewhere in a legal grey zone, which is particularly complicated in the area of trade mark law, often involving overlapping concepts of dilution, unfair advantage, and false advertising. With influencer marketing helping to distribute and mainstream dupes, the structure for analysing trade mark implications of dupes on brand reputation and brand identity precept is challenged. At the centre of this cultural and commercial shift is the growth of social media channels, especially Instagram and YouTube, paired with the emergence of digital influencers that can curate and dictate the purchasing behaviour of millions of followers. The hashtag #dupe has, for example, accumulated billions of views across all platforms, thus demonstrating both the popularity of the trend and its penetration into consumers everyday decision making. Beauty, fashion and fragrance are all particularly fertile ground for dupe culture. Influencers produce content with side by side comparison videos, dupe hauls, and product testing, so frequently that it has become normal for them to refer to dupes as 90% similar or identical to luxury items another outrageous claim that they are unable to test with any objective metrics, yet the power of persuasion for vulnerable consumers. A glaring example can be seen in the fragrance product category. Zara's Red Temptation is marketed by many influencers as a near duplicate of the expensive luxury perfume, Maison Francis Kurkdjian's Baccarat Rouge 540. Also, Zara's Cashmere Rose has been marketed as a dupe of Gucci's Flora Gorgeous Gardenia. These comparisons done by influencers develop the comparison and ultimately position the dupe as an inexpensive alternative to luxury. This creates a buzz and a community that feels empowered by their savvy consumerism. However, influencers have a lot of control over the knowledge and perception of brand value and authenticity, and they are not legally liable or required to disclose any transparency. What sets this current iteration of the dupe culture apart from previous discount market iterations is the glamorization and normalization of dupe culture through influencer storytelling. The idea of buying a poor or cheap imitation of a product was viewed negatively when compromising on quality and prestige, but a consumer's knowledge of finding a good dupe today is viewed as knowledge. This type of content is enhanced by influencers that provide sensory descriptions, aesthetic comparisons, and even psychological reassurances for consumers that they are making a ‘smart’ vs. ‘inferior’ decision. Several phrases also populate this discourse including ‘bougie on a budget’, ‘glow up for less’, and ‘save or splurge?’. This reinforces a binary between dupe and luxury providing a relationship that exists not as competitive opposites but as parallel worlds in ways that erode the uniqueness that trade mark law is intended to protect.

The image and sensory deception inherent in dupe marketing raises significant concerns about dilution of marks under both statutory and common law systems. While traditional trade mark infringement is usually established with evidence of consumer confusion, dilution doctrine particularly in U.S. law through the Federal Trade mark Dilution Act and its subsequent amendments also treats famous marks as deserving protection from ‘blurring’ or ‘tarnishment’ irrespective of confusion. Likewise, Indian trade mark law, namely Section 29(4) of the Trade Marks Act, 1999, protects famous marks against a dilution claim grounded in unfair advantage and reputational harm. The difficulty becomes the application of these statutes given there is no infringing act in the promoted product, but in the persuasive and comparative speech of the third party promoters. Moreover, the digital framework of influencer

marketing opens up avenues for potential infringement as potentially infringing content can be shared with limited controls. Although there are requirements, whether adopted through use or locally implemented laws, influencers are subject to lesser requirements than traditional brand advertisers when it comes to disclosure and substantiation. Although laws and regulations exist for example, the Advertising Standards Council of India Guidelines for Influencer Advertising, compliance with the Federal Trade Commission guidelines in the U.S. and the UK's CAP Code are rare. Many influencers do not adequately disclose paid partnerships or promotional content leading to consumer confusion at best and deception at worst. The implications of this for dupe promotions is that misleading endorsements will likely increase and do so at the expense of established trade marks with goodwill.

Take the example of e.l.f. Cosmetics, a low cost beauty brand that has created virality by explicitly marketing their products as cheaper alternatives to luxury, cult favourite products. Influencer content often compares e.l.f.'s Halo Glow Liquid Filter to Charlotte Tilbury's Flawless Filter, or their lipstick shades to Clinique's Black Honey. e.l.f. does not directly compare the products in official marketing materials, but the influencer economy does it for the company. For e.l.f., the line between comparative advertising and indirect brand dilution gets very blurry. Courts and regulators have yet to wrestle with whether influencer comparisons can be considered commercial communications, attributable to the dupe manufacturer, and more importantly, whether such claims meet the scrutiny of genuinely misleading conduct under the law of unfair competition. Psychologically, the lure of dupes speaks to the aspirational but financially challenged, mindset of Gen Z and millennial consumers. As personal branding and online presence hold equal weight if not greater as real life experience, dupes provide a quick entryway to participation in luxury culture. Consumers no longer buy based on function, or necessarily on long term value, they are buying moments, social media representation, and the illusion of taking part in elite circles. This commodification of aesthetic equivalence inherently contradicts the rationale of luxury trade marks, their very statement of luxury embraces exclusivity, prestige, and assured quality based on the source of the brand. This emerging culture raises normative questions about the nature of deception in our complex digital economy. If consumers are aware they are purchasing dupes, and are aware that they are not the originals, is there deception? Some might say that consumers are not deceived but empowered to make an informed economic decision. This particular view does not take into account the cumulative effect of repeated promotion of dupes through visual and narrative means eroding the difference and economic value of the original brand. When the luxury item is less than unique in the mind of the public because of repeated visual and narrative representations of it, the trade mark loses its symbolic capital even if it is legally registered. Worse yet, algorithmic recommender systems push dupes based on user behaviour. For instance, if a consumer watches a few dupe comparison videos, they will likely receive many more dupes related to their recent viewing history, which can often make it harder to recall brand distinctions as time wears on. Since these algorithms have amplified the visibility of dupes beyond traditional word of mouth, it dramatically increases their market reach and legal risk. Influencers, purposefully or accidentally, act as a new breed of algorithmic branding agents in a way that the current legal framework does not fully address. In this context, trade mark owners find themselves in a tricky place. If trade mark owners decide to aggressively enforce against influencers, there is a risk of backlash against that enforcement, and the risk of the corporation being labelled a corporate bully. Conversely, if trade mark owners ignore the issue of infringement by influencers, they run the risk of normalizing the loss of their brands identity. Trade mark owners can use legal options perhaps dilution, passing off, unfair trade practices, or advertising to confront the diffuse and decentralized world that is digital dupes.

Otherwise, without intervention both judicial and legislative the influencer economy seems to be dangerously winning, i.e., not only redefining fashion and beauty as more democratic, but also seems in the process of disempowering the jurisdiction of the law from protecting and promoting creative and economic investment in brand identity.

### **Legal Analysis of Digital Deception**

The digital deception phenomenon takes place at the intersection of consumer psychology, business innovation, and intellectual property protection. In the digital era, deceptive marketing practices, through the use of trade dress, comparative advertising, and influencer marketing, have crossed the line between valid advertising and a trade mark infringement. This part looks at the scope of misleading or confusing marketing under trade mark law in comparative contexts of the European Union, United States, and India. Misleading advertising and the trade mark consumer link in essence, trade mark law exists to protect consumers from confusion and protect the goodwill of brand owners. Digital deception tends to either leverage the likelihood of confusion or the likelihood of association, with the likelihood of association becoming increasingly common in dilution claims. Although confusion infers a sprinkling of belief that the infringer's product is from or endorsed by the trade mark holder, association is much more indirect, so it suggests that the consumer might link the competing brands even if he or she is not compelled by confusion. This doctrinal divide will become most significant in comparative advertising, where traders often tread the precarious line between puffery and trade mark infringement.

#### **EU Case Study: L'Oreal v Bellure – Comparative Advertising and Olfactory Marks**

In L'Oreal SA v Bellure NV, the European Court of Justice found that Bellure's marketing of 'smell- alike' perfumes was trade marks infringement, even though it was established that consumers were not confused as to the source. The comparison lists showed their fragrances to be similar to the high end brands of L'Oreal, which was a true statement with no confusion. The ECJ found that the marketing, as comparison lists, unfairly took advantage of the reputation associated with the L'Oreal marks. This was a breach of L'Oreal's rights under Article 5(2) of the Trade Marks Directive 89/104/EEC. In advance of the issue of confusion, the ECJ determined there was unfair advantage being taken of the goodwill associated with these luxury perfumes, in a manner that amounted to dilution. The Court extended the ambit of infringement in the direction of free-riding, a type of digital deception, involving the brand equity of the luxury brands, to the promotion of affordable products. This decision is important for how the Courts approach the balancing of truthful claims in comparative marketing with the protection of the reputation of their brands in the digital marketplace. The examples also include where influencer campaigns use scent notes or replicate the packaging of luxury brands.

#### **US Case Study: Gucci v Guess – The Semiotics of Infringement**

In Gucci America, Inc. v. Guess?, Inc., the Southern District of New York found that Guess infringed on a number of different aspects of Gucci's trade dress, including the green red green emphasis, the pattern of interlocking 'G's, and the use of diamond shapes. The court awarded damages and issued a permanent injunction, reasoning that Guess's copying was so extreme that it diluted the distinctiveness of Gucci's marks and created a likelihood of confusion. Although Guess put forth the defence that its designs were generic, adopted from larger fashion trends, the court largely focused on the overall effect of multiple similar features that proved a 'substantial likelihood that consumers would think that Guess products originated with Gucci. Notably, in the digital age, such semiotic imitation is amplified in a visual context

on these platforms, making the logo, patterns, and packaging carry as much communicative weight as the functionality of the product

#### Christian Louboutin v Amazon – Platform Liability and Counterfeit Trade

In the case of Christian Louboutin SAS v Amazon, the European Court of Justice was tasked with determining whether online marketplaces, like Amazon, could be liable for selling counterfeit goods that were provided by third-party sellers. The ECJ ultimately determined that Amazon could be liable if it was found to be an active promoter or storage for counterfeit products, which made it appear to consumers that Amazon was selling counterfeit products itself.

This case illustrates how platform design shapes consumer perception. As consumers begin to view infringing or misleading products through increasingly streamlined digital storefronts, trade mark owners are beginning to explore liability against intermediaries. Based on Christian Louboutin SAS v Amazon, new questions are raised about e-commerce platforms overall responsibility for remediating or preventing content that relates to digital deception and brand dilution.

#### Indian Case Study: Sabyasachi and the Lookalike Economy

In India, luxury fashion designers like Sabyasachi Mukherjee have consistently found themselves at the mercy of infringement through imitation lehengas or sarees sold multiple times as ‘Sabyasachi-style’ or ‘Sabyasachi-inspired’ on thousands of social commerce platforms, small boutique websites, and Instagram pages. While many do not directly use the trademarked name, the use of keywords, similar embroidery designs, and signature design mimicry creates both a confusion of interest to the original brand and also indirect association. While these matters rarely end up in litigation, other forms of complaint, such as reporting to the Advertising Standards Council of India or submitting notices of violation under the Information Technology Act, 2000 led to some regulatory action. With the absence of stronger design law, and the limited enforceability of ASCI, India has created a legal void for fashion marketing with deceptive characteristics in the digital space. Whereas consumers are likely not being mistaken into believing a product is original, they are, however, associated with the luxury aspect of the brand without the weight of it being authentic.

#### Likelihood of Association vs. Likelihood of Confusion

The distinction between confusion and association is vital in contemporary trade mark disputes. Courts in the EU have taken a more aggressive stance toward protecting against mere association in famous marks since L’Oreal, whereas the US trade mark system has always been focused on proving an actual likelihood of confusion to show infringement under the Lanham Act, although dilution regulations are recognized to account for the reputation of famous marks. Indian courts have mostly accepted this distinction toward confusion as a standard, but we also see some courts recognize the less tangible harms of association. In Daimler Benz v Hybo Hindustan, the Delhi High Court found that the ‘Benz’ mark could not be used in conjunction with underwear and highlighted that the use of a ‘prestigious mark’ on a product unrelated to such mark, could tarnish the heralded mark’s reputation, despite the inside. The manner in which courts are currently interpreting this distinction is extremely salient for regulating influencer marketing, comparative advertising and dupe culture online.

#### The Role of Influencer Endorsements in Consumer Deception

Influencers have, in effect, become brand ambassadors within the online domain, causing the real line between a legitimate review and a paid promotion to become indistinguishable. Many followers don’t take the time to question whether they are clicking on a video or blog post that is a commercial ad, or if it’s just another piece of influencer video content. When influencers are showcasing a ‘dupe’ or

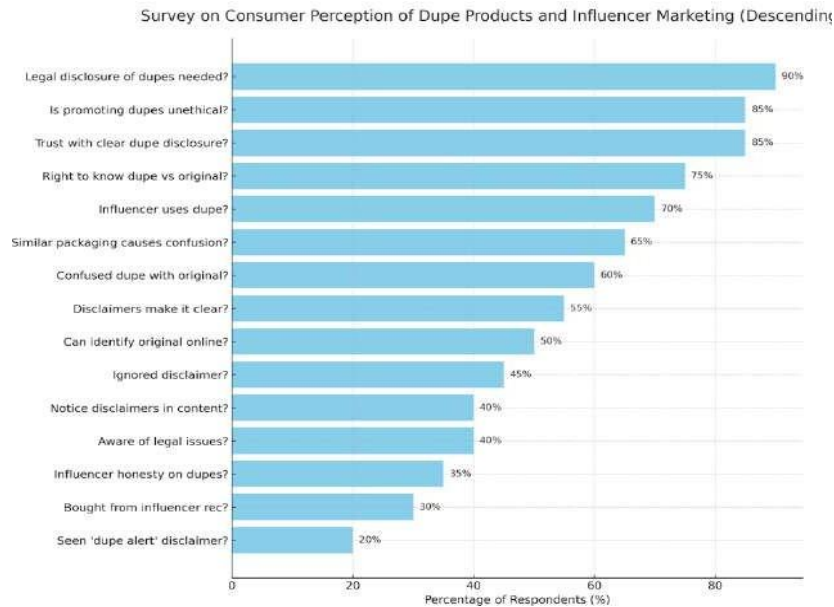
promoting a smell-a-like fragrance marketed as comparable to a pricey designer fragrance, they are using a nuanced level of digital deception. Studies have shown that followers typically see authenticity and trust in influencer posts and stories, which may overtake brand identification and develop association-based dilution. This is especially pernicious when influencers manipulate similar packaging to invoke duplicated product connections, or mislead consumers with equivalent language suggesting parity, ‘better than Chanel’ or ‘exactly like Sabyasachi’ are examples of words and phrases that can have association focused psychological triggers by the influencer. In the case of Tatcha, LLC v. Too Faced Cosmetics LLC, a high-end brand Tatcha, sued another brand Too Faced for trade dress infringement of its \$50 ultraluxury lipstick being sold at \$21, with a very similar lipstick case, and the shade Tatcha alleged irreparable harm to its reputation, and corroborated “instances of actual confusion” through social media comments, where one wrote, “So bummed, I thought this was [T]atcha releasing new shades!!!! Packaging is exactly the same?” However, Tatcha brought down the lawsuit, leaving open questions for a fine case of dupes. In another domestic case of Gurnam Singh v. G.I. Cosmetics, the plaintiff sued for infringement of its famous brand name ‘Blue Heaven’ being misused as ‘Miss Heaven.’ The Court held that the bare perusal of the dangle ‘Heaven’ was leading to consumer confusion, and the defendant’s product lacked distinctiveness, since the term ‘Heaven’ does not necessarily relate to cosmetics, and was a source of goodwill to the plaintiff’s brand likelihood of confusion not being demonstrated.

If anyone can be held legally accountable for misleading and endorsing deception, it is rarely in connection or consequence to penal measures. The ASCI Guidelines in India require that influencers disclose paid partnerships and do not make false claims, however there has not been any serious preventive or policing measures undertaken. The FTC in the United States has been the only real federal body to send some serious messages to influencers about undisclosed endorsements, but such influencer driven deception rarely gets penalized due to its native, informal, and fast paced appearance. The legal discourse about digital deception is changing, creating a framework that reflects the overwhelming complexities of online marketplaces, visual branding, and influencer culture. Confusion-based infringement models are getting additional doctrinal footing with terms like dilution by association and free-riding. While recent landmark cases across jurisdictions demonstrate increased judicial sensitivity to reputational harm due to misleading marketing, enforcement disparities persist, particularly in jurisdictions such as India, where digital marketing has greatly outpaced regulatory controls. As brands and consumers engage in a shifting, image-driven marketplace, courts and regulators will need to reposition trade mark doctrines that view any semblance of deception not only as counterfeit goods, but also in the aesthetics, language, and associations that shape consumer perception in a digital age.

### **Empirical Framework**

To complement the doctrinal analysis of trade mark dilution and deceptive comparative advertising, this chapter presents an empirical framework based on a primary survey conducted among young adult consumers. The objective was to understand perceptions surrounding the promotion of ‘dupes’ imitation products styled after luxury brands particularly in the context of influencer marketing. A structured questionnaire was administered to a balanced sample of 30 participants, evenly divided by gender (15 males and 15 females), within the age range of 20 to 35 years. The findings, while limited in scale, provide crucial insight into consumer confusion, ethical attitudes, and legal awareness concerning digital dupe culture.

**Fig: A survey on consumer perception of Dupe products and influencer marketing**



A key finding emerged from the participants responses to the question of whether they had ever confused a dupe with an original luxury product based solely on appearance. A notable number of respondents admitted they had either ‘rarely’ or ‘sometimes’ been misled. This reinforces the argument that even visually sophisticated consumers are susceptible to confusion, validating the legal doctrine surrounding the ‘likelihood of confusion’ under Section 29(2)(b) of the Indian Trade Marks Act, 1999. The visual similarity between dupe products and their authentic counterparts continues to be a potent source of marketplace deception, particularly when presented through curated influencer content. Further, participants overwhelmingly agreed that similar packaging, branding, and design elements significantly impede their ability to differentiate between genuine and imitation goods. This aligns with global jurisprudence recognizing trade dress infringement the misappropriation of the visual aesthetic and packaging of a product as a form of trade mark dilution. The responses clearly demonstrate that dupes can blur brand identity in the minds of average consumers, posing a challenge to both enforcement agencies and brands. When respondents were asked whether they could identify the original product if shown two similar looking options online, most answers fell within the ‘maybe’ and ‘not sure’ categories. This uncertainty indicates that visual assessment alone, especially in a digital retail context, often fails to equip consumers with adequate clarity. In such a scenario, influencer disclosures and disclaimers become critical tools for consumer protection. On the subject of disclaimers in influencer content, most participants reported that they had only ‘occasionally’ or ‘rarely’ seen explicit terms like ‘dupe alert’ or ‘not sponsored.’ A similar pattern emerged when asked whether they even noticed disclaimers in influencer content, with most selecting ‘sometimes’ or ‘rarely.’ These findings suggest that disclosures when made may lack prominence or clarity, thereby failing to serve their intended function. Importantly, many participants stated that even when disclaimers were present, they were only ‘somewhat’ clear in signalling that the product was not affiliated with the original brand. This gap in communication raises concerns under advertising standards and guidelines, such as those prescribed by the Advertising Standards Council of India and similar regulatory bodies globally.

The study also sought to understand consumer behaviour in response to influencer marketing. A significant number of respondents admitted to having either purchased or considered purchasing a product based solely on an influencer’s recommendation. However, trust in influencer authenticity was

mixed. While some respondents believed that influencers genuinely use the dupes they promote, many were sceptical indicating that influencers may not always disclose their personal usage truthfully. This perceived lack of honesty undermines the legitimacy of endorsements and raises questions about compliance with consumer protection norms. When asked whether they had ever ignored a disclaimer while watching influencer content, responses varied, but a substantial portion admitted to having done so at least occasionally. This finding reflects the reality of passive digital consumption, where disclaimers are often overlooked or downplayed by viewers. Despite this, an overwhelming majority affirmed that they would trust an influencer more if they clearly disclosed that a product was a dupe. This insight highlights the potential of transparent marketing to enhance consumer trust, even within the ethically Gray area of dupe promotion. The survey also revealed a troubling lack of legal awareness. When asked whether they knew that promoting dupes can have legal implications under trade mark law, a majority responded in the negative. This underscores a critical knowledge gap regarding the scope of trade mark protections, the consequences of dilution, and the regulatory obligations that influencers and advertisers must observe. Notably, while legal awareness was low, ethical sensitivity was high. A large proportion of respondents opined that promoting dupes is ethically wrong, even if not explicitly illegal, reflecting a consumer ethos grounded in fairness and brand respect. On the regulatory front, a majority of participants asserted that consumers have a right to know whether a product is a dupe or an original, and that influencers should be legally mandated to disclose such information. These responses strongly advocate for policy intervention, including the possibility of statutory amendments or more robust enforcement of disclosure guidelines to ensure consumer clarity and brand protection.

In summary, the empirical data supports the doctrinal thesis that dupe marketing, particularly through influencers, presents real risks of confusion and deception. Consumer responses reflect both vulnerability and awareness they are susceptible to misleading similarities but increasingly demand transparency and accountability. The findings reaffirm the legal necessity of robust trade mark enforcement in the digital marketplace and point toward the emerging expectation of a duty of Candor on the part of influencers and marketers alike.

### **Comparative Legal Framework**

The legal treatment of digital deception, particularly resulting from trade mark dilution and mistaken sponsorship and endorsement in the context of comparative advertising and influencer marketing, varies dramatically across jurisdictions. This comparative section will discuss the strengths and weaknesses of legal regimes in India, the United States, the European Union, focusing primarily on how these jurisdictions treat misleading advertising, influencer-generated deception, and the enforcement of trade mark rights in the digital realm.

#### **India: Fragmented Enforcement and Regulatory Gaps**

In India, trade mark law is primarily governed by the Trade Marks Act, 1999. Section 29(4) provides a means of protection against trade mark dilution. Section 29(4) prohibits use of a registered mark for goods or services that are not similar if it takes unfair advantage of the distinctive character or reputation of the mark or is detrimental to it. However, there has not been strong use of this provision. Indian courts are typically not inclined to grant protection where there

is no consumer confusion. On top of this, India does not have a strong statutory scheme for regulating comparative advertising that is based on brand reputation and does not create confusion like the EU or the US. Courts have granted protection in some cases of unfair advantage, but they have set the bar higher,

leading to inconsistent results. As it relates to influencer marketing, India has only recently begun addressing this through the ASCI Guidelines for Influencer Advertising in Digital Media 2021. With the ASCI guidelines, a disclosure is required (for example, ‘#ad’ or ‘#sponsored’), misleading endorsements are prohibited, but the guidelines are non-binding with no penal consequences. Accordingly, digital deception by influencers - especially endorsements of ‘dupes’ and ‘inspired’ products continues to flourish generally without consequences or control. Perhaps because there are limited legal consequences for comparative advertising and enforcement in India, a further proliferation of comparative advertising can occur, which does not expose the company to legal liability but takes advantage of the goodwill developed by the luxury brands it endorses.

#### United States: Strong Trade mark and Advertising Regulation

The United States possesses a relatively powerful mechanism for dealing with digital deception through the Lanham Act (15 U.S.C. § 1051 et seq.), which provides a remedy for trade mark infringement, dilution, and false advertising. Section 43(a) of the Lanham Act provides for both infringement by confusion and false or misleading representations made in commercial advertisements. It also allows a brand owner to sue someone if that person has misled consumers or has otherwise tarnished or damaged the brand image through misleading or deceptive marketing. The 2012 case of *Gucci America, Inc. v. Guess?, Inc.* illustrates how the Lanham Act could provide remedies based on cumulative acts of imitation, in which multiple aspects of trade dress were imitated which caused both confusion and brand dilution. The court acknowledged that the remedies for violations of the Lanham Act could be strong and permanent, including injunctions and monetary damages, and would deter similar acts of digital deception. Additionally, the primary regulator for influencer advertising is the Federal Trade Commission. The FTC Endorsement Guidelines require influencers to disclose material connections to brands and prohibit any false or unsubstantiated claims. The FTC can impose monetary penalties, issue public warnings, and hold brands liable for misleading endorsements. This enforcement mechanism has curtailed misleading endorsements in a variety of industries, with the beauty, health and fitness, and fashion industries being most prominently affected. The FTC's enforcement authority creates a culture of compliance for both brands and influencers. Also, the structure of the U.S. legal system, in terms of both initial interest confusion and post-sale confusion enable Courts to intervene even where consumers are not confused at the point of purchase and provides a more robust shield against digital deception.

#### European Union: Restrictive Approach to Comparative Advertising

The European Union has established one of the most comprehensive regimes around comparative advertising and trade mark dilution. Directive 2006-114-CE on Misleading and Comparative Advertising provides significant harmonization across Member States. It allows comparative advertising only if it is not misleading and it does not unfairly take advantage of a competitor's trade mark reputation. The European Court of Justice held a strict interpretation of the directive in *L'Oreal SA v Bellure NV*, where the ECJ ruled that Bellure's truthful comparison of its ‘smell-like’ perfumes with L'Oreal luxury fragrances constituted trade mark infringement because it unfairly rode on the back of L'Oreal's reputation. The court concluded comparative advertising may qualify as unlawful even when it is accurate, when a competitor rides on the prestige of a well-known mark. The EU's expansive interpretation of trade mark protection views the rights of the owner as superior to and therefore, limiting, comparative speech, to limit ‘dupe’ marketing and influencer deception. Also, with instruments such as the Digital Services Act and the Digital Markets Act, the EU will further enhance brand protections, with a requirement for digital platforms to more stringently moderate content.

The overall comparative analysis indicates that while Western markets have embraced robust frameworks to prevent digital deception, emerging markets face implied institutional and regulatory challenges. India, an active digital marketplace, remains under regulation. This is not to say that ASCI does not make advances in some respects, but overall the effectiveness of the guidelines could be improved by a statutory framework that includes actual penalties to deter future violations. Conversely, while the USA and the European Union provide models with respect to active enforcement, broad judicial interpretation and actual, reputational harm, the example of India appears as an outlier.

### **Challenges and Policy Gap**

India's digital marketplace embracing 'dupe culture' has highlighted many deficiencies in regulatory and enforcement practices within its legal and policy framework. Although the availability of similar lookalike goods within the fashion and lifestyle domains may superficially appeal to consumer interest, it indicates systemic flaws in legal literacy, brand alertness, influencer responsibility, and platform regulation. This section highlights the key challenges and policy voids to enforce against digital deception and trade mark dilution in the Indian context.

#### **1. Low Brand Awareness and Weak Enforcement Culture**

India is grappling with one of the greatest obstacles to effective trade mark enforcement: domestic brands in India tend to be extremely inactive when enforcing their trade mark rights, as compared to international luxury brands such as L'Oreal, Gucci or Louis Vuitton. Indian brands including high value brands like Sabyasachi or Masaba, tend to only enforce their trade mark rights against dilution when either the reputational impact is severe or if it has received any media attention. The legal remedies that exist for trade marks under the Trade Marks Act, 1999 especially Section 29(4) on dilution and unfair advantage have not been fully considered and exercised in the pre-litigation circumstances, especially when many well-known brands do not have an in-house team for IP enforcement or the financial capacity to fight a long winded suit. Furthermore, there are statutory and common law remedies available, but most Indian businesses, especially startups and D2C brands are unaware of their rights or the evidentiary burden required to demonstrate dilution, confusion or bad faith comparative advertising. Without this knowledge, it is difficult to have an ecosystem where dupes receive robust opposition, given that many more entities are caused or allowed to survive with minimal legal recourse.

#### **2. Limited Scrutiny of Influencer Marketing**

A glaring policy blind spot is insufficient regulation of influencer marketing. Influencers are at the forefront of bolstering dupe culture and crowdfunding dupes of luxury products, often promoting what is considered as 'affordable alternatives' without full or honest disclosures and basic legal knowledge of influencer obligations. Even though, to the credit of the Advertising Standards Council of India, ASCI has issued Guidelines for Influencer Advertising which require influencers to use the hashtags #ad or #sponsored when advertising on social media, influencers often ignore these guidelines or apply them inconsistently. Even if ASCI wished to enforce its guidelines, it does not have statutory power to do so, as ASCI is a self-regulatory body, acting only as an advisory body or as a public notifier. Interestingly, influencers commonly utilize terms of subjective and comparative language, such as 'looks just like Gucci' or 'a perfect Sabyasachi dupe', and yet did not as far as the law goes provide endorsement of actual counterfeiting or deception. The gray area in which their commentary crosses into insincere territory allows them to opt out of liability while generating enormous consumer engagement, whether legal inspiration or illegitimate misrepresentation.

### 3. Platform Responsibility: Instagram, Amazon, Myntra

E-commerce and social media platforms like Instagram, Amazon, Myntra, Flipkart etc have benefited from dupes as they act as spotless promoters and distributors of these products without liability, as they exist in a similar light as intermediaries. Even though Section 79 provides safe harbour for intermediaries, brand dilution through the use of platforms has become a relevant proposition. Many retailers on Amazon and Flipkart will report dupe products that mention similar brands in the title of the retail listing but convey ideas like ‘Inspired by ABC’ and ‘Designer Look for Less’. Instagram reels and stories on their own are filled with influencer comparisons or design inspired styling using imitation products. While there is a prohibition on counterfeit products, there is not necessarily one on dupes, as there is no enforcement possible unless brands seek to protect the institution of their brand. Often, enforcing brand rights through notice and takedown requests through platforms is cumbersome, not transparent and does not provide meaningful recourse to new brands.

### 4. Legal Ambiguity: Defining a ‘Dupe’

The Indian legal definition of ‘dupe’ is not definitively provided. The Trade Marks Act, 1999 prohibits the infringement of a trade mark and dilution of a trade mark but does not directly address inspired or look alike goods that mimic the overall appearance or trade dress of a product without using the logo or name of a product. In these situations plaintiffs use the more general principles of ‘passing off,’ ‘unfair competition,’ or ‘likelihood of association,’ which are broad and fact based, to identify how the defendant may have been misleading to consumers. The lack of specific clarity has significant implications for litigation. Counterfeit products tend to create more direct type of confusion, whereas dupes often rely on mimicking style or aesthetic, which may not necessarily confuse consumers, but is still a likely dilution or is more closely riding on the good will of the brand. While Indian courts appear to be prepared to consider dilution claims, there have not been any clear doctrines established for how the creation of comparative advertising in a dupe scenario should be decided in the absence of allegations of direct misuse of a brand.

### 5. Jurisdictional Complexities in the Digital Realm

Comparative advertising and influencer marketing often cross geographic boundaries and present challenging questions of jurisdiction. A dupe marketed by an influencer in India can reach audiences in many countries, and the original trade mark may be registered abroad. For international brands, pursuing enforcement action in this case becomes problematic as dupe marketing may emanate from an IP address in India or target Indian consumers. Other complications to enforcement include the fracturing of digital content, the distribution method of cross border drop shipping, and the possibility of anonymity or pseudonymity of sellers on social media. Conventional jurisdictional principles, such as ‘the place of harm’ or the ‘place of business’ are difficult to apply to content that is instantly shared and globally replicated. To summarize, India's current legal and regulatory regime is lacking in its ability to provide a cohesive, enforcement framework, and digital oversight, in order to combat the rise of a dupe culture. While there are formal tools available through statute in trade mark law, and some self-regulatory efforts undertaken by ASCI, the cumulative absence of coordinated brand vigilance, a lack of formal enforcement and accountability from platforms, limited regulation of influencers and instantiation of jurisdictional grey, all actively support the proliferation of digital deception. As a result, for India to solve trade mark dilution and consumer misrepresentation in the era of influencer marketing, there needs to be a stronger, technology informed, and jurisprudentially-based approach to policy.

## Recommendations & Reforms

The emergence of ‘dupe culture’ and influencer led comparative advertising has unveiled pressing legal and regulatory possibilities for potential gaps in India’s trade mark and advertising machinery. While existing laws like the Trade Marks Act, 1999 and the Consumer Protection Act, 2019 provide global protections, they do not account for the multilayered digital spaces of dupe advertising. A comprehensive reform framework is needed to address digital deception while upholding brand equity and consumer trust. This section will identify a set of doctrinal, legislative, institutional and technological reforms based on domestic considerations and comparative international examples.

### 1. Statutory Definition of ‘Dupe Advertising’

Currently, there is no statutory definition of ‘dupe advertising’ in India that gives courts and regulators a coherent benchmark. In light of the absence of such a definition, the Trade Marks Act or the Consumer Protection Act should offer a statutory definition of dupe advertisement as follows: ‘Any advertisement that compares or portrays a product as a lookalike or inspired by a well-known brand, using trade dress/presentation/packaging/design or implied association to the brand, whether or not there is use of an expressly registered trade mark’. Based on this statutory definition, there will be legislative guidance for outcome or interpretation of digital content that does not have overt infringement, but is dilutive, misleading or confers an unfair advantage, likewise, it gives courts and administrative authorities a way to temporally denote dupe marketing to seem permissible comparative advertising.

### 2. Amendments to the Trade Marks Act: Influencer Liability

Consider amending the Trade Marks Act, 1999 to reformulate third-party promotional participants including, influencers, affiliate marketers, and digital resellers as responsible parties for trade mark dilution and misrepresentation, ensuring influencer liability is not exclusively contractual, but rather is statutory like the U.S. Federal Trade Commission governs influencers for harmful deception. Under a newly defined subsection in section 29, influencers knowingly participating in the promotion of ‘knock-offs’ or creating comparative claims to effect confusion with regard to consumers should be designated ‘reasonable secondary infringers’ or ‘dilutors’. This amendment wouldn’t just align Indian jurisprudence with an international trend where influencer led misrepresentation of a good or service is considered a serious IP and consumer rights issue.

### 3. Empower ASCI and CPA Enforcement Wings

The Advertising Standards Council of India supplied guidelines for influencer marketing, but the authority and scope of ASCI is limited by a lack of statutory authority. The government should consider ASCI to be a statutory regulator under the Consumer Protection Act, 2019, and grant it binding orders and monetary penalties. At the same time, the Central Consumer Protection Authority established under the CPA 2019 should be mandated and resourced to investigate influencer led digital deception, especially in fashion and cosmetics where clones and dupes are rampant. ASCI and the CCPA can coordinate their efforts through a common database of offenders that have multiple complaints with ASCI and multiple investigations, more similar patterns for CCPA, then develop a two layer enforcement process.

### 4. Mandatory Digital Disclaimers & AI-Based Content Scanning

As a matter of transparency, any digital advertisement through influencer reels, YouTube, and Instagram stories featuring comparative or dupe products should have required disclaimers, enforced by the platform, for example, This is not an original product, or Inspired by XXX, not affiliated.

Additionally, platforms such as Instagram, Amazon, Flipkart and Myntra should have the capacity to

enact AI-based content scanning with trained search terms (e.g. dupe, like Gucci, Sabyasachi copy) and visual similarities that might warrant engagement. With this, posts could be flagged for review prior to going viral to mitigate any potential issues.

### **5. More Secure Due Diligence for E-commerce Platforms**

E-commerce platforms should be held legally responsible for due diligence before allowing a third party listing of look-alike or comparative products. This due diligence should include a mandatory brand authorization document, disclosures on product origin, and inspiration and rapid response takedown of flagged dupes. The government could consider amending the Information Technology (Intermediary Guidelines and Digital Media Ethic Code) Rules, 2021 to reflect IP based deception, and comparative advertising.

### **6. Comparative Law Inspired Reforms**

India has many foreign legal models that it can draw on for ideas. The European Union, for example, through decisions like *L'Oreal v. Bellure*, has acknowledged the potential for unfair advantage and dilution even when there is no confusion in the case of non-fair comparisons. Similarly, in the context of comparative advertising, the United States imposes strict, specific legal requirements for comparative advertising under the Lanham Act and through FTC guidelines, and agencies such as the FTC have developed legal requirements as well for influencer disclosures. With these models, Indian courts can develop a more nuanced jurisprudence around 'likelihood of association' or non-fair use rather than simply confusion, and conceptualize bad faith comparative advertising as a tort. Thus, while multi-pronged reforms must be undertaken to address the digital deception that dupe advertising promotes in the contexts of legislative clarity, influencer accountability, agency empowerment, platform responsibility, and a comparative legal model, with the right legal and policy reforms, India can protect consumer trust, protect brand identity, and protect fair opportunities to compete in an increasingly digital marketplace.

### **Conclusion**

The acceleration of 'dupe culture' in the digital economy, fast fashion, and influencer marketing raises essential questions about the traditional parameters of trade mark protection. In India, platforms such as Instagram, Amazon, and Myntra increasingly promote lookalike products, to which the line between lawful inspiration and unlawful imitation seems extraordinarily blurred. Digital influencers with little knowledge, and even less regard, for trade mark law have become powerful promoters of these misleading associations. These influencers encourage consumers to purchase the lookalikes by describing them as 'affordable luxury' or 'designer inspired', without disclaimers to alert consumers about the legality or moral implications of the purchase. Not only does this issue imperil the economic worth of established trade marks, it also undermines the function of trade marks as signifiers of origin, quality, and consumer trust. The lack of a sufficient statutory scheme that defines dupe advertisements and regulates them, combined with the scarcely enforced prohibition on endorsing such advertisements, and the lack of oversight by the platforms where these illicit advertisements accelerates, has created an opportunity for deception and dilution of brand quality. Given the circumstances, it is clear that a harmonized, technology sensitive and informed legal and regulatory response is badly needed, including, but not limited to, amending the Trade Marks Act to impose influencer liability, a formal definition of dupe advertising in Indian law, and empowering statutory regulators like CCPA and ASCI, as well a procedural imperative to comply on the part of digital platforms. As noted, Indian law needs to build out its

doctrinal toolbox following the EU, and US to address and remedy harm that fall outside of consumer confusion because of the comparatively novel identified harm of digital marketing, namely ‘unfair advantage’, and ‘likelihood of association’. At the end of the day, we are not trying to curb market competition or consumer choice, we are trying to find a viable balance between accessibility and authenticity, innovation and imitation. In a digital marketplace in which brands are built and diluted in equal measure, it is vital to protect the integrity of trade marks not only for corporate self-interest, but also for consumer trust, fair commerce, and sustainable branding. A future fitness trade mark regime must recognize the reality in which social media influences consumer behaviour, visual media are often the only marketing strategy, and changing consumer behaviours. It must protect brand identity and market fairness, so that India's IP ecosystem may respond to the speed of change of a commercial and technological environment.

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