



International Journal of Advanced Research in Education and Technology (IJARETY)

Volume 11, Issue 6, November-December 2024

Impact Factor: 7.394



INTERNATIONAL
STANDARD
SERIAL
NUMBER
INDIA



Regulation of Parallel Import Under Intellectual Property Rights : Bone or Bane

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ABSTRACT: Parallel Importation often referred as grey market goods, which involves the importation of a products from one country to another country without the consent of the manufacturer or the authorized distributor. These imports typically occurs when a product is sold at a lower price in one market than the other market., prompting the third -party entities to source and resell these goods in a higher -priced markets. This practice challenges the traditional distribution channels, raising legal, economical and ethical questions. While parallel imports can provide the consumers a product with a lower price and greater product availability, they undermine the brand protection, quality control and the integrity of the regional price strategies. This paper delves into the concept of parallel imports, examines their impact on global trade, legal frameworks, and consider the ongoing debate between fostering open market.

KEYWORDS: Global Trade, Grey market, Legal framework and Parallel Import.

I. INTRODUCTION

Intellectual property rights are considered as an asset to innovative minds. The right holder has absolute discretion to decide on the importation of the products. Parallel imports can be referred to as genuine imports that are made outside the authorized distribution channel of the manufacturers. Parallel imports, often referred to as grey market imports, consist of legitimate products made and branded by the original manufacturer. However, these products are obtained and sold in a different market without the brand owner's official consent. Parallel imports often occur when there are price discrepancies between two regions. Third parties try to divert these price discrepancies to their benefit by purchasing products in lower priced markets and selling them in higher priced ones. Parallel imports have their own benefits and drawbacks, assessing this would give us an overview of the dual nature of parallel imports. A parallel import is a non-counterfeit product imported from another country without the permission of the intellectual property owner, parallel imports are often referred to as grey goods or grey-market goods. For example, Electronic Products like smartphones, cameras, and gaming consoles. Technology related products like iPhones, canon cameras, PlayStation may have different prices and product specifications depending on the region. Importers may purchase devices in regions where they are cheaper (Hong Kong or United Arab Emirates) and resell them in countries with higher prices. This may be beneficial to the customers but may have an impact on the manufacturer as they may lose control over the pricing of the products and also struggle to control distribution of the product. As a result, parallel importers acquire products in one nation where the cost is lower than that in the nation where the products are sold. The prices of these products typically fall between the standard prices in the exporting country and those in the importing country. This idea is closely associated with the practice of parallel importation. The doctrine of exhaustion, also known as the first sale doctrine, is a legal principle that limits the rights of IP holders after the first authorised sale of a product. This Doctrine lays down that once an IP protected product is sold by or with the consent of the rights holder, the right holder loses control over the distribution and resale of such protected item and thus his right stands "exhausted." this doctrine applies to physical goods and affects IP rights for patents, copyrights, and trademarks. For example, if a person purchases a book they are free to lend it or make a subsequent sale of it without the permission of the author or the publisher. The right of the author or publisher stands exhausted on sale of the book. It is crucial to look into the different types of exhaustion to understand the extent to which parallel imports can be legal.

1. National Exhaustion

According to the national exhaustion doctrine, an intellectual property holder's rights are only deemed "exhausted" in the nation in which the product is sold. The IP holder may still exercise their right to regulate distribution and sales in the

new nation, even if the product is imported and sold there. This implies that the IP holder may still impose restrictions or even outright bans on parallel imports, which are goods bought elsewhere and transported into a nation without their consent³.

2. International Exhaustion

A more lenient strategy is offered by international exhaustion. This states that an IP holder's rights are exhausted worldwide after a product is first sold legally in any jurisdiction. This philosophy states that an IP holder loses control over a product's resale in other nations once they sell it anywhere in the world. By allowing goods marketed in low-cost areas to be freely imported and sold in higher-cost markets without the IP holder's intervention, this facilitates parallel imports and encourages a more open market.

3. Regional Exhaustion

An intermediary strategy called regional exhaustion is used by certain nations and economic blocs, such as the European Union. According to regional exhaustion, intellectual property rights inside a designated region (like the EU) are exhausted but not those outside of it by the first sale. After a product is sold in any EU member state, it is free to spread throughout the region without the IP holder's intervention. It is still possible to impose restrictions on imports from outside the zone. Under regional exhaustion parallel imports are permitted within specific regions where exhaustion applies but restricted from external regions.

II. ILEGAL FRAMEWORK OF PARALLEL IMPORTS IN EUROPEAN UNION AND UNITED STATES

1. European Union

The European Union adopts the regional exhaustion doctrine. Once a Product is sold in any EU or European economic area (EEA) country with the IP holders consent the IP rights are considered exhausted across the entire EU or EEA region. Imports are legal within the EU as long as the goods were initially sold in an EU or EEA country with the consent of the IP holder. The IP holders can restrict imports from outside the EU or EEA to maintain control over pricing and distribution of the product⁴. Legal frameworks: The European Court of Justice (ECJ) has directly affirmed the legality of parallel Importation within the EU under the principle of "Rights of Exhaustion"⁵. Once a product sold in the European Union, the patent holder of the product cannot prevent its resale in another European Union Country. Condition: European Union states that Parallel Importation must be identical in nature and the quality of the original product should not mislead the consumers. The importers must comply with the marketing Authorization requirements. Today based on the judicial precedents, international patent exhaustion is the system of choice in Canada and U.S.⁶ Especially in Canada⁷, *ELI lilly & Co v. Novopharm Ltd*, 1988 the supreme court confirmed, when a patentee sells a patented product the rights of the Patented product exhausted and the seller should not impose any restriction on the subsequent distribution. The U.S also follows a position similar to this. The traditional interpretation of patent exhaustion was changed in favour of the international exhaustion recently by the supreme court decision in the case *Impression Products v. Lexmark*, 2017.⁸

2. United States

The US follows International exhaustion for most of its IP rights. In *Kirtsaeng v. John Wiley and Sons, Inc.* (2013),⁹ The US Supreme Courts ruled that copyright protection stands exhausted after the first sale of the product regardless of where it occurs. This implies that parallel imports are allowed unless specific restrictions apply. Parallel imports are allowed in the US in many cases, especially for copyrighted goods and for certain trademarks in specific.

³ N.S.GOPALAKRISHNAN & T.G. AGITHA, INDIAN PATENT SYSTEM: THE ROAD AHEAD IN THE FUTURE OF THE PATENT SYSTEM 229 (Ryo Shimanami S, 2012).

⁴ SANTANU MUKHERJEE, PATENT EXHAUSTION AND INTERNATIONAL TRADE REGULATION, 214, (Brill 2023).

⁵ Nguyen, Ho Bich Hang, Parallel Importation: Comparative Analysis of Trademark Laws of the United States, The European Union and Japan and Legal Implications for Developing Countries, Cir, nii, ac, jp, 27-09-2011, <https://id.ndl.go.jp/bib/023437273.S>.

⁶ *ELI lilly & Co v. Novopharm Ltd* (1988) 227 N.R. 202 (SCC).

⁷ IRENA CALBOLI, ACCESS TO MEDICINES AND VACCINES, 36, (Springer Nature 2022).

⁸ *Impression products v. Lexmark* 581 U.S (2017).

⁹ *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519 (2013).

III. INTERNATIONAL AGREEMENTS ON PARALLEL IMPORTS

1. Paris Convention for Protection of Industrial Property,1883 and Berne Convention for the Protection of Literary and Artistic Works , 1886

The Paris Convention for industrial property and Berna Convention for the Protection of Lirerary and Artistic Works are IP treaties that set minimum standards for IP rights but they do not explicitly address exhaustion. These conventions allow member countries the discretion in establishing their own exhaustion policies. This enables members to have a diverse approach when it comes to parallel imports.

2.Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS),1994

The TRIPS agreement lays down the global standards for IP protection across member countries. The TRIPS agreement leaves the doctrine of exhaustion open to the interpretation of the respective countries. The WTO members are free to determine their exhaustion policy. This flexibility also means that the countries can permit or restrict parallel imports according to their economic interests and IP policies. TRIPS is the most important field in intellectual property rights and it concluded in 1994 as package together with the GATT/WTO Agreement. When it comes to parallel imports, TRIPS provide a framework that allows countries to regulate how intellectual property interconnect with trade practices. Here are some important points regarding TRIPS and parallel imports

Exhaustion of Rights: Article 6 of TRIPS Agreement calls for member countries to protect the intellectual property rights, including trademark. However it also recognize the implications of parallel imports on the market dynamics. Under the TRIPS, Member States can adopt their own regime concerning the Exhaustion of intellectual property rights. This means that once a product is sold in one jurisdiction, the rights holder may not be able to control the resale or distribution in another jurisdiction where it is imported. It's members can choose between national exhaustion (the rights have exhausted only in the national borders) or International exhaustion (the rights are exhausted once and the product sold anywhere in the world).

Impact on Trade: Encouraging parallel importation , it can increase competition and help lower prices for consumers. However, it can also impact the profit s of the rights holder and may affect their ability to control pricing strategies across the different markets.

Legal Consideration: The countries that have adopted Parallel Importation policies should ensure that their practices comply with the TRIPS obligations. This includes ensuring that protection of intellectual property rights is balanced with the need to promote the fairness of competition and consumer access to legitimate the products.

Dispute Resolution Mechanism: Disputes arising from parallel imports can be addressed under the World Trade Organisation (WTO) dispute settlement system. The Member States may engage in consultation or the dispute resolution procedures if they believe that another member is not complying with the TRIPS concerning the parallel imports.

In summary, TRIPS provide a foundation for how parallel imports are approached in the international trade and allowing flexibility in the policies. It also protect the rights of the intellectual property holders. While discussing discussing parallel imports, countries should consider both the legal frameworks provided by TRIPS and the economic of their policies.

IV. LAWS RELATED TO PARALLEL IMPORTS IN INDIA

In India the concept of parallel imports is somewhat ambiguous. The courts have been giving various interpretations that often cause confusion. Understanding the current position of parallel imports with respect to different IP rights becomes crucial.

- **Trade marks:** the primary legislation governing trademarks in India is the Trade marks Act, 1999. Section 30(3) of the act lays as follows,

When a person lawfully acquires goods that feature a registered trademark, their sale in the marketplace or any other transactions involving those goods by that person or someone claiming rights through them does not constitute trademark infringement solely because—

- a) the registered trademark was transferred from the registered owner to another individual after the goods were obtained; or

b) the goods were released onto the market under the registered trademark by the owner or with their approval.¹⁰ The Indian courts have always interpreted the exhaustion principle under Trademark law as international exhaustion in a way to allow parallel imports. In the case of *Samsung Electronics Co. Ltd v. Mr G Chaudhary*¹¹ The Delhi High Court allowed Parallel imports of Samsung products on the grounds that these were genuine products sold abroad with Samsung's consent in it. The court held that parallel imports did not constitute trademark infringement, as the trademark rights were exhausted upon the first authorised sale outside India.

- **Patent Law:** The Patents Act, 1970 governs the Patents rights throughout India. Section 107A(b)¹² of the act contains provisions for international exhaustion of patent rights; this section states that importing patented products from abroad provided they are obtained with the patentees authorisation, is not considered patent infringement. In the case of *Bayer Corporation v. Union of India*¹³ The Delhi High Court reaffirmed that patented drugs could be imported into India if the importer could prove that the goods were legitimately purchased from a market where the patentee concerned has consented to sell them. This supports parallel imports of patent products provided they are genuine.
- **Copyright Law:** The Copyright Act, 1957 governs copyright protection in India, but it lacks a specific provision for exhaustion, leading to mixed interpretations in parallel import cases involving copyrighted materials. There is limited jurisprudence on parallel imports in copyright law, making the framework less clear than in trademark and Patent cases. Without a strong precedent, parallel imports of goods like books, software, media are assisted on a case to case basis.

V. PARALLEL IMPORTS IN ASIA

Parallel imports in Asia are influenced by the unique legal frameworks and market conditions in each jurisdiction. While there is a general trend towards allowing parallel imports to enhance competition and provide consumers access, there remains varying degrees of enforcement and protecting of intellectual property rights. Businesses wishing to engage in parallel imports must navigate these legal intricacies and remain aware of both local laws and international IP Treaties like TRIPS.

China: Legal framework: China allows parallel imports, especially in the context of certain goods such as pharmaceutical and electronics. The Chinese regulatory environment has adopted to promote competition and reduce price. Importers often need to comply with the specific regulations, for obtaining necessary approvals and ensuring products adhere to local standards. The practical enforcement of intellectual property rights can vary, influencing the prevalence of the parallel Importation.

Japan: Legal framework: Japan doesn't have a strict ban over the parallel imports, and it's legal framework supports the international exhaustion of Rights. This means that once a product is sold in a particular jurisdiction, it can be imported into Japan without the rights holders permission. Japanese market has been relatively open to the parallel imports, especially with the products such as luxury goods and electronics, It enables the consumers to access for lower prices.

South Korea: Exhaustion of Rights: South Korea follow a mixed approach, both national and international exhaustion may apply depending on the circumstances. This allows for some level of parallel imports but with restrictions based on the types of the good and the nature of eir distribution. The rights holder often challenge the parallel imports, especially in sectors where brand protection is crucial, such as cosmetics and luxury items. The courts have maintained a balance between the protection of intellectual property and consumer access.

Singapore: Legal environment: Singapore adopts an international exhaustion of Rights system. Once a product in another jurisdiction, it can be imported into Singapore without the consent from the right holder¹⁴. This policy is seen as a means to encourage trade and provide consumers with the access to a broader range of the product at competitive pricing.

¹⁰ Section 30(3) in The Trade Marks Act, 1999.

¹¹ *Samsung Electronics Company Ltd. v. Mr. G. Choudhary And Anr.* on 6 September, 2006 136(2007)DLT605.

¹² Section 107A(b) of the Patent Act 1970.

¹³ *Bayer Corporation v. Union Of India & Ors*, AIR 2019 DEL 1712.

¹⁴ KUNG- CHUNG LIU, ANNOTATED LEADING TRADEMARK CASES IN MAJOR ASIAN JURISDICTIONS, 4, (Routledge 2020).

Hong Kong: Policy Approach: It embraces a similar stance to Singapore regarding the international exhaustion of Rights. Hong Kong allows parallel imports, promoting a competitive market. The legal environment incentivizes businesses and consumers to access a variety of products without the excessive restriction from rights holders

VI. THE LEGAL STATUS OF PARALLEL IMPORTS IN PHARMACEUTICALS

Parallel importation in the pharmaceutical sector refers to the practice of importing patented drugs from one country to another country without the permission of the licensed patent holder, typically because of the drugs sold at the lower price in the exporting country. The legal status of parallel imports of pharmaceutical varies from one jurisdiction to another jurisdiction and it's so complex to understand. It represents a balance between promoting market competition and protecting patent rights, with the significant implications of the drugs accessibility and pricing. Legal frameworks continues evolve and the stakeholders must stay informed about the specific regulations in their jurisdictions Here is an overview of key points regarding its legal status in Canada and Australia:

Canada: Parallel Importation are allowed under specific conditions, Canada adheres to international trade agreement that may affect pharmaceutical patents. The practice of parallel imports aims to provide lower drug prices for Canadian consumers, but it remains a contentious issue as it involves navigating patent rights.

Australia: Parallel Importation are legal under certain conditions it mainly exempting them from the licensing requirements of the product has been already marketed in Australia. This practices is generally seen as a means to increase the competition and lower the drug prices.: The diverse pricing structures in countries have often incentivize parallel Importation, it generally leads to debates on the ethics of the drug price. The Concerns over the quality and the authenticity of parallel imported drugs usually arises, by emphasizing the need for strict regulatory compliance. The practice of parallel imports often rises questions regarding its impact on pharmaceutical research and innovation, as the companies fear the revenue declines due to the price reduction.

VII. JUDICIAL ANALYSIS OF PARALLEL IMPORTS IN INDIA

In the case of *Kapil wadhwa v. Samsung Electronics (2012)*.¹⁵The facts of the case as follows Samsung Electronics Co Ltd. And Samsung Pvt. Ltd are the proprietors of the SAMSUNG Pvt. Ltd (Respondents). Kapil Wadhwa and others owned and managed an e-commerce platform to sell electronic goods such as mobile phones and other accessories (Appellants). The Respondents alleged that the Appellants infringed their trademark by engaging in the practice of importing printers bearing the "SAMSUNG" trademark and selling them in the Indian market without the authorization of the plaintiffs and restrained the appellants from importing or selling any related goods. As per as this case, the issues raised were whether India is governed by the principle of international or national exhaustion and whether parallel imports permissible in India? In this case, the court held that the division bench of the Delhi High Court addressed the legality of parallel imports in India as well as the type of exhaustion practised in India. Upon review, the court analyzed the idea of parallel imports as well as the Indian legislation pertinent to parallel imports¹⁶. The court referred to Section 30 (3), (4)¹⁷ of the Indian Trademarks Act, 1999 and held that the practice of parallel imports into India does not contravene Section 30 of the Trademarks Act, 1999. The court reviewed the principle of international exhaustion and concluded that the products can be imported into India and can be resold. The court did not rule entirely in favour of the appellant, a caveat was brought up by the court and stated that the parallel imports shall not compromise the quality or Trademarks of the goods, it is to be sold as they are without any alterations. The court also directed the appellant to display a disclaimer to indicate that the products were not from the authorized dealer and also to discharge the original owner from any liability. In the case of *Warner Bros Entertainment Inc and Ors v. Santhosh V.G.*¹⁸ The facts of the case as follows the Warner Brothers and Entertainment, who are engaged in the business of producing films, own and possess a license for the copyright of the films they produce and they alleged that the defendant infringed their copyrights by renting their film's DVDs to customers. The defendant was a proprietor of "Cinema Paradiso" through that video library, the defendant

¹⁵ Kapil Wadhwa v. Samsung Electronics (2013) PTC 112(DEL).

¹⁶ Rajnish Kumar Rai, *Does India need to harmonize the law of patent exhaustion and Parallel Imports*, VOL 19, NO 2, Information & Communication of Technology Law 115, 116 June 2010, <https://doi.org/10.1080/13600834.2010.498688>.

¹⁷ Section 30(4) of The Trademark Act, 1999.

¹⁸ Warner Bros Entertainment INC and Ors v. Santosh V.G (2012) Oa No.1682/2006.

carried out the business of selling or giving on hire DVDs¹⁹. The plaintiff alleged that the act of renting out films without the authorization amounts to copyright infringement and the plaintiff further stated that the defendant does not possess any rental license in his favour to offer films on a rental basis in India and also highlighted that this practice contravened the section 14(d)²⁰(ii) and section 51 of copyright act, 1957.²¹ The issue raised in this case was whether giving on hire or rent of such films constitute as an infringement of the trademark? It was held that, the court acknowledged that the plaintiff being the producer has the exclusive right to make several copies of their film, and also has a right to sell or give on hire or offer for sale of the copies made. The court also considered the fact that the plaintiff was also involved in the business of producing DVDs and other formats. Section 14(d) indicates that the proprietor of the work possesses the sole right to sell or rent out cinematographic work, while Section 51(b)²²(iv) states that the importation of cinematographic works for private use does not constitute as an infringement of the trademark. The court also construed that a restriction on conducting a rental business without the authorization of the owner of cinematograph work would violate the fundamental rights guaranteed under Article 19(1)²³. The court concluded that the defendant should not import cinematographic works for business and held that the plaintiff has an exclusive right to exercise such practice. In the case of *Cisco Technologies v. Shrikanth*.²⁴ The facts of the case as follows, In this instance, the Delhi High Court prohibited the defendant from bringing in products that feature the CISCO trademark by issuing an ex-parte injunction in favour of the plaintiff. The plaintiff manufactured components which are part of the hybrid infrastructures such as routers, switches etc. The defendant manufactured an identical product and used the Plaintiff's trademark to sell the product and further printed CISCO SYSTEMS on their products. The plaintiff alleged that section 29(6)(c)²⁵ of trademarks Act has been infringed. The plaintiff stated that the failure or misrepresentation of such an integral part of the network would incur huge losses to the networks. Further stated that considering the importance of the product in question, it is necessary to prevent both counterfeit sales and sales incurred by misrepresentation and that the public interest must be considered whether ex-parte or interim relief to be granted. The court observed that all statutory authorities and government authorities are under the obligation to make sure that laws are not been contravened by any person. For a registered trademark holder, Section 140 of the Trade Mark Act, 1999 has statutory provisions under which the Collector of Customs could restrict the importation of goods if such import contravenes the provisions of the Trade Marks Act Section 29(vi)(c). The court also issued a notification to customs to alert all ports to restrict the import of any consignments except those belonging to the plaintiff regarding routers, switches, or cards having the CISCO trademark. In the famous *havaianas* case, facts of the case as follows, over twenty thousand original Havaianas trademark sandals were purchased by Más Por Menos, S.A. in Panama. After such purchase, they were brought into the European Economic Area without the authorisation of the trademark owner. They were stored specifically within the customs procedures of Riofrío (Burgos) through Bilbao's customs office. Later, Más Por Menos, S.A. sold the sandals to the British company Happy Sports Ltd., and they further sold them in the UK. Alpargatas, S.A. brought sued Más Por Menos, S.A. for trademark infringement. The court held that, it initially dismissed this claim on the basis that the products could either have been sold in the EEA or the fact that the defendant knew that the products would go to the EEA never was established. Alpargatas S.A./Havaianas objects and appeals with the Provincial Court of Alicante deciding thus: Any person who imports an original product to a transit or customs warehouse infringes a trademark; A trademark owner may file an objection only when the offering or marketing would inevitably be in the EEA and The burden of proof of this sale or offer would rest on the trademark owner (also including any circumstantial evidence). The defendant appealed before the Supreme Court and the appeal was dismissed and confirmed the decision by the Provincial Court of Alicante on grounds. In the case of *Intel Technology India Pvt Ltd v. Competition Commission of India*²⁶. The case was initiated by Matrix Info Systems Pvt. Ltd. (the Informant) against Intel Corporation and Intel Technology India Pvt. Ltd under Section 19(1)(a)²⁷ of the Act. The Informant deals with importing, wholesaling, distributing, and supplying several IT products into the country²⁸. Intel

¹⁹ Jennifer A. Ferretti, *First Sale Decided: The Road to the Decision and What It means for Libraries*, VOL 65 – Issue 3-4, 261, 265 October 2013, <https://doi.org/10.1080/0361526x2013.836464>.

²⁰ Section 14(d) of the copyright Act, 1957.

²¹ Section 51 of the copyright Act, 1957.

²² Section 51(b) of the Copyright Act, 1957.

²³ INDIA CONST. art. 19.

²⁴ *Cisco Technologies v. shrikanth* (2006) 31 PTC 538.

²⁵ Section 29 (6) (c) of the Trademark Act, 1999.

²⁶ *Intel Technology india Pvt Ltd v. Competition Commission of India*. Writ Petition No. 50727 of 2019.

²⁷ Section 19(1)(a) in The Competition Act, 2002.

²⁸ P.C.Beena, IPR Regime and Antitrust Implications of Merger and Acquisitions with a focus on software and Pharmaceutical Sectors, VOL 66 Issue 2, The Antitrust Bulletin, March 2011, <https://doi.org/10.1177/0003603x2199702/>.

Corporation is a major multinational company engaged in activities like designing, and manufacturing, and those relate to the distribution of a variety of IT components, peripherals, computer systems, and electronic devices relating to communication to computing, including Micro-processors. Intel Technology India Pvt. Ltd is an Indian subsidiary of Intel Corporation. Initially, the Informant was importing Micro-processors with manufacturer warranties from manufacturers like Intel or distributors based out of different countries. For the past few years, Intel began entering into exclusive agreements with some sellers and distributors in India and outside countries with the understanding of defining them as 'authorized sellers' and then requiring them to sell their products to consumers with a specific country-manufactured warranty instead of the worldwide one. It was held that, the Commission found that Intel abused its dominant position in the market of Boxed Micro-processors. As mentioned above, before the year 2016, Boxed Micro-processors were provided with the manufacturer's warranties inside India, even if imported. However, with effect from 25th April 2016, the Intel country-specific warranty policy for India was revised to only accept warranties for Boxed Micro-processors purchased from an authorized dealer such as Intel Technology India Pvt. Ltd within India, while excluding imported warranty requests even if the Micro-processors were purchased from an authorized seller in that foreign country. The Commission held that such policy is discriminatory and unfair, and is done with ulterior motive to capture the market for its authorized seller market. Such kind of discrimination nullifies, debars and confines effective competition from the market and deprives consumer choice, thereby coming to the teeth of Section 4(2)²⁹ and Section 3(4) of the Act. The commission has based its findings on the ruling in CCI v. Fast Way Transmission³⁰, which noted that while the Informant is a competitor, it is not a direct competitor of Intel. However, barriers within the relevant market have arisen because Intel has abused its dominant position by selectively altering warranty conditions for Indian distributors while restricting the Informant's access to the market. The so-called "exclusive agreements" between Intel Technology India Pvt. Ltd and Intel under which they are given exclusive rights to sell in India are, therefore, violative of Section 3(4)(c)³¹.

The arrangements made by Intel regarding warranties does not enable consumers to switch to a substitute. Warranty services entitle purchase from all authorized sellers of Intel in India. This excludes parallel importers like informants that don't sell the products due to the non-availability of after-sales warranty services. Intel, being a market owner for Micro-processors, has changed this warranty policy so that it does not allow any equally capable competitor to be present in the market to strengthen its hold in the market and decide its processor selling at its whims. The Commission is of opinion that the adverse effect on competition, as defined in Section 19(3)³², was initiated. However, Intel had argued that the consumers are not deprived of a 'warranty' of imported Micro-processors in India, but warranty 'service' within India was denied. Even after the change in warranty policy, the Informant continued importing, which proved that there was no adverse effect on competition. The commission held that the policy of Intel corporation had adverse effect on competition, which lead to denial of access to the informant, violating section 4(2)(c)³³.

VIII. CONTEMPORARY ISSUES OF PARALLEL IMPORTS

Parallel imports provide various benefits to the consumers and have the capacity to increase competition in the market thus promoting fair trade. Parallel imports often come from markets where products are sold at a lower price due to factors such as pricing strategies, lower taxes or subsidies. This can make goods available at an affordable price for consumers in high priced markets. Products may be overpriced or unavailable to consumers in some countries, parallel imports tend to remove these hurdles. Fair trade arises only when there is competition in the market. The availability of parallel imports encourages competition. This tends to reduce prices and better quality goods are available to the consumers. The authorised distributors might be compelled to offer better prices, promotions or after sale services to remain competitive. There may be situations where the authorised dealers may not be able to meet the demands of the consumers and they may be a shortage of supply these gaps can be filled by parallel imports. Products that are region specific or difficult to source locally can be made available through parallel imports. The negative aspects of parallel imports cannot be ignored. While parallel imports provide access to various products at a lower price the aspects that follow the sale should not be overlooked. Customer care, quality control, and warranty are crucial aspects that tend to get affected after the sale has been made through a parallel import. There may also be patent and trademark implications. Parallel imports raise concerns with regards to brand dilution of trademark owners and dilution in control of the

²⁹ Section 4(2) in The Competition Act,2002.

³⁰ CCI v. Fast Way Transmission Pvt Ltd &Ors (2018) 4 SCC 316

³¹ Section 3(4)(c) in The Competition Act,2002.

³² Section 19(3) in The Competition Act,2002.

³³ Section 4(2)(c) in The Competition Act,2002.

monopolies the patent holders exercise in a market. The IP holders lose the ability to control the pricing of their products; this tends to affect their profit margins, particularly if the goods are sold at a very low price. Parallel imports may also lead to disputes over IP rights. This may happen when the IP holder attempts to restrict imports from countries where they have authorised sales. The enforcement of the IP rights in these cases may become complex.

IX. CONCLUSION AND SUGGESTIONS

Parallel imports provide for both opportunities and challenges in the global marketplace. From the above elucidation it could be inferred that parallel imports may prove to be beneficial to the consumer but not to the IP rights holder. Balancing the advantages and disadvantages of parallel imports requires a nuanced approach. Clarity of doctrine of exhaustion will help mitigate legal conflicts and set clear boundaries for IP protection. However, every country should strive towards making a balance between consumer welfare and protecting IP rights and to create a regulatory body to monitor parallel imports, ensuring compliance with the safety, quality and the Intellectual property standards and also considering the required licenses for business engaged in parallel imports to ensure accountability and traceability.

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International Journal of Advanced Research in Education and Technology

ISSN: 2394-2975

Impact Factor: 7.394