

# Design Infringement Response Checklist (India)

Evidence and enforcement response for registered design infringement under Indian law

## HOW TO USE THIS TEMPLATE

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| 1. | This document: Design Infringement Response Checklist (India). |
| 2. | Complete all bracketed fields before use. Review annually.     |
| 3. | Template only — not a substitute for qualified legal advice.   |

## 1. DESIGN INFRINGEMENT — LEGAL FRAMEWORK

**1.1 What Constitutes Infringement.** Under Section 22 of the Designs Act 2000, infringement occurs when a person: applies the registered design or any fraudulent or obvious imitation to any article in the same class; imports such an article for sale; or publishes, exposes, or puts on sale any such article. The test: would an informed user confuse the two designs?

**1.2 Damages Cap.** Civil damages under the Designs Act 2000 are capped at Rs. 25,000 per article and Rs. 50,000 per suit. For high-value design infringement, pursue copyright and passing off claims alongside the Designs Act claim to access uncapped damages.

**1.3 Incident details to record:** Your Design Registration No.; article class; brief description; infringing article; where found; date of discovery; manufacturer or importer if known.

## 2. EVIDENCE COLLECTION

**2.1 Purchase Samples.** Purchase at least 3 samples from different sources. Retain all purchase receipts, packaging, product inserts, and warranty cards. Multiple samples establish pattern of infringement.

**2.2 Photography.** Photograph the infringing product from the same 6 perspectives as your registered design representations (front, back, left, right, top, bottom). Create a side-by-side comparison sheet with your registered design on the left and infringing product on the right.

**2.3 Online Documentation.** Screenshot all product listings: product pages, seller name, price, ratings, and reviews. Note seller information. Screenshot the infringing product's packaging and any branding claims.

**2.4 Manufacturing Evidence.** Check packaging for manufacturer name and address; search Alibaba and TradeIndia for the manufacturer; check import records at DGFT.

## 3. ENFORCEMENT OPTIONS

**Cease and Desist.** Reference Design Registration No. and specific infringement. Demand: immediate cessation; removal of online listings; written undertaking; account of profits. Give 14 days to respond.

**Civil Suit under Designs Act.** File in District Court. Pray for: interim injunction; permanent injunction; damages (Rs. 25,000 per article, Rs. 50,000 per suit); delivery up and destruction.

**Copyright Claim.** If the design has artistic character, file a concurrent copyright infringement claim for uncapped damages under the Copyright Act 1957.

**Passing Off.** If your product design has acquired commercial reputation, file a passing off claim. Damages are not capped and can be substantial for well-known products.

**Customs Recordal.** Record your design registration with CBIC under the IPRER 2007 to intercept infringing imports.

#### 4. ACTION LOG

C&D; letter sent: \_\_\_\_\_ | Response received: \_\_\_\_\_

Civil suit filed: Date \_\_\_\_\_ Court \_\_\_\_\_ Case No. \_\_\_\_\_

Customs recordal filed: \_\_\_\_\_

Infringing goods removed from market: Yes / No — Date: \_\_\_\_\_

Damages or settlement obtained: Rs. \_\_\_\_\_ — Date: \_\_\_\_\_

##### IMPORTANT NOTE

This is a working template for Design Infringement Response Checklist (India). Verify all requirements with a qualified IP advocate before use. Indian IP law evolves — confirm current requirements.

## INVESTIGATION AND CROSS-BORDER ENFORCEMENT

### CONDUCTING A MARKET INVESTIGATION

**Mystery Shopping Exercise.** For suspected market-wide or trade channel infringement, conduct a structured mystery shopping exercise: identify the markets, online platforms, and distribution channels where infringement is occurring; engage investigators or staff to make documented purchases at each location; retain all receipts, packaging, delivery records, and product samples; and compile a comprehensive geographic and commercial picture of the infringement's scale.

**Supply Chain Investigation.** Identifying the source of infringing goods is critical for effective enforcement. Trace the supply chain: check product packaging labels for manufacturer, importer, and distributor details; search Alibaba, TradeIndia, and IndiaMart for the product and manufacturer; check India's import data (available through commercial services like Zauba, ImportGenius, or Cybex) to identify import consignees and shipping origins; and engage a trade intelligence firm for large-scale investigation.

**Online Market Intelligence.** Monitor online platforms systematically: search for the infringing design using product category keywords on Amazon India, Flipkart, Meesho, and Amazon.com; search for the infringing product on Google Images and Google Shopping; check AliExpress and Alibaba for the manufacturer offering the design; and use reverse image search (Google Images, TinEye) with photographs of the infringing product to find additional listings.

**Recording Evidence Professionally.** For evidence that will be used in court proceedings: create a witnessed evidence log with each piece of evidence numbered, dated, and signed by the collector; use a professional process server or notary to purchase and authenticate samples where possible; maintain an unbroken chain of custody for physical samples from purchase to court submission; and keep originals of all digital evidence in a secure, access-controlled archive.

### CROSS-BORDER AND E-COMMERCE ENFORCEMENT

**Customs Enforcement.** If infringing products are being manufactured overseas and imported into India, customs enforcement is the most efficient interception point. Under the Intellectual Property Rights (Imported Goods) Enforcement Rules 2007 (IPRER 2007): (a) record your design registration with CBIC Customs at [customs.icegate.gov.in](https://customs.icegate.gov.in) by submitting Form-I with your Design Registration Certificate, product description, and evidence of genuine products; (b) once recorded, Customs officers at ports of entry can suspend clearance of suspected infringing shipments; (c) you are notified of the suspension and must confirm whether the goods are infringing within the prescribed period; and (d) confirmed infringing goods are seized, forfeited, and destroyed.

**E-Commerce Platform Enforcement.** For infringing listings on Indian e-commerce platforms: Amazon India — register on Amazon Brand Registry (requires a registered trademark, not just a design registration, but is highly effective once registered); Flipkart — use the Flipkart IP Rights Complaint form available through the Flipkart Seller Hub; Meesho, Myntra, and others — contact the platform's legal or IP complaints team directly. For overseas platforms: AliExpress/Alibaba — use the Alibaba IPP (Intellectual Property Platform) to file complaints against manufacturers.

**International Design Enforcement.** If the infringing products are manufactured in a country where you do not have a design registration, direct design infringement enforcement is not available. However: copyright (artistic works) may be enforced without registration under the Berne Convention; passing off and unfair competition claims are available in most jurisdictions; and trade secret claims may be available if the design was created in confidence

and misappropriated.

**Documenting Enforcement Results.** Maintain a comprehensive enforcement log: for each enforcement action — the date, action taken, response received, outcome, costs incurred, and any settlement terms. This log is important for: insurance claims; investor reporting; internal risk management; and as a deterrent record showing to future infringers that the Company enforces its rights.

## ENGAGING EXPERT WITNESSES AND PREPARING FOR COURT

**Expert Witness for Design Cases.** Indian design infringement cases before the District Court or High Court typically benefit from expert testimony establishing: (a) that the Company's design is registered and novel; (b) that the defendant's design is the same or a fraudulent imitation; (c) the technical differences (or lack thereof) between the two designs from the perspective of an informed user; and (d) the commercial context in which both designs operate. Suitable experts include: industrial designers with relevant product category experience; design academics from IID, NID, or IITs; and former Designs Office examiners.

**Preparing the Claim Chart.** Similar to patent infringement, design infringement cases benefit from a visual claim chart — a side-by-side comparison table mapping each registered design feature to the corresponding feature of the infringing article. The claim chart should: use photographs and line drawings (not just text descriptions); identify each visual element of the registered design; show the corresponding element in the infringing article; and assess whether the correspondence is: identical; very similar; similar but distinct; or different. This visual presentation makes the infringement argument accessible to judges who may not be design experts.

**Interim Injunction Strategy.** In most design infringement cases, the interim injunction is the most critical relief. The plaintiff must establish: prima facie case (is there a plausible infringement argument?); balance of convenience (is more harm done by allowing infringement to continue than by granting the injunction?); and irreparable harm (can monetary damages alone remedy the harm?). For design infringement where the infringing article competes directly with the Company's product, the irreparable harm and balance of convenience arguments are typically strong. File the IA application with the plaint and request an urgent listing.

**Managing Parallel Proceedings.** Design infringement cases often involve parallel proceedings: the design infringement civil suit; a passing off claim in the same suit; a separate copyright suit if artistic elements are infringed; and potentially a criminal complaint under the Copyright Act if the design has artistic character. Coordinate all parallel proceedings through a single IP litigation counsel to maintain consistent factual and legal positions across all forums. Conflicting arguments in parallel proceedings can be exploited by the defendant.

**Quantifying and Proving Damages.** In design infringement, damages are capped under the Designs Act at Rs. 25,000 per article and Rs. 50,000 per suit. However, by running concurrent claims: the passing off damages are uncapped; the copyright damages are also uncapped (up to Rs. 2,00,000 per work); and a successful suit can result in an account of profits (the infringer's total profits from the infringing sales). To support a substantial damages claim: document your sales data before and after the infringement began; document the infringer's sales volume and pricing; engage an economic expert to calculate damages on both actual loss and account of profits bases.