

Claimant's Brief 31

1. Intellectual Property (IP) infringement by Amazon, which runs the Brand Registry

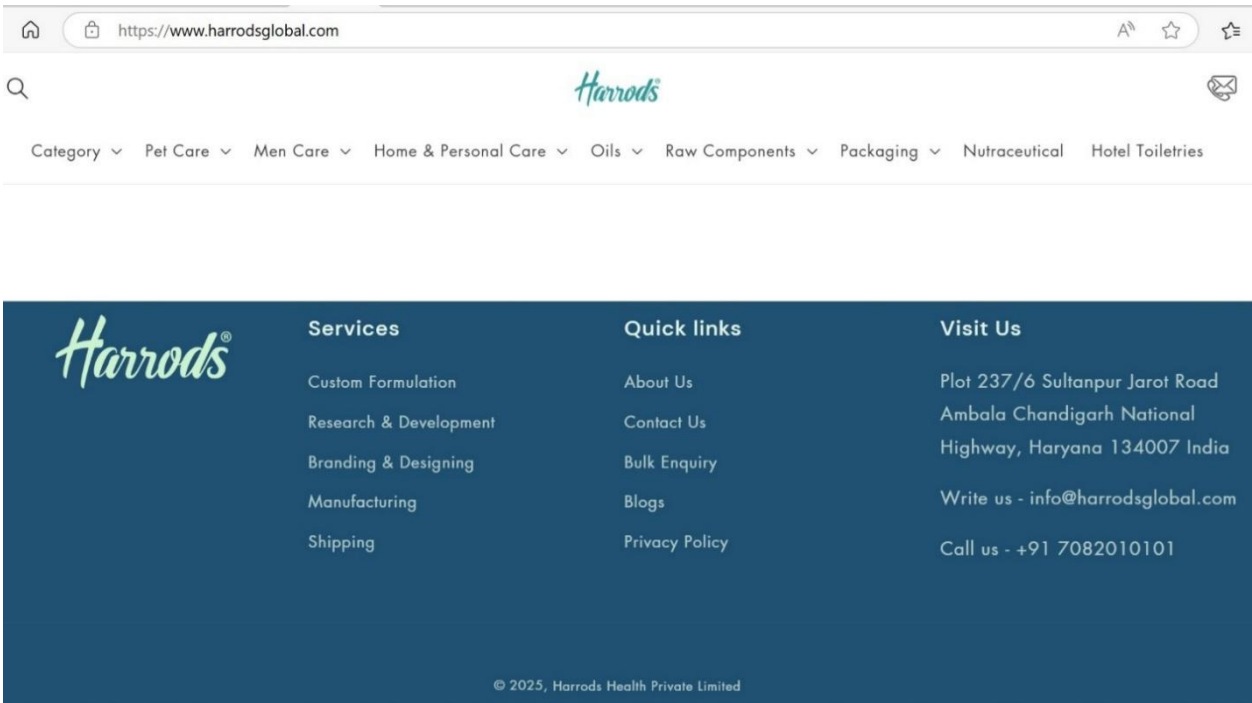
Amazon stated that: 'In the list of brands (Claimant Note: the brands against which Amazon claimed the Claimant had committed IP infringements) submitted as Defendant's Exhibit 46, "Harrods", listed as item 16, has been described as "Registered in Amazon Brand Registry: Yes". However, having investigated this by taking the claim made on page 15 of the Claimant's Brief 28 into account, we can confirm that the "Harrods" registered in the Amazon Brand Registry is not the department store in the UK but "Harrods Global Private Health Ltd", which produces cosmetics (see <http://www.harrodsglobal.com>). Thus, we will submit a revised version of Defendant's Exhibit 46 as Defendant's Exhibit 59 (Defendant's Brief 10, footnote 1)'. Amazon then submitted Defendant's Exhibit 59. In the document, the Brand ID number of 'Harrods' has been changed to 594603 and 'whether the brand has actually been registered with the Amazon Brand Registry' has been changed to 'No'.

This was the result of the Claimant spending many hours and an enormous amount of money revealing Amazon's act of torts, and the Claimant is more than thankful to Harrods who treated the Claimant, a private individual, with earnestness and responded honestly and truthfully to her enquiry.

Harrods is an extremely luxurious department store which was sold to Qatar

Holdings, the sovereign wealth fund of the State of Qatar, for £1.5 billion in 2010.¹ Among the Harrods Group (Harrods Estates, Harrods Interior Design, Harrods Aviation),² there is no Harrods Global Private Health Ltd. In fact, this is a company which is headquartered in Ambala, a small Indian rural town (population of 207, 934 in 2011).³ [Reference Material 2]

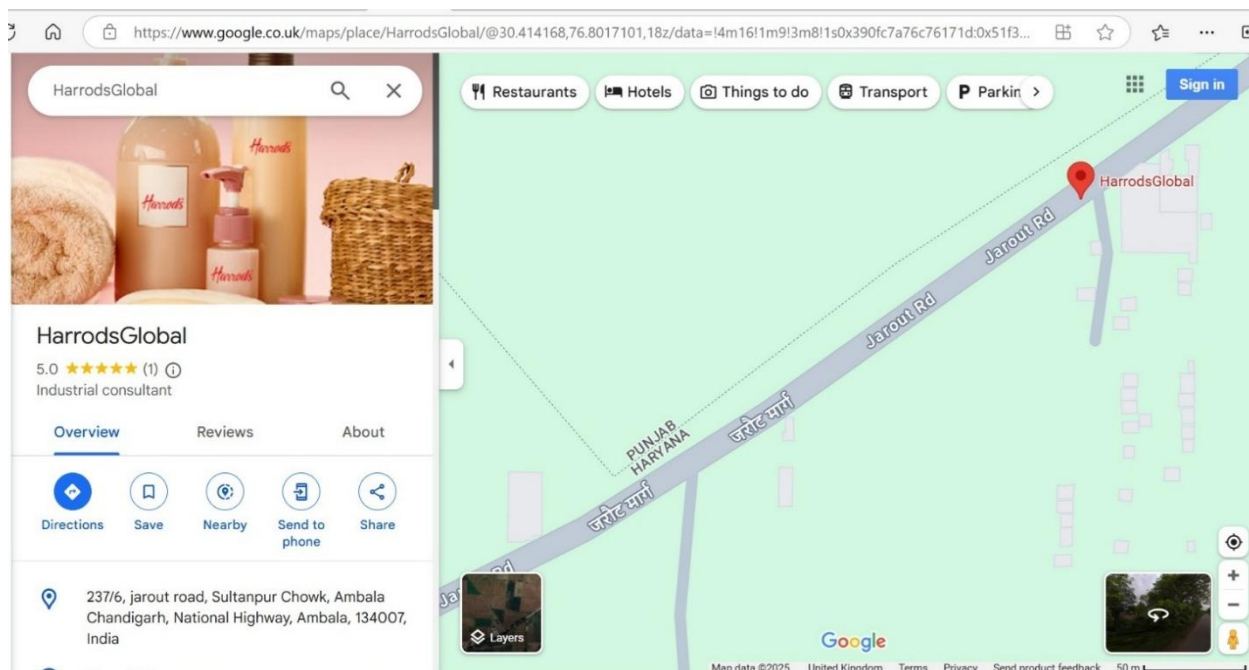
[Reference Material 2]



¹ Wikipedia, The Free Encyclopaedia, Harrods
(<https://en.wikipedia.org/wiki/Harrods>. Last visited on 17 March 2025)

² Harrods, Harrods Group (<https://www.harrods.com/en-gb/c/harrods-group>. Last visited on 17 March 2025)

³ Wikipedia, The Free Encyclopaedia, Ambala
(<https://en.wikipedia.org/wiki/Ambala>. Last visited on 17 March 2025)



The Claimant investigated Harrods Global Private Health Ltd, and having examined the Indian Company Register available online, found that the company existed and was established on 2 May 2019. However, with respect to the 'Harrods' logo, which has been used by Harrods Global Private Health Ltd on their website with the circled R symbol (®) (meaning trademark registered) attached, the Claimant investigation's revealed that they have not registered their trademark as either 'HARRODS' or 'Harrods', both in the UK and in Japan.

Amazon claims that a Brand Registry listing can only be applied for when a trademark has been approved by the relevant patent office. However, it is possible to apply for a Brand Registry listing if the trademark application has been filed by the relevant Amazon IP Accelerator partner (which will bring extra money to Amazon, unlike simply registering it by yourself or through a cheaper IP company). Therefore, Amazon may have granted a

listing on the Brand Registry of 'Harrods' to Harrods Global Private Health Ltd on this basis [Claimant Note: this listing may have been made possible by the Amazon IP Accelerator partner in India].

Consequently, a serious problem has arisen. For instance, when the rightful trademark owner tried to register their 'brand' with the Amazon Brand Registry, they were rejected by Amazon who informed them that the brand name had already been registered and that they needed to obtain permission to use the 'brand' from the brand owner. However, Amazon will not disclose the name of the brand owner, which makes it impossible to contact them (Claimant's Brief 20, pp. 20-24).

A case exists where Amazon granted a Brand Registry listing for a trademark which was rejected by the patent office as no such brand name had been registered on Amazon (Claimant's Brief 22, pp. 5-11). [Claimant Note: There was a case reported on the Amazon Seller Forum where a Brand Registry listing by a rights owner had been rejected by Amazon because the brand name had already been registered. When the rights owner of the trademark searched for other owners of the trademark worldwide (a trademark can be registered with categories), there was no such trademark registered. However, the rights owner found that an application had been made with the trademark in Japan, but the application was rejected. The rights owner assumed that although the letter of rejection would have been sent to the applicant from the patent office, the applicant had applied for a Brand Registry while the trademark application was being examined at the patent office, and this had been approved by Amazon using the IP Accelerator on a first come first served basis]. Thus, in the current case,

Amazon granted the Brand Registry listing of the luxury brand 'Harrods' to a third-party seller, which does not even have any record of applying for the trademark of 'Harrods'. This means that Amazon runs a 'system by which a third party who is unrelated to the actual owner of a trademark can register and use the trademark (Defendant's Brief 10, p.8) [Claimant Note: Amazon claims that the 'Amazon Brand Registry is a scheme whose underlying principle is to protect the rights of trademark owners relating to brands. Therefore, it is fundamentally apparent that it is not a system by which a third party who is unrelated to the actual owner of a trademark can register and use the trademark'].

Once a listing on the Brand Registry has been approved, the effect extends beyond the categories in Amazon. Harrods Global Private Health Ltd. is a cosmetic production company; however, it now becomes possible for them to sell the bags or plush toys for which the actual rights owner of 'Harrods' is famous. Furthermore, if a letter of authorisation or a licensing agreement has been provided by the brand owner, you can sell the brand on Amazon. Therefore, it also becomes possible to sell counterfeits of 'Harrods', the actual owner of the trademark, by saying that permission has been granted from the brand (Harrods Global Private Health Ltd).

Amazon provides Brand registered sellers with a 'dedicated online form which enables them to report IP violations easily and speedily' (Defendant's Brief 10, p. 8). Therefore, Amazon provided these sellers with the right to act privately to remove other sellers as easily as if they were selling 'counterfeit' goods. This was evident from a seller advising others on the Amazon Seller Forum that, 'If other sellers are selling under your

trademarked listing page, why not try using the “Report a Violation” tool to report them. Get rid of them for selling counterfeits’ (Claimant’s Exhibit 149). Furthermore, making a report using the violation tool Amazon provides makes it possible for brand registered sellers to give sellers suspected of an IP violation a penalty, including an account suspension within an hour at the earliest (Claimant’s Exhibit 162, pp. 5-6. Easy to use reporting a violation tool). In so doing, Amazon impedes price competition and infringes free competition mechanisms (Claimant’s Brief 12, pp. 33-34).

There is no righteous cause the Amazon Brand Registry serves in order to protect trademark registered brands. Put another way, the Amazon Brand Registry is a mere sales tool allowing brand registered sellers to make exclusive sales on a first-come, first-served basis using their trademark registrations via the IP Accelerator on Amazon.

Regarding such a Brand Registry listing made by a third-party seller, Mercis BV, the rights owner of the trademark ‘Miffy’, whose IP Amazon alleges the Claimant infringed (Trademark violation) [Claimant Note: The Claimant lists the IP infringement of ‘Miffy’ as List 1 item 11 in this lawsuit] was not aware that Miffy had been Brand registered on Amazon. Mercis BV even offered to contact Amazon on the Claimant’s behalf to ask them to allow her to sell Miffy merchandise that Amazon had previously removed. This indicates that when Amazon states Miffy has been Brand Registered, this was a process performed not by the rights owner, but a third party seller.

Furthermore, when the Claimant browsed through the Amazon Seller Forum on the day she was planning to submit this Brief,

she found the following post [see Reference Material 3]. The Claimant learnt the following from this post. 1) Amazon approved the trademark of a seller asking for advice on how to ‘handle those sellers selling on my brand registered catalogue’, even though the seller’s trademark application was being scrutinised by the patent office and had not yet been approved. (2) The brand registry listing was made possible simply with a package on which was printed the shop’s name, accompanied by a photo of the shop’s owner. 3) The seller was selling other brand products with their own package, even though the trademark had not yet been approved. Therefore, another seller who wanted to sell the brand product displayed on the main photo of the catalogue started to list their items. 4) The seller whose shop name had been brand registered then reported the other seller (selling on their catalogue) for committing a violation using the ‘Report a Violation’ tool provided by Amazon. The brand registered seller reported to Amazon that ‘it should be a counterfeit, as it is likely that the second photo displayed on the catalogue (the packaging which has the shop’s name along with a photo of the shop’s owner) will be different’.

The Claimant assumes that the main brand in this case would probably have been a Chinese brand. However, the same situation arose with ‘[REDACTED]’, the Claimant’s competitor who had registered their name on the Amazon Brand Registry and had been exclusively selling famous brands as non-branded using their so-called shop's original packaging. The Claimant points out that the same type of Brand Registry continues to run.

[Reference Material 3]

Seller's post on the Amazon Seller Forum on 19 March 2025



Seller_ra9Je6Zde7q6S
42 minutes ago

...

商標申請期間中の「相乗り業者対策」について、皆様のお知恵をお貸しください

お世話になります。

現在、当社はAmazonに商品を出品を開始した新規出品者です。

- ・商品はブランド登録済み
- ・商標登録は審査中、まだ取得完了していない

そのような中で、中国の相乗り業者が発生しました。

下記対応を取りましたが、まだ解決しておりません。

- ・知的財産侵害フォームから相乗り業者を違反報告→Amazonは非対応（理由は商標取得が完了していないため）
- ・相乗り業者に連絡を取るも当然無視
- ・サブ画像にパッケージ写真（私の顔写真有り）を掲載し、下記3つの理由で再度Amazonに違反報告するもAmazonの返答はなし

「①相乗り業者の商品はサブ画像と違うパッケージの可能性が高いので、偽造品です」「②相乗り業者がサブ画像通りのパッケージなら、当社パッケージの著作権侵害であり、③私の顔写真を勝手に使用しているので肖像権侵害です」

そこで、商標申請中に相乗りされた際に、皆様が講じられている対策をご教示いただけますと幸いです。

商品ページを見て楽しみに購入してくださったお客様に、偽造品をつかませるなんて絶対したくないです。非常に申し訳なく思います。

お客様への被害を増やさないためにも早急に相乗り業者を排除したいと思っています。

お客様のために、皆様のお知恵をお貸しいただけますと幸いです。

何卒よろしくお願いいたします。

Please give me advice regarding ‘how to handle those sellers selling on my brand registered catalogue’ during our trademark application, which has yet to be approved.

Thank you in advance for your help.

Currently, I am a new seller who has started selling my items on Amazon.

- Items have been Amazon brand registered.*
- The trademark application is under examination and yet to be approved.*

In this situation, a Chinese seller listed their items on my catalogue so that they could sell them.

Although I took the following measures, the problem has not been resolved.

- Reported the Chinese seller for a violation using the ‘Report a Violation’ form. However, Amazon took no action (The reason given was that the trademark registration is yet to be completed).*
- Contacted the Chinese seller; however, they ignored us.*
- Placed the photo of packaging (with a picture of myself) as the second photo of the product and once again reported a violation to Amazon, along with the three reasons given below. As yet, we have received no reply.*

1. It should be a counterfeit, as it is likely that the second photo of the packaging (which has the shop's name along with the photo of the business owner) will be different. 2. If another seller provides the same packaging as shown in the second photo, this is a copyright infringement. 3. Because the seller is using my photo without my consent, this is an infringement of my portrait rights.

Thus, I would really appreciate it if you could advise me as to the measures you take when other sellers start selling their items on your exclusive catalogues while a trademark application is pending.

I would never wish my customers, who are looking forward to receiving my item, to receive a counterfeit instead, and would feel really sorry if that happened.

I would like to remove the sellers selling their items on my exclusive catalogue immediately so as not to increase the damage caused to my customers.

For the sake of my customers, I would appreciate your guidance.

Thank you in advance for your cooperation.