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Trademark, Copyright and E-commerce: A Study on how Intellectual Property Laws on Trademark and Copyright can Protect Electronic Commerce

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Abstract

This study aims to discuss how Intellectual Property laws on Trademark and Copyright affect electronic business transactions, digital marketing campaigns, and strategies that can be implemented by companies.

In the advent of the digital economy, business analytics, artificial intelligence, and the internet of things; products and services can now be exchanged with decreased barriers. The free flow of information, goods, and services between nations may increase the number of counterfeit goods that are sold in the market.

The difference between a trademark and copyright was defined by the Honorable Supreme Court in the case of Elidad C. Kho vs. Court of Appeals, G.R. No. 115758. March 19, 2002, that states to wit:

“Trademark, copyright, and patents are different intellectual property rights that cannot be interchanged with one another.

A trademark is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. In relation thereto, a trading name means the name or designation identifying or distinguishing an enterprise.

Meanwhile, the scope of copyright is confined to literary and artistic works which are original intellectual creations in the literary and artistic domain protected from the moment of their creation.”

The study conducted by Elrod (2017) states that a trademark is helpful to safeguard the brand from absolute imitations. The study stated that trademark enforcement can help the consumers determine products in the market and truthfully recognizing the producer of a particular good or product. Sanitnarathorn (2019) states in a study that the micro size of the MP3 digital file allowed an extensive person-to-person file distribution of songs that were converted from CDs, something which was almost technically impossible in the previous technological infrastructure available.

Thus, this paper will discuss the legal protections that businesses may use in E-commerce business transactions.

Keywords: *Intellectual Property, Trademark, Copyright, Digital Marketing, Electronic Commerce.*

Introduction

Trademarks and Copyrights are forms of intellectual properties is an intangible right that has been protected by laws in different countries and jurisdictions.

This study aims to discuss how Intellectual Property laws on Trademark and Copyright affect electronic business transactions, digital marketing campaigns, and strategies that can be implemented by companies.

The paper would like to focus on how Intellectual Property (IP) laws can protect the Intellectual Property Rights of companies who engage in electronic business transactions.

Electronic business transactions are business dealings that are conducted using the internet and digital means. These business transactions are also referred to as E-Commerce or Electronic Commerce. Electronic Commerce era stated when two main e-commerce sites, E-bay and Amazon were started, GEÇİT, B. B., & TAŞKIN, E. (2020). The study further said that E-Commerce allows companies to increase the sales of their products to markets and customers that they could not reach.

As early as 2002, the Philippines has enacted a law to protect and cover transactions that are made on the internet. This law is the Republic Act No. 8792, entitled "Electronic Commerce Act of 2000." Section 4 of the Electronic Commerce Act of 2000 provides the sphere of application of the law, to wit:

"Section 4. Sphere of Application - This Act shall apply to any kind of data message and electronic document used in the context of commercial and non-commercial activities to include domestic and international dealings, transactions, arrangements, agreements contracts and exchanges and storage of information."

As companies migrate adapt their transactions using digital technologies and electronic commerce, the risk of their products being illegally copied and Intellectual Property Rights infringe upon also increases. The role of IP Law in protecting all these intangible properties of businesses could not be more relevant today than in previous years.

In the Philippines, the main government agency concerned with the enforcement of IP Laws to protect and enforce intellectual property rights is the Intellectual Property Office of the Philippines (IPOPIL).

WIPO (2020) defines Intellectual property (IP) as a form of expression of ideas or concepts, inventions; literary and artistic constructions, or designs that have a commercial or economic value (WIPO 2020).

JOURNAL OF GLOBAL BUSINESS VOLUME 9 ISSUE 1

In a study by Marinova & Raven (2006), they stated that states with developed economies lost around 60 billion dollars to least developed countries per year in the number of royalties that would have been paid for intellectual property infringement.

Iso, Joshi (2018) stated that intellectual property stimulates innovation and transfer of technology in the fields of science, technology, arts, and culture.

The distinction between trademarks and copyrights compared to a patent were elucidated by the Supreme Court in the case of PEARL & DEAN (PHIL.), INC. vs. SHOEMART, INC., et.al. G.R. No. 148222, August 15, 2003, that states to wit:

Trademark, copyright, and patents are different intellectual property rights that cannot be interchanged with one another.

A trademark is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. In relation thereto, a trading name means the name or designation identifying or distinguishing an enterprise.

Meanwhile, the scope of copyright is confined to literary and artistic works which are original intellectual creations in the literary and artistic domain protected from the moment of their creation.

Patentable inventions, on the other hand, refer to any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable.”

Thus, it can be seen in the above-quoted case law, that trademarks and copyrights have different enforcement and applications about the economic and moral rights that can be enforced by either the owner or author of the intellectual property.

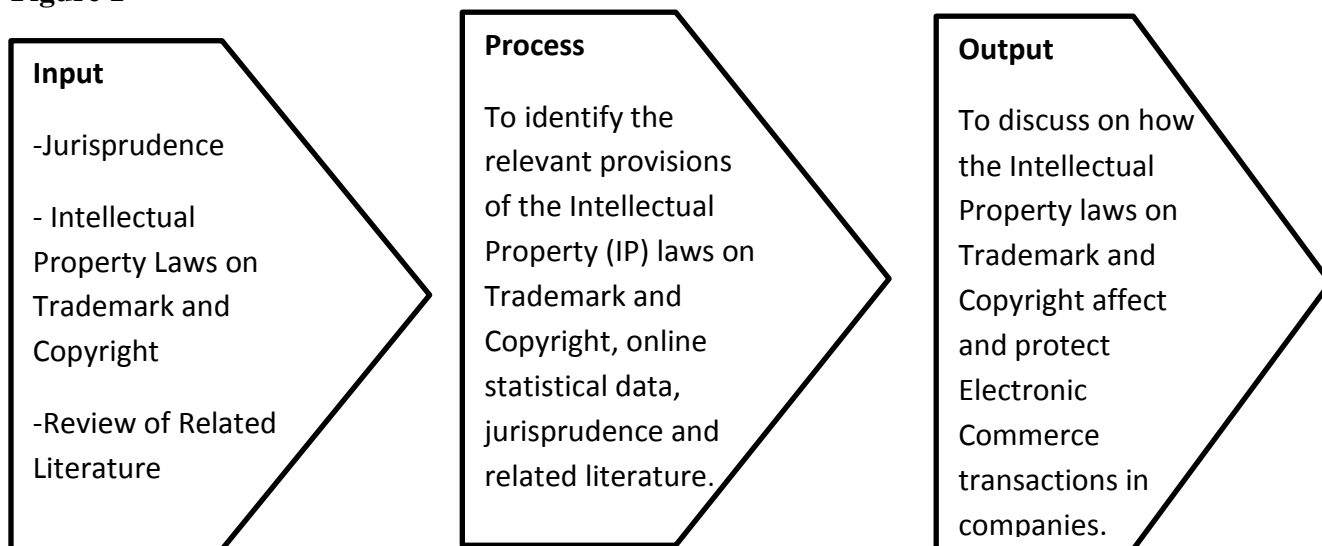
Methodology

The researcher shall discuss identify and the relevant provisions of the Trademark and Copyright laws under the Intellectual Property Code of the Philippines. The archival study on caselaw or Philippine Jurisprudence decided by the Supreme Court of the Philippines shall also be utilized in this research paper.

The proponent shall also utilize statistical data available from various online resources such as EBSCOhost, EMIS, Euromonitor, and Statista. Also, permission and clearance to obtain and utilize data were requested from the Intellectual Property Rights Enforcement Office - Intellectual Property Office of the Philippines.

The proponent shall then discuss how the Intellectual Property laws on Trademark and Copyright affect and protect the Electronic Commerce transactions made by businesses and companies.

Figure 1



Discussions and Findings

The Growth Indicators of Electronic Commerce in the Philippines

The effects of the quarantine restrictions of the Philippine government decreased the number of individuals who may travel and leave their homes during this pandemic. This travel restriction forced Filipinos to use technology to go on with their business activities. Moreover, the effects of Covid-19 in eCommerce was shown in the survey that was conducted by Statista (2020-a), where 63% of respondents said that the reason for the increase in the online purchase was that due to the closure of all non-essential business in the Philippines and 62% of respondents stated that it was because they would like to practice social distancing and minimize their time outside of their homes.

This shows that the Covid-19 quarantine restrictions in the Philippines have indeed affected the increase in the online purchases made by Filipinos during the pandemic. Filipinos having a high internet penetration rate resorted to online transactions to do business and purchase products that they need.

The table below shows the historical/forecasted data on the percentage of the population that uses the internet to buy and sell goods and services using the internet. As can be seen in the data, the percentage of the Philippine population using electronic commerce has been increasing dramatically since 2015.

Table 1

A Internet Use: Selling Goods or Services (historical/forecasted)

Geography		2015	2016	2017	2018	2019	2020
Philippines	Internet Use: Selling Goods or Services	3.8	4.6	5.4	6.3	7.2	8.2

Source: Data from Euro monitor (2020-a)

The percentage of Philippine population using the internet has also been increasing. The table below shows the population using the internet in the Philippines has also been increasing dramatically since 2015.

Table 1

B Percentage of Population Using the Internet (historical/forecasted)

Geography		2015	2016	2017	2018	2019	2020
Philippines	Percentage of Population Using the Internet	52.0	55.5	60.1	63.6	66.9	70.1

Source: Data from Euromonitor (2020-b)

EMIS (2020) stated in a study that the Philippines has been gaining advantage from their technologically literate population. The study said that the average screen time of Filipinos is approximately 4 hours every day on social media, which accounts to 76million of the population. The table below shows the E-Commerce Expenditure of the Philippines in 2019 that is segmented by product category. The data shows that Video Games, Electronics and Fashion are the top 3 categories of E-Commerce Expenditures in 2019.

Table 2

Philippine E-Commerce Expenditure by Category, 2019, USD Million

E-Commerce Expenditure Category	USD Million
Video Games	741.0
Electronics and Physical Media	258.0
Fashion and Beauty	227.0
Furniture and Appliances	166.0
Food and Personal Care	152.0
Toys, DIY and Hobbies	150.0
Digital Music	49.0
Travel (Including accommodation)	6.9

Source: Data from EMIS (2020)

JOURNAL OF GLOBAL BUSINESS VOLUME 9 ISSUE 1

Intellectual Property Rights Protection or Enforcement under the Bureau of Legal Affairs and Intellectual Property Rights Enforcement Office (IEO).

Intellectual Property Rights (IPR) protection and enforcement may be filed against the IP violator. This can be filed with the Bureau of Legal Affairs of the Intellectual Property Rights Enforcement Office (IEO) of the Intellectual Property Office of the Philippines.

The Bureau of Legal Affairs takes cognizance of trademark and patent infringements, while the Intellectual Property Rights Enforcement Office (IEO) is in charge of receiving and investigating reports and complaints and reports on counterfeiting and piracy, IPO-IEO (2020).

The functions, duties, and responsibilities of the Bureau of Legal Affairs are enumerated under Republic Act No. 8293, Intellectual Property Code of the Philippines, which states to wit:

"Sec. 10. The Bureau of Legal Affairs. - The Bureau of Legal Affairs shall have the following functions:

10.1. Hear and decide opposition to the application for registration of marks; cancellation of trademarks; subject to the provisions of Section 64, cancellation of patents, utility models, and industrial designs; and petitions for compulsory licensing of patents;

10.2. (a) Exercise original jurisdiction in administrative complaints about violations of laws involving intellectual property rights: Provided, that its jurisdiction is limited to complaints where the total damages claimed are not less than Two hundred thousand pesos (P200,000): Provided, further, that availing of the provisional remedies may be granted under the Rules of Court. The Director of Legal Affairs shall have the power to hold and punish for contempt all those who disregard orders or writs issued in the course of the proceedings. (n)

(b) After a formal investigation, the Director for Legal Affairs may impose one (1) or more of the following administrative penalties:

The issuance of a cease and desist order which shall specify the acts that the respondent shall cease from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the order;

The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed."

Thus, it can be seen that part of the main functions of the Bureau of Legal Affairs is to decide on administrative cases filed are cases in the opposition to the application for registration of Intellectual Property, and exercise original jurisdiction in administrative complaints about violations of laws involving intellectual property. The bureau also has the power to award damages and impose administrative penalties against the IP violator.

The functions, duties, and responsibilities of the IEO are enumerated under Section 2, Rule II, of the Rules of Procedure on Intellectual Property Rights (IPR) Enforcement, which states to wit:

“Section 2. Functions of the IPR Enforcement Office. The IEO shall have the following functions, duties, and responsibilities:

a.) To receive and docket complaints or reports relating to IPR violations from right holders or authorized representatives, other government agencies, and the public in general;

b.) To evaluate the complaint or report and take appropriate action thereon to ensure enforcement of IPR;

c.) To coordinate with the right holders, industry associations, and/or relevant government agencies in the conduct of its enforcement functions;

d.) To formulate policies and programs to ensure enforcement of IPR, and to prepare an annual report on the accomplishments, progress, and challenges of IPR enforcement in the country;

e.) To keep all records of enforcement such as, but not limited to, complaints. Reports, minutes of enforcement meetings, post-operation reports, and other similar or related documents.

f.) To assist in the enforcement of orders, writs, and processes issued by Bureau of Legal Affairs and the Office of the Director-General.”

The IEO has two main processes to achieve this mandate namely, IP Violation Reports and IP Violation verified complaints, IPO-IEO (2020). The IP Violation reports refer to any information about a violation of IP Rights which may come from any citizen or the IPR holder himself. On the other hand, the IP Violation verified complaints pertain to a verified written complaint signed by a right holder or authorized representative against the IP violator IPO-IEO (2020). The IEO also assists the IP holder for case buildup which can be filed with the Bureau of Legal Affairs and the Courts.

Unlike the Bureau of Legal Affairs, the IEO has no power to award damages nor impose penalties to IP violators. Also, the main focus of the IEO is counterfeiting and piracy, IPO-IEO (2020). The IEO takes cognizance and evaluates the complaint or report to ensure enforcement of IPR against counterfeiting and piracy. The IEO also fulfills the administrative enforcement role of the Intellectual Property Office (IPO) as provided for under Section 7, (c) and (d) Republic Act No. 8293, as amended. The IEO also keeps a repository of records and data of IPR enforcement.

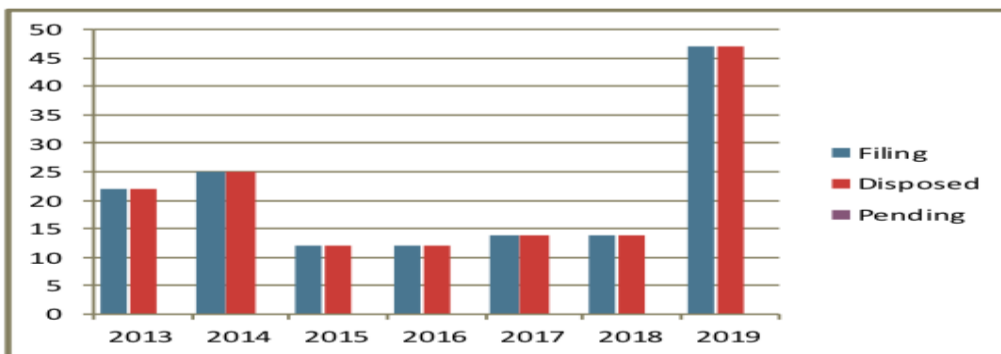
Data and Statistics on Intellectual Property Enforcement in the Philippines

The data below shows the number of IEO reports on intellectual property violations that were reported to them for the years 2013-2019. As can be seen from the total number of IEO reports filed for that 7-year period was only 146 counts.

The highest number of reports were on 2019 with 47 IP violation. There is an average of 21 counts IP violation reports that was received by IEO every year for the above stated periods.

Figure 2
IEO REPORTS (2013 - 2019)

	2013	2014	2015	2016	2017	2018	2019
Filing	22	25	12	12	14	14	47
Disposed	22	25	12	12	14	14	47
Pending	0	0	0	0	0	0	0



Source: IPO-IEO (2020), the above figure was taken from and used with permission of the Intellectual Property Rights Enforcement Office.

The figure below shows to total number of IEO reports for January to September 2020. It can be observed that from January to September of 2020 the IEO already received 150 reports of IP violations. This number already exceeded the total IEO reports that for the 2013-2019 period. Of the total 150 reports, 33 were made just last September 2020. This was a tremendous 319% increase from the 2019 reports and 714% from the 21 average yearly reports for 2013-2019 period.

Figure 3
IEO REPORTS (2020: January - September)

	January	February	March	April	May	June	July	August	September	Total
Filing	4	9	20	9	12	26	19	18	33	150
Disposed	4	9	20	9	12	25	17	9	17	122
Pending	0	0	0	0	0	1	2	9	16	28

Source: IPO-IEO (2020), the above figure was taken from and used with permission of the Intellectual Property Rights Enforcement Office.

Copyright and the Law

A copyright is an intellectual property that gives the creator or author both the “Moral Rights and Economic Rights” over the created original work. Examples of copyrights are artistic works, music, movies, pictures, and literary works composed or written. Software applications for computers that were programmed are also considered as protected copyright works under the law. The “Moral Rights” give the right of authorship to be attributed to the author or creator of artistic work. On the other hand, Economic Rights provide the exclusive proprietary and commercial right to use intellectual property to earn money by royalties or sales. Unlike Moral Rights, Economic Rights over intellectual properties can be transferred or sold by the owner.

The definition of copyright was discussed in the case of PACITA I. HABANA, ALICIA L. CINCO, and JOVITA N. FERNANDO vs FELICIDAD C. ROBLES and GOODWILL TRADING CO., INC. G.R. No. 131522 July 19, 1999, that states to wit:

"A copyright may be accurately defined as the right granted by statute to the proprietor of an intellectual production to its exclusive use and enjoyment to the extent specified in the statute. Under Section 177 of R.A. No. 8293, the copy or economic right (copyright and economic right are used interchangeably in the statute) consists of the exclusive right to carry out, authorize or prevent the following acts:

- 177.1 Reproduction of the work or substantial portion of the work;
- 177.2 Dramatization, translation, adaptation, abridgment, arrangement, or other transformation of the work;
- 177.3 The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
- 177.4 Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;
- 177.5 Public display of the original or a copy of the work;
- 177.6 Public performance of the work; and
- 177.7 Other communication to the public of the work." (Underscoring supplied)

Trademarks and the Law

A trademark is used to distinguish the products being produced by a business from those offered and sold by other industry competitors in the market. For services offered and sold to the customer, this mark is called a service-mark. Trademarks are valuable assets of the company which is prone to infringement and piracy.

Services, unlike goods, are products that are intangible and may not be stored as an inventory by the seller. The services are forms of experiences that the company provides to its customers.

Comparable to an Economic Right over intellectual property, Trademarks can also be transferred or sold by the IP owner. This trademark may be in the form of a name, distinctive word, symbol, or sign that can differentiate or separate one product manufactured by the business from that of its competitors in the market.

The definition of a trademark was explained in the case of WILTON DY and/or PHILITES ELECTRONIC & LIGHTING PRODUCTS, vs KONINKLIJKE PHILIPS ELECTRONICS, N.V., G.R. No. 186088, March 22, 2017, that states to wit:

"A trademark is "any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others." It is "intellectual property deserving protection by law," and "susceptible to registration if it is crafted fancifully or arbitrarily and is capable of identifying and distinguishing the goods of one manufacturer or seller from those of another."

Section 122 of the Intellectual Property Code of the Philippines (IPC) provides that rights to a mark shall be acquired through registration validly done by the provisions of this law." (Underscoring supplied)

Facebook, Lazada and Shopee's Policy Relevant to Intellectual Property Enforcement and Protection.

The most common social media platform for electronic commerce in the Philippines Facebook. According to Statista (2020-b), there are 74 million estimated Facebook users in the Philippines today, and is forecasted to grow to 88.1 million by the year 2025.

One feature of Facebook is the Marketplace which allows users to buy and sell goods locally or shipped from other countries abroad. The Marketplace in Facebook allows the sellers to list their products online that can be searched and viewed by the buyer. In Lazada and Shopee, sellers are allowed to list their products by signing-up and providing one government I.D.

All you need to buy and sell in the Marketplace is an account username in Facebook, Lazada, and Shopee. There are no government licenses or registration that is required to list good or services for sale. Thus, many online sellers on the internet find it convenient to use this platform to sell their products online.

Facebook Commerce Policy

To protect the Intellectual Property Rights of companies, Facebook however adopted a Commerce Policy that prohibits the listing of products that violate Trademark and Copyright laws. The following provisions quoted below are the Commerce Policy of Facebook that is relevant to the protection of Trademarks and Copyright:

“22. Subscriptions and Digital Products

Listings may not promote the buying or selling of downloadable digital content, digital subscriptions, and digital accounts.

23. Third-Party Infringement

Listings may not contain content that infringes upon or violates the intellectual property rights of any third party, including copyright or trademark. This includes, but is not limited to, the promotion or sale of counterfeits, such as goods that copy the trademark (name or logo) and/or distinctive features of another company’s products to imitate a genuine product.

Examples

Counterfeits, knockoffs, or replicas of branded goods, or posts offering goods that are likely to confuse consumers about the source, sponsorship, or affiliation of those goods. Unauthorized or pirated copies of copyrighted works, such as videos, movies, TV shows and broadcasts, video games, CDs or other musical works, books, etc.”

LAZADA Intellectual Property Rights Policy

Lazada is one of the top online stores in the Philippines today and a member of the Alibaba Group of Jack Ma. In 2019 alone, Lazada had a total of 2,500,000 monthly online traffic in the Philippines and claimed in September 2019 to be the leading electronic commerce platform in Southeast Asia having more than 50 million active buyers, EMIS (2020).

To prevent Intellectual Property Rights violations to be committed in their platform, Lazada has framed their policy about the protection of IPR.

The following provisions quoted below are the Lazada Intellectual Property Rights Policy that is relevant to the protection of Trademarks and Copyright:

“Lazada as part of the Alibaba Group is committed to protecting intellectual property rights and maintaining a healthy and safe e-commerce environment on our platforms. We take a serious stance when dealing with intellectual property infringement claims on the e-commerce platforms we operate.

This policy provides an overview of intellectual property (IP) rights and some common IP concerns that might arise when selling on Lazada. Violating this policy may result in loss of selling privileges or other legal consequences.

Please note that this is not legal advice. We recommend sellers consult a lawyer if they have a specific question about their IP rights or the IP rights of others.

Any breach of Lazada’s Intellectual Property Rights Policy may result in your product listing is locked and/or issuance of non-compliance points. Please refer to the chart below.”

SHOPEE Intellectual Property Rights Policy

Shopee is the second leading online store in the Philippines today. In 2019, Shopee had a total of 1,440,000 monthly online traffic in the Philippines and recorded 200 million online downloads of its application, showing a 92.7% increase in their gross sales, EMIS (2020). Shopee has been actively promoting in the Philippines and is directly competing against Lazada by offering lower prices than their competitors. Similarly, to Facebook and Lazada, Shopee has also instituted ways on how to protect IPR by having a policy against pirated goods sold on their platforms.

The following provisions quoted below are the FAQ page of Shopee that answers the Intellectual Property Rights Policy relevant to the protection of Trademarks and Copyright:

"Shopee takes Intellectual Property (IP) protection seriously and does not condone the use of Intellectual Property (IP) in any manner that is contrary to applicable law.

It is each seller's responsibility to ensure that the products listed and the content of the listings, including product images and descriptions, do not infringe IP rights owned by any other party. Some common examples of infringement are:

Trademark Infringement: Unauthorized use of any trademark, trade name, or trade dress in which another party has rights, or any element confusingly similar to such trademark, trade name, or trade dress, about a listed product, its packaging, or the product listing.

Copyright Infringement: Unauthorized use of copyright-protected content, such as images and descriptions, about a listed product, its packaging, or the product listing.

Industrial Design Infringement: Unauthorized use of a registered design, or a design substantially similar to a registered design, about a listed product.

Patent Infringement: Unauthorized use of a patented invention about a listed product.

"Unauthorized use" refers to the use of IP without any consent, license, or authorization from the relevant IP owner.

If you would like to file a notice of an infringement, please complete the form at this link: [IPR Form](#).

Shopee will consider each Intellectual Property Rights (IPR) Complaint seriously and work collaboratively with the IP owner or its authorized agent towards an expeditious resolution of the complaint."

Conclusions

This paper has shown that there was a significant increase in the E-Commerce Transactions in 2020 due to the Covid-19 Pandemic. It was found in the survey of Statista (2020) that 63% of respondents said that the reason for the increase in the online purchase was that due to the closure of all non-essential business. The study also found that the (IPO-IEO) 2020 reports had an increase of 319% from the 2019 reports and 714% from the 21 average yearly reports for 2013-2019 period. The reason for the significant increase of IPR violation reports from January to September 2020 is a good subject for further study.

Also, the research discussed how companies may file complaints with the IPO to enforce their IP rights against violators. Moreover, the study also discussed how online selling platforms like Facebook, Lazada, and Shopee have adopted means to protect the IP rights of products being sold on their websites.

The paper also found that an IP holder may file cases with the Bureau of Legal Affairs for trademark or patent infringements, and reports or complaints filed with the Intellectual Property Rights Enforcement Office (IEO) about counterfeiting and piracy. The research further discussed the two main processes under the IEO, which are IP Violation Reports and IP Violation verified complaints, respectively.

Thus, we can conclude in the study that these legal remedies are available to businesses to protect their Intellectual Property Rights from E-commerce transactions.

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Appendix

Figure 1

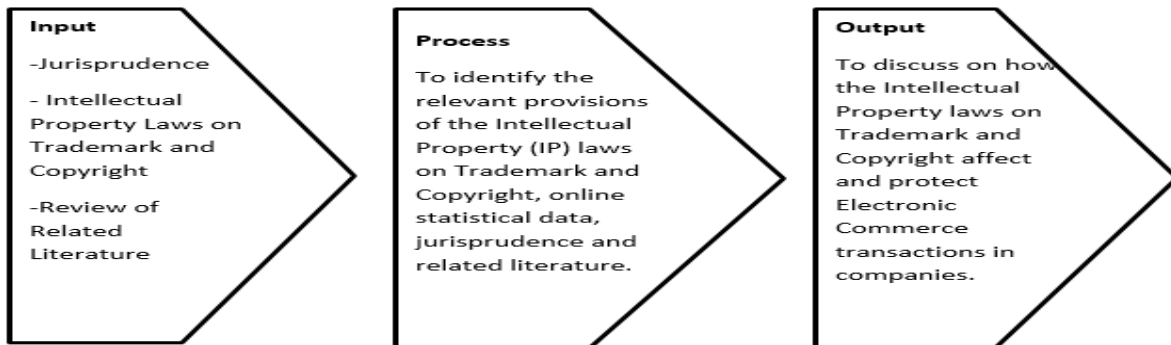


Figure 2

IEO REPORTS (2013-2019)

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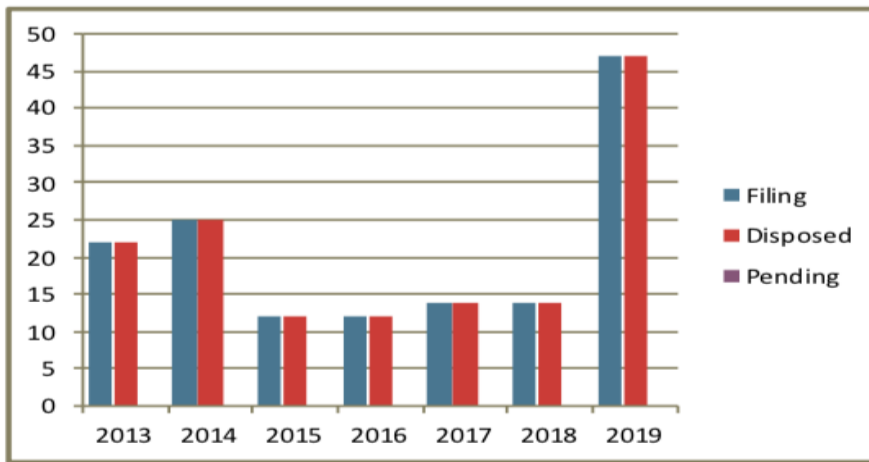


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Pending	0	0	0	0	0	1	2	9	16	28

Table 1

A Internet Use: Selling Goods or Services (historical/forecasted)

Geography		2015	2016	2017	2018	2019	2020
Philippines	Internet Use: Selling Goods or Services	3.8	4.6	5.4	6.3	7.2	8.2

Source: Data from Euromonitor (2020-a)

Table 1

B Percentage of Population Using the Internet (historical/forecasted)

Geography		2015	2016	2017	2018	2019	2020
Philippines	Percentage of Population Using the Internet	52.0	55.5	60.1	63.6	66.9	70.1

Source: Data from Euromonitor (2020-b)

Table 2

Philippine E-Commerce Expenditure by Category, 2019, USD Million

E-Commerce Expenditure Category	USD Million
Video Games	741.0
Electronics and Physical Media	258.0
Fashion and Beauty	227.0
Furniture and Appliances	166.0
Food and Personal Care	152.0
Toys, DIY and Hobbies	150.0
Digital Music	49.0
Travel (Including accommodation)	6.9

Source: Data from EMIS (2020)