
ONLINE MARKET INTERMEDIARIES' INFERENCES ON TRADEMARKS

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ABSTRACT

The effect of technology has grown so high that the for every aspect of life, man depends on new technology in their daily life. Today most people prefer to shop online platforms as they offer variety, convenience, and discounts. As technology increases the rate of crime is also increasing day by day. It has influenced various aspects of society. The E-Commerce platform has given a huge window of opportunity for counterfeiters and infringers. This has exploited the rights of inventors. The duplication of products has increased a lot. Intellectual property Right plays a key role in every sector. The right of a person's intellect and creativity is protected by IP rights. It has encouraged a person's time and effort in creating and inventing new things. If the right is not protected, it is highly likely to be exploited. Now it has been a question, "Whether the liabilities of intermediaries are adequate to prevent further infringement in the digital era." So in this paper, the researcher would like to discuss the overview of the inference of online market intermediaries on Trade Mark with Case Laws.

Keywords: Intellectual property Rights, Online Market intermediaries, Creativity, Technology, Trade Mark, Copyright

INTRODUCTION

The Internet platform's disruptive capacity has a profound impact on business, economy, and society as a whole. Online market intermediaries, such as e-commerce platforms, play a significant role in facilitating trade and commerce on the Internet. Companies like Amazon, Ajio, Flipkart, Myntra and etc., are developing online structures that enable a wide variety of human activities, paving the way for radical changes to how we operate and socialize creative value in the economy. ¹One of the important aspects of the work involves managing intellectual property rights, including trademarks, copyright, etc.,

Intermediaries (also known as middlemen or go-betweens) they the third parties who carry messages between people who are unwilling or unable to meet. Online intermediaries offer platforms for and enable the exchange of commodities, services, or information in the online environment. ²They execute or provide services like as search, e-commerce, social networks, and cloud computing. The key difference between online intermediaries and other online services is that online intermediaries bring different sorts of users together to facilitate commercial or social engagement. Online market intermediaries provide a platform for businesses and individuals to sell their products and services to a global audience. As a result, the issue of trademark infringement has become a significant concern for online market intermediaries.³ Trademark infringement occurs when someone uses a trademark without the owner's permission, also in a way that confuses consumers about the source of the goods or services.⁴ Online market intermediaries can be held liable for trademark infringement if they facilitate the sale of goods that infringe on a trademark. It helps to develop policies and procedures to prevent and address trademark infringement on their platforms. Trademarks serve as a means for businesses to distinguish their products and services from those of their competitors.⁵

Developing trademark policies that specify the guidelines for utilizing trademarks on their platform is one strategy utilized by online market intermediaries. These guidelines often demand that sellers confirm their ownership of any trademarks they use in their listings. The

¹ <https://www.wto.org/> Intellectual property for an Internet Platform.

² Online Intermediaries: Impact On The Eu Economy, Bruno Basalisco

³ Supra

⁴ *McCarthy on Trademarks & Unfair Competition* (5th ed. 2017)

⁵ The Liability of Intermediaries for Trade Mark Infringement, Ansgar Ohly, Ludwig Maximilian University Munich

effects of trademark violation are also described, including account suspension or termination⁶. A range of technology is also used by online market intermediaries to identify and stop trademark infringement. For instance, they employ algorithms that look for trademarks in product listings and contrast them with a database of registered trademarks. A listing is reported for examination by a human moderator if it is determined to be potentially infringing.

A company may encounter a number of difficulties while attempting to launch a new trademark in the marketplace. Making sure that the trademark does not conflict with other companies' already-existing trademarks is one of the key issues. Businesses can get assistance with this work from online market intermediaries, who offer a variety of tools and services to make trademark registration and search processes easier.⁷ For example, many online marketplaces are built-in trademark search tools that enable sellers to determine whether another party is already using their proposed trademark. These tools often do searches on already-existing trademarks that have been filed with governmental organizations like the European Union Intellectual Property Office (EUIPO) or the United States Patent and Trademark Office (USPTO).⁸ While intermediaries enable others to offer and sell their products, their liability is usually secondary. In some cases, however, intermediaries have been treated as primary infringers, particularly where they themselves are responsible for the presentation of advertisements on websites.

When it comes to preventing and dealing with trademark infringement on their platforms, online market intermediaries are essential. They contribute to making sure that their platforms are secure and dependable locations for companies and customers to conduct transactions by putting rules and processes into place, using technical tools, and reacting to complaints from trademark owners.

DEFINITION OF INTERMEDIARIES

The term “intermediaries” is defined under section 2(w) of Information Technology Act, 2000 which says

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⁷ <https://www.wipo.int/> IP and Business trademark Coexistence, *By Tamara Nanayakkara, WIPO SMEs Division; Acknowledgements Marcus Hopperger and Martin Senftleben, Trademarks, Industrial Designs, and Geographical Indications - Law and International Classifications Division*

⁸ <https://www.oecd.org/The Economic and Social Role of Internet Intermediaries>,

“Intermediary” with respect to any particular electronic records, means any person who on behalf of another person receives, stores, or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places, and cyber cafes.⁹

ACTIVE PARTICIPANTS AND SAFE HARBOUR PROTECTION

Section 79 of the Information Technology Act provides certain immunities to the intermediaries. That the intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by him. Section 79 of the Information Technology Act, 2000 is extracted below:

- Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-section (2) and (3), an intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by him.
- The provisions of sub-section (1) shall apply if- (a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or (b) the intermediary does not- (i) initiate the transmission, (ii) select the receiver of the transmission, and (iii) select or modify the information contained in the transmission; (c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.
- The provisions of sub-section (1) shall not apply if- (a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act; (b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to

⁹ Liabilities of Intermediaries in Trademark Infringement Cases in India - Fox Mandal

expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Section 79 of the Act elaborates on the exemption from liabilities of intermediaries and Section 79(2)(c) mentions that intermediaries must observe due diligence while discharging their duties and observe such other guidelines as prescribed by the Central Government. Accordingly, Information Technology (Intermediary Guidelines) Rules, 2011 were notified on 11th April 2011.¹⁰

A third party's information, data, or communication connection made available or hosted by an intermediary is not subject to liability under Section 79(1) of the IT Act, so long as the intermediary complies with Sections 79(2) and 79(3) of the IT Act. In the matter of *Christian Louboutin SAS v. Nakul Bajaj*¹¹ and Others, the Delhi High Court distinguished between “active” and “passive” middlemen. The Single Judge Bench ruled that whether an e-commerce platform qualifies for safe harbor protection under Section 79(1) would depend on whether it operates the platform in an “active” or “passive” manner. The Delhi High Court's Division Bench decided the Amazon Seller Services Pvt matter.¹²

In the case of *Ltd. v. Amway India Enterprises Pvt.*, it was decided that any active participation by the platform or online market entirely nullifies the ring of protection or exemption that exists for intermediaries under Section 79. For the purposes of evaluating the availability of safe harbor protection, the Amazon Case disregarded the idea of classifying intermediaries as active or passive actors. The Division Bench noted that limiting the protection provided by Section 79(1) to passive intermediaries would be a misunderstanding of Section 79. According to the Karnataka High Court's ruling in the case of *Kunal Bahl and Ors. v. State of Karnataka*, Snapdeal, an online marketplace, may seek protection under Section 79(1) of the IT Act if it met the requirements of Sections 79(2) and 79(3).¹³

ROLE OF ONLINE MARKET INTERMEDIARIES

Brokers are essential in markets due to search costs, privacy violations, incomplete

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¹¹ *Christian Louboutin SAS v. Nakul Bajaj* Case Number: CS (COMM) 344/2018, I.As. 19124/2014, 20912/2014, 23749/2014 & 9106/2015

¹² Safe Harbour Protection for E-Commerce platforms, By Mukul Sharma, Ishita Khandelwal, Sanchit Garg & Astha Tambi on July 15, 2021

¹³ Supra

information, contracting risk, and enhanced pricing control through brokers.

Following are the important roles of market intermediaries are:

- To attain economic scale or scope, combine seller items with buyer demand.
- By acting as an agent of trust, you may shield buyers and sellers from other market players' opportunistic conduct.
- Reduce operational expenses to help the market.
- Finding the right buyer and seller.
- To provide infrastructure.
- To provide Trust.¹⁴

Different types of intermediaries, such as access and storage providers, marketplace exchanges, buy/sell fulfilment, demand collection systems, auction brokers, virtual marketplaces, as well as search engines, advertising networks, web aggregators, news syndicators, or social networking sites, have emerged to carry out these functions over the Internet.¹⁵

STATUTORY FRAMEWORK

Around the world, trademark systems include comprehensive provisions addressing the liability of accessories and intermediaries. Because intellectual property infringement is generally regarded as a subset of a tort, courts in the United States and the majority of European countries have applied general tort law rules on joint tortfeasors and accessory liability. Legislation has only lately intervened to introduce specific measures such as safe harbors for internet service providers or clauses allowing injunctions against intermediaries whose services have been exploited by infringers.¹⁶

¹⁴ <https://Read.Oecd-Ilibrary.Org/> The Role Of Internet Intermediaries In Advancing Public Policy Objectives, OECD

¹⁵ The Economic And Social Role Of Internet Intermediaries, <https://www.oecd.org/> by Ms. Karine Perset of the OECD's Directorate for Science Technology and Industry. It was declassified by the ICCP Committee at its 59th Session in March 2010. It was originally issued under the code DSTI/ICCP(2009)9/FINAL.

¹⁶ The Liability of Intermediaries for Trade Mark Infringement, Ansgar Ohly

However, general tort law applies in the absence of such specific legislation. Tort law is a branch of domestic law. While comparative studies reveal common structures, there are no international tort law principles. This isn't a problem in a strictly domestic setting, but it can pose problems in multi-level systems.¹⁷

There are no general principles of tort law since it is a domestic area of law. The legislative authority for tort law and intellectual property law is situated at separate levels in multi-level systems like federal states or supranational unions, which creates difficulty. The Restatements of Torts and the common law heritage in the US have contributed to a high degree of consistency. In the EU, there are many different legal traditions, which has prevented the development of a unified strategy. In order to avoid undermining the EU's efforts at harmonization, the EU legislature and CJEU must either leave the concepts of secondary responsibility to the member states.¹⁸

There are no E.U. law causes of action for the liability of intermediaries, but only safe harbor provisions. This is because E.U. law causes of action for the liability of intermediaries create friction with domestic tort law and neighboring areas such as the protection of privacy.

U.S LAW

There are no E.U. law causes of action for the liability of intermediaries, but only safe harbor provisions. This is because E.U. law causes action for the liability of intermediaries create friction with domestic tort law and neighboring areas such as the protection of privacy. Anyone who uses a reproduction or imitation of a trademark in a way that is likely to confuse consumers is guilty of the primary infringement of a trademark, which is defined by section 114(1)(a). If intermediaries themselves present information provided by third parties in a way that causes confusion, they may be held accountable for primary infringement. In terms of U.S. copyright law, intermediaries are not protected by comparable statutory defenses from accusations of trademark infringement. with domestic tort law and neighboring areas such as the protection of privacy.

¹⁷ See for U.S. law G.B. Dinwoodie, Secondary Liability for Online Trademark Infringement: The International Landscape, 37 COLUM. J.L. & ARTS 463, 472–73 (2014); S. Dogan, Approaches to Secondary Liability for Trademark Infringement – Common Law Evolution, in The Cambridge Handbook Of International And Comparative Trademark Law.

¹⁸Supra

E.U.LAW

Online market intermediaries in European nations manage trademarks similarly to those in other parts of the world. To protect trademarks in the EU, nevertheless, there are special laws and processes to follow. Businesses can register their trademarks with the European Union Intellectual Property Office (EUIPO) in accordance with the EU Trade Mark Regulation, which lays out the guidelines for trademark registration and protection in all EU member states. Online market intermediaries in Europe frequently offer tools and services, such as a trademark search engine and a faster procedure for sellers to register their trademarks with the EUIPO, to assist firms with the EUIPO trademark registration process.

Online market intermediaries may also assist in the enforcement of trademark rights by taking action against the seller and registering a complaint with the online marketplace. In general, internet market intermediaries in European nations provide useful tools and services to assist firms in safeguarding their trademark rights and making sure they are in compliance with EU legislation.

There are two distinct regimes for trademark law in the European Union, the EU Trade Mark Regulation (EUTMR) and the Trade Mark Directive of 1988 (TMD). There are three types of infringement under both regimes' infringement provisions: double identity, the possibility of confusion, and dilution and misappropriation. The IPR Enforcement Directive (IPRED) has horizontally harmonized the remedies available in situations of intellectual property infringement, however, EU trademark law does not have a provision on secondary infringement. According to IPRED's Article 11(3), member states must make sure that owners of intellectual property rights can seek an injunction against intermediaries whose services are utilized by another party to violate such rights.

The growth of the European digital single market was in danger of being hampered by the absence of legal remedies for intermediaries, thus the legislative bodies of the EU made the decision to adopt safe harbor measures that were modeled after American copyright law. All forms of intellectual property infringement and other torts committed online are subject to the horizontal application of Articles 12 to 15 of the Directive on Electronic Commerce (ECD). Internet service providers are not responsible for caching or merely acting as a conduit (Article 12 ECD). According to Article 14 of the ECD, hosts are exempt from responsibility unless they

know about the unlawful behavior or fail to remove the illegal content promptly after learning of it.

Internet service providers are exempt from monitoring requirements under Article 15 ECD, which states that they are protected by Articles 12 to 14 ECD. The safe harbors are constrained in three ways, though. First off, they have no bearing on a court's ability to order the cessation or prevention of an infringement. Second, the CJEU has determined that only technological, automated, and passive operations are covered by Articles 12 to 15 ECD. Third, hosts may also be required to take reasonable measures to prevent future instances of infringement in addition to their need to remove illegal content. Therefore, the CJEU makes a distinction between general monitoring obligations that are disregarded by Article 15 ECD¹⁹.

INDIAN LAW

In India, online market intermediaries like Amazon India, Flipkart, and Snapdeal provide tools and services to help firms manage their trademarks. These consist of trademark enforcement services, trademark registration services, and trademark search tools. To make sure their trademarks are registered and protected, however, firms should exercise due diligence on their own and speak with a trademark attorney. The Trade Marks Act, of 1999 is the main piece of legislation controlling trademarks in India.²⁰

THE LIABILITY OF ONLINE INTERMEDIARIES

Online market intermediaries can be liable for trademark infringement if they have knowledge of the infringement and fail to take appropriate action to remove the infringing content. The liability of online intermediaries varies across different jurisdictions, with some countries providing safe harbor protection to intermediaries that comply with specific notice-and-takedown procedures.

In the United States, the Digital Millennium Copyright Act (DMCA) provides a safe harbor for online intermediaries with regard to copyright infringement but does not provide similar protection for trademark infringement. However, courts have held that online intermediaries can be liable for trademark infringement if they play an active role in the infringing activity or

¹⁹ *supra*

²⁰ Liabilities of Intermediaries In Trademark Infringement Cases In India

if they have actual knowledge of the infringement and fail to take appropriate action to remove the infringing content.²¹

The E-Commerce Directive in the European Union offers online intermediaries safe harbor protection for activities conducted at the users' direction. They risk losing this protection, though, if they are aware of pirated content and do nothing about it. The Trade Mark Directive and the Intellectual Property Enforcement Directive, which hold intermediaries accountable for infringement, are two further pieces of specialized EU legislation that address trademark infringement. Online market intermediaries should be aware of their trademark liabilities and take the necessary precautions to avoid infringing on the trademarks of others. These include putting in place efficient notice-and-takedown procedures, keeping an eye out for content that might be infringing, and working with trademark owners to remove any such content.²²

THE ISSUE OF THE PROTECTION OF TRADEMARKS ON ONLINE MARKET INTERMEDIARIES

One key issue that arises in the context of online market intermediaries is the protection of trademarks. Trademarks are distinctive signs used to identify and distinguish the goods and services of one business from those of another. In the digital age, trademark infringement has become a significant concern for brand owners. Thus, online market intermediaries need to be vigilant in monitoring their platforms to ensure that trademark infringement does not occur.²³

Online market intermediaries have developed various measures to address platform trademark infringement. For example, some platforms have introduced algorithms that detect potential trademark infringements and flag them for review. Other platforms have established mechanisms for reporting trademark infringement, such as a reporting tool that enables brand owners to submit a complaint about a specific listing or seller.²⁴

The inference from online market intermediaries on trademark introduction is that they are committed to protecting trademark rights and preventing infringements on their platforms.

²¹ THE DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA), BUSINESS LAW.

²² Reform of the EU liability regime for online intermediaries Background on the forthcoming digital services act, IN-DEPTH ANALYSIS EPRS | European Parliamentary Research Service Author: Tambiama Madiega Members' Research Service PE 649.404 – May 2020

²³ Protecting Your Trademark In The Digital Age: A Guide To Online Trademark Infringement

²⁴ Intermediary Liability and Online Trade Mark Infringement: Emerging International Common Approaches, The Oxford Handbook of Online Intermediary Liability, May 2020 (edited by Giancarlo Frosio), Frederick Mostert, King's College London

These platforms have introduced measures to detect and prevent trademark infringements, as well as initiatives to educate their sellers about trademark rights and best practices. Through these efforts, online market intermediaries play an important role in ensuring a fair and competitive marketplace where trademark rights are respected and protected.²⁵

Online market intermediaries can provide valuable assistance to businesses when introducing new trademarks to the market. They offer various tools and services for trademark searches, registration, and enforcement, which can help businesses protect their intellectual property rights and avoid infringing on the rights of others.

ROLE IN THE ENFORCEMENT OF TRADEMARK RIGHTS ON ONLINE MARKET INTERMEDIARIES

Online market intermediaries play a crucial role in the enforcement of trademark rights. In recent years, e-commerce platforms have been increasingly held liable for trademark infringement by third-party sellers on their platforms. As a result, many online market intermediaries have developed internal policies and procedures for identifying and removing listings that infringe on trademark rights.

The rules that apply to the case of auction sites and keyword advertising are typically clear, but more recently, legal proceedings have been launched against Amazon in the United States, the United Kingdom, and Germany. Amazon blends two business models, online shopping and an online marketplace. The algorithms used by Amazon's search engine give results based on an analysis of previous searches. When consumers input a trademark as a search phrase, Amazon occasionally shows both the goods of the trademark owner and rival products in the search results. The claimant in the German lawsuit furthermore offered its own goods on Amazon.

The claimants' items in the US and UK lawsuits were unavailable on Amazon, and the search results only showed rival goods. The only issue, according to the Ninth Circuit's analysis of the case in the United States, was consumer confusion. Judge Bea claimed that there was enough evidence of consumer uncertainty to prevent a conclusion by summary judgment. In E.U. the distinction between primary and secondary culpability is hazier in the legal system. Both Amazon as a merchant and Amazon as the owner of the search engine are separate businesses. In its own marketing communications, Amazon claimed that its search engine did not use the

²⁵ Supra

relevant trademarks. The origin function was unaffected because all offers were clearly labeled, and the Google test was used to detect any adverse impacts on trademark functions. These reasons did not convince Mr. John Baldwin, QC, sitting as a deputy judge in the High Court of England and Wales.

When looking for the trademark owner's goods, the typical consumer was probably under the impression that clicking on the results would lead them to it. When looking for the product of the trademark owner, the typical customer was probably under the impression that clicking on the search list's results would lead them to it. The German Federal Supreme Court decided that Amazon had utilized the trademark. It distinguished this case from those involving search engines and auction platforms by pointing out that it was solely Amazon's obligation to show the search results and that advertisers had no control over this. The court also made the observation that similar to the ruling of the Ninth Circuit in *Multi-Time Machine v. Amazon*²⁶, the typical user of online sales platforms was accustomed to searching lists that produced varied results. The Federal Supreme Court ruled that Amazon could not depend on the Safe Harbor Provision for hosting.

The application of trademark case laws can vary greatly depending on the country in which the online market intermediary operates. For example, in the United States, online market intermediaries can take advantage of safe harbor provisions under the Digital Millennium Copyright Act (DMCA) for trademark infringement. These provisions limit the liability of online market intermediaries for trademark infringement by third-party sellers on their platforms.²⁷

CASE LAWS

One relevant case that highlights the role of online market intermediaries in trademark infringement is the case of *Tiffany (NJ) Inc. v. eBay Inc*²⁸. In this case, Tiffany, the well-known jewelry company, sued eBay, the online marketplace, for trademark infringement.

Tiffany argued that eBay was facilitating the sale of counterfeit Tiffany products on its platform and that eBay was not doing enough to prevent this activity. Tiffany claimed that eBay was

²⁶ *Multi-Time Machine v. Amazon* 804 F.3d 930 (9th Cir. 2015)

²⁷ *Liability of Online Marketplaces and Social Networking Websites*, Raghav Agrawal Jindal Global Law School, Volume 10, May 2020, ISSN 2581-5504

²⁸ *Tiffany (NJ) Inc. v. eBay Inc.* 600 f.3d 93 (2d Cir. 2010)

liable for trademark infringement because it was profiting from the sale of counterfeit goods and was not taking sufficient measures to stop it.

The case went to trial in 2008, and the court ultimately ruled in favor of eBay. The court held that eBay was not liable for trademark infringement because it had taken reasonable steps to prevent the sale of counterfeit goods on its platform. eBay had implemented a number of measures to detect and remove infringing listings, including a program that allowed trademark owners to report infringing listings to eBay for removal. The court also found that eBay's use of Tiffany's trademarks in its advertising was not infringing because it was a nominative fair use. eBay had used Tiffany's trademarks to describe the genuine Tiffany products that were being sold on its platform, rather than to suggest that eBay was affiliated with or endorsed by Tiffany.

This case illustrates the importance of online market intermediaries in managing trademark infringement. While trademark owners have a responsibility to monitor and enforce their own trademarks, online marketplaces also play a crucial role in preventing the sale of counterfeit goods on their platforms. By implementing measures to detect and remove infringing listings, online marketplaces can help prevent trademark infringement and protect the rights of trademark owners.

In the case, *Louis Vuitton v. Akanoc Solutions*²⁹ the luxury brand Louis Vuitton sued Akanoc Solutions, a web hosting company, for hosting websites that sold counterfeit Louis Vuitton products. The court found that Akanoc was liable for contributory trademark infringement, as it had knowledge of the infringing activity and failed to take action to prevent it.

In the case, of *Perfect 10 v. Amazon*³⁰, the adult entertainment company Perfect 10 sued Amazon for copyright and trademark infringement, claiming that Amazon was allowing third-party sellers to offer infringing content on its site. The court found that Amazon was not liable for trademark infringement, as it was acting as an online intermediary and did not control the content posted by third-party sellers.

In the case of *Christian Louboutin SAS vs Nakul Bajaj & Others*³¹ The Plaintiffs (Christian

²⁹ *Louis Vuitton v. Akanoc Solutions inc* Nos. 10–15909, 10–16015.

³⁰ *Perfect 10 v. Amazon Inc.* 508 F.3d 1146

³¹ **Christian Louboutin SAS vs Nakul Bajaj & Others on 2 November 2018 CS (COMM).NO.344 of 2018**

Louboutin) filed a trademark infringement suit against an e-commerce website www.darveys.com (Defendants). The Plaintiffs claimed that their products were sold only through an authorized network of exclusive distributors. The Defendants were selling various luxury products on their website including the Plaintiff's products by claiming that they were 100% authentic. The Plaintiffs alleged that apart from selling and offering counterfeit products, the image of the founder of the Plaintiff and the names Christian and Louboutin were used as meta tags. The Hon'ble Court observed that no factual issues arose in the determination of the case as the Defendants had not disputed the proprietary rights of the Plaintiff over their brand Christian Louboutin.

The Defendants contended that the products sold through their website were genuine, however, they were not providing after-sales warranty or services. The only aspect to be decided was whether the Defendants' use of the Plaintiffs' mark and logo was justified under Section 79 of the Information Act, 2000. The Hon'ble court perused the Defendants' website and observed that customers were required to pay a membership fee and provided an authenticity guarantee to return twice the money if the products turned out to be fake or not of expected quality. Quality checks of the products were carried out by a third-party team and the invoices generated were those of the website (defendant) company. To determine whether an online marketplace or e-commerce website is an intermediary, the court examined the nature of services that would fall within the ambit of service contemplated in the definition of intermediary.

The court was convinced that Defendant exercised complete control over their sale of products and they were much more than just an intermediary. The Hon'ble Court noted that e-commerce websites and online marketplaces were required to operate with caution if they wanted to enjoy the immunity provided to the intermediaries under Section 79 of the IT Act. When an e-commerce website is involved in or conducts its business in such a manner, it could cross the line from being an intermediary to an active participant. The conduct of intermediaries in failing to observe due diligence with respect to IPR could amount to conspiring or abetting, aiding, or inducing unlawful conduct and may lose the exemption to which intermediaries are entitled. Finally, the Hon'ble Court ascertained whether there was any falsification of Plaintiff's trademark under Section 2(2)(c), 101 and 102 of the Trademarks Act, 1999.

These provisions were being looked at to ascertain what constituted conspiring, abetting, aiding, or inducing, the commission of an unlawful act, in the context of trademark rights. The

Hon'ble Court concluded that the use of the plaintiff's mark in respect of genuine goods would not be an infringement and in respect of counterfeit goods, it could constitute infringement. The Court noted that the Defendant was not entitled to protection under Section 79 of the Information Technology Act. Additionally, the use of Plaintiff's mark, the name and photograph of the founder without permission, and the sale of products without ensuring genuineness constituted a violation of Plaintiff's rights. The Court held that the Defendants' use of meta-tagging would constitute infringement.

The suit was decreed directing Defendant to disclose the details of all its sellers, their addressee, and contact details on the website, and prior to uploading a product bearing Plaintiff's mark, Defendant was required to obtain concurrence before offering for sale on its platform. It is apparent that the legislative intent is to protect genuine intermediaries and it cannot be extended to those persons who are not intermediaries and are active participants in the unlawful act.

CONCLUSION

In addition to search tools, online market intermediaries also provide services for trademark registration. For example, some marketplaces offer a streamlined process for sellers to register their trademarks with the relevant government agency. This can save businesses time and money, as they do not have to navigate the complex trademark registration process on their own. Online market intermediaries can provide valuable assistance to businesses when introducing new trademarks to the market. They offer various tools and services for trademark searches, registration, and enforcement, which can help businesses protect their intellectual property rights and avoid infringing on the rights of others.

Regulating online market intermediaries is an important issue that requires careful consideration and thoughtful reforms. By strengthening consumer protection, promoting fair competition, enhancing regulatory oversight, and fostering innovation, policymakers can help ensure that these intermediaries continue to benefit consumers and businesses alike while also addressing the unique challenges they pose.