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CHRISTIAN LOUBOUTIN SAS V. NAKUL BAJAJ – INTERMEDIARY LIABILITY IN E-COMMERCE

Nirmiti Umesh Patil

Case Title	Christian Louboutin Sas V. Nakul Bajaj
Case Citation	2018 SCC OnLine Del 12215
Date of Judgement	November 2, 2018
Jurisdiction	Delhi High Court
Coram	JUSTICE PRATHIBA M. SINGH
Author of the judgement	JUSTICE PRATHIBA M. SINGH

ABSTRACT

The core issue of this case is related to the concept of intermediary liability. The IT Act, 2000 provides protection to the intermediaries under Section 79¹, which is also referred to as the safe harbour provision. The safe harbour provision has its own ambiguities revolving around its application and limitation, which are exacerbated in this dynamic e-commerce landscape. As the e-platforms transform from passive conduits to active participants who facilitate trade, the difference between intermediary and marketplace becomes blurry. In this case of Christian Louboutin SAS v. Nakul Bajaj², the Court discussed the role of intermediaries in trademark infringement. They discussed how the platforms are functioning as interface entities, shaping consumer perception and influencing purchasing decisions, and therefore going beyond being mere facilitators. The Hon'ble Court in this judgment provided new judicial guidance, and this commentary will critically analyse intermediary liability through the lens of this judgment.

¹ Information Technology Act, 2000, §79, No.21 Acts of Parliament, 2000 (India)

² Christian Louboutin Sas v. Nakul Bajaj, 2018 SCC OnLine Del 12215



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Keywords – Safe Harbour Provision, Section 79 of IT Act, Intermediary Liability, role of interfaces

BACKGROUND AND FACTS OF THE CASE

Christian Louboutin is a renowned French luxury brand named after its owner and famous designer, Mr. Christian Louboutin. The brand is well known for selling high-end luxury products, particularly its signature red-soled stilettos. It owns various trademarks; in the context of this case, the word “CHRISTIAN LOUBOUTIN” is trademarked. To maintain its exclusivity, Louboutin products are sold only through limited authorised stores and boutiques. In India, they have two authorised stores located in Delhi and Mumbai.

The plaintiffs were made aware of the defendants through one of their customers who attended the event “Bridal Asia,” where, among numerous other brands, the plaintiff’s products were on display. The plaintiffs contended that the defendants sold counterfeit products without their permission. They also contended that the defendants used the trademark in large font size, along with trademarked write-ups, the red-sole design, and used the trademark in meta-tags on their website.

The defendants sought protection under the safe harbour provision of Section 79 of the IT Act, claiming their role was limited to hosting listings and that they qualified as intermediaries under Section 2(w)³ of the IT Act, 2000.

ISSUES OF THE CASE

There was no dispute on the factual matrix as Plaintiff’s proprietary rights were not disputed and were acknowledged by the defendant in the plaint. The only question of law was that defendant’s contention to be provided protection under the Section 79, IT Act, 2000. So, the two issues that arose were –

- a) Whether the defendants use of the trademarked logos, mark and image is protected under the Section 79 of the IT Act, 2000?
- b) Whether the plaintiff is entitled to relief and if so, in what terms?

ANALYSIS

³ Information Technology Act, 2000, §2(w), No.21 Acts of Parliament, 2000 (India)



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The analysis of this case primarily relies on two statutes which are the IT Act, 2000 and the Trademarks Act, 1999. Section 79 of the IT Act grants Safe Harbour in cases where platforms act like mere transmitters and are not active participants. In this case the court lists out 26 factors that could show active participation, consequentially they are not neutral intermediaries⁴. In this case, Darveys.com was involved in multiple activities such as offering transport, disclosing seller details, advertising the products on the platform, using trademarks in meta tags, write-ups and invoice. Darveys.com provided authenticity guarantee where they guaranteed money back if the product was not genuine, it charged a membership fees as it was members only platform, the picture of shipping truck had Darvey.com written on it implicating involvement in logistics. All of these were indicators of active participation. Under S. 79(3)⁵ all such activities proved the defendants' role as more than just Intermediaries. Hence, defendants were not eligible for safe harbour protection.

The court applied the standard of *constructive knowledge*, under S. 79 (3) which provides that it is necessary that the intermediaries have to observe due diligence and act expeditiously once they have actual knowledge. In this case the court stated that the defendants activities show that they were aware of the infringement and therefore had constructive knowledge. It addressed the need for proactive monitoring of all the content and sales.⁶

The court expanded the scope of Trademark infringement accounting the use of trademark on invoices, packaging or on labels to amount as infringement as it can mislead the consumers into believing the same as authorized products and give away a false impression. Therefore under S. 101⁷ and S.102⁸ of the Trademarks Act, 1999 it amounted to falsification. Use of Trademarks in meta-tags was also held as infringement.

⁴ Gerald Spindler, Internet Intermediary Liability Reloaded, 8 J. INTELL. PROP. INFO. TECH. & ELEC. COM. L. 166 (September 2017)

⁵ Information Technology Act, 2000, §79(3), No.21 Acts of Parliament, 2000 (India)

⁶ Aditi Chaudhary & Sanjana Mehta, Analysis of Intermediary Liability, 3 INDIAN J.L. & LEGAL RSCH. 1 (December 2021 - January 2022).

⁷ Trademarks Act, 1999, §101, No.47 Acts of Parliament, 1999 (India)

⁸ Trademarks Act, 1999, §102, No.47 Acts of Parliament, 1999 (India)



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The loophole of defence under S. 30 (3)⁹ further states that resale of genuine goods in the market doesn't amount to infringement. The court stated that marketing genuine goods without authorization will mislead consumer which constitutes as infringement. The court implicitly recognized the duties of "catalogue host" i.e. a platform that presents listings of various luxury products and is playing a role akin to a distributor and therefore Darveys.com was acting as a brand interface and therefore this defence was not available to the defendants.

JUDICIAL PRONOUNCEMENTS

The court's decision was based on key precedents. In *Shreya Singhal v. Union of India*¹⁰, the court held that intermediaries, when having actual knowledge (interpreted as a court order), should remove unlawful content expeditiously. The court in the present case extended this to include constructive knowledge, such as the use of meta-tags and trademarks on invoices.

In *MySpace Inc. v. Super Cassettes Ltd*¹¹, the court observed that Section 79 grants a measured privilege i.e., it provides an affirmative defence, not blanket immunity. This privilege is lost if platforms act as more than mere facilitators. In this case, Darveys.com was actively promoting listings, which disqualified it from safe harbour protection.

In *Kapil Wadhwa v. Samsung Electronics*¹², the use of meta-tags was held to constitute trademark infringement. Even though such use is invisible to consumers, it redirects traffic away from the trademark owner's site, amounting to a loss. Since the defendants used Louboutin's trademark in meta-tags it constituted to infringement.

Globally, in *Google France SARL v. Louis Vuitton*¹³, the CJEU held that exemption can only be granted when the service is limited to technical processes which are merely passive, technical, and automatic. The concept of "mere conduit" was established. "*In order to constitute a mere conduit, the service provider should not initiate the transmission, select the receiver of the transmission, or select*

⁹ Trademarks Act, 1999, §30 (3), No.47 Acts of Parliament, 1999 (India)

¹⁰ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

¹¹ *Myspace Inc. v. Super Cassettes Industries Ltd.*, 2016 SCC OnLine Del 6382

¹² *Samsung Electronics Company Limited v. Kapil Wadhwa*, 2012 SCC OnLine Del 1004

¹³ *Google France SARL and another v. Louis Vuitton Malletier SA*, [2011] Bus LR 1



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*or modify the information contained in the transmission.*¹⁴ The Indian court aligned with this reasoning, noting that Darveys.com did not operate as a mere conduit.

In *L'Oréal v. eBay*¹⁵, the European court discussed the unauthorized and counterfeit sales of L'Oréal products and use of the brand name in product listing and Google Ads. It was stated that when a platform starts promoting listing, assists the sellers in optimization of offers and influences buying decision, it ceases to be an intermediary as this is not mere conduit. In the case of *Tiffany v. eBay*¹⁶ the concept of contributory infringement was introduced as eBay had taken sufficient steps to stop sale of counterfeit items but eBay had enough reason to suspect the sale of counterfeit products and court stated that a platform isn't allowed to observe wilful blindness and held eBay accountable for contributory infringement. These precedents guided the judgement in the current case.

JUDGEMENT

The Hon'ble Court awarded a permanent injunction stopping the defendants from using any of the plaintiff's trademarks in any images, descriptions, or invoices. It directed the defendants to remove all the materials using the plaintiff's trademarks in meta-tags and their website. The court also mandated obtaining the certificates of authenticity from the sellers, and that for international sellers, Darveys.com must obtain concurrence in written agreement before offering products for sale. Upon having any knowledge of counterfeit goods, the platform must remove such listings. Since in this case, there was no evidence of actual sale of the plaintiff's products, no damages were awarded to the Plaintiffs.

IMPLICATIONS OF THE JUDGEMENT

This judgment exposed the grey zones of e-commerce liability.¹⁷ It also laid down 26 factors to examine the platform participation, plausible deniability still remains a concern—especially when sellers names are disclosed but not verified. This loophole enables unauthorised and counterfeit sales.

¹⁴ Ibid

¹⁵ *L'Oréal SA v eBay International AG* [2012] Bus LR 1369

¹⁶ *Tiffany (NJ) Inc v eBay Inc* (2008) 576 F Supp 2d 463 (US District Court, Southern District NY);

¹⁷ Akash Chatterjee & Moulinath Moitra, *Intermediary Liability Issues in India - How Social Is Social Media?*, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022)



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The 26 factors provide a strong framework and scalable standards, but they also create uncertainty in defining “active participation,” particularly in cases where platforms are providing limited support, like payments or logistics.

While requirement of written assurances sounds like a good idea in theory but it can place a heavy burden on the smaller platforms. It could stifle innovation and deter entry in a competitive market. Likewise, the constructive knowledge standard—while effective in curbing wilful blindness, by requiring repackaging of the infrastructure imposes auditing obligations that can be infeasible for smaller entities. Implementing reforms around trademark use in digital packaging and invoice design also requires infrastructural capabilities many platforms lack.

Moreover, the judgment does not address newer emerging technologies like algorithmic recommendations, AI-generated listings, or automated bundling which are the features that now heavily influence consumer behaviour. While the court’s alignment with global precedent demonstrates a commitment to watertight IP protection and consumer protection, these unaddressed areas highlight the need for clearer and scalable compliance standards. Then protection of brands IP rights can grow along with the digital market.

CONCLUSION

This judgment was transformative as it laid the cornerstone of legal framework around intermediary liability in e-commerce. By outlining the 26 factors of the conduct of the intermediary, recognition of the constructive knowledge standard, and acknowledging the use of trademarks in meta-tags amounts to infringement, the court strengthened its position in enforcement of brand IP rights in the digital age. It marked a paradigm shift from platforms being viewed as the mere passive facilitators to brand interfaces. By aligning with global precedents, as seen in *L’Oréal v. eBay*¹⁸, the judgment safeguarded consumer protection and IP rights, setting a precedent for evaluating intermediary liability in the dynamic e-commerce.

¹⁸ Ibid