# TRADEMARK INFRINGEMENT ON E-COMMERCE MARKETPLACES: RE-EXAMINING INTERMEDIARY LIABILITY UNDER INDIAN LAW

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## ABSTRACT

This article examines the evolving Indian standard for e-commerce marketplace liability for trademark infringement, tracing the doctrinal foundation laid in Christian Louboutin SAS v. Nakul Bajaj through two recent, seemingly divergent Delhi High Court decisions: PUMA SE v. IndiaMART InterMESH Ltd., which found a directory-style platform not liable, and Hindware Ltd. v. Google LLC, which found a keyword-advertising platform liable. It situates these decisions alongside the earlier keyword-advertising line of cases and briefly compares the Indian position with the United States and European Union, before considering what the resulting feature-by-feature liability standard means in practice for brand owners and platforms.

## INTRODUCTION

Buy almost anything online in India today, and there's a decent chance you'll run into a counterfeit sooner or later. A “Puma” shoe that isn't quite Puma. A recharge offer that borrows the Jio name without permission. A kitchen appliance sold under a brand that looks familiar until you read it twice. The seller is usually anonymous, based somewhere untraceable, and gone by the time anyone complains. So the trademark owner's real question is rarely “who sold this fake?” It's “who is responsible when the platform made the sale possible in the first place?”

Indian courts have spent the better part of a decade trying to answer that question, and the answer keeps shifting depending on how actively a given platform behaved — not simply on whether infringement happened somewhere on its site. This article looks at where the law currently stands, why two recent Delhi High Court decisions appear to pull in different directions on very similar facts, what a slightly older but still relevant line of keyword-advertising cases adds to the picture, and what all of this means in practice for both brand owners and the platforms that host them.

## THE STATUTORY STARTING POINT

Two statutes matter here, and they weren't really written with each other in mind. The Trade Marks Act, 1999 makes it infringement to use a registered mark in the course of trade without authorisation.[1] It says nothing specific about online marketplaces, for the fairly obvious reason that it was drafted before Indian e-commerce looked anything like it does now. The Information Technology Act, 2000, on the other hand, does speak directly to online intermediaries. Section 79 offers a conditional safe harbour from liability for third-party content, on the condition that the intermediary does not initiate the transmission, does not select the receiver of the content, does not modify it, and acts promptly to take down unlawful material once it has actual knowledge or receives a government or court order to that effect.[2] The Intermediary Guidelines and Digital Media Ethics Code Rules, 2021 layer on further due diligence obligations, including specific grievance redressal timelines that platforms are expected to meet.[3]

The trouble is that these two statutes ask different questions. Trademark law asks whether infringement occurred. Information technology law asks whether the platform behaved passively enough to deserve protection even if infringement did occur somewhere on its site. Indian courts have had to build the bridge between the two almost entirely through case law, and, as the next two sections show, that bridge hasn't been built the same way twice.

## THE FOUNDATIONAL TEST: CHRISTIAN LOUBOUTIN V. NAKUL BAJAJ

Nearly every subsequent case traces back to the Delhi High Court's 2018 decision in *Christian Louboutin SAS v. Nakul Bajaj & Ors.*[4] There, the Court held that an e-commerce platform loses Section 79 protection the moment it stops being a passive conduit and starts actively participating in the sale itself — by promoting particular listings, offering its own quality assurance, arranging packaging and delivery, or otherwise inserting itself into the transaction beyond simply hosting it. The Court laid out a fairly detailed list of relevant factors: whether the platform identifies sellers and discloses their contact details, whether it merely provides space for a marketplace to function or takes on a more hands-on role, and generally how deep its involvement in the actual sale runs. This “active versus passive” distinction has shaped essentially every marketplace liability case decided since.

It's worth pausing on why courts settled on this particular line, rather than something simpler like “was the platform aware of the infringement.” Awareness alone would be a low bar —

[1]Trade Marks Act, No. 47 of 1999, § 29 (India).
[2]Information Technology Act, No. 21 of 2000, § 79 (India).
[3]Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (India).
[4]Christian Louboutin SAS v. Nakul Bajaj & Ors., 2018 SCC OnLine Del 12215 (India).

almost every large platform is generically aware that some sellers, somewhere, are probably selling counterfeits, given the scale at which they operate. The Nakul Bajaj test instead asks about conduct: does the platform's own business model depend on curating, promoting, or otherwise adding value to the specific listing in question? If so, it looks less like a passive host and more like a participant in the sale, and the safe harbour logic — which exists to protect platforms that cannot realistically police every listing — stops applying with the same force.

**TWO 2025–26 DECISIONS, TWO DIFFERENT OUTCOMES**

The tension in current law is easiest to see by placing two recent Delhi High Court rulings side by side. In *PUMA SE v. IndiaMART InterMESH Ltd.*[5], a Division Bench set aside an interim injunction that had earlier been granted against IndiaMART, a B2B online directory platform. The Bench held that IndiaMART's use of the PUMA mark in an auto-generated dropdown menu — meant simply to help sellers categorise their own listings — did not amount to infringement, and did not amount to aiding or abetting infringement by third-party sellers either. The underlying reasoning was that liability for the actual sale of counterfeit goods sits between buyer and seller, and a platform functioning mainly as a searchable directory doesn't cross into active participation just because its own interface happens to use a trademarked term to sort categories.

Now compare that with *Hindware Ltd. v. Google LLC & Ors.*[6], decided in May 2026. There, the Court found Google liable for trademark infringement over its keyword advertising programme, which let competitors bid on and purchase the registered mark HINDWARE as a search keyword — triggering their own sponsored ads whenever consumers searched for the Hindware brand. Google was permanently restrained from permitting this use and directed to pay damages jointly and severally. The Court treated Google's active sale and monetisation of the trademark as a keyword — a commercial transaction the platform itself profits from, directly — as categorically different from passive hosting, placing the conduct squarely within the “active participation” bucket that Nakul Bajaj had described years earlier.[7]

Read together, these two cases aren't strictly inconsistent, but they do show how fine the line has become. IndiaMART's dropdown menu and Google's keyword auctions both involve a

[5]PUMA SE v. IndiaMART InterMESH Ltd., decision of the Division Bench, Delhi High Court (June 2025); see also SpicyIP, Is It a Marketplace or Just a Directory? The DHC Considers Trademark Infringement from IndiaMART (June 18, 2025).
[6]Hindware Ltd. v. Google LLC & Ors., CS(COMM) 591/2017 & CS(COMM) 592/2017, Delhi High Court (May 22, 2026).
[7]Google India Pvt. Ltd. v. DRS Logistics (P) Ltd., 2023 SCC OnLine Del 4809 (India).

platform's own systems interacting with a trademarked term without the mark owner's permission. Yet one was treated as passive categorisation and the other as active commercial exploitation. The distinguishing factor the courts drew was essentially about revenue and intent: a search-and-sort feature that helps buyers find sellers is, in the Court's view, a different animal from a paid advertising product that a platform deliberately builds and sells because trademarked search terms happen to be commercially valuable. For platforms and brand owners alike, this means liability now hinges on a granular, feature-by-feature look at how a platform's architecture actually works — not on a simple label like “marketplace” or “search engine.”

## AN EARLIER THREAD: THE KEYWORD ADVERTISING CASES

Hindware didn't arrive out of nowhere. It builds on an existing, somewhat unsettled line of keyword-advertising cases that Indian courts had already been working through. In *Google India Pvt. Ltd. v. DRS Logistics*[8], a Division Bench had earlier held that the use of a trademark as a keyword, purely to trigger advertisements, could itself constitute infringement where it caused confusion or took unfair advantage of the mark's reputation — a departure from Google's long-standing position that keyword bidding was a purely internal, technical process with no visible use of the mark at all. *MakeMyTrip India Pvt. Ltd. v. Booking.com B.V.*[9] pushed on similar territory, examining when the use of a competitor's mark as a bid term crosses into infringement rather than legitimate comparative advertising. What Hindware adds to this thread is less a new legal test and more a firmer, more explicit application of it — with actual damages attached, which earlier decisions in this space had mostly avoided.

## THE ENFORCEMENT TREND: DYNAMIC INJUNCTIONS

Running alongside this doctrinal question of when a platform itself is liable, Indian courts have also been building out considerably stronger remedies against the actual infringers. In *Reliance Industries Ltd. v. Anonymous Sellers*[10], decided in July 2025, the Delhi High Court granted a dynamic injunction restraining anonymous sellers from using the RELIANCE and JIO marks across Amazon, Flipkart, Meesho, and Snapdeal, and directed immediate delisting of the infringing products identified. Dynamic injunctions let a trademark owner extend an existing injunction to newly discovered infringing listings or mirror sellers without filing fresh litigation every time — a genuinely useful tool given how quickly counterfeit listings tend to reappear

[8]MakeMyTrip India Pvt. Ltd. v. Booking.com B.V., 2022 SCC OnLine Del 3612 (India).
[9]Reliance Industries Ltd. v. Anonymous Sellers, Delhi High Court (July 10, 2025).
[10]Dabur India v. Ashok Kumar & Ors., Delhi High Court (Dec. 24, 2025).

under a slightly different seller name once one is taken down. A similar dynamic-plus approach has since been extended to fraudulent domain names that mimic well-known marks, allowing automatic protection against future variations without separate suits for each one.[11]

These remedies don't resolve the underlying platform-liability question, but they matter enormously in practice. Even where a platform escapes liability entirely under the Nakul Bajaj framework, a trademark owner today has real, reasonably scalable tools to chase down the actual infringing listings fairly quickly. That somewhat lowers the practical stakes of the platform-liability debate, even though the doctrinal debate itself continues to run in parallel.

## A BRIEF COMPARATIVE NOTE

It's worth noting, briefly, that India isn't alone in wrestling with this. In the United States, the Second Circuit's decision in *Tiffany (NJ) Inc. v. eBay Inc.*[12] held that generalised knowledge that counterfeits exist on a platform is not enough to impose liability — a platform must have specific knowledge of particular infringing listings before liability attaches, which is a considerably more platform-friendly standard than what Indian courts have developed under Nakul Bajaj. The European Union has moved somewhat differently again: the Digital Services Act, which came into force in 2024, imposes graduated due diligence obligations on “very large online platforms” specifically, scaling responsibility with a platform's size and reach rather than relying purely on a passive-versus-active behavioural test. India's approach sits somewhere between these two — more exacting than the American specific-knowledge standard, but without the EU's explicit size-based tiering. Whether Indian law eventually moves toward one model or continues developing its own case-by-case standard is very much an open question.[13]

## WHERE THIS LEAVES INDIAN LAW

Put together, the current position is roughly this: an e-commerce platform will generally keep its safe harbour where its role is limited to hosting, searching, and organising third-party listings, but will lose that protection the moment it starts actively participating in the transaction — through promotion, fulfilment support, or by selling the trademarked term itself as an advertising product. That's a workable framework in principle. In practice, it leaves real uncertainty at the margins, precisely because most major platforms today combine passive

[11] Tiffany (NJ) Inc. v. eBay Inc., 600 F.3d 93 (2d Cir. 2010).
[12] Regulation (EU) 2022/2065 (Digital Services Act), 2022 O.J. (L 277) 1.
[13]

hosting with an increasing number of active, revenue-generating features: sponsored listings, algorithmic recommendations, fulfilment services, and seller-support tools that blur exactly the line courts have been trying to draw.

The harder question, left largely unaddressed by both IndiaMART and Hindware, is what happens to consumers and brand owners while this line gets drawn case by case, feature by feature. A counterfeit seller can operate, get delisted, and simply reappear under a new name in the time it takes courts to resolve whether a particular platform feature counts as "active" or "passive." Dynamic injunctions help, but they're still a downstream fix — they deal with the infringing listing after it has already appeared, rather than changing a platform's underlying incentive to prevent it from appearing in the first place. A more durable answer probably requires platforms to build proactive seller verification into onboarding itself, rather than relying almost entirely on post-facto takedown obligations triggered only once a trademark owner has already noticed and complained.

For brand owners, the practical lesson right now is to treat platform-specific enforcement as a portfolio strategy rather than a single lawsuit: pursue dynamic injunctions against known infringers where possible, but also track how each major platform's specific features — search, recommendations, sponsored placements — are evolving, since that is precisely where the next liability dispute is likely to arise. For platforms, the lesson cuts the other way: every new revenue-generating feature built on top of user search behaviour, however incidental it may seem at the product-design stage, carries a live risk of being read later as "active participation" in a way that erodes the safe harbour the platform is otherwise relying on.

## CONCLUSION

Indian courts have moved a long way from the early, fairly abstract question of whether e-commerce platforms should ever be liable for third-party infringement, toward a much more granular, feature-specific inquiry into how a particular platform actually functions. That is, on balance, the right direction to be heading in — platforms differ enormously in design, and a one-size-fits-all liability rule would either let genuinely active platforms escape responsibility entirely or unfairly burden platforms doing little more than hosting a directory. But IndiaMART and Hindware, read side by side, show that this granular approach comes at a real cost to predictability. Until the line between passive hosting and active participation is drawn with more consistency across cases, both platforms and brand owners will keep litigating that line one feature, and one judgment, at a time.