



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgement delivered on: 02.06.2025*

+ **FAO(OS) (COMM) 6/2024, CM APPL. 2216 & 2219 of 2024**

INDIAMART INTERMESH LTD. Appellant

Versus

PUMA SE Respondent

Advocates who appeared in this case

For the Appellant : Mr Sandeep Sethi, Mr Rajshekhar Rao, Sr
Advocates with Mr Sidharth Chopra, Mr
Nitin Sharma, Mr Naman Tandon, Mr
Kuber Mahajan, Ms Riya Kumar, Mr Sumer
Saeth and Mr Harshil Wason, Advocates.

For the Respondent : Mr. Ranjan Narula, Mr. Shakti Priyan Nair
and Mr. Parth Bajaj, Advocates

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

JUDGMENT

VIBHU BAKHRU, J.

1. The appellant – IndiaMART Intermesh Limited [IIL] has filed the present intra-court appeal, *inter alia*, impugning a judgment dated 03.01.2024 [impugned judgment] passed by the learned Single Judge in an



application filed by the respondent – PUMA SE [PSE] under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 [the CPC] being I.A. No. 15564/2021 in CS(COMM) 607/2021 captioned *PUMA SE v. IndiaMART Intermesh Ltd.*, seeking interim reliefs.

2. PSE has filed the aforementioned suit [being CS(COMM) 607/2021], *inter alia*, seeking a decree of permanent injunction restraining IIL from using, facilitating, or offering to any third parties the trademark ‘PUMA’ as a brand suggestion/keyword/search term on its website <www.indiamart.com> or use the mark ‘PUMA’ in any manner which may amount to infringement of PSE’s registered trademarks and to restrain IIL from passing off its goods and services as that of PSE. PSE has also prayed for directions to be issued to IIL to remove all listing for sale of its counterfeit products or uploading any product images of its trademarks



, Form strip logo



without verification

and due diligence. Additionally, PSE seeks compensatory and punitive damages to the tune of ₹2,00,00,010/- from IIL. PSE’s aforementioned trademarks are hereafter referred to as ‘PUMA’.

3. In terms of the impugned judgment, the learned Single Judge has restrained IIL from providing any of PSE’s registered trademark including PUMA in respect of any goods as search option in the drop-down menu presented to prospective sellers at the time of their registration on their platform. The learned Single Judge has also directed IIL to take down all



infringing listings containing any of PSE's registered trademark in respect of goods, which are offered for sale.

4. The learned Single Judge has observed that IIL's use of the mark 'PUMA' amounts to trademark infringement under Sub-sections (1), (2) and (4) of Section 29 of the Trade Marks Act, 1999 [TM Act]. Further, IIL could not claim "safe harbor" protection under Section 79(1) of the Information Technology Act, 2000 [IT Act]. IIL being aggrieved by the impugned judgment has preferred the present appeal.

PREFATORY FACTS

5. IIL is a company incorporated under the provisions of the Companies Act, 1956. IIL is engaged in the business of operating an integrated electronic business to business [B2B] portal named <www.indiamart.com>, which provides internet based e-market place/platform [Indiamart]. Indiamart provides an interface between buyers and suppliers of various products and services. The sellers desirous of using IIL's platform get registered with IIL and list the products being dealt with by them on the platform. The buyers who are interested in the products as listed can contact the sellers whose details are listed. The sale-purchase transaction in respect of any goods is directly consummated by the buyers and the sellers without the involvement of IIL or its platform, Indiamart.

6. IIL claims to be an intermediary under Section 2(1)(w) of the IT Act. IIL claims that it enables sellers of various products and/or services in various industries to list their goods and services on its platform and does



not alter their content in any manner.

7. PSE is a company and it is established and incorporated under the laws of Germany. It claims that it is one of the world's largest manufacturer of sportswear and accessories. It operates in India through its wholly owned subsidiary, PUMA Sports India Pvt. Limited. PSE claims that it has been using the following registered trademarks since 1977, which have since become source identifiers for its products [**PUMA Products**]:

- a. word mark 'PUMA' registered under Class 18 and Class 25.



- b. device mark  under Classes 18, 24, 09, 03, 16, 41, 28, 14, 25 and 35.



- c. device mark  under Classes 18, 25 and 35



- d. device mark  under Class 25

8. In addition to the above, its aforementioned trademarks are also registered with the concerned authorities in other jurisdictions. PSE's trademark 'PUMA' has been declared as a well-known trademark by the Trademark Registry and was published in the Trademarks Journal No.1942 on 24.02.2020. PSE claims that it has also been afforded protection not only for identical goods but also for completely different goods including medicines, electrical goods, locks, chemicals etc.



THE DISPUTE

9. PSE claims that in August, 2021, it received various consumer complaints of counterfeit PUMA Products, which are listed on IIL's platform.

10. The process for registration of sellers on Indiamart requires the sellers to key-in their details including those products in which they are dealing. IIL provides a drop-down menu, which enables the sellers to select one of the options or directly fill-in the description of their product in the menu bar. The options for certain products include the name PUMA which, as stated above, is PSE's registered trademark.

11. Once a seller is registered describing its goods as PUMA, the seller's listing would feature in the list of sellers selling the specific PUMA goods. Any buyer conducting a search on Indiamart using the term PUMA or any other words, which may include the word 'PUMA' would be led to such listings.

12. PSE contends that various sellers listed on Indiamart have tagged their counterfeit goods including clothing, footwear, face masks, socks, caps, watches, accessories and other merchandise, which bear PSE's registered

PUMA marks –  and  [PUMA Marks].

13. PSE has set out certain screenshots of Indiamart website, which are reproduced below:



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Search results for "puma shoes" on Indiamart. The page displays three product listings with images, prices, and contact information for suppliers.

Product Name	Price	Contact Supplier
Men Running Shoes Puma_Rsx Ferran. Size: 7 8 9 10	₹3,300/ Pair	Call 08046069100
Menstyle Sports Gents Puma Shoes. Size: 6x11 Size Available	₹975/ pair	Call 08046027634
Puma Shoes	₹750/ pair	Call 08068441075

Product details for "Puma Speeder Waking Shoes" on Indiamart. The page shows a product image, specifications, and contact information for the supplier.

Product Name	Price	Contact Supplier
Puma Speeder Waking Shoes	₹ 800/ Pair	Call 08068441075

Specifications:

- Occasion: Casual
- Size: 7, 8, 9, 10, 11
- Type: Waking
- Sole: Eva
- Material: Canvas
- Brand: Puma



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puma tshirts in delhi - Indiamart x 4way Multicolor Puma T Shirt S...

indiamart.com/productdetail/puma-t-shirt-23301150955.html?pos=3&pwd=puma%20t%20shirts&tags=All[0]Price...

All India Enter product name to search Get Best Price Covid-19 Supplies Sell Help Messages In Shops

IndiaMART > Unisex Clothing > T Shirts > Puma T Shirts

4way Multicolor Puma T Shirt, Size: M to xxi, Age Group: 18 To 55

₹ 190/ Piece Get Latest Price

Product Puma dry fit tshirts

Type

Brand Puma

Color Multi

Age Group 18 to 55

Size M to xxi

Fabric 4way

View Complete Details

Fill the quantity to get latest price!

Quantity Piece

Get Latest Price Request a quote

Shabri Unique Apparels Enterprises

South Delhi, New Delhi

4.3.5 ★★★★★ (8)

Call 08048782889

40% Response Rate

Verified Supplier Manufacturer

Ask for more details from the seller

Contact Seller

puma watches in delhi - Indiamart x

delhi.indiamart.com/search?mp?ss=puma+watches+in+delhi&cc=Delhi&mc=catid=204213&catid=722&prdsr=1

Delhi puma watches in delhi Get Best Price Covid-19 Supplies Sell Help Messages Sign In

puma watches in delhi near Delhi View by: Grid List

Location Enter city Near me All India Delhi Gurgaon Ahmedabad Surat Thane Mumbai Pune

Results With

☐ Show suppliers from Delhi only

Related Category

Men Wrist Watches

Gents Leather Watch

Men Analog Watches

Men Fashion Watches

Fashion Wrist Watches

Related Brands

Titan Watches

Casio Watches

Omega Watches

Citizen Watches

Seiko Watches

Puma golden Men Watches, For Formal, Model Name/Number:...

₹350/ Box

Farcharge India Delhi

Call 08048371747 Ext 296

Contact Supplier

Watch

Ask Price

New Communication Technology Lucknow

Call 08048372071 Ext 685

Contact Supplier

Puma Round Gents Designer Watch For Formal

Ask Price

Mantra Enterprises Near Indraprastha, Surat

Call 08068979862 Ext 286

Contact Supplier



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Search results for "puma socks" on the IndianMart website. The page shows three product listings with images, prices, and contact information for suppliers in Delhi.

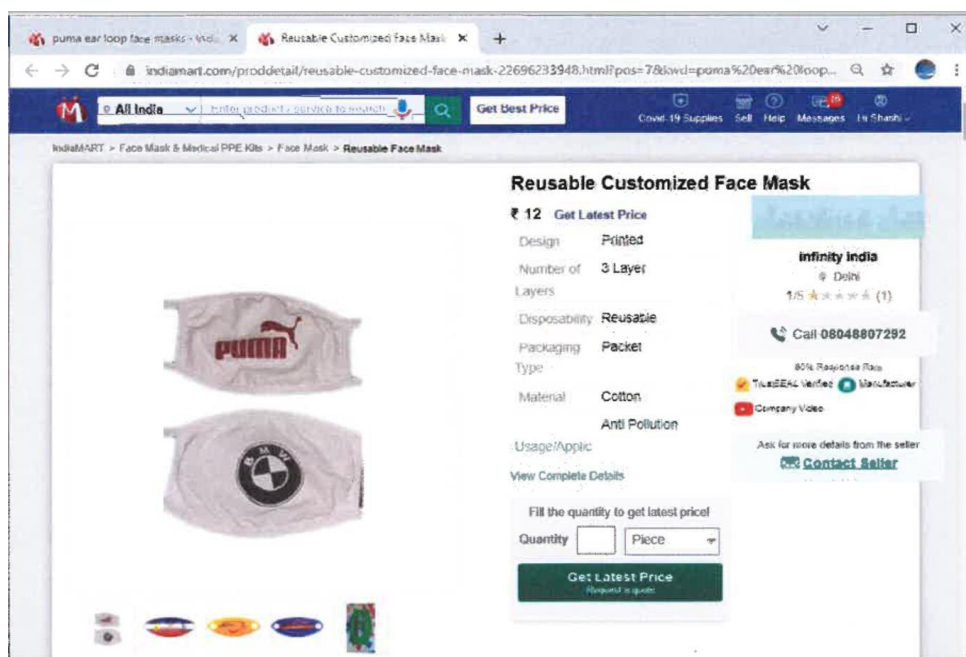
Product Name	Price	Supplier Name	Contact Number
Black, Grey and white Unisex Pouch Non Terry Free Size Socks	₹32/ Pair	Priva Hosiery	08048372400 Ext 846
Puma Socks	Ask Price	Shri Laxmi Narayan Hosiery	08048371788 Ext 322
Puma Socks	Ask Price	MJS Sports Wears	08066085813 Ext 404

Search results for "puma caps" on the IndianMart website. The page shows three product listings with images, prices, and contact information for suppliers in Delhi.

Product Name	Price	Supplier Name	Contact Number
Plain Polyester Puma Cap Blue, Size: Free	₹375/ Piece	Kuon Enterprises	07971337484
Puma Men Beanie Cap	₹22/ Piece	Kiran Exports	08046036458
Puma Cap	Ask Price	AS Caps Works	08068970145 Ext 441



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14. PSE claims that use of its registered trademarks on the goods as displayed by sellers on Indiamart amounts to infringement of its registered trademarks within the meaning of Section 29 of the TM Act. It also claims that the use of its trademark amounts to passing off.

15. PSE states that on enquiries and studying IIL's web portal – Indiamart, it discovered that IIL does not carry out any due diligence or verification in respect of the sellers. It alleges that IIL's business model is based on enrolling large number of traders in order to convert them into paid listings. PSE claims that once they submit a request to take down third party listings, the same is actioned but the third parties relist under a different or similar name. It alleges that in this manner, IIL is "encouraging and inducing infringement by lack of due diligence". It also claims that IIL was "actively infringing its brand name by aiding and abetting the users on its



platform to choose PUMA trademark/brand as a keyword suggestion/search term/recommended search to describe their products as PUMA branded products from a drop-down menu”.

16. IIL has countered the said contentions. Its defense is that it is an intermediary and does not either encourage, abet or influence the sellers on listing their products. It claims that the drop-down menu provided for registration of the sellers is only to facilitate the sellers in selecting their products. The sellers can either select an appropriate description from the drop-down menu or key-in the specific description of their products. The various names on the drop-down menu are only for the purposes of facilitating sellers from selecting an appropriate description.

17. IIL also contends that the sellers selling genuine PUMA products can use the said listing. IIL claims that wherever the counterfeit listing is brought to its notice, it takes requisite steps in accordance with the procedure established to take down the said listing.

IMPUGNED JUDGMENT

18. The learned Single Judge noted all the rival submissions and the issues that arose for consideration of the Court. The relevant extract of the impugned judgment is set out below:

“(i) Is IIL infringing the plaintiff’s registered trade marks, or passing off goods or services, other than those of the plaintiff, as the plaintiff’s? If not, the matter ends there.



(ii) If IIL is doing so, is it entitled to safe harbour under Section 79 of the IT Act and thereby insulated from the consequences of infringement/passing off?”

19. The learned Single Judge observed that both the issues are substantially covered by the decision of the Division Bench of this Court (of which one of us – Vibhu Bakhru, J. was a member) in ***Google LLC v. DRS Logistics (P) Ltd. & Ors.*** ***Neutral Citation No.: 2023:DHC:5615-DB.*** However, the learned Single Judge also observed that there were certain features in that case, which are not available in the present case. The learned Single Judge thereafter proceeded to analyse the decision of this Court in ***Google LLC v. DRS Logistics (P) Ltd. & Ors.*** (*supra*) and its applicability to the issues raised in the present case.

20. The learned Single Judge framed the following questions for consideration on similar lines as in *Google LLC's case*:

“(i) Whether use of the trade mark as choices in the drop down menu amounts to use of those marks for the purposes of Section 29 of the Trade Marks Act ?

(ii) If so, whether such use is that of the seller on the Indiamart platform or by IIL as well?

(iii) Whether the use of the trade mark as a search option in the drop down menu *per se* amounts to infringement of the trade mark ?

(iv) If so, whether IIL is absolved of its liability in respect of use of the trade mark as a search option in the drop down menu by virtue of being an intermediary under Section 79 of the IT Act ?”

21. In regard to the first question whether the use of mark ‘PUMA’ in the



drop-down option menu would be considered as a use of the trademark PUMA, the learned Single Judge referred to the relevant extract of the decision in ***Google LLC v. DRS Logistics (P) Ltd. & Ors.*** (*supra*) and observed as under:

“35.4 Paras 56 and 57 of the report once again record Google’s contention predicated on the “invisibility” of the ad words provided in the Google Ads program to the consumer using the Google search engine. Google contended that, as the ad words were invisible to the consumer, the making available of third party trade marks as ad words by Google did not constitute “use” within the meaning of Section 2(2)(b) or 2(2)(c)(ii) of the Trade Marks Act, which required “use of a mark” to be “use of printed or other visual representation of the mark”. As the making available of “AGARWAL PACKERS AND MOVERS” as an ad word in the Google Ads program did not amount to “use” of “AGARWAL PACKERS AND MOVERS” as a trade mark within the meaning of Section 2(2)(b) or 2(2)(c)(ii) of the Trade Marks Act, Google contended that DRS had no sustainable actionable claim under the Trade Marks Act.

35.7 In paras 84 to 88 of the report, the Division Bench returned two important findings. The first was that the use of the registered trade mark, in order to constitute “use of a mark” within the meaning of Section 2(2)(b) and 2(2)(c)(ii) of the Trade Marks Act, is not limited to use in a visual form on goods, but would also include use in relation to goods in any form whatsoever. The second was that Section 2(2) of the Trade Marks Act does not control or limit the width of Section 29(6). As such, use of the registered trade mark of the plaintiff, even if in one of the manners envisaged by Section 29(6), would also constitute “use” for the purposes of the Trade Marks Act.



35.8 Following the above, in paras 90 and 91 of the report, the Division Bench has interpreted the expression “in advertising” as employed in Section 29(6)(d). It holds that the expression “in advertising” is not synonymous with “in an advertisement”. In order for a registered trade mark to be regarded as having been used “in advertising”, therefore, it is not necessary that the registered trade mark must feature in an advertisement. As a sequitur, the Division Bench holds that the use of a trade mark as a keyword to trigger the display of an advertisement of the goods or service would amount to use of the trade mark in advertising.

35.9 These findings apply, *mutatis mutandis*, to the present case.

35.10 In view of the width accorded to the ambit of the expression “in any other relation whatsoever”, as they occur in Section 2(2)(c)(i) of the Trade Marks Act, by the Division Bench, and the consequent finding of the Division Bench that the use of the trade mark as an ad word in the Google Ads program would also amount to “use” within the meaning of Section 2(2) of the Trade Marks Act, the use of the plaintiff’s registered trade mark as one of the drop down choices available to the seller at the time of registration with the Indiamart platform would also amount to “use” of the trade mark within the meaning of Section 2(2)(b) and 2(2)(c)(i).”

22. Additionally, the learned Single Judge also held that the appearance of PSE’s PUMA mark on the drop-down menu, which is visible on the screen, also amounts to a visual representation of the mark PUMA irrespective of the purpose for which the representation was made or the persons whose eye it was intended for. The learned Single Judge held that whether the visual representation is made at the backend or frontend or in between, would also not be affected/reflected from the representation being



a visible representation. Thus, the learned Single Judge rejected the contention that since the drop-down menu was available only to a seller at the very backend of the registration process, the same would not amount to use of the trademark. In terms of Section 2(2)(b) of the TM Act, the argument was rejected. The learned Single Judge proceeded to hold that:

“35.13 Providing, to the prospective seller, of PUMA as one of the choices in the drop down menu also satisfies the ingredients of Section 2(2)(c)(i), which includes, in the definition of “use of a mark”, use of the mark *in any relation* to the plaintiff’s goods. It is IIL’s avowed case that the suggestions provided in the drop down menu are intended to identify the goods which are being displayed for sale *vis-a-vis* their brand name owner. Thus, in the example provided in para 5 *supra*, IIL provides “Puma shoes” as a choice in the drop down menu, to be filled in by the seller, to indicate a relationship with the goods that the seller seeks to sell and the plaintiff.

35.14 Mr. Rao stressed that, while allowing the seller to select “Puma shoes” from the drop down menu, it was never the intent of IIL to allow a counterfeiter to peddle counterfeit goods on its platform. That may very well be true. Indeed, it is not Mr. Narula’s case – it cannot be – that IIL was consciously allowing counterfeiters to sell counterfeit products on its platform. That, however, is irrelevant as a consideration while examining whether providing of “Puma shoes” as a choice in the drop down menu presented to the prospective seller constitutes “use” of the plaintiff’s registered trade mark by IIL. In my considered opinion, it certainly does. The intent of providing “Puma shoes” as an option to the prospective seller is so that, if the seller chooses that option, then, a future customer who accesses the Indiamart website and desires to purchase “Puma shoes” would immediately be presented with the



seller's product – along with the products of others who may have chosen “Puma shoes” from the drop down menu. “Puma shoes” is, therefore, being used by IIL, even if it is only in the form of one of the choices provided in the drop down menu at the “backend”, in relation to the goods manufactured by the plaintiff. Providing of “Puma shoes” as an option in the drop down menu, therefore, satisfies the ingredients of “use of a mark” as envisaged in Section 2(2)(c)(i) of the Trade Marks Act.

35.15 Thus, though the “Puma shoes” option provided in the drop down menu is visible only to the seller at the time of registering himself with the Indiamart platform, and is not visible to the consumer who visits the website with intent to purchase goods, and though it is provided only at the “backend” of the registration process, the providing of the option itself constitutes “use of a mark” of the plaintiff, within the meaning of the Trade Marks Act.

35.16 Even if one were, therefore, to regard “use of a mark” as necessitating visual representation of the mark, the providing, by IIL, of “Puma” as one of the drop down menus available to the seller at the time of registration, on the Indiamart platform would constitute “use” within the meaning of Section 2(2)(b) and 2(2)(c)(i) of the Trade Marks Act.”

23. The learned Single Judge also held that IIL’s provision of PUMA shoes as a drop-down option for a seller to register himself as a seller of PUMA shoes would also amount to use “by IIL of PSE registered trademark ‘in advertisement’ and therefore, would constitute use of the trademark within the meaning of Section 29(6) of the TM Act”.

24. The learned Single Judge also found that IIL was an active participant



in the use and selection of options from the drop-down menu, which was projected to a prospective seller seeking to register on Indiamart. The learned Single Judge noted that IIL's commercial venture was to allow sale of goods of third parties and providing an option of PUMA shoes as a choice in the drop-down menu available to the seller at the time of registration made IIL an active participant in the process.

25. The learned Single Judge also noted the contention advanced on behalf of PSE that IIL does not include all brands in its drop-down menu, but selects only a few brands for the purpose of attracting more sellers and maximizing its revenue. The learned Single Judge made observations to the effect that IIL was the architect of its platform including the drop-down feature on the website and therefore, could not be considered a non-participant.

26. In so far as the use of the trademark is concerned, the learned Single Judge referred to *Google LLC v. DRS Logistics (P) Ltd. & Ors.* (*supra*) and held that same would also be applicable in the facts of the present case for determining whether the trademark PUMA is used by the sellers alone or by IIL as well. The learned Single Judge concluded that the use of PUMA trademark in the present case was not restricted to the sellers alone, but also to IIL, thus, the learned Single Judge rejected the contention that use of the trademark, if any, is by the seller and not by IIL.

27. Insofar as the question of infringement is concerned, the learned Single Judge found that IIL's use of PUMA trademark was required to be considered as use of the trademark for the purpose of Section 29(1) of the



TM Act. The learned Single Judge referred to the definition of the trademark under Section 2(1)(zb)(ii) of the TM Act and noted that it was used in relation to the goods and services for the purpose of indicating a connection in the course of trade between the goods and services. The learned Single Judge further reasoned that choice of PUMA shoes in the drop-down menu provided on the Indiamart platform essentially performs a primary function of identifying the sources of the goods and services to be sold under the said trademark.

28. The learned Single Judge also found that offering of an option of PUMA shoes on the drop-down menu would also constitute infringement of the trademark PUMA within the Section 29(2) of the TM Act as the material produced by PSE, *prima facie*, indicated that the counterfeit goods were being offered to sale on Indiamart.

29. The learned Single Judge observed that by offering PUMA as a drop-down menu option to prospective seller seeking to register on Indiamart, IIL not only facilitates the genuine seller of PUMA products, but also counterfeiters masquerading as genuine PUMA dealers.

30. The learned Single Judge noted that in **Google LLC v. DRS Logistics (P) Ltd. & Ors.** (*supra*), this Court held that the use of a trademark as a key word in the Google ad words programme was not actionable or illegal, however, the Court distinguished the facts in the present case as under:

“38.15 In para 137 of the judgment in **Google LLC**, the Division Bench holds that the use of a trade mark as a keyword in the Google Ads program, to seek out



internet users as target for advertisements which they may find relevant is not actionable or illegal. There is, however, a fundamental difference between providing a trade mark as a keyword on the Google Ads program and providing the registered trade mark as one of the options in the drop down menu to a prospective seller on the Indiamart platform. Unlike the Google search engine, the Indiamart platform is not merely in the form of directory, but is an e-commerce website, across which goods are bought and sold. It may not be possible, therefore, to extend the observation contained in para 137 of the *Google LLC* to a case in which, without the requisite checks and balances, IIL allows prospective sellers to register themselves, without ascertaining whether they are in fact genuine dealers of the goods bearing the concerned trade mark or mere counterfeiters.

38.17 The situation that obtains in the present case is altogether different. Here, by making available Puma as a drop-down option to the prospective seller seeking to register himself on the Indiamart platform, IIL facilitates not only genuine sellers of Puma merchandise, but also counterfeiters in selling their products by masquerading as genuine Puma dealers. Thus, this is not a case in which two genuine competitors are being placed side by side. This is a case in which a counterfeiter is managing, on account of the availability of Puma as a drop-down option, to peddle counterfeits as genuine Puma products. This is, therefore, a case of defrauding of consumers, unlike the situation envisaged in para 138 of *Google LLC*.

(emphasis added)”

31. The learned Single Judge – using the language as employed in *Google LLC*’s case – held that “*the link displayed a consequence of unchecked providing of the plaintiff’s registered trade mark as a choice in the drop-*



down option to the prospective buyer does lend itself to confusion, as it enables counterfeiters and persons who are not genuine peddlers of Puma merchandise to represent themselves as genuine and thereby deceive consumers". The learned Single Judge held that use of the drop-down menu containing the word Puma shoes would also constitute infringement under Section 29(2) of the TM Act.

32. The learned Single Judge also found that instances of counterfeit PUMA products being displayed for sale on IIL's platform were detrimental to the distinctive character and repute of PSE's registered trademark and therefore, the action for infringement would lie.

33. In view of the above discussion, the learned Single Judge found that a *prima facie case* for infringement within the meaning of Section 29(1), (2) and (4) of the TM Act exists.

34. The learned Single Judge also rejected the contention that IIL was entitled to the safe harbour under Section 79 of the IT Act. The learned Single Judge held that Section 79 of the IT Act is also required to be read alongside Rule 3(1)(b)(iv) of the Information Technology Rules, 2021 (Intermediary Guidelines and Digital Media Ethics Code).

35. We consider it apposite to refer to the aforesaid extract from the impugned judgment, which sets out the learned Single Judge's reasoning to hold that the protection of Section 79 of the IT Act would not be available in the facts of the present case:



“46.3 Besides, Rule 3(1)(b)(iv) of the IT Rules requires every intermediary to make reasonable efforts to cause users of its computer resource not to host, display or upload any information that infringes any patent, copyright or other proprietary rights. This requirement having been cautiously inserted in October 2022, has to be given a strict interpretation. Strict adherence and compliance with the requirement are mandatory. Rule 3(1)(b)(iv) of the IT Rules has to be read alongside Section 79 of the IT Act. While sub-section (1) of Section 79 insulates an intermediary from third party information, data or communication links made available or hosted by it, sub-section (2) sets out the circumstances in which this protection would be available and sub-section (3) sets out the circumstances in which this protection would not be available. Both these provisions *prima facie* augur against IIL in the present case. Section 79(2) stipulates the three circumstances in clauses (a), (b) and (c) thereof, in which Section 79(1) would apply. Of these, clauses (a) and (b) are separated by the conjunction “or”, whereas there is no conjunction between (b) and (c). One presumes, however, that clauses (b) and (c) are also to be deemed as having been separated by the conjunction “or”. This indicates that it is not necessary that all the three clauses (a) to (c) must simultaneously apply for Section 79(1) to apply and that Section 79(1) would apply if any one of the three clauses (a) to (c) of Section 79(2) is applicable.

*** *** ***

46.10 For all these reasons, IIL cannot claim “safe harbour” protection under Section 79 of the IT Act.”

IIL’S CHALLENGE TO THE IMPUGNED JUDGMENT

36. IIL has challenged the impugned judgment on the following broad grounds:



- a. The learned Single Judge has erred in not appreciating the services offered by IIL and in holding that IIL's platform is an e-commerce website which allows sale of goods of third-parties to the projected users seeking to purchase goods on the IIL's platform. In this regard the learned Single Judge has incorrectly placed reliance on the decision of ***Google LLC v. DRS Logistics (P) Ltd.*** (*supra*).
- b. The learned Single Judge erred in holding that the use of PSE's trademark 'PUMA' within the drop-down menu on IIL's platform constitutes use 'as a trademark' and constitutes infringement under Section 29(1) of the TM Act.
- c. The learned Single Judge has further erred in holding that such use of PSE's trademark within the drop-down menu available to sellers amounts to likelihood of confusion/actual confusion inasmuch as the counterfeit 'PUMA' products sold by the sellers would be confused to originate from PUMA and amount to infringement under Section 29(2) of the TM Act.
- d. The learned Single Judge has erred in holding that the use of PSE's trademark 'PUMA' within the drop-down menu on IIL's platform constitutes infringement under Section 29(4) of the TM Act.
- e. The learned Single Judge has erred in holding that 'Doctrine of Exhaustion' does not exist under the TM Act nor does Section 30(1), 30(3) & (4) of the TM Act come to the aid of IIL.



- f. The learned Single Judge has erred in holding that use of PSE's trademark 'PUMA' within the drop-down menu amounts to IIL actively suggesting choices to sellers and buyers with a view to maximise revenue and thus, acting beyond the scope of an intermediary and disentitling IIL from the benefit of the safe harbour protection under the IT Act.
- g. The learned Single Judge has failed to appreciate the protection granted under Section 79 of the IT Act and erred in holding that IIL has failed to fulfill the requisite due diligence requirements mandated by law and aided in the commission of the unlawful acts of counterfeiting and infringement.

SUBMISSION OF COUNSEL

37. Mr Sethi, the learned senior counsel appearing for IIL contended that the learned Single Judge has failed to appreciate the nature of services offered by IIL. He contended that IIL is only an online discovery platform for various industries and individuals for listing of their profile and catalogue of their products/services as advertisements to prospective sellers. He submitted that IIL merely connects the buyers and sellers and its services were akin to a Yellow Pages Directory, which enables any seller to list its products or services. He contended that IIL does not participate or facilitate participation in any negotiations between the buyers or sellers on its platform. It merely provides identity and the contact details of the sellers listed on the platform. The buyers are at liberty to contact the sellers directly. He submitted that IIL is not privy to any negotiations that may take



place between the buyers or the sellers.

38. He submitted that in so far as the revenue model is concerned, the revenue is generated by value added services, which do not use PSE's trademark. Thus, the use of the trademarks are not monetised, but only used as a method of segregating the category of products. He submitted that IIL has no commercial interest in use of the trademarks of PSE, but uses it only for the purpose of enabling the sellers to describe their goods. He contended that the decision in the case of ***Google LLC v. DRS Logistics (P) Ltd*** (*supra*) is inapplicable in the facts of the present case.

39. He submitted that reference of PUMA shoes or PUMA in the drop-down menu is completely descriptive of the nature of the goods and is offered as an option to avoid misspellings by sellers registering to list on IIL. He contended that the same does not constitute use of the trademark in course of trade and would fall within the exclusion of Clauses (a) and (b) of Sub-section (1) of Section 30 of the TM Act. He emphasised that making a choice on the drop-down menu was not mandatory or in any manner limiting in nature. He submitted that IIL does not provide any listing service or offers any role in selecting the listings for the buyers which may infringe the trademark PUMA. He also pointed out of 2180 listings under the PUMA brand and PSE [Indian associate]. PSE had only shared 259 listing which displayed the images of the products, which according to PSE were infringing its trademark.

40. He also contended that there is no cause of confusion on account of use of option in the drop-down menu as it was to facilitate only the genuine



prospective seller to opt for the said listing.

41. In so far as the applicability of Section 29(4) of the TM Act is concerned, Mr Sethi contended that same would be inapplicable as PSE's case is that images of goods displayed by the sellers on IIL were similar goods. He also referred to the decision of the Supreme Court in *Renaissance Hotel Holdings Inc. v. B. Vijaya Sai and Ors.: (2022) 5 SCC 1* in support of his contention that if the goods were similar, Section 29(4) of the TM Act would have no application as all three conditions set out are required to be cumulatively satisfied.

42. Lastly, he submitted that IIL could not be denied the immunity against third party action under Section 79 of the IT Act as the option to select the particular brand or trademark in the drop-down menu on its platform would not amount to initiating any transmission or selection of transmission resulting in IIL forfeiting its immunity under the IT Act. He also submitted that Section 79 of the IT Act does not envisage an intermediary undertaking, any policing role, whereby the intermediary can take measures on its own. He submits that in terms of Rule 3 of the Information and Technology (Intermediary Guidelines and Digital Media Ethics Codes) Rules, 2021 [IT Rules], IIL has published its rules and regulations, privacy policy and standard users agreement of sellers. Additionally, a seller is also required to furnish an undertaking to refrain from violating third party rights.

43. He sought to contest the findings of the learned Single Judge to the effect that IIL had not satisfied the criterion of 'reasonable efforts' under Rule 3(1)(b)(iv) of the IT Rules. He informed this Court that the court in



Starbucks. Corporation & Anr. v. National Internet Exchange of India & Others: CS(COMM) 224/2023 has directed the Ministry of Electronics and Information Technology [**MeitY**] to place on record the interpretation as to what constitutes ‘reasonable efforts’ under Rule 3(1)(b)(iv) of the IT Rules. He submitted that the IT Act and the IT Rules also provides the mechanism and obligation to take down the material on an intermediary.

44. Mr Narula, the learned counsel appearing for PSE countered the aforesaid submissions. He supported the findings of the learned Single Judge. He also drew the attention of this Court to the observations of this Court in ***Google LLC v. DRS Logistics (P) Ltd*** (*supra*), whereby this Court noted: “*the provisions of the TM Act would necessarily have to be read in an expansive manner to address the novel issues thrown up by the advancement of technology*” along with underscoring that “*It is necessary for protection of the public that when they purchase goods and services associated with the trademark, they are not deceived in any manner in accepting goods and services from a source other than that associated with the trademark. Any use of a mark, which is likely to confuse or deceive the user is impermissible and is actionable.*”

45. He submitted that IIL’s business model is such that it allows sellers free listing but monetises the use of registered marks, including PUMA Marks, for increasing the traffic accessing IIL’s website. Further, IIL’s process of onboarding a seller shows that it actively suggests the use of registered marks including PSE’s mark without ascertaining if the goods that the seller intends to retail are genuine and those in relation to the registered



mark they are listed under.

46. Next, he submitted that IIL lists certain sellers as verified sellers and same accords them priority in the order of listings. He contended that the representation of sellers as a verified seller would encourage the buyers to accept the credentials of the sellers and to enter into transactions with them. He submitted that this would clearly establish that IIL was actively aiding and abetting counterfeiters in peddling their products. He submitted that PSE has placed on record multiple infringing listings and the same clearly reflected that IIL profited from an increase in number of listings, by increased traffic. He contended that IIL's intention to communicate to the consumers that the sellers listed on their platform were selling the goods associated with the given registered trademarks would amount of violation of Section 29(2) and 29(6) of the TM Act. He submitted that the learned Single Judge rightly referred to the decision in the case of **Google LLC v. DRS Logistics (P) Ltd** (*supra*) to apply the test of initial interest confusion. He contended that even if the confusion arose at the pre-purchase stage, the same would satisfy the criterion of infringement under the TM Act.

47. He contended that IIL's use of PUMA in the drop-down menu must be viewed from the lens of the revenue model set up by IIL through their software/algorithm, which by allowing sellers to select the PUMA mark in their listing detail ensure that such seller's listing would show up whenever a buyer searches for PUMA Products and this would be irrespective of the fact whether the products provided by the seller may or may not bear the PUMA Marks. The algorithm/software of IIL is written in a manner to



maximize user traffic by allowing sellers, sans due diligence, to list that they sell PUMA Products and aid in sale of counterfeit products. He also stated that use of a registered trademark in the drop-down menus for seller's listing is not industry practice and thus, IIL cannot take benefit of Section 30 of the TM Act. In this regard, he referred to the procedure employed by OLX, Amazon and Flipkart and argued that unlike a Yellow-Pages Directory, IIL employs categorization by well-known brands and their marks.

48. He also argued that IIL is not a passive intermediary, but actively participates in providing the sellers various brand names along with other value added services through which a seller can upgrade its services to attract more buyers. He submitted that IIL at the initial stages suggests verified leads through email and WhatsApp if the buyers provided such details. He submitted that thus, IIL cannot take refuge of the safe harbour provisions under the IT Act.

ANALYSIS

49. The controversy in the present case centers around the drop-down menu used by IIL while registering sellers on its platform, Indiamart. The drop-down menu contains an option mentioning PUMA Marks. The seller desirous for listing on Indiamart, can select options for describing its products. According to PSE, the inclusion of PUMA as an option in the drop-down menu would amount to infringement of its trademark, which is occasioned by the sellers listed on the platform displaying counterfeit products on the listing page.

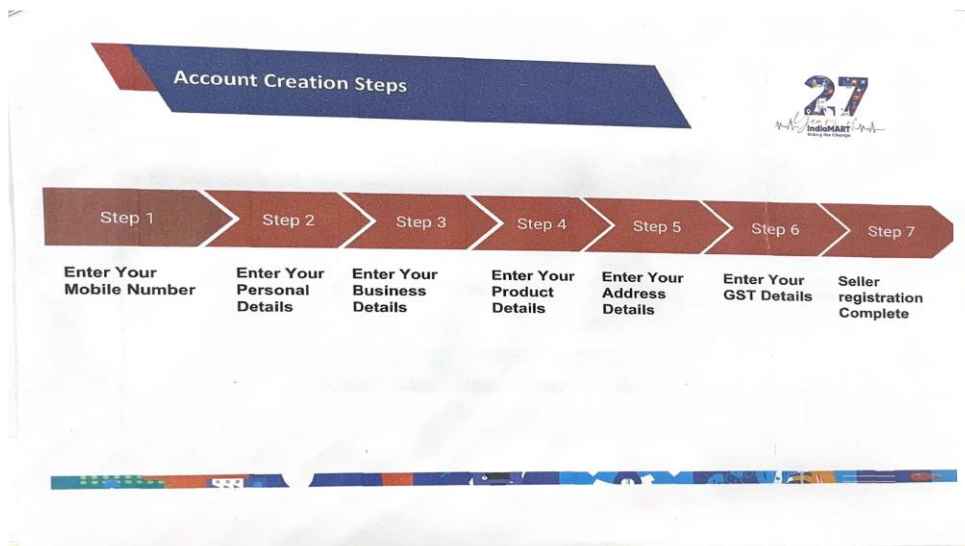
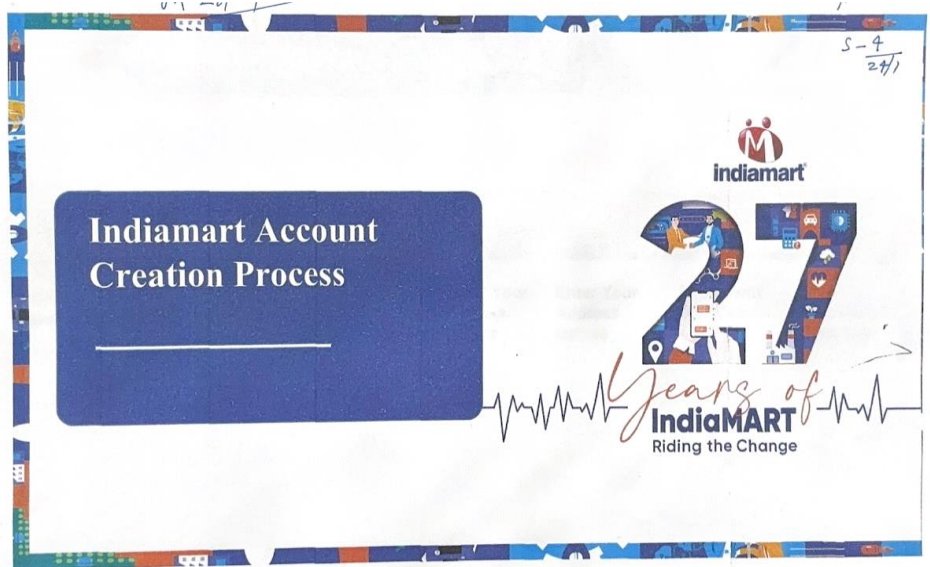


50. Before proceeding further, it would be relevant to examine the services offered by IIL and the relevance of the drop-down menu in the registration process.

51. Concededly, IIL is an intermediary defined under Section 2(1)(w) of the IT Act. This is expressly stated by PSE in its plaint and as also asserted by IIL in its defence. Thus, there is no cavil between the parties in this regard. As stated above, IIL operates an integrated electronic business to business portal – Indiamart. IIL claims that Indiamart is an online discovery platform, which lists suppliers from various industries in respect of their products and services. IIL asserts that the platform is used particularly for listing the profile/catalogue of MSMEs/individual entities. Any person can advertise its product on the said platform for viewing of buyers for their goods and services. Prospective sellers can register on Indiamart and create their goods and/or services catalogue, which is displayed. The sellers select their range of products and services, including the brand, which they wish to list. The drop-down menu is used in the listing process for a seller to describe its goods or services.

Registration Process

52. During the course of the proceedings, the learned counsel for IIL had handed over print-out of screen images reflecting the online registration process. The said screenshots are reproduced below:





Step 1 : Enter Your Mobile Number

Join IndiaMART for Free Already a member: [Sign In](#)

Mobile Number

+91 6232225776

Create Your Account

Step 2 : Enter Your Personal Details

Manage Profile [View profile](#)

Personal Information

Name* Himanshu

Designation

Mobile Number* +91 6232225776 [Edit](#)

Email ID* himanshu@h@gmail.com [Edit](#)

Alternate Mobile Number +91

Alternate Email ID

Profile Picture

Save



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Step 3 : Enter Your Business Details

27 IndiamART Making the Change

Create Account Business Details Product Details Address Details Add GST

Account created successfully

Business Details

Start adding your business details:

Your Name*
Himanshu

Company/Business/Shop Name*
The Shoe Shop

Email ID*
himanshugh@gmail.com Verify

Verify Later

Step 4 : Enter Your Product Details

27 IndiamART Making the Change

indiamart Shopping Sell Help Messages Hi Himanshu

Create Account Business Details Product Details Address Details Add GST

Business details added successfully

Product Details

Add 3 products/services you wish to sell, you can add more later :

Product/Service Name*
school shoe

Product/Service Name*
school shoes

Product/Service Name*
boys school shoes

Product/Service Name*
girl school shoes

Product/Service Name*
kids school shoe

Click here to upload image

Click here to upload image

Photo must be bright and clear with a preferably white background

Tips

73°F Clear

Search

9:22 PM 1/11/2024



2025:DHC:4819-DB



Step 5 : Enter Your Address Details

indiamart

Create Account Business Details Product Details **Address Details** Add GST

Product details added successfully

Address Details

What is the business address for "The Shoe Shop"?

Pin Code*
450331

City*
Burhanpur

State*
Madhya Pradesh

Continue

Step 6 : Enter Your GST Details

indiamart

Create Account Business Details Product Details Address Details **Add GST**

Address details added successfully

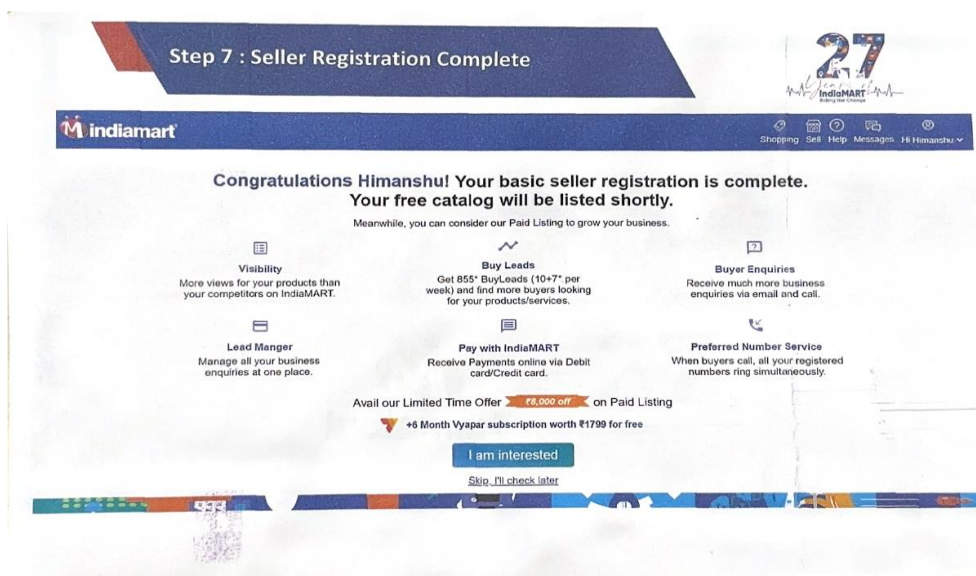
GST Details

Add your statutory details

☐ I have GSTN ☐ I am exempted ☐ I don't remember ☒ I don't have it

GST Number

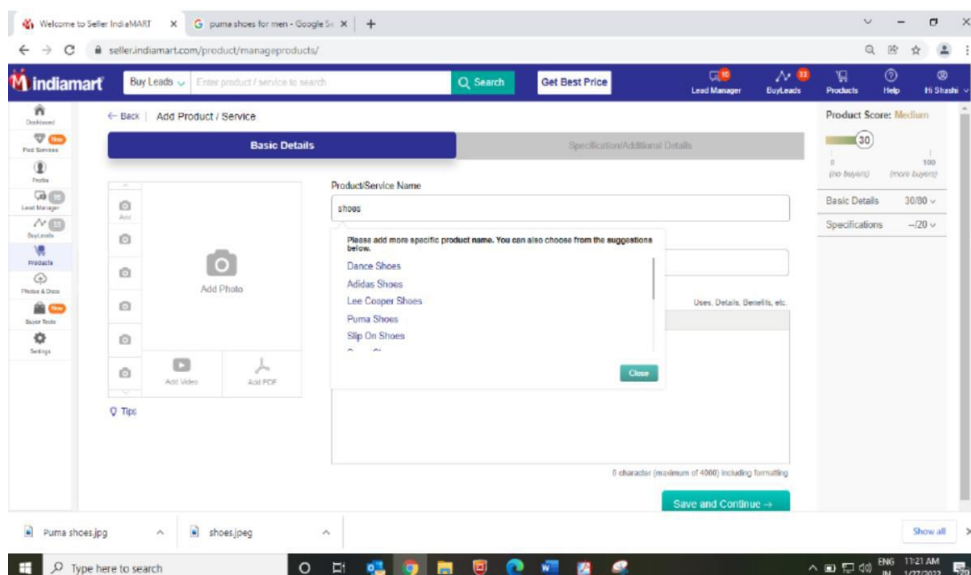
Start Selling



53. As noted above, step no.4 is the screen shot of the webpage where the details of the products are to be filled by the prospective registrant. We also consider it apposite to set out the screenshot of the webpage involving the said step as set out in the impugned judgment. The same is reproduced below:



2025:DHC:4819-DB



54. The above screenshot is illustrative of a registration of a seller selling shoes. The product/service name as mentioned in the bar is shoes. The instructions in bold in the drop-down menu reads: “Please add more specific product name. You can also choose from the suggestions below”. And the suggestions, which are displayed in the screenshot are: Dance Shoes, Adidas Shoes, Lee Cooper Shoes, Puma Shoes and Slip on Shoes etc. The list of specific options continues but the same are not reflected in the screenshot on account of limited space. The screen shot of “Step 4” in the registration process as reproduced above refers to the product “school shoes” and the specific categories as visible on the screen image are: boys school shoes; girl school shoes; and kids school shoes.

55. It is apparent from the above that IIL’s endeavour is to encourage the sellers to describe its product more precisely. This is obviously for the purposes of making the listing more relevant to the buyers searching for any



specific product or services.

56. Any buyer who is desirous of conducting a search on Indiamart regarding any specific product or services would key-in the name of the product or services and the portal would list out all listings offering the said product or services. Thus, any buyer looking for PUMA Shoes would be presented with the list of sellers who are registered in respect of the specific product. It would be for the buyer now to navigate through the listings.

57. It is also apparent from the screenshots placed on record that the listings reflect various details including the name of the particular seller; its contact details including the phone number; and the product/service offered or dealt with. Illustratively, one of the images of the screenshot (placed by PSE in its plaint and as reproduced above) reflects a product – “4way Multicolor Puma T Shirt, Size: M to xxl”. The same indicates a price per piece at ₹190/-. It describes the product as PUMA dry fit t-shirts. It also reflects brand as PUMA. The fabric is described as 4way. The sizes in which the product is available is described is M to XXL. It also reflects the Age Group for product as 18 to 55 and additionally, discloses whether the seller is a manufacturer or not. It also gives the rating of the supplier which is based on ratings by responses. The image shows that the supplier in that case (Shabri Unique Apparels Enterprises) has been granted 4.3 star rating based on 6 (six) responses.

Whether Listing of Counterfeit Products Amounts to Infringement by IIL

58. The central question to be examined is whether listing of the



counterfeit products constitutes infringement of PSE's trademarks on the part of IIL. As noted above, the learned Single Judge has held that IIL *prima facie* aids and abets the infringement of PUMA Marks on account of the seller's displaying catalogues of counterfeit products as a part of their listings on Indiamart. The said conclusion is founded on the following premises:

- i) that Indiamart is not a directory, but an e-commerce website across which the goods are bought and sold;
- ii) that by making available PUMA Marks as an option in the drop-down menu setting out options for describing the product/service to a prospective seller, IIL facilitates the counterfeiter to peddle its counterfeit goods as genuine PUMA Products;
- iii) IIL had failed in its obligation to conduct proper verification as to the genuineness of the product sold by registered sellers on Indiamart in order to weed out counterfeiters from selling their products masquerading as genuine PUMA dealers;
- iv) that the use of PUMA as a mark in the drop-down menu in the selection process constitutes use of PUMA Marks "as a trademark" and therefore, the same would constitute infringement in terms of Section 29(1) of the TM Act, which is occasioned by display of counterfeit PUMA Products by various sellers;
- v) that by offering the options, which include the trademark PUMA on the drop-down menu during filling of registration forms, there is infringement of PUMA Marks under Section 29(2) and 29(4) of the



TM Act, which is occasioned by displaying counterfeit products as the same would result in confusion and further dilution of the PUMA Marks; and

vi) that the use of the PUMA Marks in the drop-down menu would constitute use of the marks in advertising within the meaning of Section 29(6) of the TM Act.

59. The learned Single Judge has held that since IIL actively encourages and participates in the selection of options using the PUMA Marks, it forms a part of its profit making enterprise with the object of increasing its listings on its website, the safe harbor protection of Section 79 of the IT Act would not be available to IIL.

60. The learned Single Judge also referred to the decision in the case of ***Google LLC v. DRS Logistics (P) Ltd. & Ors.*** (*supra*) for drawing its conclusions. However, the facts in that case has fewer similarities with the present case than as inferred in the impugned judgment. In *Google LLC's* case the court found that Google LLC was conducting an advertisement programme – which was used in conjunction with its indexing service – using trade-marks as keywords. The keywords were used for the purpose of displaying advertisements to internet users surfing the internet using Google LLC's indexing service using keywords and/or phrases that included such keywords. The AdWords programme is Google LLC's commercial enterprise, which involves the use of trademarks as keywords. This court found that use of registered trade marks as keywords would amount to use during the course of the trade since the said keywords were used in relation



to products and services including products and services for which the trade mark was registered. However, the same was not use of that mark as a trade mark. Neither the advertiser nor Google LLC used the keywords as a trade mark.

61. In the present case, the use of the trade-mark PUMA was held as use as a trademark. The word ‘trademark’ is defined under clause (zb) of sub-section (1) of Section 2 of the TM Act. The sub-clause (ii) of clause (zb) of Section 2(1) of the TM Act is relevant. The same is set out below:

“(zb) “trade mark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;”

62. In the present case, there is little dispute that the seller who opts to describe its products or services using a registered trade mark, in the description box of the online registration form, uses the registered trade mark as a trademark inasmuch as he purports to describe the source of its goods and services as that associated with the registered trade mark.



63. Illustratively, a seller choosing the option Puma shoes from the dropdown menu describes its products as Puma shoes. If the product is not a genuine Puma Product, this would be a clear case of counterfeiting falling within the scope of Section 29(1) of the TM Act.

64. IIL uses the trademark in the registration form to describe specific goods and services, to serve as a category/classification for facilitating the display of the listings. IIL does not use the trademark to describe the goods of the seller, but – as noted by the learned Single Judge – uses the trademark to describe the goods associated with the trademark.

65. IIL’s case rests on Section 30(1) of the TM Act. The said Sub-section is set out below: -

“30. Limits on effect of registered trade mark.— (1)

Nothing in section 29 shall be construed as preventing the use of a registered trade mark by any person for the purposes of identifying goods or services as those of the proprietor provided the use—

- (a) is in accordance with honest practices in industrial or commercial matters, and
- (b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.”

66. Sub-section (1) of Section 30 of the TM Act clearly provides that Section 29 of the TM Act would prevent use of the registered trademark by any person for the purpose of identifying the goods and services as those of the proprietor. However, this is subject to two conditions. First, such usage is in accordance with honest practices in industrial or commercial matters; and second, that such use is not such so as to take unfair advantage of or



detrimental to the distinctive character or repute of the trademark.

67. In the present case, the learned Single Judge has proceeded on the basis that their sale and purchase of products/services is conducted on the platform, Indiamart and therefore, all the practices that are required for consummating sale on e-commerce platform are applicable. In the aforesaid backdrop, the learned Single Judge has also held that *prima facie* IIL's use is not in accordance with honest practices. However, if it is accepted that services rendered by IIL are in the nature of merely listing services and providing a platform for businesses to list their contact details and indicate the products that are being dealt with by him; it would be apposite to construe the services as akin to those of Yellow Pages Directory, as contended on behalf of IIL. The nature of examination for such listing would be materially different.

68. In a brick and mortar world, the commercial platform where goods are sold and purchased would be possibly be akin to a 'Hyper Market'; where different shelves / spaces are allocated to different sellers for displaying of their products for the purpose of selling the same. If the market allocate space or shelf space, under a sign board of a registered trademark brand, it would have a higher responsibility to ensure that the spaces, which is occupied under the banner of a particular brand or trademark does not display or offer for sale any counterfeit goods. However, when we consider the listing in the Yellow Pages Directory, we note that the responsibility of the publisher in listing out the contact details or businesses under various categories of products and services, is significantly different. The emphasis



of Yellow Pages Directory would perhaps be more to ensure that the telephone number as listed is correct one rather than to examine the goods and services dealt with by the businesses listed in the directory.

69. In the facts of this case, we are unable to accept that the action of offering an option to the sellers to describe their products by a brand name, *per se* could be termed as a dishonest business practice.

70. As noted above, Mr Sethi had contended that the object is only to ensure that brand is correctly spelt by various sellers attempting to describe the same product. Plainly, if different sellers describe the same goods or their brand differently, the same would adversely affect the efficacy of the search conducted in respect of the same brand. If the seller misspelt the particular brand, his listings may not show up, when a buyer searches for a product of that brand.

71. *Prima facie*, we also find no grounds for the allegations that IIL by mentioning an option regarding description of goods by brand names encourages persons, who are neither proprietors nor authorised to use the brand, to use the same.

72. In view of the above, *prima facie*, Section 29 of the TM Act is not applicable insofar as IIL provides an option to sellers to describe its goods by using its brands/trademarks.

The Decision in Amazon Technologies Inc. is inapplicable

73. The reliance placed on behalf of PSE on the decision of this Court in



Lifestyle Equities CV & Another v. Amazon Technologies Inc & Others:
Neutral Citation No.:2025:DHC:1231 is misplaced. In the said case, Beverly Hills Polo Club, the proprietor of the registered trademark in question had moved this Court, *inter alia*, praying that the defendants be restrained from selling identical goods [apparels] under the mark that was deceptively similar to its registered trademark. Additionally, the plaintiff also sought damages. Amazon Technologies Inc [defendant no.1] allegedly dealt with the products under a private label ‘Symbol’ which was a device mark similar to the plaintiff’s registered trademark. The second defendant [Cloudtail India Private Limited] had allegedly acted as a retailer of infringing products for sale on the e-commerce platform – www.amazon.in. The said e-commerce site was managed by defendant no. 3 [M/s Amazon Seller Services Private Limited]. Defendant no.1 did not enter appearance and was proceeded against *ex parte*. The other defendants also did not dispute that the plaintiff’s registered trademark was infringed. The dispute centred around the liability of the defendants to pay damages suffered by the plaintiff. In the given facts, this Court held:

“43.In the present suit the brand ‘Symbol’ is owned by Defendant No.1- Amazon Technologies, Inc. The retailer, Defendant No.2- Cloudtail India Pvt. Ltd., sells the products on the e-commerce platform www.amazon.in which is operated by Defendant No.3, Amazon Sellers Services Pvt. Ltd.

45. The brand ‘Symbol’ being used by Defendant No. 2 Cloudtail India Private Limited is admittedly owned by Defendant No.1. During the proceedings, ld. Counsel appearing for Defendant No.2 had appeared



for Defendant No.1 on 5th September, 2022 and submitted that Defendant No.1 would be willing to suffer a decree of permanent injunction and also pay the reasonable damages.....

47. It clearly appears to this Court that, all three companies which are closely related to or interlinked with each other have sought to project that they are independent of each other, clearly with an intent to avoid fastening of liability. The intention of the said Defendants has clearly been to somehow diffuse and dissipate the consequences of infringement.

52. A perusal of the trademark license, liability, and intellectual property protection clauses in the Amazon Brand License and Distribution Agreement between Defendant No.1 and Defendant No.2 indicates that Amazon retains significant control over Cloudbail's branding and distribution activities. In the opinion of this Court, the clauses in the Agreement clearly diminish Amazon's ability to distance itself from the alleged infringement committed by Cloudbail. The contractual restrictions on unauthorized trademark use, coupled with indemnification obligations, provide strong legal grounds for the Plaintiffs to argue Amazon's direct involvement in trademark infringement. The agreement being a license agreement, Defendant No.1 being a licensor and Defendant No.2 being a licensee, any infringement or unlawful use by the licensee would also affix liability upon the licensor. While licensing the word mark SYMBOL, Amazon would be unable to distance itself from the use of the accompanying horse logo device mark. Thus, the consequences of infringement squarely fall upon the Defendant No.1. The Defendants were also directed on 20th April, 2022 to file an affidavit giving the sales figures and their *inter*



se relationship at which stage the matter was prayed to be referred to mediation. Defendant No.1 was proceeded *ex parte* on 20th April, 2022. The inter se relationship has not been satisfactorily explained or placed on record by any of the Defendants. Under such circumstances, the Court has to proceed on the basis that Defendant No.1 being fully aware of the pendency of the present litigation has chosen not to file any defence. It has chosen to suffer a permanent injunction and, thus, the only question that remains is in respect of damages.”

74. In the aforesaid case, the Court had found that all the three defendants were inextricably linked in consummating the transaction of sale and purchase. The decision in the case of *Lifestyle Equities CV v. Amazon Technologies (supra)* has little application in the present case as the services rendered by IIL are essentially indexing services.

Whether IIL Aids and Abets in Infringement

75. The sellers’ description of their products as Puma Products is imputed as an infringement on the part of IIL on the ground that IIL has aided and abetted such infringement. The import of the words ‘aid’ and ‘aid and abet’ are well defined, *albeit* in criminal law. We consider it apposite to set out the definitions of words ‘abet’, ‘abettor’ and ‘aid and abet’, as defined in Black’s Law Dictionary, Eighth Edition. The same are reproduced below:

“**abet** (ə-bet), vb. 1. To aid, encourage, or assist (someone), esp. in the commission of a crime <abet a known felon>. 2. To support (a crime) by active assistance <abet a burglary>. See AID AND ABET. Cf. INCITE. [Cases: Criminal Law – 59(5). C.J.S. *Criminal Law* §§ 133, 135, 998-999] – **abetment**, *n*.

Abettator (ab- ə-tay-tər), *n*. [Law Latin] Archaic. See ABETTOR.



abettor. A person who aids, encourages, or assists in the commission of a crime. – Also spelled *abetter*. – Also termed (archaically) *abettator*. See *principal in the second degree* under Principal. [Cases: Criminal Law – 59. C.J.S. Criminal Law §§ 127, 998.]

“aid and abet, vb. To assist or facilitate the commission of a crime, or to promote its accomplishment. Aiding and abetting is a crime in most jurisdictions. – Also termed *aid or abet; counsel and procure*. [Cases: Criminal Law – 59. C.J.S. Criminal Law §§ 127, 998.] – **aider and abettor, n.**

“The phrase ‘aid and abet’ and ‘aider and abettor’ seem unnecessarily verbose.... [A]ny aid given with mens rea is abetment; hence to add the word ‘aid’ to the word ‘abet’ is not necessary and is sometimes misleading.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 724-25 (3d ed. 1982).

“In connection with the principal in the second degree or accessory before the fact, the terms ‘aid’ and ‘abet’ are frequently used interchangeably, although they are not synonymous. To ‘aid’ is to assist or help another. To ‘abet’ means, literally, to bait or excite, as in the case of an animal. In its legal sense, it means to encourage, advise, or instigate the commission of a crime.” 1 Charles E. Torcia, Wharton's *Criminal Law* § 29, at 181 (15th ed. 1993).”

76. It is also well known that aid and abetting any offence would also include an element of shared intent.

77. The learned Single Judge *prima facie* found that option of including the word PUMA in the description of the goods is to aid and abet infringement of a trade mark. We are unable to accept that any such *prima facie* conclusion could have been drawn only on the basis that IIL presents a dropdown menu for specifying the description of the products that sellers may wish to specify. This would, of course, be coupled with search feature where a buyer looking for a Puma Product would be shown the listings of all



sellers that had opted to describe their goods using the trade mark PUMA. This conclusion, in our view, ignores the nature of IIL's B2B platform – Indiamart. The learned Single Judge has proceeded on the basis that Indiamart is an e-commerce site on which goods and services are bought and sold. However, this assumption is erroneous. Indiamart is not an interactive website on which buyer can place purchase orders for supply by the supplier. Indiamart renders listing services where buyers can get in touch with sellers. They may request for price and terms of supply online, which are transmitted electronically to the Seller. The negotiations and the transaction of sale and purchase of the products, is consummated between the purchaser and the seller directly. Indiamart has no role to play in the said transaction. As noticed above, the nature of services offered by Indiamart are akin to Yellow Pages Directory. It provides a platform where sellers enlist their details for the purpose of buyers to access them. Like in Yellow Pages Directory, the publisher merely creates an index of the categories of goods and services and distributes the directory. It is for various suppliers to determine the category in which their goods and services fall. The publisher of Yellow Pages Directory would neither determine the genuineness of the products offered by any of the entities / businesses listed in the Yellow Pages nor determine whether the person selecting the category of its goods/services has correctly described the goods or has chosen the appropriate category. It is for the seller to choose as to which category its goods fall under.

78. In the present case a seller can choose not to accept any of the options and type the specific description of its goods in the menu bar. It is not



necessary for the seller to choose one of the options as provided by IIL in the drop-down menu. IIL's endeavour is merely to create sub-categories for the purpose of facilitating the search.

79. It may be in the interest of IIL that a large number of sellers use their services as the same may enhance the efficacy of its platform. The fact that IIL may have a commercial interest in expanding the base of its listing does not lead to the conclusion that a drop-down menu offering an option to describe the products as Puma Products is designed to aid and abet infringement. *Prima facie*, we are unable to read any intent on the part of IIL to encourage listing of counterfeit Puma Products by offering the sellers an option to choose a specific description of their products/services by indicating the brand name associated with their product/services.

80. It is not disputed that there are a large number of sellers who have correctly classified the products listed by them using the brand names including Puma. As noted earlier, the learned senior counsel for IIL had submitted that there are over 2180 listings out of which Puma had requested for taking down of 259 listings. And, the learned counsel for PSE had not countered the same.

Safe Harbour Under Section 79(1) of the IT Act

81. It is PSE's case that IIL has an obligation to conduct proper verification as to the genuineness of the products offered by the registered sellers on their platform in order to weed out listings of counterfeiters masquerading as genuine Puma Product dealers. In this regard, it is relevant



to refer to Section 79 of the IT Act. The same is set out below:

“79. Exemption from liability of intermediary in certain cases. –

(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

(2) 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.

(3) 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 expeditiously remove or disable access to that material on that resource without vitiating the



evidence in any manner.

Explanation. – For the purposes of this section, the expression “third party information” means any information dealt with by an intermediary in his capacity as an intermediary.”

82. In terms of Section 79(1) of the IT Act, an intermediary would not be liable for any third-party information, data, or communication link made available or hosted by him. By virtue of Section 79(1) of the IT Act, IIL being an intermediary cannot be held liable for third party information listed on its platform, Indiamart. However, applicability of the protection of Section 79(1) of the IT Act is subject to sub-sections (2) and (3) of Section 79 of the Act. The protection under Section 79 of the IT Act is available only if the provisions of Sub-section (2) of Section 79 of the IT Act are satisfied. In the present case, the learned Single Judge has held that neither of the three conditions, as specified in Clauses (a), (b) and (c) of Section 79(2) of the IT Act, are satisfied. Therefore, the protection of Section 79(1) of the IT Act is not available to IIL.

83. We are unable to accept that, *prima facie*, the conditions contained in Clauses (a), (b) and (c) of Sub-section (2) of Section 79 of the IT Act are not satisfied. In the present case, Indiamart’s function is to provide users access to a B2B platform containing information placed by the suppliers registered on Indiamart. IIL also provides certain value added services. However, *prima facie* there is insufficient material to indicate PSE’s action is premised on those value added services. IIL indicates certain sellers as ‘verified’. However, it is explained that the term verified only indicates that the phone number of the seller is verified. It would be necessary for IIL to prominently



indicate that IIL has only verified the phone number of the sellers thus, no one is deceived to believe that IIL is offering any other assurance in this regard. If any of the value added services, which are offered by IIL for consideration are found to encourage infringement, the same may merit further consideration.

84. It is PSE's case that IIL does not observe due diligence while discharging its duties under the IT Act. Undisputedly, if IIL fails to observe due diligence in discharging its duties under the IT Act or fails to observe other guidelines as may be prescribed in this behalf, the protection of Section 79(1) of the IT Act would not be available to IIL.

85. In terms of Clause (zg) of the Sub-section (2) of Section 87 of the IT Act, the Central Government is expressly empowered to frame the Rules regarding rules containing "guidelines to be observed by the intermediaries under Sub-section (2) of Section 79 of the IT Act". In exercise of said powers, the Central Government has framed The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 [IT Rules]. Chapter-II of the said Rules sets out the "Rules regarding Due Diligence by Intermediaries and Grievance Redressal Mechanism". Sub-clause (iv) of clause (b) of Rule 3(1) of the IT Rules is relevant and is set out below:

"3. Dule diligence by an intermediary. – (1) An intermediary, including 1 [a social media intermediary, a significant social media intermediary and an online gaming intermediary], shall observe the following due diligence while discharging its duties, namely:—



(b) the intermediary shall inform its rules and regulations, privacy policy and user agreement to the user in English or any language specified in the Eighth Schedule to the Constitution in the language of his choice and shall make reasonable efforts 1 [by itself, and to cause the users of its computer resource to not host], display, upload, modify, publish, transmit, store, update or share any information that,—

(iv) infringes any patent, trademark, copyright or other proprietary rights;”

86. There is no dispute that IIL is required to make “reasonable efforts” to cause sellers to not use, display or publish or transmit any information that infringes any patent, trade mark, copyright or other proprietary rights. The terms and conditions of use of Indiamart expressly contain an agreement to the effect that users will not submit to IIL for display on its website any content, material that contains fraudulent information or makes fraudulent offers that involve sale or attempted sale of counterfeit, stolen items or items whose sale or marketing is prohibited by applicable law, or otherwise promotes other illegal activities. Failure to adhere to the said user terms would entitle Indiamart to terminate the User Agreement.

87. Given the nature of the services rendered, the learned Single Judge found that, *prima facie*, merely setting out the terms and conditions, which contain the aforesaid covenants would *prima facie* not qualify the threshold of “reasonable efforts” as contemplated under Rule 3(1)(b)(iv) of the IT Rules. During the course of the arguments, it was contended by Mr. Sethi that sellers registered with IIL also furnish an express undertaking to the



effect that no patent, copyright, trademark or other IPR's are infringed, and that the sellers shall comply with the applicable laws. However, the online registration form does not prominently indicate any such undertaking. Thus, the least that IIL can do is to ensure that each of the sellers is aware of the requirement to not display counterfeit products and ensure that they furnish an express undertaking to the said effect. It would also be apposite that the same be included as a prominent part of the online registration form / process.

88. We also consider it apposite to note Mr Sethi's contention that Indiamart has put in place a robust complaint redressal mechanism, specifically enabling the complainant to escalate any complaint including in relation to 'IPR complaints'. There is also no dispute that IIL is required to take down the offending listers on the same being pointed out by any person after satisfying itself regarding the same.

89. In terms of sub-section (3) of Section 79 of the IT Act, the protection of Section 79(1) of the IT Act is not available, in case an intermediary has conspired or abetted, aided or induced commission of an unlawful act and an intermediary fails to expeditiously remove or disable access to the material on receiving actual knowledge or on being notified by the appropriate government or agency.

90. In *Myspace Inc. v. Super Cassettes Industries Ltd.:(2017)236 DLT 478*, the Division Bench of this court had examined the import of the expression "actual knowledge" as used in Section 79(3) of the IT Act and provisions of the Copyright Act, 1957. We consider it relevant to set out the



following observations made by the court in the said judgment:

“37. Section 51(a)(ii) contains, in the second part, an exception, i.e of lack of knowledge or reasonable belief. Where a party is unaware and had no reasonable ground for believing that the works so communicated are infringing works, then, the first part, (casting liability would be inapplicable). The Single Judge held that a general awareness is sufficient, instead of specific knowledge to impute knowledge. The provision of safeguard tools and as clauses in the user agreement, concluded the single judge disclosed MySpace's general awareness that works uploaded (on its website) were infringing. This Court does not agree with the “knowledge” test applied by the Single Judge. Simply put, that test overlooks that unlike “real” space, in a *virtual* world, where millions of videos are uploaded daily, it is impossible under available technology standards to identify the streaming content, which actually infringes. Knowledge has a definite connotation, i.e a consciousness or awareness and not mere possibility or suspicion of something likely. The nature of the Internet media is such that the interpretation of knowledge cannot be the same as that used for a physical premise.

38. Copinger and Skone James on Copyright, 16th Edition, Vol 1 classifies “knowledge” as both actual knowledge and constructive knowledge. Actual knowledge would connote, facts such as whether the infringer turns a blind eye or adopts as a “Nelsonian” outlook showing failure to take steps to inquire into the kind of work it permits; this is to be seen in the context of digital media. A general awareness or apprehension that a work may be violative of copyright here would not pass the knowledge test. This rule when applied to an Internet service provider attains a different connotation. In the present case, where the system stores millions of videos, can MySpace be attributed with *specific knowledge* of infringement as to attract content responsibility? To say so would require MySpace - to know all owners of all works, and not just that of SCIL-a possibility not contemplated by the Copyright Act. A further aspect to this exception is “reason to believe” or what is referred to as constructive knowledge. Mere suspicion is insufficient; and similarly an apprehension is not enough. Here again would it be



reasonable to expect a defendant/content host to sift through millions of videos or audio files to form a reasonable belief that certain specific data infringes copyright of someone? The requirement is to give specific information to the content host or the website (MySpace) that infringement occurs with respect to the specific work. A general or vague description of the works would be insufficient as this then leaves room for MySpace to rely guesswork as to what content has to be removed. Therefore, the onus is upon the plaintiff to give detailed description of its specific works, which are infringed to enable the web host to identify them. SCIL's argument here that insertion of advertisements or modification of content by MySpace disclosed its knowledge-is unpersuasive. MySpace consistently states that the advertisement insertions etc. are through automated processes- which has not been seriously disputed. The modification made is to the format of the video or audio file and not to its content. The automated process does not apparently involve MySpace's actual control. The extent of automation or for that matter the amount of manual/human control can be discerned only at trial once evidence is led to show how the automatic process works and to what extent modifications are made and controlled. In the absence of such evidence, at a *prima facie* level this Court is of the opinion that if the modification/addition is entirely through an automatic process without any human intervention then knowledge cannot be attributed to MySpace.

39. The question of deemed or constructive notice, in the opinion of the court, cannot be on the basis of any generalization, without inquiry into circumstances: it is a fact dependent exercise. For instance, in the context of even a “deemed” notice about existence of encumbrance by way of statutory charge, under Section 3 of the Transfer of Property Act, the Supreme Court held that “*There is no principle of law imputing, to all intending purchasers of property in municipal areas where municipal taxes are a charge on the property, constructive knowledge of the existence of such municipal taxes and of the reasonable possibility of those taxes being in arrears. It is a question of fact or a mixed question of fact and law depending on the facts and circumstances of the case.*” (Cf. *Ahmedabad Municipal Corporation v. Haji Abdulgafur Haji Hussienbhai* AIR 1971 SC 1201). Likewise, it was emphasized in a later decision



that “*A person is said to have notice*” of a fact when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.” (R.K. Mohammed Ubaidullah v. Hajee C. Abdul Wahab (2000) 6 SCC 402). Knowledge is to be therefore placed in pragmatically in the context of *someone's* awareness (i.e a human agency); a modification on the technical side by use of software would *per se* not constitute knowledge. Nevertheless, if the software requires some kind of approval or authorization from a person or authority as opposed to a computer system then knowledge can be attributed. This however has to be seen at the stage of trial and is beyond the purview of this appeal.

40. In this case, SCIL claims to have sent MySpace several notices describing the infringing works. Despite this MySpace did not take down the content. MySpace counters that SCIL had supplied to it more than 100,000 songs and works in which it held copyright. MySpace performed a scan and found that several of these works listed SCIL's notice, were uploaded by distributors or performers. This presented two impossibilities, one that the list provided by SCIL did not point to specific works nor did it provide the location where the works were accessible; the list was vague and general and listed every work that SCIL produced without showing whether it was available on the appellant's site and importantly, that it completely ignored the “fair use” aspect. In the peculiar circumstances, this court agrees with MySpace's contentions. SCIL is under a duty to specify the works in which it owns copyright. Merely giving the names of all content owned by it without correspondingly stating those, which MySpace is *prima facie* infringing, is contrary to the established principles of copyright law. It is only when a specific work is mentioned can it be said that MySpace possesses knowledge of a work being infringed on its website. Providing long lists of all works, tasking MySpace with identifying and removing infringing content is not enough. It is only when MySpace has specific or actual knowledge or when it has reasonable belief, based on information supplied by SCIL and if despite such knowledge or reasonable belief it fails to act can it be held liable for infringement. It would be crucial here to highlight a grey area, with respect to knowledge, e.g when a genuine licensee



uploads works of SCIL. In the absence of a notice containing specific works there is possibility whereby MySpace makes a general search to identify the plaintiff's copyrighted work, it may come across works uploaded by authorized distributors/promoters. The general notice would constrain it to blindly remove the content, which can lead to disputes. In some other instances, a licensed performer may upload a video which is a combination of two songs or a remix-where rights in one half originally vest with SCIL and the owner of the second could be some person other than SCIL, makes it impossible for MySpace to discern the nature of rights and whom it finally vests with. There could be still other cases, where a copyrighted work may be adapted in the form of another creation, based on the original. In such cases, requiring removal would result in prejudice and injury. In the absence of specific titles and locations it would be impossible for MySpace to identify and remove such content. In such cases it becomes even more important for a plaintiff such MySpace to provide a specific titles, because while an intermediary may remove the content fearing liability and damages, an authorized individual's license and right to fair use will suffer or stand negated. In other words, an indiscriminate and blind acceptance of SCIL's entire list to run a general filter and "take down" all content would result in grave damage and result in likely multifarious disputes: with uploaders, many of whom are original creators in their own right and might have used a miniscule quantum of the copyrighted content in their larger original creation; with distributors, who might hold genuine licenses and with others who create versions, remixes or original titles which may have little content; still there may be other content uploaders whose material only superficially resembles with the titles owned by SCIL, because of the lyrics or titles but is otherwise genuine creation with its independent copyright. The remedy proposed by SCIL and accepted by the single judge in such cases results in snuffing out creativity. This court holds that in the context of the *prima facie* conclusion that there was no direct infringement by MySpace, the finding by the single judge of constructive knowledge and "secondary" infringement, is incongruous and not tenable. For the foregoing reasons, this court concludes that *prima facie* there was no



knowledge on the part of MySpace, with respect to allegations of infringement of the plaintiff-SCIL's works.

53. Here it is pertinent to mention that while Section 51 of the Copyright Act provides for a system of “notice”, Section 79(3) contemplates “receiving actual knowledge” or through notification by the government or its agency. The scope was widened in *Shreya Singhal v. UOI* (2015) 5 SCC 1, where actual knowledge was held to mean a Court order in cases relatable to Article 19 of the Constitution of India. In case of Section 51(a)(ii), the only exception is that MySpace was not aware or had no reasonable grounds to believe that the content was infringing. Section 79(3) perhaps is more mindful of the way the internet functions and supplemented knowledge with the term “actual knowledge”. Given the supplementary nature of the provisions-one where infringement is defined and traditional copyrights are guaranteed and the other where digital economy and newer technologies have been kept in mind, the only logical and harmonious manner to interpret the law would be to read them together. Not doing so would lead to an undesirable situation where intermediaries would be held liable irrespective of their due diligence. By acting as mere facilitators and despite complying with legal norms, intermediaries can attract great liability, for no fault of theirs which in the long run would not only discourage investment, research and development in the Internet sector but also in turn harm the digital economy-an economy which is currently growing at a tremendous pace and without which life could potentially come to a standstill. Surely, such a consequence was not intended by Parliament, which mindful of techno-legal developments around the world created for safe harbor provisions. Another aspect is the manner how Internet is accessed. If a strict regime is implemented with respect to intermediary liability, such intermediaries could conveniently migrate to a location where data protection laws are not as rigorous and the content would still be accessible. Under such circumstances while the economic loss is one aspect, it would become near impossible to trace intermediaries to take down content.



54. Section 79(3) of the IT Act specifies that when a person has actual knowledge or upon notification by the appropriate government or its authority fails to expeditiously remove or disable access to an unlawful content then the immunity granted under Section 79(1) is revoked. The knowledge contemplated under this section is *actual* knowledge. In *Shreya Singhal* (supra), Section 79(3) with Rule 3(4) of the Rules were read down to mean receipt of actual knowledge from a court order or on being notified by the appropriate government. However, this was in respect of restrictions under Article 19(2) of the Constitution of India. The Supreme Court was conscious of the fact that if millions of requests for take down are made, it would become difficult for intermediaries (such as Google) to identify legitimate requests. In the case of copyright laws it is sufficient that MySpace receives specific knowledge of the infringing works in the format provided for in its website from the content owner without the necessity of a court order.

71. Though *prima facie* MySpace is not liable for secondary infringement, yet there is no gainsaying that infringing works are on its website. The court is under a duty to devise an equitable relief suited to the facts when liability has not been ascertained fully. At the same time precious independent talent would suffer without due recognition and monetary incentives given that monies performers would have received by licensing content are now available freely without payment. Despite several safeguard tools and notice and take down regimes, infringed videos find their way. The remedy here is not to target intermediaries but to ensure that infringing material is removed in an orderly and reasonable manner. A further balancing act is required which is that of freedom of speech and privatized censorship. If an intermediary is tasked with the responsibility of identifying infringing content from non-infringing one, it could have a chilling effect on free speech; an unspecified or incomplete list may do that. In an order of relief such as that passed by the learned Single Judge, MySpace would be in contempt of court for not complying with an order, which is otherwise impossible or at best onerous and cumbersome of performance. In order to avoid contempt action, an intermediary would remove all such content, which even remotely resembles that of the content



owner. Such kind of unwarranted private censorship would go beyond the ethos of established free speech regimes.”

91. There is no dispute that on receipt of knowledge of counterfeiting, IIL would be obliged to take down the link and failure to do so would be actionable. In such circumstances, the safe harbour of Section 79(1) of the IT Act would not be available to IIL.

92. PSE’s grievance that sellers are permitted to re-register on Indiamart despite their listings having been taken down earlier appear justified. The same seller in respect of the same products cannot be permitted to relist after its listing is removed. *Prima facie*, failure to prevent such a seller from re-listing itself in a case where its listing has been pulled down on account of infringement of IPR, would fall foul of the requirement of due diligence under Section 79(3)(a) of the IT Act. It may be a different matter if such a seller fraudulently re-lists under a different name or furnishing different particulars, the discovery of which may require a qualitative analysis, which may not be feasible. However, failure to prevent him from re-listing in its own name and with the same particulars would, *prima facie*, be indicative of IIL being negligent or complicit.

93. As noted initially, in the present case, the learned Single Judge has *prima facie* found that protection of Section 79(1) of the IT Act would also be unavailable by virtue of clause (a) to sub-clause (3) of Section 79 of the IT Act. This is because the learned Single Judge had *prima facie* found that IIL had conspired, abetted and aided in infringement of the Puma Marks. As observed above, we are unable to concur with the said *prima facie* finding.



The fact that IIL provides an option for a seller to choose the brand of its products specifically describing its goods cannot, *prima facie*, be held to be a ground to hold that it aids and abets the infringer in displaying the counterfeit products of a particular brand. The fact that a particular seller displays his advertisements under a particular sub-category describing products and services cannot lead to the conclusion that the very category is required to be eliminated. The logical sequitur of accepting PSE's contention, at this stage, would be that IIL cannot accept a description of goods by their brand. It would necessarily have to eliminate references to brands at the time of registration. This, in our view is, *prima facie*, unsustainable.

CONCLUSION

94. In our view, subject to IIL making reasonable efforts, to cause users of Indiamart not to host, display, upload or share any information that infringes the PUMA trademarks, as discussed earlier; IIL is not required to be interdicted from providing options to identify the products/services by their brands/trademarks and operating its B2B portal – Indiamart.

95. In view of the above, the impugned order is set aside to the extent that it restraints IIL from providing an option to use the PUMA mark for the description of any goods as a search option in the drop-down menu presented to prospective sellers at the time of the registration on the Indiamart platform. However, we sustain the direction that IIL shall forthwith take down all infringing listings containing the PUMA marks on the same being brought to its notice.



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96. The present appeal is disposed of in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JUNE 02, 2025

M/RK