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INTELLECTUAL PROPERTY RIGHTS

IndiaMART vs. PUMA: Balancing IP Protection and Intermediary Liability in the Digital Age

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PUBLISHED 11 June 2025

The Delhi High Court in a recent judgment, IndiaMART Intermesh Limited vs. PUMA SE has examined an intersection between Intellectual Property Rights and intermediary liability in a digital marketplace. The Court was called upon to decide whether IndiaMART can use any third parties trademark, “PUMA” as a brand keyword on its website.

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Background of the Case

PUMA SE,a global sports wear brand, filed a suit **CS(COMM)607/2021** alleging that IndiaMART’s platform was being used to enable the sale of counterfeit PUMA goods thereby infringing its trademarks. PUMA claimed that IndiaMART’s website allowed unauthorised sellers to use the mark “PUMA” by offering it as a keyword in a dropdown menu for product classification.

The Single Judge observed that IndiaMART Intermesh Limited’s “use” of the mark “PUMA” amounted to trademark infringement under Sub-sections (1),(2) and (4) of Section 29 of the Trade Marks Act, 1999. The Judge had granted interim relief in favour of PUMA, restraining IndiaMART from offering PUMA as a keyword and directing removal of listings in fringing PUMA’s trademarks. IndiaMART, in response, filed an intra-court appeal challenging the order.

Key Issues Considered

1. **Whether Listing of Counterfeit Products Amounts to Infringement by IIL?**
2. **Whether IIL Aids and Abets in Infringement?**
3. **Safe Harbour under Section79(1) of the IT Act.**

Appellant’s Contentions

IndiaMART Intermesh Limited (IIL) claimed that they are engaged in the business that operated an integrated electronic B2B which provided an internet based e-market place/platform. It provided the platform to desirable sellers that wanted to list their products and IIL does not alter their content in any manner. IIL claimed that it is an intermediary under Section 2(1)(w) of the Information Technology Act, 2000, which means “with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-marketplaces and cyber cafes”.

Respondent’s Contentions

PUMA SE is a company incorporated and established in Germany. They claim that they have been using registered trademarks since 1977, which have since become source identifiers for their products.Their trademark was declared as an “**well-known**” trademark by the Trademark Registry and was published in the Trademarks Journal No. 1942 on 24-02-2020. The products manufactured by PUMA SE are synonymous with the brand itself, firmly establishing it as a well-known mark.

PSE claimed that they received various consumer complaints of counterfeit PUMA products, which were listed on IIL’s platform. PSE claimed that the process of registration of sellers on IndiaMART required the sellers to key-in their details including the products they dealt in. PSE claimed that the use of its registered trademarks on the goods that were displayed by sellers on IndiaMART amounted to infringement of its registered trademarks as per Section29 of the Trademarks Act and it also amounts to passing off.

Scope of Trademarks Act, 1999

As per Section 2 (1)(zg), a “well-known” trademark is, “in relation to any goods or services, means a mark which has become so to the substantial segment of thepublic which uses such goods or receives such services that the use of such markinrelation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services”.

Section 29 of the Trademarks Act, 1999 defines infringement of registered trademarks. A registered trademark is said to be infringed when any trademark is deceptively similar or identical to a registered trademark without permission, intrade, in a way that is associated or confused with the original. Use in advertising, business names and even online is considered as infringement.

The term passing off is not explicitly defined under the Trade Marks Act, 1999. But the term has been defined in a leading case law of N. R Dongre and Ors. vs. Whirlpool Corporation and Anr. in Appeal (Civil) 10703 of 1996, “Passing- off is said to be a species of unfair trade competition or of actionable unfair trading by which one person, through deception, attempts to obtain an economic benefit of the reputation which another has established for himself in a particular trade or business. The action is regarded as an action for deceit. The tort of passing-off involves a misrepresentation made by the trader to his prospective customers calculated to injure, as a reasonably foreseeable consequence, the business or goodwill of another which actually or probably, causes damages to the business or good of the other trader”

Court’s Observations

The Division Bench of Delhi High Court set aside the Learned Single Judge’s order that had held IndiaMART liable for trademark infringement of **“PUMA”**

- **Whether Listing of Counterfeit Products Amounts to Infringement by IIL?**

The Court said that the action of offering an option to the sellers to describe its goods by using its brand name, per se could not be termed as dishonest business practice. Further, it stated that the Section 29 of the Trade Marks Act,1999 is not applicable in the present case.

- **Whether IIL Aids and Abets in Infringement?**

The Court held that IIL renders listing services where buyers can get in touch with sellers. It is a platform where the negotiations and the transaction of sale and purchase of the products is executed between the buyers and sellers directly. Therefore, even though PUMA listings were available through the platform, the dropdown menu did not itself constitute infringement unless used to pass off counterfeit goods. IndiaMART’s actions were analogous to a yellow pages directory enabling product classification, rather than an e-commerce platform directly involved in transactions.

- **SafeHarbourunderSection79(1)oftheIT Act.**

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 it. 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. Significantly, the Division Bench disagreed with the Single Judge’s view that IndiaMART forfeited protection under Section 79 of the IT Act. The Bench emphasized that:

- **IndiaMART did not initiate or altertransmission of listings.**
- **Itremovedcounterfeitlistingsoncenotified.**
- **No evidence established IndiaMART’s active in ducement ordeliberate facilitation of infringement.**

Thus, IndiaMART retained its immunity as an intermediary under Section79(1) of the IT Act.

Conclusion

The Delhi High Court’s decision in IndiaMART Intermesh Ltd.v.PUMASEdelivers pivotal legal clarity at the intersection of trademark protection and intermediary liability. The bench held that simply providing “PUMA” as a brand keyword in a dropdown list does not violate Section29 of the Trade Marks Act, 1999. Trademark infringement necessitates a direct link to the sale or promotion of counterfeit goods, not passive facilitation of listings.

Further, the Court reaffirmed IndiaMART's entitlement to safe harbour under Section79(1) of the Information Technology Act, 2000. IndiaMART did not originate or modify any content and took down infringing listings upon notification, satisfying the statutory conditions.

Critically, the judgment aligns with theSupreme Court's decision in ShreyaSinghalv. Union of India (2015), which read down Section79(3)(b). The Court clarified thatan intermediary's "actual knowledge" of unlawful content is triggered only when it is in receipt of: a court order, or a formal notification from the appropriate government or its agency, and only for content falling with in the permissible grounds of Article19(2) of the Constitution.

Consequently, mere private complaints or brand-owner emails do not amount to "actual knowledge" and do not deprive intermediaries of statutory immunity. The Delhi High Court found no indication that IndiaMART had such knowledge via court

or government direction, nor did it engage in active facilitation of counterfeit sales. Thus, IndiaMART retained its safe harbour protection.

This ruling strikes a just balance, it safeguards trademark holders while preventing undue burdens on bona fide intermediaries. It confirms that legitimate platforms must work collaboratively with IP owners through established grievance mechanisms,rather than facing punitive liability based on user-generated listings or keyword metadata. In doing so, it reaffirms the principled intermediary framework affirmed in Shreya Singhal, urging digital market places to maintain compliant content moderation systems without compromising operational freedom.

The judgment sets a precedent for digital marketplaces, emphasizing the need for intermediaries to implement strong monitoring and reporting mechanisms to prevent the listing of counterfeit goods. It also shows the need for balancing the protection of intellectual property rights with encouraging innovation in the digital economy. The decision suggests that collaboration between intermediaries, brand owners, and regulatory bodies could be beneficial in addressing the challenges of counterfeit goods in digital marketplaces.

For further details,contact us at:**contact@indialaw.in**

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