



Case Overview

- The case originated after the Petitioner Christian Louboutin, a luxury goods brand, alleged that the defendant company Darveys.com was indulging in unauthorised sales by selling its products thus violating its trademark rights. The defendant claimed protection through section 79 of the Information Technology Act, 2000 as an intermediary.
- The website, among other things, charged a membership fee for users to join the platform, hosted an article about Christian Louboutin products, used meta-tags, and showed the brands' logo/product photographs.
- In the argument presented by the plaintiff, Christian Louboutin SAS, they claimed that the defendant's website gives an impression to their visitors that it is affiliated, sponsored, or in some manner been approved by the plaintiff for the selling of plaintiff's luxury products through their website. Therefore, it was claimed by the plaintiff that there is an infringement of the trademark rights of the plaintiff



Issues that the court had to review

- Whether the "safe harbour" protection through section 79 should apply here?
- Whether the use of Meta Tags comprising the Plaintiff's Registered Trademark amounts to infringement of IP rights?
- Whether there should be relief awarded to the plaintiff against the defendant?



Section 79 of the IT Act

A brief about Section 79 of IT act:

- According to law, an "intermediary" is a website, organization or a person who just facilitates the communication over which information or data is transmitted.
- Intermediary does not initiate the transmission of information, select the receiver of information, select or modify the information being transmitted.
- The intermediary is not exempted from liability if it has conspired or abetted or aided or induced, whether by threats or promise or authorized in the commission of the unlawful act;
- 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.



Arguments of both parties

Defendants points:

- The sales were legally carried out
- They had no direct dealings with the Plaintiff.
- They had no knowledge of the Christian Louboutin brand.

Plaintiffs points:

- The use of the brand's trademarks on the website is a clear indication of an infringement.
- The usage of Meta tags comprising the brand names was also infringing.
- The use of an article on the website by Christian Louboutin clearly differs from the plaintiff's contention of not having knowledge about the brand.
- It also points at the various mentioning of the brand and its founder through writeups and photographs.



Final Decision

- The Court held that Darvey.com actively participated in the trading process which is evident by the fact that it did not disclose details of the foreign sellers, it guaranteed the products' authenticity and it had a membership fee. Thus, it was not an entitled to safe harbour protection under Section 79 of the Information Technology Act, 2000.
- It is submitted on behalf of Darveys.com that no product of the Plaintiff was in fact sold on its platform, though the website did advertise and promote the products using the Plaintiff's brand. Thus, no order for damages/rendition of accounts or costs is passed.

