

B.M.S College of Engineering

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DEPARTMENT OF INFORMATION SCIENCE & ENGINEERING



Case study presentation on

Christian Louboutin SAS Vs Nakul Bajaj & Ors

submitted in partial fulfilment of the requirements of the requirements for the AAT of

Cyber Law for Engineers 20IS7HSCLE

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C E R T I F I C A T E

This is to certify that the presentation entitled “**Christian Louboutin SAS Vs Nakul Bajaj & Ors**” is a bona-fide work carried out by by **Prateek M Gummaraju and Samartha S** bearing USN: **1BM19IS117** and **1BM19IS219** respectively, in partial fulfilment of the requirements for the degree in **Bachelor of Engineering in Information Science & Engineering** of **Visvesvaraya Technological University, Belgaum** as a part of for the course **Cyber Law for Engineers**, Course Code - **20IS7HSCLE** during academic year 2022-2023

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Introduction to Cyber Law

What is Cyber Crime?

To put it in one sentence, Cyber Crime is any unlawful activity in which a Computer is both: the target as well as the means of attack. Cyber crimes can involve criminal activities that are traditional in nature, such as theft, fraud, forgery, defamation and mischief, all of which are subject to the Indian Penal Code. The abuse of computers has also given birth to a gamut of new age crimes that are addressed by the Information Technology Act, 2000.

What is Cyber Law or IT Law?

Cyber Law also called IT Law is the law regarding Information-technology including computers and the internet. It is related to legal informatics and supervises the digital circulation of information, software, information security, and e-commerce.

IT law does not consist of a separate area of law rather it encloses aspects of contract, intellectual property, privacy, and data protection laws. Intellectual property is a key element of IT law.

Roughly, Cyber Law covers aspects of:

- 1) Fraud and theft
- 2) Copyright
- 3) Defamation
- 4) Harassment and Stalking
- 5) Freedom of Speech
- 6) Trade Secrets
- 7) Contracts and Employment Law

In India, Cyber Crimes are covered by the Information Technology Act, 2000 (amended in 2008) and the Indian Penal Code, 1860, which has gone through several amendments as well.

Information Technology Act, 2000:

The Information Technology Act, 2000 also Known as an **IT Act** is an act proposed by the Indian Parliament reported on 17th October 2000.

The main objective of this act is to carry out lawful and trustworthy electronic, digital and online transactions and alleviate or reduce cybercrimes. The IT Act has 13 chapters and 90 sections. The last four sections that starts from 'section 91 – section 94', deals with the revisions to the Indian Penal Code 1860.

A few important Sections under the IT Act:

- 1) Trying to tamper with computer resources - Section 65
- 2) Trying to hack into the data stored in the computer – Section 66

- 3) Provision of penalties for misappropriation of information stolen from computer or any other electronic gadget – Section 66B
- 4) Provision of penalties for stealing someone's identity-Section 66C
- 5) Provision of penalties for access to personal data of someone with the help of computer by concealing their identity- Section 66D
- 6) Provision of penalties for breach of privacy- Section 66E
- 7) Provision of penalties for cyber terrorism- Section 66F
- 8) Provisions related to the publication of offensive information-Section 67
- 9) Provision of penalties for publishing or circulating sex or pornographic information through electronic means- Section 67A
- 10) Publication or broadcast of such objectionable material from electronic means, in which children are shown in obscene mode – Section 67B
- 11) Provision of penalties for disrupting or blocking information by mediators- Section 67C
- 12) Provision for making objectionable access to a secured computer-Section 70
- 13) Delivering data or data incorrectly – Section 71
- 14) Provisions related to mutual trust and privacy – Section 72
- 15) The provisions relating to making public the information violation of the terms of the Protocol-Section 72
- 16) Publication of Ezra Digital Signature-Section 73

Description of Case Study

Christian Louboutin SAS vs Nakul Bajaj & Ors.

On November 2, 2018, the Delhi High Court delivered a landmark judgment in the case of *Christian Louboutin v. Nakul Bajaj and Ors.*¹ and also tried to clarify the responsibilities and liabilities of an e-commerce company as an intermediary of IP rights for trademark infringement. This judgment has somehow tried to clarify, but in some parts has also complicated the intermediary liability in the case of trademark infringement. However, this judgment is important and significant as this is the first time the Indian Court has pronounced any judgment related to the trademark infringement by any e-commerce platform.

In the case, the defendant was operating a website in the name of *www.darveys.com* and was offering for sale, different opulence products including luxury shoes in the brand name of “Christian Louboutin”. 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 and also the cessation of the opulence and richly status enjoyed by the plaintiff on its products which is being displayed by the website.

During trials, it was claimed by the defendants that the website is merely an intermediary as it is being used merely for booking of such products and not for selling directly through its online platform and it only books orders on the behalf of the registered seller who uses these online booking to sell their goods. They also claimed that these goods are being displayed on their platform on the behalf of those sellers and they are entitled to protection under section 79 of the IT Act, 2000.

Observations and Conclusions

The basic arguments made by the plaintiff is that the website “darveys.com” is unfairly using the brand “Christian Louboutin” for their profits without proper rights or permissions. They are claiming that the website sells counterfeit, inauthentic goods under the name Christian Louboutin, and gives various discounts and offers for the same. They further claim that the defendants have used metatags for the words “Christian” and “Louboutin” which unfairly directs towards the website “darveys.com.” They also maintain that the defendants have unfairly used Plaintiff’s trademark, Mr. Christian Louboutins name and pictures, and have offered sales.

The defendants argue that they are merely a booking website for 287 such boutiques/sellers and they send the order list to foreign suppliers. They do not physically purchase the products and sell them, rather just send the orders to foreign suppliers. They also maintain that if the manufacturer sends them a communication to not list offers, then they won’t. They maintain that they do not have a direct contact or relationship with the Plaintiff, rather they just take orders for overseas sellers. They claim that the products are 100% authentic and not counterfeits.

The court’s verdict was as follows:

As stated earlier, the only question before the honorable bench was to determine the protection of the defendant under section 79 of the IT Act, 2000. So the court basically examined the term “intermediary” provided under section 2(w) of the IT Act, 2000 and in which condition and circumstances an e-commerce platform will be applicable for protection under the section 79 of the IT Act, 2008.

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 entitled to safe harbour protection under Section 79 of the Information Technology Act, 1999.**

Report

Section 79 of the Information Technology Act, 2000 states that:

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 subsections (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 on 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 authorized 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.

As stated earlier, the only question before the honorable bench was to determine the protection of the defendant under section 79 of the IT Act, 2000. So the court basically examined the term

“intermediary” provided under section 2(w) of the IT Act, 2000 and in which condition and circumstances an e-commerce platform will be applicable for protection under the section 79 of the IT Act, 2008.

Here’s an excerpt from the court proceedings:

“ 60. Darveys.com does not disclose the details of the foreign sellers or where they purchase the products from. The sellers are not subject to the jurisdiction of this court. It is only a claim that the products are genuine. It has a membership fee for its customers. The policy which is available on Darveys.com shows that if the products turn out to be counterfeit, Darveys.com will return twice the money. Is Darveys.com an intermediary and is the Darveys.com platform entitled to exemption under Section 79 of the Act?

61. The policies which are discussed above shows that Darveys.com exercises complete control over the products. Darveys.com is in fact identifying the sellers, enabling the sellers actively, promoting them and selling the products in India. The role of Darveys.com is much more than that of an intermediary.

62. While the so-called safe harbour provisions for intermediaries are meant for promoting genuine businesses which are inactive intermediaries, and not to harass intermediaries in any way, the obligation to observe due diligence, coupled with the intermediary guidelines which provides specifically that such due diligence also requires that the information which is hosted does not violate IP rights, shows that e-commerce platforms which actively conspire, abet or aide, or induce commission of unlawful acts on their website cannot go scot free.

63. The elements summarised above would be key to determining whether an online marketplace or an e-commerce website is conspiring, abetting, aiding or inducing and is thereby contributing to the sale of counterfeit products on its platform. When an e-commerce website is involved in or conducts its business in such a manner, which would see the presence of a large number of elements enumerated above, it could be said to cross the line from being an intermediary to an active participant. In such a case, the platform or online marketplace could be liable for infringement in view of its active participation. Needless to add, e-commerce websites and online marketplaces ought to operate with caution if they wish to enjoy the immunity provided to intermediaries. The question, however, would have to be determined after reviewing the practices

of various websites under the facts and circumstances of a particular case.

64. So long as they are mere conduits or passive transmitters of the records or of the information, they continue to be intermediaries, but merely calling themselves as intermediaries does not qualify all e-commerce platforms or online marketplaces as one.”

The decree of the judgement:

- i) Darveys.com is directed with immediate effect, to disclose the complete details of all its sellers, their addresses and contact details on its website;
- ii) Darveys.com shall obtain a certificate from its sellers that the goods are genuine;
- iii) If the sellers are not located in India, prior to uploading a product bearing the Plaintiff's marks, it shall notify the plaintiff and obtain concurrence before offering the said products for sale on its platform;
- iv) If the sellers are located in India, it shall enter into a proper agreement, under which it shall obtain guarantee as to authenticity and genuinity of the products as also provide for consequences of violation of the same;
- v) Upon being notified by the Plaintiff of any counterfeit product being sold on its platform, it shall notify the seller and if the seller is unable to provide any evidence that the product is genuine, it shall take down the said listing and notify the plaintiff of the same, as per the Intermediary Guidelines 2011;
- vi) It shall also seek a guarantee from the sellers that the product has not be impaired in any manner and that all the warranties and guarantees of the Plaintiff are applicable and shall be honoured by the Seller. Products of any sellers who are unable to provide such a guarantee would not be, shall not be offered on the Defendant's platform.

vii) All meta-tags consisting of the Plaintiff's marks shall be removed with immediate effect;

viii) 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.

PPT Snapshots



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

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.

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?

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.

Rubrics Sheet

RUBRICS FOR LEGAL ADVISOR VISIT/CASE STUDY

Rubrics	Outcomes Expected
Case analysis	Able to understand the procedural history of the case and understand the evidences
IT Acts understanding	Able to distinguish the IT Act regulations and applying on the case
Verdict	Able to understand the decision announced and the penalty issued against the guilty
Presentation	Able to communicate with effectual documentation
Team work	The team worked well together to achieve the objectives
Evaluation pattern All five accomplished – Excellent (5M) Any four accomplished - Impressive (5M) Any three accomplished – Adequate (5M) Any two accomplished - Satisfactory(5M) Case history IT ACT laws Decision and penalty	