

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 164 OF 2025**

IN THE MATTER OF:

HARIYALI WELFARE SOCIETY

...APPLICANT

VERSUS

M/s FLIPKART LOGISTICS
PRIVATE LIMITED & ORS

...RESPONDENTS

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N.D.O.H.: 14.11.2025

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D-2300/2019.

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**PLACE: NEW DELHI
DATE: 13.11.2025**

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 164 OF 2025**

IN THE MATTER OF:

HARIYALI WELFARE SOCIETY ...APPLICANT

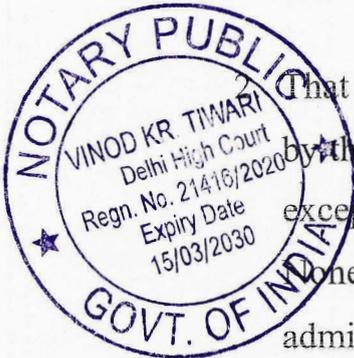
VERSUS

M/S FLIPKART LOGISTICS
PRIVATE LIMITED & ORS ...RESPONDENTS

**REPLY BY WAY OF AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO. 3**

I, SRISHTI GAUTAM, D/O ASHOK KUMAR GAUTAM, AGED ABOUT 27 YEARS, THE AUTHORIZED REPRESENTATIVE OF RESPONDENT NO. 3, HAVING IT'S REGISTERED OFFICE AT 1ST FLOOR, 29 - DARYAGANJ, NETAJI SUBHASH MARG, NEW DELHI - 110 002 DO HEREBY STATE ON SOLEMN AFFIRMATION AS UNDER:

1. I state that I am the authorised representative of the Respondent No. 3, as such I am competent to file the present reply by way of Affidavit.



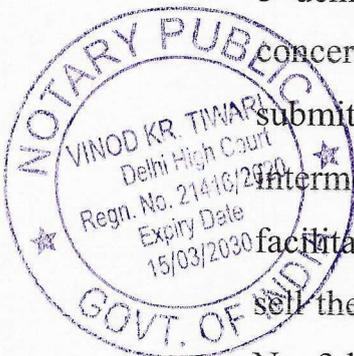
That without prejudice to the foregoing, each averment made by the Applicant is denied by the Respondent No. 3, save and except only those which are expressly admitted hereunder. One of the averments in the Application should be deemed admitted merely for the lack of specific denial.

3. The captioned Application is pending adjudication before this Hon'ble Tribunal where the Applicants' gravamen is that the Respondent Nos. 1-4 who are e-commerce platforms are allegedly engaged in illegal sale and distribution of polystyrene



and expanded polystyrene (thermocool) commodities (also known as 'Styrofoam') which is in violation of Rule 4(2) of the Plastic Waste Management Rules, 2016. That based on the Application, it is submitted that the no links of the said illegal products have been provided by the Applicant, however the Applicant has annexed screenshots of Respondent No. 3's website as Annexure A-2, more particularly with respect to Respondent No. 3's website on Pg No. 55-58.

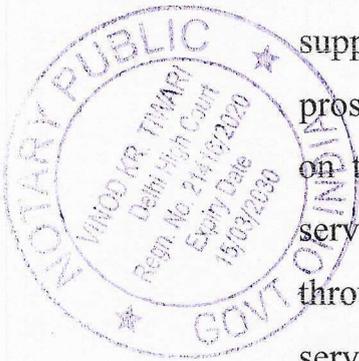
4. At the outset, it is submitted that Respondent No. 3, is not an e-commerce website and has been wrongly implicated in the present application. The Respondent No.3 is a passive intermediary and does not fall within the purview of an e-commerce website as per the PWM Rules, 2016 as it does not engage in the sale, purchase, or distribution of any products. Accordingly, the Respondent No.3 has been improperly and unnecessarily joined in the array of parties as no cause of action persists against the Respondent No.3.
5. Without prejudice, it is further submitted that Respondent No. 3 denies all allegations made against it in the Application concerning the alleged sale of the illegal products. It is submitted that Respondent No. 3 operates solely as a passive intermediary platform connecting buyers and sellers, facilitating a marketplace where third-party sellers can list and sell their products to consumers. In this capacity, Respondent No. 3 has not sold or offered to sell any illegal product in any manner, as alleged or even otherwise. The Respondent No. 3 does not own, control, or directly list any of the products on the



platform; rather, it merely provides a service that connects buyers and sellers. It is further submitted that the Applicant's claims regarding sale of illegal goods are based on a misleading and erroneous interpretation of Respondent No. 3's role and business model. It is submitted that Respondent No. 3 cannot be held responsible for the actions of third-party sellers unless there is active participation or knowledge of such illegal sale.

The Respondent No. 3 is not in violation of Section 5 of the Environment Protection Act, 1986

6. The Applicant's attempt to hold Respondent No. 3 accountable for the listings made by independent sellers on the platform, is therefore misplaced.
7. By way of background, it is relevant to provide an overview of the business model of the Respondent No. 3. It is submitted that Respondent No.3 is a company incorporated under the provisions of the Companies Act, 1956, and provides access to the website namely www.indiamart.com [hereinafter "Website"] which is an online discovery platform to facilitate interaction between the buyers and suppliers of products and services in order to access or meet the prospective buyers, suppliers of products and services. That, to access or meet with prospective buyers, suppliers get themselves listed/registered on the website and then display their various products and services. Any information or listings contained on, distributed through, or linked, downloaded or accessed from any of the services contained on the website or any advertisement/



invitation to offer displayed on or in connection with any service offered on the website [hereinafter “**Website Information**”] by the supplier (which is a third party) is intended, solely to provide general information for the personal use of the buyer(s)/user(s). Moreover, the concerned supplier who upload/hosts the information/content on the Website fully accepts all responsibilities and liabilities arising from, and out of, the use of such Information by the user(s) while categorically represents, warrants and agree under the terms of use [hereinafter “**Users Agreement**”] that the information so contained does not violate any provisions of law and/or rights of any third parties.

8. It is submitted that Respondent No.3 as a passive intermediary that merely provides a marketplace for suppliers to list their products or services is not in any violation of Section 5 of the EP, Act, 1986 read with PWM Rules, 2016 as Respondent No.3 is a passive intermediary and does not fall within the purview of an e-commerce website as per the PWM Rules, 2016 as it does not engage in the sale, purchase, or distribution of any products whatsoever.
9. Relevant extracts of Section 5 of the EP Act, 1986 and Rule 4(2) of PWM Rules, 2016 are respectively reproduced herein below for the easy reference of the Hon’ble Tribunal:



5. POWER TO GIVE DIRECTIONS.-

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may¹, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions²

Explanation--For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct--

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) stoppage or regulation of the supply of electricity or water or any other service.

(2) The manufacture, import, stocking, distribution, sale and use of following single-use plastic, including polystyrene and expanded polystyrene, commodities shall be prohibited with effect from the 1st July, 2022:—

- (a) ear buds with plastic sticks, plastic sticks for balloons, plastic flags, candy sticks, ice-cream sticks, polystyrene [Thermocol] for decoration;
- (b) plates, cups, glasses, cutlery such as forks, spoons, knives, straw, trays, wrapping or packing films around sweet boxes, invitation cards, and cigarette packets, plastic or PVC banners less than 100 micron, stirrers.

In view of the abovementioned legal provisions, it is submitted that Respondent No. 3 is merely an Online Discovery Platform to facilitate interaction between buyers and suppliers of products and services. It is respectfully submitted that Respondent No. 3 is not an e-commerce platform but merely an intermediary. It is submitted that the Respondent No. 3 functions solely as a communication facilitator between buyers and suppliers and does not engage in the sale of the products, their invoicing, or any direct transaction with buyers or suppliers. Unlike e-commerce platforms, which typically manage product listings, control transactions, and often provide product storage, packaging, and delivery services, Respondent No. 3's role is limited to enabling the discovery and connection of independent suppliers with prospective buyers. Accordingly, it is submitted that the Respondent No.3 is not engaged in any



illegal sale and distribution of polystyrene and expanded polystyrene (thermocool) commodities (also known as 'Styrofoam') which is in violation of Rule 4(2) of the Plastic Waste Management Rules, 2016.

10. It is pertinent to note that the Central Pollution Control Board (CPCB), i.e. Respondent No.5 in the present proceedings had not issued any of the notices annexed in the Original Application to the Respondent No.3 clearly establishing that Respondent No.3 does not fall within the purview of the PWM Rules, 2016 as the Respondent No.3 is not an e-commerce platform unlike the other implicated Respondents. It is submitted that mere perusal of the Show Cause Notices annexed by the Applicant as Annexure A-5 and Annexure A-7 shows that the Respondent No. 3 was never issued the said Notices. The Respondent No. 3 is not part of the list titled 'E-Commerce Companies (Non-complying)', annexed at Page 100 of the Application. As such, no opportunity has been given to Respondent No. 3 to take needful action, if any.

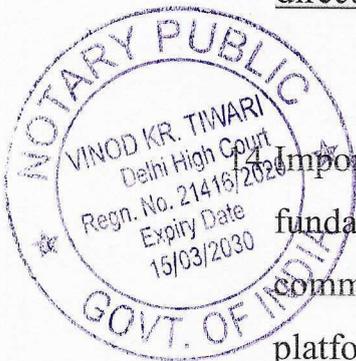
Respondent No. 3 is not an e-commerce platform

11. It is submitted that Respondent No.3, incorporated under the provisions of the Companies Act, 1956, operates the website www.indiamart.com (hereinafter "Website"), which serves as India's largest Business-to-Business (B2B) marketplace.



12. It is respectfully submitted that the Respondent No.3's role is limited to providing a B2B online marketplace wherein suppliers registers themselves and undertake listings of goods and services in which they deal with and thereafter buyers can connect with them for interactions which may or may not lead to potential commercial dealings. Respondent No.3 neither acts as a seller nor as an agent for any transactional activity. All negotiations and subsequent transactions, if any, take place independently between the parties, outside the platform and without involvement of Respondent No.3 in the execution of transaction.

13. Respondent No.3 neither sees the listed product, nor touches the listed product or stores the listed product and/or deal with the listed product in any manner whatsoever nor it participate in the execution of commercial transaction between the Users. In other words, the 'listing' does not provide access to the product/service itself, and no product/service is sold on the Website. The Website is informational and does not facilitate direct sales or purchases.



14. Importantly, the business model of Respondent No.3 is fundamentally distinct from Business-to-Consumer (B2C) or e-commerce models, like Flipkart and Amazon, where the platform directly fulfills consumer demand, processes transactions, controls pricing or participates in order fulfillment



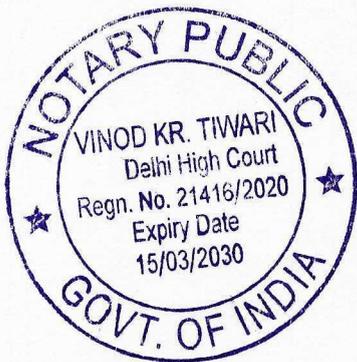
and logistics. Respondent No.3 operates strictly as a match-making platform, limiting itself to online listings only.

15. This distinction and the operation model has been judicially recognized by the Division Bench of the Hon'ble High Court of Delhi in *Indiamart Intermesh Limited vs Puma SE, FAO (OS) (Comm) 6/2024* dated 02.06.2025 (Annexure-A). The Court acknowledged that Respondent No.3 is not an interactive website for placing purchase orders but a listing services akin to a Yellow Pages directory, where buyers access supplier information to initiate independent communications. The relevant paragraphs are as follows: -

"...Indiamart renders listing services where buyers can get in touch with sellers."

"...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"

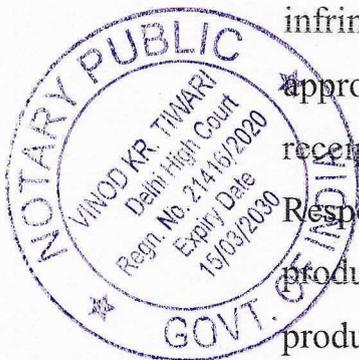
"... As noticed above, the nature of services offered by Indiamart are akin to Yellow Pages DirectoryThe publisher of Yellow Pages Directory would neither determine the genuineness of the products offered by any of the entities/ businesses listed in the Yellow Pages nor determine whether the person selecting 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"



“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 on 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”

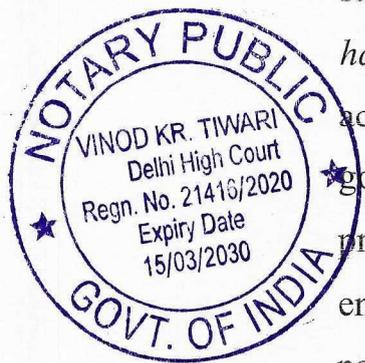
16. Therefore, it is quite clear that Respondent No.3 is an ‘Online Listing platform’ and not an E-Commerce platform, it merely connects buyers and seller and thereby attracts no liability in relation to the third party content and/or commercial transactions between third parties, which can’t obviously be executed over Respondent No.3’s platform due to lack of any such facility, under any statute and is covered under the safe harbour provision.

17. As an intermediary, the Respondent No. 3 has duly complied with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, [hereinafter “**IT Rules**”] by responding to legitimate complaints of trademark infringement or any other wrongful/ illegal listing and taking appropriate action to block or removing the said listings upon receipt of valid notices or Court’s orders. In light of the above, Respondent No. 3 denies all allegations of sale of illegal products, asserting that as an intermediary, it has not sold any products, and the said products are listed by third-party sellers. The Applicant’s claims are therefore based on a misleading



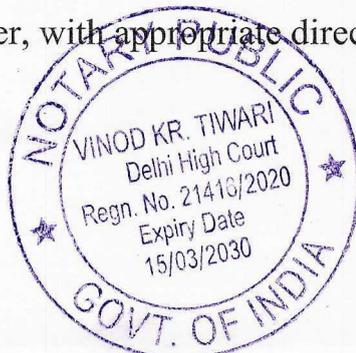
interpretation of the intermediary's role, and Respondent No. 3 cannot be held liable for the actions of independent sellers on its platform. The only relief that can be sought against Respondent No. 3 is to direct it to take down or block the infringing listings as and when brought to its attention.

18. It is submitted that as per Plastic Waste Management Rules, 2022 only certain types of single use polystyrene for decoration purposes are illegal, it is submitted that that Respondent No. 3 as a passive intermediary cannot conduct a fishing and roving enquiry into the bona fides of all products listed on its platform to ascertain which ones of the products are not following the standards/ are illegal as alleged by the Applicant. Such an exercise goes against the status of Respondent No. 3 as a passive intermediary. It is submitted that Respondent No. 3 cannot monitor content uploaded on its website as any such determination by an intermediary, leading to interference with the content on the platform, would expose it to a loss of statutory immunity available to it in the form of the *safe harbour* under Section 79 of the Act. Respondent No. 3 acknowledges the importance of preventing the sale of illegal goods, it operates strictly as a passive intermediary under the provisions of applicable laws. Respondent No. 3 does not engage in the sale of products or influence the actions of third-party sellers on its platform. It is further submitted that as per the Terms of Use of Respondent No. 3 the users agree that the items whose sales and/or marketing is prohibited by applicable law shall not be offered for sale by them. It is further submitted that Respondent No. 3 does not sell, offer for sell, stock,



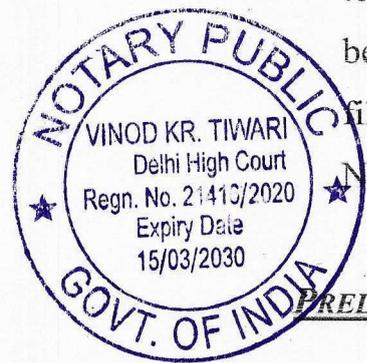
manufacture or distribute in any way the alleged products, more specifically polystyrene and expanded polystyrene (thermocool) commodities (also known as 'Styrofoam') which is in violation of Rule 4(2) of the Plastic Waste Management Rules, 2016.

19. Based on the foregoing, it is submitted that the Respondent No.3, as an online market place similar to a Yellow Pages Directory, cannot be held responsible to evaluate and assess the listings of products and services on its platform. In consonance with *para 68 of the Puma judgement (supra)*, the responsibility of Respondent no.3, is 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. Accordingly, the Respondent no.3 cannot on its own motion set out to identify and distinguish between the various listings on its platform from single to multiple uses, when it itself is not involved in uploading the descriptions or even the name and category of the products all of which is done by the users of the platform who undertake to abide by existing laws and to be held liable in case of any illegalities on their end.
20. In light of the above and the Applicant admittedly recognizing the intermediary status of Respondent No. 3 is merely a pro forma party and is not directly involved in the alleged sales. Therefore, it is respectfully submitted that Respondent No. 3 should be removed from the array of parties in the present matter, with appropriate directions to it.



21. It is also submitted that even though Respondent No. 3 is not an e-commerce platform and cannot be held liable for any act or omission as under the provisions of the PWM rules and Environment Protection Act, out of due diligence the Respondent No.3 undertakes to taken down/ removed the impugned listings of the alleged illegal products and also undertakes comply with future directions of this Hon'ble Tribunal to ensure compliance regarding removing further weblinks/URLs of the illegal products on its website on receiving a copy of this Hon'ble Tribunal's order or as and when notified by the Applicants in terms of Section 5 of the Environment (Protection) Act, 1986, (EP Act, 1986) issued by CPCB. It is reiterated that Respondent No. 3 merely acts as a passive intermediary, providing an online marketplace without engaging in the sale, stocking, pricing, or profit generation from the products listed.

22. Notably, this Hon'ble Tribunal was pleased to issue only notice to the Respondents for filing their reply by way of affidavit before this Hon'ble Tribunal, accordingly Respondent No. 3 is filing this reply by way of affidavit. It submitted that the said Notice was received by Respondent No. 3 on 19.05.2025.



PRELIMINARY SUBMISSIONS

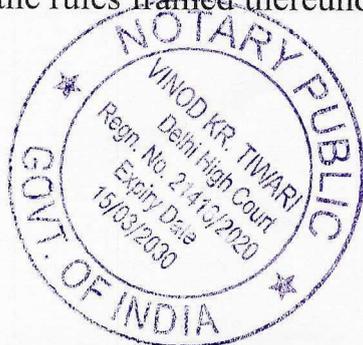


A. Respondent No. 3 is a passive intermediary website

23. The Respondent No. 3 is a company incorporated under the provisions of the Companies Act, 1956, and provides access to the website namely www.indiamart.com [hereinafter

“Website”] which is an online discovery platform to facilitate interaction between the buyers and suppliers of products and services in order to access or meet the prospective buyers, suppliers of products and services. That, to access or meet with prospective buyers, suppliers get themselves listed/registered on the website and then display their various products and services. Any information or listings contained on, distributed through, or linked, downloaded or accessed from any of the services contained on the website or any advertisement/invitation to offer displayed on or in connection with any service offered on the website [hereinafter “Website Information”] by the supplier (which is a third party) is intended, solely to provide general information for the personal use of the buyer(s)/user(s). Moreover, the concerned supplier who upload/hosts the information/content on the Website fully accepts all responsibilities and liabilities arising from, and out of, the use of such Information by the user(s) while categorically represents, warrants and agree under the terms of use [hereinafter “Users Agreement”] that the information so contained does not violate any provisions of law and/or rights of any third parties.

24. The Respondent No. 3 is a passive intermediary in terms of Section 2(1)(w) of the Information Technology Act, 2000 [hereinafter “Act”] and is liable to act in terms of the Act and the rules framed thereunder:



³[(w) "intermediary", 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-market places and cyber cafes;]

25. Furthermore, the Act envisages for and provides for a safe harbour provision for the intermediaries such as the Respondent No. 3:

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.

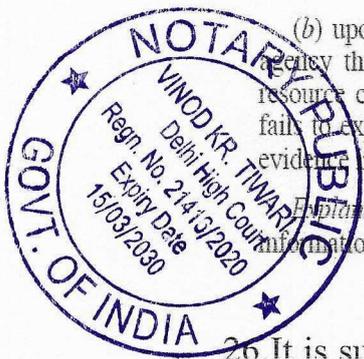
(3) The provisions of sub-section (1) shall not apply if—

(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.

26. It is submitted that after being aware about the product and/or services through the content/information hosted by the third-party supplier on the website, the buyers can interact/initiate commercial discussions with the said supplier. As such, the role

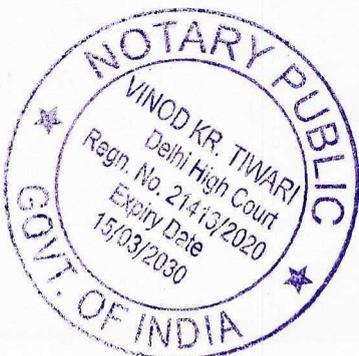


of Respondent No. 3 is only to connect buyers with the suppliers while the actual offer/discussions/acceptance of transactions takes place between the parties to the transaction.

Therefore, Respondent No. 3 is not involved in the act of manufacturing, offering for sale, selling, exporting, importing, supplying, distributing, and storing any product listed on the Website by the respective advertiser/supplier, who might be engaged in any such activities.

B. The Respondent No. 3 cannot monitor content

The Respondent No. 3 is an intermediary, having complied with the requirements of Section 79 of the Act, the IT Rules and other applicable provisions. It is no longer res integra that the true intent of Section 79 of the Act is to ensure that in terms of globally accepted standards of intermediary liabilities and to further digital trade and economy, the intermediary is granted certain protections. Further, the continuation of such valid protection becomes even more relevant in the facts of the present case since it is not the case of the Applicants that the Respondent No. 3 has violated any of the legal provisions or requirements mentioned hereinabove. Further, the Respondent No. 3's website is only a platform which enables suppliers to list their product/services and allows buyers to contact for negotiating, buying, and other business services. Respondent No. 3 does not take part in the actual transaction that takes place between the supplier and the buyer. The same is also evident from the Terms and Conditions of Use of the Respondent No. 3's website:



I. WEBSITE- MERELY A VENUE/PLATFORM

The Web Site acts as a match-making platform for User(s) to negotiate and interact with other User(s) for entering into negotiations in respect thereof for sale or supply of goods or services. IIL or IndiaMart.com are not parties to any negotiations that take place between the User(s) of the Web Site and are further not parties to any agreement including an agreement for sale or supply of goods or services or otherwise, concluded between the User(s) of the Web Site.

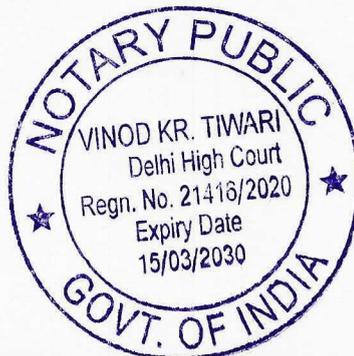
IIL does not control and is not liable in respect of or responsible for the quality, safety, genuineness, lawfulness or availability of the products or services offered for sale on the Web Site or the ability of the User(s) selling or supplying the goods or services to complete a sale or the ability of User(s) purchasing goods or services to complete a purchase. This agreement shall not be deemed to create any partnership, joint venture, or any other joint business relationship between IIL and any other party.

- Relate to sale of products or services that infringe or otherwise abet or encourage the infringement or violation of any third party's copyright, patent, trademarks, trade secret or other proprietary right or rights of publicity or privacy, or any other Third Party Rights;

A copy of Terms of Use of Respondent No. 3's website is annexed as ***Document-1***.

27. It is submitted that Respondent No. 3 does not initiate the transmission of any data on its website, nor does it select the receiver of the transmission on Respondent No. 3's Website. Respondent No. 3 observes the requisite due diligence while discharging its duties under the Act and implements all policies as prescribed by the Central Government. In fact, the Terms and Conditions of Use of the Respondent No. 3's website include an undertaking on behalf of the users to not, inter-alia, submit to Respondent No. 3 for display on its website or transmit or seek to transmit through the Respondent No. 3's website, any content, material or information which violates a third party's intellectual property right.

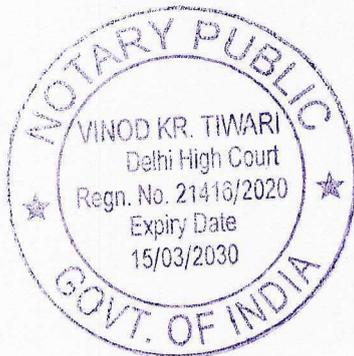
28. The aforesaid Terms and Conditions are in consonance with the Rule 3(1) of the IT Rules:



3. (1) **Due diligence by an intermediary:** An intermediary, including social media intermediary and significant social media intermediary, shall observe the following due diligence while discharging its duties, namely:—

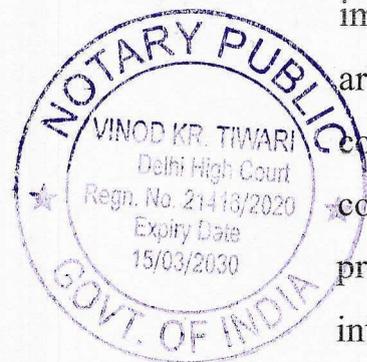
- (a) the intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the rules and regulations, privacy policy and user agreement for access or usage of its computer resource by any person;
- (b) the rules and regulations, privacy policy or user agreement of the intermediary shall inform the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that,—
 - (i) belongs to another person and to which the user does not have any right;
 - (ii) is defamatory, obscene, pornographic, paedophilic, invasive of another's privacy, including bodily privacy, insulting or harassing on the basis of gender, libellous, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or otherwise inconsistent with or contrary to the laws in force;
 - (iii) is harmful to child;
 - (iv) infringes any patent, trademark, copyright or other proprietary rights;

29. Further, the IT Rules clearly provide for a grievance redressal mechanism under Rule 3 and the Applicants have not availed themselves of the remedy under Rule 3(2) of the IT Rules. The relevant portion of the IT Rules is reproduced hereunder:



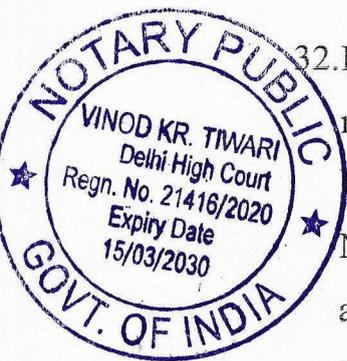
- (2) **Grievance redressal mechanism of intermediary:** (a) The intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the name of the Grievance Officer and his contact details as well as mechanism by which a user or a victim may make complaint against violation of the provisions of this rule or any other matters pertaining to the computer resources made available by it, and the Grievance Officer shall -
- (i) acknowledge the complaint within twenty four hours and dispose off such complaint within a period of fifteen days from the date of its receipt;
 - (ii) receive and acknowledge any order, notice or direction issued by the Appropriate Government, any competent authority or a court of competent jurisdiction.
- (b) The intermediary shall, within twenty-four hours from the receipt of a complaint made by an individual or any person on his behalf under this sub-rule, in relation to any content which is *prima facie* in the nature of any material which exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct, or is in the nature of impersonation in an electronic form, including artificially morphed images of such individual, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it:
- (c) The intermediary shall implement a mechanism for the receipt of complaints under clause (b) of this sub-rule which may enable the individual or person to provide details, as may be necessary, in relation to such content or communication link.

30. The role and obligation of an intermediary, such as the Respondent No. 3 have been deliberated by the Hon'ble Supreme Court of India in the matter of *Shreya Singhal v. Union of India (2015) 5 SCC 1*, wherein it has been stated that any intermediary shall act to remove the impugned content/unlawful information on its platform upon receipt of an impugned content. The intermediary is not supposed to become an arbiter and apply its mind to the veracity of the several complaints it receives daily and adjudge which of such complaints are legitimate and to what extent. Under the provisions of Section 79 of the IT Act and IT Rules 2021, an intermediary is required to remain "content neutral" to any content that is uploaded on its website and not perform any



active filtering or monitoring of contents which is uploaded by the listed Supplier on its platform, to be able to claim a 'safe harbour' from liability under the said provisions. Indeed, any such determination by an intermediary, thereby leading to interference with the content on the platform, would expose to loss of statutory immunity. The same has also been statutorily recognized by way of Rule 3(1)(d) which states that an intermediary ought to act on receipt of court order.

31. The Applicants have sought to tenuously link Respondent No. 3 with independent sellers on its website, by stating that Respondent No. 3 is selling the impugned products. It is submitted that Respondent No. 3 as an intermediary has no control over the affairs and activities of independent sellers on its website. The Respondent No. 3 merely provides a platform for the supplier of goods and services to display their product and host their catalogue. The Respondent No. 3, does not have any say in the content of the listing of the suppliers.

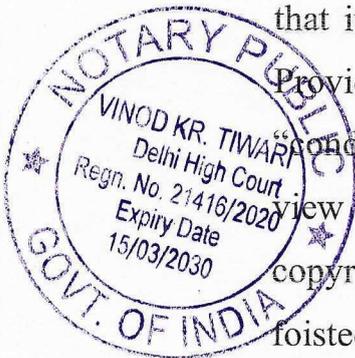


32. Respondent No. 3 as a passive intermediary merely provides a marketplace for suppliers to list their products and creates a link between the buyer and potential suppliers listed on Respondent No. 3's website. There are 20 Crore buyers, 81 Lakh suppliers and 11.3 Crore products and services listed on the website of the Respondent No. 3, and it is not an expert on the wide range of products being listed on its website. It does not indulge in, manufacturing goods, or in any manner provide any warranty regarding authenticity or fitness of the goods/services listed on the website by the Users; or provides delivery of the said goods



to the purchasers; or stores them at the warehouse; or packages the goods/services in its packaging; or raises any invoice under its name. The Applicants' reliance on factum that that Respondent No. 3 is actively abetting and encouraging the sale of impugned products is wholly misplaced. However, in this regard it is submitted that since Respondent No. 3 does not exercise control over the content created by third-party sellers, requiring it to conduct in-depth inquiries into each listing's/seller's authenticity would effectively alter its intermediary status. Such interference, akin to content monitoring, would conflict with its passive role under the law. Consequently, Respondent No. 3's role as a passive intermediary precludes any obligation to verify or certify listings unless directed by a court or government authority in line with the due process outlined in the IT Act. Thus, Respondent No. 3 cannot be held liable for the alleged listings on its platform.

33. That the Hon'ble Delhi High Court in *My Space Inc. v. Super Cassettes, 2016 SCC OnLine Del 6382*, has held that if an intermediary is tasked with the responsibility of identifying the infringing content from a non-infringing one, it could have a chilling effect on free speech. The liability saddled on such internet intermediaries cannot be so onerous and burdensome that it leads to their eventual shutdown. An Internet Service Provider such as the Respondent No. 3 acts as a "conduit/portal" for information where users can upload and view content. The Hon'ble Court held that the liability for copyright infringement by users of social media site cannot be foisted on the service provider unless it has actual knowledge

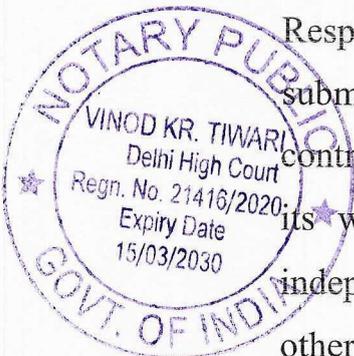


as distinguished from casual knowledge of such illegality. It also held that the remedy is not to target intermediaries but to ensure that the illegal material is removed in an orderly and reasonable manner. The Hon'ble Court in *My Space (supra)* directed that in case of interim relief has to be specific and must point out to the actual content, which is being infringed.

B. Respondent No. 3 has an Effective Grievance Redressal Mechanism

34. The Respondent No. 3 has a complaint form for specifically addressing complaints against sellers on its website.

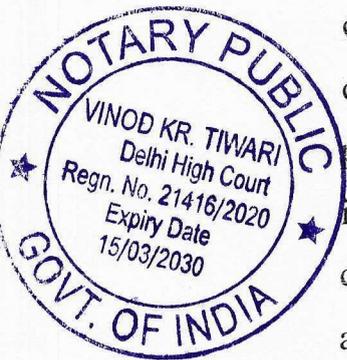
35. The Applicants have sought to tenuously link Respondent No. 3 with independent sellers on its website by stating that Respondent No. 3 is selling illegal products on its website. It is submitted that Respondent No. 3 as an intermediary has no control over the affairs and activities of independent sellers on its website. For a fee, it hosts the catalogue of various independent sellers on its website like it does for millions of other users. The development and management of the website



is akin to that of a website designer designing a website for a client with no content control.

36. It is submitted that in terms of the above undertaking given the Respondent No. 3 with respect to blocking/take-down of the impugned links from its website, it is humbly submitted that no other relief is sought or can be sought against Respondent No. 3, same being an intermediary. Hence, nothing survives against Respondent No. 3, and it may be deleted from the present proceedings.

37. It is submitted that the Respondent No. 3 have been deliberated by the Hon'ble Supreme Court of India in the matter of **Shreya Singhal v. Union of India (2015) 5 SCC 1**, wherein it has been stated that any intermediary shall act to remove the impugned content/unlawful information on its platform upon receipt of an order of the court duly adjudicating upon the legitimacy of the impugned content. The intermediary is not supposed to become arbiter and apply its mind to the veracity of the several complaints it receives daily and adjudge which of such complaints are legitimate and to what extent. Under the provisions of Section 79 of the IT Act and IT Rules 2021, an intermediary is required to remain "content neutral" to any content that is uploaded on its website and not perform any active filtering or monitoring of contents which is uploaded by the listed Supplier on its platform, to be able to claim a 'safe harbour' from liability under the said provisions. Indeed, any such determination by an intermediary, thereby leading to such determination by an intermediary, thereby leading to



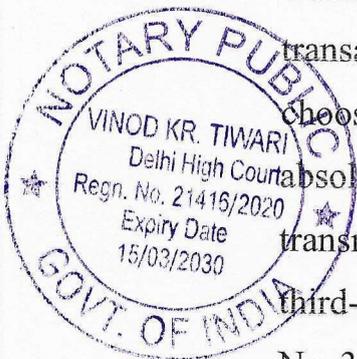
interference with the content on the platform, would expose to the loss of statutory immunity.

38. It is humbly submitted that Respondent No. 3 is not a necessary or proper party to the present Application as the present Application pertains to alleged sale of illegal products by various sellers of different e-commerce platforms and not by Respondent No. 3. It is further submitted that Respondent No. 3 is only an intermediary having no nexus to the present Proceedings. Further, no substantive relief has been sought against Respondent No. 3 by the Applicants, and it has only been impleaded as a proforma party.

C. The Respondent No. 3 is neither a necessary nor a proper party

39. It is submitted that the instant Application fails to show how the Respondent No. 3 is a necessary or a proper party to the present Application. A necessary party is one without whom no order can be effectively made. A proper party is one who is necessary for the final decision of the questions involved in the proceedings.

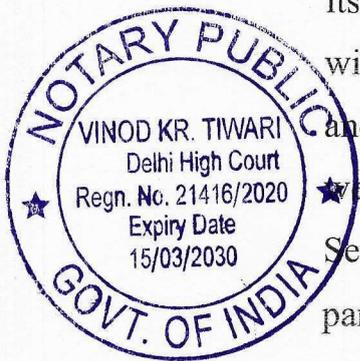
40. It is submitted that Respondent No. 3's website is a passive website and does not in any manner facilitate the conclusion of transactions on or off the website and does not in any manner choose the customers and/or suppliers. Respondent No. 3 has absolutely no role to play with respect to initiating transmissions, selecting the receiver and/or modifying the third-party content hosted on the subject website of Respondent No. 3. The Respondent No. 3 merely provides listings uploaded



by the Registered Suppliers and has absolutely no role to play during the entire transaction except to provide a platform for businesses to list their products and/or services and as such the Respondent No. 3 is a mere conduit of the information and does not aid, abet, or induce any sort of unlawful act on the subject website.

41. By providing a technology platform wherein content is integrated and made available by the supplier on its own through a self-edit tool available on the Website without intervention of the Respondent No. 3, the Respondent No. 3 cannot be termed as a seller of illegal goods and the Application cannot lie against the Respondent No. 3 as there is no sale of goods by the Respondent No. 3 and thus Respondent No. 3 is neither a necessary nor a proper party in the captioned Application.

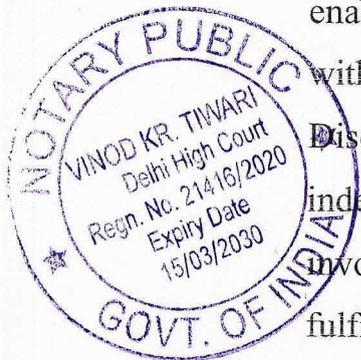
42. It is reiterated that the Respondent No.3's website is an intermediary as per Section 2(1)(w) of the Act and therefore is immune from any liability arising from the content posted on its website. The Respondent No. 3 has absolutely no role to play with respect to initiating transmissions, selecting the receiver and/or modifying the third-party content hosted on the subject website, and as such the Respondent No. 3 is protected under Sec. 79(1) of the Act. The Respondent No. 3 does not have any participation in the purchase and selling process that takes place between the Buyers and Suppliers offline. The Respondent No. 3 merely establishes a link between the supplier and the prospective buyer and plays absolutely no role beyond that,



thereby falling under the definition of 'intermediary' and is therefore falling under the definition of 'intermediary' and is therefore exempted under Sec. 79(1) of the Act.

43. It is relevant to note that Section 79 of the Act which is a non-obstante provision would prevail over provisions of other legislations and limits the liability of an intermediary as long as the conditions prescribed therein are fulfilled. In the instant case, Respondent No. 3 fulfils all the conditions prescribed under Section 79 read with the Intermediary Guidelines and as such attracts no liability vis-à-vis the alleged infringements.

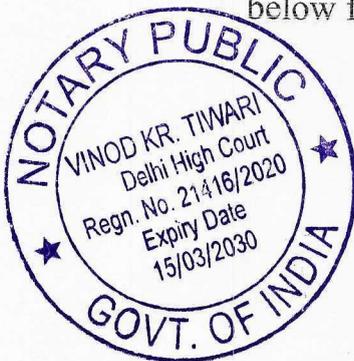
44. It is respectfully submitted that Respondent No. 3 is not an e-commerce platform but merely a passive intermediary. It is submitted that the Respondent No. 3 functions solely as a communication facilitator between buyers and suppliers and does not engage in the sale of products, their invoicing, or any direct transaction with buyers or suppliers. Unlike e-commerce platforms, which typically manage product listings, control transactions, and often provide product storage, packaging, and delivery services, Respondent No. 3's role is limited to enabling the discovery and connection of independent suppliers with prospective buyers. This platform operates as an Online Discovery Platform, where suppliers voluntarily register and independently manage their own listings without any involvement from Respondent No. 3 in the supply chain or fulfilment processes. It is further submitted that Respondent No. 3 facilitates communication between buyers and suppliers but does not partake in the sale of products or their invoicing



45. It is respectfully submitted that recently, the Division Bench of Hon'ble High Court of Delhi, in the matter of *Indiamart Intermesh Limited vs Puma Se FAO (OS) (Comm) 6/2024*, vide its judgment dated 02.06.2025, dealt with certain issues which further clarify Respondent No. 3's nature of business and its obligations. *Inter alia* the following issues were dealt with, by the Hon'ble High Court of Delhi:

a. **Activities of the platform of Respondent No. 3 and**

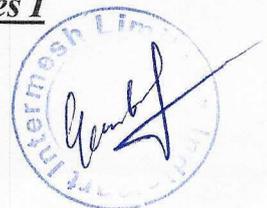
its nature: The Hon'ble High Court noted that the nature of platform of Respondent No. 3 is B2B. It further noted that Indiamart is not an interactive website on which buyer can place purchase orders for supply by the supplier. The Respondent No. 3 renders listing services where buyers can get in touch with sellers. **The Hon'ble Court further agreed that the nature of services is akin to Yellow Pages Directory.** It neither determines the genuineness of the products offered by any of the entities/businesses listed nor determines whether the person selecting the category of its goods/services has correctly described the goods or has chosen the appropriate category. The relevant portion of the judgment is reproduced herein below for easy reference:



“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



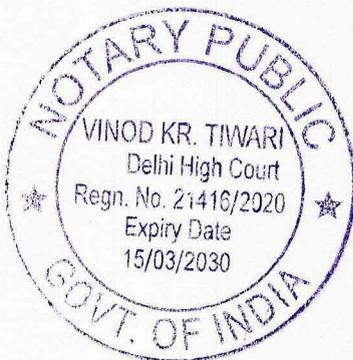
that ILL presents a dropdown menu for specifying the description of the products that sellers may wish to specify. This would, of course, be coupled with search feature where a buyer looking for a Puma Product would be shown the listings of all sellers that had opted to describe their goods using the trade mark PUMA. This conclusion, in our view, ignores the nature of ILL'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 I



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.

- b. **Emphasis of Respondent No. 3's business:** The Hon'ble High Court compared the business of the Respondent No. 3 to that of the yellow pages directory and noted that the emphasis of the publisher would be more to ensure that the telephone number as listed is correct rather than to examine the goods and services dealt with by the businesses listed in the directory. The relevant portion of the judgment is reproduced herein below for easy reference:

“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 I 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.

Evaluation of “reasonable efforts” taken by the Respondent No. 3 and obligations of the Respondent No. 3 in case of breach by users:

The Hon’ble High Court duly noted that the terms and conditions of the Respondent No. 3 expressly contain an agreement to the effect that users will not submit to the Respondent No. 3 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 item whose sale or marketing is prohibited by applicable law, or otherwise promotes other illegal activities. The relevant portion of the judgment is reproduced herein below for easy reference:

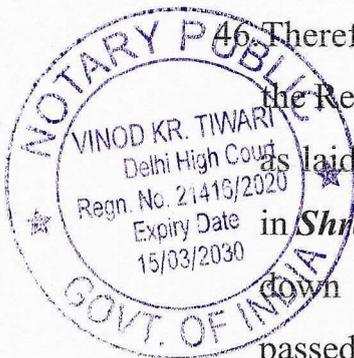
“86. There is no dispute that IIL is required to make “reasonable efforts” to cause sellers to not use, display or publish or transmit any information that infringes any patent, trade mark, copyright or other proprietary rights. The terms and conditions of use of Indiamart expressly contain an agreement 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.

...
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 ILL is required to take down the offending listers on the same being pointed out by any person after satisfying itself regarding the same."*

A copy of the judgment passed by the Hon'ble High Court of Delhi in *Indiamart Intermesh Limited vs Puma Se FAO (OS) (Comm) 6/2024*, is annexed herewith marked as **Document No. 2.**



46. Therefore, without prejudice to any submissions made herein, the Respondent No. 3 is ready and willing to follow the process as laid down in the judgement of the Hon'ble Supreme Court in *Shreya Singhal vs. Union of India (2015) 5 SCC 1* and take down the impugned/unauthorized pages in terms of orders passed by this Hon'ble Tribunal. It is submitted that no logical purpose would be served by arraying Respondent No. 3, a party to the instant proceedings inasmuch as any compliance arising from the subject matter of the captioned Application can be

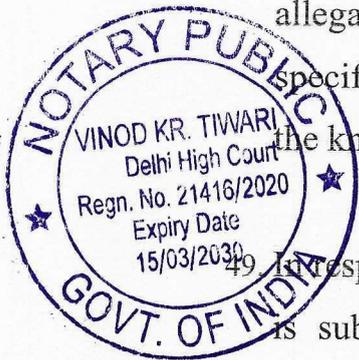


undertaken upon receipt notice of the orders of this Hon'ble Tribunal, if any and, as such, subsequent to compliance of Order by the Respondent No. 3, no cause of action subsists against it.

47. It is submitted that the Respondent No. 3 undertakes to comply with any further directions to block/remove the listings of any products as issued to it by this Hon'ble Tribunal, as this Hon'ble Tribunal may deem fit. In view of the above, it is clear as day that the presence of Respondent No. 3 in the captioned Suit is not required since all/any compliance can be undertaken in terms of *Shreya Singhal vs. Union of India (2015) 5 SCC 1*.

PARA-WISE REPLY:

48. It is respectfully submitted that the Respondent No. 3 is only an intermediary, and it is not liable for any sale/ purchase of the impugned illegal products. In view of the above, it is submitted that the following para-wise reply is being given to the allegations qua the Respondent No. 3. Any other allegation not specifically dealt with hereinafter is denied for being beyond the knowledge of the Respondent No. 3.

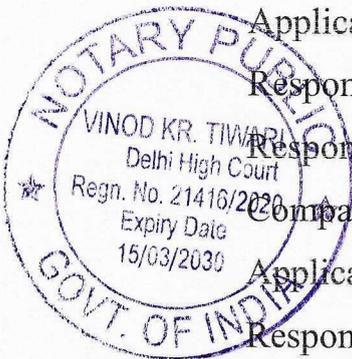


49. In respect of the contents of Paragraph III, IV, 2, 5, 7 and 10 it is submitted that Respondent No. 3 is merely an Online Discovery Platform to facilitate interaction between buyers and suppliers of products and services. It is respectfully submitted that Respondent No. 3 is not an e-commerce platform but merely an intermediary. It is submitted that the Respondent No.



3 functions solely as a communication facilitator between buyers and suppliers and does not engage in the sale of products, their invoicing, or any direct transaction with buyers or suppliers. Unlike e-commerce platforms, which typically manage product listings, control transactions, and often provide product storage, packaging, and delivery services, Respondent No. 3's role is limited to enabling the discovery and connection of independent suppliers with prospective buyers. This platform operates as an Online Discovery Platform, where suppliers voluntarily register and independently manage their own listings without any involvement from Respondent No. 3 in the supply chain or fulfilment processes. It is further submitted that Respondent No. 3 facilitates communication between buyers and suppliers but does not partake in the sale of products or their invoicing. The contents of the Preliminary Submissions are reiterated in this regard.

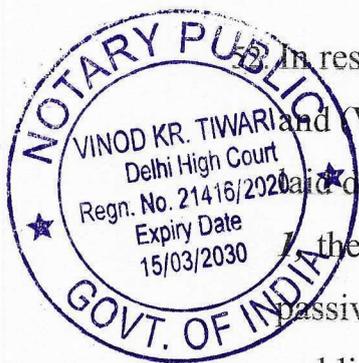
50. In respect of the contents of Para 14 to 18, it is submitted that mere perusal of the Show Cause Notices annexed by the Applicant as Annexure A-5 and Annexure A-7 shows that the Respondent No. 3 was never issued the said Notices. The Respondent No. 3 is not part of the list titled 'E-Commerce Companies (Non-complying)', annexed at Page 100 of the Application. As such, no opportunity has been given to Respondent No. 3 to take needful action, if any.



51. In respect of the contents of Para 19 it is submitted that that Respondent No. 3 cannot conduct a fishing and roving enquiry



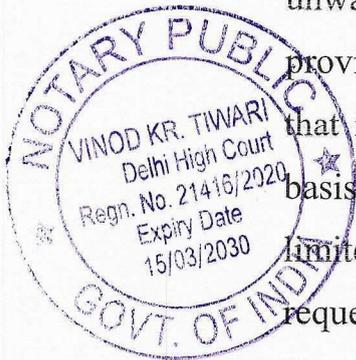
into the bona fides of all products listed on its platform to ascertain which ones are not following the standards/ are illegal as alleged by the Applicant. Such an exercise goes against the status of Respondent No. 3 as a passive intermediary. It is reiterated that Respondent No. 3 cannot monitor content uploaded on its website as any such determination by an intermediary, leading to interference with the content on the platform, would expose it to a loss of statutory immunity available to it in the form of the *safe harbour* under Section 79 of the Act. Respondent No. 3 acknowledges the importance of preventing the sale of illegal goods, it operates strictly as a passive intermediary under the provisions of applicable laws. Respondent No. 3 does not engage in the sale of products or influence the actions of third-party sellers on its platform. It is further submitted that as per the Terms of Use of Respondent No. 3 the users agree that the items whose sales and/or marketing is prohibited by applicable law shall not be offered for sale by them. The contents of the Preliminary Submissions are reiterated in this regard.



In response to the contents of the prayer clause in Para No. (I) and (V) it is submitted that as per settled law and the guidelines laid down in *Shreya Singhal vs. Union of India (2015) 5 SCC 414* the only relief that can be sought qua Respondent No. 3, a passive intermediary is to take down/ remove the impugned weblinks. It is submitted that the Respondent No. 3 undertakes to comply with blocking/take-down of alleged illegal products upon receipt of directions of this Hon'ble Tribunal qua the impugned listings as per the terms of *Shreya Singhal (supra)*.



It is further submitted that the prayers sought by the Applicant are wide-ranging, that may result in a "fishing and roving inquiry" by Respondent No. 3, into the authenticity and compliance of millions of listings, effectively transforming its role from a passive intermediary to an arbiter and an active monitor of content. Such an exercise goes against the status of Respondent No. 3, as a passive intermediary. It is reiterated that the Respondent No. 3 cannot monitor content uploaded on its website as any such determination by an intermediary, leading to interference with the content on the platform, would expose it as a loss of statutory immunity available to it in the form of the *safe harbour* under Section 79 of the Act. Additionally, as reinforced by precedents such as *Shreya Singhal v. Union of India*, intermediaries are not obligated to actively filter or verify content; they are only required to act upon receiving specific takedown requests via proper legal channels. Imposing an obligation to pre-emptively monitor all listings would violate these principles and expose Respondent No. 3 to unwarranted liability, thereby eroding the statutory immunity provided under the law. Respondent No. 3 respectfully submits that it cannot be required to monitor content on an ongoing basis and that its responsibilities as an intermediary should be limited to processing specific complaints and takedown requests as per legal mandate. It is respectfully submitted that Respondent No. 3, being a passive intermediary, does not participate in the manufacturing, promotion, sale, or distribution of any products listed on its platform, nor does it earn profits from the activities of third-party sellers. Respondent No. 3's role is limited to facilitating



communication between buyers and suppliers without engaging in any commercial transactions. Accordingly, Respondent No. 3 has no accounts of profits to render, and any claim by the Applicant for fine/penalty based on such profits is not applicable to Respondent No. 3. The contents of the Preliminary Submissions are reiterated in this regard.

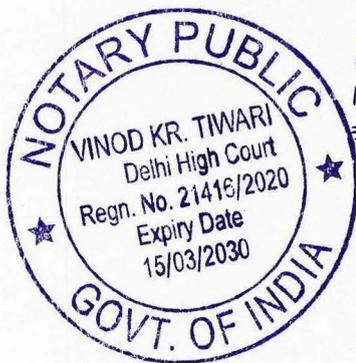

DEPONENT

VERIFICATION:

Verified at New Delhi on this 13th 3 NOV 2025 day of November, 2025 that the contents of Paragraphs 1 to 15 are preliminary submissions, and Paragraphs 16 to 52 of the para – wise response in Reply on merits are true and correct and the legal submissions made are based on legal advice received and believed to be true and correct.

[Handwritten signature]
1/29/24
I identify the Deponent who has signed/put thumb impression in my presence


DEPONENT


NOTARY PUBLIC
VINOD KR. TIWARI
Delhi High Court
Regn. No. 21416/2020
Expiry Date
15/03/2030
GOVT. OF INDIA

CERTIFIED THAT THE DEPONENT
Shri/Smt./Km..... Mr. S. Sharma
S/o, W/o, D/o, Sh..... R/o.....
Identified by Shri/Smt.....
has solemnly Attested before me at Delhi
on... 13 NOV 2025 Sl. No...
that the contents of the affidavit which
have been read Over & explained to him/her
are true & correct to his/her knowledge.

NOTARY

IndiaMART Terms and Conditions of Use

Exporters [Sell](#) [Help](#) [Messages](#) [Sign In](#)
Last Updated On: 7 December 2021

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS OF USE AGREEMENT CAREFULLY

The following agreement captures the terms and conditions of use ("**Agreement**"), applicable to Your use of IndiaMART.com ("**Web Site**"), which promotes business between suppliers and buyers globally. It is an agreement between You as the user of the Web Site/IIL Services and IndiaMART InterMESH Ltd. ("**IIL**"). The expressions "You" "Your" or "User(s)" refers to any person who accesses or uses the Web Site for any purpose.

By subscribing to or interacting with other User(s) on or entering into negotiations in respect of sale or supply of goods or services on or using the Web Site or IIL Services in any manner for any purpose, You undertake and agree that You have fully read, understood and accepted the Agreement.

If You do not agree to or do not wish to be bound by the Agreement, You may not access or otherwise use the Web Site in any manner.

- I. [Web site-Merely a Venue/Platform](#)
- II. [Services Provided by IIL](#)
- III. [User\(s\) Eligibility](#)
- IV. [User\(s\) Agreement](#)
- V. [Amendment to the Agreement](#)
- VI. [Intellectual Property Rights](#)
- VII. [Links to Third Party Sites/Content](#)
- VIII. [Termination](#)
- IX. [Registered User\(s\)](#)
- X. [Data Protection/Personal Information](#)
- XI. [Posting your Contents on IIL](#)
- XII. [Interactions between User\(s\)](#)
- XIII. [Limitations of Liability/Disclaimer](#)
- XIV. [Notices](#)
- XV. [Governing Law and Disputes Resolutions](#)
- XVI. [General/Miscellaneous](#)
- XVII. [Big Buyer terms of use](#)
- XVIII. [Pharmaceutical Product/Service Policies](#)
- XIX. [Customer Relationship Management Services](#)

I. WEBSITE- MERELY A VENUE/PLATFORM

The Web Site acts as a match-making platform for User(s) to negotiate and interact with other User(s) for entering into negotiations in respect thereof for sale or supply of goods or services. IIL or IndiaMart.com are not parties to any negotiations that take place between the User(s) of the Web Site and are further not parties to any agreement including an agreement for sale or supply of goods or services or otherwise, concluded between the User(s) of the Web Site.

IIL does not control and is not liable in respect of or responsible for the quality, safety, genuineness, lawfulness or availability of the products or services offered for sale on the Web Site or the ability of the User(s) selling or supplying the goods or services to complete a sale or the ability of User(s) purchasing goods or services to complete a purchase. This agreement shall not be deemed to create any partnership, joint venture, or any other joint business relationship between IIL and any other party.

II. SERVICES PROVIDED BY IIL

IIL provides the following services to its Customers and their respective definitions are classified here under: -

- "[Leading Supplier](#)": It gives the User(s)s priority listing within categories of their choice as available on IndiaMART, thus increasing visibility of their products.
- "[Star Supplier](#)" : It is add-on service by IndiaMART which gives its User(s) priority listing in their chosen category of products. By availing this service the User(s) will get benefits of increased leads and enquiries.
- "[TrustSEAL](#)": is a seal that User(s) gets after getting its business-related documents and information verified.
- "[Maximiser](#)" : User(s) availing this service could maximize its return on investment by availing the specialised feature of this package.
- "[Mini Dynamic Catalog](#)": It is a professionally-designed catalog on IndiaMART along with independent control to add, delete, edit text and images as per requirement of customers.
- "Verified" User(s): Users are said to be verified if any of their provided primary/ secondary, mobile or email is verified by IIL.

III. USER(S) ELIGIBILITY

User(s) represent and warrant that they have the right to avail or use the services provided by IIL, including but limited to the Web Site or any other services provided by IIL in relation to the use of the Web Site ("**IIL's Services**"). IIL's Services can only be availed by those individuals or business entities, including sole proprietorship firms, companies and partnerships, which are authorised under applicable law to form legally binding agreements. As such, natural persons below 18 years of age and business entities or organisations that are not authorised by law to operate in India or other countries are not authorised to avail or use IIL's Services.

User(s) agree to abide by the Agreement and any other rules and regulations imposed by the applicable law from time to time. IIL or the website shall have no liability to the User(s) or anyone else for any content, information or any other material transmitted over IIL's Services, including any fraudulent, untrue, misleading, inaccurate, defamatory, offensive or illicit material and that the risk of damage from such material rests entirely with each User(s). The user shall do its own due diligence before entering into any transaction with other users on the website. IIL at its sole discretion reserves the right to refuse IIL's Services to anyone at any time. IIL's Services are not available and may not be availed or used by User(s) whose Accounts have been temporarily or indefinitely suspended by IIL.

IV. USER(S) AGREEMENT

to any services provided by IndiaMART to any third party without obtaining explicit prior written consent from IndiaMART. [Exporters](#) [Sell](#) [Help](#) [Messages](#) [Sign In](#)

This Agreement applies to all services offered on the Web Site and by IIL, collectively with any additional terms and conditions that may be applicable in respect of any specific service used or accessed by User(s) on the Web Site. In the event of any conflict or inconsistency between any provision of this Agreement and any additional terms and conditions applicable in respect of any service offered on the Web Site, such additional terms and conditions applicable in respect of that service shall prevail over this Agreement. This Agreement shall govern the User's usage of IIL Services and, the User acknowledges that this Agreement shall supersede all or any term, agreement, contract executed between IIL and the User.

V. AMENDMENT TO USER(S) AGREEMENT

IIL reserves the right to change, modify, amend, or update the Agreement from time to time and such amended provisions of the Agreement shall be effective immediately upon being posted on the Web Site. If You do not agree to such provisions, **You must stop using the service with immediate effect.** Your continuous use of the service will be deemed to signify Your acceptance of the amended provisions of the Agreement.

VI. INTELLECTUAL PROPERTY RIGHTS

IIL is the sole owner and the lawful licensee of all the rights to the Web Site and its content ("**Web Site Content**"). Web Site Content means the design, layout, text, images, graphics, sound, video etc. of or made available on the Web Site. The Web Site Content embodies trade secrets and other intellectual property rights protected under worldwide copyright and other applicable laws pertaining to intellectual property. All title, ownership and intellectual property rights in the Web Site and the Web Site Content shall remain in IIL, its affiliates or licensor's of the Web Site content, as the case may be.

All rights, not otherwise claimed under this Agreement by IIL, are hereby reserved. Any information or advertisements contained on, distributed through, or linked, downloaded or accessed from any of the services contained on the Web Site or any offer displayed on or in connection with any service offered on the Web Site ("**Website Information**") is intended, solely to provide general information for the personal use of the User(s), who fully accept any and all responsibility and liabilities arising from and out of the use of such Information. IIL does not represent, warrant or endorse in any manner the accuracy or reliability of Website Information, or the quality of any products and/or services obtained by the User(s) as a result of any Website Information.

For any content and or link uploaded to the Website by the User from YouTube, the User agrees to abide and accepts, the terms of service of YouTube, available at <https://www.youtube.com/t/terms>.

The Information is provided "as is" with no guarantee of completeness, accuracy, timeliness or of the results obtained from the use of the Information, and without warranty of any kind, express or implied, including, but not limited to warranties of performance, merchantability and fitness for a particular purpose. Nothing contained in the Agreement shall to any extent substitute for the independent investigations and the sound technical and business judgment of the User(s). In no event shall IIL be liable for any direct, indirect, incidental, punitive, or consequential damages of any kind whatsoever with respect to IIL's Services. User(s) hereby acknowledge that any reliance upon the Information shall be at their sole risk and further understand and acknowledge that the Information has been compiled from publicly aired and published sources. IIL respects the rights of such entities and cannot be deemed to be infringing on the respective copyrights or businesses of such entities. IIL reserves the right, in its sole discretion and without any obligation, to make improvements to, or correct any error or omissions in any portion of the Information.

- **Trademark**

"IndiaMART" and related icons and logos are registered trademarks or trademarks or service marks of IIL in various jurisdictions and are protected under applicable copyright, trademark and other proprietary and intellectual property rights laws. The unauthorized adoption copying, modification, use or publication of these marks is strictly prohibited.

- **Copyright**

All Web Site Content including Website Information is copyrighted to IIL excluding any third-party content and any links to any third-party websites being made available or contained on the Web Site. User(s) may not use any trademark, service mark or logo of any independent third parties without prior written approval from such parties.

User(s) acknowledge and agree that IIL is not an arbiter or judge of disputes concerning intellectual property rights and as such cannot verify that User(s) selling or supplying merchandise or providing services on the Web Site have the right to sell the merchandise or provide the services offered by such User(s). IIL encourages User(s) to assist IIL in identifying listings on the Web Site which in the User(s) knowledge or belief infringe their rights. User(s) further acknowledge and agree by taking down a listing, IIL does not and cannot be deemed to be endorsing a claim of infringement and further that in those instances in which IIL declines to take down a listing, IIL does not and cannot be deemed to be endorsing that the listing is not infringing of third party rights or endorsing any sale or supply of merchandise or services pursuant to or on account of such listing.

IIL respects the intellectual property rights of others, and we expect our User(s) to do the same. User(s) agree to not copy, download or reproduce the Web Site Content, Information or any other material, text, images, video clips, directories, files, databases or listings available on or through the Web Site ("**IIL Content**") for the purpose of re-selling or re-distributing, mass mailing (via email, wireless text messages, physical mail or otherwise) operating a business competing with IIL, or otherwise commercially exploiting the IIL Content unless otherwise agreed between the parties. Systematic retrieval of IIL Content to create or compile, directly or indirectly, a collection, compilation, database or directory (whether through robots, spiders, automatic devices or manual processes) without written permission from IIL is prohibited.

In addition, use of the IIL Content for any purpose not expressly permitted in this Agreement is prohibited and entitles IIL to initiate appropriate legal action. User(s) agree that as a condition of their access to and use of IIL's Services, they will not use IIL's Services to infringe the intellectual property rights of any third parties in any way. IIL reserves the right to terminate the right of any User(s) to access or use IIL's Services for any infringement of the rights of third parties in conjunction with use of the IIL's Service, or in the event IIL is of the believes that User(s) conduct is prejudicial to the interests of IIL, its affiliates, or other User(s), or for any other reason, at IIL's sole discretion, with or without cause.

- **URL's/Sub-Domain**

URL's/ Sub-domain names assigned by IIL to User(s) (including both paid and free User(s)) are the exclusive property of IIL and it cannot be assumed to be permanent in any case. IIL reserves the right, without prior notice, at any point of time, to suspend or terminate or restrict access to or edit any URL's/Sub-

otherwise) to the websites offered by such third parties ("**Third Party Websites**"). IIL advises its User(s) to read the terms and conditions of use and/or privacy policies applicable in respect of such Third Party Websites prior to using or accessing such Third Party Websites. Users acknowledge and agree that IIL has no control over any content offered on Third Party Websites, does not monitor such Third Party Websites, and shall in no manner be deemed to be liable or responsible to any person for such Third Party Sites, or any content, products or services made available thereof.

VII. LINKS TO THIRD PARTY SITES

Links to third party sites are provided on Web Site as a convenience to User(s). User(s) acknowledge and agree that IIL does not have any control over the content of such websites and/ or any information, resources or materials provided therein.

IIL may allow User(s) access to content, products or services offered by third parties through hyperlinks (in the form of word link, banners, channels or otherwise) to the websites offered by such third parties ("**Third Party Websites**"). IIL advises its User(s) to read the terms and conditions of use and/or privacy policies applicable in respect of such Third Party Websites prior to using or accessing such Third Party Websites. Users acknowledge and agree that IIL has no control over any content offered on Third Party Websites, does not monitor such Third Party Websites, and shall in no manner be deemed to be liable or responsible to any person for such Third Party Sites, or any content, products or services made available thereof.

VIII. TERMINATION

Most content and some of the features on the Web Site are made available to User(s) free of charge. However, IIL reserves the right to terminate access to certain areas or features of the Web Site (to paying or registered User(s)) at any time without assigning any reason and with or without notice to such User(s). IIL also reserves the universal right to deny access to particular User(s) to any or all of its services or content without any prior notice or explanation in order to protect the interests of IIL and/ or other User(s) of the Web Site. IIL further reserves the right to limit, deny or create different access to the Web Site and its features with respect to different User(s), or to change any or all of the features of the Web Site or introduce new features without any prior notice to User(s).

IIL reserves the right to terminate the membership/subscription of any User(s) temporarily or permanently for any of the following reasons:

- (a) If any false information in connection with their account registered with IIL is provided by such User(s), or if such User(s) are engaged in fraudulent or illegal activities/transactions.
- (b) If such User(s) breaches any provisions of the Agreement.
- (c) If such User(s) utilizes the Web Site to send spam messages or repeatedly publish the same product information.
- (d) If such User(s) posts any material that is not related to trade or business cooperation.
- (e) If such User(s) impersonates or unlawfully uses another person's or business entity's name to post information or conduct business in any manner.
- (f) If such User(s) is involved in unauthorized access, use, modification, or control of the Web Site database, network or related services.
- (g) If such User(s) obtains by any means another registered User(s) Username and/or Password.
- (h) Or any other User(s) activity that may not be in accordance with the ethics and honest business practices.

If IIL terminates the membership of any registered User(s) including those User(s) who have subscribed for the paid services of IIL, such person will not have the right to re-enrol or join the Web Site under a new account or name unless invited to do so in writing by IIL. In any case of termination, no subscription/membership fee/charges paid by the User(s) will be refunded. However, In case of discontinuation of services due to the reasons other than mentioned hereinabove, IIL may on its discretion, process the pro rata refund after adjustment of such other charges as it deems fit.

User(s) acknowledge that inability to use the Web Site wholly or partially for whatever reason may have adverse effects on their business. User(s) hereby agree that in no event shall IIL be liable to any User(s) or any third parties for any inability to use the Web Site (whether due to disruption, limited access, changes to or termination of any features on the Web Site or otherwise), any delays, errors or omissions with respect to any communication or transmission, or any damage (direct, indirect, consequential or otherwise) arising from the use of or inability to use the Web Site or any of its features

IX. REGISTERED USER(S)

To become a registered User(s) of the Web Site a proper procedure has been made available on the Web Site which is for the convenience of User(s) so that they can easily use the website.

User(s) can become registered User(s) by filling an on-line registration form on the Web Site by providing the required information (including name, contact information, details of User(s) business, etc.). IIL will establish an account ("Account") for the User(s) upon successful registration and will assign a user alias ("User ID") and password ("Password") for log-in access to the User(s)'s Account. IIL may at its sole discretion assign to User(s) upon registration a web-based email or messaging account ("Email Account") with limited storage space to send or receive emails or messages. Users will be responsible for the content of all the messages communicated through the account.

User(s) registering on the Web Site on behalf of business entities represent and warrant that: (a) they have the requisite authority to bind such business entity this Agreement; (b) the address provided by such User(s) at the time of registration is the principal place of business of such business entity; and (c) all other information provided to IIL during the registration process is true, accurate, current and complete. For purposes of this provision, a branch or representative office of a User(s) will not be considered a separate entity and the principal place of business of the User(s) will be deemed to be that of its head office.

User(s) agree that upon initiating the process of registration on the Web Site, they consent to the inclusion of their personal and business data in IIL's on-line database and authorize IIL to share such information with other User(s) as well as undertake steps for verification of the User from time to time to avoid any probable violation of any of the terms contained in the Terms of Use. IIL may refuse registration and deny the membership and associated User ID and Password to any User(s) for whatever reason. IIL may suspend or terminate a registered membership at any time without any prior notification in interest of IIL or general interest of its User(s) without assigning any reason thereof and there shall arise no further liability on IIL of whatsoever nature due to the suspension or termination of the User account. User(s) registered on the Web Site are in no manner a part of or affiliated to IIL.

User(s) further agree and consent to be contacted by IIL through phone calls, SMS notifications or any other means of communication, in respect to the services provided by IIL even if contact number(s) provided to IIL upon registration are on Do Not Call Registry.

X. DATA PROTECTION

Personal information supplied by User(s) during the use of the Web Site is governed by IIL's privacy policy ("**Privacy Policy**"). Please click here to know about the [Privacy Policy](#).

XI. POSTING YOUR CONTENT ON WEBSITE

Some content displayed on the Web Site is provided or posted by third parties. User(s) can post their content on some of the sections/services of the Web Site

User(s) understand and agree that IIL in such case is not the author of the content and that neither IIL nor any of its affiliates, directors, officers or employees have entered into any arrangement including any agreement of sale or agency with such third parties by virtue of the display of such content on the Web Site. User(s) further understand and agree IIL is not responsible for the accuracy, propriety, lawfulness or truthfulness of any third party content made available on the Web Site and shall not be liable to any User(s) in connection with any damage suffered by the User(s) on account of the User(s)'s reliance on such content. IIL shall not be liable for a User(s) activities on the Web Site, and shall not be liable to any person in connection with any damage suffered by any person as a result of any User's conduct.

User(s) solely represent, warrant and agree to:

- (a) provide IIL with true, accurate, current and complete information to be displayed on the Web Site;
- (b) maintain and promptly amend all information provided on the Web Site to keep it true, accurate, current and complete.

User(s) hereby grant IIL an irrevocable, perpetual, worldwide and royalty-free, sub-licensable (through multiple tiers) license to display and use all information provided by them in accordance with the purposes set forth in the Agreement and to exercise the copyright, publicity and database rights User(s) have in such material or information, in any form of media, third party copyrights, trademarks, trade secret rights, patents and other personal or proprietary rights affecting or relating to material or information displayed on the Web Site, including but not limited to rights of personality and rights of privacy, or affecting or relating to products that are offered or displayed on the Web Site (hereafter referred to as "**Third Party Rights**").

User(s) hereby represent, warrants and agree that User(s) shall be solely responsible for ensuring that any material or information posted by User(s) on the Web Site or provided to the Web Site or authorized by the User(s) for display on the Web Site, does not, and that the products represented thereby do not, violate any Third Party Rights, or is posted with the permission of the owner(s) of such Third Party Rights. User(s) hereby represent, warrant and agree that they have the right to manufacture, offer, sell, import and distribute the products offered and displayed on the Web Site, and that such manufacture, offer, sale, importation and/or distribution of those products violates no Third Party Rights.

User(s) agree that they will not use IIL Content and/or IIL's Services to send junk mail, chain letters or spamming. Further, registered User(s) of the Web Site agree that they will not use the Email Account to publish, distribute, transmit or circulate any unsolicited advertising or promotional information. User(s) further hereby represent, warrant and agree (i) to host, display, upload, modify, publish, transmit, store, update or share ; or (ii) submit to IIL for display on the Web Site or transmit or sought to be transmitted through IIL's Services any content, material or information that does not and shall at no point:

- Contain fraudulent information or make fraudulent offers of items or involve the sale or attempted sale of counterfeit or stolen items or items whose sales and/or marketing is prohibited by applicable law, or otherwise promote other illegal activities;
- Belong to another person and to which User(s) do not have any right to;
- Be part of a scheme to defraud other User(s) of the Web Site or for any other unlawful purpose;
- Be intended to deceive or mislead the addressee about the origin of such messages or knowingly and intentionally is used to communicate any information which (i) is patently false or grossly offensive or menacing/misleading in nature but may reasonably be perceived as a fact; or (ii) harass a person, entity or agency for financial gain or to cause any injury to any person;
- Relate to sale of products or services that infringe or otherwise abet or encourage the infringement or violation of any third party's copyright, patent, trademarks, trade secret or other proprietary right or rights of publicity or privacy, or any other Third Party Rights;
- Violate any applicable law, statute, ordinance or regulation (including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising);
- Divulge any Personally Identifiable Information ("PII") in accordance with the principles of data protection laws;
- Relate to any controversial weapons, cluster munitions or anti-personnel mines and other such defense equipment;
- Be defamatory, abusive libelous, unlawfully threatening, unlawfully harassing, grossly harmful, indecent, seditious, blasphemous, pedophilic, hateful, invasive of another's privacy, including bodily privacy racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, leading to breach of confidence, or otherwise unlawful or objectionable in any manner whatever;
- Be vulgar, obscene or contain or infer any pornography or sex-related merchandising or any other content or otherwise promotes sexually explicit materials or is otherwise harmful to minors;
- Promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
- Contain any material that constitutes unauthorized advertising or harassment (including but not limited to spamming), invades anyone's privacy or encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any law or regulation;
- Solicit business from any User(s) in connection with a commercial activity that competes with IIL;
- Threaten the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting any other nation;
- Contain any computer viruses or other destructive devices and codes that have the effect of damaging, interfering with, intercepting or expropriating any software or hardware system, data or personal information or that are designed to interrupt, destroy or limit the functionality of any computer resource;
- Link directly or indirectly to or include descriptions of goods or services that are prohibited under the prevailing law; or Otherwise create any liability for IIL or its affiliates.

IIL reserves the right in its sole discretion to remove any material/content/photos/offers displayed on the Web Site which in IIL's reasonable belief is unlawful or could subject IIL to liability or in violation of the Agreement or is otherwise found inappropriate in IIL's opinion. IIL reserves the right to cooperate fully with governmental authorities, private investigators and/or injured third parties in the investigation of any suspected criminal or civil wrongdoing.

In connection with any of the foregoing, IIL reserves the right to suspend or terminate the Account of any User(s) as deemed appropriate by IIL at its sole discretion. User(s) agree that IIL shall have no liability to any User(s), including liability in respect of consequential or any other damages, in the event IIL takes any of the actions mentioned in this provision.

User(s) understand and agree that the Web Site acts as a content integrator and is not responsible for the information provided by User(s) displayed on the Web Site. IIL does not have any role in developing the content displayed on the Web Site. IIL has the right to promote any content including text, images, videos, brochures etc. provided by User(s) on various platforms owned by the company.

XII. INTERACTION BETWEEN USERS

complete a purchase. User(s) are cautioned that there may be risks of dealing with foreign nationals or people acting under false pretences on the Web Site. Web Site uses several tools and techniques to verify the accuracy and authenticity of the information provided by User(s). IIL however, cannot and does not confirm each User(s)'s purported identity on the Web Site. IIL encourages User(s) to evaluate the User(s) with whom they would like to deal with and use the common prudence while dealing with them.

User(s) agree to fully assume the risks of any transactions ("**Transaction Risks**") conducted on the basis of any content, information or any other material provided on the Web Site and further assume the risks of any liability or harm of any kind arising due to or caused in connection with any subsequent activity relating to any products or services that are the subject of any such transaction.

- Such risks include, but are not limited to, misrepresentation of products and services, fraudulent schemes, unsatisfactory quality, failure to meet specifications, defective or dangerous products, unlawful products, delay or default in delivery or payment, cost miscalculations, breach of warranty, breach of contract and transportation accidents.
- Such risks also include the risks that the manufacture, importation, distribution, offer, display, purchase, sale and/or use of products or services offered or displayed on the Web Site may violate or may be asserted to violate Third Party Rights, and the risk that that User(s) may incur costs of defense or other costs in connection with third parties' assertion of Third Party Rights, or in connection with any claims by any party that they are entitled to defense or indemnification in relation to assertions of rights, demands or claims by Third Party Rights claimants.
- Such risks further include the risks that the purchasers, end-users of products or others claiming to have suffered injuries or harms relating to product originally obtained by User(s) of the Web Site as a result of purchase and sale transactions in connection with using any content, information or any other material provided on the Web Site may suffer harms and/or assert claims arising from their use of such products.

User(s) agree that IIL shall not be liable or responsible for any damages, liabilities, costs, harms, inconveniences, business disruptions or expenditures of any kind that may occur/arise as a result of or in connection with any Transaction Risks. User(s) are solely responsible for all of the terms and conditions of the transactions conducted on, through or as a result of use of any content, information or any other material provided on the Web Site, including, without limitation, terms regarding payment, returns, warranties, shipping, insurance, fees, taxes, title, licenses, fines, permits, handling, transportation and storage. In the event of a dispute with any party to a transaction, User(s) agrees to release and indemnify IIL (and our agents, affiliates, directors, officers and employees) from all claims, demands, actions, proceedings, costs, expenses and damages (including without limitation any actual, special, incidental or consequential damages) arising out of or in connection with such transaction

IndiaMART reserves the right to add/modify/discontinue any of the features offered on IIL's Services.

XIII. LIMITATION OF LIABILITY/DISCLAIMER

The features and services on the Web Site are provided on an "as is" and "as available" basis, and IIL hereby expressly disclaims any and all warranties, express or implied, including but not limited to any warranties of condition, quality, durability, performance, accuracy, reliability, merchantability or fitness for a particular purpose. All such warranties, representations, conditions, undertakings and terms are hereby excluded. IIL makes no representations or warranties about the validity, accuracy, correctness, reliability, quality, stability or completeness of any information provided on or through the Web Site including display or listing of tenders on the Web Site which in no manner is endorsed by IIL. IIL has no association of whatsoever nature with the publisher and/or the published contents. Moreover, IIL does not facilitate or participate in any sale, delivery, transaction and / or storage related to any product including but not limited to controversial weapons, cluster munitions or anti-personnel mines and other such defense equipment. IIL does not represent or warrant that the manufacture, importation, distribution, offer, display, purchase, sale and/or use of products or services offered or displayed on the Web Site does not violate any Third Party Rights; and IIL makes no representations or warranties of any kind concerning any product or service offered or displayed on the Web site. Any material downloaded or otherwise obtained through the Web site is at the User(s) sole discretion and risk and the User(s) is solely responsible for any damage to its computer system or loss of data that may result from the download of any such material. No advice or information, whether oral or written, obtained by the User(s) from Web Site or through or from the Web Site shall create or be deemed to create any warranty not expressly stated herein.

Under no circumstances shall IIL be held liable for any delay or failure or disruption of the content or services delivered through the Web Site resulting directly or indirectly from acts of nature, forces or causes beyond its reasonable control, including without limitation, Internet failures, computer, telecommunications or any other equipment failures, electrical power failures, strikes, labour disputes, riots, insurrections, civil disturbances, shortages of labour or materials, fires, flood, storms, explosions, Acts of God, natural calamities, war, governmental actions, orders of domestic or foreign courts or tribunals or non-performance of third parties. User(s) hereby agree to indemnify and save IIL, its affiliates, directors, officers and employees harmless, from any and all losses, claims, liabilities (including legal costs on a full indemnity basis) which may arise from their use of the Web Site (including but not limited to the display of User(s) information on the Web Site) or from User(s)'s breach of any of the terms and conditions of this Agreement. User(s) hereby further agree to indemnify and save IIL, its affiliates, directors, officers and employees harmless, from any and all losses, claims, liabilities (including legal costs on a full indemnity basis) which may arise from User(s)'s breach of any representations and warranties made by the User(s) to IIL.

User(s) hereby further agree to indemnify and save IIL, its affiliates, directors, officers and employees harmless, from any and all losses, claims, liabilities (including legal costs on a full indemnity basis) which may arise, directly or indirectly, as a result of any claims asserted by Third Party Rights claimants or other third parties relating to products offered or displayed on the Web Site. User(s) hereby further agree that IIL is not responsible and shall have no liability for any material posted by other User(s) or any other person, including defamatory, offensive or illicit material and that the risk of damage from such material rests entirely with the User(s). IIL reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by any User(s), in which event such User(s) shall cooperate with IIL in asserting any available defences.

IIL shall not be liable for any special, direct, indirect, punitive, incidental or consequential damages or any damages whatsoever (including but not limited to damages for loss of profits or savings, business interruption, loss of information), whether in contract, negligence, tort, strict liability or otherwise or any other damages resulting from any of the following:

- The use or the inability to use the Web Site;
- Any defect in goods, samples, data, information or services purchased or obtained from a User(s) or a third-party service provider through the web site;
- Violation of Third Party Rights or claims or demands that User(s) manufacture, importation, distribution, offer, display, purchase, sale and/or use of products or services offered or displayed on the web site may violate or may be asserted to violate Third Party Rights; or claims by any party that they are entitled to defense or indemnification in relation to assertions of rights, demands or claims by Third Party Rights claimants;
- Unauthorized access by third parties to data or private information of any User(s);
- Statements or conduct of any User(s) of the web site; or

IV. NOTICES

All notices or demands to or upon IIL shall be effective if in writing and shall be deemed to be duly made when sent to IIL to IndiaMART InterMESH Limited, 6th floor, Tower 2, Assotech Business Cresterra, Plot No.22, Sector- 135, Noida-201305, Uttar Pradesh, India.

All notices or demands to or upon a User(s) shall be effective if either delivered personally, sent by courier, certified mail, by facsimile or email to the last-known correspondence, fax or email address provided by the User(s) on the Web Site, or by posting such notice or demand on an area of the Web Site that is publicly accessible without a charge.

Notice to a User(s) shall be deemed to be received by such User(s) if and when Web Site is able to demonstrate that communication, whether in physical or electronic form, has been sent to such User(s), or immediately upon Web Site's posting such notice on an area of the Web Site that is publicly accessible without charge.

XV. GOVERNING LAW AND DISPUTE RESOLUTIONS

This Agreement and the Privacy Policy shall be governed in all respects by the laws of Indian Territory. IIL considers itself and intends itself to be subject to the jurisdiction of the Courts of Noida, Uttar Pradesh, India only. The parties to this Agreement hereby submit to the exclusive jurisdiction of the courts of Noida, Uttar Pradesh, India.

XVI. MISCELLANEOUS

- Headings for any section of the Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.
- IIL's failure to enforce any right or failure to act with respect to any breach by a User(s) under the Agreement and/or Privacy Policy will not be deemed to be a IIL's waiver of that right or IIL's waiver of the right to act with respect with subsequent or similar breaches.
- IIL shall have the right to assign its obligations and duties in this Agreement and in any other agreement relating IIL's Services to any person or entity
- If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck out and the remaining provisions of the Agreement shall be enforced.
- All calls to IndiaMART are completely confidential. However, Your call may be recorded to ensure quality of service. Further, for training purpose and to ensure excellent customer service, calls from IndiaMART may be monitored and recorded.
- Nida Sheereen is the designated **Grievance Officer** in respect of IIL's Services. Any complaints or concerns with regards to any content on IIL's Services or any breach of this Agreement or Privacy Policy can be directed to the designated Grievance Officer in writing at IndiaMART InterMESH Limited, 6th floor, Tower 2, Assotech Business Cresterra, Plot No.22, Sector- 135, Noida-201305, Uttar Pradesh, India or through an email signed with the electronic signature sent to grievances@indiamart.com
- The Agreement and the Privacy Policy constitute the entire agreement between the User(s) and IIL with respect to access to and use of the Web Site, superseding any prior written or oral agreements in relation to the same subject matter herein

XVII. BIG BUYER ("BB") TERMS OF USE

- Under BB banner, IIL shall develop a microsite for the User(s) company ("**BB Company**") on the Web Site. IIL shall display all the leads of the BB Company on the microsite, to enable the BB Company to find out suppliers in a short period of time. BB Company hereby grants IIL the right to use its intellectual property on the microsite and Web Site in relation to the requirements posted by the BB Company on Web Site. It is clarified that all intellectual property rights in the logos, brands and trademarks of the BB Company used in relation to the above shall vest in the BB Company only.
- BB Company shall ensure that the contents provided to IIL shall not contain any material which is offensive, derogator, explicit or perverse to any specific race, gender or class of persons or degrading to public conscience or morals and does not breach any applicable law.
- IIL makes no representations or warranties to BB Company with respect to services provided by IIL under BB banner.
- IIL hereby disclaims all warranties express and implied, including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement with respect to the services provided by IIL under the BB banner.
- In no event shall IIL be liable to BB Company for any special, exemplary, indirect, incidental, consequential, punitive damages or for any damages arising out of or in connection with respect to the above mentioned service.
- Apart from the said terms & conditions, the Agreement shall be deemed to form part and parcel of BB term and conditions.

XVIII. PHARMACEUTICAL PRODUCT/SERVICE POLICIES

The [Web Site](#) does not facilitate the purchase of pharmaceutical products, and only advertises and/or showcases the pharmaceutical products posted by Users(s). User(s) involved in the purchase and supply of pharmaceutical products hereby agree to abide by and be compliant of any applicable laws, rules, regulations, notifications or orders issued by the Government of India or any of its agencies from time to time in this regard including but not limited to Drugs and Cosmetics Act, 1940, Drugs and Cosmetics Rules, 1945 ("**Drug Rules**"), Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 ("**Drug and Magic Remedies Act**").

IIL shall not be responsible for any information, content or material in respect of or related to any pharmaceutical product posted, provided or displayed by User(s) on the Web Site. Accordingly, the User posting the content shall ensure that the content so posted does not violate any statute in the rules made thereunder including the Act(s) as referred above, so that no consequences of any nature could be attributed to IIL in any manner whatsoever.

Users(s) hereby undertake that they shall solely be responsible and shall bear all the liabilities in respect of selling prescription medicines and/or drugs mentioned in any of the Schedules of the Drug Rules without a prescription issued by a registered medical practitioner and in accordance with the conditions laid down in such rules. In the event of breach of such condition, IIL shall not be liable and responsible in any manner whatsoever.

Users(s) undertake and agree to indemnify and hold harmless IIL and/or any of its affiliates, directors, officers, employees or representatives from and against any and all losses, liabilities, damages, claims, costs and expenses (including attorney's fees and expenses, any third party claims), which IIL may incur or suffer as a result of or in connection with any illegal sales of drugs and/or medicines.

IIL does not offer any guarantees or warranties on the medicinal products or services displayed or listed on the Web Site and is not liable for any relevant transaction between the User(s), including transactions involving sale of any medicine(s) restricted and/or banned for sale by any governmental or any other

CUSTOMER RELATIONSHIP MANAGEMENT SERVICES:

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The Customer relationship management service ("CRM Service") offered by IndiaMART encompasses cloud-based software and applications accessible to Users for business use. Access to the CRM Service is facilitated through a unified user account which serves as the key to unlocking various services provided by IndiaMART.

- Usage of CRM services

CRM services facilitate integration with a range of third-party applications ("Third-Party Applications"). You have the opportunity to integrate external Third-Party Applications with the CRM Service through the use of APIs, provided such applications allow such integration. Through the CRM Platform, Users are granted the capability to seamlessly create, edit, and share a diverse array of content and information.

- Consent and Ownership of Content/Information

By opting to engage with the CRM Service, Users expressly represent and warrant that they possess the necessary consents, authorizations, or proprietary rights with respect to the content and information that they create, store, transmit, or share using the CRM Platform. Additionally, Users hereby confer upon IndiaMART the explicit and irrevocable permission to access, duplicate, disseminate, store, transmit, reformat, and publicly exhibit the aforementioned content and information. This permission is granted for the purpose of enabling the provision of CRM Services to Users.

- Responsibility for Content and Information

Users acknowledge and accept that they retain sole and absolute responsibility for the integrity, legality, accuracy, and appropriateness of all content and information that is disseminated through CRM Services. While IndiaMART does not exercise editorial control over such content, Users acknowledge that any content deemed in violation of these terms or relevant laws may be subject to removal without prior notice.

- Limitations

a) Prohibition of Transfer to Third Parties: Users are strictly prohibited from transferring, sublicensing, or assigning any of their rights, access, or entitlements related to the CRM Service to any third party without obtaining explicit prior written consent from IndiaMART.

b) Responsibility for System Impact: Users shall refrain from any actions or activities that could potentially lead to damage, overload, disablement, impairment, or any form of harm to IndiaMART's servers, networks, computer systems, or operational resources.

c) Preservation of Service Integrity: Users acknowledge and agree that they shall not, directly or indirectly, undertake any attempts to disassemble, reverse engineer, decompile, or otherwise tamper with the underlying structure or components of the CRM Services.

d) Legally Compliant Use: Users shall not employ the CRM Service for any purpose that is illegal, prohibited by applicable laws or regulations, or inconsistent with ethical standards.

Indemnification

Users shall indemnify, defend, and hold harmless IndiaMART, its affiliates, officers, directors, employees, and agents from any and all claims, liabilities, damages, losses, costs, and expenses (including reasonable legal fees) arising from or related to their use of the CRM Service.

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* **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.

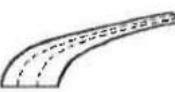
7. PSE is a company and it is established and incorporated under the laws of Germany. It claims that it is one of the world's largest manufacturer of sportswear and accessories. It operates in India through its wholly owned subsidiary, PUMA Sports India Pvt. Limited. PSE claims that it has been using 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.

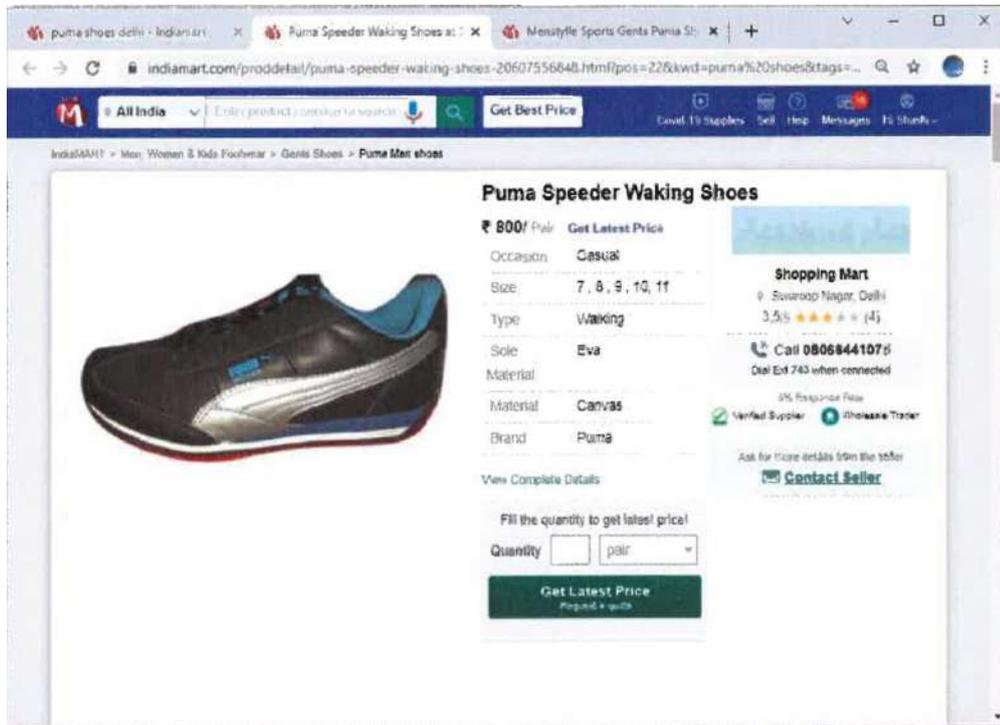
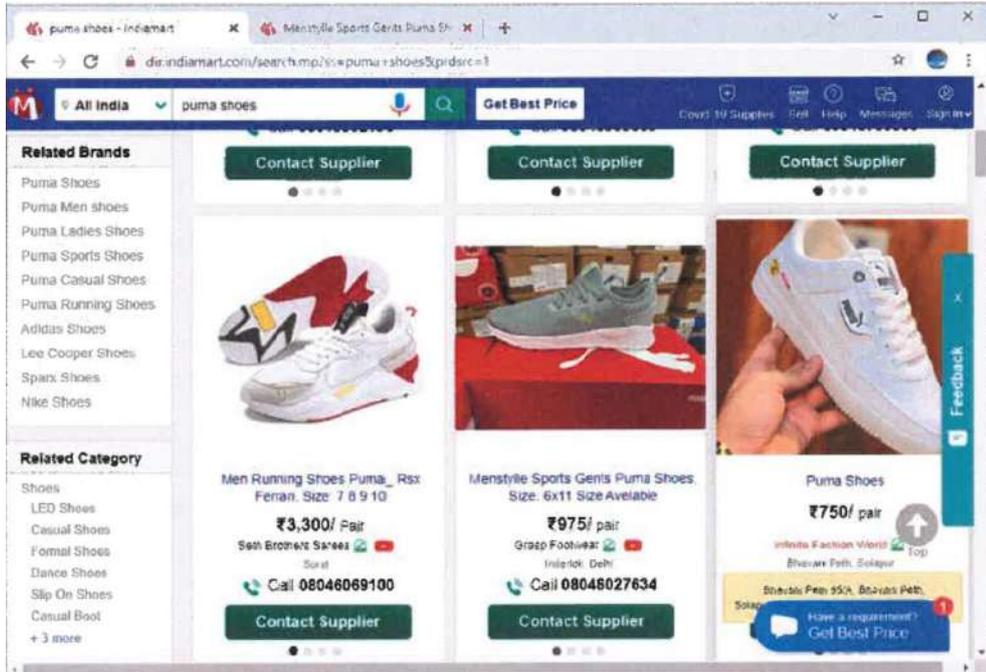
10. The process for registration of sellers on Indiamart requires the sellers to key-in their details including those products in which they are dealing. IIL provides a drop-down menu, which enables the sellers to select one of the options or directly fill-in the description of their product in the menu 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:





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

₹ 190/ Piece [Get Latest Price](#)

Product	Puma dry fit tshirts
Type	
Brand	Puma
Color	Multl
Age Group	18 to 55
Size	M to xxl
Fabric	4way

Shabri Unique Apparels Enterprises
 South Delhi, New Delhi
 4.3/5 ★★★★★ (8)
 Call 08048782889
 40% Response Rate
 Verified Supplier Manufacturer
[Contact Seller](#)

Fill the quantity to get latest price!

Quantity Piece

[Get Latest Price](#)

puma watches in delhi near Delhi

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

<p>Puma golden Men Watches, For Formal, Model Name/Number...</p> <p>₹350/ Box</p> <p>Fanchise India</p> <p>Call 08048371747 Ext 296</p> <p>Contact Supplier</p>	<p>Watch</p> <p>Ask Price</p> <p>New Communication Technology</p> <p>Call 08048372071 Ext 685</p> <p>Contact Supplier</p>	<p>Puma Round Gents Designer Watch For Formal</p> <p>Ask Price</p> <p>Marite Enterprises</p> <p>Call 08068979852 Ext 206</p> <p>Contact Supplier</p>
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Screenshot of an e-commerce search for 'puma socks' in Delhi. The page shows three product listings:

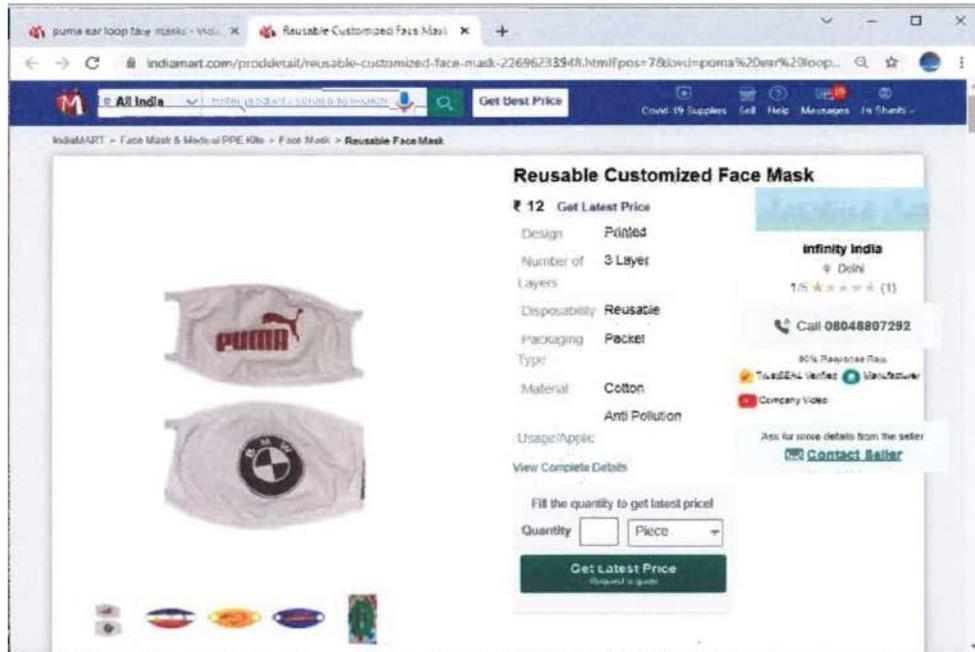
- Product 1:** Black Grey and white Unisex Pouch Non Terry Free Size Socks. Price: ₹32/ Pair. Supplier: Puma Hosieriy, Near Delhi. Contact: Call 08048372400 Ext 848.
- Product 2:** Puma Socks. Supplier: Shri Lakmi Narayans Hosieriy, Firozpur, Near Delhi. Contact: Call 08048371788 Ext 322.
- Product 3:** Puma Socks. Supplier: MAS Sports Wears, Rohini, Delhi. Contact: Call 08066085813 Ext 404.

Left sidebar includes 'Results With' (Show suppliers from Delhi only), 'Related Brands' (Puma Socks, Jockey Sports Socks, Adidas Socks, Nike Men Socks, Jockey Men Socks), and 'Related Category' (Socks, Gait Socks, Anti Slip Socks, Tee Socks, Acrylic Socks, Ankle Socks, Quarter Socks, Sports Socks).

Screenshot of an e-commerce search for 'puma caps' in Delhi. The page shows three product listings:

- Product 1:** Plain Polyester Puma Cap Blue, Size: Free. Price: ₹375/ Piece. Supplier: Kuoob Enterprises, Sector 17, New Delhi. Contact: Call 07971337464.
- Product 2:** Puma Men Beanie Cap. Price: ₹22/ Piece. Supplier: Kiran Exports, Dwarah in Delhi. Contact: Call 08046036458.
- Product 3:** Puma Cap. Supplier: AS Caps Works, Mumbai. Contact: Call 08068970145 Ext. 441.

Left sidebar includes 'Results With' (Show suppliers from Delhi only), 'Related Brands' (Puma Cap, Adidas Cap), and 'Related Category' (Fashion Caps, Beanie, Printed Caps, Beret Caps, Brushed Cotton Cap, Visor Cap, Net Cap, Skull Caps).



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:



S-4
27/1

Indiamart Account Creation Process



27

Years of
IndiaMART
Riding the Change

Account Creation Steps



Step 1

Step 2

Step 3

Step 4

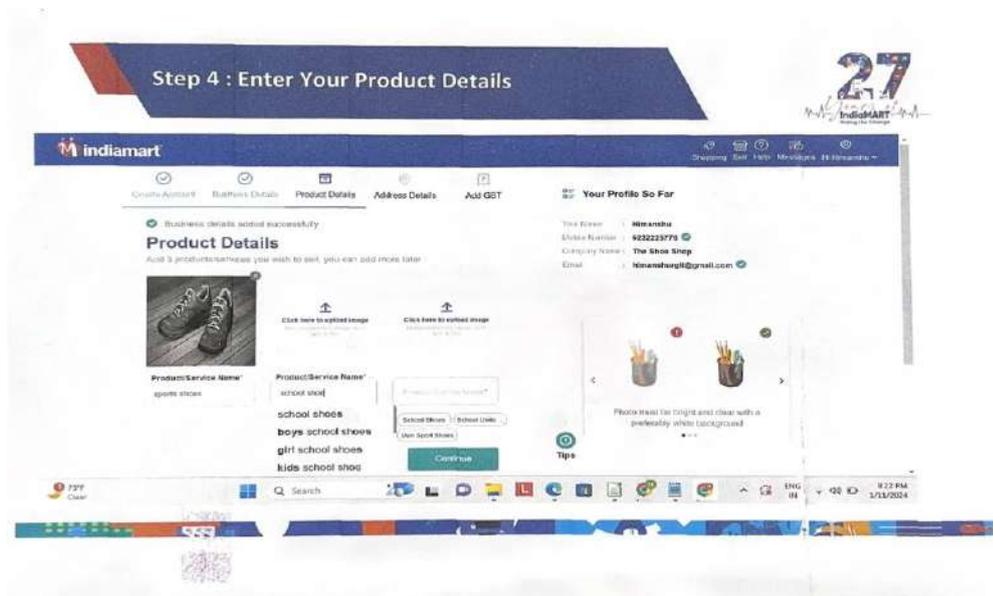
Step 5

Step 6

Step 7

Enter Your Mobile Number	Enter Your Personal Details	Enter Your Business Details	Enter Your Product Details	Enter Your Address Details	Enter Your GST Details	Seller registration Complete
--------------------------	-----------------------------	-----------------------------	----------------------------	----------------------------	------------------------	------------------------------







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 Show Stop?"

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**

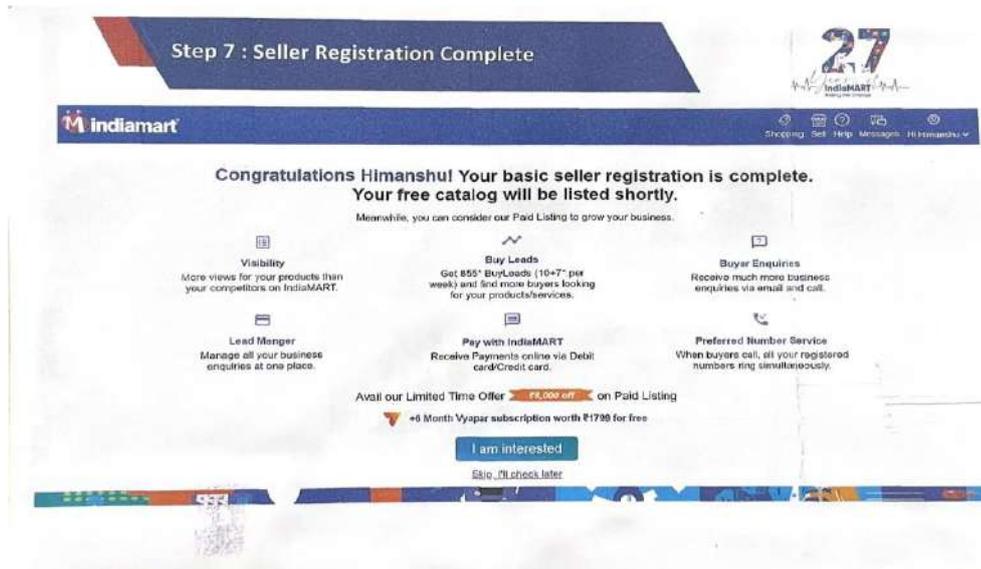
Address details added successfully

GST Details
Add your statutory details

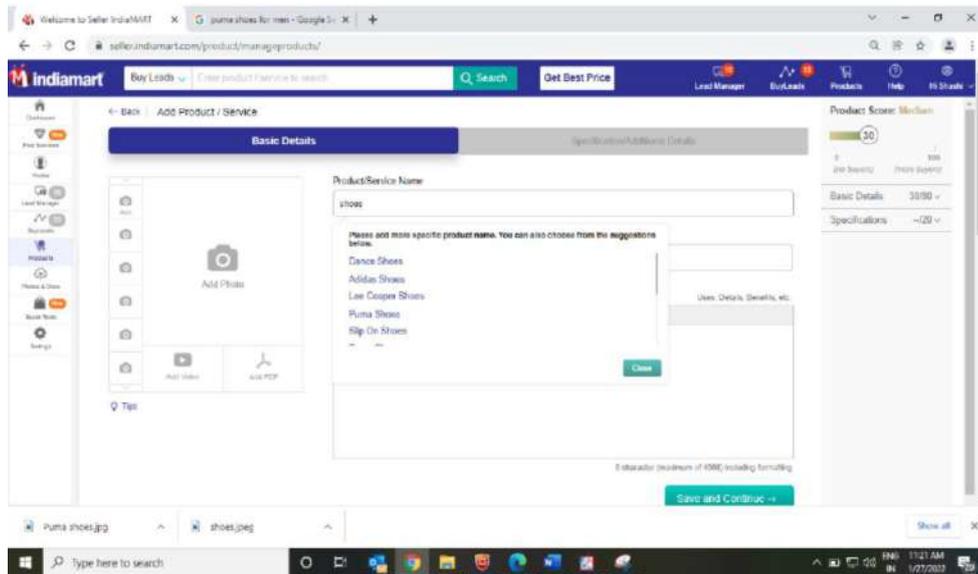
I have GSTN I am exempted I don't remember I don't have it

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:



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



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 Cloudbait'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 Cloudbait. 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 Hussenhbai* 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 restrains 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.



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

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 164 OF 2025**

IN THE MATTER OF:

HARIYALI WELFARE SOCIETY ...APPLICANT

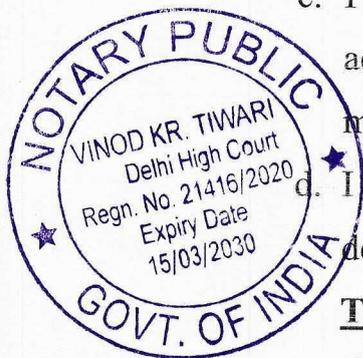
VERSUS

M/S FLIPKART LOGISTICS
PRIVATE LIMITED & ORS ...RESPONDENTS

**CERTIFICATE UNDER SECTION 63(4)(c) READ WITH
SECTION 63(2) OF THE BHARATIYA SAKSHYA
ADHINIYAM, 2023**

I, Srishti Gautam, aged about 27 years, authorized Representative of Respondent No. 3 in the captioned matter, having its registered office at 1st Floor, 29 – Daryaganj, Netaji Subhash Marg, New Delhi – 110 002, do solemnly affirm and say as follows:

- a. I state that I am the Authorized Representative of Respondent No. 3 and am competent to issue this certificate in the captioned matter.
- b. I state that this certificate is issued in compliance with the conditions referred to in Section 63(1) and (2) of the Bharatiya Sakshya Adhinyam, 2023.
- c. I state that the electronic records filed along with the accompanying pleadings are printouts/ DVDs/Pendrive as mentioned in the pleading's index ("**Electronic Record**").
- d. I have produced the Electronic Record from the following device, i.e., my computer of make and model: **Lenovo Thinkpad**, Color: **Black**, serial number: **BA5C4CB5-6B57-403EAD** ("**Computer**"). Subsequently, I shared

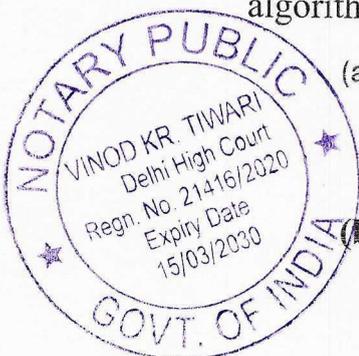


these documents with Respondent No.3's counsel and thereafter went to their office and accessed their printer/scanner of make Brother DCP-7535DW of serial no. E-78346M3N350943 located at New Delhi.

- e. I further state that the information contained in the Electronic Record is derived from information available in the computer and network in the ordinary course of activity.
- f. I state that the Electronic Record, to the best of my knowledge and belief, is an accurate record of the material available on the Internet and in the electronic device maintained in an electronic form. As the Electronic Record was accessed by me and thereafter e-filed/ printed/ burned to a DVD by Respondent No. 3's' counsel upon my instructions, I am competent to issue this certificate.
- g. The digital device i.e., the computer was under my lawful control and operation for regularly creating, storing or processing information for the purposes of carrying out regular activities and during this period, the Computer was working properly, and the relevant information was regularly fed into the Computer during the ordinary course of business.
- h. I am advised to state that the HASH values of the Electronic Record obtained by Respondent No. 3's counsel through the algorithm SHA 256 on their device are:

(a) **55eb14af24cbd74053617800addce15d91da7f1c
ae49e58e3ebd973d3710f530**

(b) **19cc454c41bc770db534431d64c9a611b56c810
47a1a48cc280c93cf2558ee84**



i. I state that the above information is true and correct to the best of my knowledge.

Place: **New Delhi, India**

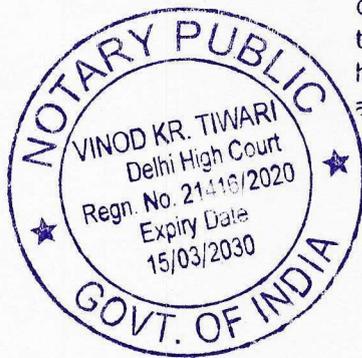
Date: 13.11. 2025



13 NOV 2025

Handwritten signature
D/2987/24
Identify the Deponent who has signed/bur
thumb impression in my presence

CERTIFIED THAT THE DEPONENT
Shri/Smt./Km.....
S/o, W/o, D/o, Sh.....
Identified by Shri/Smt.....
has solemnly Attested before me at Delhi
on..... **13 NOV 2025** No.....
that the contents of the affidavit which
have been read Over & explained to him/her
are true & correct to his/her knowledge



NOTARY

**Advance Service: Original Application No. 164 of 2025 - Hariyali Welfare Society v. Ms Flipkart Logistics Private Limited & Ors.**

1 message

Priya Goyal <priya@njlaw.in>

13 November 2025 at 18:24

To: "litigation@dclawchambers.com" <litigation@dclawchambers.com>, "vivek@haryali.org" <vivek@haryali.org>, mscb.cpcb@nic.in, secy-moef@nic.in

Cc: Naman Joshi <nj@njlaw.in>, office@njlaw.in

Dear All,

We represent the Respondent No. 3 - Indiamart InterMesh Limited in the captioned matter pending adjudication before the Hon'ble National Green Tribunal, New Delhi. Please find attached the following being filed on behalf of Respondent No. 3 -

1. Reply to the Original Application
2. Application seeking Condonation of Delay in filing Reply

This is by way of advance service. Kindly acknowledge the receipt of the same.

Kind Regards,

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