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## EU: increasing liability of online marketplaces for trademark infringement

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In today's e-commerce-driven world, the liability of online marketplace like Amazon or eBay for trademark infringement is and remains a hot legal topic. The issue has become increasingly complex as platforms have evolved from mere intermediaries to integrated sellers and service providers. While EU law has harmonized direct trademark infringement across member states, it leaves indirect (or contributory) infringement largely up to national legislatures. Until recently, the prevailing legal test relied heavily on distinguishing whether a platform played an active or passive role.



### The Traditional Test: Passive Platforms Are Not Liable

For years, the Court of Justice of the European Union (CJEU) maintained that online marketplaces are not directly liable for trademark infringement when they merely host third-party content—provided they remain passive. This line of reasoning was established in key cases:

**Google France v. Louis Vuitton:** hosting providers are not liable for trademark infringement unless they have actual knowledge of illegal activity and fail to act swiftly.

**L'Oréal v. eBay:** eBay was not “using” the trademarks itself but merely provided a platform for others to do so.

**Coty Germany v. Amazon:** Amazon was not liable simply for warehousing products unless it also offered them for sale on its own account.

In all of these cases, the dividing line was clear: if the marketplace's actions were technical, automatic and passive, they were not responsible for infringement.

## The Turning Point: Louboutin v. Amazon

This position was challenged in the [Louboutin v. Amazon](#) judgment. Christian Louboutin, known for his iconic red-soled shoes, argued that Amazon did more than just host third-party listings—it actively designed sales offers, controlled shipping, and displayed ads featuring the disputed goods in ways that blurred the lines between third-party and Amazon listings.

The CJEU agreed that such involvement could constitute “use” of a trademark under EU law. Importantly, the Court highlighted the consumer’s perception: if a reasonably observant user cannot distinguish between Amazon’s role and the third-party seller’s, the marketplace might indeed be liable. This reflects a broader trend in EU jurisprudence: liability can arise when platforms integrate and promote listings as part of their own commercial activity.

## Parallel Developments in Copyright and National Laws

This evolving “active role” doctrine is not limited to trademark law. In copyright cases like [Elsevier v. Cyando](#), the CJEU confirmed that platforms optimizing or promoting content play an active role and may be held responsible. National courts have adopted a similar logic:

In the [Manhattan Bridge case](#), the German Supreme Court concluded that platforms with an economic interest in infringing goods (like charging seller fees) could be liable.

In France, [courts](#) ruled that guarantees like “100% authenticity” and authentication services implied a commercial endorsement, making platforms liable.

The UK Supreme Court in [Lifestyle Equities v. Amazon](#) established liability based on whether a “reasonably observant user” links the platform’s services with the trademarked goods.

## What Lies Ahead: Knowledge, Control, and the DSA

The next frontier for courts—especially the CJEU—will be clarifying the role of knowledge in establishing liability. Unlike direct infringement, which does not require intent, contributory infringement hinges on whether a platform intentionally induced the violation or knew (or should have known) about it.

However, the Digital Services Act (DSA) adds another layer: it specifies that general awareness of illegal content does not equal actual knowledge. This could mean that a marketplace will only be liable if there is clear evidence of awareness and inaction.

## Conclusion: Toward a New Standard

The Louboutin judgment and related cases represent a shift away from the “passive host” framework. The emerging judicial test is more nuanced and context-specific, looking at how integrated the platform is in the transaction, how listings are presented, and what consumers reasonably perceive.

In short, online marketplaces are no longer invisible back-end platforms. As they become more embedded in the buying process—through fulfilment, advertising, and branding—the courts are increasingly likely to see them as trademark users themselves, and therefore, potentially liable.

Expect the CJEU to continue refining this standard in the coming years, especially as the DSA

reshapes digital liability rules across the EU. The message is clear: in the online marketplace, responsibility follows control.

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