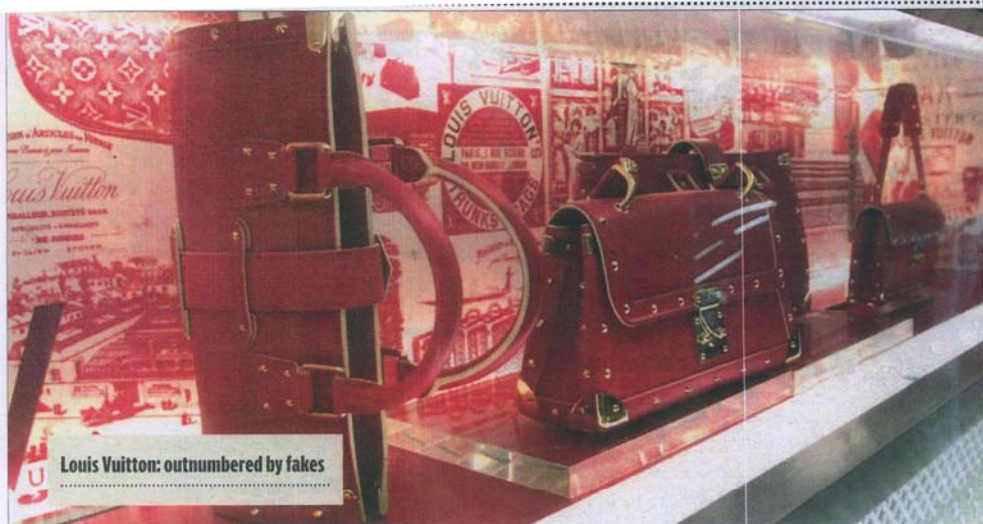


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## French court hits eBay with €40m in fines for trading in counterfeits

By Ben Moshinsky

AS DEDICATED followers of fashion know, a decent handbag is worth its weight in gold. But eBay has discovered that a counterfeit one could cost it almost €40m (£31.81m).

French court Tribunal de Commerce has demanded that eBay shell out almost €20m (£15.91m) to Louis Vuitton Malletier and €16.4m (£13.04m) to Christian Dior Couture, as well as around €3m (£2.39m) to perfume brands, after users of the auction site were found to be trading in counterfeit goods. All the brands in question are owned by luxury goods conglomerate LVMH.

The size of the fine has staggered observers of the judgment, which could deal a punishing blow to eBay's entire business model. Little wonder that eBay is set to appeal.

Alexandra Neri, head of IP for Herbert Smith in France, is shocked. She says: "From a legal point of view the judgment doesn't make any sense. Before this decision eBay obtained 18 others that said the company wasn't liable for counterfeits.

"You can't adopt a decision that says, 'you're earning money so you're liable'. I really am surprised at this decision."

Meanwhile, the international community is watching intently. Doubts have been raised over the impartiality of the tribunal, which is staffed by amateur judges taken from the business world.

Stuart Witchwell, managing director

of UK IP consultancy Intangible Business, says: "I don't think eBay will end up paying the fine. eBay's just a conduit – the users know that they're not buying from eBay but another individual.

"To me it looks like a French court sympathetic to a French company against an American company."

The tribunal has waded in to a debate that has been raging for several years – namely, should eBay be liable for counterfeits that are bought and sold on its website?

**“Who's responsible for what happens on eBay?**

**The answer is eBay. They're the ones making the profit out of the fakes”**

Simon Tracey, Davenport Lyons

The auction giant now spends \$20m (£10.05m) a year on a team of 2,000 people to take down listings featuring counterfeited goods. This is despite maintaining that it has no legal obligation to do so because it is a platform for goods bought and sold rather than being a vendor in itself. According to eBay, this means it is not liable for breaching IP rights if cheap knock-off goods appear on the site.

The cost to the company of ramping up that IP protection programme, which eBay would have to do if it were made responsible for every faux-leather belt its users bought, could seriously damage its

business. But critics say the company has a responsibility to do so and thus play its part in the global effort to prevent IP theft.

Simon Tracey, IP partner at Davenport Lyons, has seen the other side of the eBay debate and welcomes the French court's decision. He is the liaison between the UK Anti-Counterfeiting Group (ACG) and eBay, and has a client list stuffed full of luxury goods makers.

"Brand owners tell eBay that they're taking the proverbial – eBay's getting revenue from this business," he says. "Every time a counterfeit is sold on the site, eBay makes a profit."

Tracey quotes statistics from LVMH's survey of eBay fakes carried out before the dispute went to trial. The company found that, in the second quarter of 2006, 90 per cent of Louis Vuitton handbags sold on eBay were fakes. The staggering figure means that only 15,000 of the 150,000 handbags sold were real.

"Who's responsible for what happens on eBay?" asks Tracey. "The answer is eBay. They're the ones making the profit out of the fakes."

There are convincing arguments on both sides of the debate. Nobody knows for sure whether eBay is really liable for the fakes that appear on its site – at least not enough to bet money on the outcome of a court dispute. But everyone has an opinion.

Far from being the definitive word on the counterfeit question, the French tribunal's decision has served to ignite a debate that will rage around the world.