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The online *dilemma*

K&L Gates
investigates some
of the common
intellectual
property battles
faced online.



TO SURVIVE IN the fashion industry in the 21st Century, it is vital for brands to have a strong online presence. Despite the myriad of opportunities afforded by the online marketplace, it also presents some very real threats, such as the easy and largely untraceable sale of counterfeit products and unauthorised use of designs, trade marks and copyright works.

However the online marketplace need not be the 'wild, wild west' that some consider it has become. In this article, we look at two case studies that outline some of the more common intellectual property problems faced online and, importantly, highlight the things that brands can do to protect themselves online and to respond to these issues.

CASE STUDY #1 – Counterfeit Goods Sold Through Ali Express, TMall and eBay

An increasingly common problem faced by our clients in the online marketplace is the sale of counterfeit and reproduction goods including the unauthorised use of trade marks, photographs and promotional images. Through eCommerce sites such as Ali Express, TMall and eBay, counterfeiters and copyists can target a large consumer base with relatively low start up costs and use a myriad of a brand's promotional materials, such as campaign videos, photographs, company statements and the fashion house's trade marks, to promote the sale of counterfeit or reproduction goods as genuine products.

There are a number of quick and cost-effective options available to brand owners that become aware of their trade marks and images being used, without their authority, to

promote the sale of counterfeit and copy products on these eCommerce websites. Brands can take quick action to stop this conduct and minimise the harm to their labels. Take-Down policies and procedures usually require a brand to establish that it is the owner of a registered trade mark or design or the owner of copyright in a particular work that has been infringed in order to take action to remove the infringing listing. Once ownership has been established, eCommerce websites generally move very quickly to have the listing complained about removed from the internet.

Brands should also continue to monitor the web for relisting of the content on other websites, as it is not uncommon for the same listing simply to be uploaded to another site. We can assist in formulating an appropriate strategy using take-down methods and if required, traditional legal routes to achieve a long-term solution to any repeat conduct.

CASE STUDY #2 – 'Did You Know That Your Brand is the Worst Thing Ever?'

Another challenge faced by brand owners is the posting of false, misleading and defamatory statements about their brands online. Through the rise of social media platforms like Facebook and Twitter along with customer review sites like Trip Advisor and Zomato, the potential for the average consumer to voice a false and damaging comment or opinion about your brand online has grown exponentially. Instead of just a few restaurant critics, every customer has the potential to cause substantial damage to the goodwill of your brand. Although there is the ability for

this power to be used to support your brand, if a disgruntled customer posts a misleading or defamatory statement online then your brand can be adversely affected.

As is the case with eCommerce websites, there are a number of cost-effective options available to brands dealing with social media sites and review sites to have any false or defamatory statements quickly removed. The terms and conditions of these sites dictate the acceptable use of the platforms and, where postings fall foul of such terms, brands can take full advantage of complaint procedures and other mechanisms to ensure that any harmful content is swiftly removed.

Key Takeaway Points

Fashion houses are facing an ever increasing number of challenges in promoting their brands on-line. The good news is that a number of quick and cost-effective methods are available to minimise the harm to your brand.

If you have concerns regarding the posting of false, misleading and deceptive or defamatory statements regarding your brand online or if you become aware of the sale of counterfeit or reproduction products or any unauthorised use of your designs, trade marks, photographs, images and other copyright works, then contact us to discuss the best strategy to remove the sale and material and to protect your brand as soon as possible. ■

For legal advice about online intellectual property challenges and other intellectual property matters, please contact Christine Danos, Senior Associate, K&L Gates – christine.danos@klgates.com