

NY court revives Tiffany's false ad claim vs. eBay

April 1 2010, By LARRY NEUMEISTER , Associated Press Writer

(AP) -- EBay Inc. might be violating false-advertising laws if it does not warn consumers that some of the Tiffany products offered by sellers on its Web site are not authentic, a federal appeals court said Thursday.

Still, the 2nd U.S. Circuit Court of Appeals handed the online auctioneer significant victories when it ruled that [eBay](#) did not engage in trademark infringement or trademark dilution in its use of jeweler Tiffany & Co.'s trademarks. Those rulings upheld the findings of a lower court judge.

Tiffany sued eBay in 2004, saying eBay engaged in [trademark infringement](#), trademark dilution and false advertising because most items listed for sale as genuine Tiffany products on its sites were fakes.

An eBay lawyer did not immediately return a message for comment.

The appeals court did not overturn a finding by the lower court that eBay did not violate false advertising laws, but it did return the case to the judge to consider that issue again.

The three-judge panel said it had difficulty agreeing with the lower court because the judge failed to determine whether evidence showed that eBay advertising was misleading or confusing in regards to Tiffany products.

It said in its written ruling that it had difficulty with the lower court's reliance on the fact that eBay did not know which listings offered

counterfeit Tiffany goods.

The appeals court said "it sheds little light on whether the advertisements were misleading insofar as they implied the genuineness of Tiffany goods on eBay's site."

The 2nd Circuit noted that eBay advertised the goods sold through its site as Tiffany merchandise.

"The law requires us to hold eBay accountable for the words that it chose insofar as they misled or confused consumers," it said.

The company would not need to stop advertising goods such as Tiffany products if it knows some of them are counterfeit, the appeals court said.

"A disclaimer might suffice," it said. "But the law prohibits an advertisement that implies that all of the goods offered on a defendant's website are genuine when, in fact, as here, a sizeable proportion of them are not."

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