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Tiffany fights losing battle against inevitable change

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"Ahh... Do I detect a look of disapproval in your eye? Tough beans buddy, 'cause that's the way it's gonna be."

— Holly Golightly in "Breakfast at Tiffany's"

Like many large, traditional companies, the jeweler Tiffany & Co. made the puzzling choice to engage in a protracted and expensive legal battle rather than simply accepting and adapting to the technological changes in the worldwide marketplace.

Four years ago, Tiffany filed a lawsuit against eBay, the online auction giant, in the U.S. District Court for the Southern District of New York. Tiffany alleged its trademark was violated when eBay permitted sellers to list potentially counterfeit Tiffany items for sale.

Last week, following a non-jury trial, Judge Richard J. Sullivan issued a ruling in favor of eBay, concluding "[i]t is the trademark owner's burden to police its mark and companies like eBay cannot be held liable for trademark infringement based solely on their generalized knowledge that trademark infringement might be occurring on their Web sites."

Judge Sullivan's decision, hailed as an important victory for online retailers, was in keeping with the vast majority of U.S. decisions on this issue.

Not surprisingly, instead of accepting defeat gracefully and vowing to find ways to make innovative platforms such as eBay work to their advantage, representatives of Tiffany indicated the company would most likely appeal the decision to the U.S. Court of Appeals for the Second Circuit.

In other words, rather than allocating resources so the company can adapt to the ever-changing online marketplace, Tiffany is planning to expend more money battling the inevitable — change.

Judge Sullivan noted Tiffany's strategy of avoiding, rather than acknowledging technological change, in his decision: "Notwithstanding the significance of the online counterfeiting problem, it is

clear that Tiffany invested relatively modest resources to combat the problem. In fiscal year 2003, Tiffany budgeted approximately \$763,000 to the issue, representing less than 0.05 percent of its net sales for that year. ... Tiffany's CEO, Michael Kowalski, testified that over the past five years, Tiffany has budgeted \$14 million to anti-counterfeiting efforts — of which approximately \$3 to 5 million was spent in litigating the instant action."

Tiffany is not alone in its reluctance to adapt its business practices to embrace and complement emerging technologies. Trademark and copyright infringements claims against online giants such as YouTube, Google and eBay abound as industries with foundations planted firmly in the 20th century struggle to stay afloat when confronted with 21st century innovations.

The recording industry has yet to find a way to maintain profitability in the face of online file sharing and other emerging technologies. Likewise, conventional retailers, television and print media continue to struggle with these issues as consumers increasingly obtain information,

products and services online, rather than through traditional venues.

The online marketplace is expanding exponentially. Pioneering business entrepreneurs are creating increasingly inventive online platforms through which products are advertised, bartered, exchanged and sold. Online commerce is becoming commonplace.

Like Tiffany, some companies steadfastly refuse to acknowledge the profound changes in the marketplace and, instead, expend precious time, energy and resources in the futile attempt to turn back the clock and prevent change.

Conversely, other innovative businesses, such as eBay, wisely accept the fact that change is inevitable and reap the financial benefits as they creatively and innovatively tackle the digital frontier.

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