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[eBay is Embroiled in More Intellectual Property Disputes](#)

Posted on December 16, 2010 by [Tiffany Blofield](#)

Many people will access [eBay](#) this month to purchase that special gift for the holidays. In doing so, there are many products listed on eBay that are associated with valuable trademarks.

In a previous blog post, "[New York Provides No Assistance to 'The Little Blue Box' Company](#)," we informed you that a district court had found that Tiffany & Co.—not eBay—was responsible for protecting its brand and trademark on the auction site. In other words, eBay was not responsible for keeping its users from selling fake jewelry with the Tiffany & Co. name. eBay was only required to take appropriate action after it had received notice of the infringement, presumably from Tiffany & Co. Since this post, the United States Court of Appeals for the Second Circuit affirmed the decision for the most part. The only issue remanded back to the district court was whether eBay's use of Tiffany & Co.'s trademarks constituted false advertising.

In May 2009, the United Kingdom had issued a ruling in favor of eBay that it was not liable in connection with trademark infringement claims brought by [L'Oréal SA](#), but had referred the question of what eBay should have to do to stop parties from selling infringing products to the European Court of Justice.

Last week, the advocate general to the European Court of Justice issued an opinion recommending vindication for eBay from L'Oréal SA's trademark infringement claims. Specifically, he held, among other things, that eBay was not liable: for using trademarks as keywords or for trademark images posted by its users. The opinion discussed the differences between a paid Internet referencing service provider such as Google (where a recent EU decision had found it not liable for trademark infringement) and an operator of an electronic marketplace such as eBay. The advocate general opined that an operator of an electronic marketplace (such as eBay) benefits from the sale so it should be treated differently. Accordingly, once such an operator had knowledge of the infringement and failed to stop it, then the operator could be found liable. Although his opinion is not binding, the European Court of Justice will consider the advocate general's opinion in issuing its own decision.

Trademark infringement is not the only intellectual property dispute facing eBay. It also is being sued in Delaware by XRPT Ventures LLC for patent infringement. Specifically, the suit relates to e-commerce payment systems (e.g., PayPal's pay later, checkout system, buyer credit and balance manager). There are even allegations that eBay attempted to patent XRPT's technology as its own.

These will likely not be the last actions brought against eBay involving intellectual property.

