

08-3947-cv

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

TIFFANY (NJ) INC. and TIFFANY AND COMPANY,

Plaintiffs-Appellants,

v.

eBAY INC.,

Defendant-Appellee.

**On Appeal From the United States District Court
for the Southern District of New York**

**BRIEF FOR AMAZON.COM, INC., GOOGLE INC., INFORMATION
TECHNOLOGY ASSOCIATION OF AMERICA, INTERNET COMMERCE
COALITION, NETCOALITION, UNITED STATES INTERNET SERVICE
PROVIDER ASSOCIATION, AND UNITED STATES TELECOM ASSOCIATION
AS AMICI CURIAE IN SUPPORT OF DEFENDANT-APPELLEE EBAY, INC.**

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST OF AMICI CURIAE.....	1
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
I. THE DISTRICT COURT PROPERLY HELD THAT GENERALIZED KNOWLEDGE OF INFRINGEMENT BY THIRD PARTIES IS NOT SUFFICIENT TO TRIGGER LIABILITY FOR CONTRIBUTORY INFRINGEMENT	6
A. Prevailing Precedent Requires Specific Knowledge of Infringement.....	7
B. The Rule Tiffany Proposes Would Result in Impracticable Burdens and Cripple the Availability of Secondary Markets on the Internet.....	10
II. EBAY’S USE OF THE TIFFANY MARK IN SPONSORED SEARCH LISTINGS AND OTHER ADVERTISEMENTS WAS NOMINATIVE FAIR USE.....	19
CONCLUSION.....	22
CERTIFICATE OF COMPLIANCE WITH RULE 32(A)	
ANTI-VIRUS CERTIFICATION FORM	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

CASES

<i>Fonovisa, Inc. v. Cherry Auction, Inc.</i> , 76 F.3d 259 (9th Cir. 1996)	9, 10
<i>Hard Rock Cafe Licensing Corp. v. Concession Services, Inc.</i> , 955 F.2d 1143 (7th Cir. 1992).....	11
<i>Inwood Laboratories, Inc. v. Ives Laboratories, Inc.</i> , 456 U.S. 844 (1982)	7, 8, 9, 10
<i>Merck & Co., Inc. v. Mediplan Health Consulting, Inc.</i> , 425 F. Supp. 2d 402 (S.D.N.Y. 2006).....	20
<i>New Kids on the Block v. News America Publishing, Inc.</i> , 971 F.2d 302 (9th Cir. 1992)	18, 20, 21
<i>Tiffany (NJ) Inc. v. eBay, Inc.</i> , 576 F. Supp. 2d 463 (S.D.N.Y. 2008).....	<i>passim</i>

STATUTORY PROVISIONS AND RULES

47 U.S.C.	
§ 230(a).....	17
§ 230(b).....	17
Fed. R. App. P.	
R. 25(a)	1
R. 26(a)	1
R. 29(a)	1
R. 29(e)	1

Amazon.com, Inc. (“Amazon”), Google Inc., the Information Technology Association of America (“ITAA”), the Internet Commerce Coalition (“ICC”), NetCoalition, the United States Internet Service Provider Association (“US ISPA”), and the United States Telecom Association (“USTelecom”) submit this brief as *amici curiae* in support of Defendant-Appellee eBay Inc. in the appeal from the judgment entered against Plaintiffs-Appellants Tiffany (NJ) Inc. and Tiffany and Company (“Tiffany”) in *Tiffany (NJ) Inc. v. eBay, Inc.*, 576 F. Supp. 2d 463 (S.D.N.Y. 2008) (“Op.”). The parties have consented to the filing of this proposed *amici curiae* brief.^{1/}

STATEMENT OF INTEREST OF AMICI CURIAE

Amici are providers of interactive computer services, or organizations representing such providers, that serve as platforms for (among other things) Internet commerce between millions of buyers and sellers throughout the country and the world who otherwise would have no practical way of finding and interacting with one another. In so doing, these services bring lower prices, wider selection, and other significant benefits to consumers

^{1/} *Amici* file this brief pursuant to Federal Rule of Appellate Procedure 29(a). This brief is being timely filed no later than seven days, excluding intermediate Saturdays, Sundays, and legal holidays, after the filing of eBay’s brief by dispatch, on or before the last day for filing, to a third-party commercial carrier for overnight delivery to the clerk. Fed. R. App. P. 25(a)(2)(B)(ii), 26(a)(2), 29(e).

and foster the development of more efficient markets, including secondary markets for the sale of used goods.

Amazon allows users and other third parties to offer for sale millions of new, refurbished, and used items in a wide range of categories through Amazon.com. Such listings can include mention of trademarks to identify the products for sale.

Google Inc. provides a variety of online services including the Google Web Search and Product Search services that permit users to look for products for sale based on an index of billions of Web pages from content providers around the world. Such products—and trademarks identifying them—may appear both in the “search results” and accompanying “sponsored links” purchased by advertisers to alert consumers to the availability of particular goods or services on the advertisers’ sites. Indeed, the court below found that “eBay purchased sponsored link advertisements on . . . Google advertising the availability of Tiffany items on eBay.” Op. at 480. One of Tiffany’s claims against eBay was based on the purchase of such advertisements.

ITAA provides leadership in market research, standards development, business development, networking, and public policy advocacy to some 350 corporate members doing business in the public and commercial sector

markets. These members range from the smallest start-ups to industry leaders offering Internet, software, services and hardware solutions, and include eBay, Yahoo!, AT&T, and Verizon. A complete list of members can be found at www.ita.org/about/members.cfm.

ICC is a trade association of leading broadband Internet service providers, e-commerce sites, and technology trade associations. Its mission is to achieve a legal environment that allows service providers, their customers, and other users to do business on the Internet under reasonable rules governing liability and the use of technology. ICC's members include leading Internet and e-commerce companies and trade associations, such as Amazon, AT&T, Comcast, eBay, Monster Worldwide, and Verizon.

NetCoalition serves as the public policy voice for some of the world's largest and most innovative Internet companies on key public policy matters affecting the online world. Its members are providers of search technology, hosting services, Internet service providers ("ISPs"), and Web portal services and include Google, Yahoo!, eBay, Amazon, IAC, and Bloomberg.

US ISPA is a national trade association that represents the common policy and legal concerns of the major ISPs, portal companies, and network providers. Its members include companies such as AOL, AT&T, Earthlink, and Verizon Online.

USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. Its diverse membership includes small, mid-size, and large companies that are deploying advanced communications services to consumers throughout the United States. Such services permit consumers to, among other things, engage in Internet commerce through a variety of providers, including eBay.

Amici have a strong interest in the rules governing liability in cases in which it is alleged that one or more of their millions of users has misused their interactive services to infringe on another party's trademarks. Indeed, a legal regime that imposed expansive liability in such circumstances—of the kind that Tiffany advocates—would threaten the success and viability of Amici's (and their members') online businesses, and the vitality of e-commerce generally. By contrast, the rule adopted by the court below—consistent with prior rulings of the Supreme Court and numerous other federal and state courts—appropriately both limits a service provider's potential liability for a third party's infringing acts to circumstances in which the provider knew or had reason to know of that party's specific infringing activities and maintains a robust conception of “nominative fair use” that is necessary to foster the continued growth and development of e-commerce.

SUMMARY OF THE ARGUMENT

Tiffany’s position that “generalized knowledge” of alleged trademark infringement is sufficient to give rise to liability is both contrary to precedent and would as a practical matter severely damage or eliminate secondary markets for the sale of used goods on the Internet, causing great harm to consumers and the public interest. Under governing Supreme Court precedent, contributory liability applies only to situations in which the defendant knew or should have known of specific infringing activity and failed to take appropriate remedial action. Acceptance of Tiffany’s contrary claim would effectively create a test under which providers such as eBay or Amici could be held liable whenever they could “reasonably anticipate” infringing activity—a test the Supreme Court has specifically rejected.

Tiffany’s theory would impose on service providers policing obligations that would be both impractical and unreasonably burdensome. Tiffany itself concedes that it cannot in good faith attest that a particular listing contains counterfeit goods absent manual inspection of the listing by a Tiffany employee—a task that Tiffany characterizes as overwhelming notwithstanding its specialized knowledge of Tiffany’s brand, products, and typical knockoff products. That burden would be crushing for eBay and similarly situated service providers, which would, under Tiffany’s proposed

regime, have a similar duty with respect to not only Tiffany's marks, but also thousands of other marks around the globe. Faced with the infeasibility of screening out even a small proportion of counterfeit goods and the consequent risk of liability for infringement and substantial litigation costs, service providers would have little choice but to severely limit or even delete listings for all trademarked goods whenever they had any general reason to think some portion of the listings for such goods were counterfeit. The result would be devastating for the continued existence of online secondary markets for the sale of used goods and would eliminate millions of legitimate transactions. Nothing in the law of contributory infringement (or nominative fair use) requires such harm to the public interest.

ARGUMENT

I. THE DISTRICT COURT PROPERLY HELD THAT GENERALIZED KNOWLEDGE OF INFRINGEMENT BY THIRD PARTIES IS NOT SUFFICIENT TO TRIGGER LIABILITY FOR CONTRIBUTORY INFRINGEMENT

At bottom, Tiffany's primary argument boils down to the proposition that, because the district court found that eBay "had *generalized* notice that some portion of the Tiffany goods sold on its website might be counterfeit," Op. at 507, eBay had a "duty to act" to prevent such infringement and was liable for failing to fulfill this duty. (Tiffany Br. 28.) The district court

rightly rejected this claim. As eBay explains in detail, Tiffany’s position is contrary to the case law, which requires service providers like eBay to act only where they know or have reason to know of specific infringing acts, not merely general knowledge of potential infringement. Indeed, adoption of Tiffany’s position would put service providers in an untenable situation and have the effect of suppressing large swaths of legitimate commerce and harming consumers.

A. Prevailing Precedent Requires Specific Knowledge of Infringement

The district court properly held that the controlling inquiry under the Supreme Court’s decision in *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844 (1982), is whether a service provider such as eBay knows or has reason to know of specific acts of infringement. The Supreme Court explained that contributory trademark liability can arise only where a “manufacturer or distributor . . . continues to supply its product to *one* whom it knows or has reason to know is engaging in trademark infringement.” *Id.* at 854 (emphasis added). If there were any doubt that the Court’s use of the pronoun “one” was intended to limit contributory infringement to situations in which a provider knows or has reason to know that a particular recipient of a product or service is engaging in infringement, that doubt was removed

in the Court’s subsequent discussion, where it explained that liability “depended upon” whether the defendants “continued to supply [the drug] to pharmacists whom the petitioners knew were mislabeling generic drugs.” 456 U.S. at 855. In other words, it was not sufficient that the defendants knew that *some* pharmacists were mislabeling drugs and that therefore infringement likely would result from their continued supply of the product to pharmacists generally. Rather, the defendants had to be supplying the drugs to particular individuals whom they knew or had reason to know would engage in infringing acts. Likewise, here, it is not enough for Tiffany to show that eBay knew or had reason to know that some percentage of users were selling counterfeit Tiffany products; rather, Tiffany would have to show that eBay failed to take appropriate action when armed with notice that a particular listing on its site was offering infringing merchandise. As the District Court found, Tiffany failed to make such a showing.^{2/}

Adoption of Tiffany’s position would “water[] down” the standard for contributory infringement liability in precisely the manner the Supreme Court rejected in *Inwood*. 456 U.S. at 854 n.13. In response to concerns

^{2/} As eBay explains in its brief, its policy of sanctioning and ultimately terminating particular users it had reason to believe were selling counterfeit products and its removal of listings specifically identified as potentially infringing were more than sufficient to satisfy the *Inwood* standard. (eBay Br. 48-49.)

expressed in the concurring opinion that the Court was endorsing a standard under which liability could attach if a defendant could “reasonably anticipate” that its actions would facilitate infringement by others, the *Inwood* Court made clear that such a standard would be “incorrect.” *Id.* Yet that is the standard that Tiffany effectively advocates. The logic of its position is that, because eBay knew or should have known that some proportion of listings for Tiffany goods had historically been for counterfeit goods, eBay should have known—that is, it could “reasonably anticipate”—that at least some current and future listings would be as well. Indeed, Tiffany’s amicus the International Anticounterfeiting Coalition gives the game away: in explaining (at 7) why Tiffany’s position is (in its view) correct, it inexplicably asserts that the “holding” of *Inwood* is that liability attaches when a person fails to take “reasonable precautions” in a situation where infringing conduct can be “reasonably anticipated.” (*See also id.* at 8-9 (Court’s “reason to know standard” and proposed “reasonably anticipated” standard “cover essentially the same type of conduct and knowledge”).) In fact, the Supreme Court expressly rejected precisely that “watered down” standard.

Nor can Tiffany draw support from cases concerning “willful blindness,” such as *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259 (9th

Cir. 1996). As the court below found, eBay was far from “willfully blind.” Op. at 514-515. To the contrary, eBay provided a robust mechanism for trademark owners to inform it of listings for infringing products and promptly acted to remove such listings. *Id.* at 478-479. And it put in place various other mechanisms to detect and eliminate counterfeit items. *Id.* at 476-479. This is a far cry from the circumstances in cases such as *Fonovisa* in which the service provider had reason to know that vendors were engaging in infringing activity but chose to look away. 76 F.3d at 261, 264-265. Here, eBay actively chose to look for infringing activity and to stop it where it could. The fact that eBay cannot prevent all such infringing activity does not make it willfully blind but, as discussed below, simply reflects the practical reality of running a virtual marketplace in which millions of goods are offered for sale.

B. The Rule Tiffany Proposes Would Result in Impracticable Burdens and Cripple the Availability of Secondary Markets on the Internet

The standard for contributory liability adopted in *Inwood* and applied by the court below distributes the burdens of policing infringement and liability in a manner that is both fair and practical. The trademark holder has the knowledge and incentives to police infringement of its mark as aggressively as makes sense given factors such as the mark’s value and the

damage a particular infringing activity may cause to such value. It would be perverse to suggest that a service provider such as eBay—which is not itself selling or advertising the infringing goods—should be required to be a “more dutiful guardian[]” of a trademark owner’s “commercial interests” by investing greater resources in such policing than the owner itself. *Hard Rock Cafe Licensing Corp. v. Concession Services, Inc.*, 955 F.2d 1143, 1149 (7th Cir. 1992). At the same time, where a provider in the position of eBay knows or has reason to know of specific infringing activity but fails to take reasonable actions in response, federal trademark law permits it to be held accountable for that failure.

By contrast, the legal regime that Tiffany advocates would impose duties on service providers that are neither practical nor feasible. As a result, service providers such as eBay and Amici would face a substantial risk of liability that they could not mitigate and would have little choice but to severely restrict the number and variety of goods they offer for sale.

Although that result might commercially benefit Tiffany and other trademark holders, it would harm consumers and be contrary to the public interest.

A service provider such as eBay cannot practically police potential infringement based on the “generalized knowledge” that Tiffany proposes as

the trigger for liability. Ironically, this is illustrated by Tiffany’s own description of the difficulties *it* has in policing its own trademark on eBay. Tiffany blithely asserts that eBay could just use automated word filters or arbitrary rules of thumb such as “block all listings with 5 or more Tiffany items” to identify and screen allegedly counterfeit products. (Tiffany Br. 16 n.5, 22.) Yet, when Tiffany attempts to identify counterfeit products and must attest to its good-faith belief that they are infringing, Tiffany apparently does not use these allegedly simple measures. Instead, even with its specialized knowledge concerning its brand, trademarks, and products, Tiffany explains that it must have employees manually review listings to accurately identify infringing products, and that the sheer number of listings of Tiffany products on eBay renders this an overwhelming task. (*Id.* at 23.) But, under Tiffany’s theory, eBay would have to engage in such an effort many thousands of times over—not just for Tiffany’s marks, but for every trademark for which it had some undefined “general knowledge” of possible infringement. Moreover, Tiffany and other trademark holders obviously are far more familiar with their own trademarks and products and the telltale signs that a product bearing their mark is not genuine than eBay and similar service providers ever could be.^{3/} Thus, the trademark holders have a

^{3/} Indeed, the District Court found that determining the authenticity of a

comparative advantage in policing infringement both in terms of the effort required and the likelihood of accurately distinguishing between genuine and counterfeit products. Yet Tiffany would foist the duty to police on service providers such as eBay instead of the trademark holders.

In fact, it is entirely unclear *how* eBay and other service providers could practically identify counterfeit goods absent some form of specific notice from trademark holders. Obviously, eBay cannot physically inspect the products available on its site, since one of the key benefits of online marketplaces is that sellers can be located anywhere and interact with both eBay and prospective buyers electronically. And the other suggestions made by Tiffany and its supporting amici are ad hoc and clearly overinclusive. As the district court found, for example, Tiffany's "5 or more" rule is entirely arbitrary and inaccurate, because genuine Tiffany goods are sold on eBay in lots of 5 or more. *Op.* at 482-483. In any event, even if such a rule made sense in the case of a maker of luxury products such as Tiffany, the same would not be true in the case of many other products, particularly those that typically are sold in larger numbers. Under Tiffany's theory, would eBay and other service providers have to come up with ad hoc rules for each and

Tiffany jewelry item often requires a physical inspection by an expert familiar with Tiffany products. *See Op.* at 472 & n.7 ("[D]etermining whether an item is counterfeit will require a physical inspection of the item, and some degree of expertise on the part of the examiner.").

every trademarked product? How would the service provider know if the rule was appropriate and sufficient to foreclose liability? Tiffany does not even begin to address these questions.

Similarly, the suggestions of Tiffany's supporting amici have little grounding in reality. Coty, for example, suggests that eBay should look with suspicion on sellers who successfully close sales for a high percentage of their listings. (Coty Br. 29.) But that makes no sense. In fact, a seller with a high closing percentage is at least as likely to be someone who lists particularly desirable products or prices them well—that is, the type of seller who brings the greatest benefit to other users. Yet, under Coty's ad hoc rule, eBay and other service providers should regard them with suspicion, or even just block them automatically.

Although Tiffany suggests that eBay ought to be able to use word searches or filters to screen for infringing products (Tiffany Br. 22), it tellingly provides no examples of such searches. Obviously, apart from sellers who expressly represent that they are selling a knock-off product, the advertisements for a counterfeit and a genuine article might well read identically; indeed, to the extent a seller is intending to pass off a counterfeit good as genuine, he or she would have every incentive to use the same words as a seller of the genuine good likely would use. Again, Tiffany's

own conduct belies its claim: While eBay’s service permits anyone to conduct word searches among its listings, Tiffany admits that such searches do not enable it to identify counterfeit goods and that it must instead manually review each listing. (Tiffany Br. 23.)

Ultimately, the legal rule Tiffany proposes—under which a service provider would be at risk of liability whenever it had “general knowledge of pervasive infringing activity” and failed to act appropriately (Tiffany Br. 31)—would create crippling uncertainty on two levels. *First*, it is unclear what would count as sufficient “general knowledge” to trigger the purported duty to act. At what point does alleged infringement become “pervasive”? Is it when a particular proportion of a particular product is allegedly infringing? And what type of allegation is sufficient—if a trademark holder simply asserts that 20% of the products identified by its trademark on eBay are counterfeit, would eBay then have “general knowledge of pervasive infringing activity?” Or does a threshold number of specific reports of infringement render the conduct pervasive? *Second*, it is uncertain what duty a service provider would have once it had the requisite “general knowledge.” eBay, for example, already takes a number of steps designed to prevent infringement, yet Tiffany’s apparent position is that those are inadequate. What, then, is sufficient? Does a service provider have to

actually prevent the alleged infringement altogether or just some or most of it?

The uncertainty resulting from Tiffany's proposed rule would create extremely harmful incentives for the operators of online marketplaces. Faced with the prospect of significant liability and/or litigation costs for carrying listings of potentially counterfeit goods, a service provider would have strong reason to remove listings whenever it had *any* reason to think they might possibly contain counterfeit goods. While Tiffany might well desire that result,^{4/} it would be harmful to consumers and marketplace efficiency because it would inevitably lead to the removal of listings that in fact were advertising genuine goods. For example, even though a "substantial number of authentic Tiffany goods are sold on eBay," Op. at 509, eBay might not have any choice but to filter out *all* listings for Tiffany products given the difficulties in detecting which listings are for counterfeit goods and the resulting fear that any other course might allow some counterfeit products to slip through and lead to potential liability. That same consequence might well occur for all other trademarked goods for which

^{4/} The district court noted that Tiffany's demand that eBay ban the sale of Tiffany silver jewelry altogether provided "at least some basis in the record for eBay's assertion that one of Tiffany's goals in pursuing this litigation is to shut down the legitimate secondary market in authentic Tiffany goods." Op. at 510 n.36.

there was a risk that a court would find eBay (or another service provider) had the requisite “general knowledge” of infringement.

The end result would be far fewer goods listed and exchanged over online marketplaces and the suppression of numerous legitimate transactions. That would deprive consumers of the array of benefits offered by online marketplaces such as eBay. Although secondary markets for the sale of used goods have long existed (e.g., flea markets and garage sales), physical distance and other factors have meant that consumers generally had access to only a limited number of sellers and therefore benefited from little choice or competition. Online marketplaces not only remove the barrier of physical distance but also, for example, enable buyers to search for goods, and sellers to list them, on a 24/7 basis; indeed, a buyer and seller need not even be available at the *same* time in order to engage in a transaction. By thus lowering or even eradicating a variety of transaction costs, online marketplaces dramatically expand the pool of sellers and buyers. The result is greater competition, wider selection, lower prices, a more efficient marketplace, and numerous other benefits for consumers and the public interest generally. Tiffany’s position would significantly reduce and, in some cases, outright eliminate these benefits—a result directly contrary to federal policy that seeks to encourage the development of e-commerce and

online services, *see* 47 U.S.C. §§ 230(a)-(b), and an unwarranted and improper extension of the monopoly power conferred on trademark owners. *See, e.g., New Kids on the Block v. News Am. Publ'g, Inc.*, 971 F.2d 302, 309 (9th Cir. 1992) (trademark owner has only “limited property right” and where use of the mark “does not imply sponsorship or endorsement, the fact that it is carried on for profit and in competition with the trademark holder's business is beside the point”).

Contrary to Tiffany’s suggestion (*e.g.*, at 43), service providers such as eBay do *not* have an incentive to permit or even encourage the sale of counterfeit items even though revenue may generally increase with the volume of sales. The district court made a contrary—and eminently sensible—factual finding. *Op.* at 469 (eBay has “an interest in eliminating counterfeit Tiffany merchandise . . . to preserve the reputation of its website as a safe place to do business”). As Tiffany itself notes, the sale of counterfeit items generates complaints to eBay from its customers. (Tiffany Br. 25.) A user who unknowingly purchases what turns out to be a counterfeit item on eBay will be less likely to purchase items on eBay again. Moreover, to the extent eBay developed a reputation as a marketplace where a substantial proportion of items were counterfeit, users generally would be discouraged from purchasing items. That, in turn, would result in fewer

incentives for sellers to post listings, ultimately creating a destructive spiral that could damage eBay's business significantly.

Thus, Tiffany has the incentives backward. eBay and service providers such as Amici have strong reasons for wanting to develop and maintain a reputation for providing reliable, trusted marketplaces. Indeed, many of eBay's signature features—such as its user rating system that enables prospective buyers to assess the track-record of particular sellers—are designed for that purpose. Similarly, eBay and other service providers have strong incentives to develop and take reasonable measures to reduce the availability of counterfeit goods, so as to minimize the chance of a negative user experience. And, as the district court found, eBay has invested significant resources in many such steps, ranging from its VeRO program to various filtering techniques. *Op.* at 476-479. Marketplace incentives appropriately balance the costs and benefits of anti-counterfeiting measures in a way that artificial, judicially imposed measures could not.

II. EBAY'S USE OF THE TIFFANY MARK IN SPONSORED SEARCH LISTINGS AND OTHER ADVERTISEMENTS WAS NOMINATIVE FAIR USE

The District Court correctly found that eBay's use of the Tiffany mark in sponsored-link advertisements on search engines such as Google and in other advertising fell well within the core of nominative fair use. *See, e.g.,*

New Kids on the Block, 971 F.2d at 308; *Merck & Co., Inc. v. Mediplan Health Consulting, Inc.*, 425 F. Supp. 2d 402, 413 (S.D.N.Y. 2006). Tiffany does not contest that use of its mark in advertisements to identify genuine Tiffany goods lies at the heart of the nominative fair use doctrine. Instead, Tiffany’s argument reduces to the assertion—unsupported by any precedent—that eBay’s use of its mark in advertisements was not fair use because eBay had generalized knowledge that some undefined and unidentified proportion of the items for sale might be counterfeit. (Tiffany Br. 45-46.)

Whatever the strength of Tiffany’s argument might be in a case where an advertiser used a trademark to identify goods for sale that it knew to be counterfeit, that is not the situation here. As the district court found, a “substantial number” of authentic Tiffany items are available for sale on eBay. Op. at 509. And whenever eBay becomes aware of a specific potentially infringing item, whether through its VeRO program or otherwise, eBay removes that listing. *Id.* at 478, 487-488. Thus, eBay did not use the Tiffany mark to identify goods that it knew to be counterfeit and its use of the mark was fair.

As with its proposed standard for contributory infringement, Tiffany’s proposed limitation on the nominative fair use doctrine would cause

significant harm to the continued growth of e-commerce and the public interest. If the rule were, as Tiffany suggests, that eBay and other service providers could not use a trademark to identify available goods in an online marketplace so long as it was possible that some participants were posting listings for counterfeit goods, then the resulting risk of liability likely would prompt service providers to abandon the use of marks in advertising. But that would make it exceedingly difficult for consumers to find Tiffany or other particular products among the vast sea of online content from any legitimate source other than Tiffany itself and Tiffany-authorized dealers. Indeed, it is unclear how else a service provider such as eBay could alert consumers to the fact that authentic Tiffany items were available for sale in the eBay marketplace. And the same would be true for all manner of trademarked goods. The nominative fair use doctrine is intended to prevent precisely that type of result by facilitating use of trademarks to identify goods for sale. *See New Kids on the Block*, 971 F.2d at 307 (“Much useful social and commercial discourse would be all but impossible if speakers were under threat of an infringement lawsuit every time they made reference to a person, company or product by using its trademark.”). Tiffany’s proposed rule would largely eviscerate those benefits in the context of e-

commerce, perhaps to Tiffany's own commercial benefit, but not to the benefit of consumers and the public interest.

CONCLUSION

For all of the foregoing reasons, and for the reasons stated in eBay's brief, the judgment of the District Court should be affirmed.

Respectfully submitted,

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Dated: December 2, 2008

ANTI-VIRUS CERTIFICATION FORM

See Second Circuit Interim Local Rule 25(a)6.

CASE NAME: *Tiffany (NJ) Inc. v. eBay Inc.*

DOCKET NUMBER: 08-3947-cv

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Dated: December 2, 2008

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2008, ten copies of the foregoing Brief for Amazon.com, Inc., Google Inc., the Information Technology Association of America, the Internet Commerce Coalition, NetCoalition, United States Internet Service Provider Association, and the United States Telecom Association as *Amici Curiae* in Support of Defendant-Appellee eBay, Inc. were filed with the U.S. Court of Appeals, Second Circuit by Federal Express overnight mail, postage prepaid, and submitted in Portable Document Format by electronic mail to <civilcases@ca2.uscourts.gov>.

I further certify that on December 2, 2008, two copies of the foregoing Brief for Amazon.com, Inc., Google Inc., the Information Technology Association of America, the Internet Commerce Coalition, NetCoalition, United States Internet Service Provider Association, and the United States Telecom Association as *Amici Curiae* in Support of Defendant-Appellee eBay, Inc. were sent by Federal Express overnight mail, postage prepaid, and in Portable Document Format by electronic mail to:

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