

France makes a second step in favor of eBay liability.

Categories : [Infringement](#)

Date : mardi 21 septembre 2010

After the decision of July 20, 2010, of the Court of Appeal of Reims, it was the turn to the Court of Paris to hold eBay liability on September 3rd, 2010 in three proceedings engaged by Louis Vuitton Malletier and several companies belonging to that group.

The proceedings were initiated in 2006 and aimed at stopping that eBay broadcasts auctions:

i) for fake Vuitton products or with usernames reproduction the plaintiff trademarks or with descriptions including the plaintiff trademarks for the sole purpose of attracting more potential buyers ;

ii) of auctions relating to perfumes and cosmetic products manufactured by them or presented by sellers as being manufactured by them.

On June 30, 2008, the Court of First Instance found eBay to be liable and ordered eBay to pay a total of 40 million Euros to the plaintiffs. This was actually the very first decision ever ruling eBay and it made a particular big noise around considering the amount granted by the Court of First Instance.

In the decision of Appeal, the Court said that the behavior of eBay was not purely technical, automatic and passive as eBay played an active role while helping the sellers for describing, presenting and positioning the items they list on the auction site.

The judge pointed out that the activities of eBay could not be artificially spitted into hosting and brokerage activities. These activities had to be taken as a whole and brokerage aspects bound eBay to determine whether the items being for sale were or not fake products.

The Court however decided to reduce to 5,6 million Euros the amount that eBay was ordered to pay to the plaintiffs. That's still a significant amount but far less than the 40 million Euros allowed in the first placed. The Court of Appeal has actually lowered some of the factors used to evaluate the prejudice before the Court of Appeal.

This second French decision of Appeal for sure goes in the sense of eBay liability. But this time other grounds of action were involved. As we said before, this apparent tendency against eBay still needs to be monitored so as to see if French practice definitively goes in that sense especially considering that the situation at hands went back to 2006 and that eBay's system has quite evolved since then.