



ARE Trademark Law Alert: Second Circuit Decides *Tiffany v. eBay* Appeal

April 1, 2010

Author(s): Charles R. Macedo, Michael J. Kasdan

On April 1, 2010, the U.S. Court of Appeals for the Second Circuit affirmed most aspects of the decision of the U.S. District Court for the Southern District of New York in *Tiffany v. eBay*. See *Tiffany (NJ), Inc. v. eBay Inc.*, No. 08-3947-cv, Slip op. (2d Cir. Apr. 1, 2010). *Tiffany* is significant because it addresses whether the online auction site eBay may be liable under theories of trademark infringement or dilution for sales of counterfeit goods made through its site. *Tiffany* also addresses whether eBay may be liable for false advertising under these circumstances.

As we have previously reported, the widely followed *Tiffany* case was part of a larger international effort by luxury good purveyors and other retailers to crack down on counterfeit sales of such goods made through eBay. See, e.g., [Duty on trade mark owner to police its own marks](#), *Journal of Intellectual Property Law & Practice*, 2008; [eBay: A Tale of Two Defenses](#), *IP Law360*, August 22, 2008; [Tiffany \(NJ\) Inc. v. eBay Inc.: Guidelines for Online Retailers to Police Third Party Sales of Counterfeit Goods](#), *Common Law Journal*, July 29, 2008; [Tiffany v. EBay: Trademark Owners Beware](#), *IP Law360*, July 16, 2008 (all available at www.arelaw.com).

In this latest decision, the Second Circuit affirmed the District Court's dismissal of Tiffany's trademark infringement claims (both direct and contributory) as well as Tiffany's trademark dilution claim, but remanded Tiffany's claim for false advertisement for further proceedings before the District Court.

Shortly, we will be providing a complete analysis of the Second Circuit's holding. Please check our website for this detailed discussion and other reports and presentations on this issue.

For further information on how this decision could impact your business, please [contact](#) one of our attorneys.

* [Charles R. Macedo](#) is a partner and Michael J. Kasdan was an associate with Amster, Rothstein & Ebenstein LLP. They specialize in all facets of intellectual property law including trademark, patent and copyright law. Charles can be reached at cmacedo@arelaw.com.