



COUNTERFEITING

# FED UP WITH FAKES

LMVH and other luxury brands are aiming big guns at online purveyors of knockoffs

BY CAROL MATLACK

**A** RECENT LISTING ON eBay reads: "Brand new authentic Louis Vuitton holdall, \$188!" Offers another: "Authentic Dior sunglasses, \$23.30." Too good to be true? You bet, says Paris-based luxury giant LVMH Moët Hennessy Louis Vuitton. LVMH has filed a lawsuit against eBay Inc. contending that nearly all Vuitton and Dior items sold on the auction site are fakes.

LVMH's complaint, filed in a Paris court on Sept. 21, is the latest salvo in a battle that could shake the foundations of the online auction business. eBay has long styled itself as a marketplace where buyers and sellers make deals with minimal supervision. But companies such as LVMH and Tiffany & Co., which has filed

a similar suit in the U.S., say that eBay has allowed counterfeit trade on its sites to spiral out of control. The companies estimate that fewer than 10% of eBay-listed items bearing their brand names are genuine. eBay says the LVMH suit is "without merit" and that the auctioneer works closely with brand owners to identify and remove offending sellers. Still, "the problem just gets worse," says James Swire, a New York-based lawyer with Arnold & Porter who represents Tiffany. "We take down more [sellers] every year."

LVMH can expect a sympathetic hearing in France, where anti-counterfeiting laws are so tough that sim-

ply owning a fake Vuitton handbag is punishable by a fine of twice the value of a genuine bag. A French appeals court last June upheld a lower court decision

ordering Google Inc. to pay nearly \$400,000 in damages to LVMH because the search engine had displayed advertising from merchants selling fake Vuitton goods. Google said after the ruling that it would bar advertisers from buying listings using others' trademarks. Emboldened by that ruling, LVMH now is seeking \$50 million in damages from eBay.

What if LVMH wins? One solace for eBay is that French courts are stingy in awarding damages, says



ILLUSTRATION BY GLYNIS SWEENEY

Anne Cousin, a Paris-based litigation specialist with the London law firm Denton Wild Sapté. To win the kind of damages it seeks, LVMH would have to document thousands of individual sales of fake items, Cousin says. Yet even if the award were minimal, a French ruling against eBay could have big consequences. The court could, for example, order eBay to remove fakes from its pages worldwide, not only from its French site, on grounds that a France-only fix wouldn't stem the damages suffered by LVMH. "The cost of policing would directly impact eBay's business model," says Thomas Hemnes, an intellectual-property lawyer with the Boston-based GTC Law Group.

### TAKING ON WAL-MART

NO QUESTION, LVMH is willing to fight to protect its gold-plated brands, which include Vuitton, Dior, Fendi, Guerlain, and others. Already this year it has won court cases in China against the popular Silk Market in Beijing, and against the Chinese unit of Paris-based retailer Carrefour, for selling counterfeit handbags. And in June, LVMH sued Wal-Mart Stores Inc. in the U.S., alleging that its Sam's Club stores were carrying fake Fendi bags. Wal-Mart has denied the charge and says it can prove the bags were genuine.

Lawsuits are only part of the threat to eBay's business, though. Experts warn that the spread of knockoffs on the site is hurting legitimate vendors and turning off buyers. "Fraudsters are getting better and better at scamming the system," says Ina Steiner, editor of AuctionBytes.com, a newsletter for online auction users. "As more people have bad experiences, it's a growing problem."

Fine—but who should fix it? An eBay spokesman says the company monitors its site for counterfeit goods and responds promptly to complaints. But, he says, "a brand owner is the only one that can truly and effectively police its own brand." Says Scott Devitt, who tracks eBay for St. Louis brokerage Stifel, Nicolaus & Co: "In the physical world, it's not a mall owner's responsibility to manage everything a merchant does." Indeed, some earlier efforts to pin blame on eBay have failed. A German court in 2002 rejected a request by Switzerland's Montres Rolex to ban the sale of Rolex-branded watches on eBay. Rolex is appealing the decision to Germany's supreme court.

Yet critics say eBay is clearly losing ground in the fight against counterfeit goods. Test purchases from among roughly 300,000 Dior products and 150,000 Vuitton items offered on eBay

CHINA

## Take That, You Pirates

China has long been a great place for movie buffs with no qualms about ripping off Hollywood. The sidewalks of Beijing, Shanghai, and other cities are thick with vendors hawking pirated copies of even the most recent studio releases for as little as \$1. That makes it tough for Hollywood to earn money. The big studios say fakes cost them nearly \$2 billion annually across Asia.

Warner Bros. has come up with a novel strategy to fight back. Until last year, the studio sold DVDs of its films in China for

studio won't provide details of its Chinese revenues, Mark Horak, who oversees Asian sales for Warner Home Video Inc., says: "We're seeing significant improvements in our sales performance" due to the change.

Even at \$1.88, though, the real thing is nearly double the price of many knockoffs. So why are Chinese buyers starting to make the switch? The counterfeits—especially of the newest releases—are often filmed with a camcorder in a theater, which makes for lousy sound, a wobbly image, and sometimes even heads popping up in the foreground. Many fakes are higher-quality copies of DVD releases, but even these lack extras such as interviews with actors. "True movie fans buy the real ones," says 26-year-old Wang Yan as he browses the offerings at the Fab Endless Culture movie shop in Beijing. "The quality and the translations are much better, and the price has come down."

Despite Warner's success, other studios remain skeptical. Unless Beijing cracks down harder on fakes, there's little chance the strategy will make much of a difference. So, Hollywood isn't backing off more aggressive tactics. The Motion Picture Association of America on Sept. 14 filed suit in Beijing against two local retailers and has won settlements in 10 similar suits over the past three years. In the first half of this year, the MPAA says an operation it calls Red Card has resulted in 405 raids in China and seizures of 1.9 million pirated DVDs.

—By Dexter Roberts and Ronald Grover



about \$3, and typically released them three or four months after they started showing in American cinemas. In April, though, Warner slashed prices nearly in half, to about \$1.88. Perhaps more important, they're now available within days of their release in theaters—earlier than anywhere else in the world. *Superman Returns*, for instance, has been in Beijing stores for some time now, but still isn't available on DVD in the U.S. Although the

during the first six months of this year showed that 90% were fakes, LVMH says. The "brand new" Vuitton holdall listed for \$188, for example, is certainly going cheap since the genuine article retails for \$885 and is sold only at Vuitton boutiques and a handful of high-end retailers such as Neiman Marcus. "It's not enough for eBay to say, 'Tell us there's a counterfeit.' eBay knows, or should know" without being told, says Louis S. Ederer, an intellectual property lawyer at New York firm Torrys LLP who has successfully represented Tommy Hilfiger Corp. and others in counterfeiting cases against retailers.

For now, it's caveat emptor for eBay shoppers. Helena Amourdedieu, a Paris public-relations consultant, says that she paid nearly \$500 last winter for what she discovered was a fake Chloe "Paddington" handbag on eBay. The seller ignored several demands for a refund, finally relenting after she posted a negative review on eBay's site. But, Amourdedieu vows, "I'll never again buy anything expensive on eBay where there's a brand label involved." If more customers follow her example, eBay could have a genuine problem on its hands.

—With Tim Mullaney in New York