

Social networks: the chosen channel for promoting counterfeit products. How can you enforce your intellectual property rights?

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Social networks have become the major communication channel for trademark, design, and copyright infringements and is now a privileged vector for trafficking counterfeit products.

Accounts are created both by companies and individuals to promote their trademarks and products, and by influencers giving visibility to the brands of their business partners.

Social networks are not only used as advertising platforms, but also as distribution channels. On these platforms, counterfeiters advertise fake products and do not hesitate to use well-known trademarks to attract clients and generate traffic.

Thus, one of the main challenges for owners of intellectual property rights is the successful enforcement of these rights on the Internet and more particularly on social networks.

It must be stressed however, that the enforcement of intellectual property rights is for several reasons, particularly complex: firstly, the difficulty of actually identifying infringements; secondly, the temporality of stories, which have become a perfect tool for communicating without leaving any trace behind; thirdly, the lack of any real effectiveness of alert mechanisms, weakened further by anonymity on these platforms.

In such a context, what are the options in place to protect your rights and to fight effectively against counterfeiting?

Firstly, we would recommend setting up monitoring systems targeting those key terms and visuals which are considered the most valuable to your company. Such monitoring enables you the owner of the rights to identify the use of your signs on the Internet through alerts.

These alerts can monitor more notably different web pages, recent domain name registrations, online sales platforms, and social networks.

This first stage is essential as it allows the early detection of an infringement and gives the rights holder the opportunity to react quickly and effectively against the acts of infringement thereby reducing the threat of greater damage.

It is then necessary to determine the best strategy to adopt to stop such acts of infringement. Among the different actions to be taken should be the direct reporting of any unlawful content to the social networks concerned.

It should be pointed out however, that social networks are highly unpredictable in how they respond to such action and alerts. In fact, for identical situations, it is not uncommon to obtain very different responses e.g., an acceptance or an outright refusal to withdraw the litigious content infringing act.

It should be noted that extreme care should be taken when reporting such acts to social

networks as the reports themselves can be qualified as acts of unfair competition and denigration if they are not duly justified. We therefore recommend having recourse to such action only when you are sure of the legitimacy of your report and request.

Two recent decisions of the Paris Commercial Court have established case law in exactly this way.

In the first case, a jeweler reported an alleged infringement of his intellectual property rights to Facebook and obtained the withdrawal of a competitor's account for 8 days during the Christmas holidays. The Commercial Court however, ordered the jeweler to provide a certified copy of the original Facebook report in order for it to assess whether or not there had been acts of denigration by the jeweler against the competitor (Paris Commercial Court, 27 May 2022, RG n°2021060557).

In the second case, a company had obtained the suspension of a competitor's advertisements for the sale of scented candles following a report filed to the sales platforms Veepee, Bazarchic and Showroomprivé.

The Commercial Court subsequently ruled that the company had committed acts of denigration specifically as it was unable to justify the existence of copyright on the scented candles in question and that it had therefore damaged the competitor's image and business by having the advertisements removed (Paris Commercial Court, 16 May 2022, RG n°J2022000238).

In conclusion, the holders of intellectual property rights should

therefore pay particular care in the filing of such cases.

Articles from the Intellectual Property team

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Our specialist team of IP lawyers is at your disposal to help you protect your rights on the Internet and social networks.

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