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Auction sites try to knock out knockoffs

By Dean Takahashi
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If you find a deal at an online auction site for a price that seems too good to be true, look twice.

One company that makes sunglasses, Oakley, went online and found more than 19,000 auctions on eBay and other Web sites last year that were selling fake Oakley sunglasses. When Oakley investigated further, the Southern California company traced some of the counterfeits to an Oregon man's house where they found 33,000 more.

"EBay is a huge problem for a lot of us brand holders," said Vance Lommen, director of legal affairs for Oakley, based in Foothill Ranch. "It's also any auction sites. eBay at least is working with us to close these sites down."

Now that counterfeit goods have become big business at online auction sites, companies are expanding their efforts to thwart it. "We have several attorneys who do nothing but collect the information on the auction sites 24 hours a day," Lommen said.

The auction sites are the places where small-time counterfeiters sell goods one by one under their real names, supplementing their incomes and hoping no one notices. But mixed among them are wholesalers who sell goods by the dozens, often using both fake identities and credit cards. For consumers, it's easy to fall prey to them. Counterfeiters will advertise a real pair of Oakley sunglasses in a listing and then send a fake pair to the winning bidder.

"It's called gray market diversion," Lommen said.

EBay, the San Jose online auction giant, says it has more than 1,000 employees targeted at stopping fraud, counterfeiting and illegal sales on its site. But that number is dwarfed by the monitoring task at hand. The online auction site has 6 million new listings a day. "Technology in this case is a double-edged sword," said Hani Durzy, a spokesman for eBay. "There's no doubt the Internet makes counterfeiting easier. The other side of that is that technology makes it harder to be anonymous."

Durzy estimates that one-hundredth of 1 percent of goods sold on eBay involve some kind of fraud, whether it's counterfeiting or trademark violations or something else illegal. But manufacturers fear the numbers are high and just getting worse.

In response to complaints, eBay has started cracking down on fraud and counterfeiting through its VERO program, which enables tens of thousands of goods makers to request that questionable auctions be shut down.

Private eyes

Some companies hire private investigators, such as Robert Holmes at IP Cybercrime in Beverly Hills, who spend their time trolling through auctions for culprits. Holmes has to first wade through the small mom-and-pop sellers to identify their larger distributors, and then his clients take legal action against the bigger fish.

While successes are growing, so is the problem. Rolex stopped just 180 Internet auctions of counterfeit goods in 1998. In 2005, it shut down more than 4,000 such auctions. Microsoft is shutting down about 40,000 eBay auctions a year, said Bonnie MacNaughton, a senior attorney for software giant.

The creators of designer jeans called 7 for All Mankind recently bought 50 pairs of their own jeans on eBay. They found that nearly 90 percent were fakes.

After gathering evidence, the company asked eBay to close down the sales. "We're talking about 10,000 auctions on eBay being closed in a month," said Barbara Kolsun, general counsel at 7 For All Mankind. "Or 10,000 individual sellers of counterfeits, and that's just on eBay."

Lommen, the Oakley executive, says he goes after wholesalers on eBay who offer to train people to sell fakes. Many of the successes come as a result of finding informants who expose the counterfeiters, Lommen says.

``We do it legally, but we play dirty the same way they do when they go after drug dealers," Lommen said. ``I've got my own snitches."

Technology companies are lending their help. GenuOne, a software company in Boston, has more than 500 subscribers to its service for monitoring eBay auctions for suspicious transactions. The software automatically trolls through eBay listings and lists red flags, such as 1,000 auctions posted by the same person. When GenuOne CEO Jeffrey Unger demonstrated the software at a Starbucks, he pulled up hundreds of suspicious auctions of Apple iPods.

``One of the big clues is somebody selling a lot of the same inexpensive item," he said.

Building a case

But it's hard to completely automate the process of shutting down auctions, mainly because of the legal ramifications of making mistakes. Holmes, the private investigator at IP Cybercrime in Beverly Hills, said dozens of cases come across his desk every day, but he can act on maybe 50 of the biggest cases a year since it takes up to six months to build a criminal case against someone.

Some large companies are demanding that online auction sites do more to stop the problem.

A lawsuit brought by Tiffany & Co. against eBay in 2004 alleges that the San Jose company wasn't doing enough to stop counterfeiting and in some cases was abetting it directly by advertising sales of fake Tiffany jewelry. The 150-year-old upscale jewelry company made secret purchases on eBay and found 73 percent of sales involved frauds.

``They purport to police their own sites," said James Swire, an outside attorney for Tiffany at Arnold & Porter. ``We don't think they do a good enough job."

Swire said courts are finding that -- in the offline retail sales world -- landlords bear some liability if their properties are used by counterfeiters. In eBay's case, he notes that the company makes money off of each transaction of counterfeit goods.

EBay defends position

EBay says it is doing all it can to stop fraud because, contrary to perceptions, counterfeiting actually hurts its business in the long run. Chris Donlay, another spokesman for eBay, says that a bad experience with counterfeits will drive consumers away from the site. But he adds that eBay doesn't take possession of goods, which pass only from seller to buyer.

``It's not feasible to pre-screen or block items," said Durzy. ``We do what we can to enforce laws against counterfeiting. It's bad for our business and our customers."

But Tiffany wants to shift more of the burden of policing to eBay. If the court sides with Tiffany in the trial coming up later this year, eBay's way of doing business may have to change. It would have a hard time pre-screening its huge volume of auctions.

Others say a crackdown may not help. As eBay has become more stringent on counterfeits, the counterfeiters have moved to other auction sites such as www.sell.com and China's www.alibaba.com. Attorneys for Rolex found that 79 percent of the counterfeit goods auctions they shut down in 2002 were on eBay, but last year eBay accounted for only 22 percent. Other auction sites took up the slack.

``When we succeed at shutting auctions down on eBay, they go somewhere else," said Lommen.

Contact Dean Takahashi at dtakahashi@mercurynews.com or (408) 920-5739.