

When tenants sell luxe knock-offs, landlords may pay the price

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Are landlords liable for what their tenants sell? Companies that sell copyrighted products, are successfully arguing that landlords are liable for facilitating their tenants' sales of counterfeit goods by knowingly looking the other way.

Although landlords are generally not liable for the illegal activity of their tenants if they do not know it is occurring, landlords cannot turn a blind eye to counterfeit sales and then seek to avoid responsibility by claiming they had no knowledge illegal activities were occurring on their property. This new approach to curtailing the sale of counterfeit products by targeting lawsuits against retail landlords, as opposed to the tenant-sellers of the infringing goods, is known within industry vernacular as the "landlord program."

The rationale of the landlord program is to go after wealthy commercial property owners — landlords — who, unlike most tenants, have a lot to lose. Since many tenants have little money, companies seeking to protect copyrighted products are now targeting the deep pockets of landlords, whom they know are capable of paying judgments and settlements.

These companies also realize that landlords, unlike tenants, are tied to a brick and mortar building. Whereas a tenant shutdown in one retail location can easily reopen another shop down the block, a judgment against a landlord requiring it to evict all tenants found selling knock-offs has a more profound im-

act than simply pushing the problem elsewhere.

Put another way, companies selling copyrighted products have much more to gain from the retail landlord, because the retail landlord has much more to lose.

LOUIS VUITTON SETS PRECEDENT

The novel lawsuit which first set the precedent for the landlord program was the Southern District of New York case of Louis Vuitton Malletier vs. Richard E. Carroll, in which Louis Vuitton secured a permanent injunction against a Canal Street land-

lord. The landlord could not dispute his knowledge that tenants in seven buildings he owned were selling Louis Vuitton counterfeits, as more than 8,000 fake Louis Vuitton products were seized from his buildings in a 12-month period, and given that he was sent more than five written notices from Louis Vuitton about the counterfeit activity on his properties.

Pursuant to the court's order, the landlord agreed to evict all his tenants selling fake Louis Vuitton products, to post signs announcing counterfeit sales are illegal and to permit random inspections to ensure the court's order be followed.

In January of 2006, a legal settlement was reached between Louis Vuitton and landlords for seven other Canal Street properties, in which the landlords promised:

- To prevent tenants from selling handbags with counterfeit Louis Vuitton logos.
- To hang signs inside and outside their shops warning that the retailers aren't authorized vendors of Louis Vuitton products.
- To finance and provide full access to court-appointed officials who will search the

shops weekly for fake Louis Vuitton products for the next two years.

- To evict tenants found selling fakes.

Similar settlements have been signed by different landlords owning a total of 11 buildings on Canal Street, and given that the contents of the agreements remain sealed, some speculate Louis Vuitton also received financial compensation from the landlords.

Leveraging off of these successful legal outcomes, it is only a matter of time before the landlord program moves beyond the narrow corridor that is New York City's Canal Street to other cities with a sizable presence in the counterfeit industry — including Houston.

Although there is no simple answer to the question of landlord liability when tenants sell knock-off goods, recent case law and private lawsuit settlements indicate landlords are being required to take unprecedented action and to expend significant effort, time, and money to stop the sale of counterfeit goods by tenants leasing space on their properties.

To minimize such liability exposure, landlords should take preventative steps when drafting the lease and should vigilantly monitor their tenants and respond quickly if and when illegal activity is discovered on their properties.

Otherwise, landlords that provide a safe haven for their tenants to engage in the sale of counterfeit goods risk becoming the next casualty in this war on knock-offs known as the landlord program. ■

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