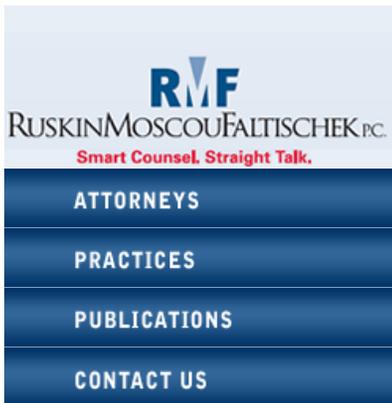


DIGITAL MEDIA

# LAW ALERT

May 2012



## Ruskin Moscou Faltischek's Digital Media Law Capabilities:

- Digital & Social Media Policies
- Domain Name Monitoring
- Website Agreements
- Online Reputation Monitoring
- Internet Startup Advice
- Intellectual Property Protection
- M&A Due Diligence

For additional information on this or any digital media related issue, please contact Andrew S. Hazen, of Ruskin Moscou Faltischek's Digital Media Practice Group. He can be reached at 516-663-6553 or [ahazen@rmfpc.com](mailto:ahazen@rmfpc.com).

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## Court Orders Search Engines and Social Sites to De-Index Websites

By Andrew S. Hazen, Esq.



ANDREW S. HAZEN

Hermes International SCA ([www.Hermes.com](http://www.Hermes.com)), maker of Birkin handbags and silk scarves, recently won a judgment that includes \$100 million in damages against 34 websites that sold fake copies of its luxury goods on websites such as [HermesOutletStore.com](http://HermesOutletStore.com) and [HermesBags-Outlet.net](http://HermesBags-Outlet.net).

U.S. District Judge Denise Cote in New York ruled that the websites, which didn't defend themselves in court, sold items that infringed upon at least nine (9) Hermes products including Birkin and Kelly handbags, wallets, watches, belts and jewelry. Additionally, Cote said the websites were liable for federal trademark counterfeiting and infringement.

The court also stated that "If plaintiffs discover new domain names registered by the defendants containing one or more of the Hermes trademarks or marks confusingly similar thereto, plaintiffs may bring the additional infringing domain names to the court's attention."

Judge Cote also said that the Internet service providers and merchant account providers, as well as third-party processors and search engines including Google, Microsoft's Bing and Yahoo, must immediately stop providing services to the defendants or links to their websites.

The judge also directed social media companies including Facebook and Twitter to "de-index" and remove from any search pages links to the infringing defendants.

This isn't the first time a court has ordered search engines and social sites to de-index allegedly offending websites (see *Chanel, Inc. v. The Partnerships, et al.*). However, there are arguably some procedural and jurisdictional problems with these rulings. In particular, Google, Bing, Yahoo, Facebook and Twitter are not parties to the litigation and what authority does the court have to order de-indexing of these offending sites?

The Stop Online Piracy Act (SOPA) was introduced to expand the ability of

U.S. law enforcement to fight online trafficking in copyrighted intellectual property and counterfeit goods. Under SOPA, the court would have such authority to order search engines and social networks to de-index sites without having formal jurisdiction over them; however, SOPA has not become law.

Attorney Advertising

Future cases may not be so clear and as it becomes more difficult to ascertain that a website is an 'allegedly offending' website, the courts must exercise great care, caution and responsibility because de-indexing a website from the search engines and social networks can literally put it out of business.

So long as courts are making these decisions, you should be vigilant about ensuring that your websites are above board so that they do not end up at the wrong end of one of these types of decisions. Moreover, domain name monitoring services are a great way to combat these "allegedly offending" websites by getting them on your radar as soon as possible before serious damage is done.

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