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Combatting IP Infringement, Unauthorized Sales on Shopping Apps

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Now-popular online marketplaces like eBay have made consumer-to-consumer e-commerce possible. Today, it is getting even easier through “flea market” and consignment shop-style apps, which pride themselves on the ease with which people can shop for and sell products.

Leading fashion marketplace apps include Mercari and Poshmark. Each offers fun and easy ways to shop for and sell items through mobile devices and tablets.

As with other more traditional online marketplaces, however, a small percentage of bad actors can exploit these platforms and their users by using the apps to engage in the unauthorized sale of others’ products.

Mercari

For those unfamiliar with Mercari, the app is in good company among other free iPhone apps.

According to Apple Inc. data for the week ending Aug. 21, 2016, as published by [SFGate](#), the top 10 free iPhone apps that week were the Bitmoji Keyboard, Snapchat, Messenger (for Facebook), Instagram, Google Maps, Facebook, Pokémon GO, YouTube, Uber and Mercari.

The concept is simple: sellers can take photos of the new or pre-owned products they want to sell, add in a short bit of details and—with a single tap of the screen—the products are available “to millions.”

Mercari debuted in Japan in July 2013 and in the United States in September 2014.

This app’s value eclipsed the \$1 billion mark earlier this year, according to Business Insider.

Poshmark

Another popular app, Poshmark offers customers the chance to purchase “new and gently used items at prices up to 70% off retail” from Poshmark’s “Boutiques and Closets.”

Sellers can similarly take a photo of an item, use a filter to create a desirable “Covershot” and post the item on the marketplace – all in under 60 seconds.

Poshmark, launched in 2011, was previously a destination for women’s fashion only. Very recently, the company began offering men’s and children’s clothing.

Based on recent growth, Poshmark Inc. is eyeing a public offering in the future, [per The Wall Street Journal](#).

Apps not immune from unauthorized sales

To be clear, the vast majority of transactions made through shopping apps are legitimate. There is typically genuine interest (and enjoyment) among most users in using the platforms for their true purposes.

But, of course, there will always be a small percentage of people who willfully ignore the apps’ terms, guidelines and lawful purposes in order to try and make a quick profit by engaging in unauthorized sales.

And as people become even more aware of these apps, given the ease with which sellers can make money through them, there is a high likelihood that top brands will see their products increasingly sold through such apps without authorization.

Reporting unauthorized sales

Neither Mercari nor Poshmark takes infringement or other unauthorized sales lightly.

Mercari asks people to report items listed for sale that might be counterfeit or otherwise non-genuine (“Only genuine items can be listed on Mercari”). Upon review, if Mercari determines the items are counterfeits or non-genuine, Mercari will delete the items and either suspend or ban the sellers.

The app also takes requests from brands themselves seriously, [stating](#) that a “direct request” for deletion of an item by a trademark or copyright holder will similarly result in deletion and potential banishment of the seller.

Mercari has an [infringement form](#) that can be used to request the takedown of sales infringing on a brand’s copyright and/or other forms of intellectual property.

Poshmark, meanwhile, prohibits the “sale of counterfeits and unauthorized replicas of branded products.”

Among other things, Poshmark mentions in its [Community Guidelines](#) that sellers may not confuse buyers into believing that sellers or their listed products are “affiliated with, sponsored by, or endorsed by the trademark owner.”

Trademark and copyright owners can contact Poshmark at support@poshmark.com to report potential violations, as outlined in its [Terms of Service](#).

While apps such as Mercari and Poshmark might not operate like the third-party websites through which we typically see unauthorized sales, companies can similarly incorporate unauthorized sales on these apps into their [online seller enforcement](#) programs.

For more information, contact Vorys' Illegal Online Seller Enforcement team at 877.545.6905. Learn more about the practice at [services-648.html](#) and through <https://www.youtube.com/watch?v=FwowsQp1l4>, and follow Whitney on Twitter (@[WhitneyCGibson](#)).