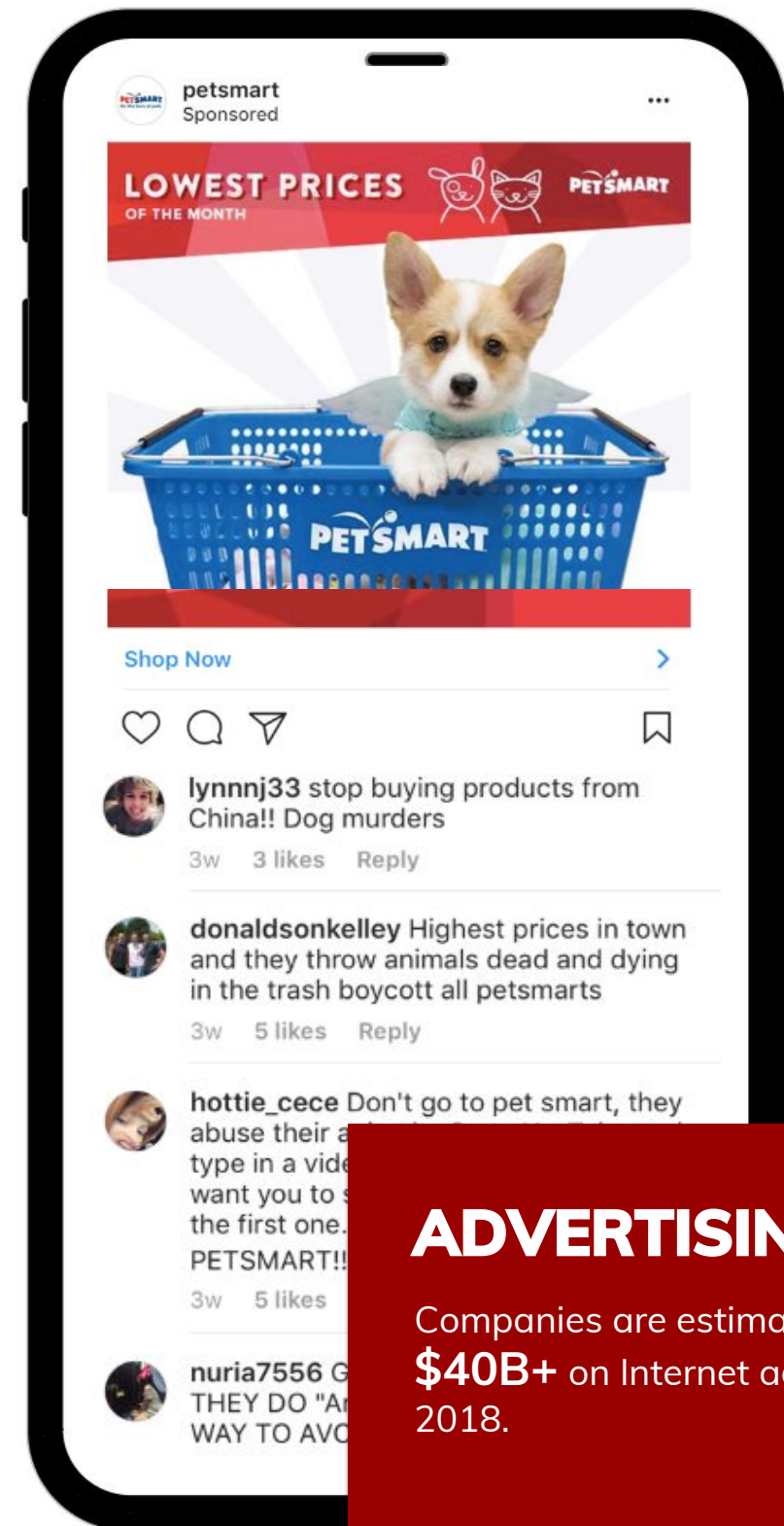


THE SELLING OF COUNTERFEIT GOODS ON SOCIAL MEDIA

ADVERTISING BEFORE



ADVERTISING NOW

Companies are estimated to spend **\$40B+** on Internet advertising in 2018.

THE PROBLEM

Social media is the “most distinctive medium for communication” for sales of counterfeit goods, thereby **undermining brand protection** and resulting in both **loss of revenue and damage to brand reputation**, as well as causing issues for both government and consumers.


- The UK Intellectual Property Office (2015)

Why Social Media?


1. **Low barriers of entry**; anyone can set up an account and copy near-identical images from legitimate sites.
2. **High reach and visibility** through the use of hashtags, spam bots, ads and other tactics.
3. **Increased “Buy now” features** implemented by social platforms makes it easy to accept payment outside the platforms.
4. **Social selling and perceived trust** through closed groups and direct messages.







Example #1 Account Advertising Counterfeit Products on Fendi's Official Instagram Account



fendi








MADE WITH BOOMERANG


▶ 167,784 views

fendi Be mine! Move over, box of chocolates, the Fendi Valentine's Day capsule collection is the only




luxury_perfect_bags_taotao

Luxury perfect replica bags



luxury_perfect_bags_taotao

Follow

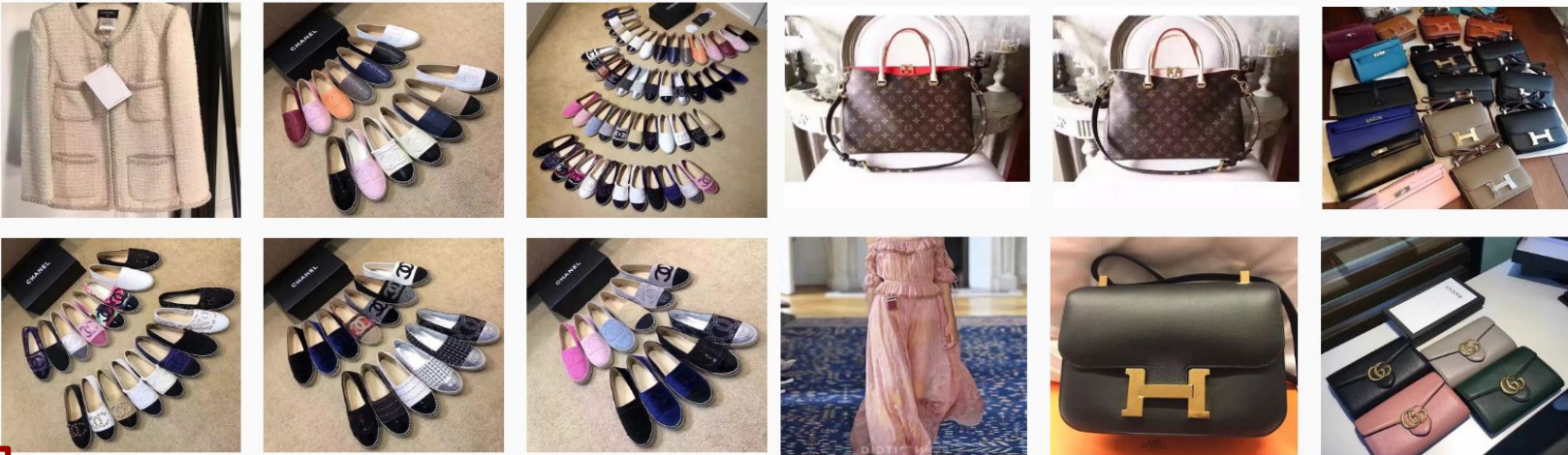


1,064 posts

178 followers

56 following

Whatsapp:+31645187135 All the highest top quality replica bags. As same as the original.Free shipping worldwide. Support paypal . Email:chentaotaylor@gmail.com





BRANDBASTION




THE SELLING OF COUNTERFEIT GOODS ON SOCIAL MEDIA

5


Example #2 Account Advertising Counterfeit Products on Manolo Blahnik's Instagram Account


**manoloblahnikhq**
Manolo Blahnik





♥ 5,925 likes
manoloblahnikhq Posing in the poinsettia
#OnceUponaManolo #Remola

**verasunflower1213** I can buy 😊 Good Discount 👍 WeChat : VERAsunflower1213



verasunflower1213











Follow

⌵

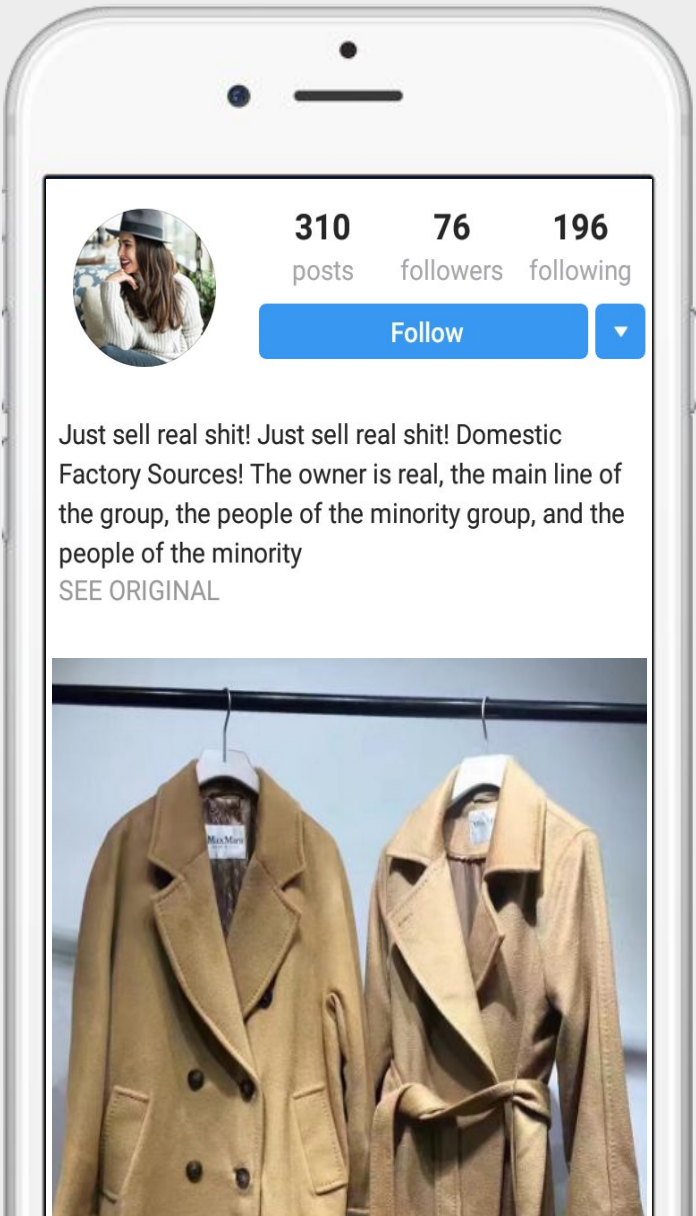
...

913 posts 42 followers 184 following

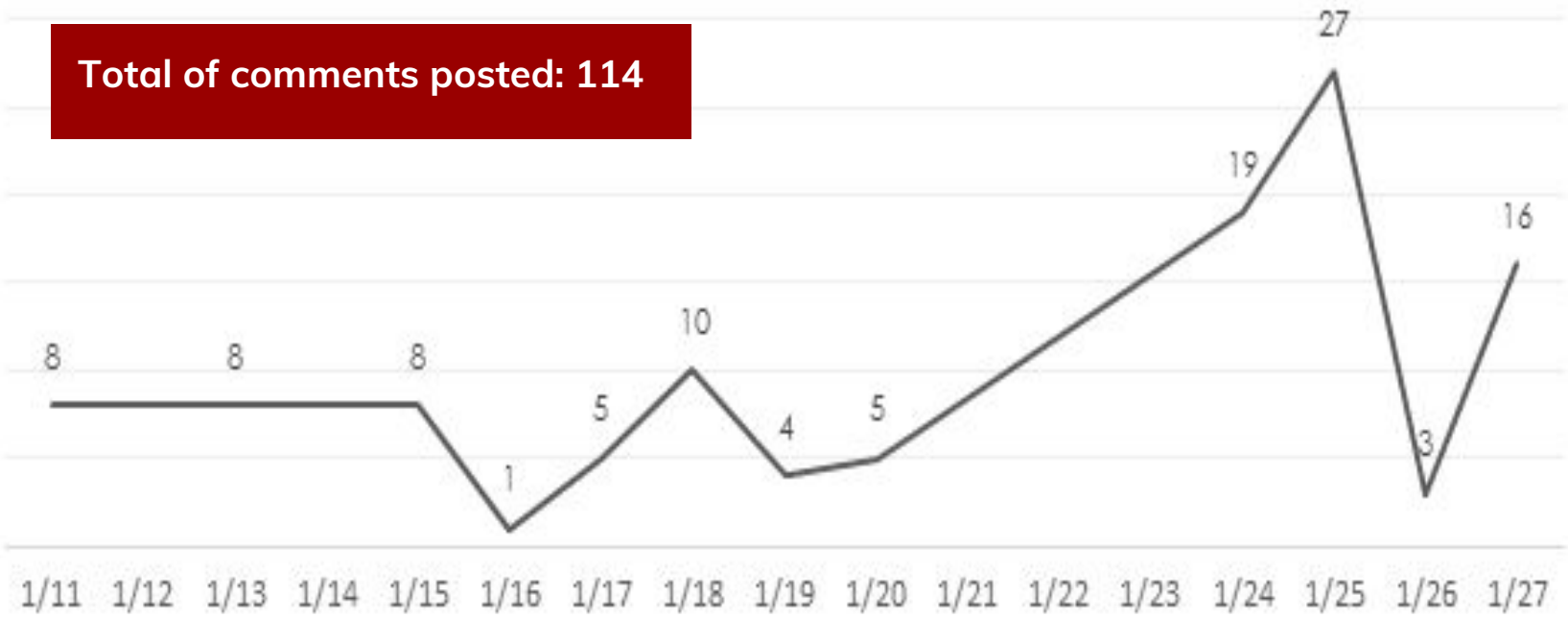
Hermes Luxury Buyer ViVi ☐☐☐☐ +shipping worldwide ♥All the Luxury things are 100% authentic! ☐Buy Hermes bag onely in Hermes Shop! ⌚☐Good Discount△☐WeChat: VERAsunflower1213 ☐



Insights into the Activity of an Illicit Instagram Account Selling Counterfeit Goods*



Total of comments posted: 114



During around two weeks in 2017, one “salesperson” alone posted 114 comments, advertising counterfeit goods on the Instagram accounts of Alexander McQueen, Balenciaga, Balmain, Burberry, Dior Official, Jimmy Choo, Manolo Blahnik, Marni, Salvatore Ferragamo and Versace.

*Account description has been translated from Chinese to English



15%

of 15-24 year olds say they **intentionally purchased a counterfeit product** in the past 12 months, 9 percentage points more than in 2013.

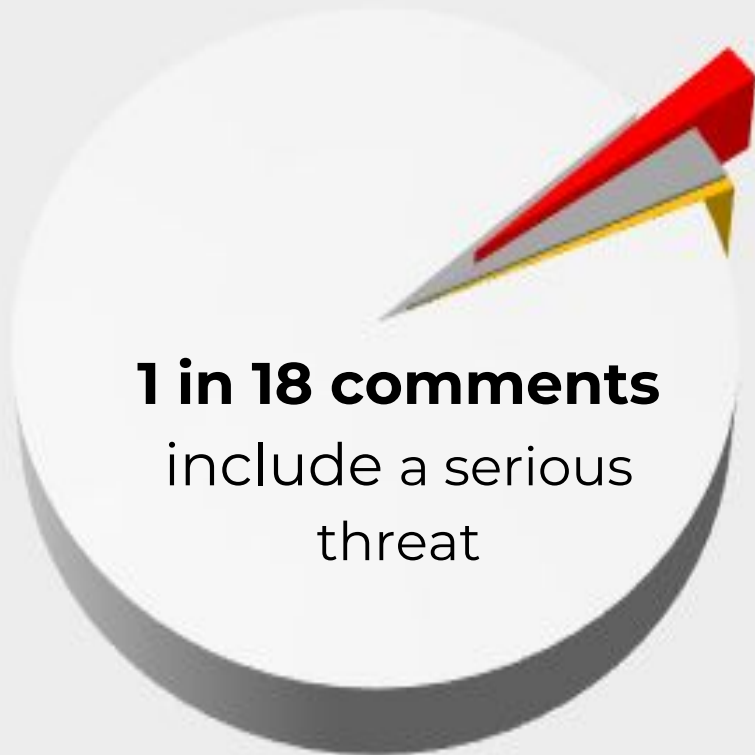
(EUIPO IP Perception Study (2017))

20%

of luxury brands' Instagram posts received comments selling counterfeit and / or illicit products.

BrandBastion Analyzed a Sample of 30,000 Comments on Luxury Brand Accounts

Breakdown of Threats by Percentage



- 2.81% Spam and scam
- 2.03% Comments leading to counterfeit goods
- 0.58% Brand Attacks

Based on a total sample of 36,000 comments

Risk Evaluation

Saint Laurent	HIGH
Salvatore Ferragamo	HIGH
Fendi	HIGH
Balenciaga	HIGH
Manolo Blahnik	HIGH
Jimmy Choo	HIGH
Balmain	HIGH
Marni	HIGH
Versace	MEDIUM
Burberry	MEDIUM
Alexander McQueen	MEDIUM
Dior	MEDIUM

HIGH = percentage of harmful comments exceeds 5%

MEDIUM = percentage of harmful comments 3% - 5%

Finding: Many Counterfeit Accounts Have Common Features

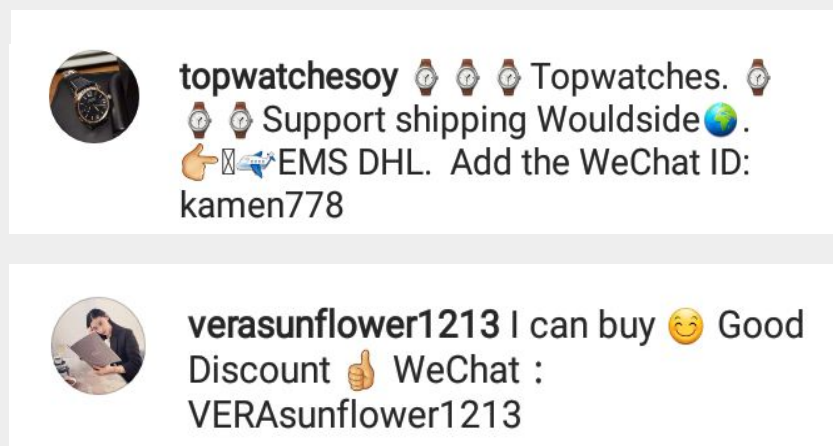
Common Features of Illicit Accounts

Many “seller accounts” seem to have the same factory source, as they have many common features:

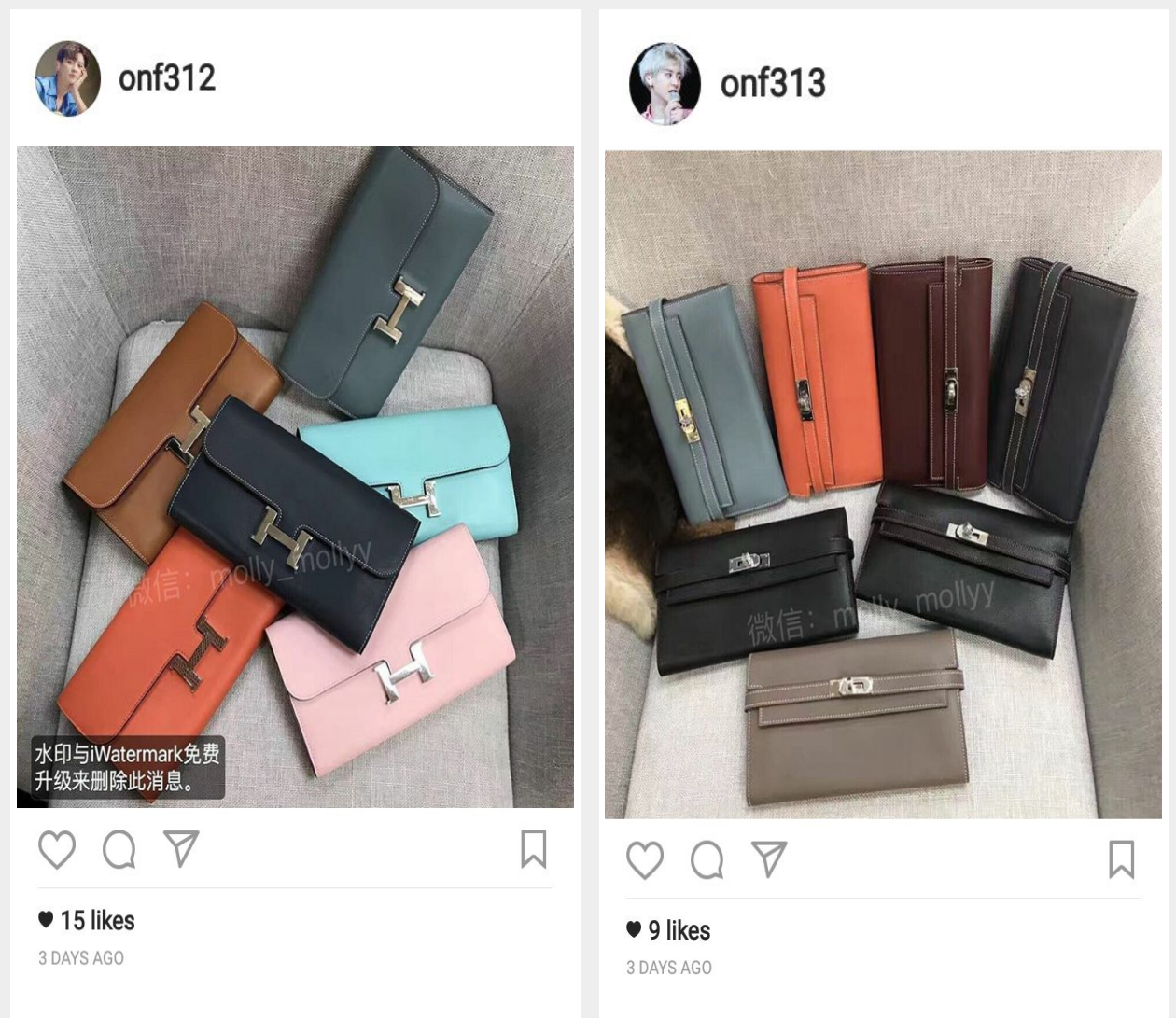
1. Similar account names

<https://www.instagram.com/onf312>
<https://www.instagram.com/onf313>
<https://www.instagram.com/onf314>
<https://www.instagram.com/onf317>
<https://www.instagram.com/onf318>
<https://www.instagram.com/onf319>

2. Similar posting behavior and message



3. Similar content for sale

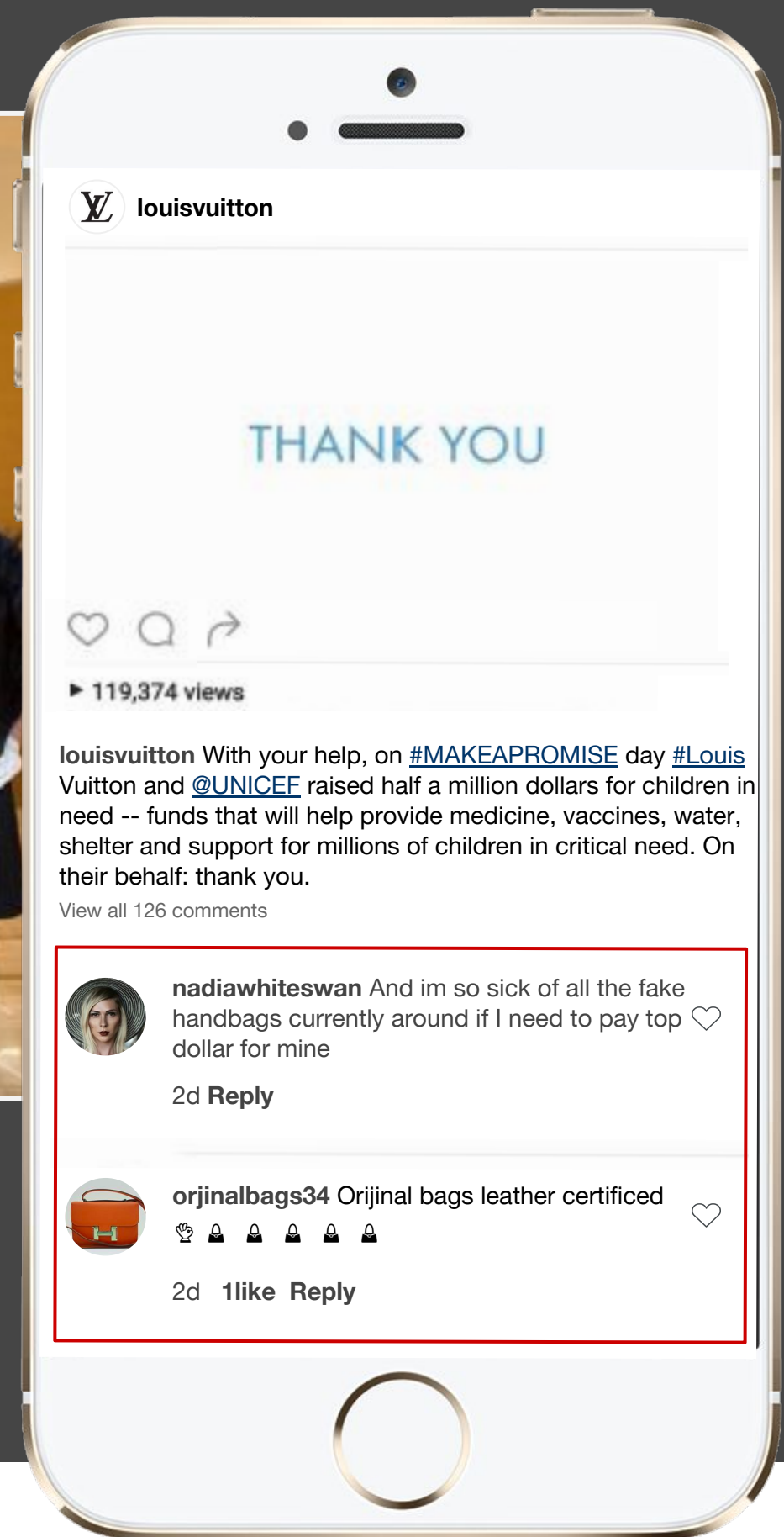


What's the Harm?

1. **Direct impact:** Loss of industry revenue
2. **Indirect impact:** Reputation harm to industry and to individual brands
3. **Indirect impact:** Loss of taxes and impact on employment
4. **Product safety and quality issues**



Three out of four luxury purchases are influenced by what consumers see online. Digital is now **the engine of the luxury shopping experience.**



What is Facebook's and Instagram's responsibility?

Internet service providers are to some extent exempted from liability when it comes to third party trademark infringements on their sites (such as sale of counterfeit goods).

EU: Article 14 of the E-Commerce Directive limits the liability of information service providers where they act as mere hosts of information, provided that they:

- **do not have actual knowledge** of any illegal activity, and
- upon obtaining such knowledge, **act quickly to remove/disable access** to the information
- contributory liability not harmonized - leading to conflicting national judgements

US: The Digital Millennium Copyright Act offers a similar safe harbour for sites when it comes to copyright infringements, as long as the site has an effective takedown system

- but no similar provision exists for trademark infringements: the **situation is unclear** and big sites are staying safe by implementing similar reporting forms for trademark infringements

What Does Case Law Say About Liability?

Europe

Germany, Rolex cases (2004-2008):

Site liable as “interferer”, has to act diligently when notified, actual knowledge of infringements required → **some liability**

France, L’Oréal v. eBay (2007):

eBay is only a host and had sufficient anti-counterfeit measures → **not liable**

France, LV v. eBay (2008):

eBay acts as broker and bears responsibility for counterfeit goods on site → **liable**

CJEU: L’Oréal v. eBay (2011):

Intermediaries exempt from liability if they have not played an “active role”. Even if not active, liable if aware of infringements & fails to act

US

Tiffany v. eBay (2010):

Up to the brand to monitor sites, eBay had implemented enough measures and had no specific knowledge of the infringements (only general knowledge of fake goods on site) → **not liable**

LV v. Akanoc Solutions (2011):

Service provider notified multiple times but had not acted → **liable**

Chloé v. Sawabeh (2013):

No takedown notices were submitted but site knowingly allowed fakes → **liable**

Brands & sites have lately been settling legal battles and implementing co-operative measures

There is **no uniform position on the liability** of service providers regarding the selling of counterfeit goods.



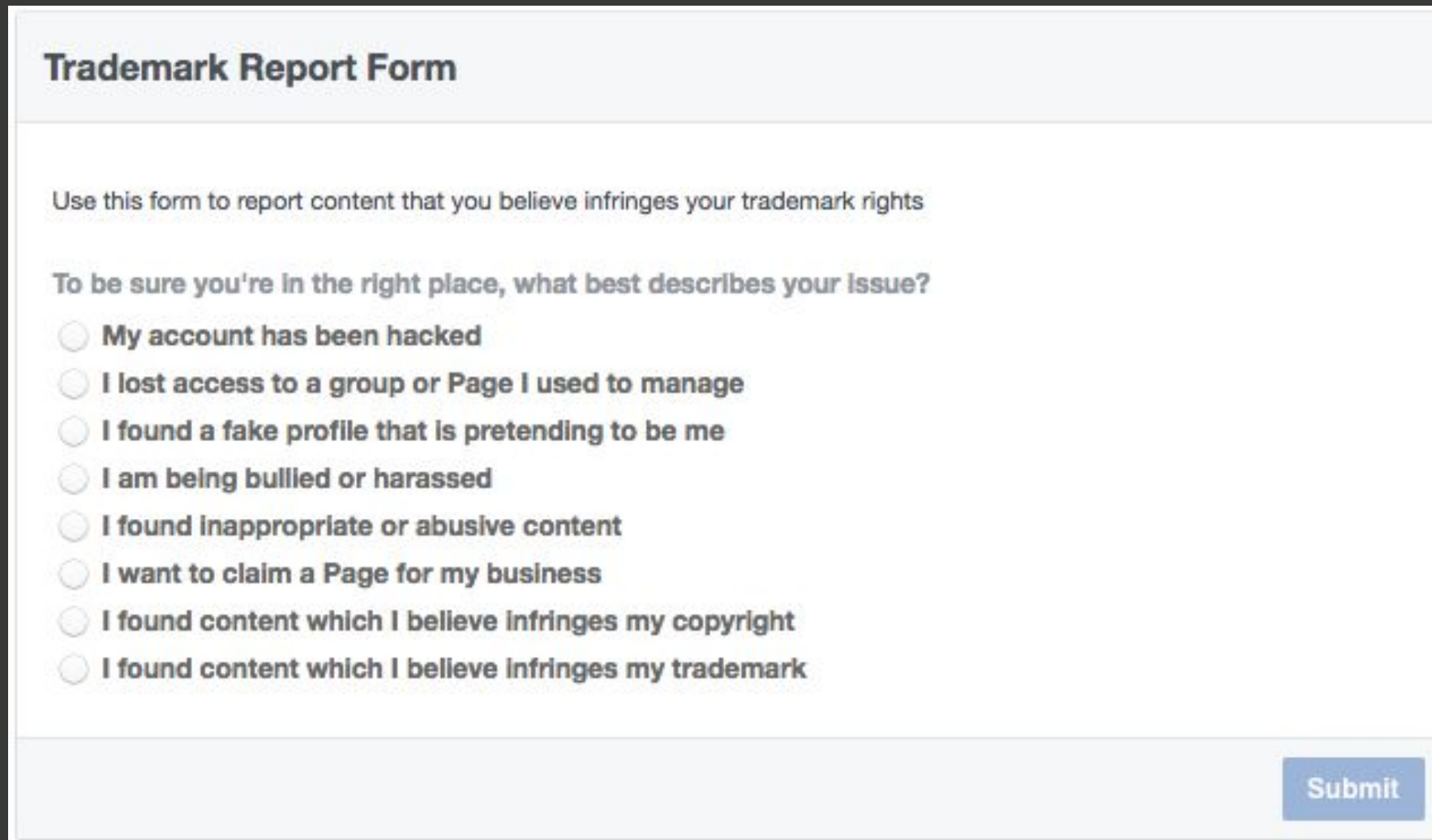
Why Is This Relevant for Social Media Platforms?

Case law has so far focused on e-commerce sites, but since regulation concerns service providers generally, **social networking sites are also affected.**

In addition, **social media sites are increasingly profiling themselves as shopping platforms** (for example Instagram's "Shop Now" function) and **profiting from sponsored ads.**

What Facebook and Instagram Are Doing

Fulfilling obligations based on legislation and case law, both Facebook and Instagram are currently allowing trademark infringements to be reported for takedown through online forms:

A screenshot of the Facebook 'Trademark Report Form'. The form has a light blue header with the title 'Trademark Report Form'. Below the header, there is a light blue box containing the text: 'Use this form to report content that you believe infringes your trademark rights'. Below this box, the question 'To be sure you're in the right place, what best describes your issue?' is followed by a list of eight radio button options: 'My account has been hacked', 'I lost access to a group or Page I used to manage', 'I found a fake profile that is pretending to be me', 'I am being bullied or harassed', 'I found inappropriate or abusive content', 'I want to claim a Page for my business', 'I found content which I believe infringes my copyright', and 'I found content which I believe infringes my trademark'. At the bottom right of the form is a blue 'Submit' button.

The forms require step-by-step filling out of:

- Contact information
- Trademark information (registration number, covered categories, jurisdiction, links)
- Infringement information (links to content, description of infringement)

Filling out forms for individual infringing accounts/posts is a tedious job that requires many man-hours. Forms can be filled out by authorized representatives.

Has Facebook and Instagram Done Enough? Who Should Take Responsibility?

Tiffany Inc. v. eBay Inc., 600 F.3d 93 (2d Cir. 2010), established that trademark owners have the burden of policing for counterfeit items when their products are sold in an online marketplace. The fact that eBay had done “enough” was based on the following:

1. The site had developed a software to find illegal counterfeit listings;
2. Maintained the takedown and notice system VeRO;
3. Offered brands space on the site to warn consumers about fake goods;
4. Suspended many fake accounts per year

What Should a Brand Be Doing?

MONITOR

24/7 monitoring of social media for accounts selling counterfeit goods (both owned properties and accounts at large)

BECOME AWARE

Become aware of counterfeiters, differentiating these from loyal brand users.

REACT

Give effective means of “becoming aware” by report infringing accounts at scale.

What Can Be Done with Infringements on Social Media Platforms?

1

TRACK and know what's going on social media

SPEED is essential

Find counterfeit accounts before they have many followers/photos and make them lose legitimacy, shut them down quickly

2

FILE for account or post to be taken down

ACCURACY is essential

File daily to cause enough hassle, file correctly (only real infringing accounts) to avoid PR disasters and counterclaims

3

GO AFTER the infringing accounts directly

ELIMINATION is essential

Get contact info from sites and contact infringers directly, but may be time-consuming, ineffective and hindered by data protection

Even though counterfeiters are primary liable, **finding them and bringing them before justice can be frustrating and require significant resources**. In today's global social media world, cutting distribution channels may be key to an effective fight against counterfeiters.

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www.brandbastion.com
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