



Beyond Domains: Digital Platform Liability for Trademark Infringement in the US

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Direct Liability

- Search Engine Liability for Keyword Advertising
 - *Rescuecom v. Google*, 562 F.3d 123 (2nd Cir. 2009)
 - Statutory definition of “use in commerce” for purposes of infringement/dilution needs work
 - *Rosetta Stone v. Google*, 676 F.3d 144 (4th Cir. 2012)
 - Adwords Suggestion Tool = “use in commerce”
<https://adwords.google.com/KeywordPlanner>



Direct Liability

Multi Time Machine, Inc. v. Amazon.Com, Inc., 804 F.3d 930 (9th Cir. 2015)

The screenshot shows the Amazon.com homepage with a search for 'mtm'. The search results dropdown lists several items: 'mtm ammo box', 'mtm ammo box in Sports & Outdoors', 'mtm case gard', 'mtm watch', 'mtm special ops watch', 'mtm ammo can', 'mtm special ops', 'mtm case-gard', 'mtm case', and 'mtm ammo'. Below the search results is a banner for 'Dreamfoam Gets Your Bed Just Right' featuring a man with a mattress. To the right of the search bar are navigation links for 'Hello, Sign in Your Account', 'Join Prime', 'Cart', and 'Wish List'. Below the search bar is a 'Shop by Department' sidebar with categories like 'Unlimited Instant Videos', 'MP3s & Cloud Player', 'Amazon Cloud Drive', 'Kindle', 'Appstore for Android', 'Digital Games & Software', 'Audible Audiobooks', 'Books', 'Movies, Music & Games', 'Electronics & Computers', 'Home, Garden & Tools', 'Grocery, Health & Beauty', 'Toys, Kids & Baby', 'Clothing, Shoes & Jewelry', 'Sports & Outdoors', and 'Automotive & Industrial'. Below the search results is a section titled 'What Other Customers Are Looking At Right Now' with a grid of product listings. Below that is a section titled 'Digital Cameras Best Sellers' with a grid of camera listings. On the right side of the page, there are several promotional banners: 'St. Patrick's Day', 'Gold Box: Editor's Picks', 'Your Music. Everywhere.', 'New JBL OnBeat Speaker', 'Bose SIE2i Sport Headphones', and '\$30 Off Instantly'. At the bottom right, there is a banner for 'Discover something new in your city'.

amazon.com: Online Shopping ...
www.amazon.com

Shop by Department
Search All mtm Go

Unlimited Instant Videos
MP3s & Cloud Player
Amazon Cloud Drive
Kindle
Appstore for Android
Digital Games & Software
Audible Audiobooks
Books
Movies, Music & Games
Electronics & Computers
Home, Garden & Tools
Grocery, Health & Beauty
Toys, Kids & Baby
Clothing, Shoes & Jewelry
Sports & Outdoors
Automotive & Industrial
Full Store Directory

mtm ammo box
mtm ammo box in Sports & Outdoors
mtm case gard
mtm watch
mtm special ops watch
mtm ammo can
mtm special ops
mtm case-gard
mtm case
mtm ammo

Dreamfoam Gets Your Bed Just Right
From super soft to rock hard and everywhere in between, new innovation lets you buy your mattress comfortably online
Ease your back pain Shop Dreamfoam
One of thousands of small businesses thriving because of Amazon customers

What Other Customers Are Looking At Right Now

Product	Price	Rating
Amazon Gift Card - E-mail - All...	\$100.00	★★★★☆ (15,100)
Kindle Fire HD 7", Dolby Audio...	\$199.00	★★★★☆ (10,264)
Kindle, 6" E Ink Display, Wi-Fi...	\$69.00	★★★★☆ (3,158)
Kindle Paperwhite, 6" High Resolution...	\$119.00	★★★★☆ (8,174)
Kindle Fire HD 8.9", Dolby Audio...	\$299.00	★★★★☆ (4,388)
Stanley 91-988 201-Piece Drive...	\$109.99 \$67.99	★★★★☆ (27)
Roku 3 Streaming Player	\$99.99	★★★★☆ (76)

Digital Cameras Best Sellers

Product	Price	Rating
Canon PowerShot A3400 IS 16.0 MP...		★★★★☆ (10)
Canon PowerShot SX260 HS 12.1 MP CMOS...		★★★★☆ (10)
Canon EOS Rebel T4i 18.0 MP CMOS...		★★★★☆ (10)
Canon PowerShot ELPH 110 HS 16.1 MP...		★★★★☆ (10)
Canon EOS Rebel T3i 18 MP CMOS...		★★★★☆ (10)
Canon PowerShot A2300 IS 16.0 MP...		★★★★☆ (10)
Panasonic LUMIX DMC-LX7K 10.1 MP...		★★★★☆ (10)

Discover something new in your city

Multi Time Machine, Inc. v. Amazon.Com, Inc., 804 F.3d 930 (9th Cir. 2015) (cont'd)

The screenshot shows an Amazon search results page for the query "mtm special ops watch". The page features a search bar at the top with the query entered. Below the search bar, there are navigation links for "Your Amazon.com", "Today's Deals", "Gift Cards", "Sell", and "Help". The Amazon logo and "Join Prime" are also visible. The search results are displayed in a grid format, showing several watch listings. Each listing includes a product image, the product name, the price, and a star rating. The first listing is a "Luminox Men's 8401 Black Ops Watch" priced at \$265.00. The second listing is a "TAWATEC E.O.Diver TWT.43.B1.11T" priced at \$235.00. The third listing is a "Chase-Durer Men's 246.4BB7-XL-BR Special Forces 1000XL Black Ionic-" priced at \$779.99. The fourth listing is a "Luminox Evo Navy Seal Blackout Mens Watch 3051.BLACKOUT" priced at \$299.99. The fifth listing is a "Traser T4004.357.37.01 Chrono Big Date Pro Blue, Chronograph Watch" priced at \$468.00. On the left side of the page, there are filters for "Departments", "Watch Case Shape", "Watch Case Diameter", "Watch Dial Color", "Watch Feature", and "Watch Band Width". A red box highlights a summary judgment for Amazon affirmed, stating that the search results were likely to confuse a reasonably prudent consumer.

Connecting...
www.amazon.com/s/ref=nb_sb_ss_i_3_3/189-9850728-2126934?url=search-alias%3Daps&field-keywords=mtm special ops watch&prefix=mtm%2Caps%20
amazon
Join Prime
Your Amazon.com | Today's Deals | Gift Cards | Sell | Help
St. Patrick's Day > Shop now
Shop by Department Search All mtm special ops watch Go Hello, Sign in Your Account Join Prime 0 Cart Wish List

"mtm special ops watch"
Related Searches: mtm, mtm special ops, mtm watch
Showing 1 - 18 of 24 Results Choose a Department to enable sorting

Luminox Men's 8401 Black Ops Watch by Luminox
\$400.00 **\$265.00**
Order in the next **21 hours** and get it by Thursday, Mar 14.
★★★★☆ (35)
Eligible for FREE Super Saver Shipping.
Watches: See all 19 items
See Visually Similar Items

TAWATEC E.O.Diver TWT.43.B1.11T by TAWATEC
\$300.00 **\$235.00**
Order in the next **21 hours** and get it by Thursday, Mar 14.
★★★★☆ (19)
Eligible for FREE Super Saver Shipping.
Sports & Outdoors: See all 14 items
See Visually Similar Items

Chase-Durer Men's 246.4BB7-XL-BR Special Forces 1000XL Black Ionic-
\$995.00 **\$779.99**
Order in the next **22 hours** and get it by Thursday, Mar 14.
★★★★☆ (19)
Eligible for FREE Super Saver Shipping.
Sports & Outdoors: See all 14 items
See Visually Similar Items

Luminox Evo Navy Seal Blackout Mens Watch 3051.BLACKOUT by Luminox
\$350.00 **\$299.99**
Order in the next **21 hours** and get it by Thursday, Mar 14.
★★★★☆ (106)
Eligible for FREE Super Saver Shipping.
Sports & Outdoors: See all 14 items
See Visually Similar Items

Traser T4004.357.37.01 Chrono Big Date Pro Blue, Chronograph Watch by Traser
\$520.00 **\$468.00**
★★★★☆ (8)
Watches: See all 19 items
See Visually Similar Items

Departments
Watches
Wrist Watches
Sports & Outdoors
Sport Watches
+ See All 3 Departments

International Shipping (What's this?)
 AmazonGlobal Eligible

Shipping Option (What's this?)
Free Super Saver Shipping

Watch Case Shape
 Round

Watch Case Diameter
Under 20mm
20mm to 29mm
30mm to 39mm
40mm to 49mm
50mm & Over

Watch Dial Color
Beige Orange
Black Pink
Blue Purple
Brown Red
Gold Silver
Green White
Grey Yellow
Mother of Pearl

Watch Feature (What's this?)
 Water Resistant
 Luminous
 Shock Resistant
 Chronograph
 Screw-Down Crown
 Stopwatch
 Tachymeter
+ See more...

Watch Band Width
 Under 10mm
 10mm to 19mm
 20mm to 29mm
 30mm to 39mm
 40mm & Up

Waiting for s.amazon-adsystem.com...

- Summary Judgment for Amazon affirmed:
- "In light of Amazon's clear labeling of the products it carries, by brand name and model, accompanied by a photograph of the item, no rational trier of fact could find that a *reasonably prudent consumer accustomed to shopping online* would likely be confused by the Amazon search results." (emphasis added)

Direct Liability

- *Gucci America Inc et al v. Alibaba Group Holdings Ltd*, U.S. District Court, Southern District of New York, No. 15-03784 (currently pending)

The screenshot shows the Alibaba.com search results for 'gucci'. The page features a navigation bar with the Alibaba.com logo and links for 'Sourcing Solutions', 'Services & Membership', and 'Help & Community'. A search bar at the top contains the word 'gucci' and a search button. Below the search bar, there are filters for 'Products' and 'Suppliers'. A notice at the top states: 'Notice: Some items are disallowed to be displayed / offered for sale on our website under Product Listing Policy. For instance, medicine such as aspirin'. The main content area displays a product listing for 'Used Genuine GUCCI wholesale at reasonable prices meet customer needs'. The product details include: 'US \$5000-1000000 / Box', '1 Box (Min. Order)', 'Material: Leather', 'Style: Bag', 'Gender: Women', 'Brand Name: Used GUCCI', and 'Place of Origin: IT'. The supplier is identified as 'SEIKO INDUSTRY CO., LTD.' from Japan, with a response rate of 93.5%. A promotional banner for 'September' is also visible, offering 'Win extra savings between Sept. 12-30!' with options for 'Discount', 'Promo Price', and 'Free Inspection'.

Indirect Liability

- *Rosetta Stone v. Google*,
562 F.3d 123 (2nd Cir. 2009)
- *Tiffany, Inc. v. eBay, Inc.*,
600 F.3d 93 (2d Cir. 2010)
- *Academy of Motion Pictures Arts and Sciences v. GoDaddy.com, Inc.*,
Case No. CV 10-03738 (C.D. Cal. 2015)



Platform Takedown Experience and Takeaways....

- App Store

<https://www.apple.com/legal/internet-services/itunes/appstorenotices/#?lang=en>

- Twitter

<https://support.twitter.com/forms/trademark>

- Facebook

<https://www.facebook.com/help/440684869305015/>

- Amazon

<https://www.amazon.com/gp/help/reports/infringement>

- Advising client platforms

Digital Millennium Trademark Act (DMTA)?