

Supplementary agreement for the extension of image usage rights for the sub-licensing to eBay

Why do I need a supplementary agreement?

The background of the necessary for a supplementary agreement are the announcements of the eBay platform within the scope of the current autumn updates. This envisages, among others, that image rights of uploaded images are sub-licensed to eBay. For this purpose there will be a change in the General Business Terms and Conditions (German abbreviation: AGB) for commercial sellers as of 1 February 2018.

Each user undertakes herein to licence all product pictures used on the platform to eBay for the purpose of further use. This regulation is also anchored in the supplementary agreement of eBay now already – however in the form of a polite request. The new obligation, however, poses a problem for dealers: The sub-licensing will not be permitted in the majority of cases as the used images mostly stem from the manufacturer itself. An authorised use would thus inevitably mean an infringement of copyright. Only dealers, who produce their images themselves can decide this independently and at their liberty.

Is the action of eBay even lawful?

The changes of eBay correspond in terms of contents with the agreement of the Amazon platform in many aspects. The fact is that Cologne Higher Regional Court assessed with the judgement of 19 December 2014 (file no. 6 U 51/14) the agreement of Amazon, that in terms of contents is congruent with these terms and conditions to a large extent, as legally admissible. In the end only legal action against the agreement should actually provide clarification.

Sample supplementary agreement

Owing to the sub-licensing obligation it is therefore necessary for all sellers, also wholesalers, to protect themselves legally with regard to the image rights. The following sample supplementary agreement can be used for this purpose. It consists of a cover letter with the presentation of the problem and the corresponding licence extension for the respective user. In order to have consistent proof the images should only be used, according to the new stipulations of eBay, when the signed version has been received by the dealer again.

Modifications

The sample represents the normal case, in which a seller procures goods directly from the manufacturer. In cases, in which goods are procured from a wholesaler, it should be clarified whether the wholesaler itself is entitled to grant a sub-licence.

Recipient:

To [recipient]
Street
Postal Code/city
Further supplements

Sender:

Seller [seller's name]
Street
Postal Code/city
Further supplements

Re.: Extension of the image usage rights in view of changed eBay terms and conditions for commercial sellers

Dear Sir or Madam,

As a dealer of the eBay market place I act trade with your products. This relates to the products produced by you:

--

For the purpose of better presentation I upload the images made available by you to eBay in line with my simple right of use.

A further transmission, i.e. a sub-licensing of this right of use has not been permitted to me so far.

Due to extensive changes in the General Business Terms and Conditions of eBay so far this sub-licensing right will, however, be necessary from 1 February 2018 for a successful distribution of your products on eBay. At this time all dealers of the platform will, in particular, be obligated to grant a right of use to the product images. These rights shall, in particular, include the reproduction, editing and public availability. Although not every image is used by eBay, each image will be subject to the sub-licensing

Dealers, which do not agree to the new eBay General Business Terms and Conditions, will be excluded from the sale and can thus not conduct any trade via the platform any more. A use without a prior licence extension, on the other hand, would mean an infringement of copyright and can therefore not be taken into consideration. Therefore, the extension of the existing rights of use is of essential importance for us and for you.

I therefore request you to grant me in addition to the existing rights of use the following extension to the rights of use and to sign and return it to me. If you explicitly do not request a use on eBay, please inform me hereof so that I can apply for an exceptional case at eBay in line with your reply.

Extension to the agreement regarding product image usage rights

A. Scope of the extension

The holder of the original licence agreement

shall receive the following extension to the existing licence:

A non-exclusive, revocable, free right, not limited in terms of time and location is granted to all image materials used by the licensee of the company

on the market place platform eBay. The right of the licensee shall in particular cover, however not exclusively, the granting of the right to reproduction and distribution as well as the right to make these available to the public. In addition, the licensee is entitled to grant the named sub-dealers on eBay the right to grant eBay Inc. with the registered seat in San José, California, authorisations for use derived on its part. The scope of this derived authorisations for use are oriented to the contents of the licence agreement drawn up by eBay Inc. This shall also apply

insofar as eBay Inc. receives the right on its part to grant rights of use to the image material of the licensor to third parties. The licensee is not entitled to carry out the sub-licensing otherwise.

B. Assurance and liability

By the provision of the image material the licensor assures the licensee that it is entitled to grant all rights, which are to be granted according to this extension agreement. Exclusive, sole rights of use by third parties are not available.

The licensor will not be liable towards the licensee for claims of third parties, which they assert against the licensee owing to possible infringements of rights, in particular with the infringement of a trademark.

You can find further information relating to the changes under:

<http://ir.ebaystatic.com/cr/v/c1/eBay%20Zusatzvereinbarung.pdf>

Place, date:

--

Signature (licensor)

Place, date:

--

Signature (licensee)