

Group of Twenty

Measures to combat counterfeit consumer goods



Forum:	Group of Twenty
Issue:	Measures to combat counterfeit consumer goods
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Introduction

Counterfeiting is a broad term used to describe the *“manufacturing of any product, which so closely imitates the manufacturing of another product, that it deceives the consumer into thinking he is buying the other product”* (Organization for Economic Cooperation and Development). To put the term “counterfeiting” into perspective, it encompasses the manufacturing of products which infringe on other product’s trademark or copyright. For example, in the fashion industry, a well-known brand might be illegally used to sell somebody else’s product.

The impact of counterfeiting, poses an obvious threat to the economic and social interests of many brands and manufacturers in the “consumer goods” sector. However, its devastating impact on the consumer his/herself still remains largely unnoticed. In this research report, the impact, which the counterfeiting of various products has, will be discussed, respective to the different industries whose products are being counterfeited.

Definition of Key Terms

Counterfeiting

“Counterfeiting is the practice of manufacturing goods, often of inferior quality, and selling them under a brand name without the brand owner’s authorization” (International Trademark Association). Another word, used interchangeably with counterfeiting is “piracy” (however this generally refers to counterfeiting in the entertainment industry). Counterfeiting products are also referred to colloquially as “knock-off” products.

Patent



Patents are the rights to intellectual property which a sovereign state will provide, for a limited amount of time, to an inventor of a product (Dictionary). They are used to prohibit other manufacturers from selling the invention as their own (and they must recognize/ compensate the individual who owns a patent, if they are to re-manufacture a similar product).

Trademark

Trademarks are a form of corporate identity, and the term trademark encompasses a distinct feature (i.e. symbol, packaging, design or the product itself), which the corporation owns exclusive rights to use (Dictionary).

Patent Infringement

Patent infringement, as the words suggest, is the use (ie manufacturing or distributing) of a product/ invention which is patented, without the authorization of the patent holder.

Trademark Infringement

Similarly, trademark infringement is the use of a corporation's identifiable feature (whether it be logo, packaging, design or the product itself), without the authorization of the company/ corporation (which is usually only given if you are representing that company to begin with).

Counterfeit Medicine

"One which is deliberately and fraudulently mislabelled with respect to identity and/or source" (World Health Organization). Counterfeit Medicines are usually medicines which either contain no active ingredients, or are poorly made, and so pose a grave health threat.

General Overview

Counterfeit goods were predicted in 2012 to make up 7% of all Worlds' Trade. This represents an increase in the percentage of counterfeiting goods in World Trade in 1997 - when it was only 5%. This is attributed to: "advances in technology, increased international trade, emerging markets, increased share of products that are attractive to copy (i.e. clothing and software)" (*Organization of Economic Cooperation and Development*). Counterfeiting is predicted to have cost 2.5 million jobs worldwide (*International Standardization*



Organization). The Counterfeit industry is said to have reached a global value of 1.77 Trillion dollars (which also shows a significant industry since 2008) (*Tehranipoor Mark*).

Seeing as counterfeiting affects a vast array of different industries concerned with consumer goods, the section below will provide brief insight and examples into general and specific impacts which counterfeit products have on different industries. It should also be noted, that seeing as counterfeiting affects such a vast amount of industries, the more peripheral ones will be mentioned in this research report.

Fashion Industry

The fashion industry is particularly susceptible to counterfeiting, due to the nature of fashion itself (i.e. fashion is constantly changing and so keeping track of patents and trademark is relatively difficult). Although trademark does protect the brand owner's products, fashion accessories are usually affected by knock-off products which simply copy the appearance of the renowned products, yet do not use usually the specific logo.

However, in a controversial twist, there are several complications which arise in the fashion counterfeiting industry: 22% of customers claim to knowingly buy knock-off designer accessories (The Huffington Post), as they feel that a lot of fashion accessories are too expensive to begin with. Additionally, some brands/ companies, "like Zara" and "Urban Outfitters", are accused themselves of infringing on the patents and creations of other smaller artists (Chavie Lieber).

Entertainment Industry

The entertainment industry is the largest affected sector by counterfeiting goods. 50% of videos are counterfeited, 43% of software is counterfeited, and 33% of music is counterfeited. 2,700,000 US dollars were lost in North America's software industry (the country most affected by the issue) (*Organization of Economic Cooperation and Development*). The term piracy is used to more specifically address how movies and music affected are replicated and distributed without the owner/ artist's permission.

There are several platforms, where entertainment counterfeit products can be taken advantage of. One of such being the black market. The black market is an unregulated, unmonitored market which handles illicit transactions (although the products themselves might not be illegal). In Spain for example, there is a culture built around "el Top Manta", which is a group of Mafia-employed merchants, who sell illicit, knock-off and pirated products. The second platform for entertainment counterfeiting is the internet. The internet has made use of "streaming", "uploading", and "downloading" to globalize illicit products. The



wrecks a massive economic impact on the industry (as shown in several statistics above). However, due to the varying legal standards of some countries (for example it is legal in the Netherlands to download, but not to upload), it is quite difficult to regulate the illegal/ illicit activity on the internet (not to mention the fact that there is a seemingly infinite amount of such activity).

Pharmaceutical industry

The counterfeit pharmaceutical industry poses a very serious problem. Counterfeit medicines pose a grave health threat, as a majority of them are substandard drugs, which may contain malicious ingredients. Sub-Saharan Africa, and LEDC's are particularly susceptible to counterfeit medicines. This is due to the fact that there is a lack of distribution of such pharmaceuticals, and also the price of regular pharmaceuticals forces those who have lower income to turn to poor-quality-medicine retailers (who usually sell for cheaper). Counterfeit medicine is an extremely lucrative business, and is said to be more profitable than the cocaine and heroin industries (making 70 billion dollars as of 2010).

Counterfeit medicine takes 100,000 lives a year, in Africa, and a predicted 30% of anti-malarial drugs are sub-standard drugs. There are also strong allegations, and evidence which suggests, that the manufacturers of counterfeit medicines are linked to organized crime groups.

Major Parties Involved and Their Views

United Nations Office on Drugs and Crime

The UNODC attempts to tackle transnational organized crime and seeks to solve problems not solely limited to counterfeit goods (for example: human trafficking, environmental crime, etc.). The UNODC has committed themselves to fighting counterfeit goods through means of international collaboration and ensuring domestic laws are feasibly structured to ensure they are not violated.

World Trade Organization (WTO)

The World Trade Organization has dedicated itself to protecting intellectual property, and tries to enforce the international agreements made by the World Intellectual Property Organization (WIPO):

- In accordance to the Paris Convention for the Protection of Industrial Property (which discusses patents, industrial design, etc.).
- The Bern Convention for the Protection of Literary and Artistic Works (which discusses copyright)

Counterfeiting Countries Involved

According to a study released by the U.S Department of Commerce, the order of countries (from smallest to largest), from which counterfeit products originate is: India, Russia, United Arab Emirates, Thailand, Philippines, Malaysia, Singapore, Taiwan and finally China. The reason countries like these counterfeit is because it is an extremely lucrative business, and in countries such as the ones listed above, there is also an extremely large (and also cheap) workforce which makes the large scale production of such counterfeit goods much more feasible.

The United States of America (USA)

The USA is one western country deeply affected by piracy and counterfeit consumer goods. The USA has also however, implemented several strict anti-counterfeit consumer goods policies: the U.S Department of Homeland Security dismantled “82 websites distributing (or relating to) the sale of fake consumer goods” (*Wired*).

Organization for Economic Development and Cooperation (OECD)

The OECD is an organization which aims to promote policies that handle the economic and social wellbeing of people around the world. Naturally, the OECD concerns itself with counterfeiting globally too, and has produced several reports (on statistics, trends, origins, etc.) concerning counterfeiting and piracy.

World Health Organization (WHO)

The World Health Organization more specifically targets the problem which the issue of counterfeit medicines poses, on countries (more specifically in less economically developed areas). WHO has dedicated itself to raising awareness about these medicines and the dangers they pose, and has also implemented several other means of combating counterfeit medicines (to varying degrees of success).

World Intellectual Property Organization (WIPO):

The purpose of the WIPO is, as its name might already suggest, to promote and protect intellectual property around the world, between states, unions, and organizations. This is one

of main international organizations (in which there are additionally many national ones) which aim to protect intellectual property, and to enforce patents, trade marking, etc.

Timeline of Events

Due to the nature of counterfeiting issue, there is no appropriate timeline of events which can be used to put the issue into context. However here are some of the dates of events:

Date	Description of event
1883	Paris Convention for the Protection of Industrial Property
1886	The Berne Convention for the Protection of Literary and Artistic Works
1988	WHO was encouraged by the World Health Assembly to initiate programs on the detection and prevention of falsely labelled, counterfeited or substandard pharmaceutical products.
1994	Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, Administered by the WTO
2007	OECD produces report on Counterfeiting and Piracy
2012	The Anti-Counterfeiting Trade Agreement (ACTA). Its purpose was to protect intellectual property rights.

UN involvement, Relevant Resolutions, Treaties and Events

The United Nations' involvement on this issue remains relatively limited. The World Health Organization has implemented several resolutions which address the issue of counterfeit medicines. For example:

- Resolution EB7.R79 (1951): which was an attempt to introduce more effective methods of illegal-drug-distribution prevention internationally.
- 1992 April 1st-3rd: the first international meeting on counterfeit medicines held at WHO in Geneva.



Furthermore on the United Nations' website there are a myriad of reports on substandard medication and counterfeit pharmaceuticals in Africa (as this aspect of the issue has been addressed by the UN).

Evaluation of Previous Attempts to Resolve the Issue

In 2012 the ACTA act was signed by eight nations. The agreement (as mentioned above), aimed to introduce several ways of protecting trademark and copyright from counterfeiting and piracy. However, China, the world's notorious producer of such consumer goods, did not ratify the agreement. In effect, the refusal, of one of the most responsible nations involved, to ratify the treaty, greatly undermined the potential of the agreement. Although it still has provided a strong multinational foundation for other anti-counterfeiting measures.

Possible Solutions

In order to effectively address the issue, delegates must consider which nations lie at the root of the problem. By tackling the manufacturers of counterfeit consumer goods, you are stopping the problem before it even starts. However, this is easier said than done. As has been proven by nations such as China, it is obviously not in best interest of the countries whom manufacture a lot of counterfeits, to abandon a large source of income for their economy. And so it is up to the delegates to effectively lobby, and come to a consensus with nations, such as China, whereby they incentivize, nations such as China's, cooperation in the battle against counterfeit consumer goods.

The solution above is a suggestion for addressing the issue in the long term. However, delegates should also focus on measures they can implement to address the short term problems posed by counterfeit consumer goods. Delegates may consider implementing more aggressive anti-piracy measures, as did the US, and begin actively seeking out and dismantling online platforms for counterfeit distributions.

Another aspect of this issue, which is somewhat unique, is the issue of counterfeit medicine. There is a prevalence of counterfeit medicine and substandard drugs in developing regions. The United Nations can address the issue by thus sending in volunteers and experts into such region, providing locals with cheaper, reliable medication alternatives. Similarly, experts can be sent into the region to simply raise awareness on the presence of these dangerous



sub-standard drugs, and this in turn might lead to a decline in the use of such counterfeits. Additionally, seeing as counterfeit pharmaceuticals is something linked strongly to drug cartels in these respective regions, the use of an international police force to actively seek out and dismantle these organizations, might also be worth entertaining.

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