Protecting Brands Is Important

Reputation of a brand drives how the products will perform in the marketplace. A strong brand is what many consumers use to make the final purchasing decision. It represents a “contract of expectations” between the company and the consumer. Trademarks are used by the consumer to identify the source of the product and counterfeit trademarks violate this expectation, directly damaging the brand. When the reputation of a brand is damaged, the consumer is less likely to trust that the “contract of expectations” will be satisfactorily met. Damage to a brand is usually more expensive to recover from than proactively taking steps to protect it.

In many instances, authenticating the brand has become the topic of standards created through professional certification organizations including SAE and ISO and even legislation. For example, SAE standards AS5553, AS6496, and AS6081 are intended for use in the aviation, space, defense and other high performance/reliability electronic equipment applications and includes establishing criteria for the control of suspect or confirmed counterfeit/fraudulent electrical parts and reporting to other potential users and authority having jurisdiction. ISO 12931 establishes specific performance criteria for authentication solutions used to establish authenticity throughout the good life cycle of a product.

The Drug Quality and Security Act will require serial numbers to be added to all pharmaceutical products. Such regulations are a means of tracing movement of product through the supply chain and to assist in protecting the integrity of product from company of origin to the retailer.

Finally, long-term financial success depends on protecting the brand. Consider specifically the risk of product counterfeits, which are a trademark violation and a fundamental threat to the brand. Through the production and sale of counterfeit product, the counterfeiter can be thought of as an “unseen competitor” that undermines corporate profit. As
depicted in Figure 1, this occurs both directly and indirectly. Through inferior and unreliable products (though some counterfeits are higher quality than others), counterfeits dilute the value of the brand, which reduces customer satisfaction with the branded product. These same products increase consumer health and safety risks, particularly as counterfeitors veer from using quality, safe materials and manufacturing products to specified standards. This, of course, is reason enough to combat product counterfeiting. Yet it also reduces customer satisfaction while simultaneously increasing the risk of litigation as a result of customers and others filing suit against the brand owner.

Product sales are reduced as a result of declining customer satisfaction with the brand, but this is not the only factor that begins to drive down sales due to counterfeits in the marketplace. The mere presence of counterfeits can serve to stifle creativity and innovation as there is less incentive to invest in research and development and to create new products when criminals are poised to immediately steal and profit from the hard-earned intellectual property of the company. Similarly, by flooding the market with counterfeits, the unseen competitor reduces the penetration of the authentic, branded product in the marketplace. Particularly when the counterfeits sold are deceptive and consumers are duped into buying a counterfeit instead of an authentic product (as opposed to nondeceptive when they understand they are purchasing counterfeit products), this reduces the probability that any given product purchased will actually be that of the brand owner. Of course, there is not a legal distinction between deceptive and nondeceptive counterfeits—both are illegal and damage the trademark owner and result in other detrimental economic and social consequences.

By simple math, these detrimental consequences combine to reduce profits. As shown in Figure 1, profits are a function of (among other things) sales and litigation. The presence of counterfeits in the marketplace reduces sales and increases litigation, which inhibits profits. At the same time, it is necessary for brand owners to combat product counterfeiting through prevention, detection, investigation and enforcement. These costs, like the others, affect the bottom line. However, it is important to acknowledge that, like other risks, investment in preventing product counterfeiting can ultimately save the company far more than its cost while also protect the safety and well-being of its customers.

Many brand owners don’t consider themselves at risk because they don’t believe their products are being counterfeited, or they have taken the position that since they didn’t create the counterfeits they are not responsible for correcting the problem. This is short-sighted. If a brand owner isn’t aware of its products being counterfeited it’s probably not looking. And even if they aren’t being counterfeited currently they are likely at risk of it, and once counterfeits are in the marketplace the damage begins. While it is common to think that luxury or designer items are the most susceptible, the fact is virtually any product can be counterfeited. Automotive and electronic parts, pharmaceuticals and medical products, food and beverages—everything from Christmas tree lights, toys, and toothpaste to aviation parts, nuclear power plant components, and pesticides, and everything in between. The more successful the brand is and the greater the demand for the product the more likely it is to be counterfeited, especially when there are few legitimate alternatives in the market place.

For the brand owner, the risk to profitability, and, indeed, sustainability, is a primary reason to take product counterfeiting seriously. However, there are many other reasons that brand owners, and indeed governments, consumers, and other stakeholders, need to work toward combating counterfeits. While systematic, reliable estimates are lacking (USGAO, 2010), available evidence indicates the crime is large and growing. Estimates of the costs of product counterfeiting have grown from less than $30 billion in the early 1980s (Abbott & Sporn, 2002; Stern, 1985) to $200 billion by
the end of the 1990s (IACC, 2005) to $600 billion in recent years (Chaudry & Zimmerman, 2009; GAO, 2010), with some projecting the crime will soon cost nearly $1.8 trillion BASCAP (2011). Trafficking of counterfeit goods has become one of the world’s largest and most rapidly growing criminal enterprises (United Nations Interregional Crime and Justice Research Institute, 2003).

Additionally, the negative effects of product counterfeiting are many and wide-ranging. Beyond direct corporate interests, this crime undermines consumer health and safety. For example, counterfeit pharmaceuticals, which could contain incorrect and unsafe ingredients, or no or insufficient active ingredients, are thought to represent upwards of 15% of the world’s drug supply (World Health Organization, 2008). Governments and the economy suffer as taxes aren’t always paid on counterfeit purchases, which often supplant legitimate sales, thereby preventing taxes from being collected on those purchases as well, and governments must spend millions of dollars to investigate violations and enforce intellectual property rights (USGAO, 2010). Due to loss in revenue and incentives to innovate, the economy suffers from a significant loss of jobs and diminished economic growth. This is a considerable risk given that intellectual property-intensive industries directly and indirectly support 46% of private-sector jobs in the U.S. (Global Intellectual Property Center, 2012), and 2.5 million jobs have been lost to product counterfeiting and piracy worldwide (BASCAP, 2011). Counterfeits represent a risk to national security and public safety in that they enter the military supply chain (U.S. Department of Commerce, 2010; U.S. Attorney’s Office, 2014), both terrorist groups and international crime syndicates have engaged in counterfeiting to fuel their enterprises (Sullivan, Chermak, Wilson, & Freilich, 2014; Heinonen & Wilson, 2012; U.S. Department of Justice, 2008), and many other crimes are associated with them (Hlavnicka, Keats, and Drimalla, 2013).

Much more systematic research needs to be done to understand the nature of product counterfeiting, and its scale and consequences. We know existing estimates are unreliable, and, in some ways, we don’t know what we don’t know. Yet, we know product counterfeiting is not a victimless crime. As described above it has multidimensional consequences and victims. We also know that virtually all brand owners are at risk—small and large. Small companies may have only a single or few products so the existence of counterfeits can be devastating to their survival. By contrast, large companies may have many brands, a diverse portfolio of products and suppliers, etc., so the opportunity to penetrate the market with counterfeits is greater. All these reasons make product counterfeiting worth a concerted effort to address.

**Business Conditions Create Product Counterfeit Opportunity**

Understanding opportunity can help in tackling crime (e.g., Clarke, 1983; 1995; Cohen & Felson, 1979; Eck & Weisburd, 1994). By assessing the opportunity for crime, brand owners, law enforcement officials, legislators, and others can devise strategies to both respond to and prevent it. Opportunity-based theories and frameworks offer many insights for combating product counterfeiting (Hollis, Fejes, Fenoff, & Wilson, 2014; Hollis & Wilson, 2014).

There are many features that shape the opportunity for product counterfeiting. The expansion of the global economy, along with the accessibility of the Internet, provides product counterfeiters a firm foundation for operations. This is further fueled by consumer demand for goods they cannot afford (Schornstein, 2013), and by counterfeiters taking advantage of environments that offer low-cost manufacturing opportunities and little interest in protecting intellectual property. Counterfeiters can bolster their welcome in such an environment by offering local value such as employment and tax revenues.

Similar to a legitimate business, product counterfeiters seek high profits by controlling expenses and seeking competitive advantage. Securing and presenting as new scrap, returned, obsolete, excess, reconditioned materials are some options as they are usually less than manufacturing and shipping new product to the point of distribution. Counterfeits also take advantage of advances in technology, such as 3-D scanners and printers, that enables inexpensive production of components, products and packages. Likewise, the internet offers a low-cost form of communication and marketing to the global customer that is simultaneously instant and anonymous. Counterfeiters seek out distributors who look to maximize their profit by mixing less expensive counterfeit with authentic product, which increases their overall profit for each shipment. At the retail level, savvy counterfeiters keep the cost of their product close to the genuine so as to not alert brand owners, law-
enforcement officials, and sometimes consumers that the product is counterfeit.

Incentives for counterfeiting are created by the limited awareness consumers, law-enforcement officials, and even some brand owners have of this crime. Many of those in position to identify and response to counterfeits do not think to question the authenticity of the products or even know what to do if they suspect a product is not authentic. This makes allocating resources to the problem difficult. Moreover, would-be offenders are lured by the reality that counterfeiters generally face low risk for detection, prosecution, or penalties (Albanese, 2011; IACC, 2005). Investigations are time consuming and expensive, and, given the complexity of cases, not all are eventually caught and then charged criminally or sued civilly. Further, the penalty levied against those that are convicted or receive a ruling against them may not be as great as the damage caused. Collectively, these circumstance result in low deterrence.

Effective Brand Protection Programs Emphasize Strategy

Research and field experience contend that the most effective brand protection programs are strategic, proactive, and holistic. A long history of research suggests the most effective crime interventions are data-driven and comprehensive (Goldstein, 1979; Cohen & Felson, 1979). The idea is to systematically assess the problem to illuminate the criminal opportunity, which can be used to inform the strategic response to it. Using evidence and analysis, the aim is to shrink the opportunity for the crime to occur, such as by increasing effort to carry out the crime and the risk of being apprehended. This approach has been shown to reduce many forms of crime. Moreover, leading law enforcement and brand protection experts routinely contend they cannot arrest and litigate their way out of the counterfeiting problem. As opposed to a purely enforcement approach, they call for partnerships, information sharing, research, awareness, education and training, and a total business solution. In other words, effective brand protection programs are evidence-based and strategic—they work to understand the risk of product counterfeiting and institute a plan to mitigate it. They are reactive as necessary, but as proactive as possible, with emphasis on prevention, awareness, education and partnerships. Importantly, they recognize the brand protection function must be integrated throughout the organization to be efficient and effective.

Typical Brand Protection Programs Are Weak

Historically, brand owners that could afford their own brand protection programs have made them enforcement-driven if not exclusively enforcement-based. This tends to coincide with a tactical emphasis, where, also, incidents are tackled individually after they occur. While effective to some degree, these reactive approaches limit opportunities for ongoing proactive practices that could mitigate a brand owner’s risk of having a product counterfeited. Other brand owners that are unable to dedicate resources to an enforcement based program have virtually no brand protection program or take a minimalist approach to the problem. Unprepared, this places them in a reactionary stance when one of their products is counterfeited. They are left trying to make sense of the incident and responding as best they can without planning to control the damage. This results in an inefficient, piecemeal approach. To be sure, enforcement and tactics are critical components of an effective brand protection program, and they will help catch, prosecute and penalize offenders. However, they alone are not enough to minimize the risk of product counterfeits.

Criminal opportunity can be reduced in a number of ways, such as making the crime harder to commit, increasing the risk of apprehension, and reducing the reward the offender receives by committing the crime.
To be successful, all of the pieces are necessary so it is important to incorporate the other functions that can bolster brand protection. Consider just a few other functions and their contribution to brand protection and the prevention and response to counterfeits:

- Market monitoring (which includes but is not limited to internet monitoring) by sales and marketing employees looks for counterfeit or diverted product in the marketplace, compares sales levels and product life cycles with prediction models, audits distributor purchasing/return practices, and actively tracks company business practices related to excess and obsolete material, scrap, multiple sales/price practices and back order cause and effects. Marketing and sales strategies related to advertising and geographic distribution influence if and when they are targeted by the counterfeiter.

- Packaging incorporates features that allow positive product authentication, indicate tampering, increase difficulty of replication, and permit product track and trace.

- Quality assurance identifies instances of product problems/returns.

- Procurement works to vet reliable and legitimate suppliers, and to ensure authentic product is sourced.

- Warehousing facilities must properly secure product.

- Human resources screens employees by conducting background checks, and facilitates training and awareness of staff.

- Supply chain management administers the flow of goods and services from point of origin to point of consumption.

To be sure, virtually every part of the organization plays some role in brand protection. Organizations on the more progressive end of the continuum work to learn and integrate their functions as part of a total business solution to brand protection.

**Conclusion**

Product counterfeiting is a complex, global crime, facilitated by many trends, conditions, and other influences. A function of numerous business conditions, product counterfeiting is a fundamental risk to the brand for most brand owners. It reduces corporate profitability, but also causes many public health and safety, economic, social and national security problems. Many brand owners take a minimalist response, either doing little to protect themselves or by taking a solely reactive, enforcement-based approach that simply addresses problems as they occur. Those on the cutting-edge of brand protection understand that a more strategic, proactive, holistic, and evidence-based approach is required to minimize the risk to product counterfeits. A first step in prevention and response is to understand how its opportunities are shaped. Situational crime prevention contends that criminal opportunity can be reduced in a number of ways, such as making the crime harder to commit, increasing the risk of apprehension, and reducing the reward the offender receives by committing the crime (Clarke, 1995). Drawing from research and practice, brand owners and law-enforcement agencies seeking to combat product counterfeiting should consider how they can minimize the opportunity for its occurrence. This involves the integration of all functions in the corporate brand protection strategy. Brand owners seeking to improve the protection of their brand from product counterfeits should consider what more they can do to create a total business solution.

**References**


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