



Managing the Problems of Product Counterfeiting in India

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ABSTRACT

Duplicate, pirated, copied, export quality seconds, near to original are some terms we come across in Indian markets which simply refer to spurious or counterfeit products. Counterfeiting is a global problem of enormous effect. For marketers in India, managing this is a part and parcel of the business and is considered to be normal. The negative effect of counterfeits in the market is sizeable however most organizations in India lack the initiatives to quantify the loss of revenue due to counterfeits available in the market and similarly lack the pro-activeness in management of counterfeits. Despite its obvious importance, relatively little attention has been paid either to the economics or management of counterfeiting. Existence of counterfeits actually means lack of knowledge and infringement of Intellectual property rights and/or neglecting the seriousness of it. The present paper provides a conceptual framework of the costs and benefits of anti-counterfeiting measures. The paper draws on a range of conceptual and empirical work to develop an agenda of items for company policy makers. The conclusion attempts to put together a number of suggestions for government and policy makers that should reduce the extent of counterfeiting activity.

Keywords : Counterfeit products, Intellectual Property Rights (IPR), Infringement, India

Introduction:

Definition of the term counterfeiting is very important at first, mainly for understanding the subject, and to understand and measure the extent of the problem. In practice, the limits of counterfeiting are unclear for two reasons: first, that the definition rests on views about consumer perceptions; second, goods are counterfeit and which are legally parallel traded is not always immediately obvious and may have to be determined under the law. The use of the term "counterfeiting" means to imitate something. Counterfeit products are fake replicas of the real product. Counterfeit products are often produced with the intent to take advantage of the superior value of the imitated product. This is as described in Wikipedia.

Some other definitions of Counterfeit are:-

"Made in imitation of something genuine with the intent to deceive or defraud; forged": *Collins English Dictionary*

"Made to look like an exact copy of something in order to trick people": *Merriam-Webster Dictionary*

"Made in exact imitation of something valuable with the intention to deceive or defraud, a fraudulent imitation of something else": *Oxford Dictionary*

While counterfeiting is generally associated with the infringement of trademarks, it may involve other aspect of IPR also, like patent, copyright, design or even a combination of them. The concept also includes the copying of packaging, labeling and any other significant features of the product. The effect of counterfeiting can be extremely harmful for the IPR holder as the fake goods are usually of lower quality and lower price. Thus, as such goods confuse or mislead consumers; they tend to spoil the originator's market and also degrade

the value of the originator's intellectual capital. This paper examines the history of counterfeiting, reviews the challenges of measurement. Finally the chapter describes the seven major drivers of the growth in counterfeit trade.

Understanding the nature of counterfeit products:

Centuries ago, counterfeiting of coins in Rome was part of the normal exchanges involving smuggling, minting privileges, alchemy, and foreign trade in Genoa in the sixteenth and seventeenth centuries. Goldsmiths, soldiers, bankers, convicts on galleys, and even priests were involved in developing counterfeit coins. But product counterfeiting may even be older. Babylonian and Egyptian priests placed inscriptions from earlier civilizations on monuments to increase their proceeds and legitimacy. The advent of trademarks used to identify manufacturers of particular products certainly created the opportunity for counterfeiting. Some form of trademark has probably been in use since ancient times. Roman builders indicated the maker of bricks and tiles by stamping an identifying mark on them. While there is no record of legal enforcement of trademarks during Roman times it appears that the Romans punished abuses through their commercial institutions. During the middle ages guilds required craftsmen and merchants to affix marks which distinguished their products from low-quality imitations. The main function of these marks was to assign responsibility for inferior products. Marking products in the form of pottery and coins started in India several centuries ago at the Indus Valley Civilization, however it is difficult to trace back the exact dates of counterfeits originating, however the major counterfeit market is believed to have started post British rule as the cheaper products of foreign quality were aspired in the market and that gave rise to counterfeiting of products. Attempting to measure the global value of counterfeit products is very difficult. This is understandable given the illegal nature of this activity. The only real

data are indicators such as seizures of pirate product by police or customs authorities. In addition, there is no agreement on factors that should be considered when calculating the scale of counterfeiting. Should the estimate include sales lost by specific brands and at what prices, damage to brand equity, total sales of counterfeits, or some combination of these factors, or a combination of these all or something else? A solution to shortlist the most appropriate method of estimation requires further research and investigation.

Product counterfeiting is a well-known problem, one that has been with us for a very long time. Trademarks go back to ancient times and where there are trademarks counterfeiting soon follows. Recently more attention is being paid to fighting the problem. It would seem the first logical step would be to determine the size of the counterfeit market. But estimating the extent of this illicit trade is a difficult task. First, no direct measurement of counterfeit trade can be undertaken, since by definition this is an illegal activity. Customs seizures are such a small percentage of overall trade that it is impossible to draw conclusions from these statistics. Many organizations have attempted to estimate the size of the counterfeit market and have described the major flaws in every method which tries to put a definite size on it. The US Government's General Accountability Office (GAO) to refer for example; focuses on two key assumptions in measuring counterfeit goods—substitution rate and value. Several methods have been used to calculate the size of the counterfeit goods market including extrapolation from counterfeit goods seizures, survey of supply and demand and use of economic multipliers. The Organization for Economic Cooperation and Development (OECD) states that the overall degree to which products are being counterfeited and pirated is unknown, and there do not appear to be any methodologies that could be employed to develop an acceptable overall estimate.

It is important to understand the reasons which result in counterfeits to origin and ways to manage them. There are several reasons behind the worldwide growth of counterfeit goods. The most important factors can be hypothetically identified as: (1) low cost high technology which results in low investment and high profits; (2) globalization and lower trade barriers; (3) consumer complicity; (4) expansion of channels and markets; (5) powerful worldwide brands; (6) weak international and national enforcement, (7) high tariffs and taxes.

Managing problems of product counterfeiting:

Counterfeiting should be tackled within a general, consistent and synergistic package of measures to ensure the protection of corporate IPR. In particular, a company must: (i) continuously monitor the need for IP protection and the form this should take -patent, design and trademark. (ii) know and bear in mind the legal and administrative rules for IPRs -first to invent versus first to apply (iii) develop strategies to manage IP who should "own" the right - the parent or subsidiary/how to minimize the tax burden and whether to develop a "universal" or series of "national" marks) (iv) undertake early assessment of the value of each element of IP, ideally separating the value of the asset from the value added by IPRs; (v) establish a mechanism to evaluate the returns to continued protection, and renew protection as appropriate -preventing premature lapse of rights (vi) develop a framework to monitor infringement and, where appropriate, pursue a case against infringer (vii) maintain access to legal experts in IPRs.

The importance of keeping the originator's product distinct from those of potential counterfeiters is extremely crucial for survival and growth of business. If the originator fails in this fundamental action, their goods slip into becoming generic and any remaining IPRs become difficult, if not impossible to defend. Thus, maintenance of distinctiveness is a pre-requisite for many of the anti-counterfeiting strategies described below; it defines the scope of the monopoly and the grounds for protection of the monopoly because of consumer confusion.

Certain Suggestions for Government and policy makers to manage the problems of counterfeiting in India are as enumerated below:

- The Government has to take huge initiatives in popularizing the concepts of IPR in professional education and in particularly the field of business management.
- At certain levels of businesses, IPR implementation has to be made a cultural adaptation. This can be mandated by policy makers.
- Anti-counterfeiting technologies to be increasingly promoted and put in to use to protect and authenticate products.
- There are a large number of national and international anti-counterfeiting organizations, some of which specialize in particular product areas. Their services can be used in the country which can primarily happen with necessary IPR education.
- The originators in the country should be given all possible administrative and legal authorities dealing with pirating and counterfeiting.
- Properly regulated licensing may offer opportunities that deflect potential counterfeiters. Offering a licensing opportunity to a potential counterfeiter lowers the chances to counterfeiting, as long as the contract is properly designed and enforced.

Conclusion:

The point is that consumers who buy fakes are a market segment that purchases counterfeit because of their inability to afford the genuine product. Therefore, buyers in that segment do not really represent lost sales. The argument centers on the idea that these consumers would not have bought the genuine product anyway. It is clear from the above discussed issues that there is a need for a greater consistency in the measurement of the problem that can probably only be resolved by an international survey of the global counterfeiting problem, organized by an international body such as WTO or WIPO. In India also there has to be a local representative body governing this issue. Although product counterfeiting is certainly not a new phenomenon, much more attention is being paid to it in recent years. As we have seen counterfeit products may go back more than 2,000 years and punishment for infringement at least 700 years. Products which can be classified as counterfeit are those made without authorization from the owners of IPR (trademarks, patents and copyrights) associated with those products. Given the illegal nature of the activity no direct measurement is possible. Compounding the problem is defining what exactly is being measured. A proper measure has to be benchmarked: is it sales lost and should it be calculated based on current retail prices? or should damage to brand equity be added? Those making the estimates, such as the OECD and the International Trade Commission, readily admit their methodologies leave much to be desired. Since the actual seizures by Customs agencies around the world represent approximately 1/10 of 1% of total imports, one must say the true number is not known with any confidence today. Products counterfeited at one time were limited to high-priced, high-tech, highly visible branded and intensive R&D products. But today nearly every consumer and industrial product is subject to counterfeiting. The existence of a counterfeit goods market damages consumers as well as home and host countries, the owners of the intellectual property both large and small, and their associated wholesalers and retailers. There may be evidence that organized crime and terrorist organizations are using the proceeds from counterfeit products to finance their activities. There are seven main drivers of the growth of counterfeit goods, many associated with the reduction in the cost of high technology and the increasing openness provided by globalization. The Internet has afforded counterfeiters a nearly unlimited market, low-cost communications, and the means for avoiding detection. Weak enforcement of both national and international intellectual property protections has made counterfeiting a low-risk market entry strategy. We believe that the suggested measures can help to a substantial extent in checking counterfeiting activities and retain the originator's rights.

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