

The Fight against Consumer Goods Counterfeiting - Dimensions, Challenges, Solutions

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Abstract

Consumer goods counterfeiting, substitution, falsification and other similar maneuvers fall under the category of fraud, whose magnitude increased along the development of human society.

A very actual issue is addressed: counterfeiting of goods as an expression of IPR infringement, especially since, currently, each socio-economic category (state, producers and consumers) is affected by the effects of this fraudulent activity.

The paper draws attention upon the impact of the infringement issues, globally and regionally. Recent statistics underline the increasing scale of goods counterfeiting and justify the rising concern of all bodies involved in combating this phenomenon which gained alarming dimensions.

The main focus is on introducing various public and private initiatives regarded as tools in the fight against consumer goods counterfeiting: regulations, agreements, partnerships, strategies and measures.

Keywords: *goods counterfeiting, intellectual property rights, fight against counterfeiting*

JEL Classification: *F19, F69, O34*

Introduction

Under current conditions, characterized by the complexity and dynamism of economic processes and phenomena, by activities carried out in a turbulent environment due to the rapidity of occurring changes and the uncertainty created by the relationships between its elements, many of us have lost sight of the issue of ensuring personal safety and security, both by the state and ourselves.

Intellectual property, closely connected with R & D and innovation, represents the basis for economic development, social and cultural progress worldwide. In this respect, due to the effervescent globalization which gave rise to numerous frauds in the field of intellectual property, an issue that requires a comprehensive characterization is the complex phenomenon of goods counterfeiting, which is globally studied and closely related to the interactions at national and regional levels.

A high degree of protection, both nationally and globally, can be achieved by cooperation between states through effective enforcement tools available to trademark holders, by accurate border controlling of trade flows and seizure of counterfeit goods, but also through consumer awareness campaigns that make consumers more cautious regarding counterfeit products.

The Issue of Goods Counterfeiting in the Current Context

Although the counterfeiting issue is not new, currently it gained increased importance, as this worrying phenomenon evolved, affecting, on the one hand, consumer confidence, and, on the other hand, the health and consumer safety and the environment, due to product non-conformities in terms of quality and to circumstances arising from the disposal and destruction of these products.

While in the past the most common counterfeit products were luxury goods, at present, the phenomenon of counterfeiting has grown alarmingly, covering almost all categories of goods and affecting economies throughout the entire world.

The World Trade Organization (WTO) defines counterfeit trademark goods in the art. 51 of the TRIPS Agreement as “any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation”.¹

In Romania, according to the *Law no. 344/2005 on specific measures for the enforcement of intellectual property rights in customs clearance operations*², counterfeit goods are defined as:

- a) any commodity, including its packaging, bearing without authorization a trademark which is identical or not different in its essential aspects from a trademark of a product or service legally registered for the same type of goods and, therefore, violates the rights of the mark holder;
- b) any symbol of a product or service trademark (including logo, label, adhesive label, brochure, instructions for use or warranty document bearing such a symbol) even if it is presented and is in the same situation as the goods referred to in point a) above;
- c) any package bearing the trademarks of counterfeit goods, presented separately and being under the same conditions as the goods defined in point a) above.

As one can see, we can talk about counterfeit goods in the case of the production and marketing of products that are apparently identical to the original, but which are made for fraudulent purposes. The counterfeit product is often of inferior quality compared to the characteristics of the genuine product.

In recent years, consumer goods counterfeiting and piracy have been subjected to an alarming increase in terms of impact and scale, annual estimated losses amounting to a value of over \$ 700 billion³, the whole world being under the threatening spectrum of this phenomenon.

At global level, counterfeit foodstuffs generate losses of 10-15 billion dollars for the industry annually, according to a survey conducted by the Association of Food and AT Kerney Research.⁴

¹ WTO, Agreement on Trade-Related Aspects of Intellectual Property Rights, p. 342

² <http://www.legex.ro/Legea-344-2005-51146.aspx>, Art. 3, Para. (1), 11 [02.03.2014]

³ <http://www.icewbo.org/bascap/> [15.03.2014]

⁴ *** *Economic Adulteration and Counterfeiting of Global Food and Consumer*,

<http://www.atkearney.com/consumer-products-retail/consumer-product-fraud-deterrence-and->

Forecasts on the evolution of losses due to goods piracy and counterfeiting worldwide are extremely worrying, as shown in the Frontier Economics report, released in February 2011⁵. Thus, in 2015 the global loss is estimated to reach between 1220 billion and 1770 billion dollars and, in terms of employment, over 2.5 million jobs could be lost.

Table 1. Estimate of the total value of counterfeit and pirated products in 2008 and 2015, and impact on the broader economy and employment

OECD Category	Estimate in \$ billions (2008)	Estimate in \$ billions (2015)
Internationally traded counterfeit and pirated products	\$ 285 - \$ 360	\$ 770 - \$ 960
Domestically produced and consumed counterfeit and pirated products	\$ 140 - \$ 215	\$ 370 - \$ 570
Digitally pirated products	\$ 30 - \$ 75	\$ 80 - \$ 240
Subtotal	\$ 455 - \$ 650	\$ 1, 220 - \$ 1, 770
Broader economy wide effects	\$ 125	\$ 125 +
Employment losses	2. 5 million	2. 5 million+

Source: Frontier Economics (2011), p.5

According to Jacobs et al. (2001), the most vulnerable product categories susceptible to counterfeiting could be summarized as follows⁶:

- Highly visible, high volume, low tech products with a well-known brand names such as toothpaste and chocolate;
- High-priced, high-tech products such as computer games, CDs, DVDs, auto and airplane parts;
- Exclusive prestige products such as clothing, apparel, and perfume;
- Intensive R & D, high-tech products such as pharmaceuticals and some industrial products.

Table 2 shows the great diversity of product categories most commonly counterfeited, focusing on those components that have an impact on both the largest producers and holders of intellectual property rights, and especially consumers.

Table 2. The diverse nature of illicitly produced goods (select categories)

Automotive	Scooters, engines, engine parts, body panels, air bags, windscreens, tires, suspension and steering components, automatic belt tensioners, brake disc pads, clutch plates, oil, oil pumps, water pumps, chassis parts, engine components, lighting products, belts, hoses, wiper blades, grilles, rings, brake fluid, wheels, hubs, anti-freeze, windshield wiper fluid
Chemicals / pesticides	Insecticides, herbicides, fungicides, non-stick coatings

[detection/detail/-/asset_publisher/bb2U1mEdkxG7/content/economic-adulteration-and-counterfeiting-of-global-food/10192](#) [15.03.2014]

⁵ Frontier Economics, *Estimating the global economic and social impacts of counterfeiting and piracy*, February 2011, retrieved at <http://www.iccwbo.org/Data/Documents/Bascap/Global-Impacts-Study---Full-Report/>, p. 3

⁶ Chaudhry, P. and Zimmerman, A., *Protecting Your Intellectual Property Rights*, Management for Professionals, Springer Science+Business Media New York, 2013, retrieved at http://www.springer.com/cda/content/document/cda_downloaddocument/9781461455677-c1.pdf?SGWID=0-0-45-1366413-p174602955, p.17-18 [15.03.2014]

Table 2 (cont.)

Consumer electronics	Computer components, computer equipment, webcams, remote control devices, mobile phones, TVs, loudspeakers, cameras, headsets, USB adapters, shavers, hair dryers, irons, mixers, blenders, pressure cookers, lighting appliances, smoke detectors, clocks
Electrical components	Components used in power distribution and transformers, switchgears, motors and generators, gas, and hydraulic turbines and turbine generator sets, relays, contacts, timers, circuit breakers, fuses, distribution boards and wiring accessories, batteries
Food, drink and agricultural products	Conserved vegetables, powder milk, butter, baby food, instant coffee, alcohol, drinks, candy / sweets, hi-breed corn seeds
Pharmaceuticals	Medicines used for treating cancer, HIV, osteoporosis, diabetes, hypertension, cholesterol, cardiovascular disease, obesity, infectious diseases, Alzheimer's disease, prostate disease, erectile dysfunction, asthma and fungal infections; antibiotics, anti psychotic products, steroids, anti-inflammatory tablets, pain killers, cough medicines, hormones, and vitamins; treatments for hair and weight loss.
Tobacco	Cigarettes, cigars, and snuff
Toiletry and other household products	Home and personal care products, including shampoos, detergents, as we fragrances, perfumes, feminine protection products, skin care products, deodorants, toothpaste, dental care products, shaving systems, razor blades; shoe polish; non-prescription medicine

Source: extract and adaptation form *The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime*, http://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf, p. 4 and Răducanu, I., Stancu, A., *Falsificarea băuturilor alcoolice tari pe piața românească*, sesiunea internațională de comunicări științifice *Economia contemporană. Prezent și perspective*, 24-25 aprilie 2004, Universitatea din Pitești, Facultatea de Științe Economice, Juridice și Administrative, Secțiunea Comerț-Marketing, Editura AGIR, ISBN 973-8466-56-3, ISBN 973-8466-63-6, p.123-134

At European level, the Report on EU customs enforcement of intellectual property rights, containing results recorded at EU border in 2012, shows that in 76.77% of the seizures the goods were destroyed, in 13.86% of these cases a court case was initiated by the right-holder to determine the infringement and in 8% of the cases, the goods were released because they appeared to be non-infringing original goods or no action was undertaken by the right-holder after receiving the notification by the customs authorities.⁷ Nevertheless, in this situation, it is possible that some counterfeiting goods were not identified and continue to remain available in distribution chain, still affecting consumers.

Consumer Goods Counterfeiting and Fraudulent Activity – Resorts and Effects

The rapid development of the economy in the new millennium has caused an upward development of consumer goods counterfeiting, which involved several factors that characterize all groups and sub-categories of commodities. Most important *factors* that promote such

⁷ European Union, *The Report on EU customs enforcement of intellectual property rights*, results recorded at Eu border in 2012, 2013, retrieved at http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2013_ipr_statistics_en.pdf [22.03.2014]

activities include: physical-geographical, technical, economic, socio-economic and political factors.

Under the current circumstances, there are seven major reasons behind the worldwide growth of counterfeit goods which include⁸:

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.

A particularly important aspect that involves the development of consumer goods counterfeiting over time is related to its numerous *effects*, affecting primarily the consumers that have direct contact with those products and, secondly, both governments trying to combat and reduce this phenomenon and right holders whose benefits are undermined.

Generally, counterfeits have a double impact: social and economic. From an economic perspective, goods counterfeiting, or the "crime of the 21st century"⁹ as it was called has serious consequences for holders of intellectual property rights and for the affected states, given the financial losses recorded, counterfeits representing at the same time a connection with cross-border organized crime. For this reason the marketing of counterfeit and pirated goods, as well as all goods infringing an intellectual property right, cause considerable damage to producers, traders and abiding right holders.¹⁰

On the one hand, the most important effects on economy include: effects on industries that compete directly with those counterfeiting their products, effects on innovation and economic growth, effects on companies involved in the production and sale of genuine legal products, investment effects, and effects on governments.

On the other hand, in terms of social effects, those are determined by two types of motivation: the motivation of the goods counterfeiters and the motivation of those who purchase counterfeit goods knowingly or unknowingly.

Therefore these social effects refer in particular to: the effects experienced by consumers as a result of confidence loss; effects on health and personal safety¹¹; financial loss due to purchase of counterfeit goods; effects on the active population by increased unemployment; impaired moral health of the employee and family through job loss and the inability to pay taxes.

A new field of interest related to this issue is represented by the activity of the organized criminal groups that have taken the advantage of the possibility of combining several fraudulent activities. Thus, these groups have diversified into the illicit trafficking of counterfeit goods, at

⁸ Chaudhry, P. and Zimmerman, A., *Protecting Your Intellectual Property Rights*, Management for Professionals, Springer Science+Business Media New York, 2013, Chapter 2: The Global Growth of Counterfeit Trade, p.22, retrieved at http://www.springer.com/cda/content/document/cda_downloaddocument/9781461455677-c1.pdf?SGWID=0-0-45-1366413-p174602955 [19.04.2014]

⁹ Viehues, M., Linklaters Oppenhoff & Rädler, *Counterfeiting and Organized Crime*, International Trademark Association, Special Report of Counterfeiting, September 2004 [22.03.2014]

¹⁰ Colecția de working papers în științe economice, Section 1, Bucharest, 2009, p. 94 [22.03.2014]

¹¹ *** *Too good to be true: the real price of fake products*, retrieved at http://europa.eu/rapid/press-release_MEMO-13-346_en.htm [19.04.2014]

the same time being involved in crimes varying from drug and human trafficking, to extortion and money laundering.¹²

Global and Regional Initiatives for Combating Goods Counterfeiting

Global bodies involved in the protection of intellectual property rights

Being a complex phenomenon with many implications, it is obvious that, at both national and multilateral level, different states and institutions, in collaboration with major players in the industry, work together for the adoption of initiatives to alter the intensity of the global evolutionary trend of counterfeiting.

At the intergovernmental level, major initiatives have been developed by the World Trade Organization (WTO), World Intellectual Property Organization (WIPO), Interpol and the World Customs Organization (WCO) and health by the World Health Organization (WHO). A summary of activities under the responsibility of these bodies and the role of other organizations are presented in the table below:

Table 3. Summary of intergovernmental activities on IPR

Organization	Main activities relating to counterfeiting and piracy
Group of 8 (G8)	Established experts group to examine ways to strengthen efforts to combat counterfeiting and piracy.
Global Congresses	The Global Congresses on Combating Counterfeiting and Piracy bring together senior officials from government, international organisations and the private sector to enhance international co-ordination and co-operation and seek more effective solutions to combat counterfeiting and piracy. The Congress is organised by Interpol, WCO and WIPO, with the support of industry (GBLAAC, INTA, ICC and ISMA)**
International Criminal Police Organization (Interpol)	Supports law enforcement agencies worldwide to combat IP crime through an IP Crime Programme. Established government/industry Intellectual Property Crime Action Group (IIPCAG) to advise and assist with initiatives. □
WCO	Provides training and technical support for governments to combat trade in counterfeit and pirated products. Works with governments and industry to address enforcement issues through information exchanges, and guidelines for effective enforcement.
WHO	Engaged in building co-ordinated networks to combat counterfeit medicines around the globe. Established government/industry International Medical Products Anti-Counterfeiting Taskforce (IMPACT) to support efforts. Published guidelines for government measures to combat counterfeit medicines.
WIPO	Oversees certain IP treaties and conventions containing enforcement provisions; provides technical enforcement support and training to governments. Established Advisory Committee on Enforcement (ACE) to support activities.
WTO	Oversees TRIPS agreement, which establishes a comprehensive multilateral legal framework governing IPR; agreement contains provisions for enforcement, consultation and dispute resolution. A TRIPS Council oversees operation of the agreement and government compliance

* Global Business Leaders Alliance Against Counterfeiting, International Trademark Association, International Chamber of Commerce (Business Action to Stop Counterfeiting and Piracy), and International Security Association Management

Source: OECD, *The Economic Impact of Counterfeiting and Piracy*, OECD, 2008, retrieved at 2008, <http://www.iccwbo.org/Data/Documents/Bascap/Economic-Impacts/Econ-Impacts-OECD/>

¹² UNODC, *The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime*, retrieved at http://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf [19.04.2014]

In preventing and combating counterfeiting, the most important multilateral agreements concluded over time are:

- Convention establishing the World Intellectual Property Organization
- Union Convention of Paris of March 20, 1883 for the Protection of Industrial Property, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925 and London on June 2, 1934 and in Lisbon on 31 October 1958
- Madrid Agreement Concerning the International Registration of Marks
- Patent Cooperation Treaty adopted by the Diplomatic Conference in Washington on June 19, 1970
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
- Hague Agreement Concerning the International Deposit of Industrial Designs
- Singapore Treaty on the Law of Trademarks
- Protocol relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on 27 June 1989
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks of 15 June 1957, as revised at Stockholm on 14 July 1967 and at Geneva on May 13, 1977 and amended on October 2, 1979
- Vienna Agreement establishing an International Classification of the Figurative Elements of Marks issued in Vienna on June 12, 1973 and amended on October 1, 1985.¹³
- Locarno Agreement establishing an International Classification for Industrial Designs, signed on October 8, 1968 and revised on September 28, 1979
- Strasbourg Agreement Concerning the International Classification of patents from March 24, 1971, amended on 28 September 1979¹⁴
- International Convention for the Protection of New Varieties of Plants
- Madrid on penalties for false or misleading indications of products' origin
- Agreement on intellectual property rights
- Patent Law Treaty adopted by the Diplomatic Conference on 1 June 2000
- Lisbon Agreement on the Protection of Appellations of Origin and their International Registration of products.

European Initiatives. EU agreements with other countries

The EU recognizes the importance of respecting and protecting intellectual property rights, while economic and social development in the EU can not be achieved without this protection. Taking into account the applicable international agreements and treaties in this area, which were the basis of the Community legal regulations, several regulations are currently covering this issue.

EU started to act in response to this challenge by civil law measures allowing right holders to benefit from the intellectual property rights they are entitled to. In this respect, the EU Customs Regulation no. 1383/2003 provides rules regarding customs action against goods suspected of infringing certain IPR and the measures to be taken against goods found to have infringed such rights.

For the same purpose, the European Observatory on Counterfeiting and Piracy was launched in 2009. The main objectives of the Observatory consist of collecting and presenting data on the economic and social implications of counterfeiting and piracy and of creating a platform in

¹³ <http://www.agepi.md/pdf/law/international/vienna.pdf> [15.04.2014]

¹⁴ <http://www.agepi.md/pdf/law/international/strasbourg.pdf> [15.04.2014]

which representatives of national authorities and stakeholders can exchange ideas and expertise on best practices.¹⁵

At EU level, another important initiative to combat counterfeiting refers to Directive 2004/48/EC which aims to ensure a high and comparable intellectual property protection in the Member States, not by the introduction of a single regime, but by reducing differences between national regulations in the field so that they can be harmonized.

In September 2008, the Council invited the Commission and the Member States to review customs legislation on intellectual property rights across borders (Council Regulation (EC) no. 1383/2003). Thus, the EU Council adopted a resolution on the EU Customs Action Plan to combat infringements of intellectual property rights (IPR) for 2009-2012.

On 4 May 2011, the European Association of Pharmaceutical Full-line Wholesalers (GIRP) PierreRiu and Videdressing signed *the Memorandum of Understanding (MoU)*¹⁶ on Sale of Counterfeit Goods via the internet. From 7 January 2014, the European Federation of Pharmaceutical Industries and Associations (EFPIA) also became a signatory organization.

This action is oriented towards fighting against counterfeiting with major internet platforms (such as eBay, Amazon, Allegro and Rakuten/PriceMinister) and right holders, while the consumer goods, luxury goods, wines and spirits, toys, sporting goods, consumer electronics, film, software and video-game industries register a rapid growth in counterfeiting.¹⁷

Customs play a vital role in other international initiatives, including the Counterfeiting Trade Agreement (ACTA). ACTA is a multinational treaty concluded for the purpose of establishing international standards on intellectual property rights. The agreement was signed in October 2011 by Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea, and the United States. In January 2012, the European Union and 22 countries that are member states of the European Union also signed the agreement but none of these countries have officially approved it; the treaty will enter into force and will be applied only in those countries that have ratified it.

Another initiative at EU level, achieved in the second quarter of 2012, consists of the development of a database where Member States can store the enforcement requests from IPR holders, making them available to all Member States. This database is called COPIS and is an effective and direct processing of cases by the customs authorities at the national level, being recorded for statistical purposes.

In the light of economic, commercial and legal developments, the legal framework involving customs authorities needed to be improved in order to efficiently protect the intellectual property rights. In this context, on 12 June 2013 a new Regulation (EU) No 608/2013 of the European Parliament and of the Council concerning customs enforcement of intellectual property rights was adopted¹⁸, providing procedural rules for customs authorities to enforce intellectual property rights with regard to goods liable to customs supervision or customs

¹⁵ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee And The Committee Of The Regions Horizon 2020 - The Framework Programme for Research and Innovation, , Bruxelles, 30.11.2011, COM(2011) 808 final, retrieved at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0808:FIN:ro:PDF> [02.05.2014]

¹⁶ http://ec.europa.eu/internal_market/iprenforcement/docs/memorandum_04052011_en.pdf [02.05.2014]

¹⁷ http://europa.eu/rapid/press-release_MEX-14-0401_en.htm [02.05.2014]

¹⁸ http://eur-lex.europa.eu/legal-content/EN/TXT/?jsessionid=lpZFRZvJJkwDLZH3kPwr3Hxq1nwfQKgL9b8vphsCIGThNvkT4LMs!1343514170?uri=uriserv:OJ.L_.2013.181.01.0015.01.ENG [04.05.2014]

control.¹⁹ The new Counterfeit Goods Regulation aims to facilitate actions taken by right-holders in the case of infringing goods.²⁰

After the European Council called for a review of the EU's existing regulation on counterfeit goods (1383/2003/EC), the European Commission proposed a new anti-counterfeiting regulation (5129/2013/EC) to be implemented, with the aim of strengthening the enforcement of IPRs by customs. The Regulation 5129/2013/EC, adopted by 1 January 2014 includes the following measures²¹:

- a) Extended protection of IPRs;
- b) "Simplified Procedure" for detention and destruction of goods made mandatory;
- c) Accelerated procedure for the destruction of small consignments;
- d) Information sharing;
- e) Destruction and detention costs.

The anti-counterfeiting campaign promoted by the European Commission (including the European Observatory on Counterfeiting and Piracy) and EU Member States, together with producers, trade and consumers associations aims to protect citizens and business against goods which do not meet safety standards through better rules such as a multi-annual plan and a single legislative instrument to reinforce the controls on products in the internal market, allowing authorities to immediately withdraw non-compliant and dangerous products from the market. This plan, adopted in February 2013, involves greater resource sharing, better IT tools, tougher and more targeted external controls at the Union borders and harsher penalties.²²

International cooperation is another prerequisite for preventing the access of IPR infringing goods on the EU market. Thus, several agreements or partnerships have concluded between the EU and other world countries, in order to harmonize regulations and ensure the same level of protection against counterfeit goods across many countries. Main agreements are the following:

- o Association Agreements between the European Commission (EC) and its Member States and Mediterranean economies, known as the Euro-Mediterranean Agreements. These agreements relate to an appendix that lists international treaties dealing with intellectual property rights and which, in fact, represent additions to the TRIPS Agreement;
- o Partnership and Cooperation Agreement between the EC and its Member States and the Africa, Caribbean and Pacific, signed in Cotonou, which includes provisions to better protect IPR;
- o Agreement between the EC and its Member States and the Republic of South Africa which aims at covering mutual assistance in the implementation of laws and regulations, in setting up offices and staff training.
- o Cooperation framework agreement between the EC and its Member States and Korea, which highlights the importance given to the provisions of multilateral conventions and the need for their implementation within national legislation.
- o Cooperation agreements between the EC and its Member States and Ukraine, respectively Moldova to protect intellectual property rights in these countries at the level existing in the community.
- o Cooperation between the EU and the U.S.

¹⁹

http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/legislation/index_en.htm [04.05.2014]

²⁰ <http://juridiabutzow.com/en/current/new-counterfeit-goods-regulation-into-force-on-1-january-2014-what-will-change-2/> [04.05.2014]

²¹ <http://www.squiresanders.com/introduction-of-new-eu-counterfeit-goods-regulation-enhancement-of-an-intellectual-property-right-owner-protection-against-infringement/> [04.05.2014]

²² *** *Too good to be true: the real price of fake products*, http://europa.eu/rapid/press-release_MEMO-13-346_en.htm [04.05.2014]

This is one of the most important bilateral cooperation, expressed by the EU-US Action Strategy for the implementation of intellectual property rights. The strategy emphasizes two main areas of collaboration²³:

1. the improvement of the enforcement of intellectual property rights (improving the efficiency of customs and border control authorities, technical assistance through better staff training in this field of protection etc.).
2. the promotion of public-private partnerships.

Regarding the US IPR seizures in Fiscal Year (FY) 2013, their number increased by nearly 7% to 24,361 from 22,848 in FY 2012 and goods that were genuine increased by 38% to \$1,743,515,581. In this context, the Department of Homeland Security (DHS) mentioned that China remains the primary source economy for counterfeit and pirated goods, with a total value of \$1.1 billion, which represent 68% of all IPR seizures. There are also seizures from another 73 economies that affected U.S. borders.²⁴

With China being the main source for counterfeit goods, the EU Commission and the PRC government launched the EU-China Project on the protection of intellectual property rights in 2007, having as main objective to improve the efficiency of protection of intellectual property rights and to implement similar legislation for that purpose in China. This project involves technical assistance from the EU which includes training for customs officers, exchange of experience and best codes of practice, cooperation through a network of rights holders including China and the EU, and other stakeholder's techniques for better enforcement of intellectual property rules.²⁵

The contribution of international organizations in the fight against counterfeiting

The extent and impact of counterfeiting affect not only state officials and world governments, but also independent organizations, industry stakeholders, consumer organizations increasingly concerned by the evolution of this phenomenon. Many of these organizations provide detailed reports on counterfeiting and piracy. Among these organizations, it is important to highlight the most important ones, namely: International Anti-Counterfeiting Coalition (IACC), Global Anti-Counterfeiting Group (GACG), the ISO, the American National Standards Institute (ANSI), DHS, Business Action to Stop Counterfeiting and Piracy (BASCAP), International Chamber of Commerce - Commercial Crime Services (CCS), Pharmaceutical Security Institute (PSI), the Organization for Economic Cooperation and Development (OECD), Canadian Anti-Counterfeiting Network (CACN), Coalition for Intellectual Property Rights (CIPR), the Coalition Against Counterfeiting and Piracy (CACP), the European Trademark Owners (MARQUES), Quality Brands Protection Committee (QBPC).

²³ *** *Transatlantic IPR Collaboration*, retrieved at http://www.euussciencetechnology.eu/uploads/inventory/final_report_aws_en.pdf [04.05.2014]

²⁴ *** *Intellectual Property Rights Seizures Statistics Fiscal Year 2013*, retrieved at <http://www.cbp.gov/sites/default/files/documents/2013%20IPR%20Stats.pdf> [04.05.2014]

²⁵ *** *Anti Brand Counterfeiting in the EU*, Report on Best Practices, 30 december 2010, retrieved at http://www.gacg.org/Content/Upload/Documents/Transcrime_Report%20Best%20Practices_Project%20FAKES.pdf [16.05.2014]

Strategies in the Global Fight against Counterfeiting

Policy options on ways to fight counterfeiting

Internationally, several strategies to fight counterfeiting have been developed over time, both by governments and organizations around the world, and by rights holders.

To be effective, strategies should be adjusted according to brand's target markets, the types of counterfeit product being produced and to the manner the counterfeits are being manufactured, distributed and sold. In this case, significant investment is required to assess the extent of the phenomenon, followed by the development of a strategy that combines elements of IP protection, supply chain, manufacturing and distribution management, effective online monitoring programme, engagement with consumers and legitimate trader, exports and customs controls, retail market controls, and efficient technology to identify the real and the fake products.²⁶

The most important anti-counterfeiting strategies fall into one of the following categories:

1. The “*due diligence*” strategy type, referring to self own systems, considering all the factors involved in the process of counterfeiting products;

This strategy takes into account several measures to counter or reduce the negative effects of counterfeiting products such as²⁷:

- use of recipes / technologies / processes for manufacturing complex, difficult to replicate products;
- use of new materials or which are not on the market;
- use of production techniques that can not be achieved only with expensive equipment or major investments;
- conducting trainings for employees;
- employee loyalty not to send industrial secrets to others;
- quality certification of their products.

2. The current decade requires an integrated approach to all levels and involving all operators working together in order to provide the necessary commodities to end customers at the right time and place, responding to their expectations entirely. In the current context, *traceability* gains an increasingly active role in the management of delivery-supply chain.

In accordance with ISO 9000:2005, traceability means the "ability to trace the history, application or location of that which is under consideration". ISO guidelines specify that traceability can relate to the origin of materials and parts, the processing history, and the distribution and location of the product after delivery.²⁸

3. *Anti-counterfeiting technologies* cover the latest advances in nanotechnology able to help around the world to take a step forward in the fight against counterfeiting. High compatibility with the technologies of production of large companies and their relatively low cost make them ideal instruments in this fight.

Nanotechnology development was based on the results of interdisciplinary sciences in the 20th century and new tools for investigating nano materials. This field subsequently generated a wide intermix of fundamental sciences and revealed new areas of research which seemed

²⁶ Nash, L., Vetere, G., Young, M., *Responding to the hidden threat: how luxury brands are fighting back against counterfeiting*, <http://www.worldtrademarkreview.com/issues/article.ashx?g=1384d2c3-a52e-4fa9-9a30-4b4098236082> [10.05.2014]

²⁷ <http://www.avocat4u.ro/ro/contrafacere.php> [10.05.2014]

²⁸ ISO, ISO 9000:2005 *Quality management systems—Fundamentals and vocabulary*

unimaginable a few decades ago. In the narrow sense, nanotechnology is the science of materials whose properties depend on the size.²⁹

4. Another strategy considered to be effective refers to the *public-private partnerships involved in consumer education*, as a critical factor in the development of counterfeit products. The consumer is buying and using the product, he also evaluates the product, and thus, he must be aware of the associated risks he is exposed to when purchasing counterfeit goods and of the disastrous effects both on the state and health or personal integrity .

Public-private partnerships can enhance the collecting of useful information for public authorities that require data on product characteristics, if those products are fake or not, but especially for right holders who are interested to know the modus operandi of criminal groups.

Major contribution of multinational companies in reducing global counterfeiting

Large companies situated in the forefront of the world's most valuable brands have increased over time their efforts to curb the scourge of counterfeiting that hinders the development and progress of society.

Thus, by analyzing numerous documents on this phenomenon and emphasizing the means used by large companies to combat and mitigate the extent of counterfeiting, paths ahead for multinational companies shall include:

1. Establishing a specific business strategy in the field of intellectual property rights, which uses the full range of formal and informal means of protection. This strategy assumes that, in addition to identifying networks of goods counterfeit and use of effective action developed by the state in this direction, large companies should develop their own protection systems consisting of teams trained to sue and to defend their interests and other informal instruments such as trade secrets.
2. Establishing an effective communication strategy with the aim of sustaining the IPR enforcement. This strategy involves effective instruments by which customs authorities could be informed on the existence of manufacturing illegal activities involving counterfeit products, of the marketing of dangerous counterfeit products and their identification opportunities. Communication does not have to be initiated only with the state authorities, but also with networks of distributors and sellers. Not least, educating consumers to identify the differences between genuine and counterfeit products that represent a real danger should be a part of this strategy.
3. The focusing of anti-counterfeiting activities, taking into consideration limited resources available, which means that each step towards respecting IPR involves costs and this should determine the company to concentrate primarily on defending the integrity of the brand in countries where it markets its products.
4. Be alert to the pitfalls of different countries of origin of counterfeit goods, especially as these countries are a big problem in that they did not fully harmonize their legislation based on global standards. The large company should work with the basic structures of the world to defend their rights effectively facing the problems in these countries.
5. Ensuring the company's progress through ongoing research and technological innovation – the higher their speed, the harder will be for counterfeiters to copy. These innovations should closely relate to the quality of products offered at reasonable prices to consumers.

²⁹ Stamatina, I., *Nanomateriale aplicații în biosenzori , surse de energie, medicină, biologie, Elemente de nanotehnologie*, 2008, retrieved at <http://3nanosae.org/files/documents/1057.pdf> [17.05.2014]

Conclusions

At international level, the traded goods flow volume increased exponentially, which determined the development of existing and new technologies in order to increase the economic activities effectiveness and the opportunities to obtain higher benefits in a short time. These human creations must be protected on the basis of intellectual property rights that have been developed and maintained for this reason.

Obviously, together with the economic development and progress of society, crimes affecting intellectual property rights also developed, the most important of them being trafficking of counterfeit goods. A diverse range of factors facilitate the expansion of this phenomenon, the most important being physical-geographical, technical, economic, socio-economic and political factors.

Counterfeit products are currently causing numerous and complex effects with direct implications on essential components of economic and social security. Unfair competition used by many producers of counterfeit goods gives rise to: economic effects - impacting the authentic goods producing industries; trade effects - in terms of global trade volume and value; effects on investments - which depend on to the degree of protection of intellectual property rights; effects on state authorities, highlighted by the resources that need to be strengthened for finding and implementing effective solutions to reduce counterfeiting.

In addition to these economic effects, social effects are primarily affecting the working population by the loss of many jobs or the impossibility to create others, and by limiting the employee benefits. In addition, effects on the environment and human health are occurring due to the use of poor quality, toxic, hazardous, sub-standard materials.

Given these implications, several initiatives were started at international level, major institutions collaborating at this level being the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), Interpol and the World Customs Organization (WCO) and World Health Organization (WHO).

The most important step taken by these organizations is the TRIPS Agreement, which provides minimum standards for intellectual property provisions that ensure harmonization of international law and solidifying the international regime for the protection of intellectual property rights. TRIPS appears as an extension of WIPO, which should closely cooperate with all the other world organizations involved.

Regionally, both the EU and the US have expressed their commitment to ensure effective regulations, establishing a flexible legislative framework which needs continuous adapting and to fully respect international treaties in this field.

Other initiatives have been developed by non-governmental organizations and other business associations around the world, highlighting the fact that counterfeiting dark picture needs to be given luminosity through cooperation, both externally and internally (at the national level). This collaboration should be achieved with the support of large multinational companies which should use an increasing range of strategies: self-awareness of the strategy to combat counterfeiting and the factors that impair the efficiency of this system, anti-counterfeiting technologies and ensuring better cooperation with state authorities to educate consumers.

Goods counterfeiting - one of the major challenges brought about by the globalization century - imposes the need to increase the efficiency of protection of intellectual property rights. This efficiency could be achieved through the following directions for action:

- o ongoing research in all areas with the purpose of ensuring permanent innovation, which will not allow counterfeiters to copy so quickly.

- research in the area should not be carried out only at the right-holder individual level (at company level), but in collaboration with professional organizations, various research institutions or universities;
- more effective enforcement of existing legislation in the field, including implementing specific regulations in other states, thus achieving a harmonized level of protection;
- establishment and effective implementation of a system of penalties to underline the fact that this phenomenon is not negligible because of its many implications;
- conducting awareness campaigns regarding the danger posed to consumers, especially in underdeveloped countries which face difficulties in ensuring the resources necessary for a healthy lifestyle.

Consumer goods counterfeiting is a complex and evolving phenomenon, with many economic, social and legal implications. Given the disturbances and negative effects of counterfeit goods on the economy and trade at all levels, national and international bodies are permanently taking measures to combat such activities.

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