

Romania

The economic impact of counterfeiting and new anti-counterfeiting strategies

Counterfeiting and the perception of counterfeiting

Counterfeiting is a genuine threat to commerce, economic development and consumer health and safety, and is becoming a major focus for organised criminals. One reason for this is that under the current system in Romania, the punishments for those found guilty of counterfeiting are considerably lighter than the punishments for those found guilty of more traditional avenues of organised crime. However, despite this the potential profits are similar to those that might be expected from trafficking drugs or people.

Counterfeiting is an international phenomenon and extremely difficult to suppress. Conversely, the protection and defence of intellectual and industrial property helps to ensure economic stability. In one recent opinion poll in Romania on the subject of counterfeiting, 48% of respondents believed that the main motivation for counterfeiters is high profits; 33% put it down to poverty; 11% cited lack of enforcement; while 7% blamed corruption among the relevant bodies.

Even more interesting is the perception of how counterfeits are disseminated. Specifically, 35% of respondents found from their own experience that counterfeits are sold in all kinds of store, while 33% said that they are sold only by street merchants. The counterfeiting of industrial goods is characterised by the coexistence of several types of counterfeiting, according to the quality of execution. The main types of counterfeiting are handcrafted counterfeiting, poor-quality counterfeiting and high-performance counterfeiting.

Handcrafted traditional counterfeiting is based on a specialist skill in manufacturing forgeries. This type of counterfeiting is usually found in the area of art and antiquities. Aside from his or her speciality, the counterfeiter often has other techniques that help him or her create a precise reproduction with an antique look. Sometimes, such counterfeiters can transform damaged works or regular art objects into perfectly reproduced

works, which appear authentic.

Poor-quality counterfeiting uses less valuable raw materials, materials and technologies. This form of counterfeiting is the most common and covers almost all groups of industrial goods. Counterfeiters use techniques that involve little skill but considerable financing and organisation.

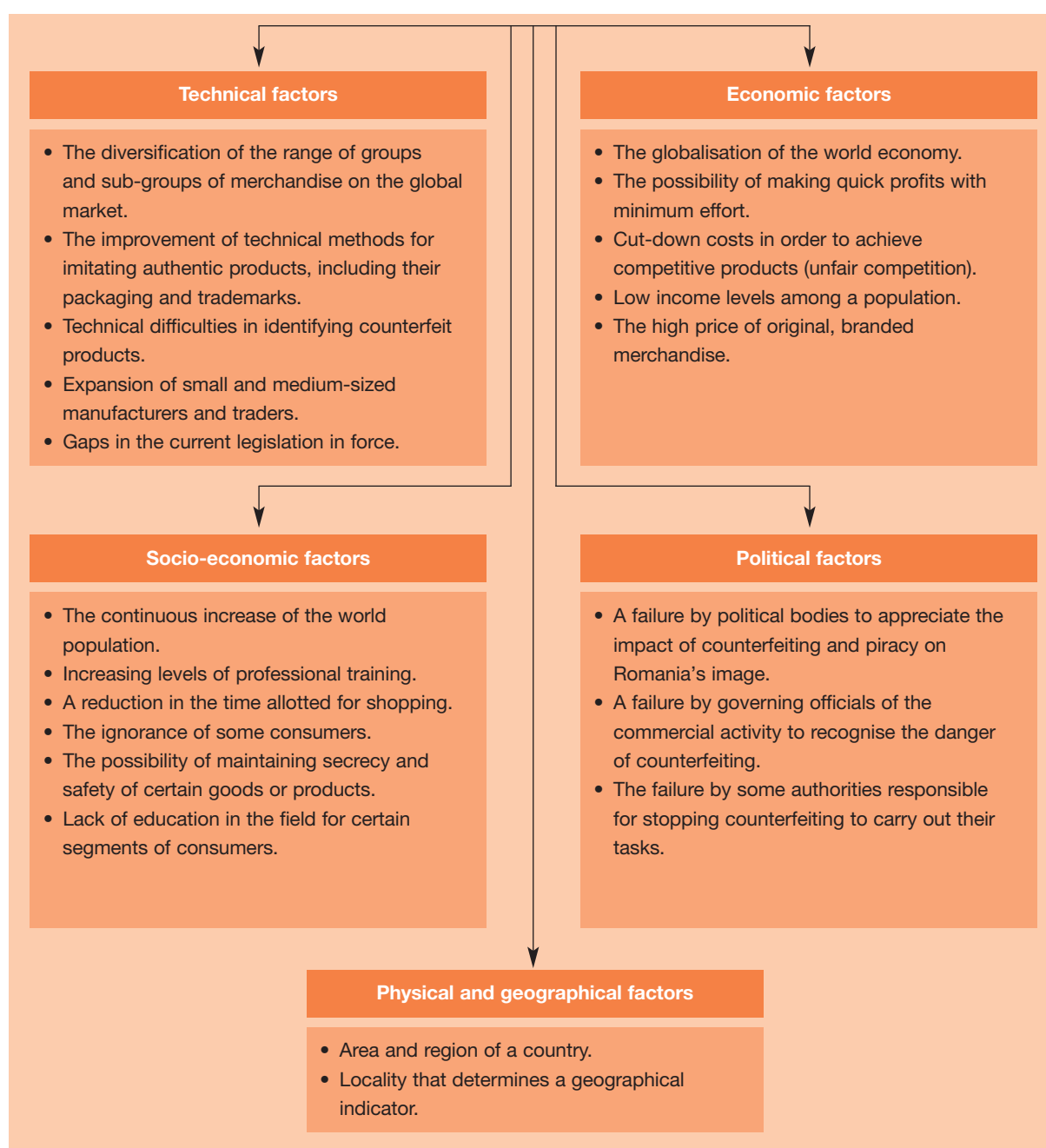
High-performance counterfeiting generally requires considerable skills in order to manufacture goods that closely resemble the original.

In the context of modern economic life, industrial counterfeiting is blooming as never before, due to many factors, including physical-chemical, technical, economic, socio-economic and political factors. These general factors interact with a large number of specific factors in each group:

- Physical and geographical factors relate to the area or region in which a country and its neighbouring countries are located. Within a country, the region and city where the trading company is based are also important, especially in the case of geographical indicators.
- Technical factors are the most important with regard to counterfeiting, because it is technical and scientific innovations in various different fields that have allowed for the manufacture of new, synthetic raw materials or substitutes that mimic natural products. Such products make it difficult for consumers or even specialists to tell the counterfeits apart from genuine products.
- Economic factors are also important because they relate to prices and revenues. Manufacturers, sellers and distributors generally wish to acquire the most profit by selling counterfeit products or using the packaging of well-known companies on non-compliant or dangerous goods.

The impact of counterfeiting

Losses due to counterfeiting not only affect the industrial environment and the manufacturers of the original



products, but also involve significant social costs.

Consumers are the ultimate victims of unfair competition and counterfeiting. Countries also lose vast sums of money in uncollected taxes, as well as incurring high costs as a result of trying to protect industrial property rights. In addition, as mentioned earlier, counterfeiting is closely linked to other criminal activities, such as drug trafficking, money laundering and terrorism.

In the business environment, counterfeiting can have the following different effects on different parties.

Material losses and additional costs for rights holders

Of all involved parties, rights holders are the most exposed to counterfeiting. Counterfeiting means that rights holders' investments in registering and promoting their products or services do not have the desired results, as the original products have to compete with counterfeits. The latter, being much cheaper but of doubtful quality, are sold to consumers, many of whom believe that they have purchased an original product. However, if they are dissatisfied with the quality of the counterfeit – which is likely,

given that many counterfeits are of poor quality – consumers can lose their trust in the rights holders' products and services, and choose another manufacturer in the future.

Thus, in order to protect their reputation and suppress the consequences of counterfeiting, holders of industrial property rights whose products have been counterfeited incur additional expenses, aside from protecting those industrial property rights. This is why major holders of IP rights set aside budgets especially for fighting piracy.

Costs for countries where criminal offences are committed

Major industrial property rights holders tend to avoid investing in the manufacture and promotion of their products in countries known to have high levels of counterfeiting. A direct consequence of this is a reduction in the amount of taxes and charges collected by such countries; indirect effects include job losses, and lower standards of living and levels of development.

There are no real benefits that might result from the manufacture of counterfeited goods, such as the creation of new jobs or an increase in taxes and charges to the countries where such counterfeiting takes place. It is commonly accepted that those involved in the manufacture of counterfeit goods have no legal documents and are badly paid, while no taxes or duties are paid on the counterfeit products when they are illegally exported to other countries.

Liabilities for countries where counterfeit products are sold

Countries where counterfeit products are sold experience similar problems: job losses, a reduction in the amount of taxes and charges collected, and an increase in the budgetary deficit. In addition, the networks through which counterfeit goods are sold often involve corruption or other offences characteristic of organised crime.

All these negative effects also result in an increase in expenses relating to maintaining the police, courts, prisons and customs authorities.

Losses incurred by consumers of counterfeit goods

Finally, end consumers of counterfeit products incur their own costs. In addition, they risk their health or even their lives, in the case of counterfeit products in the pharmaceutical, medical, aviation and other transport sectors.

In conclusion, counterfeiting has a direct impact on industrial property rights holders, especially on the

well-known ones, such rights being most often breached despite the large amounts of money spent to protect them.

Anti-counterfeiting strategies

As counterfeiting increases, rights holders have an important role to play in fighting it. While the phenomenon cannot be eradicated in itself, the industrial environment must put its own strategies in place in order to limit the damaging effects as much as possible.

Strategies cannot be efficient unless they are correlated with the market, whose main characteristic in this context is globalisation. Therefore, the best results are likely to result from long-term strategies, which associate all the factors involved at an international level.

As of January 1 2007, the date of Romania's accession to the European Union, the commercial area formerly known as the 'domestic market' has gradually lost its meaning. This market used to be limited by Romania's borders. Instead, the domestic Romanian market has been replaced by the EU market, which in turn is open and incorporated into the global market.

This is why rights holders seeking to protect their rights in Romania subscribe to international anti-counterfeiting strategies, including the following:

- due diligence, which involves assessing their own systems and analysing the factors that allow counterfeiting to take place;
- creating their own tailored anti-counterfeiting technologies; and
- public-private partnerships, such as educating consumers and building loyalty among the target public.

Due diligence strategies

By analysing their manufacturing systems through employee self-assessment and by identifying their own anti-counterfeiting measures, rights holders should be able to ensure that all reasonable measures have been taken to prevent their goods or services from being counterfeited.

At this stage, it is important for rights holders to analyse carefully their own security systems in order to avoid information leaks with regard to manufacturing processes, ingredients and materials.

Anti-counterfeiting technologies

Several technologies, such as holograms, smart cards, special safety inks and elements, may be useful to identify or authenticate products. These technologies

vary considerably, depending on the level of sophistication or price.

A negative aspect to using such devices is that their efficacy is time limited, due to the well-known resourcefulness of counterfeiters.

Such devices vary from mere prints of small value to complex optical, biotechnological, chemical or electronic technologies determined by the nature of the product to which they are applied. Combinations of such devices are used in order to have a guaranteed effect, and the devices can be either visible or hidden.

Public-private partnerships and educating consumers

Rights holders should take a proactive attitude towards protection and provide all the necessary information to police forces and customs authorities when they discover breaches of their rights.

In the current context, cooperation between rights holders and public authorities is one of the most effective anti-counterfeiting strategies. Interest in such partnerships is increasing, primarily because of the need

to exchange information in order to fulfil the obligations deriving from such agreements. Such cooperation can prove invaluable. For example, police officers need information on a product's characteristics and whether these have been counterfeited in order to protect such products. Meanwhile, rights holders are always interested to learn about the operating methods employed by criminal groups. In the context of globalisation and increasing levels of sophistication in counterfeiters' operating methods, it is practically impossible for a rights holder to protect its own goods or services alone and unaided.

In the author's opinion, the most efficient anti-counterfeiting strategy is for rights holders to educate consumers about the dangers of counterfeiting.

The purpose of such a strategy, which is also achievable through a public-private partnership, is to make consumers aware of the risks they are exposing themselves to when purchasing counterfeit goods, and of the disastrous effects that counterfeits can have on a country's economy, as well as on their personal health and integrity.



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Adrian Cavescu has over 10 years' experience in all aspects of IP and commercial and corporate law. Before joining Rominvent, he worked for the police IP department, specialising in anti-counterfeiting investigations. Mr Cavescu's practice focuses on trademarks and industrial designs, and deals with a broad range of IP matters – particularly for holders of well-known marks – such as litigation and enforcement, police and customs seizures, domain name disputes and anti-counterfeiting.