

Brand management in cyberspace

The Internet has opened up a wealth of opportunities for counterfeiters. A comprehensive brand protection programme is necessary to combat the online sale of fakes before they can cause greater harm to your brand

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Brand owners are increasingly embracing the Internet to strengthen global brand recognition and increase sales. Online retail sales have grown at an annual rate of 20% or more. However, the Internet provides equal opportunities for counterfeiters, which can exhibit knock-off goods alongside originals, often at a much lower price. The Internet has not only provided counterfeiters with greater access to customers, but also made it much easier and cheaper for them to source counterfeit goods and bring them to Western consumers.

While it may seem a daunting task to curtail counterfeiting in cyberspace, online brand protection cannot be ignored. This article provides an overview of common online brand protection problems and strategies to combat those problems.

The problem of online counterfeiting

The Internet is a vital tool in any brand strategy. It is an effective way to strengthen your brand and give customers throughout the world access to your products and designs. Unfortunately, however, this same power helps infringers and counterfeiters to copy others' products, brands and designs. Until recently, counterfeiting enterprises resembled the traditional organised-crime

business model, requiring specialised international relationships and substantial resources to arrange for the manufacture, importation, storage, distribution and sale of counterfeit goods. The emergence of the Internet has largely eroded this model. Today, counterfeiting has become increasingly decentralised. As access to global trade becomes easier and cheaper, anyone can set up a counterfeiting business. A new class of counterfeiter has emerged: non-professional, independent individuals with few, if any, of the prerequisites once necessary to be a counterfeiter, such as capital, connections, in-depth knowledge of manufacture and trade. It was recently estimated that 1.3 million sellers around the world use eBay to sell goods either as their full-time job or as a source of some of their income. Any one of these sellers could sell counterfeit goods, sometimes just as easily as selling genuine products. Tiffany, which sued eBay in the United States in 2004, claimed that in a random sample of eBay sales for "Tiffany silver jewellery", 73% of these goods proved to be counterfeit. This will come as no surprise to brand holders that monitor the Internet for counterfeit goods. Indeed, eBay is the only tip of the iceberg: other auction sites such as iOffer.com, dhgate.com and taobao.com cater more to sales of counterfeit goods. A record \$119 billion in knockoff goods was sold online in 2007, according to MarkMonitor, one of several proprietary software makers that patrol the web looking for counterfeiting violations. Regardless of the actual number, which is difficult to determine, the accessibility and reach of the Internet have radically changed both legal and illegal commerce.

On the demand side, the Internet is a powerful platform for counterfeiters to reach a large number of potential consumers

worldwide in a highly cost-effective manner. On the supply side, the Internet provides easy access for counterfeiters to engage a large pool of potential manufacturers and suppliers of counterfeit products worldwide in a largely risk-free environment. The Internet is attractive to counterfeiters for a number of reasons.

Anonymity

The Internet limits the risk of detection. Buyers and sellers on auction sites and business-to-business selling sites commonly provide “user names” rather than their real names. In addition, counterfeiters often use false names and addresses when setting up user accounts with particular auction sites. This makes it hard for brand owners to sufficiently identify counterfeiters. Also, there are now privacy services which legally conceal the true identity of website owners. Added to this are the ubiquity of cellphones and the increasingly common practice for counterfeiters that list contact telephone numbers on their websites to use roll-over services — so that, for example, a consumer who believes he or she is calling a domestic number is actually reaching a number in a foreign country.

Flexibility

Counterfeiters can quickly establish online merchant sites, which can also be taken down easily or moved to internet service providers (ISPs) in jurisdictions where anti-counterfeiting regimes are weak.

Market size

Lowering the traditional barriers to entry has given rise to a huge number of smaller sellers that largely act independently of one another. The possibility of marketing a small number of counterfeited products across multiple platforms further increases the size of the counterfeit market. The number of auction sites and business-to-business sites and volume of different sellers and listings on each site are daunting, requiring a greater investment for brand owners to identify and move against counterfeiters.

Global reach

The Internet provides sellers with a means to reach consumers on a global basis at low cost, around the clock. Counterfeiters can expand sales into secondary markets, such as auction sites, while simultaneously offering traditional web stores which offer products from a single seller at set prices that appear as a sponsored link in search sites and “spam” email.

Deception

Utilising readily available software and online images, counterfeiters can easily create sophisticated, professional-looking websites that are highly effective in deceiving buyers. Counterfeiters often use stock photos of genuine products, taken from brand holders’ websites, to market their goods online and then send counterfeits to the consumer. Misleading or contrived ratings of consumer experiences, use of validation services such as VeriSign and the fact that counterfeiters can easily arrange payment by credit card or PayPal can further complicate matters by creating a false sense of security among purchasers. Finally, selling a mix of genuine and fake goods can further facilitate deception.

Access to manufacturers

Counterfeiters no longer need to “speak the language”, be able to provide instructions on making the goods or put up funds to get counterfeit goods made. Any number of wholesalers and middlemen offer to do this and even accept credit cards or PayPal. A non-Chinese speaker with no on-the-ground connections in China can easily buy fake goods at wholesale from China, import them by mail or courier and resell them as genuine goods on auction sites. Manufacturers of counterfeit goods are ubiquitous on business-to-business sites such as taobao.com, and several China-based websites such as www.dhgate.com are written in English and sell and ship branded products at wholesale to anyone with a credit card.

Speed

The speed at which a company’s new products or designs are knocked off is astounding, now that detailed pictures and other information are readily available online. For example, fashion houses, which traditionally show their new seasonal designs several months before the start of the season, commonly find knockoffs on sale before the real item is available in stores. Recent news reports show that counterfeit versions of an “Phone Nano” are on sale even before this model has been introduced by Apple.

Eliminating traditional risk points

The possibility to buy counterfeit goods in smaller quantities and ship them through the mail greatly diminishes the risk of interception by Customs. This also eliminates the need for large inventories. Internet vendors need never come into contact with counterfeit products; instead,

they can use “drop shipping”, soliciting the order, accepting payment and then filling the order through an overseas supplier, which mails the product directly to the customer.

Strategies for dealing with online counterfeits

Given the difficulties the Internet has introduced to the fight against counterfeiting, it is tempting for brand holders to bury their heads in the sand and ignore the problem, hoping that it will not have a great impact on their bottom line. But this can have more serious consequences down the road. While counterfeiters have learned how to use the Internet to reduce the risk of identification, the transparency of many virtual markets provides opportunities for brand owners to identify and take action against counterfeits. Here are some tips on how to develop an effective strategy for fighting the sale of online fakes.

Monitor the Internet

A good starting point in any anti-counterfeiting programme is to monitor the Internet for fakes of your brands. It is important to understand the scope and depth of the issue, as well as the hot spots particular to your brand. Different industries and even different brands in the same industry will experience different issues, such as the types of site where bogus goods are sold or how those goods are transported. Understanding your company's problems will assist in budgeting and planning a proactive and/or offensive strategy.

Adopt a multi-faceted approach

Not every counterfeit sale online merits a lawsuit. It is a good idea for brand owners to employ a variety of different tactics, depending on the problem.

Take advantage of website programmes

While many brand owners perceive the US *Tiffany* judgment as a setback, one of the reasons why the court refused to find liability was that Tiffany had failed to advantage of eBay's Verified Rights Owner (“VeRO”) programme, which removes any auction identified as being fake by an authorised brand representative. eBay will also provide the seller's name, address and phone number (even though this information is often falsified) to the brand owner upon request. eBay also employs hundreds of employees who monitor the Internet for obvious sales of counterfeit products. Recently, the company provided a tip to German police that triggered the

seizure of 20 tons of knockoff designer clothing. While eBay is far from perfect and other auction sites are often not as responsive, almost all of them – even the China-based auction sites – will take down fake auctions if requested to do so. Brand owners with a large number of counterfeit sales take down literally hundreds of auctions each day. These programmes are relatively inexpensive and do have a return. A brand owner that undertakes a diligent monitoring programme (and there are many ways to do this) will see a reduction in sightings within a few months.

Designate a point person or team

It is important that there be a point person to whom instances of fakes can be sent, and who has contact with auction sites and sellers. This may be done by in-house legal department or outside counsel working in conjunction with investigators. This point person becomes an expert on identifying counterfeits and various patterns and trends in counterfeit sales.

Aggregate information

It is important to collect and analyse information about counterfeiters. Smaller sellers are often eager to reveal who sold to them, especially if it limits their liability. Companies should develop a partnership approach between management, sales teams, investigators and outside attorneys to confront the online world of counterfeiting. Often distributors and sales teams are in the best position to learn about counterfeits, since authorised distributors and retailers of genuine goods will complain to them. Once this information is consolidated, it is easier to spot trends and know where the biggest problems are.

Identify larger sellers

Through your monitoring, identify repeat or larger sellers of counterfeit goods. Even among this class of sellers, it is important to distinguish those who will respond to a cease and desist letter from those who have no regard for the law. Many markers can help to distinguish among the various types of seller – there may be the hope of taking a large number of fake goods out the pipeline or recovering assets and damages – but expert legal assistance is key. Once these large sellers are identified, depending upon your budget, you may use more in-depth investigative techniques to identify website owners, source and the best jurisdiction to take action. You will also want to weigh your options among the panoply of available criminal and civil actions.

Contributory liability

ISPs and merchant account/payment providers, particularly those located in the United States and European Union, will often stop providing services to a website selling counterfeit goods, especially if they are concerned about their own contributory liability. In many cases, selling counterfeit goods violates the ISPs' and merchant account/ payment providers' terms of use, giving them the ability to terminate the relationship and provide identifying information to the brand owner.

Anti-piracy devices

Whenever possible, control your labels. Using anti-piracy devices such as bar codes and labels with holograms is a good idea, but not a cure-all.

Educate the public

Educate would-be sellers or distributors and consumers to buy from legitimate sources. For example, eBay provides an "About Me" page for brand owners to educate consumers on how to identify genuine articles and whom to contact if they have questions about a product's authenticity.

Several organisations and companies have also banded together to educate the public that counterfeiting is not a victimless crime. It robs brand owners of their valuable goodwill and national economies of jobs, customs duties and tax revenue, while consumers also suffer – not to mention the

tragedies that occur because counterfeiters use child labour and are purportedly tied to organised crime and terrorism.

Lobby

Counterfeiters are fast adapting to new capabilities provided by the Internet. Unfortunately, their practices are not static, but adapt to fit the rapidly changing e-commerce realities. Brand holders should similarly look ahead and identify issues that are best addressed by legislation or treaty. Organisations such as the International Trademark Association (INTA) note that there is a need for nations to work together to exchange information and ideas that will eliminate the threats posed by counterfeiting.

Conclusion

The Internet dramatically increases the ease by which counterfeiters can reach across national borders to sell counterfeit goods to unsuspecting customers. As INTA has noted, "Cyberspace has, in large part, taken vendors of counterfeit goods off the streets and away from the flea markets and provides them with easy, relatively risk-free access to supply and an instantaneous worldwide demand." Brand holders cannot afford to ignore the way the Internet is shifting the counterfeiting paradigm, but should develop strategies designed to address these new dangers the Internet imposes and to curtail the erosion of their brands throughout cyberspace. **iam**



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