

The Concept of Counterfeit under the Law of Trademark

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ABSTRACT: *Counterfeit trade mark products includes all goods, including packaging, carrying, without authorisation, a trade mark which is similar to, or cannot be differentiated from, a trade mark validly licensed in respect of such goods in its basic aspects and which infringes the rights of the proprietor of the trade mark in question in compliance with the legislation of the country of import. Counterfeiting will severely undermine the overall economic operation, the rights and rightful interests of inventors and, last but not least, the welfare of customers in particular. Inventions are a decisive aspect of scientific development. The most valuable piece of security in the field of industrial property is the product of technological development. The crime of counterfeiting is even greater, as the invention is described as a work that brings a new spirit, a product of imagination, an idea that results in something new or a solution to a particular technical problem.*

KEYWORDS: *Counterfeit, India; Trademark, Crime of counterfeiting.*

INTRODUCTION

A strong justification for raising the trade in counterfeit drugs, especially in the last era marked by the global recession, is that they can be forged at the industrial level so that criminal organisations can use the sums of money from the actual "industry" as their key means of financing transnational criminal activities. While counterfeit medications are most commonly associated with life and health hazards, experience indicates that there are other similarly unsafe goods that threaten the safety of the public. We take the instance of replacement of vehicle components[1].

Europeans use millions of imitation perfumes without knowing what risks they are taking. Organized crime flooding the European economy with the path of synthetic perfumes China - Turkey - Romania, receiving industry fragrances worth tens of millions of euros, risking the welfare of people instead. While customs officers or border police hold shipments of bogus perfumes, the lack of responsiveness to representatives of companies manufacturing luxury perfumes includes the legitimate selling of imitation perfumes on the European market[1].

Counterfeit goods can be detected at border crossings, which, say specialists, are relatively easy. The owners of copyright over the trademark has the chance to apply for boundary action. Consequently, at the frontier, illegal merchandise will be found and later discarded[2].

According to Security 129/1992 of the Law on Crafts, counterfeiting is the unlawful execution of any act provided for after the date of design registration. The sentence is serious if the details are likely to create a threat to public safety or welfare. Furthermore, the statute mandates that, for the full period of the design registration, the holder has the sole right to use and to prohibit the use of the design by a third party who does not have his permission. Specifically, this manual includes: the breeding, manufacture, placing on the market, offering for sale, placing on the market, producing, distributing or utilizing, or storing of, the commodity through which the design is integrated or added for certain purposes[2].

Nowadays, the first place your mind goes when you hear the word piracy may not be the bandits of the sea, stealing and sinking ships as they see fit. Instead, you may think of a very different type of piracy, one that lacks an eye patch and peg legs, but involves an average internet connected citizen and a desire to listen to music[3].

The use of the internet to download/pirate a myriad of different things protected by copyright, from images, songs and movies, to programs, games and operating systems, is a major problem in today's day and age. There is now a very serious threat to the protection of these items, which creates a major divide between producers and consumers. It was no longer possible to know if someone had copied a file or placed it on a CD[4].

The concept of having a world wide web where digitized versions of protected items could be shared from peer to peer was not in sight when copyright was created. However, now we have entered an internet-dominated

world, copyrighted material is no longer as easy to protect. Sharing was made easy by the digital age, and that only exploded when the idea of peer to peer sharing was developed. Without going into extreme detail, the ability to protect digital data became almost zero with the development of a system that enabled computers to interact with each other and send large data chunks over thousands of miles[5].

Firstly, creativity is harmed by counterfeiting and piracy, actively impacting job generation and economic development. Via a number of legal instruments, such as patents, copyrights, designs, patterns and trademarks, companies shield their ideas. They will be less likely to produce new concepts and goods without the defence of their intellectual property rights. Risks are especially high for companies where the expense of research and development is high relative to the cost of production of the finished product (e.g. pharmaceuticals). Industry spending in research and developments could well slowdown in the face of declining turnover due to counterfeiting and piracy. This will restrict productivity, growth and competition, causing companies to simply shut down or limit production at least[5].

DISCUSSION

The amount of counterfeiting in a nation is considered to be directly proportional to corruption indicators. Thus, in countries with no regard for legal provisions, the dark statistic of criminality, which reflects the disparity between true and obvious crime, is more pronounced. An illegal imitation of a branded good is a counterfeit good. The official term can be found in the compliance section of the Intellectual Property Rights Agreement, known as the TRIPS Agreement, negotiated by the World Trade Organisation[6].

'Counterfeit trademark goods shall be understood to mean goods, including packaging, bearing, without authorisation, a trademark which is identical to a trademark validly registered in respect of such goods or which, in its essential aspects, cannot be distinguished from such a trademark, thereby infringing the rights of the proprietor of the trademark in question under the law of the country of importation"[6].

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Secondly, a rising challenge to consumer health and protection is counterfeiting and piracy. While some shoppers are shopping for what they consider are bargains, purchasing counterfeit and pirated goods knowingly, others may buy counterfeit and pirated products thinking they have purchased legitimate objects. An increasing range of goods are often sub-standard in all situations and bear serious risks ranging from moderate to life-threatening[7].

Thirdly, the profit margins for counterfeiting and piracy are relatively high and the fines are poor relative to other forms of drug trade. As a consequence, the trade in fake products is viewed as high benefit and low risk. They have, as a result, been an enticing investment for organized crime[7].

Lastly, counterfeiting and piracy influence the Member States' public budgets. Millions of tax collections are wasted each year as a consequence of pirated and counterfeited goods imported through customs and sold on the grey markets. Meanwhile, the expenses associated with combating the effects of counterfeiting are mostly incurred by the governments of Member States by further spending on consumer health and safety and law enforcement[7].

It is necessary for corporations to pay considerable attention to respecting their intellectual property rights. For any corporation, the acquisition and control of these rights are valuable properties. This rights risk losing both their importance and their usefulness without adequate attempts to ensure the respect of these rights by third

parties and without continuous monitoring of non-authorized uses. Legislators have set out a variety of forms for holders of intellectual property to fight against abuses of their rights[7].

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Automotive parts (brake pads, hydraulic hoses, engine and chassis parts, suspension and steering elements, airbags, spark plugs, filters), electrical components (circuit breakers, fuses, buttons, batteries), food and drinks (tea, rice, alcohol, raw spirits, baby formula), cleaners, toiletries, kitchen goods and cigarette products are industries where health and safety consequences tend to occur. In 2008, a 26 percent increase in fake foods, a 38 percent increase in counterfeit electrical equipment and a 118 percent increase in fake drugs is represented in customs seizures[9].

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CONCLUSION & IMPLICATION

First and foremost, anti-counterfeiting, anti-piracy and anti-smuggling efforts must be made a foreign policy priority by the Government of India. Tangible initiatives to improve IP rules, improve compliance, and impose enhanced fines will help convince legal business owners and customers that the government is concerned about defending IP rights and, in exchange, will promote stronger support for government policies. Furthermore, reinforcing India's IPR compliance system would give a warning to crime networks that they will no longer allow this activity.

In order to raise awareness of the major impacts of counterfeiting, piracy and smuggling, elected authorities, foreign governmental organisations, industry and customers need to collaborate more collaboratively to develop innovative and efficient approaches to combat this severe economic and social challenge. The advantages to the economy of India of a more mature IP regime are undeniable. There is a close connection, as summarized in the entire article, between the efficacy of IP security and the economic success of a region. IP systems have a major impact on the growth, FDI, job potential, creativity and overall competitiveness of each economy, as well as facilitating productivity and efficiency.

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