

Industrial Compass for General Counsel

Anti-counterfeiting - Protecting your brand and supply chain

Why Anti-counterfeiting is an important issue industrial companies are facing today?



World markets and global supply distribution chains have created opportunities for industrials to grow and prosper. With these opportunities continues to come challenges for companies around the rise of counterfeit goods and the theft of companies' intellectual property. Industry 4.0 is accelerating a rise in activity: false labelling of products, fake or inferior materials and components used to make products, and the misappropriated use of another's trademark are just a few examples of how counterfeit goods and the theft of intellectual property are hurting customers.

Business pressures: why companies should consider reviewing their strategy?



Proactive control over protecting your brand is vital. Certain jurisdictions and harbors which are well known either for export, for transshipment and/or for import are high-risk for counterfeit goods. A global-wide anti-counterfeiting program is essential.



Effective strategies are crucial in these globalized and challenging times, it is necessary to **manage and protect** your IP rights. Recent exceptional circumstances have created opportunities for counterfeit operations to thrive.



Maintaining trust and minimizing **reputation damage** is key. At its worst letting counterfeit goods into the supply chain could affect national security or civilian safety. Commonplace are issues of trust, reputation and share price damage.

Potential impact and possible implications for Industrial companies



Detriment to intellectual property, the value of IP rights such as patents and trademarks will decrease. If third parties can use IP rights of your company unpunished, this use will detract from the functions of the specific IP right. Your trademark will become less suitable for distinguishing your goods/services or you will lose income because that your monopoly to produce and sell your patented goods is disregarded by a third party.



Reputational losses causing your market value to decline; loss of goodwill and confidence by customers and suppliers. At the heart of your business is your brand. Brand protection is therefore vital to protect. Employees of companies targeted by counterfeiters are also affected by the potential loss of jobs due to reduced sales of legitimate goods and the unfair competition created by the sale of the counterfeit goods



Product Liability your company will have spent time and capital developing products that are safe and ensuring compliance with all necessary regulatory requirements. Counterfeiters products compromise safety and integrity to cut corners that could result in your legal team having to handle product liability risk if customers suffer an accident or injury.



Time and resources focused on investigating and prosecuting. Multiple countries pose challenges in combating counterfeiting operations due to local protectionism and corruption; lack of transparency and inconsistent application of relevant counterfeiting laws and guidelines by local enforcement authorities are other big issues clients should be aware of.

General Counsel awareness



Board level awareness of emerging counterfeiting of their brand and direct involvement in determining the response is critical. Threat intelligence can help organizations become more proactive, focused and preventative to take control of counterfeiting risk in a positive way. Asking the questions below can help leaders quickly identify gaps in the current anti-counterfeiting strategy and encourage an organization-wide approach to secure the future of their business

- How do we move from “**reacting**” to “**anticipating**” counterfeit issues?
- How do we put the counterfeit threats we face into **business context**?
- How do we **demonstrate the return on investment** of our anti-counterfeiting measures?
- What are the **risks to customers** if our products are counterfeited e.g. product liability claims? loss of trust?
- When was the counterfeit threat **last examined** by the Board?
- Is counterfeiting part of the Board’s **strategy discussions**?
- Is our **IP portfolio up to date**: do we have to take action to keep our protection in the EU and/or the UK post-Brexit?



Questions for General Counsel to use in the Boardroom

- 1 Who in our organization is **responsible** for counterfeiting issues?
- 2 Do we know which products are most at **risk** and pose the largest risk to our **reputation**?
- 3 Do we fully understand our **current vulnerabilities**?
- 4 **Do we already have a problem?** Is there an unexplained increase in returns or customer complaints? Does our brand have a market share where you are not even doing business?
- 5 Do any of our **supply chain partners** put us at risk?
- 6 Are we **educating our customers** on how to identify and avoid counterfeit goods?
- 7 Are we **cooperating** and partnering with police, enforcement and tax agencies?
- 8 Are we taking **practical measures** to improve anti-counterfeiting procedures with appropriate technology?
- 9 Have we **registered** our intellectual property, such as our trademarks, and have we recorded this with the appropriate customs agencies in order to help them identify counterfeit goods?
10. Are our **competitors** ahead of us? If so, does this give them an advantage?

What actions should General Counsel consider?



Consider **developing a global strategy which deals with the preventative measures as well as how to react to the threats in high risk jurisdictions**. Work with your Board and external advisors to develop a bespoke strategy, making clear the risks your company faces and the impact it could have on wider strategic plans and day-to-day operations. The anti-counterfeiting strategy provides an in depth review of an organization’s ability to protect its brand and its preparedness against counterfeit-crime looking at:

- Education
- Practical measures
- Partnership
- Enforcement

Contact us



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