Counterfeiting and Illicit Trade: How Fake Goods Harm Consumers and Businesses

Center Forward Basics

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Overview

Counterfeiting is one of the fastest-growing forms of **illicit trade**, threatening consumers, governments, and businesses. By illegally reproducing trademarks and selling fake goods, counterfeiters exploit the reputation of legitimate brands for profit while undermining economic stability, public safety, and consumer trust. Unlike generic "dupes," counterfeits deliberately pass themselves off as authentic, infiltrating industries from fashion and electronics to pharmaceuticals and automobile parts. The consequences extend far beyond lost revenue. Counterfeits deprive governments of tax income, damage the reputations of trusted companies, and endanger consumer health with unsafe or substandard goods. As opportunities expand for counterfeit trade, governments and international organizations face mounting challenges to combat this crime. Understanding the scope, economic consequences, and enforcement strategies surrounding counterfeiting is essential to protecting innovation, trade, and public safety.

What are Counterfeits?

Counterfeiting, also known as **intellectual property (IP)** theft, entails the theft of a **trademark**. Counterfeit goods use a trademark without the owner's permission. Bad actors producing counterfeits rely on the reputation of the trademark's owner to sell their fake products for a significant profit. This crime is a federal offense punishable by federal prison, hefty fines, asset forfeiture, and restitution, with potential sentences up to 30 years and up to $30 million in fines. In addition to federal penalties, state laws may also apply, allowing for concurrent state charges and penalties. Most U.S. states can prosecute counterfeiting as a felony. Counterfeiting differs from other IP violations, such as piracy and patent infringement, because counterfeiters attempt to use another party's IP to pass off their goods as the legitimate version. "Dupes" or other generic versions of products are not considered counterfeits because they avoid using the intellectual property of the original product.

Counterfeiting affects almost every industry producing consumer goods, including apparel, accessories, music, software, medications, cigarettes, automobile and airplane parts, toys, electronics, and more. During the COVID-19 pandemic, the market experienced an increase in counterfeit products like PPE, test kits, and medicine. Bad actors also took advantage of the rise in online shopping to sell counterfeits.

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Center Forward brings together members of Congress, not-for profits, academic experts, trade associations, corporations and unions to find common ground. Our mission: to give centrist allies the information they need to craft common sense solutions, and provide those allies the support they need to turn those ideas into results.

In order to meet our challenges we need to put aside the partisan bickering that has gridlocked Washington and come together to find common sense solutions.

For more information, please visit www.center-forward.org

Key Definitions:

- **Illicit trade:** the illegal production, movement, and sale of goods and services. Operations, often run by criminal networks, exploit global supply chains and trade infrastructure, undermining public safety, weakening institutions, eroding the rule of law, and reducing tax revenues.
- **Counterfeit:** the unauthorized representation of a registered trademark carried on goods identical or similar to goods for which the trademark is registered,

China produces the majority of counterfeit goods in the global economy. About 62% of counterfeit items seized by authorities originate from China or are routed through Hong Kong from China. In fiscal year 2024, U.S. Customs and Border Protection (CBP) seized 27,927,068 counterfeit or pirated products from China and Hong Kong, with a retail value of $5.02 billion. But more slip through the cracks. The government's inability to seize all counterfeits flowing into the U.S. suggests the American trade deficit with China is larger than previously thought.

Economic Consequences

Counterfeits are often cheaper than their legitimate counterpart, which makes them appealing to consumers. Hidden in the low price is the lost government revenue, the negative effect on legitimate business, and the dangers to consumers from this form of illicit trade.

Governments lose out on revenue from taxes when sellers trade counterfeits in illicit markets, bypassing regulations and tax collection systems. Public services go underfunded, leading governments to shift more of the tax burden to companies and individuals.

In addition to an increased tax burden, private companies suffer from counterfeits because of reputational damage, mistrust of legitimate products, and loss of revenue. When consumers experience negative effects from counterfeits, they often blame the legitimate product, not knowing they had purchased a fake version. A loss of trust affects a business's future sales, since customers assume they can no longer trust their products. Losing sales revenue to the illicit counterfeit market leaves less revenue to pay employees, leading to fewer employment opportunities and layoffs.

Counterfeits directly threaten consumers because of their construction – these goods are often made with cheap, substandard, and dangerous components. Consumers' health and safety are at risk when interacting with these goods. Risk is particularly high with pharmaceuticals and medical devices, hygiene and cosmetic products, food and beverage, and automotive parts. Counterfeit medications may have a lower quantity of an active ingredient, no active ingredient at all, or a completely different ingredient or toxic substances, like rat poison or fentanyl. Similarly, counterfeit food, hygiene, and cosmetic products can misrepresent their ingredients, disguising their real ingredients and potentially leading to adverse health effects. Automobile parts produced as counterfeits create life-threatening situations when buyers install them in their vehicles, expecting a functioning component.

to deceive the purchaser into believing that he/she is buying the original goods.

- **Intellectual property (IP)**: different types of intangible expressions (such as artistic and literary work, discoveries and inventions, words, symbols, and designs) for which specific monopoly rights are recognized under specific laws.

- **Trademark**: words, names, symbols, or devices that distinguish one person's goods from those manufactured or sold by others.

Key Statistics:

- The OECD estimates the global trade in counterfeits to be $467 billion
- In 2021, counterfeit and pirated goods made up 2.3% of global trade
- Counterfeiting is responsible for 2.5 million jobs lost globally
- 96% of counterfeit pharmaceuticals conflict with U.S. laws
- In fiscal year 2024, CBP seized IP-infringing goods worth $5.4 billion (MSRP)

The illicit trade of counterfeits affects all participants in legitimate business, often detrimental to their health—financial, reputational, physical, or otherwise.

Efforts to Combat Counterfeits

The United States takes a variety of domestic approaches to combat the trade of counterfeits.

Congress has passed legislation to combat counterfeiting and protect both consumers and brand owners, with the Lanham Act serving as the cornerstone of federal trademark protection. Enacted in 1946, the Lanham Act defines trademarks and outlines the criteria for protection: a mark must be distinctive, nonfunctional, and used in commerce. It provides civil remedies for trademark infringement and counterfeiting, including injunctions, statutory or treble damages, and seizure of counterfeit goods. However, its jurisdiction is limited to violations occurring within the United States. To strengthen enforcement, Congress passed the Trademark Counterfeiting Act of 1984, criminalizing certain violations of the Lanham Act. This statute imposes severe penalties, including fines up to $5 million and imprisonment up to 20 years, for trafficking in counterfeit goods, especially those posing risks to health, safety, or national security. Enforcement of these laws is supported by agencies like U.S. Customs and Border Protection (CBP), which has authority to detain and seize counterfeit goods at U.S. ports of entry. Together, these legislative tools form a framework for protecting intellectual property, deterring counterfeit trade, and ensuring consumer safety. Trademark owners can invoke these laws by registering their marks, monitoring for infringement, and pursuing legal remedies through civil or criminal channels.

To address international incidents of IP violation, the U.S. makes trade policy in line with the World Trade Organization (WTO) 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). TRIPS established minimum standards for member states to provide IP protection. Free trade agreements, particularly the United States-Mexico-Canada Agreement (USMCA), build on TRIPS protections, provide criminal penalties for trade secret theft, IP rights enforcement in the digital environment, and enhanced due process and transparency for geographical indications. Lastly, U.S. trade tools include tariffs to protect domestic companies against IP infringement. Read Center Forward's Basic on Tariff Authority to learn more.

Intergovernmental organizations, like the OECD, warn that geopolitical factors make enforcing anti-counterfeit measures challenging, despite efforts by the U.S. and other countries. Law enforcement generally does not prioritize seizing counterfeits. A lack of resources or political will often exacerbates this sentiment. This is especially true in a post-COVID world, when many governments have focused their limited resources on rebuilding their economies. To combat this, the OECD works to strengthen coordination between enforcement agencies within and across borders. Companies and IP holders offer insights on distinguishing their legitimate products from counterfeits, assisting law enforcement with identification. The European Union established the EU Intellectual Property Enforcement Portal (IPEP) to connect IP holders with enforcement agencies, including customs officials and police, to combat the flow of counterfeit goods. Senator Chuck Grassley (R-IA) and Senator Maggie Hassan (D-NH) introduced legislation to create a similar system in the U.S., whereby CBP can share suspected counterfeits' packing and shipping information with IP rights holders, e-commerce platforms, and transportation carriers. Representative Blake Moore (R-UT) and Representative Brad Schenieder introduced corresponding legislation in the House.

Counterfeits pose real danger to consumers, as well as lost revenue for governments and economic and reputational harm for companies. Public-private partnerships are essential to align goals, strategies, and information when criminals are often one step ahead.

Links to Other Resources

- Congressional Research Service – Intellectual Property Rights (IPR) and U.S. Trade Policy
- Congressional Research Service – An Introduction to Trademark Law in the United States

- Congressional Research Service – The U.S. Secret Service: History and Missions
- Forbes – The Global Impact of Counterfeiting And Solutions to Stop It
- Information Technology & Innovation Foundation – How Chinese Online Marketplaces Fuel Counterfeits
- International AntiCounterfeiting Coalition – About Counterfeiting
- Organisation for Economic Co-operation and Development – Mapping Global Trends in Fakes
- Senator Chuck Grassley – Grassley, Hassan Lead Bipartisan Push to Curb Counterfeit Imports
- U.S. Chamber of Commerce – How the Private and Public Sectors Work Together to Combat Counterfeiting
- U.S. Customs and Border Protection – Intellectual Property Rights (IPR)