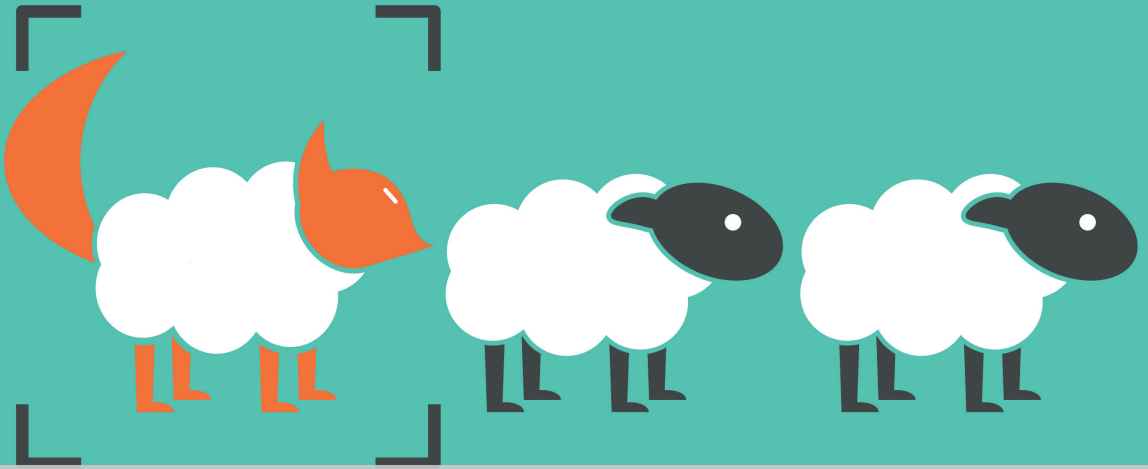


Anti-counterfeiting and Online Brand Enforcement 2021



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The life of a brand-protection professional during the pandemic

Author
Maysa Razavi

Brand protection during the pandemic

Counterfeiting continues to spread globally like a plague. In recent years, with the expansion of the Internet, brand-protection teams have had to battle with counterfeiters online, usually with limited resources to tackle these illicit traders. Fake goods are sold online directly to consumers, one item at a time, often by formidable and well-hidden criminal networks.

In 2017, Global Financial Integrity found that transnational crime turned over between \$1.6 trillion and \$2.2 trillion annually, with counterfeiting valued as the most lucrative crime (\$923 billion to \$1.13 trillion) followed by drug trafficking (\$426 billion to \$652 billion). Despite this, counterfeiting is a low priority for enforcement officials, making it a low-risk, high-reward crime. Although fake goods are often of poor quality and potentially dangerous, consumer demand for these goods is high. Under these circumstances – high demand and weak enforcement – anti-counterfeiting appears to be an insurmountable challenge for brand-protection teams. Compounding matters further, in 2020 the covid-19 pandemic spread to every corner of the globe, upending life as we know it and amplifying the counterfeiting problem.

E-commerce expanded rapidly as consumers increased their online spending under lockdown conditions, and counterfeiters

were quick to begin producing much-needed medical equipment and supplies. Brand-protection teams, however, have been stepping up to the mounting challenge and developing some creative solutions to deal with these issues. Awareness-raising campaigns to reach both consumers and policymakers, customs training, consumer-protection mechanisms and private-public and cross-industry collaborations are all in the mix. Some of the strategies are under way, while others have been proposed, and the full results are yet to be realised.

Criminals take advantage

As we got used to social distancing and working from home, the criminal underworld adapted to the crisis in its own way by turning to cybercrime, fraud and counterfeiting.

For counterfeiters, the covid-19 crisis offered the perfect environment within which to operate. As the epidemic turned into a pandemic, consumers worldwide began to stock up on products to get them through the crisis, purchasing food, over-the-counter medicine, personal-care goods and disinfectants in mass quantities. As commonplace items such as hand sanitiser and toilet paper began to sell out, consumers began searching more widely for these goods, looking outside authorised retail stores.

Counterfeiters have followed these purchasing trends and seized the opportunity



The Internet provides an ideal setting in which counterfeiters can thrive; especially as desperate consumers look online for high-demand items

to flood the market with fake, substandard goods to take advantage of buyers. Fake medicines, fake surgical masks and fake test kits linked to covid-19 have become widespread.

In late March 2020, a report by Europol emphasised that criminals “have quickly seized the opportunities to exploit the crisis by adapting their modes of operation or developing new criminal activities”, including cybercrime, fraud and the distribution of counterfeit and/or substandard goods. Counterfeiters participate in many other schemes as well, such as phishing, scamming and online fraud.

These illicit activities pose significant health and safety risks for consumers at a time when health and safety is paramount. Consumers rely on the goods they buy to be what they are represented to be. They trust that the disinfectants they purchase will protect them from lingering germs and that the medicines they buy to fight fevers and coughs will contain effective ingredients. Trademarks underscore this trust. And brand-protection teams defend this trust. With counterfeit products, all bets are off.

Supply shrinks and demand increases

The pandemic has not only affected pharmaceuticals and personal protective equipment (PPE); the effects can be seen across industries. As quarantines began, manufacturing slowed down and businesses prepared for an economic downturn. However, consumers kept buying goods, ranging from exercise equipment to home decor and eye makeup. Even more than a year later, businesses cannot keep up with the demand for certain goods.

The United Nations reported a significant increase in e-commerce sales as a result of

the pandemic. It also reported significant changes in the type of goods in demand as 2020 progressed. From the beginning, PPE and health-related products were important to consumers, but demand for a wider range of goods including food and home-improvement products, for example, has also increased. Businesses that made the switch to online sales were in a better position to salvage their profits.

Now, e-commerce has become the ‘general store’ for everyone’s needs, as many people continue to stay home to limit their exposure to the virus. The Internet provides an ideal setting in which counterfeiters can thrive; especially as desperate consumers look online for high-demand items. Shoppers may not even be aware of the seller’s identity or whether the goods that they are buying are genuine. Even photographs of goods on websites are often stolen from the brand owner’s website. Counterfeiters can also easily and anonymously accept credit card transactions from across the globe and later use consumers’ collected data to perpetrate identity theft.

Protecting consumers from online fraud has been challenging. A recent European Commission study reported that 57% of EU citizens aged between 55 and 74 years made an online purchase in 2020, up from 45% in 2010. This demographic has traditionally favoured the immediate customer service available at bricks-and-mortar shops, but since shopping in a physical store has become a potential health risk, online shopping has become the trend.

The decrease in supply of goods and the increase in demand may have led some consumers to be less concerned about where their goods are coming from, prompting them to buy from unidentified sources. As

demand for face masks outpaced supply, counterfeit N-95 masks flooded the market, and as demand for branded, luxury face masks grew, counterfeit products filled that void too.

Brand-protection resources

Border shutdowns and travel bans have also affected the supply of goods flowing through e-commerce and offline purchases as well. A decrease in passenger flights means fewer opportunities for small packages to be sent to consumers in other regions. The shortage of staff, confusion about new travel rules and limitations on physical distancing cause delays in cargo transit and make targeting counterfeits more difficult and less of a priority.

On top of all these challenges, there are fewer brand-protection professionals doing the anti-counterfeiting work. Many businesses furloughed and then consequently laid off their anti-counterfeiting teams as non-essential staff. With fewer internal resources and fewer enforcement officials looking at these issues, counterfeiting is growing exponentially during the pandemic.

Lessons learned

Nevertheless, brand-protection work has adapted and much has been learned over the past few months in support of the anti-counterfeiting battle.

Consumer awareness increasingly urgent

Raising consumer awareness about the dangers of counterfeiting has been at the forefront of combating fakes. For more than a year, the news has been riddled with stories of counterfeit masks and coronavirus tests – and now vaccines. Early in the pandemic, in March 2020, Interpol’s Operation Pangea, an international operation targeting illicit pharmaceuticals, seized 34,000 fake surgical masks and identified 2,000 online links advertising counterfeit items related to covid-19. “Once again, Operation Pangea shows that criminals will stop at nothing to make a profit. The illicit trade in such counterfeit medical items during a public health crisis shows their total disregard for people’s well-being,



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Ms Razavi graduated *cum laude* from New York Law School and worked on anti-counterfeiting matters in-house at various corporations before joining INTA in 2012.

or their lives,” said Jürgen Stock, Interpol’s secretary general. These warnings have been echoed throughout the pandemic for health and safety goods, but also during the 2020 holiday shopping season for clothes, personal electronics and toys. By November 2020, US Customs and Border Protection had seized 26,503 shipments of counterfeit goods valued at more than \$1.3 billion.

In July and August 2020, several brands, including Philip Morris, Procter & Gamble and Tommy Hilfiger, working with the US Department of Homeland Security and US Immigration and Customs Enforcement (ICE), launched a public awareness initiative in the fight against covid-19 to help combat trade in fraudulent goods. The advertising campaign raised awareness about counterfeit PPE, faulty test kits and other fake supplies.

The campaign comprised printed and digital public service advertisements (with logos of participating partners) appearing nationally in key publications, including *The Washington Post*, *The Wall Street Journal*, *Vice Magazine*, *Politico* and *Vox*, as well as through cable news channel CNN.

Over the years, INTA has advocated the collaboration of both the public and brand owners in helping to raise awareness of the dangers of counterfeits by bringing its Unreal Campaign into schools. INTA launched the Unreal Campaign in 2012. This global campaign, which aims to educate young consumers (14 to 23 years old) about the dangers of counterfeiting and the importance of trademarks, has reached more than 55,000 students in more than 125 cities in 40 jurisdictions. On social media, the campaign has displayed more than 3.8 million impressions (measurement of reach) and has had more than 188,000 engagements. In 2020, the campaign went virtual, with 48 presentations (14 onsite and 34 virtual) reaching 11,574 students in 15 countries (Argentina, the Cayman Islands, Germany, India, Israel, Italy, Mexico, Nicaragua, Nigeria, Peru, the Philippines, Spain, Turkey, the United States and Uruguay).

In INTA's most recent submission to the USPTO in December 2020, it called for developing a national consumer awareness campaign on combating the trafficking in counterfeit and pirated products. As seen over the past year, consumer awareness of the dangers of counterfeiting is a consumer-protection initiative, rather than a private initiative.

Policymakers must be made aware of the dangers of counterfeiting. Europol is currently preparing priorities for its European multidisciplinary platform against criminal threats (EMPACT) for the EU Policy Cycle 2022-2025. The earlier policy cycle (2013-2017) prioritised the successful advocacy and mobilisation by private and public IP authorities, specifically addressing organised-crime groups involved in the production and distribution of counterfeit goods that violated health, safety and food regulations, as well as those that produced substandard goods. However, the current EMPACT 2018-

2021 priorities do not include IP crime or counterfeiting. Against that backdrop, and in cooperation with the European Observatory on Infringements of Intellectual Property Rights and its network, INTA has been working closely with other European IP associations to incorporate IP crime into the next EMPACT cycle. If successful, this effort will not only make fighting counterfeiting a priority, but it will allot more of Europol's resources to this growing crime.

Virtual customs training is another key element that can raise awareness of counterfeiting at international borders. In 2015, INTA launched a pilot virtual customs training platform to allow its members to reach officials around the world without the added cost of having to travel to each port. The videos were recorded and translated into Spanish and Mandarin. Even in a post-pandemic world, brand owners would not be able to travel to every port, and virtual customs training has become the trend. INTA is helping by holding free, virtual regional and national customs training for members in various jurisdictions globally, which were not originally open to virtual training. More training will be available as borders start to open up.

Calls for improved consumer-protection mechanisms

Along the same lines, and because of the scale of the issue, consumer-protection mechanisms should be put into place to include counterfeiting. The fight against unsafe counterfeit goods represents a core consumer-protection issue, given the high risk that counterfeits raise for the health and safety of consumers and citizens worldwide, in particular, during the current covid-19 crisis.

In June 2019, the EUIPO reported “the extent of the dangers to health posed by counterfeit goods” to EU consumers, such as “chemical, injuries, strangulation, choking, electric shock, damage to hearing and fire risks”, adding that “24 percent of the dangerous products recorded as counterfeit posed more than one danger to users”. Toys are the most ‘popular’ type of unsafe counterfeit product and children were the end users of 80% of the products reported



INTA promotes collaboration as the foundation of its fight against online counterfeiting

to be dangerous and counterfeit (ie, toys, childcare items and children’s clothing). Fake pharmaceutical products – notably antibiotics, lifestyle drugs and painkillers – traded worldwide at an estimated \$4.4 billion in 2016.

INTA has been advocating measures to protect consumers from these dangers by including unsafe counterfeit goods in the scope of the European Commission’s upcoming New Consumer Agenda, as well as within the provisions of the General Product Safety Directive. INTA is also looking at how covid-19 fraud provisions in the Consolidated Appropriations Act passed by the US federal government in December 2020 will affect anti-counterfeiting measures. INTA’s anti-counterfeiting committee is also looking at the anti-fraud provisions in Singapore, which began with a joint event with EuroCham on 30 March 2021.

New tools for better collaboration

Finally, and an equally critical variable in the anti-counterfeiting equation, is collaboration. Private-public and cross-industry collaboration is paramount, especially in fighting online counterfeiting.

An example of effective collaboration is the success of Operation Stolen Promise, launched in February 2021 by ICE’s Homeland Security Investigations (HSI) to stop covid-19-related fraud with a focus on illicit counterfeit goods. The first pillar of the operation’s strategy is partnership. HSI is partnering and sharing intelligence with private organisations such as 3M, Amazon and Pfizer to combat counterfeiting. The results have been staggering. As of 25 March 2021, there have been 2,054 covid-19-related seizures, including counterfeit masks and medicines totalling in excess of \$47.2 million, with 265 arrests. One of the most effective models of

Operation Stolen Promise is the work around 78,141 covid-19-related domain names that were analysed by HSI.

INTA promotes collaboration as the foundation of its fight against online counterfeiting. Its guidelines, entitled Addressing the Sale of Counterfeits on the Internet, provide best practices for the various private-sector stakeholders to work together to combat counterfeiting. INTA’s anti-counterfeiting committee is working together with its enforcement and internet committees to update these guidelines in 2021. INTA has held more than 60 policy dialogues over the past 10 years since the best practices were created. In the past year, INTA hosted 14 discussions with member platform intermediaries to promote their online counterfeiting policies. Also in 2021, INTA began hosting corporate insider discussions on brand protection to allow corporate members to freely discuss best practices and exchange ideas to improve their anti-counterfeiting work.

INTA’s March 2021 Board Resolution on Proceeds of Counterfeiting is intended to deprive counterfeiters of the financial resources supporting their illegal operations – in effect, adopting a ‘follow the money’ model. The board resolution seeks to empower courts with the legal basis to confiscate and seize assets on a temporary basis, subject to appropriate evidentiary requirements, prior to securing a conviction when proceeds appear to be the result of counterfeiting. It also calls for empowering courts to order the confiscation of the apparent assets or proceeds of counterfeiting when counterfeiters transfer assets to third parties for the purpose of evading confiscation orders on an interim or perpetual basis. In addition, it urges enactment of comprehensive procedures to

strengthen the effectiveness of confiscation, including the efficient management and protection of frozen or seized goods and their adequate disposal and transfer to the appropriate entity when a defendant is found guilty of counterfeiting. It also encourages greater international collaboration by providing reciprocal freezing and seizure orders. These are the tools needed to keep criminals from getting an upper hand.

The increase in criminal counterfeiting, the rise in e-commerce sales, the slowdown of manufacturing, the lack of consumer awareness, limited resources and the high demand for goods have all exacerbated the challenges that brand owners will continue to face during the pandemic. With counterfeiting soaring to new, unanticipated levels, brand-protection teams must adapt and create new solutions. Innovative measures of working

together have emerged and this improved collaboration will help combat these crimes. **WTR**



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