



HD Warning for farm exports, as **Chinese** counterfeiters rip off Aussie products

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WC 989 words

PD 15 December 2014

SN Australian Broadcasting Corporation (ABC) News

SC ABCNEW

LA English

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An Australian farmer who has been exporting to **China** is pulling his product out of the market over counterfeit concerns.

His move comes as Australian agriculture eyes the fresh opportunities of exporting to **China** under the recently agreed free trade agreement.

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Victorian producer David Blackmore, of Blackmore Wagyu Beef, has been selling his product to high-end restaurants in **China** for several years, but has recently become aware of counterfeit products being passed off as his beef, which fetches a premium price.

Mr Blackmore says the potential damage to his **brand** reputation, from lesser quality rip-offs, means he would rather pull out of the market.

"We sell beef to up to 20 countries, every month. Every piece of beef is **sold** before it's actually processed. We've got more demand for our product that we can meet, so rather than damage the **brand**, we would pull out of **China**," Mr Blackmore said.

With **brand** reputation critical to his **company's business**, Mr Blackmore doesn't want to jeopardise that by being exposed to counterfeiters.

"We don't want our **brand** reputation ruined by other beef that's not ours, that is **sold** with our **brand** on it," Mr Blackmore said.

Intellectual **property** lawyer Stephen Stern, of Corrs Chambers Westgarth, has acted for a number of Australian exporters whose products have been subjected to counterfeiting in **China**. He says the practice is commonplace.

"Back in the 80s and 90s it was luxury good products and watches. From the 2000s onwards it's any particular product that will sell," Mr Stern said.

Mr Stern says counterfeiters in **China** are becoming increasingly sophisticated, making the fakes harder to detect.

Counterfeits becoming more sophisticated

"You are not dealing with Ma and Pa organisations. You are dealing with large scale **commercial** factories that use commonly equipment that can cost some tens of thousands of dollars to manufacture the counterfeit product.

"There are small factories, there are backdoor businesses all over the place that manufacture a range of counterfeit products, but it goes from small, right up to full-time industrial manufacture of products that are of not unacceptable standard," he said.

In Mr Blackmore's case, a head chef for a five-star **hotel** in Shanghai, who had been using Blackmore Wagyu Beef for a period of time, contacted the **company** when he noticed a change in quality of meat.

"When he described what cut he was taking, we didn't even export it to **China**, so immediately we start thinking there is something seriously going wrong," Mr Blackmore said.

To ensure the integrity of its product, Mr Blackmore's **company** had been placing a plastic insert with their logo and **brand** name printed on it inside packaging with the meat before it was vacuum-sealed shut.

"We found that the cryovac bag, and our logo that was going inside the bag, the insert, was all being counterfeited," Mr Blackmore said.

"Our insert is a food-safe plastic, the ink is imported and it's actually got a code in. We could immediately work out that this wasn't our logo."

Lawyer Stephen Stern says counterfeiting in **China** can range from look-alike products to identical rip-offs.

He acted for the Treasury **Wine** Estates **Group**, when the luxury Penfolds **wine brand** was targeted by counterfeiters.

"One of the more famous ones in which we acted was a product that looked virtually identical, except it was called 'Benfolds'.

"It was extremely hard to detect that the first letter was a **B**, and not a P, unless you looked for it."

A spokesperson for the **brand** says Penfolds keeps a continuous global watch on all of its wines.

"Penfolds has in place a dedicated network in high risk areas, using lawyers and investigatory agencies, and works closely with local authorities," the spokesperson said.

"Penfolds protects its rights vigilantly and has in place multiple, dedicated processes to combat counterfeiting and fraudulent mimicking of the Penfolds **brand** and wines."

Anti-counterfeiting laws

Mr Blackmore says he's asked Australian authorities to investigate the counterfeiting of his beef, but no further action has been taken.

New laws introduced in **China** in April this year aim to give greater protection to trademark owners, but lawyer Stephen Stern says it's too early to say whether they will be effective.

"There certainly are a series of changes being put through by the **Chinese** Government. That's in part because the government recognises that there are **Chinese** brands, **Chinese** trademarks that are valuable. It's not simply the foreigners who are at risk from counterfeiting.

"With any new law, there is always period of uncertainty.

"The law takes time, so it's unlikely you'll be able to get an immediate result simply through civil litigation."

Mr Stern says that, even with legal protection, shutting down counterfeiters is not simple.

"The problem of course in **China** is it can be a bit like 'whack 'em all' - you manage to sue one infringer, that's great, but two more pop up in surrounding provinces the following week, or the following month," Mr Stern said.

He says the other concern for Australian companies trading in **China** is that it's not uncommon for their trademark to be registered by someone else.

"I've seen other cases where the Australian **business** has been selling products to **China** for a year or two or three years and then found that a **Chinese** national has registered the Australian trademark and is using that to 'greenmail' the Australian **business**, because with a trademark registration the **Chinese** national can sue the Australian **company** for trademark infringement and stop their sales.

"If you're launching products into **China**, be aware that not only do you have to register your **brand**, but you may end up fighting ongoing battles against counterfeiters. It's common place."

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IPD counterfeits

PUB Australian Broadcasting Corporation

AN Document ABCNEW0020141214eacf000jm