

## Case Study on Online Sale of Counterfeit Products

### 1. Definition:

From an economic perspective counterfeiting can be defined as “the process of manufacturing and then passing off through retail a copied object as an original in order to deceive someone that it is real”.



Counterfeiting would be termed as a cybercrime only when it's done by means of electronic operations. **So if someone is selling some fake branded products online then that would be termed as a Cybercrime.**

#### 1.1 Basic Goals affected by Online Counterfeiting

The only thing affected by counterfeiting is the trust of the customers and the pockets of the criminal. This also affects the brand's reputation and the online portal through which the crime was happening.

### 2. Laws/Amendments/Sections addressing this Cybercrime:

The Trademark Act of 1999 provides for statutory registration and protection of trademarks of right holders. Under this Act, the penalty for selling or applying false trademarks or trade descriptions includes from six months to three years' imprisonment in addition to a fine of at least Rs. 50,000 up to Rs. 200,000.

The Copyright Act 1957 defines this offence with the same penalties. It has been amended five times prior to 2012, once each in the years 1983, 1984, 1992, 1994 and 1999, to meet with the national and international requirements.

The 2012 amendments make Indian Copyright Law compliant with the Internet Treaties – the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).

Trademark Act, 1999– The Act nowhere mentions the term “counterfeit”, however the Act provides for civil remedies in the form of injunction, damages, delivery-up, anton pillar and john doe orders under Relief in suit for infringement under Section 135 of Trademark Act.

### 3. Case Studies

- Alexander Wang was handed a favourable ruling in a trademark counterfeiting and cybersquatting case in the U.S. District Court of Manhattan. Since none of the 45 defendants in the case appeared in court, Wang has handed a default judgment, including \$90 million in damages, as well as ownership of 459 domain names that were either offering counterfeit goods for sale and using the Alexander Wang brand name in their domains, such as cheapalexanderwangbags.com.
- US lifestyle and footwear brand 'Skechers' has filed cases against e-commerce giant Flipkart and four sellers on its platform for allegedly selling its fake products. Skechers, with the help of court-appointed local commissioners, raided seven warehouses in Delhi and Ahmedabad and found counterfeit merchandises from sellers Retail Net, Tech Connect, Unichem Logistics and Marco Wagon, the company said in its petition submitted to the Delhi High Court. The company has found more than 15,000 pairs of fake shoes that were to be sold as Skechers.
- In a collection in person PayPal scheme, the scammer targets eBay auctions that allow the purchaser to personally collect the item from the seller, rather than having the item shipped, and where the seller accepts PayPal as a means of payment. The fraudster uses a fake address with a post office box when making their bids, as PayPal will allow such an unconfirmed address. Such transactions are not covered by PayPal's seller protection policy. The fraudster buys the item, pays for it via PayPal, and then collects the item from the victim.

### 4. Methods and Tools used to execute this cybercrime

The methods can be of large variety as the fraudster may sell any type of product using any of the multiple available platforms.

Basic requirements would be a Fake ID as a seller, some fake comments and reviews of the products, trusted members in dispatch/ delivery agencies, etc.

The method would be to lure as many buyers as possible in a short amount of time and try to take their money as earlier as possible in the transaction.

### 5. Implication/ Effects of Cybercrime

#### US LAWS

It carries a potential fine of up to \$250,000 and a maximum of 25 years in federal prison. Penalties are increased where the crime resulted in financial gain, or resulted in another party suffering a financial loss. Penalties may be up to double the amount gained or lost.

#### INDIAN LAWS

- At present, the primary legal instrument that seeks to curb the introduction of imported counterfeit goods in India is the IPR Enforcement Rules of 2007.

Under the rules, a holder of IP rights is required to submit a form in the prescribed manner to an authorized customs officer, accompanied by an application fee of 2000 rupees, requesting that clearance for imported goods infringing the concerned person's IP rights be suspended.

- Within 30 days of the receipt of the notice, the applicant has to be informed whether or not his application has been accepted. The minimum period for which the request, if sanctioned, will continue to hold good is one year.
- If the applicant's request is accepted, the goods in question shall be deemed to be prohibited within the meaning of Section 11 of the Customs Act, and the only condition that the right holder must fulfil in order for the suspension to continue to remain in force is that she must join the proceedings within a period of 10 days of the suspension.

## **6. Prevention Strategies, program, tools for the Cybercrime**

### **6.1 Tools**

There can't be any generic tool or program to detect fake products since the fraudster may be using any of the multiple available platform to sell that product. Still we could detect that the product is fake to an extent by checking the validity of the product via the products ISBI number or some other identification proof.

### **6.2 Methods**

There's always an identification and verification number with the product to check its validity but most of the times this number is available only after the transaction takes place and the product is in our hands.

## **7. References**

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