

EDUCATING AND INFORMING THE CONSUMER IN ORDER TO FIGHT COUNTERFEITING

EMILIA PASCU, OANA-MARIA MILEA, PETRONELA-SONIA NEDEA
FACULTY OF TOURISTIC AND COMMERCIAL MANAGEMENT, "DIMITRIE CANTEMIR"
CHRISTIAN UNIVERSITY, Unirii Blvd, no 176, district 4, BUCHAREST, ROMANIA,
pascu.emilia@ucdc.ro, o_rez@yahoo.com, petronela844@mail.com

Abstract:

Educating the consumer and fighting against the counterfeiting phenomenon are highly important action fields in every developed country because, although there are cases in which counterfeiting is considered a victimless crime and copying is perceived as an act of recognizing true value, this vision does not fit the consequences.

The impact of counterfeit products on trade owners, consumers and national economies cannot be minimized; therefore, consumers must be informed about the dangers they face by purchasing a counterfeit product. It must be said that legislation is very strict with counterfeiters.

The high counterfeiting level reflects, regardless the consumers' appetite for trademark products, the counterfeiters' ability of adapting to market trends and huge financial profits from selling counterfeit goods; the article allows an overall look regarding the counterfeiting issues.

Key words: counterfeiting, trademark, holograms, ACTA

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Methods of fighting against counterfeiting

It is said that any trademark is a product, but not any product is a trademark. A trademark is much more than a simple product.

In fact, a trademark can be perceived as a complex symbol. The trademark represents the immaterial sum of all those features which constitute a product: name, package, price, history, reputation, promoting methods. A trademark also contains the customers' opinions related to their experience with the product or related to previous market experiences. Therefore, the process of maintaining the quality is essentially based on keeping these intrinsic features of the product. In this direction, the fight against counterfeiting becomes an issue of global importance as counterfeiting has developed both at a national and international scale.

A counterfeit product steals the identity of a well known trademark and, at the same time, it defeats the consumer's expectancies: comfort, trust and personal safety.

Although there are moments when counterfeiting is perceived as a *victimless crime* and copying is viewed as a manner of *recognizing the value*, this vision does not correspond to the consequences: the impact of counterfeit goods over trademark owners, consumers and national economies cannot be minimized. The high level of counterfeiting reflects, beyond consumers' preferences for trademark products, the counterfeiters' ability of adapting to market trends and the huge profits made from selling counterfeit goods¹¹.

¹ Docan D., online article, <http://www.anticontrafaceri.org/interviuri/interviu-cu-dl-dan-docan/1.html>

This is the reason why educating the consumer and fighting against counterfeiting represent highly important action fields in developed countries. The consumers are periodically informed on the dangers they face when buying a counterfeit product, the legislation being very strict with the counterfeiters.

Nowadays, the economy which faces one of the greatest crises of all times has developed important perception changes even when it comes to counterfeiters. They turned their attention toward accessible products, leaving behind the idea of falsifying only luxury products. We should take into account the fact that the offer is directly related to the amount of requests; as an example, there are many Chinese factories which tend to produce every type of products in order to survive this economical crisis². A new method of cheating the consumers is to counterfeit lesser known products which can be easily traded through the Internet at much higher prices than any other counterfeit products³. In the USA, there are many important companies which annually lose millions of dollars because of counterfeited products trade. This led to an aggressive reaction of trademark rightful owners. This is the reason why counterfeiters choose a less known and protected product, in order to gain significant products without being seriously affected by the crisis. The counterfeiters have reached the lowest level of immorality, because they even develop online sites identical to the original ones, presenting the consumer goods which aren't original.

There are some products which bring important profits, but there are some goods which function on the basis on a *reverse engineering principle*. This means that the counterfeiter acknowledges the functioning principles of the original product by analyzing its internal structure and way of functioning. Then, the products would be produced at a large scale and traded by breaking the regulations⁴. The prices are similar to those of the original products, therefore the consumers are misled and determined to buy an "*original*".

The crisis has led to various opportunities for the counterfeiters. Cheap materials are being bought from different markets and they are turned into clothing articles which are tagged with the words "*Made in...*", even though these have only been manufactured in that precise area. In order to avoid this kind of situations, there has been taken into consideration the idea of developing legislation projects at a European level. This would allow this kind of tagging only when two out of four processing stages are developed in a geographical area⁵.

Methods and techniques of diminishing the counterfeiting process

The statistics don't show the real dimensions of the counterfeiting phenomenon or the trademarks counterfeited more often in order to protect the DPI main firms. But it's a fact that in the USA, for example, the total value of the suppressed counterfeited products has grown each year to an extent of 20%, their value reaching the total of 260.7 million dollars in 2010, without estimating the value of those counterfeited goods traded via the Internet.

The Association for the Promotion of Trademark Products and Anti-Counterfeiting Fight in Romania has launched *Pro Q Hologram* as a technical possibility of fighting against counterfeiting. Pro Q Hologram certifies original products and services*. It has a high quality design which does not allow the duplication through

² Avery P., *The economic impact of counterfeiting and piracy*, OECD Publishing, Paris, 2008

³ Pascu, E., *Nowadays Counterfeiting Phenomenon*, Textile Industry, no. 1/2009, Bucharest

⁴ Blakeney, M.- *The Pheaaomenon of Counterfeiting and Piracy in the European Union: factual overview and legal and instituțional framework*, ed.Schneider, M. and Vrins, O., Oxford University Press, 2006

⁵ Părăian E., Pascu Emilia, *Merchandise Expertise*, reviewed and supplemented edition , Pro Universitaria Publishing House, Bucharest, 2012

* The ProQ Hologram Security Mark is a trademark registered at O.S.I.M. at the request of the National Consumer Protection and Programs and Strategies Promotion Agency in Romania, which holds the property rights of this trademark.

classical hologram or computer assisted one. This label is a technical solution for fighting against forgery and for protecting trademarks already on the market, consumers, trademark users, authentic products and services, or for respecting the regulations regarding the protection of producers and consumers, for applying the CE's rules in Romania. It is a secured marker and its highly qualitative design is verified and registered in *Hologram Image Register* – London (*Counterfeiting Intelligence Bureau*) at *Hologram Manufacturers Association***.

Thanks to the materials' high quality and special features, the security label offers the possibility of being applied to a large amount of goods and it eliminates deterioration.

The hologram *certifies and guarantees* the original product or service and it is verified by the control organisms for assessing its authenticity and responds to any claim of the consumer by means of verifying both the product and the juridical entity which produced or imported the product.

The material of which the hologram consists is a mix of aluminum and polyester, having dimensional stability and exceptional mechanical resistance to the majority of the usual solvents. When one tries to unstuck it (by means of vacuum deposition metal layer) one gets a controlled breach which leads to an easily detectable irreversible destroy. Holograms can be kept for over 12 months under normal indices of temperature and humidity, before applying them to different products.

Thanks to the *tridimensional design* of high securing obtained by means of photolithography with high resolution (over 40.000 dpi), in very bright colors, the special effects written directly with electrons fascicle cannot be duplicated through the classical or computer assisted hologram.

Hologram customization is made by means of 6 characters alphanumeric series, in random numbers and letters, laser written, which vaporize the aluminum layer without affecting the polyester over the hologram. Any attempt of modifying or erasing the given series leads to implicit destroy of the hologram through selective fragmentation. The encoding implies 2 million codes and this makes the generation of other valid codes which could be recognized as authentic impossible.

Each authorized user is given the encoded holograms and their codes need to be introduced in a special database in order to authenticate a product. It also supplies information on the firm that registered that product, the period of buying the holograms and the generic name of the product.

Applying the secure marking system of the original components has the advantage of protecting the purchased trademark, of securing the distribution chain and of monitoring the market. This way it is enabled the protection of those traders who want to develop an illicit trade. This process also enables the *consumers' protection* and the *fight against counterfeiting*, as well as the *promotion* of highly qualitative products and services.

Holograms can be applied to products, wrappers, documents, electronic equipment labels, clothing, alcohol, software, CDs, watches, sportswear, medicine, notarial documents, various documents which need to be certified etc., the legal organisms being able to detect the counterfeit product.

The benefits of using holograms are the following:

- ✓ diminishing/disappearance of counterfeited trademarks;
- ✓ diminishing tax evasion;

** The International Hologram Manufacturers Association (IHMA) is a nonprofit organization meant to represent and promote at a global level the interests of hologram manufacturers. Founded in 1993, the association currently has 90 members from all over the world. It also has branches in Europe and America.

- ✓ securing the providers with regard to the authenticity and quality of the purchased products;
- ✓ generalizing a healthy business environment;
- ✓ rapid profit growth in the case of those who offer this kind of products on the market;
- ✓ giving the authorities the possibility of rapidly controlling the products and services in order to diminish the counterfeiting processes and to eliminate illegal competition;
- ✓ trade consolidation and development in the advantage of the consumer who needs to be assured of the purchased quality.

Taking into account the temptation and the major benefits generated by counterfeiting alcoholic beverages, for fighting against forgery one needs to apply the correspondent labels depending on the specific categories and having the possibility of controlling them. The label mentions the number of milliliters, the alcohol concentration (dal) and their customization according to each marking owner. Moreover, the fiscal repositories have been introduced, in the sense that all the transports of products which can be excised come with administrative documents of the merchandise (DAI) which are printed at the National Printing Office. It has been introduced mark encoding in order for each mark could be identified in an individual manner by particularizing each label. Therefore, date and time of delivery as well as emission features become easily accessible; it annuls any type of fraud even when the labels disappear in order to be used at another time.

For finding false labels an infrared machine called Forem is needed. It verifies the paper, the ink, the foils and security graphic. The sample which is being analyzed is invaded by an infrared light and the ink produces a “*signal*” called *signature* which allows identifying each element of that specific ink. These signals are analyzed in order to find out if they match the standard sample and if they are original or false.

Ideas for limiting the counterfeiting phenomenon

In order to diminish this phenomenon in Romania (given its dimensions, we cannot hope that it would stop, at least not immediately or totally) we could consider the following possible anti-counterfeiting measures⁶:

- ✓ creating a secure climate regarding anti-counterfeiting in the trade circuit. Because of procedural constraints, of the penalties that can be applied by the authorized organisms in the case of forgeries coming from the part of economic agents, of financial obligations which are part of a strict contract and have legal clauses, when applying strict regulations at a large scale, this antitrade practice (breaking the legal obligations of trading original products) does not sustain one of the most important principles of the trade circuit: the establishment of the trade circuit;
- ✓ expanding the collaboration in the business environment in order to diminish counterfeiting of those products that are being traded in Romania and encouraging loyal competition by applying a more strict set of rules and regulations able to control the treacherous character of economic competition which use counterfeiting as a way of breaking the financial equilibrium. They don't allow a good development of trade activities because, due to illicit commercial practices in which counterfeited products are traded, in the situation in which a company gains a lot of importance on the market, but it doesn't care about its business partners or consumers.

⁶ Pascu E., *Harmonizing the Romanian and the European Union's legislative frames regarding the fight against counterfeiting in relation to consumer's protection*, the University Publishing House, Bucharest, 2011

- ✓ managing the conflicts regarding the anti-counterfeiting process between various economic agents. Therefore, a good financial relationship between traders equals an increase in the quality of the original products they offer. Moreover, the consumers' rights benefit from a real consolidation. The consequences are the development and diversification of products' market, as well as the appearance of new rules which perfect the juridical relationship between financial agents and consumers.
- ✓ creating some trends in what regards the manner of approaching and developing juridical relations which are to appear between financial agents (and which are to be followed by the economic agents) in order to erase any kind of obstacle which might appear and that could interfere with the process of obtaining those services which must be provided by the co-contractor;
- ✓ developing some legislative projects regarding the optimization of commercial relations and the consequences of such relationships, allowing trading companies to focus more on those available resources which are going to be used in order to protect the consumer and to develop original products and services that would correspond to legal regulations which set the frame for quality standards (that should be respected) and the consumers' requests.
- ✓ developing partnerships with the authorities, public institutions and representative organisms of civil society;
- ✓ creating a partnership between investors, producers, consumers and authorities in an anti-counterfeiting campaign by means of creating a solid economic climate which would also be open to investments. Moreover, the economic agents should acknowledge the necessity of following the legal features of the contract regarding anti-counterfeiting measures.
- ✓ collaborating with international networks of fighting against counterfeiting; signaling counterfeiting cases by means of information, data images regarding traded counterfeited products, as well as the companies which sell them. They should be periodically mentioned in the consumers' benefit in order to prevent such situations and to discourage the purchase of such goods. These measures are taken in order to assure the commercial liberty principle, but in order to gain the fight against counterfeiting there should be a rigid legislative frame regarding anti-counterfeiting measures;
- ✓ the periodical signaling of those cases in which counterfeited products are detected: localization, market segments, interest in buyers and the elaboration of a risk analysis regarding the forgery of a trademark on the Romanian market, ended up with creating a file for each counterfeited trademark;
- ✓ securing the country's borders by means of procedures, measures and customs surveillance actions which seize the counterfeited products (that transit Romania or are being traded in Romania);
- ✓ aligning to the EU's legislation is the most important measure which needs to be taken in order to fight this expanding phenomenon.

From a juridical point of view, not all consumers are aware of the fact that they commit a crime by purchasing a counterfeit good. Therefore, in the EU's member states there have been developed various actions of informing the consumers about this growing phenomenon, in order to avoid risks and there has been analyzed the idea of introducing more rigid legislative frames regarding the necessity of mentioning the country where the goods are produced, especially in the case of third party countries of the EU. Strict customs controls – which stop approximately 70% of the counterfeit

merchandise⁷ – together with these measures can improve the transparency of the products' origin and therefore fight against forgery.

The Financial Guard (together with other authorized organisms) can be perceived as a source of information regarding the presence of counterfeit merchandise because it is the first one to contact this financial crime area. During the surveillance and the control actions, the Financial Guard's employees could discover that even if the documents are all in order, the documents are all counterfeited. They can communicate the location of these products in order for the authorities to action according to regulations.

An important contribution to the fight against counterfeiting it is represented by adopting at a European level a set of rules that would oblige the producer to mention the origin country of certain products imported by third party countries in the EU, increasing the transparency of certain products' origin, such as clothing.

In order to protect both the rightful owners and the consumers, the ACTA agreement has determined both positive and negative reactions.

The Anti-Counterfeiting Trade Agreement – ACTA – is a multilateral commercial treaty which is considered to be a response to the global increase of trade in counterfeited products and works protected by author rights. ACTA's action field is large and includes the counterfeiting of physical goods, as well as online trading and information technology.

The idea of this treaty appeared in 2007 when the USA, the EU, Switzerland and Japan announced that they would negotiate ACTA. Their example was followed by Australia, South Korea, New Zealand, Mexico, Jordan, Morocco, Singapore, the United Arab Emirates and Canada.

The discussions on this theme were kept secret at first, but starting with august 2011 they have been made public as: *the Anti-Counterfeiting Trade Agreement between the European Union and its member states, Australia, Canada, Japan, Republic of Korea, United Mexican States, Morocco, New Zealand, Republic of Singapore, the Swiss Confederation and the United States of America*.

The treaty wants to establish an international legal framework with its own government aside from international institutions such as The World Trade Organization⁸.

ACTA mentions the fact that in cases of breaking the author rights' regulations and in cases of counterfeiting trading merchandise, juridical authorities could seize both counterfeited goods and the tools which are relevant in the forgery. In the case of trading products counterfeiting, all documents (original or copy) would be seized. In this sense, even products found in hand luggage can be confiscated if they fall under ACTA's regulations.

Before applying this treaty, its action field should be strictly established in order to avoid abuses, as there many opinions which consider ACTA to develop a culture of abusing surveillance.

The demarcating line between counterfeiting and breaking the consumers' rights is very thin and it gives the authorities the possibility of verifying or even confiscating laptops, MP3 players and mobile phones in order to find traces of piracy. The passenger could get fined or could have their belongings destroyed.

The polemics are far to be ended but, in order to protect the consumers, the national economies and the rightful owners of a trademark, the decisions must take into account those errors which break the rights that need to be protected.

⁷The Romanian National Customs Authority, press release, <http://www.customs.ro/UserFiles/Confiscari%20ANV%20%20%202010.pdf>

⁸ „Copyright deal could toughen rules governing info on iPods, computers”, Vancouver Sun, <http://www.canada.com/vancouversun/story.html?id=ae997868-220b-4dae-bf4f-47f6fc96ce5e&p=1>

All these decisions which are to be applied can help diminishing the phenomenon which currently affects all international markets and in front of which all governments are powerless, without bringing though adjacent prejudices.

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