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Counterfeit Products in International Business

International Business

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FOREWORD

This thesis is done in Vaasa University of Applied Sciences in the line of International Business. The idea of making a thesis about the meaning of counterfeit products in International business was a result of experience and interest.

The exchange program called Star Module was held in Thailand between 22 of February-22 of May 2009 and during that time I decided to do the thesis about counterfeiting.

I am currently working in a sporting goods shop chain in Vaasa, Finland called Top-sport and dealing every day with the products which are very commonly found in the sector of counterfeit products.

Hereby, I give great thanks to my supervisor Mrs Maj-Lis Backman who gave me a great amount of valuable advice and guidance.

Last but not least, I truly appreciate my parents Marco Cucinotta and Eila Cucinotta and my sister Francesca Cucinotta. I thank for their supports in my life. Also, my beloved girlfriend, Susanne Hakala is one of the persons I want to deliver my true love and appreciation.

I would like to dedicate this thesis to the kind persons mentioned above. Thanks to all.

Vaasa, 21, May, 2010

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ABSTRACT

Author	Antonio Marcello Cucinotta
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This thesis studied counterfeiting in international business. The spread of counterfeits has become global in the recent years and the range of goods subject to infringement has increased significantly. The problem has become so large that every product in every industry is vulnerable.

The study starts by giving Information about Intellectual property rights and continues to more detailed information about counterfeiting. The thesis intends to explain the problems related to counterfeits and how they affect consumers and businesses.

The empirical research was carried out as a qualitative study in a way of theme centred interviews, with individual persons and a representative. For my research I collected answers from people with different age and status to get different views from different kind of people.

From the answers collected I learned that the counterfeiting is already affecting in Finland too and it has been developing already for a long time and that there are likely to be a lot of problems still to come in the future.

Keywords: Counterfeit, Intellectual Property Right, Piracy, Infringement, Knockoff

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TIIVISTELMÄ

Tekijä	Antonio Marcello Cucinotta
Opinnäytetyön nimi	Tuoteväärennökset kansainvälisillä kaupoilla
Vuosi	2010
Kieli	Englanti
Sivumäärä	64+ liitteet
Ohjaaja	Maj-Lis Backman

Tutkimus selvittää tuoteväärennöksien merkitystä kansainvälisillä markkinoilla. Tuoteväärennösten levinneisyydestä on tullut globaali ilmiö ja tuotteiden väärentäminen on kasvanut merkittävästi. Jokainen tuote on tätä nykyään altis väärennöksille ja se luo kaikki tuotteet riskin alaisiksi.

Tutkimus alkaa immateriaalioikeuksista ja jatkuu tutkimaan yksityiskohtaisemmin tuoteväärennöksiä. Lopputyö pyrkii selittämään minkälaisia vaikeuksia ihmisille ja yrityksille koituu tuoteväärennöksistä.

Empiirisessä osuudessa valitsin tutkimusmenetelmäksi kvalitatiivisen tutkimustavan, tarkemmin teemahaastattelun. Tutkimukseeni keräsin vastauksia erilaisilta henkilöiltä ja yhdeltä yritykseltä, heillä kaikilla oli erilainen tausta ja he olivat eri ikäisiä.

Saamistani tuloksista huomasin, kuinka tuoteväärennökset vaikuttavat jo Suomeen ja, että kasvua on tapahtunut paljon nopeasti. Tuoteväärennökset voivat tuottaa useita ongelmia tulevaisuudessa.

Avainsanat: Tuoteväärennös, Immateriaalioikeus, piratismi

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Figure 2: Would you buy a counterfeit product?

Figure 3: Factors driving use of the Internet by counterfeiters and pirates

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1 INTRODUCTION

1.1 Topic of the study

Counterfeiting and piracy are illegal business controlled by criminal networks. The spread of counterfeit products (commonly called “Knockoffs”) has become global in recent years and the range of goods subject to infringement has increased significantly. The problem has become so large that every product in every industry is vulnerable.

The most common counterfeit goods in the market are: handbags, clothes, watches, colognes, medicines, spare parts and all kinds of electronic devices. The ones mentioned here are just the most common products, but there are many very surprising fake products like books, golf balls and items which you could not ever think are that profitable to sell as a fake product, like lamps, batteries and shampoos.

Counterfeit products escape normal tax and tariff payments. They expose consumers to health, safety and quality risks and impose costs on society at large, in terms of employment, crime and social services. Counterfeiting also impacts legitimate businesses, causing loss of sales, lower profits and loss of brand trust and value. However, in an interconnected economy, consumers and governments also suffer.

The word counterfeit frequently describes both the forgeries of currency and documents, as well as the imitations of clothing, software, pharmaceuticals, watches, electronics, and company logos and brands. In the case of goods it results in patent infringement or trademark infringement. There have been many regulations made internationally to protect Patent and Trademark from infringement.

(<http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Impact%20of%20Counterfeiting%20on%20Governments%20and%20Consumers%20-%20Exec%20Summary.pdf>)

1.2 Aims and research questions

The thesis intends to answer to what kind of laws and regulations there are to slow down the counterfeit business. Counterfeits have created a lot of discussions during the recent years and people are becoming more and more suspicious about the originality of the products, how careful should we be and why do people buy counterfeits and what will it lead to?

There are a lot of products which can cause serious damages and lead to even death. I am trying to answer what kinds of different risks there are with certain products. The globalization and the internet have made the spread of counterfeits large, and I am going to find out what are the aim factors driving to use of the internet by counterfeiters and pirates.

The meaning of counterfeit is very wide and therefore I am going to specify it to focus on counterfeit products. I am also going to solve what to consider from a buyer`s perspective and what companies need to consider.

The research questions are as follows:

1. What is the meaning of counterfeits?
2. How big problems are counterfeiting products in International Business?
3. What are the laws and regulations that make it so hard for companies to control counterfeiting?
4. What kind of influence does the Internet have on counterfeits?
5. Why do people buy “Knockoffs”?
6. Where does the money from the counterfeit goods go to?
7. Why does Finland have such a good control over counterfeits compared to Thailand?

1.3 Conclusion

By answering the questions, the final thesis will give a picture about counterfeit products and will bring both the theoretical and practical information together to create a picture on how large a problem counterfeiting really is and what kind of regulations and organizations there are to prevent the spread of counterfeits.

1.4 Methodology

There will be both desk research and field research in the study .The desk research will focus on finding information available from different kinds of sources, like books and the internet. There are several internet pages which give articles in a data-article form. The most updated information will be collected from the different web pages. During my exchange in Thailand data was collected for the field research.

The interviews are made for individual persons with different age and status and to a company which is struggling with counterfeits. I have chosen to interview a company called Supporters place, it is an online Fan Store for sport supporters. My own experience will also help me to identify the problems from sport industries point of view.

2 COUNTERFEITING

2.1 The meaning behind counterfeiting

The word counterfeiting has a wide meaning because it has many different ways of appearing. The word counterfeit frequently describes both the forgeries of currency and documents, as well as the imitations of clothing, software, pharmaceuticals, watches, electronics, and company logos and brands. In the case of goods it results in patent infringement and trademark infringement. (<http://en.wikipedia.org/wiki/Counterfeit>)

There are several synonyms for describing counterfeiting, like Knockoffs, Pirates, fake products, patent infringement or trademark infringement. In 1986 there was no internationally approved legal definition for counterfeiting.

WIPO (World Intellectual Property Organization) was trying to define the term counterfeiting with the evidence that the product is a fake by proving it. If a product is marked with a sign or logo, which is either reminding a fake or identically reminding of the protected patent or Trademark and these kinds of products are brought to the country, offered for sale, rented or sold by credit or given for free it refills the terms of counterfeiting(Anti-counterfeiting. A practical guide. Jordan Publishing Limited 1998.Clark ja Worsdall 1998, p. 1 and Montan, Lall, Borg-Marks 2001), p. 9.

After this the World Trade Organization (WTO) has defined with Agreement on Trade-Related Aspects of Intellectual Property Rights (Trips) a definition of counterfeiting.

According to the Agreement on trade-related aspects of intellectual property rights which goes like this:

“counterfeit trademark goods” shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; (World Trade Organization)

2.2 TRIPS

TRIPS stand for Trade Related Aspects of Intellectual Property Rights. The terms to it was agreed in 1 January 1995 when there was a lack of protection against spreading counterfeit products at the agreement. It was first signed by 125 countries. In the TRIPS agreement there are points of protections in different field of immaterial rights. (Kauppakaari Immateriaalioikeuden oppikirja Kolmas uudistettu painos, Kauppakaari Lakimiesliiton kustannus HELSINKI 2001 S.16)

There are 140 countries that belong to the TRIPS including all of the member countries of the EU and the United States. (Haarmann, P-L. 2001. Immateriaalioikeuden oppikirja. 3. painos. Helsinki: Kauppakaari, Lakimiesliiton Kustannus.)

The TRIPS agreement covers five broad issues:

- how basic principles of the trading system and other international intellectual property agreements should be applied
- how to give adequate protection to intellectual property rights
- how countries should enforce those rights adequately in their own territories
- how to settle disputes on intellectual property between members of the WTO
- Special transitional arrangements during the period when the new system is being introduced.

(http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm)

3 INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS

Protection of IPRs is an issue to which governments and industry have assigned higher priority in the recent years. This is reflected in the actions that they have taken in a number of areas. Multilaterally, governments established

an agreed framework for recognizing and enforcing IPRs both in national and International through TRIPS.

In addition, governments working with industry have been working through international institutions, such as the World Intellectual Property Organization (WIPO), Interpol and the World Customs Organization (WCO), to improve enforcement.

Counterfeiting and piracy issues are also being addressed in the context of the G8 summit meetings, with the aim of developing more effective global solutions. (<http://www.oecd.org/dataoecd/11/38/38704571.pdf>)

3.1 Meaning of intellectual property rights

The purpose of the intellectual property rights is to stop pirates, counterfeiters, imitators and even in some cases third parties who have independently reached the same ideas, from exploiting them without the licence of the right over. (Intellectual property law in Finland By Niklas Bruun, Kluuwer law international, Kauppakaari oyj Helsinki 2001)

Intellectual property with the exception of copyright law falls within the administrative domain of the Ministry of Trade and Industry. The ministry is responsible for the development and legislation pertaining to these rights.

The National Board of Patents and Registration of Trademarks, which was founded in 1942, is an authority subordinate to the Ministry of Trade and Industry. Immediately before the establishment of the board patents, trademarks and registration matters were processed by a separate department at the Ministry of Trade and Industry. The board handles all matters relating to patents, utility models, industrial designs, trade names, trademarks and chip protection.

The national board of the patents and registration also has a Board of Appeals which is a part of the patent office and is not entirely independent of the registration authority.

(Intellectual property law in Finland by Niklas Bruun, Kluuwer law international, Kauppakaari oyj Helsinki 2001)

There are 27 EU member countries following the Intellectual property act and they have the possibility to use the rights, by law regulations which are set up with GATT and TRIPS implements. In these 27 EU member countries the customs are involving, in the cases where they suspect counterfeiting.

(Finnish Customs)

3.2 Introduction to trade marks

Trademarks are generally words, phrases, logos and symbols used by producers to identify their goods. However, shapes, sounds, fragrances and colours may also be registered as trademarks. Almost any word, name, symbol, or device capable of distinguishing the source of goods may be used as a trademark subject to few limitations. (<http://topics.law.cornell.edu/wex/Trademark>)

3.2.1 Meaning of trademark

The purpose of trademarks is to make the difference between products and services, so that people as consumers can distinguish better between competing products and services in a market economy. They are one of the key issues in the intellectual property right and their influence to counterfeiting is big. Unlike patents, trademarks can be maintained indefinitely by paying renewal fees. Nonetheless, marks do not by themselves

have the capacity to prevent a competitor from entering any market with his own products or services; they merely prevent from annexing the protected mark in order to facilitate market entry. Accordingly, there is no policy reason for imposing any limit on the duration of rights of this type. At least, this will remain so provided that marks are not allowed to become barriers in the way of marketing products or services. (Intellectual property: Patents, copyright, Trademarks and allied rights, fifth edition BY: W.R. Cornish, London sweet & Maxwell 1999) p.9

3.3 Registered design

A design relates to the features of shape, configuration, pattern or ornamentation which, when applied to a product, gives the product a unique appearance. A registered design can be a valuable commercial asset. The registration of a design gives the owner protection for the visual appearance of the product but not how the product works.(<http://www.ipaustralia.gov.au/designs/index.shtml>)

A registered design can be a valuable commercial asset. If a registered design is owned there can be steps taken to enforce design rights. Once a registered design is examined and certified, you may sue for infringement if another person uses your registered design without your permission.

A registered owner,:

- has the exclusive right to use the design specified in registration;
- has the exclusive right to authorize other people to use design as specified in registration;
- has a registered design that is personal property that can grow in value and be sold;

- Can take action to stop other people using the design after examination and certification.

(http://www.ipaustralia.gov.au/new_designs/keyfeatures.shtml)

3.4 Patents

Patents are granted in respect of inventions, i.e. technological improvements, great and small, which contain at least some scintilla of inventiveness over what is previously known. To take the standards now operating in much of Europe, they are typified by the following:

- They issue from a state or regional patent office after a substantial examination of their validity.
- They last for a maximum of 20 years from application: and
- They require that the invention be publicly described in the patent specification

3.4.1 Patents and counterfeiting

The right which they accord is to prevent all others –not just imitators, but even independent devisers of the same idea–from using the invention for the duration of the patent. That core conception reveals a great deal about why invention patents are the most basic, the most valuable and, to others, potentially the most dangerous, of all intellectual property right category. (<http://www.epo.org/aboutus/press/releases/archive/2005/27102005.html>)

Patents are one form of Intellectual property. The risk of patent infringement grows with the geographical market area and is greatest in the United States market. (Intellectual property beyond rights, Niklas Bruun, WSOY 2005) p.352

3.4.2 The side effect of the patenting

One of the critical elements for counterfeiting to take place is that some of the big companies who have factories, for example, in Asia are taking advantage of not paying the fees for the patenting and copyright

How it really works then is that factory X is producing a lot of the product A. Product A is the real thing and all the costs and permissions to the product are ok. At the same time as company X is making the products they have counted that if they save 2 cm of the material which should be used for product A, they can produce product B from the same material which was left over because of the 2 cm. The company doesn't have to pay taxes and other kinds of fees related to producing and so they gain the benefit of the so called extra material. (Interview: Leif Dahl, Sales Manager of Top-Sport Vaasa 14.11.2009)

3.5 Copyright

Copyright is a form of intellectual property that gives the author of an original work exclusive right for a certain time period in relation to that work, including its publication, distribution and adaptation, after which time the work is said to enter the public domain. Copyright applies to any expressible form of an idea or information that is substantive and discrete and fixed in a medium.

Some jurisdictions also recognize "moral rights" of the creator of a work, such as the right to be credited for the work. Copyright is described under the umbrella term intellectual property along with patents and trademarks.

Copyrights might be, for example, different kinds of publications like books and literature, movies, paintings, compositions. For computer programs, games and maps the time is 15 years. The time for copyright is 70 years from the death to the copyright owner. (World Intellectual Property Indicators, 2009 by WIPO)

3.5.1 What are the economic rights of copyright owners?

Copyright owners generally have the right to authorize or prohibit any of the following things in relation to their works:

- Copying the work in any way. For example, photocopying, reproducing a printed page by handwriting, typing or scanning into a computer, and taping live or recorded music are all forms of copying;
- Issuing copies of the work to the public. However, once a copy has legally been put into circulation anywhere in the European Economic Area, this right cannot be used to prevent further sale of that copy, although rental and lending of it can still be controlled by the copyright owner;
- Renting or lending copies of the work to the public. However, some lending of copyright works falls within the Public Lending Right scheme, and this lending does not infringe copyright;
- Performing, showing or playing the work in public. Obvious examples are performing plays and music, playing sound recordings and showing films or videos in public. This right also includes public delivery of lectures, speeches and the like, and letting a broadcast be seen or heard in public also involves performance of music and other copyright material contained in the broadcast;
- Broadcasting the work or other communication to the public by electronic transmission. This includes putting copyright material on the internet or using it in an on demand service where members of the public choose the time that the work is sent to them;
- Making an adaptation of the work, such as by translating a literary or dramatic work, transcribing a musical work and converting a computer program into a different computer language or code.

Copyright is infringed when any of the above acts are done without authorization, whether directly or indirectly and whether the whole or a substantial part of a work is used, unless what is done falls within the scope of

exceptions to copyright permitting certain minor uses of material.

(<http://extwww.patent.gov.uk/types/copy/c-about/c-about-faq/c-about-faq-economic.htm>)

3.6 Moral rights

Moral rights give the authors of literary, dramatic, musical, artistic works and film directors the right:

- To be identified as the author of the work or director of the film in certain circumstances, e.g. when copies are issued to the public.
- To object to derogatory treatment of the work or film which amounts to a distortion or mutilation or is otherwise prejudicial to the honor or reputation of the author or director.

In contrast to the economic rights under copyright, moral rights are concerned with protecting the personality and reputation of authors.

The right to be identified cannot be exercised unless it has been asserted, that is, the author or director has indicated their wish to exercise the right by giving notice to this effect (which generally has to be in writing and signed) to those seeking to use or exploit the work or film.

Moreover, the author or director can waive both the right to be identified and the right to object to derogatory treatment.

These rights do not apply to case:

- where the work is a computer program
- where ownership of a work originally vested in an author's employer
- where the material is being used in newspapers or magazines
- reference works such as encyclopedias or dictionaries

- Authors of literary, dramatic, musical and artistic works and film directors are also granted the moral right not to have a work or film falsely attributed to them.

Performers also have moral rights which include the right:

- to be identified as the performer and
- to object to derogatory treatment of performance.

Moral rights last for as long as the copyright lasts in the work although the creator may waive, that is choose not to exercise, his or her moral rights.

Unlike copyright, moral rights cannot be sold or assigned to another person. (<http://www.ipso.gov.uk/types/copy/c-otherprotect/c-moralrights.htm>)

3.7 Industrial design indicators

An industrial design is the ornamental or aesthetic aspect of an article. The design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

Industrial designs are applied to a wide variety of products of industry and handicraft: from technical and medical instruments to watches, jewelry, and other luxury items; from house wares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods. The holder of a registered industrial design has exclusive rights against unauthorized copying or imitation of the design by third parties.

The term of protection is generally five years, with the possibility of further periods of renewal up to, in most cases, 15 years. (*World Intellectual Property Indicators, 2009 by WIPO*)

3.7.1 Conclusion about intellectual property rights

Intellectual property rights (IP) consists of patents, trademarks, registered designs, copyrights, utility models, registered designs Industrial design indicators, the know-how, trade secrets, the company name or the design of its logo which can represent most of its value. Because people are so brand-orientated in today`s world, it is important for the persons and companies to have their rights and secrets protected. Because of the laws and regulations they have the opportunity to have their rights regulated but because of the illegal counterfeits it has become a large problem to right owners. In some countries the laws and regulations are not followed and that is one of the main reasons, why the spread of counterfeits is so large.

World Intellectual Property Organization has reported that for the 500 largest companies, IP represents anything between 45 to 75 Per cent of their value. (World Intellectual Property Indicators, 2009 by WIPO Publication941)

The majority of the population can make choices denied to our parents on what we eat, wear or listen to, where we travel and how we get there. At the same time, we are faced with a variety of brands that would have shocked our parents: our clothes now have labels on the outside. Our sunglasses have the manufacturers name written on them, and aren`t just for keeping the sun out of our eyes. We hear that Coke is the Real Thing: the hidden message being that The Fake Things isn`t as good. (Knockoff: The Deadly Trade in Counterfeit Goods by Tim Phillips. Kogan page Limited 2007) p.16

3.8 The side effect of intellectual property rights

There are a lot of ways how companies can protect themselves, but there is a side effect to this too. Some companies which are aiming to short-term business are not paying for the protection and the rights as it is not free to protect all the rights. It brings extra costs and if the intensions of the business are just to sell and get the profit as fast as possible, they don`t want to pay

extra. This is a way of acting when looking at short term sales. (Interview: Maj-Lis Backman 10. Mar.2010 Vaasa University of Applied Sciences)

4 WIPO, GATT, WTO

Many things have been done to prevent counterfeiting with laws and regulations. Because the problem is not just a problem of one country, there are different kinds of ways of handling the issue. There are also many organizations that are doing all they can to stop the spread off knockoffs. In the next headings there will be a brief introduction to such organizations.

4.1 World Intellectual Property Organization (WIPO):

WIPO is a specialized agency of the United Nations system of organizations and it is responsible for the promotion of the protection of intellectual property throughout the world. (International Commercial Agreements: a Primer on Drafting and Resolving Disputes, third edition by William F. Fox Jr. Kluwer, law international 1998). P.309

WIPO is located in Genève and it has 184 member nations and it administers 24 international treaties (16 on industrial property; 7 on copyright. (Patentioikeus, By Rainer Oesch ,Heli Pihlajamaa. Talentum 2008)p.45

4.2 The General Agreement on Tariffs and Trade (GATT)

GATT covers international trade in goods. The workings of the GATT agreement are the responsibility of the Council for Trade in Goods (Goods Council) which is made up of representatives from all WTO member countries. (http://www.wto.org/english/tratop_e/gatt_e/gatt_e.htm)

GATT was signed in 1947, with a multilateral agreement regulating trade among about 150 countries. According to its preamble, the purpose of the GATT is the substantial reduction of tariffs and other trade barriers, the

elimination of preferences, on a reciprocal and mutually advantageous basis and adequate protection of intellectual property rights. (<http://www.law.duke.edu/lib/researchguides/gatt>)

4.3 World Trade Organization (WTO)

WTO was set in January 1, 1995. The WTO implements the agreement, provides a forum for negotiating additional reductions of trade barriers and for settling policy disputes, and enforces trade rules. (<http://www.law.duke.edu/lib/researchguides/gatt>)

Its main function is to ensure that trade flows as smoothly, predictably and freely.

WTO is trying to make consumers and producers to know that they can enjoy secure supplies and greater choice of the finished products, components, raw materials and services that they use. (http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr00_e.htm)

5 COUNTERFEITS AS AN INTERNATIONAL THREAT

Counterfeiting is one of the fastest growing industries in the world; the total amount of its market is estimated to be over 500 billion dollars. It is an illegal industry which is having a negative effect on world economy. It is run by the organized crime and it affects the developing countries, it costs jobs, breeds corruption and violence as well as kills people. In today's world globalization is a trend and it has had a big impact on the spreading of counterfeits. If we think about how easy it is to communicate with the help of the internet, we can realize that you can sell and buy anything over the net. For counterfeit economy it means that it is more difficult for you to find counterfeits; it is easier for them to find you.

The problem has become so big that it is not just the luxury products which you will certainly notice when walking the main streets of Sunny Beach in Bulgaria but that it is very hard to even know which products are fake. The

measuring of the quantities of counterfeits is impossible to know because the quantities of caught ones are available but the ones which are not caught stay a mystery. Both The World Customs Organizations and International Chambers of Commerce estimate that the fakes in world trade are currently worth about 512 billion dollars, or 5 to 7 per cent of the world's trade. (ICC, World Customs Organization)

The European Parliament has already in 1985 listed the products which were available as knockoffs as shown in table 5.1. On this list there were products like groceries, alcohol, drugs, home electronics, spare parts for cars, airplanes and helicopters (Clark and Worsdall 1998, s. 14 to 16 and Montan, Lall and Borg-Marks 2001, s. 12–13)

5.1 An illustrative list of products subject to IP infringement

<u>Industry sector</u>	<u>Examples of products subject to IP infringement</u>
Apparel, footwear and designer clothing	T-shirts, hats, jerseys, trousers, footwear, caps, socks
Audio-visual, literary and related copyrighted work	Scooters, engines, engine parts, body panels, air bags, windscreens, tires, bearings, shock absorbers, suspension and steering components, automatic, spark plugs, disc brake pads, clutch plates, oil, filters, oil pumps, water pumps, chassis parts, engine components, lighting products, belts, hoses, wiper blades, grilles, gasket materials, rings, interior trim, brake fluid, sealing products, wheels
Consumer electronics	Computer components (monitors, casing, hard drives), computer equipment, webcams, remote control devices, mobile phones, TVs, CD and DVD players, loudspeakers, cameras, headsets, USB adaptors, shavers, hair dryers, irons, mixers, blenders, pressure cookers, kettles, deep fryers, lighting appliances, smoke detectors, clocks
Electrical components	Components used in power distribution and transformers, switchgears, motors and generators, gas, and hydraulic turbines and turbine generator sets, relays, contacts, timers, circuit breakers, fuses, switchgears, distribution boards and wiring accessories, batteries
Food, drink and	Fruit (kiwis), conserved vegetables, milk powder, butter,

agricultural products	ghee, baby food, instant coffee, alcohol, drinks, candy/sweets, hi-breed corn seeds
Personal accessories	Watches, jewelers, glasses, luggage, handbags, leather articles
Toiletry and other household products	Home and personal care products, including shampoos, detergents, fine fragrances, perfumes, feminine protection products, skin care products, deodorants, toothpaste, dental care products, shaving systems, razor blades; shoe polish; non-prescription medicine
Tobacco	Cigarettes, cigars, and snuff
Other	Toys, games, furniture, sporting goods (such as basket ball's and golf clubs), stickers, dyed and printed exotic fabrics, belt buckles, decals, flags, lighters, tabletops, flowers, plant cuttings, qualification certificates, abrasive tools, sanitary products (bath tubs, wash basins, toilets), tableware (plates, bowls, cups)

Figure 1: An illustrative list of products subject to IP infringement Source: <http://www.oecd.org/dataoecd/11/38/38704571.pdf> page_10

5.2 The key concerns

Counterfeiting and piracy are longstanding problems which are growing in scope and magnitude. They are of concern to governments because of a negative impact that can lead to lack of innovation. They pose a threat to the welfare of consumers and supports Criminal networks, organized crime and other groups that disrupt and corrupt society. They are of concern to business because of the impact that they have on sales and licensing, brand value and firm reputation, and the ability of firms to benefit from the breakthroughs they make in developing new products. They are of concern to consumers because of the significant health and safety risks that substandard counterfeit and pirated products could pose to those who consume the items. (<http://www.oecd.org/dataoecd/11/38/38704571.pdf>)

6 THE INTERNATIONAL SITUATION IN 3.Mar 2009

The International Chamber of Commerce (ICC) held a conference to the press for solutions to Counterfeiting and Piracy on March 11 2009 in Paris, France.

The International Chamber of Commerce (ICC) said that it will challenge global leaders gathering at a major congress to identify concrete solutions to the growing problem of counterfeiting and piracy, which has been exacerbated by the current economic crisis and is estimated to cost the global economy \$750 billion annually.

The Organization for Economic Cooperation and Development estimates that more than \$200 billion in tangible counterfeits and pirated goods flow through international trade channels each year.

In addition, law enforcement groups and others such as ICC have estimated that the overall cost of counterfeiting and piracy may be as high as \$750 billion a year when other losses to the economy are included.

These include domestically produced and consumed counterfeits, fake products distributed through the Internet, reduced foreign investment and technology transfers, and losses to broader society including increased government spending for health care and law enforcement.

The global economic crisis has placed even greater pressure on both public and private sector efforts to maintain the collective fight against counterfeiting and piracy. At the same time, the criminals who are involved in this illegal trade in fakes are intensifying their efforts to grow their businesses, maximize illicit profits, and build even stronger transnational organized crime networks which harm citizens and economies in all countries.

The social and economic losses associated with these illegal activities, such as the loss of jobs and tax revenues, constitute a critical concern for governments. (http://www.ag-ipnews.com/getArticle.asp?Art_ID=7748&lang=en)

7 REASONS FOR COUNTERFEITING

The International Chamber of Commerce has made a list about the reasons which lead to counterfeiting. The first reason is mentioned to be the profits out of pure sales. The second reason is said to be that there are still many countries that lack the immaterial laws protection or it has errors and also generally there is a lack of forcing the ending of counterfeiting. The third reason is to be said the cheapness of the equipments the counterfeiters need for counterfeiting. A final reason is the lack of knowing what kind of crime the counterfeiting is. (International Chamber of Commerce)

7.1 Poverty

In China there are lots of reasons which lead to taking advantage of the people who are poor. Mostly the workers come from the country side and they are paid approximately 150 € per month for producing counterfeit goods. It is way more that they would get by working in the countryside. Counterfeiting business is a way of surviving for the people who don't have an education. <http://arena.yle.fi/video/821200>

The astonishing expansion of manufacturing capabilities in less developed countries has raised incomes and boosted trade around the world. But the same production and distribution has also created a frightening phenomenon: an ever increasing flood of counterfeits and fakes in the world market. With factories located in remote countries, counterfeiters can divert the technology and supplies needed to produce knockoffs. http://www.i-b-t.net/anm/templates/trade_article.asp?articleid=228&zoneid=3

8 MARKET ANALYSIS: WHY DO PEOPLE BUY KNOCKOFFS?

People who purchase counterfeit merchandise risk funding nefarious activities, contributing to unemployment, creating budget deficits and compromising the future of the global economy.

So what is the real reason for people buying counterfeits? Just like there is not just one type of counterfeiting; there isn't just one type of customers. There are several reasons why we might buy a counterfeit. The market for counterfeit and pirated products can be divided into two important sub-markets. <http://www.oecd.org/dataoecd/11/38/38704571.pdf>

In the primary market, consumers purchase counterfeit and pirated products believing they have purchased genuine articles.

In the secondary market, consumers looking for what they believe to be bargains knowingly buy counterfeit and pirated products.

There are four facts based on the market behavior:

- We might know that it is not a genuine but still buy it. The first presumption might be that we are trying to buy it as cheaply as we can.
- We might know that it is not genuine, and so does everybody else.
- We might know the product is a fake, but nobody else knows.
- We might not know we bought a fake, and embarrassingly everyone else knows.

In the developed world, on average we live in the greatest luxury that we have ever experienced. We have the possibility to make our choice. The modern society has created a pressure for the consumers to be aware about the trends and the media spreads the pressure to follow them.

(Knockoff: (The deadly Trade in Counterfeit Goods by Tim Phillips Kogan Limited page. 2007) p.16

8.1 Would you buy a counterfeit product?

The Finnish newspaper Iltalehti made a survey on 24.August.2007 regarding counterfeits. The question was simply. Would you buy a counterfeit product?

There were 5671 answers given from people with different backgrounds. Mostly people chose counterfeits because of the price as shown in Figure 2.

Answers given: 5671

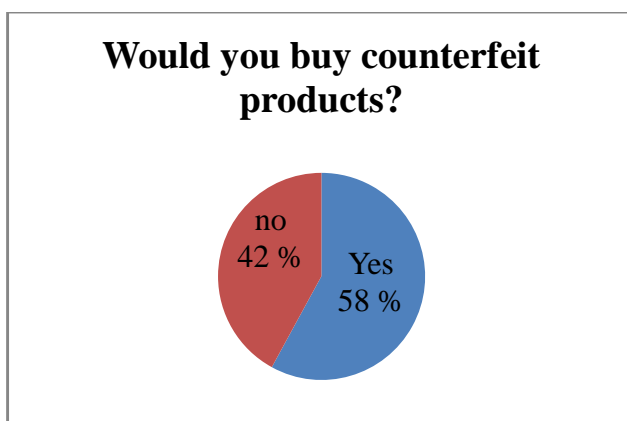


Figure 2 would you buy counterfeit products

Source:

<http://www.iltasanomat.fi/arkisto/Default.asp?alue=nettikyselyt&id=11796>

8.2 Why is it not worth buying knockoffs?

- The materials used in the products can cause serious damage to health.
- You can get an allergic reaction from the materials used in the product, or they can be easily flammable.
- Medicines don't necessarily have the effect that they should have or they can have serious side effects.

- Spare parts, for example, in cars, airplanes and ships can cause failures and accidents.
- The parts of electronic devices can cause fire burns and explosions.
- Missing manuals can cause accidents.
- Nobody is responsible for the product and there are no guarantees for products.
- The quality of the product is poor compared to the genuine article.
- When the real products are being sold less and the sales and manufacturing are getting smaller it means that in Europe there are 100 000 people losing their jobs every year.
- The government is losing tax incomes because of the knockoffs, which are collected in other ways from the tax payers.
- Selling knockoffs is illegal and can lead to fines or jail.
- Counterfeiting is part of international organized crime.

<http://www.tuotevaarennos.fi/main/index.php?p=Tuotevaarennokset/1>

8.3 Comparison: Fake versus Genuine.

If we make a comparison between a person who buys knockoffs and a football fan we can realize what is the meaning of original and genuine.

A season ticket to Manchester United home games costs from 513-931£ for adults depending on the place where you want to sit, the other thing is that are there any seats left? ([www.manutd.com/Season tickets adults](http://www.manutd.com/Season%20tickets%20adults))

But what if someone offered fans the chance to watch a knockoff Manchester United for half the price, using poor quality players pitched against a similarly Liverpool or Arsenal, there is not a single fan who would take that option, because they care about the authenticity of the experience more than they care about money, even if they had to wait for the tickets for ten years. (Knockoff: The deadly Trade in Counterfeit Goods By Tim Phillips Kogan Limited page 2007) p.16

9 COUNTERFEITING: A THREAT TO HEALTH

One of the many reasons why it is not advisable to buy counterfeit products is the reason that they can be a threat to the health and can seriously damage it. As it has been clear now it is not only the luxury goods which are counterfeited. There are dozens of everyday products available as well.

9.1 Medicines

One of the areas which are now popular in counterfeiting is different medicine. It is extremely dangerous and still even 6-7 per cent of the drugs sold in the world are illegally produced. The problem of counterfeit medicines was first addressed at the international level in 1985 at the Conference of Experts on the Rational Use of Drugs in Nairobi.

Increasing international trade of pharmaceuticals and sales via the internet has further facilitated the entry of counterfeit products into the supply chain.
<http://www.who.int/medicines/areas/policy/en/>

9.1.1 Key facts about counterfeit medicines

- Counterfeit medicines are medicines that are deliberately and fraudulently mislabeled with respect to identity and/or source.
- Use of counterfeit medicines can result in treatment failure or even death.
- Public confidence in health-delivery systems may be eroded following use the use or detection of counterfeit medicines.
- Both branded and generic products are subject to counterfeiting, they may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient or too much active ingredient, or with fake packaging.

All kinds of medicines have been counterfeited, including medicines for the treatment of life-threatening conditions, expensive lifestyle medicines, and inexpensive generic versions of simple painkillers and antihistamines. The World Health Organization (WHO) has estimated that in Thailand 40 per cent of the drugs is counterfeits and in some countries in Africa 60 per cent of the drugs can be counterfeits. If the medical care suffers so much because of counterfeits it is a very bad situation for the world health in the future. The medicine and health organization FDA in the United States has estimated with (WHO) that at the end of year 2009 the sales of counterfeit products will reach up to 23 milliard dollars. The amount is estimated to rise in the year 2010 up to 75 milliard dollars.

(<http://www.tekniikkatalous.fi/kemia/article111849.ece>)

As we can see the problem is very big and it has also already landed in Finland too. According to Finnish Customs in 2008 there were 60 000 Viagra pills caught. (Tulliviesti 2/2009Tullihallitus)<http://www.who.int/medicines/services/counterfeit/en/index.html>

9.2 Electrical counterfeit products

Counterfeit electrical products are infecting nearly every product category in the electrical market. Manufacturers, distributors, contractors and customers face risks, ranging from liability and life safety to profitability. The problems must be addressed, and it will take the unity of the entire electrical industry to do so. (<http://www.counterfeitscankill.com>)

"Counterfeit electrical products pose a risk of injury and death. Manufacturers, distributors, contractors, and ultimately customers face risks ranging from liability to life safety to profitability. More than one million counterfeit electrical products have been recalled in the recent years,

including circuit breakers that did not trip when overloaded, cell phone batteries without a safety device in the circuitry to prevent overcharging, and extension cords with mislabeled, undersized wiring that overheated (Frank Abagnale Discusses Counterfeit Products in (www.counterfeitscankill.com))

What to consider when buying electronic products:

- ▶ Look for the IECCEE NCB certification marks. If you have concerns about the marks, contact the relevant Certification Bodies.
- ▶ Buyers should beware of bargains that seem too good to be true. Products may be cheap because they are counterfeit or defective.
- ▶ Use established vendors who purchase their goods from legitimate distributors and genuine manufacturers.
- ▶ Night vendors may not be willing to grant refunds for electrical products that do not perform as they should.

(www.iccwbo.org/.../Counterfeiting_IECCEE%20version_photos.ppt)

9.3 Alcohol and food

The majorities of IPR infringements in the food/drink industry involve the misappropriation of trademarks or registered designs, especially for types of foodstuffs or drinks where the original product can easily be replaced by a substitute.

Because food and drink products are intended for human consumption, the sector is vulnerable to the possible health effects of sub-standard counterfeited products reaching an unsuspecting market. The industry points out that these health problems could extend from headaches to people dying from the consumption of such products.

Generally, few consumers would knowingly purchase food or drink products that they knew to be fakes or substitutes unless they somehow also had prior knowledge of the suitability of those counterfeited products. In the case of food and drink, the possibility of serious health consequences would probably be too great for most consumers to take the risk. Therefore, counterfeiters do everything possible to make their counterfeited items appear as close to the original as possible, a task that is becoming increasingly easier.

As well as deceiving consumers through appearance, there is also a risk that the more attention (and cost) that goes into the packaging, the less will be devoted to the product inside, thus increasing the possibility that the fake goods could carry health risks. However, as a counterpoint it is unlikely that counterfeiters would purposely produce harmful products, which would hinder their sales and reduce the potential returns of their investments.

(<http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/OECD-FullReport.pdf>) page329- 335)

10 "THREE Ps": IN COUNTERFEITING

Because the counterfeits are getting better all the time and it might be very difficult to recognize the genuine items.

Here is the “Three Ps” which can make counterfeits a little bit easier to recognize.

- **Package:** Look at the quality of the product and its packaging. Watch for things like poor stitching, incorrectly spelled brand names or logos, etc.
- **Price:** If the price is too good to be true, it probably is.
- **Place:** Brand name products are sold in stores or through the official company Web site, not on the streets or open air markets (IAAC).

11 INTERNET “THE MODERN WAY OF SELLING COUNTERFEITS”

The popularity of online auction and retail sites on the internet has made it easier for counterfeiters to sell their products to an unsuspecting, as well as, uninformed public. There are many ways and places how and where to sell Counterfeits and buy. Because of the global network, the spread of counterfeit sales has moved to websites and auction sites. The factors to use internet can be shown on the table 11.1.

The global counterfeit market, which already accounts for 9% of world trade, will double in size over the next two years. Much of the increase will be due to sales from unregulated internet sites advertising fake goods.

The internet have all the product information a counterfeiter could hope, and other communication technologies make it possible for counterfeiters to introduce products and convincingly fake packaging.

The clothes people are buying over the internet might be helping to prop up terrorist or criminal gangs. Every major terrorist group in the world is into counterfeiting one way or another.

Research has shown that half the drugs currently obtained on the internet were of dubious origin. Many were ineffective and some potentially dangerous. A recent study by the Spanish Consumers' Association had shown that a quarter of "e-pharmacies" sold medicines on the Internet illegally. Many counterfeit medicines were repackaged products that had outlasted their original shelf life. <http://www.fraudaid.com/Scamspeak/conprods.htm>

11.1 Factors to use internet

Anonymity	The ease with which counterfeiters and pirates can conceal their true identity sharply limits the risk of detection.
Flexibility	It is possible for a counterfeiter or pirate located anywhere in the world to establish online merchant sites quickly. Such sites can also be taken down easily or, if necessary, moved to jurisdictions where IPR legislations and/or enforcement are weak
Size of market	The number of e-commerce sites and volume of listings are huge, making it difficult for rights holders and enforcement agencies to identify and move against infringing counterfeiters and pirates. With respect to auction sites alone, the firm eBay recorded 596 million new listings in the second quarter of 2006 (eBay, 2006). The possibility of marketing a small number of infringing products multiple times can further undermine enforcement efforts.
Market reach	The internet provides sellers with a means to reach a global audience at low cost, around the clock. For counterfeiters and pirates, who have traditionally thrived in localized, often informal, markets, this represents a major opportunity to expand sales.
Deception	Utilizing readily available software and images on the Internet, counterfeiters and pirates can easily create sophisticated and professional looking web sites that are highly effective in deceiving buyers. Misleading or contrived ratings of consumer experiences with internet vendors can further complicate matters by creating a false sense of security among purchasers. Finally, the infringing products may be sold alongside legitimate articles, which can facilitate deception.

Figure 3: Factors driving use of the Internet by counterfeiters and pirates

Source: <http://www.oecd.org/dataoecd/11/38/38704571.pdf> page 12

12 THE MARKETS FOR COUNTERFEITS AND PIRATED PRODUCTS

Counterfeiters and pirates target products where profit margins are high, taking into account the risks of detection, the potential penalties, the size of the markets that could be exploited and the technological and logistical challenges in producing and distributing products.

On the demand side, consumers either: (i) unwittingly buy counterfeit or pirated products thinking that they have purchased genuine items, or (ii) knowingly buy lower-priced counterfeit or pirated items. The degree to which consumers knowingly buy counterfeit or pirated products depends on the characteristics of the products concerned.

For example, consumers who would knowingly purchase counterfeit garments without any hesitation may have no interest in purchasing counterfeit pharmaceutical products. <http://www.oecd.org/dataoecd/11/38/38704571.pdf>

12.1 Counterfeiting and piracy in virtually all economies

Information provided by government authorities and industry worldwide suggests that counterfeiting and piracy are taking place in virtually all economies. Data provided by customs officials indicated that products had been intercepted from close to 150 source economies, including 27 of the OECD's 30 member countries. The sources mentioned include those economies where the counterfeiting and piracy are taking place, as well as economies that serve as intermediate shipping points. Covering the top 20 source economies, Asia emerges as the largest source for counterfeit and pirated products, with China as the single largest source economy as shown in

Figure 4.

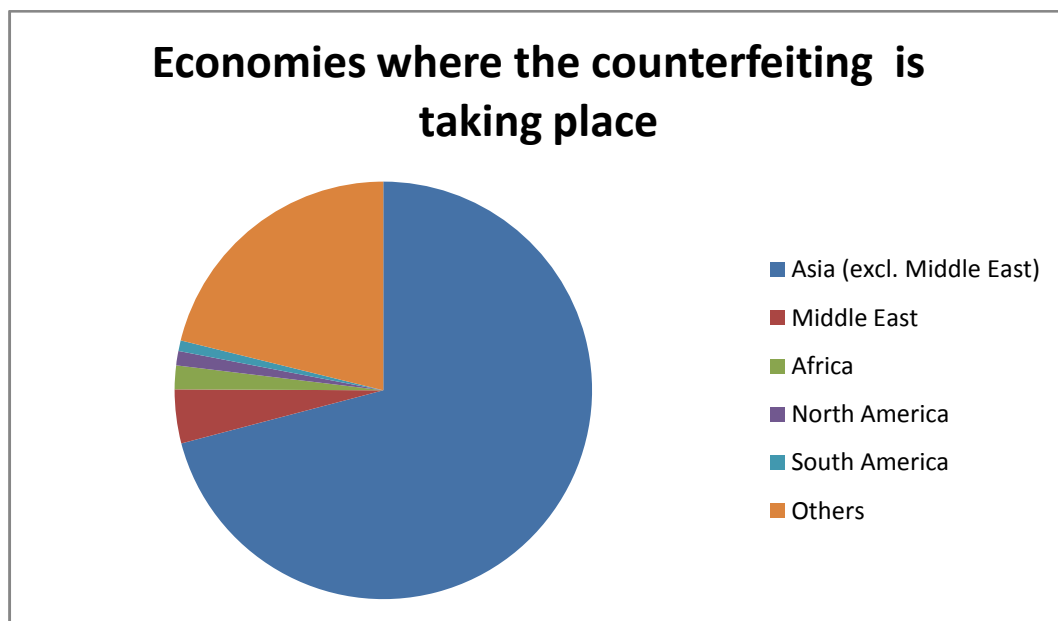


Figure 4 Economies where the counterfeiting is taking place

Source: <http://www.oecd.org/dataoecd/11/38/38704571.pdf> page 11.

13 FINNISH CUSTOMS

Finnish Customs is a part of the customs system of the European Union. Customs is a central state agency supervised by the Ministry of Finance through management by results. Finnish Customs cooperates with the trade community as well as with domestic and foreign authorities.

Protects society:

Expert competence on cross-border traffic and taxation is the basis of the successful and target-oriented crime prevention of the Customs.

The Customs promotes internal security with other security authorities, especially in the PCB cooperation (PCB = Police, Customs and Border Guard).

Customs protects the consumers and the environment

- by controlling imported foodstuffs and consumer goods
- by enforcing import and export restrictions.

According to The Finnish customs the amount of counterfeits has increased rapidly during couple of years.

The customs is doing hard work in preventing counterfeits from coming and leaving from the country. They are also trying to inform the citizens to avoid counterfeit goods.

http://www.tulli.fi/en/finnish_customs/about_us/tasks/index.jsp

In the year 2008 1, 35 million counterfeit products worth of 17 million dollars didn't reach the market. Immaterial, trademark and intellectual property right crimes were noticed by the customs in 104 cases, most of them 57, in total were intellectual property rights. (Tulliviesti magazine 1/2008)

14 WHO BENEFITS AND GAINS THE PROFITS?

The sale of fake goods, ranging from "designer" clothes to power tools to pharmaceutical products is directly linked to international terrorism and organized crime.

Links have been founded between counterfeiting and Al-Qaeda, Hezbollah, the IRA, ETA, the Mafia, Chinese Triad gangs, the Japanese Yakuza crime syndicate, the Russian Mafia and drug cartels. Indeed, the recovery of Al-Qaeda training manuals had shown that the organization recommends the sale of counterfeit products to raise funds.

<http://www.fraudaid.com/Scamspeak/conprods.htm>

In addition to the established link between counterfeiting and piracy and organized crime, the links can take two basic forms:

- *Direct involvement*, where a terrorist group is implicated in the production or sale of counterfeit goods and remit a significant portion of those funds for the activities of the group. Terrorist organizations with direct involvement include groups which resemble or behave like organized crime groups.
- *Indirect involvement*, where sympathizers involved in IP crime provide financial support to terrorist groups via third parties.

<http://www.oecd.org/dataoecd/11/38/38704571.pdf> page 13

15 COMBATING COUNTERFEITING, PIRACY FOR COMPANY

Next practical tips for combating counterfeiting, piracy and gray-market goods are introduced for businesses.

- Consider conducting an intellectual property audit to identify and assess companies' portfolio of common law and registered rights, including trademarks, copyrights, trade names, trade dress and others.
- Consider what policies and programs there are to fight against pirates or counterfeiters? Who in organization would lead the effort? With what budget? Do you have relationships in industry associations or government that might assist an enforcement effort?
- Company should register all trademarks and trade names
- Supply and distribution channels should be thought carefully. Suppliers, wholesalers, distributors, retailers and customers can all be valuable resources in identifying and responding to infringements in the marketplace. Counterfeit, pirated and gray-market goods can appear anywhere in the distribution channels.
- Check internet sale and auction sites, flea markets, closeout and dollar stores, house party programs and even major retail chains.

- Pursue manufacturers, individual sellers, importers, distributors, retailers and most other participants in the manufacturing and distribution chain. Target defendants that complement your goals.
- Industry associations might have enforcement programs of which the company can avail. Seizure orders, injunctions and damages (including statutory damages) are available against counterfeiters
- Enforcement of certain IP rights in certain jurisdictions or against certain defendants is good to handle
- Map all elements of manufacturing and distribution operations, from purchasing of raw material through the distribution cycle, to waste scrap and product management including warranty and claims analysis to stay ahead of the game. Conducting brand integrity audits to evaluate new product competition and to assess the level of counterfeit activities in a market where your products are sold must be an integral part of this strategy.
- Register the company trademark in all the countries where doing business or plan to do business.
- Watch out for fluctuating sales or angry customers complaining about product quality while reviewing your returned products for source and origin of the products. Customers who complain may actually have a counterfeit product in their possession. In other words, create a mechanism for consumers to alert about counterfeit products. Changing people's perception of counterfeits serves to help them understand that a counterfeit is not a harmless amusement, cheap souvenir or genuine savings; rather it can actually pose serious risk to their health and safety.
- Train the distribution and other intermediaries to notice differences in packaging, product colors, weight and other characteristics. Develop a process that allows these intermediaries to report any discrepancies they may notice. Train your key personnel from executives to technical and sales personnel to recognize if brand is being compromised due to counterfeit activities.

- Use new technologies to help trace products through the supply chain and to distinguish genuine articles from fakes. Molecular tags (such as DNA) are increasingly being used in products or on packaging to mark them in such a way that special assays can distinguish the real thing. More discrete identifiers dubbed DNA markings can be used to identify products in ways that the counterfeiters cannot duplicate.
- Discourage Promotion of Counterfeit Products from visiting markets that sell counterfeits, as is being done in some places in China. Warn against buying counterfeits in travel advisories issued by governments to its citizens
http://www.perkinscoie.com/news/pubs_detail.aspx?publication=2318&op=updates

15.1 Driving Forces

The dramatic increase in commercial piracy is directly linked to the great surge of foreign direct investment (FDI). Because of globalization companies are setting up joint ventures and subsidiaries overseas, as well as investing great resources in technology and research transfer. The increase in FDI and globalization has given people the opportunity to do something they would not have gotten into their hands otherwise.

As the economies in developing countries grow and develop, they are able to acquire high-tech machinery to facilitate counterfeiting. Advances in new technologies allow almost exact reproductions of original products and the internationalization of economies and worldwide demand for certain products and brands also result in globalization of counterfeit products.

Many counterfeit outfits now have mass production capabilities and have developed relationships with legitimate distribution channels to market their products. Popularity of online auction and retail sites on the Internet has made it easier for counterfeiters to sell their products to an unsuspecting, as well as, uninformed public. This is why it is extremely important for the companies to

start fight against counterfeits and piracy.http://www.i-b-t.net/anm/templates/trade_article.asp?articleid=228&zoneid=3

EMPIRICAL STUDY

The empirical study starts with an introduction to research methodology. The work is going to be carried out through a theme interview because it will be a good way of collecting data about the experiences and opinions of people and companies.

The theme-centred interviews will give unique answers and the specific information to the questions which will form a wider view about counterfeiting.

16 RESEARCH METHODS

16.1 Qualitative research

The most commonly used research methods are qualitative and quantitative. Qualitative and quantitative research is a perennial, hot debate, especially in the social sciences.

<http://wilderdom.com/research/QualitativeVersusQuantitativeResearch.html>

Qualitative researchers aim to gather an in-depth understanding of human behaviour and the reasons that govern such behaviour. The qualitative method investigates the why and how of decision making, not just what, where, when. Hence, smaller but focused samples are more often needed, rather than large. [sampleshttp://en.wikipedia.org/wiki/Qualitative_research](http://en.wikipedia.org/wiki/Qualitative_research)

To generalize, qualitative research is usually better for exploring, understanding, and uncovering, while quantitative research is generally better for confirming and clarifying. [http://www.goodproductmanager.com/2008/01/22/understand-qualitative-vs-quantitative-research/\)](http://www.goodproductmanager.com/2008/01/22/understand-qualitative-vs-quantitative-research/)

16.2 Data collection

Data collecting in a way of theme interviews will be a way of getting the information gathered to be further analyzed. The data collecting will be made with using the cross-sectional study. (Tutki ja kirjoita, Hirsijärvi Sirkka, Remes Pirkko, Sajavaara Paula, publisher Tammi 2007 p.173.

Cross-sectional analysis form is a class of research methods that involve observation of some subset of a population of items all at the same time, in which; groups can be compared at different ages with respect of independent variables. http://en.wikipedia.org/wiki/Cross-sectional_study

In this research I hope to get opinions about people with different age and background.

16.3 Theme-centered interview

Theme-centered interview is seen usually as a mix of both a formula questionnaire and open interview. An open conversation situation has to be established during the interview

The interview starts with a short explanation of the topic of the study and a clarification of the interview frame (duration, process, promise of confidentiality. <http://www.qualitative-research.net/index.php/fqs/article/view/1092/2396>

The aim of my theme-centered interview will be to get opinions from people who are dealing with the issue in companies and also generally opinions about counterfeiting.

16.4 Reliability and Validity of the research

In the research it is important to avoid mistakes. It might be that the questions that are asked are differently answered from what expected. Determining the impact of the results is dependent upon two concepts: validity and reliability. Validity entails the question, “does your measurement process, assessment, or

project actually measure what you intend it to measure?” The related topic of reliability addresses whether repeated measurements or assessments provide a consistent result given the same initial circumstances.
http://www.natcol.org/research/files/Validity-ReliabilityResearchArticle_000.pdf

16.4.1 Reliability

Reliability is when a test measures the same thing more than once and results in the same outcome. The reliability of the research means its ability to give non –accidental results in the research. (Exploring Research Fourth edition. Prentice Hall Inc. 2000. Neil J. Salkind) p.105

If results are similar then it is likely the method of data gathering is reliable. Because my research will be conducted in a way of interviews it is important that even if the questions were asked twice, the answers would remain the same. That is why I want to show my conclusions to the people who I have interviewed so I can be sure that what I concluded in my research is the same what they originally wanted to tell.

16.4.2 Validity

Validity of the thesis means the truthfulness or accuracy within the score of a test or interpretation of an experiment. (Exploring Research Fourth edition. Prentice Hall Inc. 2000. Neil J. Salkind p.326

The interviews are done in the mother language of the person who is interviewed to prevent misunderstandings. The theme centered interview will also give the possibility to specify the question if the interviewed person doesn't understand the question. The research measures the validity correctly because I am able to be a part of the interview and so the questions are not misunderstood.

17 RESEARCH ANALYZIS

The research analysis will be divided in to two parts; the first part will give opinions on a personal level from ordinary people in different age and backgrounds. It is important to have opinions from this category to create a general picture about what people think about counterfeiting.

In the second part the interviewed person has been chosen from a company according to the interviewee`s experience about counterfeiting and I will create a discussion about counterfeiting from the business perspective.

Analyze of the research is to gain results and answers from the theme-centered interviews. The recording technique will be in a way of audio tape. The advantage by recording is easier to make observations and analyze the data recorded because the interview can be reviewed as often as needed.

The disadvantage in recording technique is that the participants might not act in their usual. I am trying to contact the conversation in a way that makes it comfortable for the participant.

(Thesis and Dissertations, A guide to Planning, Research and Writing, R. Murray Thomas, Dale L. Brubaker , Corwin Press 2008) p.156

The research is going to be anonymous, because the subject is very sensitive and it is easier for these interviewed to give more truthful, answers. I don't find it necessary to tell the names of the persons, that is why the names will be in a form of person A, person B, and so on. The interviewed company has given permission to publish the details and the person in the company.

In the next chapter I will present some basic information about the people and companies who have been interviewed so the reader can have a picture about them. The questions will also give a picture about the market behavior.

The answers of the interviews will be analyzed in to a big picture, so that the empirical study will be enjoyable to read. The intension is not to go through

the interview answer by answer and question by question. The idea is to pick up points which give the needed information.

17.1 Introduction to the companies and persons

The idea of this chapter is to give the reader a picture about the companies and persons who participated in this research. The first part of this chapter will include opinions of individual persons with different age and different background. Because the persons will be anonymous it is still good for the reader to know the certain companies and people were interviewed about the issue of counterfeiting. The questions may vary because of the different backgrounds that the interviewed have.

17.1.1 Person A

Person A is a 24-year-old Finnish male student, who has lived in Thailand and seen how big a problem counterfeiting is, especially in Asia. He has information from the area of Bangkok where the situation is very concerning. Cultural differences are significant and that is why his experience in living both in Finland and in Thailand will give extra value to the research.

17.1.2 Person B

Person B is a 63-year-old female who is pensioned; she has experience from running a business in the field of clothing. She has been importing clothes back in the 80s. This person was chosen because of getting information about the situation of counterfeiting now and then and how it has changed.

17.1.3 Person C

Person C is an 18-year-old male student who hasn't yet got so much experience. I however have seen him wearing some counterfeit clothes. It is also good to know opinions about a person who hasn't got so much experience about counterfeiting.

17.1.4 Person D

Person D is a female at the age of 40. She has travelled a lot in Europe and the experience of places visited will give a larger picture from Europe. She has also read books about counterfeiting.

17.1.5 Supporters Place

Supporters Place is an international company which is operating on the web page www.Supportersplace.com. The company is selling licensed fan based products. They are also co operating with Steve Perryman Sport travel by selling sports event trips to events around the world, especially trips to Formula1 and soccer trips.

18 ANALYZING OF THE QUESTIONS

18.1 General view

The purpose of questions number 1 and 2 is to collect information about what people think about the word counterfeiting. From the answers I got this collected:

“The first thing that comes to my mind is that you get at luxury product cheaply, especially clothes and watches”

Even though counterfeiting has many areas, usually people think about luxury clothes. That is because it is the most common product you can notice.

Counterfeiting has a very large meaning and I was expecting that the answers would be based mainly on the luxury clothes.

“The amount of electronic devices has increased”

If we think about the near history of counterfeiting, we can realize that electronic products have developed during the past 20 years, that is why the popularity have increased, and as in all counterfeiting the number one rule for

the ones who are doing it, is to follow the market and create a product based on the popularity and demand.

18.2 Purchase behaviour

The purpose of question number 3 is to ask if the interviewed persons have bought counterfeits. By asking this I wanted to prove that it is very common that people have bought a counterfeit some time in their life. From the answers I got this collected:

“When I was younger I bought clothes, watches and sunglasses”

“I have never bought fake products so that I have known that they are counterfeits”

From these answers I can make a conclusion referring to the theoretical study of the thesis where I discussed about purchase behavior. Nowadays people are more suspicious about what they are buying, but back in the days when counterfeits were not that common you couldn't be so suspicious about what you were buying because the counterfeiting was so new thing.

18.3 Value

The purpose of question four is to understand what kind of value the interviewed people give to the fake products that they have bought.

From the answers I got this collected:

“I see counterfeits as souvenirs which will work the time they work”

Many people buy knockoffs when they are travelling, they also spend money when they are travelling and in many tourist places the products are sold a lot.

18.4 Place

With question five I wanted to know that where they have seen the knockoffs being sold.

“Mainly I have seen counterfeits in tourist places but in Asia there where knockoffs sold in large apartment stores”

The most common place for selling counterfeits is in tourist streets, bazaars and market places. The amazing thing is that in Asia they have so many errors in their system to stop counterfeiting that counterfeits can be even sold in large apartment stores.

“In the 90s there where fake bags sold in Tallinn at cheap prices”

Many people in Finland have had their first experiences about counterfeiting in Tallinn. There is a market place called “Mustamäen tori”.

“In the 90s there were people who rented space for selling counterfeits in the weekends and they sold them in front of our store”

Person B suffered in the 90 s because of counterfeits and because the people didn’t understand them then.

18.5 Price

“In Thailand it is cheaper to buy a fake Ed Hardy t-shirt instead of a normal white t-shirt”

It might even be more difficult to even find a normal white t-shirt. A fake Nike shirt costs about 100 baht which is about 2 Euros.

“It is more expensive to buy from Tenerife instead of Asia”

There are differences in the price level and there are many things which affect it. If we make a comparison between a tourist street in Tenerife and a shopping mall in Bangkok we realize that most of the people buying from

tourist destinations are not local people but the people in Bangkok are mostly locals. That affects the pricing a lot.

18.6 Purchase

With questions 6 and 7 I wanted to find out that would the persons still buy counterfeits for some reason and are there some products they know that they wouldn't buy.

"I would still buy sunglasses because they are just cheap accessories"

Sunglasses are often considered to be just so cheap that it doesn't matter if you lose or break them. From my own experience I have noticed that people like to call fake sunglasses as party glasses.

"Medicines are one thing for sure that I wouldn't buy"

"I am afraid of the consequences that the fake medicines might cause"

Use of counterfeit medicines can result in treatment failure or even death. This is an area in counterfeiting which is considered to be dangerous and there are a minimal number of people who are willing to take that risk.

18.7 Quality

With question number 7 I wanted to find out how good the knockoffs are — what is the quality like and have there been any differences, disappointments, surprises?

"The colours will vanish after the first wash and the size will also change"

"I wouldn't buy fake clothes anymore because of their poor quality"

Many of the persons agreed that after a while you will give value to the real ones. As there are no guaranties and you cannot really complain to anyone about a counterfeit product.

Nowadays there are various products with different quality.

18.8 Increased/Decreased?

With question 8 I wanted to know how people see counterfeiting in the past and how they see it now.

“I think that the amount of counterfeits has increased but in Finland the counterfeits are very well controlled, because you can't see any places where they are being sold”

I agree that it is very well controlled in Finland and the Finnish regulations and laws have made it difficult to counterfeit them publicly.

“It is even told in the news about the amount of counterfeits which are getting caught”

People are becoming more aware of counterfeits all the time there are large amounts of operations being caught, thanks to the Customs.

In the 90s there were certain products which were counterfeited but nowadays you can even see water bottles being counterfeited”

18.9 Brands

With question number 9 I wanted to know what brands people know that are being counterfeited.

“The most common products which are counterfeited are Lacoste, Polo, Armani and Calvin Klein”

The once mentioned above are some of the most common brands which are being counterfeited. Because there are so many different products which are being counterfeited there are also so many brands which are not being recognized. The fact is that every brand is vulnerable of being counterfeited.

18.10 Customer behaviour

With question 10 I wanted to know about the customer behaviour.

“I think that people have the pressure to follow the trends even though they wouldn’t have the money to do that by buying real luxury brands”

“People just bought them because they thought that they got it cheap”

In this question the answers varied as a result of the age of the interviewed. The younger people were more concerned about the image they might create by wearing and using counterfeits. The older were not so concerned about the consequences.

18.11 Problem

With question 11 I wanted to know how big a problem counterfeiting is within international business/ Finland.

“It is said that because of the counterfeiting people are losing jobs but in Asia people are getting jobs because so many people are dealing with manufacturing and selling”

I think that one of the biggest problems in the field of counterfeiting is that at the same time as it creates jobs, it also makes people lose their jobs. There is a big contradiction about what people think about counterfeit around the world.

19 COMPANY INTERVIEW: SUPPORTERS PLACE

I decided to make an open interview with the representative of Supporters Place Finland. I wanted to interview a company who is struggling with the awareness of counterfeits in business. The interview was hold in the company office which is located in Vaasa, Finland. I knew the CEO in advance from playing with him at the same team. Because I knew him before hand it made the interview very open. Because the other persons I have interviewed are not specialists in the matter of counterfeiting, it was more important for me to tell

and discuss about the risks and future of counterfeits. We had a long discussion about the meaning of counterfeits related to the soccer shirts. I choose the company especially because of the popularity of soccer shirts and fan culture. Before the interview I read many articles about the counterfeiting and soccer shirts so I knew that I have some statements which I know about and can discuss with a person who is working in that field. We agreed on the fact that the counterfeiting has increased rapidly. We talked about pricing, customers and especially about the exchange period in Asia. During my studies in Thailand I watched a lot of soccer and I realized that even though Thailand has not been very successful in soccer that there are lots of people following the games, especially Premiere League and Champions League. We were also discussing the thing that the Thai beer industries like Singha and Chang are being advertised in the shirts of the English teams. It is one of the reasons why there are lots of fake shirts in Thailand because people can't afford buying license shirts and they wear the shirts because of the bear advertisements. I wanted to know that has Mr. Byggningsbacka seen any fakes in Finland and have there been people who have asked about the originality of their products? He told me that he has seen some fake shirts sold even in Vaasa.

Because the company is working over the internet there have been people who have said that you can get the same shirts cheaper from EBay and other similar internet pages. The fact is that the purchase prices don't allow the shirts to be sold with cheaper price, which is why they are probably many fakes. Big brands like Nike and Adidas are struggling with counterfeiting and he told me that Nike and Adidas are working together with the manufacturers to avoid counterfeiting. One true in this business is too, as I stated in the chapter 8.3 (Comparison: Fake vs. Genuine) that a true Fan would not buy Fakes. (Byggningsbacka Andreas 20.Feb,2010 Supporters Place, Vaasa. Interview)

20 CONCLUSION

The main aim of this thesis was to examine the role of the counterfeits in international business.

I thought that the topic of my research was very interesting and it gave me a totally new aspect about counterfeiting. I have learned about the risks and problems that counterfeiting can cause.

One of the main reasons why I wanted to make my final thesis about counterfeiting was because it has become more and more popular and I think, it is going to cause a lot of problems in the future for the companies and individual people

I hope that this topic would be discussed more because the number of counterfeits has risen very rapidly and it has become a new phenomenon. The main problem in counterfeiting is that the money goes to organized crime and terrorists. Counterfeiting is just a new way of collecting money for the illegal businesses and terrorism.

During my research I have discussed the topic a lot with people I have met. Hopefully I have made some people more aware of the problem related to the topic.

REFERENCES

1. *Printed books:*

Bruun Niklas (2001). Intellectual property law in Finland. Helsinki Kauppakaari oyj.

Cornish W.R. (1999) Intellectual property: Patents, copyright, Trademarks and allied rights, 5TH edition Sweet & Maxwell

Clark, Andrew – Worsdall, Anthea (1998). Anti-counterfeiting-
A practical guide. Jordan Publishing Limited.

Fox, William F jr (1998) (International Commercial agreements a primer on drafting and resolving disputes, 3TH edition.Kluwer law international

Haarmann, Pirkko-Liisa, (2001) Kauppakaari Immateriaalioikeuden oppikirja Kolmas uudistettu painos, Helsinki, Kauppakaari Lakimiesliiton kustannus.

Hirsijärvi Sirkka, Remes Pirkko, Sajavaara Paula(2007), Tammi

Phillips Tim (2007) Knockoff: The deadly Trade in Counterfeit Goods. Kogan page

Oesch Rainer, Pihlajamaa Heli(2008) Patenttioikeus.Talentum

Salkind Neil J (2000) Exploring Research 4TH edition. Pretice Hall Inc.

Murray, Thomas. R. Brubaker, Dale L (2008) Thesis and Dissertations-A guide to Planning, Research and Writing, Corwin Press

(Tulliviesti magazine 1/2008)

2. Electronical publications:

BASCAP, 2009. The Impact of Counterfeiting on Governments and Consumers[online]. Available in www form:<URL:<http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Impact%20of%20Counterfeiting%20on%20Governments%20and%20Consumers%20-%20Exec%20Summary.pdf>

IPAustralia,2010 Information about designs. Available in www form:<URL:<http://www.ipaustralia.gov.au/designs/index.shtm1>

OECD Executive summary Jun-2007. The economic impact of counterfeiting and piracy. Available in www form:<URL:

<http://www.oecd.org/dataoecd/11/38/38704571.pdf>

NATCO, 2001.Validity and Reliability in Research. Available in www form:<URL:http://www.natco1.org/research/files/Validity-ReliabilityResearchArticle_000.pdf

Iltasanomat, 2007. Questioner about counterfeiting. Available in www form:<URL<http://www.iltasanomat.fi/arkisto/Default.asp?alue=nettikyselyt&id=11796>

ManUtd, 2010. Season tickets Available in www form:<URL[http://www.manutd.com/Season tickets adults](http://www.manutd.com/Season%20tickets%20adults)

Intellectual Property office, 2010. Information about Moral rights Available in www form:<URL <http://www.ipo.gov.uk/types/copy/c-otherprotect/c-moralrights.htm>

IIC,2009. Report about counterfeiting Available in www form:<URL[http://www.iccwbo.org/./Counterfeiting_IECEE%20version_photos.ppt](http://www.iccwbo.org/./Counterfeiting_IECEE%20version_photos.pdf)

Economic rights of copyright owners <http://extwww.patent.gov.uk/types/copy/c-about/c-about-faq/c-about-faq-economic.htm>

WHO, 2010. Counterfeit medicines Available in [www form:<URLhttp://www.who.int/medicines/services/counterfeit/en/index.html](http://www.who.int/medicines/services/counterfeit/en/index.html)

(World Intellectual Property Indicators, 2009 by WIPO Publication941)

WTO, 2007. Agreement on Trade-Related Aspects of Intellectual Property Rights, Available in [www form:<URL:http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm)

<http://www.tuotevaarenos.fi/main/index.php?p=Tuotevaarennokset/1>

<http://www.counterfeitscankill.com>)

<http://www.fraudaid.com/Scamspeak/conprods.htm>

http://www.tulli.fi/en/finnish_customs/about_us/tasks/index.jsp

<http://www.who.int/medicines/areas/policy/en/>

http://www.perkinscoie.com/news/pubs_detail.aspx?publication=2318&op=updates

http://www.i-b-t.net/anm/templates/trade_article.asp?articleid=228&zoneid=3

<http://wilderdom.com/research/QualitativeVersusQuantitativeResearch.html>

http://en.wikipedia.org/wiki/Qualitative_research

<http://www.goodproductmanager.com/2008/01/22/understand-qualitative-vs-quantitative-research/>)

http://en.wikipedia.org/wiki/Cross-sectional_study

<http://www.qualitative-research.net/index.php/fqs/article/view/1092/2396>

<http://en.wikipedia.org/wiki/Counterfeit>)

<http://topics.law.cornell.edu/wex/Trademark>)

http://www.wto.org/english/tratop_e/gatt_e/gatt_e.htm

http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr00_e.htm

<http://www.epo.org/about-us/press/releases/archive/2005/27102005.html>

http://www.ag-ip-news.com/getArticle.asp?Art_ID=7748&lang=en

Video:

Yle areena vaarallinen väärennös <http://areena.yle.fi/video/821200>

Interviews:

Backman Maj-Lis 10. Mar.2010 Vaasa University of Applied Sciences)

Byggningsbacka Andreas 20.Feb,2010 Supporters Place, Vaasa. Interview.

Dahl, Leif, 14.Nov, 2009. Top-Sport, Vaasa. Interview.

APPENDIX 1

Theme Centred interview

Hello!

I am studying in Vaasa University of applied Sciences in the line of International Business.

I am doing my final thesis about counterfeiting in international business.

By answering to following questions you will give me a bigger picture about the opinions that individual persons and companies have about counterfeiting.

The interview can be held in Finnish, Swedish or English.

The names of the persons involved in this research will not be mentioned in this thesis.

Background questions:

- Gender?
 - Age?
 - Status?
1. What comes to your mind when I say the word counterfeit?
 2. How do you see counterfeits in general?
 3. Have you bought counterfeits?
 4. If yes, do you still use them and do you give value to them?
 5. Where have you seen knockoffs been sold?
 6. Have you seen any comparison between prices?
 7. Are there some product you would buy and some you wouldn't?

8. How good are the knockoffs — what's the quality like?
Any differences, disappointments, surprises
9. Has it increased/decreased, any changes?
10. What do think are the products which are most counterfeited?
11. Is counterfeiting an issue of ignorance or greed?
12. How big a problem is counterfeiting in International Business/in Finland?

APPENDIX 2

Company questions:

- How do you protect your company products from not being stolen?
- Are there similar companies in Finland?
- Have you had the opportunity to make a research about counterfeits?
- What are the laws and regulations that make it so hard for the companies to control counterfeiting?
- What kind of influence does the Internet have on counterfeits?
- How do the company control the originality at product?
- Where do you order products from?
- Why do people buy “Knockoffs”?
- Where does the money made from the counterfeit goods go to?
- Why does Finland have such a good control over counterfeits compared to some other countries?
- How do you control that your products are not counterfeits?

