

*Luxury brands in the digital world*  
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## International

# Luxury brands in the digital world

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Counterfeiting is a global, multibillion-dollar problem that has serious economic and health ramifications for governments, businesses and consumers. Counterfeiting is everywhere. Sales of counterfeit goods now represent around 7% of world trade and the global market for luxury fakes has exploded, especially in the digital world.

### Counterfeiting is everywhere

Luxury counterfeits are not a new phenomenon, but with technological advances and sophisticated new ways to reach consumers, the business is increasing rapidly. In the past, luxury counterfeits were often shipped in large cargo containers and passed through numerous middlemen before reaching consumers on the streets. Now counterfeit sellers set up online presences on auction or marketplace sites and ship luxury counterfeits directly to consumers. They also use the Internet and social media tools to generate web traffic and to divert consumers to rogue e-commerce websites selling their goods – which often have the same look and feel as the brand owner's site. Compared to the purchase of a fake handbag on the street, the purchase of a bag online makes it harder for a consumer to tell whether the product is genuine. An online ad for a Gucci bag could show a photo of a genuine Gucci bag, but the purchaser would actually receive a fake one. The counterfeit seller may create pseudo product reviews, blog entries and rogue social media profiles to enhance its legitimacy. Susceptible consumers may fall for this fake content. According to

2009 Eurobarometer statistics, 22% of EU citizens have unknowingly bought counterfeit goods. As shopping online is considered entirely legitimate, online counterfeit products may attract consumers who would never purchase a Louis Vuitton handbag in a dark alley. The Internet creates a situation where the marketplaces for counterfeit products and for the genuine article are suddenly the same. Further, online shops give the buyer a sense of anonymity and impunity. Given the seemingly boundless scope of the Internet, luxury brand owners come across anonymous online counterfeit sellers every day.

### Tarnished brand equity

A luxury brand's most valuable assets are its status, its heritage, the quality of its work and materials and the price. However, luxury counterfeits are almost always badly made. Although they may look the same, the materials are of poor quality and do not meet the high standards in which luxury brands take pride. This perception of counterfeit products has a negative effect on brand associations, and in particular on the perceived quality of luxury brands and the personal status and value of owning luxury brand goods. The results cause serious damage to the luxury brand's status and tarnished brand equity. Further, counterfeit products reduce demand for luxury brands and lead to lost revenues.

### Legal mitigation in the digital world

Anti-counterfeiting legislation differs significantly around the world, making it hard for brand owners to enforce their rights in the digital realm. A stricter and more internationally harmonised anti-counterfeiting legislative framework, with tougher penalties,

is needed in order to have a real deterrent effect on producers, sellers and consumers of counterfeit luxury goods.

Major international efforts have been made in order to harmonise anti-counterfeiting legislation around the world. One example is the Anti-counterfeiting Trade Agreement (ACTA). ACTA is a multinational treaty for the purpose of establishing international standards for IP rights enforcement. The agreement aims to establish an international legal framework for targeting counterfeit goods, generic medicines and copyright infringement on the Internet, and would create a new governing body outside existing forums, such as the World Trade Organisation, the World Intellectual Property Organisation and the United Nations. ACTA contain three parts: a legal framework, methods of enforcement and international cooperation.

The agreement was signed in October 2011 by Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea and the United States. In 2012 Mexico, the European Union and 22 EU member states also signed.

Organisations representing citizens and non-governmental interests argued that ACTA favours big businesses over individual innovators and creators, and that it was designed to protect the interests of multinational corporations at the expense of fundamental civil rights. Signature by the European Union and many of its member states triggered widespread protests across Europe, and on July 4 2012 the European Parliament declined its consent, effectively rejecting it. However, ACTA is not dead. A process to obtain the six ratifications necessary for it to come into force is ongoing, and it is being used by the United States to influence other countries into adopting a new global standard for IP enforcement.

In addition to ACTA, serious national initiatives and measures are being taken against the illicit trade in luxury goods. France is at the forefront, with the toughest anti-counterfeiting legislation in the world – simply possessing counterfeit goods has been considered a crime since 1994. In Italy, the *Camera Nazionale della Moda Italiana* regularly sponsors conventions promoting closer collaboration between the fashion

industry, police and customs officers. In the United Kingdom, the All-Party Parliamentary IP Group states that penalties should be increased and measures should be taken to make it easier to obtain convictions.

In addition to higher penalties and more efficient enforcement possibilities, the risk of detection (ie, simply the risk of the counterfeiter getting caught) is also a major issue if legislation is to have a deterrent effect. The anonymity of the Internet presents a hurdle, making it harder to find and identify counterfeiters and to hold them responsible. The *Comité Colbert* (an association founded in 1954 “to promote the concept of luxury,” with 75 French luxury brands as members) has suggested an alliance with banking groups and payment handlers (eg, MasterCard, Visa, American Express and PayPal) as a way to track illegal trade online. In general, improved collaboration between brand owners, the police and Customs is needed. Continued increased cooperation between brand owners is also necessary, since counterfeiters are likely to sell fake products from several brands.

### **What can be done?**

Insofar as legal action is concerned, there is clearly only so much that luxury brand owners can do. As well as sellers and purchasers of counterfeit goods, companies or persons providing an online marketplace where fake goods are sold are also participants in the counterfeit world. Websites that allow third-party sales (eg, Amazon and eBay) account for tens of billions of dollars’ worth of commerce each year. Brand owners must police such websites and report infringements in order to force websites hosting sales of counterfeit products to remove infringing items. Thus, law enforcement agencies place a heavy burden on the shoulders of luxury brand owners. In order for luxury brand owners to increase the likelihood of successfully enforcing their rights, the following practical actions should be considered.

### **Educate consumers about effects of purchasing counterfeit products**

One action is to educate consumers about the danger of buying luxury brands cheaply on the Internet. If the deal seems too good to be

true, it probably is. Luxury brand owners can also provide information on their webpages so that consumers can easily ascertain the details of the brand's logo, examine aspects of the product itself and learn where the product is made, since many counterfeit items may be marked incorrectly. However, many consumers may be unaware that they can face fines and legal penalties for buying counterfeit goods, especially when buying designer goods overseas. The *Comité Colbert* has run campaigns such as "Buy a fake Cartier, get a genuine criminal record" – this is one method of raising awareness among consumers that buying counterfeit goods can be a criminal act.

#### **Emphasise customer service**

A powerful tool to fight luxury counterfeits is to emphasise customer service. A luxury brand consumer would never go into a retail store and buy high-end luxury products if he or she were not treated well. Customers of premium products need to feel special even when shopping online. A concierge-type offering, providing assistance with ease and style, is one method of achieving this.

#### **Register your intellectual property**

Rights holders should register trademarks, designs and copyrights in order to obtain legal protection and potential remedies against infringers. They should also review IP portfolios on a regular basis.

#### **Be active online**

Brand owners should actively monitor auctions, websites, online advertisements, sponsored links, social media sites and other online content that references the brand name. They can run keyword searches using the brand name or variations thereof.

#### **Proactively enforce your brand**

If infringements are spotted, the rights holder should send cease and desist letters to online infringers demanding an account of profits and disclosure of the source of the counterfeit goods. It can also contact internet service providers and social media sites to remove rogue sites and accounts, and cut off the payment means to rogue sites.

#### **Work closely with Customs**

Brand owners should record trademark, design and copyright registrations with the relevant customs agencies. They should cooperate closely with customs officers, providing assistance and training in detecting fakes from originals and reviewing seizure notices and seized samples of goods.

#### **Secure the supply chain**

Further, brand owners should carefully screen manufacturers and vendors in order to reduce the risk of having them sell and distribute goods outside the normal distribution chain. It is not uncommon that counterfeit products are manufactured at night in the same factories where luxury products are manufactured during the day – known as 'moonlight' factories. A question for luxury brand owners is what happens with leftover materials.

#### **Change products designs periodically**

Companies should change product designs periodically by incorporating new anti-copying mechanisms. When they provide information to employees, they should stress the confidential nature of these mechanisms. Even confidentiality agreements with employees may be called for.

#### **Comment**

Brand owners can influence lawmakers to implement deterrent legislation, but in reality the most efficient means for them to try to clamp down on the global multibillion-dollar counterfeit industry is to work proactively to enforce their brands and to continue to educate consumers. **iam**

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