

Attorney, investigator: Counterfeit goods are a global problem, but receive little attention from authorities

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The proliferation of counterfeit goods in the United States has become amplified with the emergence of a global economy in recent years, and Ohio is certainly not immune to the trend, according to Luis Alcalde, an attorney at Columbus-based Kegler, Brown, Hill & Ritter.

Alcalde, who has spent a better part of a career assisting clients with international business law issues and intellectual property matters, and who also served a stint as president and general counsel at the PICA Corp., an asset protection and investigative firm, said that despite the growing numbers of knockoff goods making their way through shops nationally and locally, attention from local law enforcement officials has been lacking.

Even when a trademark owner is able to identify a counterfeiter, successful prosecution is often hampered by inattention, he said.

"Say you're going to a local prosecutor, (and) I tell him my investigator and I, we have these people we know we can bust. Prosecutors and cops have their hands full - murders, burglaries, rapes. Right away, I'm not at the top of the priority list. Even in our own country, we run into resource limitations."

The range of goods in the U.S. subject to infringement has increased significantly in the last decade, Alcalde said. Apparel and accessories accounted for more than 50 percent of the counterfeit goods seized by U.S Customs and Border Control.

According to the study of Counterfeiting Intelligence Bureau of the International Chamber of Commerce, counterfeit goods make up 5 percent to 7 percent of world trade, although these figures cannot be substantiated due to the nature of the industry.

A report by the Organization for Economic Co-operation and Development indicates that up to \$200 billion of international trade could have been in counterfeit and illegally-copied goods in 2005.

In November 2009, the OECD updated these estimates, concluding that the share of counterfeit and pirated goods in world trade had increased from 1.85 percent in 2000 to 1.95 percent in 2007, which represents an increase to \$250 billion worldwide.

In a detailed breakdown of the counterfeit goods industry, the total loss faced by countries around the world has been estimated at \$600 billion, with the U.S. facing the most economic impact.

Current estimates place the global losses that result from counterfeit goods at \$400 billion.

Despite these reports, Alcalde said, there's no real way to measure the actual economic effect of counterfeiting.

Consumers who willingly purchase knock-offs might actually generate money for the brand through advertising exposure and for the manufacturers of the product's materials.

Actual losses, both monetarily and physically, can be found from the unwitting consumer who purchases, for instance, a bottle of imitation Viagra from an online pharmacy.

How aggressive a brand owner is in pursuing counterfeiters depends on the brand owner, Alcalde said. Certain brand owners might consider imitation as the ultimate form of flattery.

"(The brand owner's) attitude might be, 'Sure, why not. It's a sign of success,'" he said.

"It's a business decision," he added. "You almost have to put yourself in the mind of the trademark owner and their business plan."

Bruce Kingsland, president of Bruce Kingsland & Associates, a Columbus-based investigative firm that represents companies such as Nike, Rolex, Coach and Louis Vuitton, said brand owners who decide against protecting their brands from counterfeiters typically are "here today, gone tomorrow" businesses.

"It really diminishes their brand," he said. "Say you get a pair of Nikes and they fall apart in two months. (Consumers who unwittingly) buy counterfeit products will tell their friends that the product is crap."

Kingsland said a higher prioritization of counterfeiting activities from Ohio's big-city police forces would be of greater benefit than just taking a few fake purses off the streets.

"Law enforcement needs to become more familiar with this. They're going to find other nefarious activity" well beyond the actual counterfeit goods themselves, he said, noting that since 9/11, Ohio ranks second nationally in terrorist-related arrests.

"In my opinion, what's happened since 9/11, there's been this big focus (on the federal level) on how criminal networks are financed, where money is generated from, (and where it's going)," Alcalde said. "There's a whole focus on how criminal organizations worldwide are involved in this."

"A lot of money is being generated."

On Thursday, the U.S. Treasury Department announced the identification of The Lebanese Canadian Bank and subsidiary LCB "for the bank's role in facilitating the money laundering activities of an international narcotics trafficking and money laundering network," an example, Alcalde said, of the vast, complex nature of the international criminal activity that takes place behind the veil of counterfeiting.

A statement from the Treasury Department said, "This network moves illegal drugs from South America to Europe and the Middle East via West Africa and launders hundreds of millions of dollars monthly through accounts held at LCB, as well as through trade-based money laundering involving consumer goods throughout the world, including through used car dealerships in the United States."

"Treasury has reason to believe that LCB managers are complicit in the network's money laundering activities. Today's action also exposes the terrorist organization Hizballah's links to LCB and the international narcotics trafficking and money laundering network," it continued.

Alcalde, who is a native of Cuba and has traveled extensively overseas, especially in Latin America, said that from an international perspective, enforcement of counterfeiting rings is even more difficult.

"Fifty-percent or more (of the Latin population) is living in dire poverty," he said. "What do you focus on - drugs, murderers, rapists or counterfeiting? Issues of prioritization are magnified in these countries."

In a message sent to The Daily Reporter, Alcalde wrote about his experiences in Latin America and the challenges that are presented to authorities and brand owners.

"While working in many third-world countries, I saw how the authorities would turn a blind eye to the problem regardless of treaties or laws passed to protect intellectual property. The facts are harsh. In countries filled with poverty and violent crime, the counterfeiter is often viewed as someone gainfully employed in a non-violent enterprise, not causing trouble for the government.

"In fact, the counterfeiter may be an employer of many, from those making the fakes, to those distributing them to the stores and street sellers, and the sellers themselves. It will take more than treaties and laws to tackle these underlying attitudes and causes."

Alcalde said new security measures being developed will help curtail the purchase of counterfeit goods by unwitting consumers, but these measures will be of benefit only if the consumer knows what to look for.

"There's a whole industry developing around packaging - tracking, holograms - so people can tell whether they're buying the real thing or not," he said.

"These measures are only applicable for a consumer who's looking for the real thing."

Kingsland, who's firm investigates between 80 and 100 stores every year for selling counterfeit goods, said it's important for consumers to realize to what their money is contributing when they buy knockoff merchandise, and that the Buckeye state is truly in the heart of it all.

"Ohio has a big problem," he said.

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