

The Global Risk of Product Counterfeiting: Facilitators of the Criminal Opportunity

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A-CAPP Backgrounder

February 2015

Product counterfeiting represents a growing, global risk that poses many negative consequences for consumers, businesses, governments, national security, the economy, and society. Research suggests that the first step in formulating effective strategies to combat such crime is to understand what shapes the nature of the criminal opportunity. This Backgrounder highlights facilitators of product counterfeiting opportunity.

Product Counterfeiting and the Criminal Opportunity

“Counterfeit products” generally refer to any good or packaging containing a trademark that is indistinguishable from one registered to an authorized trademark owner. Luxury-brand items are most commonly associated with counterfeits, but any manufactured good can be counterfeited. Commonly counterfeited goods include aircraft and automobile parts, artwork, batteries, agricultural products, chemicals and pesticides, clothing, collectibles, electronics, food and drinks, healthcare products, household products, jewelry, tobacco and toys (OECD, 2008)—even military-grade integrated circuits and defense goods (U.S. Attorney’s Office, 2014).

Far from a victimless crime, product counterfeiting is a complex global problem. While systematic, reliable estimates are lacking (USGAO, 2010), available evidence indicates the crime is large and growing. Estimates of the costs of product counterfeiting have grown from less than \$30 billion in the early 1980s (Abbott & Sporn, 2002; Stern, 1985) to \$200 billion by the end of the 1990s (IACC, 2005) to \$600 billion in recent years (Chaudry & Zimmerman, 2009; GAO, 2010), with some projecting the crime will soon cost nearly \$1.8 trillion BASCAP (2011). Trafficking of counterfeit goods has become one of the world’s largest and most rapidly growing criminal enterprises (United Nations Interregional Crime and Justice Research Institute, 2003), and increasingly adopted by

international organized criminals (U.S. Department of Justice, 2008). Moreover, counterfeits represent a risk to national security by infiltrating the defense supply chain (U.S. Department of Commerce, 2010), and many other crimes are associated with product counterfeiting. Some of these include Criminal Conspiracy, 18 U.S.C. § 371, Racketeer Influenced and Corrupt Organizations Act, (RICO), 18 U.S.C. §§ 1961 et seq., Mail Fraud, 18 U.S.C. §1341, Money Laundering, 18 U.S.C. § 1956 and Wire Fraud, 15 U.S.C. § 1343 (Hlavnicka, Keats, and Drimalla, 2013). As counterfeiters conduct their criminal operations within commerce, using global facilitators to maximize profits, they are through the normal course of business activities violating these and other laws. Both international crime syndicates and terrorist groups have engaged in counterfeiting to fuel their enterprises (Sullivan, Chermak, Wilson, & Freilich, 2014; Heinonen & Wilson, 2012). However, as identified, 67 of 89 suspects were collaborating with extremist or terrorist groups involved with counterfeiting not because of ideological beliefs but economic greed (Sullivan, et al., 2014), indicating that financial incentives remain a primary motivator for product counterfeiting activities regardless of ideological beliefs.

The consequences of product counterfeits are multidimensional and far-reaching. For consumers, this crime poses health and safety risks. An estimated 700,000 persons die annually from malaria and tuberculosis because of counterfeit medicine (Harris, Stevens, and Morris,

2009). Seemingly innocuous counterfeit goods may also pose direct dangers, such as counterfeit extension cords that catch fire (U.S. Consumer Product Safety Commission, 2006). For industry, counterfeiting reduces profits. One estimate (United Nations Interregional Crime and Justice Research Institute, 2008) suggests losses of \$12 billion to the automotive industry through sale of counterfeit parts; another (Jackson, Patel, & Khan, 2012) suggests annual losses of \$75 billion to legitimate manufacturers through the global sale of counterfeit pharmaceuticals. Industry also incurs intangible costs from product counterfeiting including that to brand values and reputations resulting from poor-quality counterfeits as well as reduced incentives to innovate or develop new products.

Governments lose tax revenue from the sale of counterfeit products while also having to allocate resources to combat the crime. Between 2007 and 2009, for instance, U.S. Customs and Border Protection spent \$42 million just to destroy seized counterfeit goods (U.S. Government Accountability Office, 2010). Counterfeiting may also pose indirect costs to society through job loss; by one estimate, 2.5 million jobs have been lost to product counterfeiting and piracy worldwide (BASCAP, 2011).

Understanding opportunity can help in tackling crimes such as counterfeiting (e.g., Clarke, 1983; 1995; Cohen & Felson, 1979; Eck & Weisburd, 1994). By assessing the opportunity for crime, brand owners, law enforcement officials, legislators, and others can devise strategies to both respond to and prevent crime. Opportunity-based theories and frameworks offer many insights for combating product counterfeiting (Hollis, Fejes, Fenoff, & Wilson, 2014; Hollis & Wilson, 2014). Below we review some key features that shape the opportunity for product counterfeiting.

Factors Shaping the Criminal Opportunity

The expansion of the **global economy** along with the accessibility of the Internet provides product counterfeiters a firm foundation for operations.

Generally, any product can be counterfeited, but usually only successful products are chosen for counterfeiting.

Consumerism is often the genesis for product counterfeiting. The insatiable desire many consumers have for luxury goods they cannot afford provides opportunity for the counterfeit product in the marketplace (Schornstein, 2013). Successful counterfeiters of luxury items select products to counterfeit partially based on the demand for the product. This demand is often created by marketing campaigns of the authentic brand owners. Consumers seeking immediate gratification and status of these luxury or uniquely designed products often select the counterfeit for its **low price**.

Pricing does not necessarily motivate the purchase of non-luxury counterfeit products such as pharmaceuticals, electronics, auto parts, apparel, or food. Brand owners create demand which counterfeiters seek to fulfill by securing products they can present as authentic. They may do so by producing the counterfeit in an area of the world that provides low-cost manufacturing capabilities—and minimal interest in enforcing intellectual property (IP) laws or detecting and reporting on their violation.

Such **tacit approval** of counterfeiting by authorities, who may view counterfeiting as satisfying a consumer demand that will inevitably be fulfilled, creates a supportive environment for counterfeiters to apply their trade. Counterfeiters can reinforce such an environment by promoting benefits such as employment to local residents and even providing tax revenues. **Cultural acceptance** in some markets creates a supportive environment for counterfeiters to apply their trade and thrive. Countries vary in the way they think about intellectual property and proscribe its violation. What one considers a violation, another does not.

Regardless of where the product is manufactured, in the United States the use of a counterfeit mark in connection with goods and services is the basis for liability, and not the product itself (Hlavnicka,

Keats, & Drimalla, 2013). Many counterfeiters have the product manufactured without a trademark. Then they export the product from the country of manufacturing to the country of distribution before applying the trademark(s). This is frequently the case when **economic disparity** exists between the country with low-cost manufacturing and the country with high demand for the product.

Similar to a legitimate business, product counterfeiters seek high **profits** by controlling expenses. If possible, counterfeiters will procure existing product they can present as authentic new product rather than incur manufacturing costs. There is often product available for sale that entered the market as excess and obsolete, stock lifts, scrap, returned, remanufactured, or reconditioned. The costs for purchasing these products, preparing them for distribution, and presenting them as authentic new product is usually less than manufacturing a counterfeit product and shipping it to the point of distribution. Many times, cleaning, painting, labeling, and packaging are all that is necessary to make the product appear new and legitimate. This process may be enabled by low-cost **technology**, including 3-D printers that facilitate the production of components if not entire products and packages.

The **Internet** provides a counterfeiter instant, anonymous access to the global consumer. Counterfeiters have a distinct advantage over other start-up businesses because they have chosen a product that is already successful in the marketplace and in demand. Any Internet searches by consumers for legitimate products will likely display sites offering counterfeit products as well.

Another opportunity for **distribution** is driven by distributors seeking to increase their profits. Counterfeiters generally offer product to wholesale distributors for less than what distributors may pay the brand owner.

Distributors in turn may mix the genuine and counterfeit together in shipments to the retail customer, increasing their profits for each shipment. Sophisticated counterfeiters distributing their products at the retail level generally keep the cost of their product close to the genuine, because an unusually low price would alert brand owners, law-enforcement officials, and sometimes consumers that the product is counterfeit.

Counterfeiters generally face **low risk** for detection, prosecution, or penalties (Albanese, 2011; IACC, 2005). These factors further incentive the crime.

Moreover, consumers, law-enforcement officials, and even some brand owners often have **little awareness** of this crime. Many consumers do not think to question the authenticity of the products they purchase, and do not know what to do about product counterfeiting or where to report it. Similarly, local police, who may be in a good position to assist consumers and brand owners, often know little about product counterfeiting and therefore find it difficult to allocate resources to respond the crime.

Conclusion

Product counterfeiting is a complex, global crime, facilitated by many trends, conditions, and other influences. A first step in prevention and response is to understand how its opportunities are shaped. Situational crime prevention contends that criminal opportunity can be reduced in a number of ways, such as making the crime harder to commit, increasing the risk of apprehension, and reducing the reward the offender receives by committing the crime (Clarke, 1995). Drawing from research and practice, brand owners and law-enforcement agencies seeking to combat product counterfeiting should consider how they can minimize the opportunity for its occurrence.

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This A-CAPP Backgrounder was supported by the U.S. Chamber of Commerce, Global Brand Council. The ideas expressed herein are those of the authors and do not necessarily represent the opinions of the U.S. Chamber of Commerce.



The Michigan State University Center for Anti-Counterfeiting and Product Protection (A-CAPP) is the first academic body focusing on the complex global issue of brand protection, with specific emphases on understanding the nature of product counterfeiting and protection and on developing strategies to effectively prevent, detect, and respond to product-based crime. Linking industry, government, academic, and other stakeholders through interdisciplinary and translational research, education, and outreach, the A-CAPP serves as an international hub for evidence-based anti-counterfeit strategy. For more information and opportunities to partner, contact Dr. Jeremy Wilson, Director of the A-CAPP, at jwilson@msu.edu or (517)432-2204. Additional information can also be found at <http://www.a-capp.msu.edu>.