

Jason Kosofsky

“On Counterfeit Auto Parts”



Leah Evert-Burks: This is Leah Evert-Burks with the Center for Anti-Counterfeiting and Product Protection @ Michigan State University and *this is Brand Protection Stories* - stories about the practice of brand protection by those who live it.

Leah Evert-Burks: We are speaking with members of the brand protection community about notable cases in their careers. Stories that are *stranger than fiction*, but in fact real life scenarios where we learn about the practice of brand protection and the challenges faced by brand-owners, law enforcement, government authorities, and consumers among other members of the world community.

Jason Kosofsky: So, if you think about it. It's the wear parts of your car. Most like when you go to get your car, when you drive your car, you have suspension components that cause the vehicle to move up and down. Those wear out because you hit potholes, right? Nobody has perfect roads. We're not driving on immaculate roads, right? So, you have these, where wear product lines, you have the filters that are recommended for sensors for changing, and there's recommendations from other OEs for how often to change these types of products. You get into brakes, products that wear down,

nothing on the vehicle stays immaculate to day one. So, this is the type of products that get targeted.

Leah Evert-Burks: Jason Kosofsky is the founder of Fortitude Consultant. He was previously with Ford Motor Company where he served as a Senior Global Brand Protection investigator. Jason has over 21 years of experience in combating automotive counterfeiting and intellectual property violations in cases involving copyright, design patents, trademarks, parallel imports, and trade secrets.

During his career, Jason has also developed key collaborations with organizations involved in the areas of global security, cyber security, research & development, packaging engineering, licensing and with the office of general counsel, and has developed longstanding relationships with external law enforcement partners.

Jason was a founding member of the Automotive Anti-Counterfeiting Council or A2C2 formed in 2015, served on its board and also as its president. A2C2 is a collaboration among automakers and their partners that strives to eliminate counterfeit automotive components that could harm U.S. consumers.

Jason holds a bachelor's in business administration from Northwood University in Midland, Michigan.

Leah Evert-Burks: Today, we're going to talk about two monumental counterfeit cases in the auto industry. With one of the leading brand protection protectors, Jason Kosofsky, who has spent most of his career to date at Ford Motor Company. Both cases came down in the big apple. In one of the cases, Jason partnered with the

NYPD to initiate the investigations and arrests. In the other, the FBI. Talking through these cases, has all the twists and turns that we know brand protection cases take, but also serve to be instructive, specifically on strategy and approach from a well-seasoned instructor. Welcome to Brand Protection stories, Jason.

Jason Kosofsky: Thank you, and good afternoon to everybody.

Leah Evert-Burks: So, before we get into the actual stories or the cases, I learned recently from your interaction with our A-CAPP students, that you started your career selling auto parts for the after-market business. How did that give you a good foundation for brand protection?

Jason Kosofsky: It was an interesting conversation. So back in the original days, I started selling car parts and before I became into brand protection, it kind of help me understand how parts went together in the cars. How the aftermarket worked, how distribution channels were effective. How people were able to purchase legitimate parts after-market parts, or potentially counterfeit parts, and how the means of that worked. So being in the forums I was in, it helped me understand how genuine products were transferred and sold.

Leah Evert-Burks: So, did Ford recruit you from that position?

Jason Kosofsky: So, I was lucky enough to fall into that position. I actually found the right timing and knew some of the people that were there. One of the persons that I was working with at an auto repair shop, started working for Ford. He said hey, we're looking to

hire someone else, and I was able to get into it. So, I kind of just fell into it.

Leah Evert-Burks: Yeah, it's such great background for the work that you've done. We've talked a lot at the A-CAPP Center about how people come from a variety of backgrounds. But I would say, coming from a sales perspective with replacement auto parts is the perfect beginning position to launch you into brand protection in the auto world.

Jason Kosofsky: Yeah, it definitely helped me out. It definitely gave me a lot more opportunities to understand the business and understand how counterfeiters went to market.

Leah Evert-Burks: Right, Right. So back to the stories, I found it interesting that we are talking about two cases, two different sets of law enforcement teams, one the city law enforcement forces and the other Federal. I think what's interesting too, in both cases, for our listeners are about some of the differences of those two cases and some of the similarities. The first one is relating to an entity known as Black and Yellow Warehouse. Which, if you could begin by kind of laying out the story of what their business operation was?

Jason Kosofsky: So, both of these targets and actually all the counterfeiters we were looking at in New York, were big into the taxi and limousine commission product lines. They were selling products into fleets and installers that had to get their vehicles up in a short period of time. So, these companies would go out and have to get the vehicle fixed so they can turn around and put it back on the road quickly. So, these were guys that were able to provide a

twenty-four-hour service or sell parts to late night installers, or even all-day installers, and just had a plethora of parts available to sell for them.

Leah Evert-Burks: So that type of business really was an opportunity for the counterfeiters. Because, as you said, they had to turn those vehicles around quickly, or they lost money if they were a taxi or cars for hire such as limousines.

Jason Kosofsky: Yeah, there's a lot of money tied into the taxi and limousine commissions and before Uber and everyone else became effective, the opportunities for those people to own their own medallion as they're called to have their taxi. That might be a one-person business and they can't afford for that taxicab to be sitting, or that limousine to be sitting where they can be making money in in the city.

Leah Evert-Burks: Right. It also makes me think about the increased risk to the people that hire cars, or, you know, taking a taxi ride through the city. They have no idea what the condition of the car is, or what the replacement parts could be. Whether it be counterfeit brake pads or oil filters, or so forth. So, I think it brings another dimension of the risk for the consumers that are jumping in that cab or hiring a limousine.

Brandon Drain: Counterfeiting is a violation of trademark rights, one of the intellectual property rights granted to innovators and companies along with patents, copyrights and trade secrets. Trademarks tell the world who a brand is, building on the trust, quality and reputation of its name; for consumers, it designates the

origin of the product bearing the trademark in word form and/or logo - in other words where the product came from, and who produced it.

Leah Evert-Burks: So, in thinking about this case, just procedurally, as I understand it, Ford and in its investigations discovered the counterfeit operation going on with Black and Yellow Warehouse. They filed suit and were able to get a temporary restraining order to stop that operation and that activity, and then the defendant stipulated to a preliminary injunction. Do you know why they agreed to the preliminary injunction, or what was kind of the background of that and the movement of that case?

Jason Kosofsky: So, the case was actually handled criminally first, and a lot of it was done with NYPD. NYPD had a big portion of it, and we were helping NYPD to do their portion. The key elements in that case were, we were supporting local law enforcement and local prosecutors to the develop their case. So, we were all working together in the same target to stop the counterfeiters. So, there was a little bit more opportunities to work with the locals in that case originally to start and then figure out how to work with NYPD to move that case forward and go forward with the prosecution of the case together.

Leah Evert-Burks: I see. So, what kind of auto parts were they utilizing? That they were counterfeiting and placing on these vehicles?

Jason Kosofsky: So, they were counterfeiting all – every single type of car part can be counterfeited. A lot of times what they come

across and counterfeit – you always hear about the brake pads, you see the taillights, you see the accessories, you get into the filters or oil filters, the transmission filters a lot of different components in the vehicle. There isn't a car part that can't be knocked off and counterfeited. It becomes a question of the health and safety aspect of the whole entire piece of it.

Leah Evert-Burks: Right. OK and I believe in this case, the goods were identified as fake because of the packaging. Can you speak to that a little bit?

Jason Kosofsky: So a lot of times, the counterfeiters will make their packaging look identical to the original packaging, right? And in this case, you could tell the misspellings of the words, the colors were off, the basic counterfeit identifiers. The shops might not know or the consumer that put the part on the car might not know the difference because they're not seeing the part put on. So those key elements were huge in the identifying of the processes. How do you look at the packaging? How do you look at what shops and what these installers are putting on the vehicles? Packaging is always the easiest thing to start the conversation around. What do you have in your portfolio to go after counterfeiters?

Leah Evert-Burks: In the March 2021 edition of The Brand Protection Professional the role of packaging in brand protection is explored, including the use of counterfeit packaging to fool distributors and consumers, ALSO how security features can be adhered to or included on packaging for detection and authentication purposes, AND the importance of proper destruction of packaging to prevent misuse. It is also here in this edition that we

highlight one of our key academic partners, the *MSU School of Packaging*, one of the leading schools in the nation.

Leah Evert-Burks: I think another interesting aspect when I read about this case was one of the defenses that the defendant tried to use was saying that the trademarks didn't cover the specific products that were allegedly counterfeited, and the trial court denied that motion.

And they were ultimately found guilty of 2 counts of second-degree trademark counterfeiting.

But what I find interesting about that, of course the listeners in the trademark world know it's extremely important that, when you register your trademarks, you register in the classes that you're going to produce the products in. But what the Court said here basically was, you know, there may not be - I think it was the oval trademark the Ford oval trademark may not, have a registration for brake pads, but we know that if Ford appears on those brake pads, then there's intent to counterfeit those trademarks. So I think that was an interesting ruling and a nice precedent that that court set for that aspect of trademark law.

Jason Kosofsky: I think so too. I think some of the benefits that we had behind it is, being a famous brand. You can't say every single aspect of every single detail. You might make a product, you might make brake pads today, it might be brake shoes tomorrow. It might be different name in the future. It all depends on how you define that, right?

Leah Evert-Burks: Yeah. There was another interesting aspect, legal aspect to this case, too, was in the jury instructions. So, you

know I have a litigation background. I know a lot of the listeners do, too. That jury instructions become a very important part of a trial. Both sides argue what instructions are going to be given to the jury. And that relates to the law that will instruct them on coming to a verdict. And I think the defendants in this case tried to argue that there should not be any instructions as to a knowledge requirement, knowing that the product is counterfeit being a requirement. Because the court said, you know, simple possession shows intent of the criminal activity. And so, they were instructed properly per the Appellate Court. I don't know if you have any thoughts on that reflection. It gets in the weeds, legally.

Jason Kosofsky: It does you know the legality aspect is not my bailiwick, the investigation parts are more of mine. So, I let the attorney's figure that out and fight through the good parts of it.

Leah Evert-Burks: Yeah, absolutely. So, the other New York story was, you collaborated with Federal enforcement, specifically the FBI, and I believe that this was also an entity that had cars for hire, taxis, and limousines. And again, you know, when you look at this, the public has no knowledge of maintenance, history, or condition of the car. You know they hire it, they jump into it, they go to their destination, and you had mentioned this of course, was pre-Uber. But now you think about that in the situation of ride sharing capabilities, we have no idea what a hired car may have gone through with respect to their maintenance and whether that's been genuine goods that have been placed on that car. But with this case, I think you had some pretty heavy hitters - you had FBI, U.S. Immigration and Customs, Homeland Security, Border Patrol, Department of Commerce, and this was three individuals that were

charged with selling counterfeit replacement parts. Can you give us a little bit of background about that investigation?

Jason Kosofsky: So, one of the great things about the auto industry is that there's a big collaboration, right? We do a lot of collaborating with the other brands and working together and collaborating on counterfeit car parts. So, we weren't the only brand affected in these cases. There were other brands affected, and other teams out there helping us with the investigations. So, being able to communicate that effectively with law enforcement was huge. If law enforcement was doing a test purchase for another brand, we were able to connect law enforcement with that brand so they could use their test purchase and validate their products. So, it gave us a lot more availability and a lot more opportunities to look at the case. The collaboration effort is huge, especially in law enforcement, because you go into these warehouses, you have 100 people trying to help you identify what counterfeit product you're looking at, what the pieces of a puzzle are - and I mean the law enforcement teams that were there were phenomenal. We're going through shelf by shelf looking at all the products, helping law enforcement identify what's counterfeit, what's genuine, and they're able to seize and make determinations with us on site. Those collaborations are huge and having multiple brands in the warehouse, having everybody go through the right process is key.

Leah Evert-Burks: Yeah you know we're competitors in every other sense. But when it comes to brand protection, collaboration amongst those competitors, is absolutely essential. You know talking about what you know if you see another brand's product, while you're doing an investigation or seizure, freely communicating that,

and coordinating with law enforcement, it's nice to see that industry wide. I know that that is, that is one of the reasons that you helped found A2C2 to bring those brands together and talk about how you work together to deal with counterfeits and to coordinate efforts among law enforcement. You know law enforcement is busy, right? They've got a lot of crimes that they're investigating and prosecuting. So, if you bring a case to them coordinated with a number of brands, you can get their attention and their help. Can you talk a little bit about that coalition?

Jason Kosofsky: Yeah, so one of the benefits about A2C2, and coalitions and industry working groups like that is that you're able to go on a raid action and help law enforcement because they might see something during the raid action that might not be your brand, right? But now, with A2C2, or an industry working group, that collaboration is able to reach out and say, hey, listen, we know brand X, but here's the contact person for brand X, here's their phone number here's their name, I'll reach out to you. I'll call them, I'll send a picture to them, let's talk to them, and then give the phone to the case agents. The case agents are able to make determinations. If they need to get a sample for brand X, they can do it. If what brand X is showing them or telling them gives them a validation, they could seize the product a lot easier - that collaboration is huge. Anytime you're able to work with your competitors to fight a counterfeiter, it's a lot better for you. It makes the case move easier. It's a lot harder to go back into a location to go look at something after you've already left. So, the idea is to be up front and have as much knowledge as you can when you go in up front.

Leah Evert-Burks: Right. And I believe this case, Jason, there was a lot of deceptive moving of inventory and trucks, and it became kind of a shell game, I guess. Can you talk about that a little bit?

Jason Kosofsky: So, there was a little bit of a shell game. They were moving around some vehicles with merchandise in them that were out and about for deliveries and never came back into the warehouse. So, law enforcement had to track down those vehicles and obtain them to find more counterfeit product that was inside of them. They were trying to keep as much counterfeit product out of their buildings and facilities at the time of the raids and search warrants. So it was quite, quite an interesting thing - we're hearing words while we're doing search warrants, "We'd spotted this vehicle, it was supposed to be here but it's parked 3 lots over" or something different, and law enforcement has to watch it and figure out who owns it and where does it go and all the pieces of a puzzle to these guys that were hiding the vehicles at the time of the search warrant.

Leah Evert-Burks: Yeah. And again, it surprises me, even though it shouldn't, about all the different parts that are counterfeited. So, from that case I saw the list of course, brake pads, ignition coils, water pumps, window regulators, suspension sway bar links, which I'm not exactly certain what that is. Wheel hubs, anti-lock braking sensors, control arm bushings, transmission filters, Pittman arms. So, tell us a little bit about what these are?

Jason Kosofsky: So, if you think about it. It's the wear parts of your car. Most like when you go to get your car, when you drive your car, you have suspension components that cause the vehicle to move up

and down. Those wear out because you hit potholes, right? Nobody has perfect roads. We're not driving on immaculate roads, right? So, you have these, where wear product lines, you have the filters that are recommended for sensors for changing, and there's recommendations from other OEs for how often to change these types of products. You get into brakes, products that wear down, nothing on the vehicle stays immaculate to day one. So, this is the type of products that get targeted. Window motors, window regulators, products that go up and down with your windows to go. How often you use your window? Think about your braking system; you have brake pads, rotors, and hubs. I know those are all complex components but look at the wheel of your car. What stops the wheel of your car? So, if you look at that, you have a caliper, you have some brakes, those type of products help stop your car and they wear out as time progresses because it's metal on metal, and it's designed to stop you. So these are the type of products that wear out and have the opportunity to create counterfeit risk.

Leah Evert-Burks: And I know you and I were talking about... I think it was a more recent case. But about counterfeit grills. Which I think the average consumer would look at that and think well, that's just decorative. You know what could be the big deal, but that that has a - the design is to cool the system and allow airflow into the engine. That's you know, not my expert explanation but so something that's seems as innocuous as a grill, could pose a safety concern.

Jason Kosofsky: Well, some brands have safety sensors in the grills for crash importance, right? So, if you really think about how crash important system works, which is, think about if you get in a car

accident. Everything in the whole entire system of a car comes together and works together to crunch and crumble in the right space. If you change something in those components that aren't genuine or aren't tested, or don't set the sensors off the right way, it could potentially cause a delay in the deploying your airbag. It could cause different delays in the whole entire system. So, there's a lot to these systems that the brands develop, and how the counterfeit parts could play into the system. Just because it looks pretty and says a brand name on it, doesn't mean it's been tested, doesn't mean it has safety sensors, and it doesn't have any of those opportunities that exist for it, and that becomes a big risk for consumers.

Leah Evert-Burks: Right. I would think every component on an automobile has a safety purpose to it.

Jason Kosofsky: I would agree with that, and people questioned me and asked me that numerous times like, define hubcaps. I said, well, how can you define a hubcap not being a safety aspect. If you think about it, it could potentially be a flying saucer. A cars moving sixty to eighty miles an hour. What happens if that hubcap flies off or becomes a projectile? There's are different opportunities through the health and safety for components of the car.

Leah Evert-Burks: Is there one component that surprised you that it was being counterfeited?

Jason Kosofsky: No. You know, after being doing this for so long there hasn't - we've seen products getting counterfeited and knocked off 6 months after we release them. Anybody is an opportunist; I mean everybody likes to make their vehicle look

better or spoof up their vehicle to different standards. That gives a big opportunity. I mean, people spend a ton of money on their vehicle, and they wanted to do different things and look different ways. So, the opportunities, I think, exist in a lot of different categories and I don't think people realize how much there is for it.

Brandon Drain: The marketplaces where counterfeits are sold have expanded through the years as consumer buying habits have changed. Once sold on folding tables at flea markets, now the sale of counterfeits online is the biggest threat, and the most difficult to police and enforce against. Along with websites and selling platforms, counterfeits are now sold through social media and make appearances in the metaverse. Counterfeiters go where the consumer goes...Still many of the enforcement actions against these criminals takes place in the physical world, and as we learn in *Brand Protection Stories* are never short on drama.

Leah Evert-Burks: Right. So, these two cases, as I mentioned at the outset, were significant. In both investigation aspects and also in legal precedent. I always like to kind of wind down the podcast with having the guest kind of think of one word that describes those cases, and that's hard to do, it's a hard task. But if you think about these two cases, that we've talked about. Out of New York City with different sets of investigators and law enforcement, is there one word that you think describes your experience with those cases?

Jason Kosofsky: So, my word has always been collaboration. Just because no matter which way you looked at it, even in these two criminal cases, you get into the collaboration with law enforcement, the prosecutors, the civil attorneys, everybody's collaborating. You

collaborate with other brands, other industries - the collaboration aspect if you're doing it right, is a very, very powerful tool. A lot of brands don't want to share information with other brands. And if you don't, you lose that collaboration. You lose those opportunities to make a bigger raid action and a bigger thought process of "hey, listen it's not just us. There are other people here being counterfeited, and this whole collaboration works as a group." Law enforcement, Customs and Border Protection, Homeland Security, FBI. You go into payment processors; you can get into the locals of law enforcements. There's a lot of different aspects and if you're not being collaborative it's definitely a hindrance to you.

Leah Evert-Burks: Yeah, I would agree. And you know as we've talked about the brand protection community is far and wide. You know everybody kind of has a purpose and can help with the fight against counterfeiting, so collaboration is absolutely essential. I agree with you. So, Jason, I just want to thank you for sharing these stories with us today and thank you for doing the hard work.

Jason Kosofsky: Thank you, and like I said it's not just the hard work. I mean, MSU does a lot of hard work with their A-CAPP program. I mean, and Leah, you've done these great presentations and these podcasts. My kudos goes off to you guys and everything you guys have done in this space and giving the education about counterfeiting and how it affects everybody.

Leah Evert-Burks: We get into cars every day, cars we own or hire, that through regular maintenance or due to a need for repairs may, or more accurately are likely to have after-market replacement parts. Do we think about whether those parts are genuine? We

should, but how can we know? But the knowledge that auto brands, federal and local law enforcement officials and brand protection professionals are out in force to make us safe in these vehicles, can lend some comfort as we go about our daily lives.

Brandon Drain: Successful brand protection takes a village and as such is multi-disciplinary by nature, *and* necessity. That is one of the reasons the A-CAPP Center works across disciplines and opens its student internships to a variety of majors including packaging, engineering, law, criminal justice, psychology, and International Relations.

Brandon Drain: If you're interested in sponsoring episodes of Brand Protection Stories, please contact A-CAPP Director Kari Kammel at kkammel@msu.edu.

Brandon Drain: Thanks for joining us today for this edition of *Brand Protection Stories*, produced by the Center for Anti-Counterfeiting and Product Protection (or A-CAPP) @ Michigan State University in East Lansing, MI. Please visit us @ a-capp.msu.edu. A-CAPP is a non-profit organization founded in 2009. It is the premier academic body focusing upon the complex global issues of anti-counterfeiting and product protection of all products, across all industries, in all markets responsible for training the next generation of brand protection professionals. In addition to this series, we offer self-paced online certificate courses in brand protection, applied education and academic courses, executive education, student internships, live summits and virtual events, and publish the quarterly digital industry journal, *The Brand Protection Professional* - now in its 6th year of publication.

Leah Evert-Burks: This is Leah Evert-Burks with A-CAPP. Until our next session, keep protecting your brands, and the world's consumers. Keep it real.