

Many unhappy returns: watch out for fakes sneaking in through your back door

Brand owners carefully monitor markets to ensure that counterfeits are not reaching consumers, but are they doing enough to ensure that they are not themselves being supplied with counterfeit versions of their products?

It was in essence a very simple plan: to sell counterfeit products back to the brand owner. In this instance Cisco was the target of the scam, which proved to be very lucrative for Iheanyi Frank Chinasa and his co-defendant Robert Kendrick Chambliss – until their luck eventually ran out. Their sale of counterfeit Cisco products back to Cisco resulted in a Federal Bureau of Investigation inquiry and the arrest of the co-conspirators. Chambliss pleaded guilty to the charges, and on February 2 2011 a federal jury in Virginia found Chinasa guilty of conspiracy, obstruction, wire fraud and multiple mail fraud offences.

Chinasa manufactured counterfeit computer networking and telecommunications equipment, and Chinasa or Chambliss would then contact Cisco and falsely claim that a Cisco product covered by a warranty was malfunctioning. Cisco would supply them with a replacement product, but under its warranty rules the allegedly faulty product had to be returned – no problem for this pair, as they sent counterfeits back instead.

The scheme reportedly defrauded Cisco of computer equipment valued at more than \$27 million. The case serves as a stark reminder of the audacity and ingenuity of counterfeiters and the need for brand owners to be vigilant on all fronts.

I have heard of other instances where fakes have been sold back to the brand owner. Goods supplied on a 'sale or return' basis are at particular risk of being scammed in this way. In one case I heard about many years ago, vinyl records were affected – record stores could return unsold stock for credit and soon some dishonest retailers were sending back fakes and receiving credit for them. Even worse for the music group concerned was the realisation that in some cases these items were then being re-distributed to other stores by the transport and delivery department without being subjected to proper quality control inspections, so the company was inadvertently re-distributing counterfeit copies of its own products.

Retailers are facing a growing risk of counterfeiters finding their way into stock by means of illicit customer returns. Some fraudsters buy a genuine product from a designer store and then go off and purchase a matching fake; they then return the fake to the store

complaining about a fault in the product and hope to find an unwitting sales assistant either to replace it with a genuine one or to provide a refund. However, most big brands are now wise to this scam and train shopfloor staff to watch out for it.

Interestingly, online sellers of fakes sometimes provide fake receipts to help convince buyers that their products are authentic. Some of these sellers take as much care over producing convincing-looking receipts (using the right paper, inks and typefaces) as they do to copying the product details and these plausible 'packages' can also be used to attempt to similarly defraud the store named in the receipt.

Quality control and customer care teams also need to be aware of the wider issues. I once had reason to speak to someone in the quality control department of a pharmaceutical company and in passing, I asked whether he ever received queries about counterfeit goods. "All the time," he answered. "They try to get credit for fakes not manufactured by us." I asked what action he took and he said that he analysed the product carefully and, if the tablets complained of were not genuine, he did not authorise a refund. I asked what else he did and he said he took no further action. I asked whether it had not occurred to him that there may be many more such tablets in the marketplace besides those complained of, and that maybe someone else – for example, in the company's legal team – might be interested to know about the problem. He replied that his job was to verify whether complaints were valid and that was the end of it as far as he was concerned.

Quite rightly, brand owners focus their internal counterfeiting awareness training on sales and marketing staff, and such programmes are usually led by the legal, trademark or product security teams. But these cases show that it is important to remember that other parts of the organisation need to be alerted to the risk of encountering counterfeit products. Protecting the integrity of the entire supply chain is vital, so employees in quality control, customer relations, product returns, warranty claims and procurement should all be primed and ready to consider the possibility of fake products or suspicious behaviour patterns.

In fact, it makes sense for all employees to be made aware of the risks posed to their company by counterfeits and what to do if they spot something suspicious, as that will mean every pair of eyes is on the lookout for problems. As always when fighting fakes, leadership by experienced IP counsel is vital, but these functions and colleagues are potential allies who may provide a regular flow of valuable information about the trade in counterfeits. WTR

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