

Countering Counterfeits

*Dr. G. Sridhar**

In this paper an attempt is made to discuss how counterfeits inflict loss to government, corporate, consumers and society at large. Paper emphasizes that the onus to counter counterfeits is in the hands of corporate and they need to devise appropriate proactive and reactive strategies. The paper is based on the authors understanding of the subject through review of literature and informal interactions with managers of several organisations.

Introduction

Product counterfeiting of luxury, consumer goods and industrial goods is a major problem world over and is more acute in developing countries (Economist 2003). TRIPs agreement defines counterfeits as any goods bearing unauthorized trademark and thereby infringing the rights of the trademark owner under the law of the country of importation. Counterfeiters emerge and thrive where there is low literacy level, low purchasing power, low consumerism level, high unemployment rate, nexus between counterfeiters and law enforcers, slow judiciary process and loopholes in laws and its enforcement (Harvey, 1988, Bush et al, 1989, Olsen, et al, 1992, Wee et al, 1995, Chaudhry, et al, 1996, Cordell, et al, 1996, Jacobs, et al 2001, Bazerman and Jason, 2003, Cunningham, 2003). Counterfeit manufacturers, especially in the emerging economies, get attracted to the business as they find little risk for a large profit, low probability to get caught, low conviction rates, less penalty if convicted (Dubey 1994), simple technology to produce and consumer ambivalence (Kaikati and LaGrace 1980).

Counterfeits are different from piracy and passoff brands. Counterfeits are products manufactured without any authorisation and are not protected by trademarks, copyrights or patents. Piracy is unauthorised use of copyrighted and / or patented goods and brands. Counterfeiting is production related and piracy is associated with the product or brand. Pass off brands are similar in appearance to the original but are not exactly the same. For example, Coldgate is a passoff brand of Colgate. A partial list of counterfeits/pass off brand names is given in Table I.

- Table 1 about here -

For the purpose of the paper all the above three spurious product variants are considered as counterfeits. This is done to avoid unnecessary jargon and also that similar strategies are required to counter them.

The Good And The Ugly

Counterfeits inflict heavy losses to organisations both in terms of monetary and time of managers. Consumers on the other hand are cheated¹ after purchasing counterfeits and they would be at loss on various fronts like physical, monetary, emotional, and time. Sometimes the effect could be even death and injuries. Government also faces decline in foreign capital investments, and tax revenues. In addition, it has to also tolerate a parallel economy and injustice to legitimate business.

Though not desirable in a society, counterfeits satisfy the aspiration needs of the consumers. They also benefit organisations by making them proactive and strive for better value offer to the market. Table – II presents a short account of the good and the ugly of counterfeits.

- Table II about here –

¹ Consumers encounter both deceptive and non deceptive kinds of transactions with the counterfeits. Deceptive counterfeiting is a situation in which the consumers are not aware of purchasing a counterfeit product at the time of purchase. A survey conducted by A. C. Neilson in India reveals that 80 percent of the consumers realize that they have brought a counterfeit only after they have consumed.

Magnitude

While the world trade is growing by three to four percent, counterfeits are growing by 150 percent (Smith, 1997). As per International Chamber of Commerce, global losses from counterfeiting of products amounted to more than \$200 billion in 1996 and counterfeit products accounted for 5 percent of world trade (Nill and Shultz, 1996). In international markets, four broad categories are considered to be highly vulnerable to the product counterfeiting (Jacobs et al, 2001). These are

- *Highly visible, high volume, low-tech products with well-known brand names.* (Examples are toothpaste, candies, and chocolates)
- *High-priced, high-tech products.* (Examples are computer games and audio or video entertainment products, fake auto parts, airplane parts and so on)
- *Exclusive, prestige products* (Examples include well-known apparel and accessories as well as perfumes and other expensive gift items).
- *Intensive R&D, high-tech products such as pharmaceuticals* (Examples also include defense related products, industrial goods and so on).

India's Brand Protection Committee names eight categories of products seriously under attack from counterfeits: Rubs and balms, Glucose Biscuits, Beverages, Coconut Oil, Batteries, Detergents, Shampoos, Soaps and Fairness creams. In India, FMCG² sector is losing about Rs. 1, 700 crore of revenue annually as a result of counterfeits. Government from FMCG sector is losing about Rs. 600 crore by way of unpaid taxes and duties from this sector alone. Software piracy rate in India is estimated to be about 60 percent as per NASSCOM. Almost one sixth part of Pharma products in India are counterfeits resulting losses to many organisations³. Music industry is losing 40 percent of its revenue due to piracy.

Generic Strategies

The onus to counter counterfeits is in the hands of the corporate. This is because the extent of likely damage due to counterfeiting is more severe in case of corporate than to either government or consumers. Secondly, governments may find this issue to be of less importance when compared to other serious issues. On the other hand, consumers are either unaware most of the time or lack proper forums / mechanisms to voice their opinion. However, civil society organisations can play a key role either independently or in collaboration with government and corporate.

Corporate organisations can use both reactive and proactive strategies to counter counterfeits. Some of the generic proactive strategies are government lobbying, proactive changes in marketing mix and labeling. Reactive strategies include warning, reactive changes in marketing mix, and legal action. Let us look at each of these strategies, their strengths and weakness.

Proactive Strategies

Government Lobbying:

Organisations lobby with state and central governments for formulation and proper implementation of property rights and copyrights at local, state and central levels. Lobbying can be done either in individual capacity or through their associations like CII and FICCI. However, many such efforts are negated by the nexus between law enforcers and counterfeiters. Further, government may find the issue to be of less importance when compared to other problems and hence may give a step treatment. While using this strategy, organisations should realize that the

² As per an estimate losses suffered due to counterfeits by organisations is as follows; HLL - Rs 1000 crore, Marico Industries - 15 – 20 percent of sales revenue, P & G - 10 percent of its sales revenue, Dabur's Lal Dantmanjan Tooth Powder - 7 – 8 percent (www.indiaonline.com)

³ Of the total sales losses due to counterfeits for Alembic is 25 – 30 percent, Cipla is 20 – 30 percent and Ranbaxy is 10 – 12 percent (www.indiaonline.com)

battle against the counterfeits is a long term one and an end to counterfeiting is too much to hope in the short run.

Proactive changes in marketing mix:

Organisations promote the advantage of buying the original product by modifying marketing mix elements thus restricting or delaying the entry of the counterfeits into their product categories. For example software firms like Microsoft launch basic version of the product and later request the consumers to visit their website and upgrade. Consumers with original software would be able to upgrade the software. Such strategy is useful only for select product categories and when organisations are better market oriented, big and can invest resources. Sometimes, proactive changes might even confuse the consumers and thus makes them wary of purchasing even the real ones.

Labeling:

Organisations are increasingly using anti-counterfeiting features like holograms, hidden words, and symbols etc. In some product categories like textiles and software, a modern technique called DNA security maker is used where the original manufacturer encodes product manufacturing information as a part of the product. Some of these techniques are similar to security devices that RBI (Reserve Bank of India) uses for developing currency notes.

Though labeling as a technique looks to be advanced, given the sophistication of the counterfeiters, they can be copied. We now find even holograms to be counterfeited thus leading to serious doubts on these techniques. Added, techniques like DNA are costly and complex and hence might be difficult for small players to use.

Reactive Strategies

Warning:

Organizations send a warning signal either by calling them or in writing or in person. However, as it happens many times, there is a chance that counterfeiters may be hiding underground and operate from there. In some cases, they halt their activities for some time and later resume. This strategy, though often used, is generally considered as a first and mild reaction.

Reactive changes in marketing mix:

Organisations alter marketing mix elements like selective price cuts, special promotional drives through several media against counterfeits, partnering with channel members and so on. Many organisations offer incentives to their distributors, wholesales and retailers if they play key role in countering counterfeits. These channel members help organisations in identifying counterfeits, finding out the sources of counterfeit products, and advise consumers about the ill effects of counterfeits.

However, poor infrastructure, higher illiteracy levels pose challenges for this strategy to work. Added, many retailers and wholesalers would shy away from helping the organisations trace counterfeits as they are more interested in earning higher margins from the counterfeiters.

Legal Action:

As counterfeiters are criminals and counterfeiting has become an organized crime (Bazerman and Jason, 2003), organisations pursue criminal procedures to thwart the counterfeits proliferation. Organisations facing the threat of counterfeits can present a complete dossier to the concerned government authorities with samples of counterfeits, proof of purchase, photos or videos of purchase, information on counterfeiters, and information of counterfeit godowns. The dossier helps the authorities to conduct their own independent investigation to confirm the information provided by the organisations. Once confirmed a case can be filed to thwart the counterfeits proliferation. Tough penalties and imprisonment could be possible verdicts.

One of the limitations of legal action is that it is costly and time consuming. Further, nexus between law keepers and law breakers raises doubts on this strategy's success. Only big and influential firms can afford this approach.

Managerial Implications

As mentioned earlier, the onus of taking initiative to counter counterfeits has to come from the corporate. A framework to this direction is given in Figure I. Broadly there are five steps and each of these steps is discussed briefly below.

- Figure I about here -

Scan for Counterfeits:

Organizations have to initially estimate the extent of counterfeits present in their local, regional and countrywide markets. They can look for counterfeits through various sources like detectives, publications and distribution channel members. Each of these sources helps in different ways. For example, published information at local level is scanty and difficult to obtain and hence relying on distribution channel members like retailers, distributors would be of immense help. To trace where the counterfeits are manufactured, detectives can be used. Published sources help to generate a macro picture. Organisations need to use such information sources judiciously.

Effect on Business:

Scanning for counterfeits should lead to assessment of its effect on the business. If counterfeits are absent in the market (which is rare), organizations need to foresee the emergence of counterfeits. This gives a clear picture as to what strategies are appropriate at different points of time. Key areas that need to be assessed are loss of sale, profits, brand loyalty and time and human resources.

Search for appropriate strategies:

If organisations foresee the emergence in future, then appropriate proactive measures should be in place well before. If counterfeits are present, and the effect on business is evident, then organizations need to employ reactive measures. If the effect of the counterfeits on business is less but is likely to increase in future, then proactive strategies should be adopted along with the reactive strategies.

Choice of better alternative:

Choice of appropriate strategies, reactive or proactive, should primarily depend on three factors. Firstly, appropriateness of the strategy to the situation. For example, if the threat of counterfeits is more to the brands then reactive and proactive communication is more appropriate. If there is a threat to the copyrights of the product, legal action is more appropriate. Second is the time factor. Chosen strategy should take as little time as possible. This is because, as time passes by, the threat of counterfeits manifolds. Third is the cost and benefit ratio of the strategy. Sometimes few alternatives are expensive or the result is not so beneficial to the organizations. Finally, if a combination of strategies is to employed, care needs to be taken that there is synergy.

Feedback:

Organizations should realize that an end to counterfeiting may be too much to hope for. Hence, feedback got should be incorporated in the future strategic initiatives. This is because strategies used now might be ineffective tomorrow.

Conclusion And Future Directions

Organizations should see presence of counterfeits as a challenge and not as a curse. They should view the presence of counterfeits as an opportunity to serve the consumers better, improve their brand loyalty, reduce the costs and build customer relations. Organizations should realize that an end to counterfeiting may be too much to hope for. To curb counterfeits a concerted effort from the government, organizations, civil society and consumers is essential.

One of the limitations of the paper has been that we could not delve on numerous other strategies that organisations employ other than the six generic proactive and reactive strategies. Also, the generic strategies that are discussed here might not be effective for some product categories. Further, the problem of counterfeits has been understood as mere economic in nature, including in this paper. It is important to recognize counterfeits as a multidimensional concept and has to be researched on other dimensions like cultural and social.

Research on the counterfeits is scanty. Much of the research is fragmented and lacks any conceptual clarity. There is no unified framework of approach to understand this vital problem. There is ample scope for researchers to work on this specific issue. Some of the key areas that need to be addressed are nature of counterfeiting, conceptualizing counterfeits, its antecedents and consequences, typology of managerial action to counter counterfeits, government and its measures to counter counterfeits, civil society role in curbing counterfeits and societal impact of counterfeits.

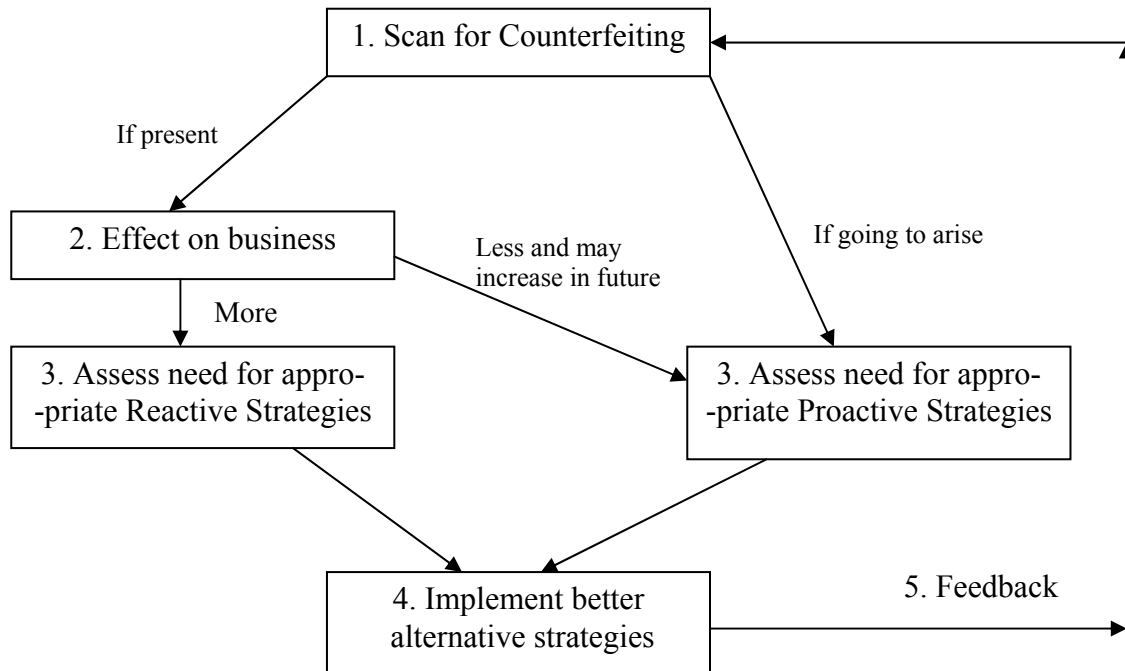
Table I. Counterfeit / Pass Off Brand Names

Actual Brand Name	Company Name	Counterfeit/Pass-Off Names
Fair and Lovely	Hindustan Lever Limited	Friends and Lovely, Fair and Lonely, Purely and Lovely
Nirma Washing Powder	Nirma Chemicals	Narima, Nima
Parachute	Marico Industries	Parashudh
Lifebuoy	Hindustan Lever Limited	Lifejoy, Litejoy
Ponds Talc	Hindustan Level Limited	Polons
Vicks	Procter and Gamble	Vips, Vice, Vepox, Vix, Vikes
Reynolds	G.M. Pens	Renolds
Cadbury's Eclairs	Cadbury's	Choudharys Eclairs
Colgate tooth paste	Colgate – Palmolive	College, Colbate, Coldate
Ariel Washing Soap	Procter and Gamble	Arel, Areil
Clinic Plus Shampoo	Hindustan Lever Limited	Cliric Plus
Head and Shoulders Shampoo	Procter and Gamble	Head and Showers
Bata	Bata India Limited	Bala
Ruf and Tuf	Arvind Mills	Tuf and Stuff, Tuf and Tuf

Source: Gopalswamy (2005), Field visits

Table – II: The Good And The Ugly Of Counterfeits

Actors	The Good	The Ugly
Consumers	Cheap Products	Shoddy Products
	Psychological Satisfaction	Physical Risk
		Monetary Risk
		Emotional Risk
Organisations	Pressure to reduce costs	Functional Risk
	Better service and reach	Sales loss
	Better supply chains	Brand loyalty
		Financial loss
Government		Managers time
		Investments to counter
		Tax
		FDIs
		Indication of inefficiency
Counterfeiters	Low costs, better margins	Black economy proliferation
	Profits	Risk to public health
	No taxes	If caught, punishable
	Employment opportunity	
	No need to build brands	

Figure – I: Countering Counterfeiting – Managerial Framework**References**

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