

LEGAL/PRIVACY

## Chinese counterfeiting continues to thrive despite resistance

August 6, 2015



*Chinese consumer uses mobile device*

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By KAYSORIN

This year a number of luxury brands and retailers have begun to take action against the increasingly important problem of counterfeit goods in China.

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The combination of producing a large percentage of products and lax government regulation makes China particular susceptible to counterfeiters looking to copy luxury items and sell them at a cheaper price. Counterfeiting can have a negative impact on a wide range of individuals, and until brands and nations can come together to regulate the practice, it will continue.

"The proliferation of fakes has little to do with access," said Rania Sedhom, managing partner at [Sedhom & Mayhew](#), PLLC., New York. "For example, authentic name brand merchandise is available in China and sits alongside their very far distant fake cousins online.

"Laws regarding trademarks in China are different from those in other countries like the U.S." she said. "Without fighting the war on counterfeit without requesting Alibaba and other large Chinese companies to lobby for legal change, will have little to no effect."

## Knock it off

The Chinese counterfeit situation is the result of a number of different factors that have come together. One significant element is that many products are produced in Chinese factories, so the percentage of goods leaving China is higher than other nations.



*Luxury handbags by brands like Louis Vuitton are often replicated*

Additionally, the Chinese government has previously neglected to take action against counterfeiters, and Chinese laws regarding intellectual property are not strictly enforced. There has been some improvement, likely as a result of recent lawsuits.

“While the counterfeit situation is still a massive problem, China has taken steps to move in the right direction,” said Martin Feinberg, partner and head of the anti-counterfeiting department at [Olshan Frome Wolosky LLP](#), New York. “They are receiving pressure from the U.S. and other countries around the world to tighten up their practices, because no one wants to do business with them if they can’t protect the goods that come out of their country.”

For example, in 2013 Richemont-owned Cartier won with a trademark infringement lawsuit against China-based companies, indicating that luxury marketers should not ignore threats to brand equity in the country and send a message to counterfeiters.



*Cartier was able to successfully fight counterfeiters*

Cartier won in a Shanghai court after it filed a lawsuit against two jewelry companies based in Beijing and a Chinese online supermarket that sells these companies' products for using the brand name without the French jeweler's consent. Luxury marketers should continue to pursue trademark cases to take a stance against counterfeiting, especially in China where the government is just starting to acknowledge the issue ([see story](#)).

Counterfeiting can have a negative impact in a variety of different ways. The total value of counterfeit goods originating in China is estimated to be \$1.22 billion, according to the International AntiCounterfeiting Coalition.

Each year, more than \$28.5 billion in profits is lost in the European Union due to counterfeit apparel and accessories, according to a new report by the EU Observatory.



*Perfumes and other cosmetics may also be counterfeited*

The "Quantification of IPR Infringement" report, which looks at the cosmetics and personal care sector as well as apparel and accessories, dissects the economic impact counterfeit goods have on employment in intellectual property rights intensive industries and how consumers' perceptions of intellectual property are formed in the EU-28. Luxury goods are often subjected to counterfeits, which dilute the brand's standing and harm the trust a house has with its consumers due to fears of making a purchase that is not authenticated and of a trusted quality ([see story](#)).

This brand reputation factor is one of the most significant negative affects of counterfeit goods.

“Besides the issues with intellectual property and copyright infringement, counterfeiting has always had the potential to damage brand equity in a given market, particularly a relatively new one like China, where people's maids or drivers may buy counterfeit versions of their favorite luxury brands,” said Avery Booker, partner at [China Luxury Advisors](#).



*China is particularly susceptible for a combination of reasons*

It is important for both brands and governments to take action against counterfeiting. There are numerous measures that can be taken to prevent transportation or educate consumers and law officials on how to distinguish counterfeit products.

“Developing a world wide brand enforcement strategy is the ultimate key, and it is important to do it early rather than late,” Olshan Frome Wolosky LLP's Mr. Feinberg said. "That strategy would include the proper registration of a brand’s trademark in the countries it does business in, plans to do business in and produces in.

“Implement certain product security measures to protect products from being counterfeited can help,” he said. "Brands can work with law enforcement to train them to assist in stemming the tide of counterfeit.”

While China needs to improve its policies, the U.S. government and luxury brands can also do their part in the fight against counterfeit merchandise.



*Luxury brands are especially popular in China*

### **Fighting back**

Recent lawsuits have highlighted the impact of counterfeiting and the role that China plays in the proliferation of goods. For example, luxury conglomerate Kering has filed a lawsuit against Chinese ecommerce giant Alibaba, claiming the retailer has been facilitating the sale of counterfeit goods.

Kering, along with its brands Gucci and Yves Saint Laurent, filed the lawsuit in a U.S. district court in New York May 15, stating that the online retailer has been allowing, and possibly encouraging, the sale of knock-off goods for profit. The group filed a similar suit against Alibaba in 2014, but soon dropped the case when the ecommerce player agreed to implement strategies to avoid the sale of counterfeits on its site ([see story](#)).

Kering is joined by other luxury powerhouses in its dedication to eliminate counterfeit goods. In 2011, luxury conglomerate Compagnie Financiere Richemont continued the battle against counterfeit luxury products with a lawsuit against a Pakistani Web site that it claims is an unauthorized retailer. How far do luxury houses have to go to protect themselves?

The conglomerate's Chloe, Alfred Dunhill, Montblanc-Simplo and Officine Panerai have

filed a lawsuit against Tradekey, claiming that it fosters an environment for unauthorized sales. Having dealt with lawsuits for other Richemont brands such as Cartier, this is the conglomerate's continuing struggle to protect itself ([see story](#)).

Legal action has helped bring more attention to the issue of counterfeiting, but it will never be resolved without cooperation between brands and governments.

"As I've said in the past, brands need to work with credit card processing companies and banks to thwart the sale of counterfeit merchandise," Ms. Sedhom said. "It is confusing to me how it can be so difficult for consumers to engage in online gambling where all parties are in agreement and understand the risks, but so easy to purchase fake goods where both parties do not always have a meeting of the minds."

Final Take

*Kay Sorin, editorial assistant on Luxury Daily, New York*

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