

STRATEGY

## Counterfeiting and IP Luxury Memo special report

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*Louis Vuitton is one of the 10 most-counterfeited brands. Image credit: Louis Vuitton*

By SARAH JONES

Luxury brands work hard to establish a positioning based on quality and artistry, but while this appeal lures in customers, it also makes them an attractive target for knockoffs.

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Counterfeit sales have expanded thanks to globalization, giving fake sellers the chance to impersonate and steal sales from brands on an international level, duping consumers into purchasing what they often believe to be the real deal. Aside from stealing business from the luxury brand of which they are copying, counterfeiters put luxury labels' top asset—their brands—at risk.

"A lot of research suggests that counterfeits steal sales from luxury brands because consumers who buy them are not buying the real thing, and may never buy them," said Keith Wilcox, Barbara and Meyer Feldberg associate professor of business at [Columbia Business School](#), New York.

"However, I don't fully agree with this argument," he said. "I am sure some people won't buy the real thing because they can buy a counterfeit. However, for a lot of people they would if they could afford to.

"With that said, I think the bigger issue for luxury brands is what counterfeits might do to their brand image. If a person who can afford to buy a luxury brand sees someone wearing a counterfeit version of a brand who does not fit the brand image, this may turn them off and make them less likely to buy the brand."

### Foundation for fakes

Counterfeiting is a booming business. An Organization for Economic Co-operation and Development (OECD) [report](#) from 2016 estimates that total imports of fake goods were \$461 billion in 2013, more than double the figure from 2005.

While luxury brands only represent a portion of this total market, which also includes categories such as electronics and chemicals, the industry is nonetheless impacted by this significant trade. Counterfeits account for about 2.5 percent of all imports around the world.

The International Trademark Association (INTA) [projects](#) that counterfeiting will reach \$991 billion by 2022.

An OECD report found that brands from the United States, Italy and France are the most apt to be copied.

The U.S. Department of Homeland Security made 31,560 seizures of items that violated intellectual property in 2016, up 9 percent from the previous year. These counterfeit products totaled almost \$1.4 billion based on the value of the items copied.

According to the EU Observatory's Office for Harmonization in the Internal Market, counterfeit apparel and accessories alone take away \$28.5 billion in profits from the European Union each year. The illegal business is also tied to the loss of 363,000 jobs in Europe ([see story](#)).

China is the top producer of counterfeit goods. Almost two-thirds of all fake items seized in 2013 came from the emerging market.



*Counterfeit cosmetics seized in the U.S. that were imported from Asia. Image credit: ICE*

Sellers of counterfeit goods do not pay taxes as an aboveboard business would, taking away funds from governments.

Beyond hurting the brands in question, counterfeiting is tied to other illegal and inhumane activities. The funds made from the sale of fake goods have been tied to organized crime and terrorism, while products are often made using child labor.

*Interpol's Turn Back Crime film about counterfeiting*

Counterfeits are largely understood to have a negative effect on both luxury brands and the world at large, but some studies have shown that fakes could actually have a net positive impact on the original brands.

For instance, [research](#) published in Marketing Letters in 2012 showed that the presence of luxury counterfeits raised consumers' desire to buy into the real brand.

A 2010 [paper](#) from the British Journal of Criminology similarly argued that counterfeits are actually good for luxury brands, as they promote the brand being copied.

Per the [Telegraph](#), the authors also put forth the idea that law enforcement should not waste resources taking down counterfeit designer products, instead focusing on potentially harmful fakes such as medications. In addition, they maintain that copies do not take away money from luxury labels, since the consumers who would buy counterfeits would never buy the real thing.

Experts agree that there are some consumers who buy counterfeit simply because they cannot afford it at the moment and they seek the style or the status marker, and if financial obstacles were gone, they would become buyers of authentic merchandise.

The reasons why consumers buy fake luxury goods go beyond the financial, though.

A 2015 [study](#) published in the Journal of Luxury Research compared the psychology and attitudes toward counterfeits held by German and South Korean consumers, and found that culture played a large part in the perception of fakes. The German consumers were more apt to say that they were buyers of fakes, which the report attributes to social pressures.

While South Koreans are risk-averse, Germans were more apt to avoid counterfeits due to morality.

A 2016 [report](#) from the Journal of Business Research found that Chinese consumers were partly motivated to buy

fakes due to the adventure and excitement involved in the purchase process. Rather than feeling responsibility for their part in the counterfeit market, buyers were more concerned with the embarrassment associated with others finding out their purchase is a fake.

However, some openly talk about their purchases and are proud of their ability to find better fakes or differentiate between real goods and knockoffs.

"Prior to my studies, the common understanding is financial gain and social-adjustive purpose, for example being perceived as a member of elite clubs who consume luxury brands, are the motivations for consumers willingly purchase and use counterfeit luxury goods," said Xuemei Bian, senior lecturer in marketing at the Business School of the [University of Kent](#) and co-author of the report, Canterbury, U.K.

"Our most recent research is one of the few studies which reveals, in addition to the above noted motivations self-image enhancement, intrinsic hedonic outputs, such as the 'thrill of the hunt' and being part of a 'secret society,' and a sense of genuine interest of counterfeits are the most powerful motivational drivers of unethical counterfeit consumption," she said.

Top five trends in counterfeiting and IP infringement:

Marketplaces vs. brands

A number of brands have fought back against the proliferation of fakes on marketplaces such as eBay, Alibaba and Amazon.

Birkenstock made news when it pulled all of its merchandise off Amazon, fed up with the amount of unauthorized SKUs on the platform. The footwear label's CEO, however, claims that Amazon has attempted to circumvent its efforts by reaching out to authorized sellers with requests for inventory ([see story](#)).

Louis Vuitton successfully attained a court-ordered block against number of Amazon sellers it said was selling counterfeit goods ([see story](#)).

LVMH also won a case against eBay in 2008, which claimed that the majority of Louis Vuitton bags and Dior perfume retailed on the marketplace were fakes. EBay was ordered to pay 38.6 million euros, which at that time was about \$60.8 million, in damages.

Unlikely alliances

Some luxury brands have decided that rather than beating marketplaces retailing fake goods, they would rather join them.

For instance, in August Kering dismissed its 2015 lawsuit against Alibaba that had claimed the ecommerce giant was not only allowing but encouraging the sale of fakes. Instead of fighting Alibaba, Kering created a joint taskforce with the retailer to combat counterfeit goods ([see story](#)).

Alibaba joined the International AntiCounterfeiting Alliance in 2016, but had its membership suspended after other members complained about its lack of effort to curb sales of fakes, with Gucci Americas and Michael Kors quitting the group. In January, the retailer partnered with brands such as Swarovski and Louis Vuitton, forging its own coalition.

Louis Vuitton also went from suing streetwear label Supreme less than two decades ago over misuse of its logo to collaborating with the brand on a collection ([see story](#)).

Superfakes

Whereas counterfeits were typically able to be differentiated from their real counterparts by craftsmanship or design details, some fakes today have become almost indistinguishable from the real thing.

Skilled workers have learned how to produce handbags or watches that can fool even experts. These products might include pieces of the real thing, such as genuine handles or hardware, as well as including accessories such as dust bags or receipts.

These superior copies also prey on consumers searching for an authentic Chanel bag or a Rolex watch in the secondhand market. Prices for these knockoffs are typically high enough that they may not set off any skepticism from the shoppers, who shell out hundreds or even more than \$1,000 for a fake.

## *Real vs Fake: Herms Bag*

### International infringement

The globalization of other industries has had an impact on counterfeiting, turning it into a more international business. Most counterfeit goods end up leaving the country where they are produced and are sold elsewhere.

With ecommerce democratized, brands have to be concerned not only with imposter merchandise, but also with impersonators online. Web sites with domain names using brand names are retailing fake watches or handbags, allowing them to reach consumers globally.

### Legal action

According to a Wall Street Journal [report](#), more luxury brands are taking their grievances with counterfeiters to court.

Along with this increased focus on legal action, a number of brands have had significant wins in IP law. Moncler, for instance, benefited from a new Trademark Law in China, receiving about \$448,000 in damages against a Beijing-based producer of counterfeit outerwear ([see story](#)).

### Copycat categories

While counterfeiting in the luxury industry is frequently associated with knockoff purses, the trade extends beyond fashion. Here are some of the most common categories that are subject to fake goods.

#### Apparel and accessories

The U.S. Department of Homeland Security seizes more apparel and accessories than any other category, representing one-fifth of total seizures. Footwear, measured separately, is the most commonly copied type of merchandise.

Aside from faux Michael Kors and Prada hawked on a street corner, the fashion industry is also guilty of copying from itself. Sellers including fast fashion retailers such as Forever 21 and contemporary brands such as Ivanka Trump have been accused of stealing designs from higher-end designer labels such as Gucci and Aquazzura.

A report from Fashionbi called out the fashion industry for its own role in counterfeiting, as designers have appropriated artwork or taken a bit too much inspiration from another label ([see story](#)).

Some have even made light of counterfeiting, with Dolce & Gabbana producing a series of authentic touristy T-shirts inspired by ones sold by street vendors alongside the label's alta moda event in 2016. The #DGTheRealFake shirts, which were revealed at the brand's spring/summer 2017 fashion show, had a lofty price tag ([see story](#)).



*Dolce & Gabbana #DGTheRealFake tee leans into the skid. Image credit: Dolce & Gabbana*

### Jewelry

In 2014, jewelry eclipsed handbags as the type of product with the greatest dollar amount of seized fake goods in the U.S., based on the manufacturer's suggested retail price of items confiscated.

Rolex, along with its fashion counterpart Louis Vuitton, is one of the most popularly knocked off labels.

Fashion labels are not the only ones having to battle mass retailers for their intellectual property. In August, Tiffany & Co. won a lawsuit against Costco, which was marketing engagement rings labeled "Tiffany" ([see story](#)).

### Beauty

Counterfeiters have also seized on consumers' desire for a beauty deal, creating knockoff versions of cosmetics and fragrances. These are often sold to unsuspecting shoppers online as they search for products.

Whereas the prices of most fake hard luxury goods are shockingly low compared to the typical cost, beauty's entry-level price points make it more difficult for shoppers to know they are buying counterfeit cosmetics. Rather than seeing red flags, they often assume they are simply getting a good deal.

Fake beauty products grew 25 percent from 2011 to 2013, according to the OECD.

Unlike fake apparel or accessories, beauty products produced by these illegal operations can be harmful for the buyer. Cosmetics can contain harmful chemicals or ingredients such as mercury or paint thinner.

According to [Bloomberg Businessweek](#), Estée Lauder has been aggressively fighting back against copycats of its brands, such as M.A.C. The beauty conglomerate seeks out fakes by making test purchases on marketplaces and has also taken offenders to court.

### Spirits

As with a number of other categories, fake alcohol is also a big business in China. Similar to counterfeit cosmetics, black market spirits often contain chemicals that should not be ingested, such as antifreeze or isopropyl alcohol.

The liquor is sometimes produced in unsanitary conditions, with reports of brewing taking place in bathrooms.

### Automotive

Counterfeiters have been caught making fake auto parts as well as accessories. The parts not only hurt the auto industry, but can also be dangerous.



*Fake auto accessories seized in Seattle. Image credit: ICE*

### Online operations

Counterfeit sales have moved beyond the back alley with help from the Internet.

Sellers register domain names that include brand names looking to lure buyers.

In addition to fake domains, counterfeiters are also using tools such as bots and algorithms to reach consumers on social media, according to a [Washington Post report](#). Using artificial intelligence software, sellers can target individuals who have posted about a specific brand or boost their content using a particular hashtag, such as #Chanel, to get themselves noticed by shoppers.



*Consumers can struggle to tell if they are getting the real thing online. Image credit: Stockvault*

Given the size of China's counterfeit industry, the country's popular social media network WeChat has had a significant problem with fake brand accounts. In 2016, the platform disabled 7,000 accounts that were tied to counterfeit sales, according to [World Trademark Review](#).

Beyond the counterfeit sellers themselves, a [Shanghai Evening News](#) report also noted that a number of WeChat users were acting as a proxy between counterfeiters and their friend group, taking on the role of "purchasing agents." These individuals were offering everything from wine to handbags through the app.

"Counterfeiters are bootlegging luxury brands' online presence and then hijacking their sales," said Rania Sedhom, managing partner, [Sedhom Law Group](#), New York. "For example, savvy counterfeiters will create fake luxury brand accounts on social media. They then use similar pictures to lure followers and then sell them fake goods.

"Other savvy counterfeiters will scour a brand's social media account, comment on something pretending to be an employee or affiliate of the brand and then send the follower to purchase to its own Web site and sell them a counterfeited good," she said. "So, rather than lure aspirational buyers, the counterfeiters are actually luring customers, maybe even loyal ones.

"Buying through social media is quick. You open the app, click on the picture, click on the pop-up with a link to the merchandise and buy. It probably took me longer to type the steps than it takes to consummate the purchase. Most customers may not notice that they are being re-routed. So, not only is it buyer beware it's brand beware as well."

In 2016, Richemont-owned Cartier and Montblanc won a court ruling in the U.K. that ordered Internet service providers to block a handful of sites selling fake versions of their watches and pens.

Internet sellers have also been a key focus of Moncler, which took down more than 1,800 Web sites selling counterfeit merchandise under its brand name.

Beyond fake Web sites and social media, luxury copycats are also abundant on marketplaces.

Often counterfeit sellers will retail a number of low-priced legitimate goods to build up positive seller reviews before turning the store into a distribution system for fakes. This, along with the anonymity, can make it harder for customers to know what they are getting.



Taobao's homepage. Image credit: Taobao

In the 12 months ended in August 2016, Alibaba Group said it closed 180,000 shops on its Taobao platform and removed more than 380 million listings for counterfeit items. The platform, which is similar to eBay and is a top ecommerce platform for Chinese consumers, has put measures in place to try to prevent offender sellers from reopening.

Despite these efforts and its initiatives to present a united front on counterfeiting with luxury brands, Alibaba was included in the Office of the United States Trade Representative's list of Notorious Markets in 2016. The report says, "While recent steps set positive expectations for the future, current levels of reported counterfeiting and piracy are unacceptably high."

Alibaba founder Jack Ma also drew animosity when he said in a speech last June that fake luxury goods are of a better quality and offer more appealing price points than the real thing. Since then, the group has forged a number of luxury partnerships aimed at taking down fakes.

In an effort to clean up the unknown element of buying luxury online, eBay launched an authentication program for luxury goods earlier this year ([see story](#)).

## Law and order

Jurisdictions have looked to curb counterfeiting through legislation.

Federal U.S. laws against counterfeiting focus on the sellers, with first offenders found hawking counterfeit goods given a maximum sentence of 10 years in prison and a fine of up to \$2 million.

In France, however, in addition to sellers being held responsible for the crime, those who buy or wear fake goods can also be slapped with a fine of at least 300,000 euros, or \$354,000 at current exchange, or up to three years of jail time.

To protect the "Made in Italy" positioning, Italy also has laws that impose fines on individuals who buy or accept fake merchandise, with penalties ranging from about 10 to 10,000 euros, or \$12 to about \$12,000.

In the city of New York, councilwoman Margaret Chin proposed a bill that would similarly make buying fake goods a misdemeanor, slapping offenders with a \$1,000 fine and up to a year of jail time. First introduced in 2011, the law has not yet been passed ([see story](#)).

Luxury brands frequently use lawsuits and legal action to stem the misuse of their intellectual property.

For instance, Mot Hennessy recently won a court case against auction house Acker Merrall & Condit, which had put a counterfeit bottle of Krug Champagne up for sale. Along with the ruling in the spirits maker's favor, the judge ordered the auction house to change its authentication process ([see story](#)).

Back in 2013, Cartier successfully brought a Chinese suit against two jewelry companies and a supermarket for misusing its trademark ([see story](#)).

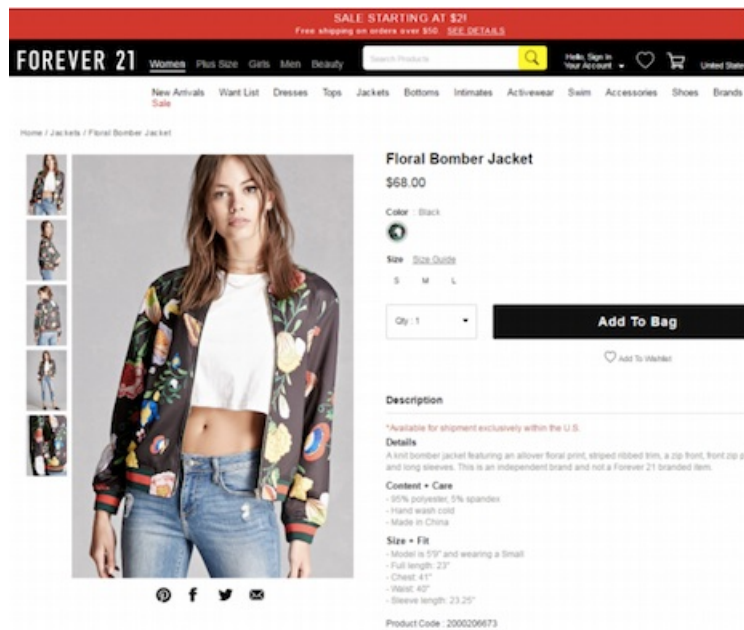
Fighting back against counterfeiting can seem like a game of whack-a-mole, as brands knock down one seller only to find others pop up in their place.

This is especially true online, where sellers can hide behind fake names and simply open a new profile on a marketplace or register a new domain name to keep their business going after being shut down.

While issues of registered trademarks are more easily disputed, some aspects of what a brand perceives as its intellectual property can be more difficult to prove in court.

Christian Louboutin, for instance, has on a number of occasions lost cases to gain exclusive and protected ownership of its red soles ([see story](#)).

Gucci similarly is in a battle with Forever 21 over whether its signature webbing should be trademarked ([see story](#)).



*Forever 21 jacket included in the court case. Image credit: Forever 21*

"Companies like Forever 21 have made a simple business decision: it's worth it to them to push the limits and see how much they can get away with," said Milton Springut, partner at [Springut Law PC](#), New York. "Yes, sometimes they will be sued, have to spend money on litigation, and might even have to pay damages. But this is viewed as a cost of doing business. Overall, there is a healthy profit that is made, so no reason to stop.

"The only way brand owners can combat these type of copiers is get to the root of the problem: go after the infringers, and insist that they turn over all of their profits and, if forced to litigate, seek treble damages and attorney's fees," he said.

"For sure, such enforcement is not cheap. But here is where the long-term strategy comes in. In the long run, spending the money to develop a reputation as being a 'difficult brand' pays off in that infringers move on to other brands and avoid you."

While brands are typically applauded for their efforts to curb counterfeiting, sometimes fighting what is perceived to be the misuse of intellectual property can actually backfire on a brand.

For instance, Gucci faced criticism from Chinese consumers after it issued warnings to businesses selling paper replicas of its products. Locals said that the brand's retaliation was out of touch with local culture, in which tradition calls for burning paper recreations of everything from cars to mansions, with the belief that the deceased will then have them in the afterlife

The brand eventually apologized and did not pursue further legal action ([see story](#)).

### Technology tactics

As it becomes harder for customers to distinguish real from fake, technology is proving an aid in authenticating merchandise.

Salvatore Ferragamo and Moncler are among the brands putting RFID chips in their fashions to help track them. Starting with its pre-fall 2014 collection, Ferragamo began implanting chips in its shoes, luggage and handbags, allowing them to be traced and identified ([see story](#)).





*Ferragamo's fall/winter 2017 campaign. Image credit: Ferragamo*

To help consumers differentiate authentic products, spirits producers Johnnie Walker and Rmy Martin are among the companies creating smart bottles.

Rmy Martin's bottle links to a brand app. Using near field communication, consumers can scan the bottle with their smartphone to see whether it is real and if it has been opened.

The Coalition Against Illicit Trade (CAIT) suggests technology as the answer to curbing counterfeiting, suggesting that brands work with governments to create solutions. The organization is in favor of "track, trace and authentication," which would follow the movement of goods and allow the consumer to know they are buying authentic goods ([see story](#)).

Other technology solutions promise to simplify the question of real or fake.

Startup Entrupy sells secondhand dealers a device that hooks into a smartphone. Using this attachment, the user scans a handbag and sends the resulting images to Entrupy.



*Entrupy system. Image credit: Entrupy*

The company then compares the photos to its database of microscopic photos and delivers a result in seconds. This is intended to take the human error out of authentication ([see story](#)).

#### Authentic awareness

One of the ways to prevent the sale of counterfeits centers on the consumer. Education and awareness campaigns can help them realize that what they believe to be a harmless bargain is actually funding more nefarious activities.

In June, the U.S. Customs and Border Patrol kicked off a campaign to raise awareness for the impact of counterfeit goods. "The Truth Behind Counterfeits" targets tourists, many of whom are looking to buy while abroad, educating them on the jobs lost and dangerous activity funded by fakes.

France also launched a campaign to make consumers think twice about making a counterfeit purchase in 2012. In association with luxury organization Comit Colbert and the French National Anti-Counterfeiting Committee, the ads which feature humorous slogans alongside imagery created by labels such as Chanel and Van Cleef & Arpels were placed at airports in France and a number of other European nations.

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© 2011 Chanel

*One of Comit Colbert's ads. Image credit: Harper's Bazaar*

"The protection of intellectual property rights makes it possible to grow competitive French businesses and safeguard French jobs," said Elisabeth Ponsolle des Portes, president and CEO of the Comit Colbert, in a statement at the time. "The combat of the Comit Colbert, which is of long date, illustrates the luxury sector's commitment to the fight against counterfeiting to protect our know-how and creation."

In 2011, eBay teamed up with the Council of Fashion Designers of America and 50 labels, including Diane von Furstenberg, Calvin Klein and Marchesa, for its "You Can't Fake Fashion" campaign. The designers created custom tote bags that were auctioned off at the set price of \$150.

Harper's Bazaar similarly ran an awareness campaign titled "Fakes Are Never in Fashion." The Hearst-owned magazine drew attention to the issue among its readership with a dedicated Web site.

Brands can also do their part to educate their consumers. Many labels, including Tiffany & Co., have warnings to their shoppers on their ecommerce sites. Tiffany's message identifies authorized sellers and cautions that buyers should beware of products that are retailed elsewhere.

A 2009 [paper](#) from the Journal of Marketing research found that brands that are more conspicuous, such as those with recognizable logos, are more apt to appeal to counterfeit buyers, since they can then show off their faux label merchandise and use it for social cachet. The research noted that brands may want to think about how they present themselves through designs and marketing, as a less noticeable label is less apt to be sought-after and copied.

"I am not sure that a marketing campaign can be that effective at getting consumers to stop buying counterfeits," said Columbia Business School's Mr. Wilcox, a co-author of the report.

"It is similar to trying to get people to stop using drugs with an anti-drug campaign," he said. "It might have some impact, but the demand is too great to just rely on advertising."

"I think the best way for luxury firms to reduce the demand for counterfeits is to focus on product design. For instance, smaller logoed products are less likely to be counterfeited.

"Additionally, innovative and high-quality materials are harder to counterfeit. Finally, people buy luxury brands because they feel a connection to the brand, so focusing on building that connection may be a more effective way to use advertising."

Whether through marketing, awareness campaigns or legal action, luxury producers should play a proactive role in protecting their intellectual property, as they are their best advocates.

"IP is like a house a solid foundation is necessary to maintain its structural integrity," said Springut Law's Mr. Springut. "We have seen too many brands which take a short-term and not entirely adequate view of IP.

"When a design is first introduced, if you cut corners or skimp on IP foundation it can lead to issues later on when infringements appear which may be a challenge because it may well be too late then to protect the design."

Best practices to combat counterfeiting and IP:

- Rania Sedhom, Sedhom Law Group:
  - "Communicate with your followers and customers. Tell them about your anti-counterfeiting measures and help them learn how to spot fakes and enhance your authenticity process often. Make it a burden for counterfeiters to catch up. Update your technology as often as necessary and make it easy for consumers to validate the authenticity of a product.
  - "Go after counterfeiters. It is a numbers game. It is statistically impossible for you to stop all of them, but you should stop as many as you can."
- Milton Springut, Springut Law:
  - "Make sure your IP foundation is in place. You need to find and work with U.S. counsel who understands all the forms of IP to come up with a long term comprehensive strategy to protect what you have.
  - "Pursue a vigorous enforcement program, and insist on full turnover of profits and fees.
  - "Brands should also consider investing in anti-counterfeiting technology. One thing which really offends many non-U.S. clients about American litigation is discovery. In our courts, a great deal of time is spent getting information from the other side that is relevant to the case. European courts operate differently, and some European companies find this process intrusive. Anti-counterfeiting technology can, in some cases, reduce this intrusiveness, as well as make it easier to win the case."