

Publications

How to Detect and Stop Counterfeit Online Sales

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Related Industries

Retail and Consumer Products

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Ordinary consumers are often unable to distinguish counterfeit products from legitimate products. In fact, according to a [recent study](#), nearly one in four consumers has unknowingly purchased a counterfeit product on the internet.

Thus, the question becomes how can counterfeits be detected and, thus, how counterfeit online sales be limited by the companies themselves.

We have found that the best way for companies to detect counterfeits (of their own products) is to use a skilled cyber investigator or cyber investigation company.

Counterfeit sellers often fall within one or more of the categories below:

- They are selling products substantially below retail price
- They have a large volume of product available
- They have short domain histories
- They have low quality websites
- They have been known to sell other counterfeits before

Cyber investigators are generally skilled at identifying bad actors online that are selling counterfeits, especially if using technology created specifically to stop these types of unauthorized sales.

In working with cyber investigators to identify counterfeit sellers online, they can produce a report with sellers known to sell counterfeits and who potentially fit any of the above criteria. From there, an investigator can purchase the products, which he or she can inspect, and make an ultimate determination as to whether the products are actual counterfeits.

Companies affected by counterfeits can work with attorneys skilled at pursuing online sellers who can develop tailor-made programs to eradicate counterfeit sellers using various legal techniques. These techniques include sending cease and desist letters and obtaining

injunctions that can result in the removal of or transfer of websites.

The goal is to remove and stop impermissible counterfeit sales and sellers, rather than engaging in something akin to playing “Whac-A-Mole,” where you can get some products taken down, only to see them pop up again online.

Beyond removing counterfeit products and websites, as well as potentially seizing websites and associated proceeds, counterfeit enforcement efforts should also be geared toward ensuring the unauthorized sellers completely stop cease their unlawful activity.

It is also worth noting that the federal Lanham Act provides for special damages in trademark counterfeiting cases. On top of actual damages, ill-gotten profits, treble damages and attorneys’ fees, Lanham Act also provides for statutory damages ranging anywhere from \$1,000 to \$200,000 per counterfeit good.

If a court finds counterfeit sales to be willful, that number can rise to as much as \$2,000,000. However, it is important to note that to receive counterfeiting protection from the Lanham Act, companies must register their trademarks with the United States Patent and Trademark Office.

For more information, contact Vorys’ Illegal Online Seller Enforcement team at 877.545.6905. Read more about the practice at [services-648.html](#).