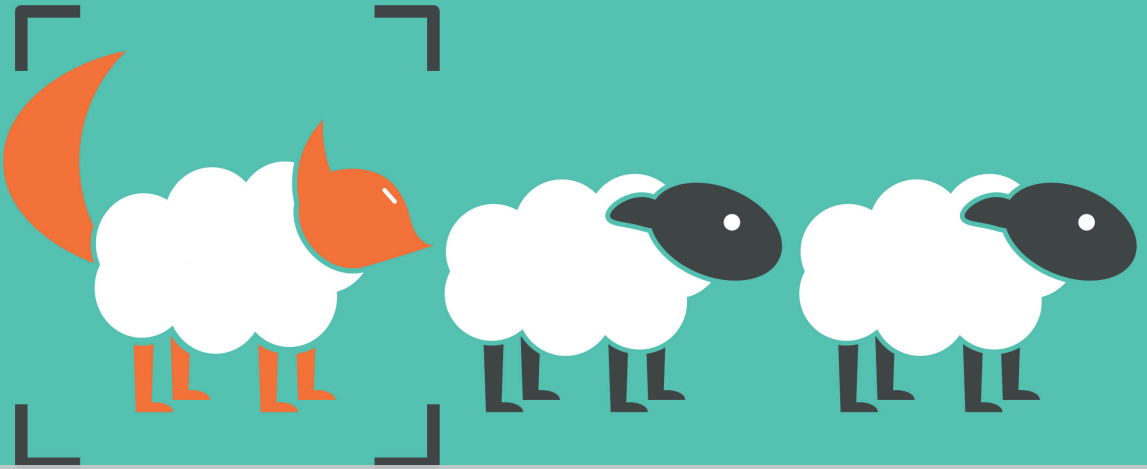


Anti-counterfeiting and Online Brand Enforcement 2021



Introduction

Anti-Counterfeiting Group

Phil Lewis

A Global Guide

Leading the fight against counterfeiting



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Introduction

Anti-Counterfeiting Group

Fighting the menace of criminal counterfeiting

Author
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The Anti-Counterfeiting Group (ACG) had intended for 2020 to be a year of great celebration for ACG members. For 40 years we have been fighting the menace of criminal counterfeiting and our successes over this time have been huge. As a result, we fully intended to mark the many achievements of the group and our members at numerous events across the United Kingdom. However, it was not to be. The arrival of the covid-19 pandemic quickly changed all of our lives and, while it interrupted planned celebrations and events, many people suffered far more unimaginable loss, illness and heartache during the year. And so, first, we at ACG would like to express our deepest sympathies to those who have been affected by the pandemic. We would also like to offer our heartfelt thanks to those medical staff and front-line service providers who have continued to work so hard to keep us all safe and well.

Counterfeiting in covid times

Although the covid-19 pandemic greatly altered the world for almost everyone, international criminals involved in counterfeiting and other forms of illicit trade sought nothing more than to profit from the dangers and disasters that we all faced. As a result, we witnessed growth in one of the world's faceless menaces – counterfeiting – which, throughout this terrible period, has once again crept up and spread to become nothing less than a criminal contagion.

These villains quickly recognised the global health emergency to be just another business opportunity. Feeding on people's illnesses, difficulties and fears, when they looked to find ways to buy essential products and avoid the threat of contracting the virus, the criminals immediately stepped in to prey on their victims' anxieties. Counterfeiters rapidly began manufacturing and selling a huge range of dangerous household items, including fake household products, hygiene commodities and food and drink. But alongside this, we also saw the arrival of unsafe and useless covid-related fakes, including protective clothing, sanitisers, remedies and, most recently, counterfeit vaccines.

Fortunately, Europol, Interpol and other global enforcement authorities were swift to recognise the threats and risks arising from criminal counterfeiters selling bogus versions of covid-19 vaccines and, based on the methods being used to market these forgeries, they were also able to publish warnings on how organised crime would be adapting its methods to meet the demand of genuine vaccines. The forecasts were later confirmed in a key Europol report, which identified the distribution of substandard and counterfeit pharmaceutical products, including preventative covid-19 vaccines, as a "systematic pandemic-related criminal threat". However, fears increased further as criminals began spreading disinformation on vaccine scarcity



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Phil Lewis has been engaged in IP enforcement since 2001 when he became the United Kingdom's senior policy adviser on IP crime. Based at the UK Intellectual Property Office, Mr Lewis was responsible for developing and leading the United Kingdom's first National IP Crime Strategy.

In 2008, Mr Lewis became senior national expert at the European Commission, where he authored the commission's strategy against counterfeiting and piracy. He was responsible for conceiving and developing the EU Observatory on IP Infringements of IP Rights.

In 2014, Mr Lewis was awarded the Global Anti-Counterfeiting Award for individual achievement and worked as policy and strategy adviser to the UK Anti-Counterfeiting Group (ACG). In 2018, he became the new director general of the ACG.

to encourage purchasing of their fakes. In the United Kingdom we began to see the impact of this when the City of London's Police IP Crime Unit arrested and charged a fraudster (who had been claiming to work for the UK National Health Service) for injecting a 92-year-old woman with a fake covid-19 serum.

Online shopping

As the fifth-largest consumer market in the world, the United Kingdom has always been hugely attractive to counterfeiters and during the height of pandemic restrictions, we saw an exponential rise in essential and therapeutic

online buying by consumers. Kantar, a leading European e-commerce auditing company, correctly predicted that the pandemic would accelerate this shift from physical retail buying to e-commerce. Its data showed that consumers who made more than 50% of their purchases online had not only increased dramatically, but that 60% of consumers said that they would continue to buy online to the same extent after the pandemic had passed.

Supply chains

The criminals were clearly alert to this and to other direct changes, including the

disorder in global supply chains, which was affecting large-scale maritime deliveries. Not wanting to see vital markets decline due to these disruptions, they began to eye up a move to 'nearshore' production. This again became evident at the end of 2020 when a UK trading standards authority, assisted by ACG members, uncovered a counterfeit clothing factory with deplorable and dangerous conditions and the use of forced labour to manufacture and stockpile its products.

Without large-scale physical markets to sell their products criminals were handed a gift in a major rise in online buying, but they also began to exploit a greater use of social media as a medium for sales. As a result, the use of 'influencers' came to the forefront. There can be little doubt that social media influencing can be a huge benefit in marketing legal products and services. The public has faith in the opinions of celebrities and people from similar backgrounds, so when they endorse a product, consumers trust their recommendations.

However, once again, criminals have identified these potential benefits and recruited unwitting and irresponsible influencers to engage in building interest in cheap and often dangerous fake goods. According to analytics company Ghost Date, on one major platform, as many as one in five fashion posts were found to include a fake item.

Throughout 2020, ACG warned that all these issues were helping to forge new marketing and supply paths for criminal counterfeiters and increasing the threat to businesses and consumers alike. However, thoughts naturally turned towards obvious health and safety issues

and, as a result, the scope and scale of the trade in fakes sold online continued to grow.

Consumer protection

The United States and the European Union are forging ahead with important steps to protect consumers and businesses from the growing dangers of online counterfeiting and illicit trade. The European Commission's draft Digital Services Act sets its sights on giving e-commerce platforms greater responsibility to proactively screen products and prevent the sale of counterfeit goods from appearing on their sites. The US INFORM Act also aims to build greater online protection by improving processes to check the validity of third-party sellers.

Unfortunately, the United Kingdom has yet to follow this lead. The government's Online Harms white paper delivered to Parliament in December 2020 does nothing to recognise the growing threat of dangerous counterfeit goods. The ACG has written that the development of an online harms regime is the perfect opportunity to put measures in place to protect members of the public from counterfeiters and the dangerous fake goods that they are selling, which can not only put consumers out of pocket but also damage their health. However, so far, the government has refused to accept the argument that counterfeiting is a clear health and safety threat, despite the appearance of fake anti-covid vaccines, remedies and medical equipment and the fact that UK Border Force and Trading Standards are regularly uncovering more counterfeit household and hygiene products, electrical goods and toys that are substandard and clearly dangerous.

Trade after Brexit

Aside from the pandemic and economic disruptions, the government must still finalise a raft of Brexit laws by 31 October 2021. Until the coronavirus crisis hit, thousands of civil servants had been engaged in developing policy, laws and new trade deals. Work was also ongoing to put new public bodies in place to assume responsibilities previously dealt with by EU institutions. This work also included the preparation of new regulatory regimes, systems and databases. To date, some critical areas have not received the same level of negotiation as others. One example is data flows and exchanges, which are vital for enforcement and business. In these areas we are reliant on unilateral EU decisions, and ACG members are concerned that UK enforcers may be cut off from vital EU systems that enable intelligence and information sharing about transnational counterfeiters.

This is true in relation to the European Union's Anti-counterfeit and Anti-piracy System, which is critical for joined-up border protection. This was replaced by a new UK system on 1 January 2021, but so far it lacks a link to customs authorities in the European Union.

However, UK agencies will still be able to access some criminal records through Prüm, the system built to automate exchanges of data on DNA, fingerprints and vehicle recognition, and the European Criminal Records Information System. The United Kingdom will also have access to EU Passenger Name Records. All this means that the United Kingdom will still be able to work with EU agencies, such as Europol, on joint investigations of organised crime



So far, the government has refused to accept the argument that counterfeiting is a clear health and safety threat

and terrorism. Regrettably, we still have no information on whether the European Arrest Warrant will still be applicable in the United Kingdom, but other areas at risk include the:

- the EUIPO Enforcement Database, a unique central portal for business and enforcement to exchange information on products, trade routes, suppliers and preferred shippers, among other things (all EU customs and 38 police authorities are users);
- the Europol Information System central criminal information and intelligence database; and
- RAPEX, the market surveillance authorities' rapid alert system for dangerous goods.

Another policy decision that has brought some concern surrounds the Chancellor's announced plans to establish eight new regional freeports in the United Kingdom.

While the announcement is welcome news for the economy and jobs, as we enter a new era of international trade after leaving the European Union, ACG members have warned about the acknowledged misuse of freeports in a wide range of other countries, which has led to serious increases in illicit trade, including counterfeit goods, drug trafficking, corruption and money laundering.

According to a recent Organisation for Economic Cooperation and Development (OECD) report, free trade zones are amplifiers of illicit trade as they lie outside the home country's jurisdiction and are often "lightly regulated". As such, they are attractive to illegal groups and activities. The OECD report also found that the addition of a single trade zone within an economy significantly increases counterfeiting by 6%. These risks have also been raised by other respected bodies, including the World Customs Organisation, and have led to the European Parliament calling for the abolition of freeports in the European Union.

The ACG's view is that unless enforcement and policing are strong at UK free trade zones, they run a severe risk of becoming transit points and complex manufacturing and distribution centres for the trade in counterfeit goods. Solid reassurance is needed that the UK government has clear plans in place to prevent more illicit and dangerous goods from

arriving in the country. Otherwise, the only people taking control of our borders will be international criminals.

Transport of goods

As we all know, the trade in counterfeit goods is a long-standing and growing worldwide socio-economic risk, that threatens effective business and the health and safety of consumers. At the same time, it is a major source of income for organised criminal groups. Nowadays, counterfeit and pirated products are transported by increasing means of transport. The trafficking of counterfeits via small parcels was evident during the pandemic, as other major supply chains were disrupted. However, if we look at the volume of counterfeit items arriving onshore, the global trade in fakes still makes great use of container ships.

The latest report by the OECD and the EUIPO revealed that container ships carried 56% of the total number of seized counterfeits, with China and Hong Kong, East Asia, India, Malaysia, Mexico, Singapore, Thailand, Turkey and the United Arab Emirates at the top of the list of source countries. The recent port development strategies under the Chinese Belt and Road Initiative in Europe could add to the problem as counterfeiters in China infiltrate and use the Mediterranean region to move even more illicit products through container ships. The result could see customs authorities in Europe overwhelmed in dealing with high volumes of small parcels at airport hubs and an increase in the illicit use of container shipping arriving at our ports.

All these risks illustrate the fact that transnational organised crime networks now have a hold on many facets of global trade and, once embedded, they become extremely difficult to remove.

Global fight against counterfeiting

ACG members are continually tackling all of the factors that are destroying legitimate businesses, their motivation to innovate will aid our economic growth and increase our consumer safety and security. As such, our role is becoming ever wider and more global in the fight against this menacing trade. We are distinctively set up as a trade association, representing more than 3,000 brands, with

an intelligence coordinator in place to help identify threats and support enforcement. This function enables us to take a leading role in the United Kingdom on intelligence-led actions against some of the most notorious markets and rogue online traders.

Despite pandemic restrictions, in 2020 we dealt with more than 800 pieces of intelligence, which facilitated almost 50 raids, in which we netted counterfeit products with an estimated value of around £10 million. We also trained almost 2,000 enforcement officers.

However, this operational function is not limited to border support and physical markets; we also act against online sales of fake products, through websites, e-commerce platforms and social media.

Moreover, we are part of a global network and are building and maintaining even more international alliances, to drive more effective and sustainable strategies, regulation and enforcement. We are a major contributor to the OECD, EUIPO, the World Customs Organisation, Europol, Interpol, the United Nations Interregional Crime and Justice Research Institute, the Global Anti-Counterfeiting Network, the European Brands Association AIM and the European Anti-Fraud Office. But more is needed. We recognise that a structure to enable the United Kingdom to continuously share information, best practice

and intelligence with international partners is more crucial than ever. We can then use this to:

- gather and provide compelling facts and data to drive more understanding and more effective evidence-based policy decisions and actions;
- develop more evidence-based and focused training, events, conferences, media outreach, lobbying and innovative training for public and private sector decision-takers, policy makers and enforcers; and
- support coordinated intelligence to facilitate and act against physical and online supply chains and distribution outlets. **WTR**



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