

# Phoney war

Not-for-profit organisations such as the UK-based Anti-Counterfeiting Group are leading the fight against the growing global threat of intellectual property crime by uniting rights holders, law enforcement and government bodies, as director general **Ruth Orchard** explains to Elly Earls.



**T**he internet has triggered counterfeiting activities that were unimaginable five years ago, making it the largest problem for brand owners and law enforcement in 2010.

EU customs statistics released in 2009 reveal that, between 2007 and 2008, the counterfeiting of electrical equipment, medicines and personal care products increased by 58%, 57% and 42% respectively, while MarkMonitor, an online brand protection provider, estimates that \$133 billion in legitimate revenue was lost in 2009 solely due to the sale of counterfeit goods on the internet.

But several other factors contribute to the problem, such as consumer attitudes.

A survey commissioned by the International Chamber of Commerce in December 2009 showed that 80% of consumers regularly purchase counterfeit products with little remorse. The frequency of purchases increased with income, suggesting that the economic downturn has led to a boost in affluent consumers' interest in fakes – 41% of the low-income group admitted to buying counterfeit products but this increased to 50% for high-income shoppers.

## Fight back

As a straightforward solution to the problem simply does not exist, the only way to begin to counter the crisis is through a complex and expensive network of global cooperation.

Opposition to the international trade in counterfeit and pirated products is gaining ground, and the worldwide anti-counterfeit packaging market is expected to be worth \$79.3 billion by 2014, an increase of an estimated compound annual growth rate of 8.6% compared with 2009.

The UK-based Anti-Counterfeiting Group (ACG), which represents nearly 200 companies worldwide, including Procter & Gamble, Unilever and Microsoft, is part of that opposition, and it aims to expose the global effects of intellectual property crime on both consumers and rights holders by working in collaboration with brand owners, law enforcement agencies and the Government.

Referring to consumer attitudes to buying counterfeit products highlighted by the International Chamber of Commerce survey, Ruth Orchard, director general of ACG, notes: "The demographic isn't what you'd expect. In every sector of society people are willing to look the other way and there's almost a competition as to who has the best fake."

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Meanwhile, manufacturing has shifted to less-developed nations with poor intellectual property (IP) protection laws, providing further opportunities for counterfeiters to thrive. "When manufacturing moved out of the UK to the Far East, that's where the fakers went too, making intercepting them much more difficult," Orchard explains.

With finite resources available, the budgets of law enforcement and rights holders must be taken into account. "We have to take a measured look at what's available and what's possible," says Orchard. "We're discussing it at every level – national, EU and global."

In Brussels there is a confidential initiative, which aims to bring together online traders and rights holders to create a code of practice.

"Online traders claim that they're not liable for the sale of fakes on their website, yet they take a percentage of every sale, which is illegal," says Orchard. "This initiative will hopefully avoid the need for actual legislation – a voluntary agreement is a better answer to the problem."

Trading Standards is also developing its internet enforcement practices, but jurisdiction is still one of the most significant hurdles. "How do you get hold of somebody who has a fake identity on their website in Russia?" asks Orchard.

## Fake hotspots

The counterfeiting hotspots are currently Turkey, Russia and China; indeed, 54% of the total counterfeit goods seized by EU customs in 2008 originated in China. But the problem is spread more widely across the developing world with Indonesia known for food and beverages, the United Arab Emirates for cigarettes, and India for counterfeit medicines.

Although the ACG works closely with the UK Government, the group does not have the resources to directly influence the leaders of nations worldwide. "Our government does what it can to put pressure on other governments," says Orchard. "IP crime is now on the agenda for the global G8 summit; it's a way of beginning to influence people." >>

But government action alone is not enough; rights owners must be involved from the outset. "The Real Deal initiative, which focuses on the sale of fakes in markets, is a good example of this in the UK," says Orchard. "Law enforcement, local authorities, rights holders and market operators are on board, and consumer awareness comes as a bonus. We hope it will provide a national model for other countries to follow."

The EU, however, is lagging behind the US, according to Orchard: "We have a good legal set-up, but our problem is the enforcement of those laws. Trading Standards deals with it inside the frontier, customs deal with it at the frontier, the police deal with it now and then, but Trading Standards, which is a local authority, is primarily responsible. We need a more comprehensive system."

For Orchard, the US model is the benchmark. The National Intellectual Property Rights Coordination Center coordinates the activities of US Immigrations and Customs Enforcement, US Customs and Border Protection, the Food and Drug Administration, the FBI, the

Computer Crime & Intellectual Property Section, the Department of Commerce and the US Postal Inspection Service.

One of the key aims of the body is to enhance working relationships with industry players. Moreover, the US government's Strategy Targeting Organized Piracy (STOP) initiative is focused on helping businesses, including small and medium-sized enterprises, to protect their intellectual property in the US and abroad.

#### Investigative technology

Technological developments will also play an important role in the continuing battle against piracy, as brand owners are increasingly beginning to realise. Radio-frequency identification (RFID) technology helps companies track shipments and secure their supply chains, while genetic markers can be incorporated into packaging to identify genuine products.

"The most crucial development is the investigative technology being used to track and trace counterfeit goods on the internet,"

says Orchard. "There's no shortcut; rights holders need to invest in this technology."

Software service providers such as MarkMonitor and Envisional, both of which are members of the ACG, are being used more frequently by companies attempting to protect their brands, to the extent that MarkMonitor raised the price of its service by 18% last year. Such systems scan auctions, newsgroups and B2B forums as well as websites to guard against the threats of online brand theft.

Government bodies, law enforcement agencies and brand owners are determined to tackle the ever-growing threat of criminal counterfeiting, but until comprehensive schemes are established on a global scale, there is little hope of a let-up.

"It will involve a lot of global cooperation between governments, law enforcement and rights holders; it's a very difficult juggling act," says Orchard, concluding that governments must also seriously address the issue of consumers' apathetic attitudes: "There are a lot of initiatives going on, but they're only in their infancy." ■

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