

Sweet Deal ... What's the Harm?

You know the feeling: your heart beats a little faster, you get a little nervous, and you might glance nervously over your shoulder a time or two—even if you are in front of your computer in the privacy of your own home. Why? Because the deal you have just stumbled on for those _____ (fill in the blank) designer goods just seems too good to be true. And you know it is. In some cases, the fact that the deal is for a knockoff is obvious, because the designer name is slightly misspelled, the color just doesn't look right, or the finishing details just don't feel right. But in recent years, especially in the case of Web sites dealing in knockoffs, the purveyor of the goods loudly and proudly exclaims that the goods are “authentic” and are being offered as a special “clearance” offering or some other almost plausible explanation for a price that is often only 20 percent or less of the price of the authentic goods. You still know this is too good to be true, but in this economy everyone knows that a treat can only come if it is a great deal. And, after all, what's the harm in treating yourself to a little fake luxury at a great price?



In my experience as an attorney practicing primarily in the field of intellectual property law, I have come to realize that just about everyone knows that buying counterfeit goods (a harsher sounding term than the more euphemistic “knockoff,” but the reality behind counterfeit goods is harsh) is wrong, but many people—if not most—view it as only being “technically” wrong. The most common excuse I have heard for this view is the rationale that purchasing a knockoff does not harm the owner of the rights in the genuine article because the person purchasing the article would never buy the genuine article at anywhere from 5–100 times (or more) the cost of the counterfeit good. Even from a “technical” standpoint, this conclusion is simply wrong. For example, if one can purchase a counterfeit Rolex® watch for \$70 when the original costs \$7,000 or more, the availability of these counterfeit goods in the market cheapens the brand and lessens the incentive for others to purchase the original. I

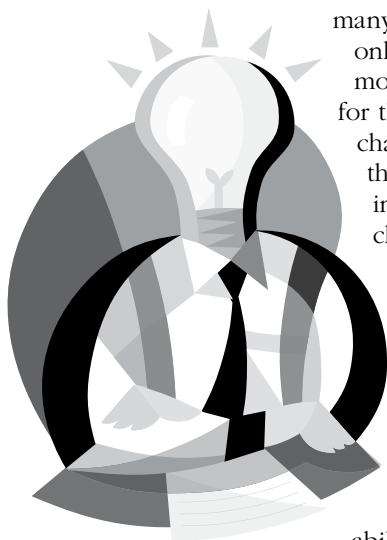
could give you dozens more reasons why the sale and purchase of counterfeit goods causes real harm to the owner of the rights to the original. But, in large part, members of the public have failed to change their buying habits based on the “technical” harm these habits cause.

Today's poor economy has further exacerbated the situation. According to a recent article in *Adweek*, many brand managers believe that today's poor economy is encouraging more fakes and counterfeit products.¹ In this article, Milton Pedraza, CEO of the Luxury Institute, notes: “The aspiration consumer who was buying real luxury still covets that luxury—even though he can no longer afford it.” Accordingly, these consumers are in search of more for less, often leading them to buy counterfeit goods. And what happens at the top of the economy for luxury goods is also happening at the lower end of the economy as well, where DVD piracy and traffic in tobacco products that are counterfeit, untaxed, or both continue to increase.

What these buyers do not take into account in their glee at getting a “great deal” is the very real harm caused by the ever-growing counterfeit goods industry and the ancillary services that have grown up to protect the industry. In the not so distant past, several major manufacturers of consumer goods have experienced a significant backlash resulting from allegations that their contractors used child labor to produce their goods. As a result, most manufacturers of name-brand items have taken steps to ensure that their contractors do not use such labor. But how do you think these extremely cheap counterfeit goods are manufactured? They are produced, in large part, by child labor. And these children are subjected to conditions that make you cringe when you hear about them. In a recent *New York Daily News* article about counterfeit designer shoes, the author recounts details of a recent sweatshop raid in Thailand, where the factory operator had broken the bones of the child workers—all of whom were younger than 10 years old—as a way to prevent the children from escaping.²

Organized crime has also increasingly moved into crimes that involve infringement on intellectual property rights, such as trafficking in counterfeit luxury goods, pirated DVDs, and counterfeit or untaxed tobacco products. The reason for doing so is that the risks are much lower and the penalties less harsh than those imposed for traditional criminal operations, such as drug smuggling and distribution.

But the real elephant in the room that people sim-



ply do not talk about is the connection of counterfeit goods to terrorism. In 2003, Interpol's Secretary General Ronald Noble testified before the U.S. Congress on the link between intellectual property crime and terrorism based on Interpol's investigation of cases involving trafficking in counterfeit goods in Europe.³ Interpol's investigations revealed that some terrorist organizations, such as paramilitary groups in Northern Ireland, were directly involved in producing or distributing the counterfeit goods, and other terrorist organizations were being funded with proceeds from trafficking in counterfeit goods by the organizations' benefactors.

More recently, the Rand Corporation released a study detailing the connections that exist between film piracy and terrorism.⁴ This study found that both the Irish Republican Army and India's D-Company have relied on film piracy to support their activities. This same study found that Assad Ahmad Barakat, a known DVD pirate who was labeled by the U.S. government as a "specially designated global terrorist" in 2004, transferred \$3.5 million to Hezbollah in a single transaction.

Trafficking in counterfeit or untaxed tobacco products is another fertile source of funds for terrorists, according to an article published by the Center for Public Integrity in 2009: *Terrorism and Tobacco: Extremists, Insurgents Turn to Cigarette Smuggling*.⁵ This study finds, for example, that Al Qaeda in the Islamic Mahgreb, a terrorist organization believed to be backed by Osama Bin Laden, is one of the groups that control the trade on the "Marlboro connection" through the Sahara Desert, along which untaxed and counterfeit cigarettes flow. This study also found that the Real IRA, which continues to use terrorist tactics, has relied in part on cigarette smuggling, flooding Ireland with counterfeits of popular brands, to underwrite its operations. And in Pakistan, heavily hunted Taliban militias profit by allowing counterfeit cigarettes into Afghanistan and China.

So how do we solve this problem? All the studies offer recommendations that mostly involve increasing the priority of pursuing intellectual property crimes, which are typically viewed as being a lower priority of law enforcement agencies, and imposing tougher penalties on those who engage in such crimes. I, for one, believe that the solution also rests with each of us. When faced with an incredibly sweet deal that is obviously not legitimate, we have to collectively make the choice to walk away from the temptation. I know this sounds difficult and many think that taking advantage of such a deal is only technically wrong, but if you stop and think about the ramifications of that sweet deal in terms of the human suffering it causes others, I am certain you will conclude, as have I, that what looks like a sweet deal is, in fact, pretty darn sour. **TFL**

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Endnotes

¹Robert Klara, *Copying Machines: Counterfeiting Used to be Called a Nuisance. Now, There's a New Word for It: Epidemic*, 50 ADWEEK 26 (June 29, 2009).

²Jane Ridley, *Hell on Heels. Internet Shoe Scam Rips Off Buyers and Preys on Kids*, N.Y. DAILY NEWS (July 16, 2009).

³Ronald K. Noble, Secretary General of Interpol, Testimony Before the U.S. House of Representatives, Committee on International Relations, 108th Congress, *The Links Between Intellectual Property Crime and Terrorist Financing* (July 16, 2003).

⁴Gregory F. Treverton et al., *Film Piracy, Organized Crime, and Terrorism* (RAND Corporation 2009), available at www.rand.org/pubs/monographs/MG742/.

⁵Kate Wilson, *Terrorism and Tobacco: Extremists, Insurgents Turn to Cigarette Smuggling* (Center for Public Integrity, June 28, 2009, available at www.publicintegrity.org/investigations/tobacco/articles/entry/1441/).

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