



DISRUPTIONS CAUSED BY COVID-19 INCREASE THE RISK OF YOUR BUSINESS ENCOUNTERING ILLICIT TRADE RISKS

Counterfeit and pirated products are being produced and consumed in virtually all economies of the world, and there has been an alarming expansion on the general economic and social damage incurred as a result. Few sectors can claim to be spared from the counterfeiting phenomenon. Trade in fake goods, which infringe on trademarks and copyrights, harms companies and governments alike.

While counterfeiting and piracy levels are difficult to determine with precision, vulnerability to counterfeiting and piracy is a major threat to all businesses—especially to those who may not be aware of the tools, resources and best practices that can be used to combat illicit trade risks.

Selling, supplying or buying counterfeit or pirated goods can damage your business' reputation and put your customers at risk. If combined with other illicit trade practices, such as tax avoidance, counterfeiting can have a direct impact on opportunities to collect national revenue and secure better public services.

While you may have been aware of supply chain vulnerabilities before the crisis, the massive disruptions that have come with the pandemic have magnified those vulnerabilities. Now more than ever, it is imperative that business leaders are educated on steps that can be taken to protect their businesses. This guide is your essential resource for combatting counterfeiting and piracy risks in the COVID-19 era.

COUNTERFEITING

If the products that you manufacture are in short supply, your goods are at risk of being counterfeited. Customers unknowingly purchasing imitations of your goods that are harmful or faulty, can cause lasting damage to your reputation, and, when combined with competition from imitators, counterfeiting can have lasting consequences on your business' market share and economic viability. On the other hand, purchasing counterfeit raw materials or other supplies carries a range of health and safety risks both for your consumers and for your employees.

Even before the onset of the COVID-19 pandemic, reports identified a significant increase in the volume of counterfeiting: 461 billion USD, or 2.5% of world trade in 2013 versus 509 billion USDs, or 3.3% of world trade in 2016. This data is even more striking as world trade declined during this period.¹

In the context of COVID-19, brand intelligence platform, Red Points, recorded that the number of counterfeit detections increased 38% between March and April 2020 across apparel, toys, home goods², accessories and sporting goods. In particular, the sale of counterfeit healthcare and sanitary products; personal protective equipment; and pharmaceutical products have increased manifold since the outbreak of the crisis.

Between 3-10 March 2020, Operation PANGAEA XIII, a joint operation by police, customs and regulatory authorities from 90 countries, confiscated over 34,000 counterfeit surgical masks,

¹ OECD and EUIPO: [Trends in Trade in Counterfeit and Pirated Goods](#) (2019)

² Laura Urquiza for Fast Company: [Counterfeiting is a billion-dollar problem. COVID-19 has made it far worse](#)

“corona spray”, “coronavirus packages” or “coronavirus medicine.” Compared to the 2018 operation, an increase of 18% was reported in antiviral medication seizures, including a 100% increase in seizures of counterfeit chloroquine—an antimalarial medication which was, at one point, hypothesized to reduce the harmful health effects of COVID-19.³⁻⁴

These numbers are striking, but they are not insurmountable. Using anti-counterfeiting best practices, including developing clear due diligence procedures are the best way to guard your business against imitators.

WHAT IS A COUNTERFEIT?

Counterfeit goods are made in exact imitation of something else with the intention to deceive or defraud consumers. Counterfeit items can be sold in stores or online and have the potential to carry a range of health and safety risks. Almost any item can be counterfeited, but examples include:

- > Ineffective or dangerous prescription drug reproductions
- > Toxic imitation gold dental filling materials
- > Poorly wired imitation electronics
- > Consumer goods of baby formula made with sub-standard or poisonous chemicals

PIRACY

Trademark infringement is a risk to anyone creating unique intellectual property, with creative goods at risk of being copied by both physical and digital means. However, the risk of your business encountering piracy and malware through the use of unlicensed software has increased with the rise of the internet.

WHAT IS A PIRACY?

Piracy refers to the unauthorized copying of materials protected by intellectual property rights (such as copyright, trademarks, patents, geographical indications, etc) for commercial purposes and unauthorized commercial dealing in copied materials.

Concretely, piracy entails reproducing movies, music, books or other copyrighted works without permission from the copyright owner.

The ease of access to technology has meant that over the years, piracy has become more rampant.

Quick access to a world of information through has enabled the distribution of pirated publications and software, and the ability of pirates to move to new platforms or distribution channels quickly means that even if a pirated material is removed, it can reappear at any time. A 2018 survey reported that 37% of software installed on personal computers was unlicensed, and that corporate malware attacks caused by unlicensed corporate software causes losses of nearly \$359 billion globally per year⁵. In January 2020, projections estimated that funds lost to pirated

³ Europol: operation Pangea: <https://www.interpol.int/en/News-and-Events/News/2019/Operation-Pangea-shining-a-light-on-pharmaceutical-crime>

⁴ The Lancet: RETRACTED: [Hydroxychloroquine or chloroquine with or without a macrolide for treatment of COVID-19: a multinational registry analysis](#)

⁵ The 2018 BSA Global Software Survey: <https://gss.bsa.org/>

video services would exceed \$67 billion worldwide by 2023.⁶ International investigators apprehend piracy rings operating around the world, with one high-profile case in 2018 leading to the capture of five hackers who stole more than 25,000 digital files, including movies and audio clips, and profited off of their sale online.⁷

Piracy levels have surged to unprecedented levels during quarantine and confinement periods, with anti-piracy software company, Muso reporting visits to torrent sites increasing between 7 – 27% globally between the last week of February 2020 and the last week of March 2020⁸. Even more strikingly, the rise of film piracy was recorded at levels between 40 – 70% during that same period.⁹

If you have ever searched for free or discounted versions of copyrighted content online or in the physical world, you have helped to further the crime of piracy. Other forms of piracy can include unauthorized reproduction of intellectual property content and unauthorized account or file sharing. While engaging in piracy can seem like a cost-saving measure, malware associated with the use of unlicensed software can cost more than \$10,000 per infected computer. Copyright infringement crimes can also lead to high fines and imprisonment sentences, so it's important to take steps to guard yourself against these risks.⁵

HOW TO IDENTIFY PIRATED AND COUNTERFEIT GOODS

Some counterfeit and pirated products will have no brand names or documentation, but others may have false documentation falsely certifying that the product is of a genuine quality, or that it has met standard testing, etc. Although even experts sometimes struggle to distinguish genuine from fake products, conducting a rigorous due diligence prior to purchasing should be done in all instances to minimize risk.

Even if you don't buy directly from counterfeiters and pirates, low-grade, inferior raw materials and pirated products can cut costs tremendously, allowing the illicit trader to undercut the authentic competition. Therefore, there is a chance that counterfeit or pirated products may enter into the supply chains or software of legitimate businesses and brands, especially during times of high demand and shortages created by the COVID-19 pandemic. While it can be tempting to access content and goods for cheaper prices, piracy and counterfeiting are bad for your business and have a serious price.

IMMEDIATE ACTIONS THAT YOU CAN TAKE TO PROTECT YOUR BUSINESSES AGAINST COUNTERFEITING AND PIRACY

► Protect your own intellectual property rights

Companies and brands holding intellectual property rights are at heightened risk during this time of uncertainty. Violations of intellectual property can lead to income loss, damage brand reputation and consumer trust, as well as hinder creativity and future innovation. Take these steps to increase vigilance of and safeguard against intellectual property infringements:

- > Register intellectual property and record trademarks with relevant customs authorities.
- > Analyse risk of intellectual property breach.
- > Be aware of developments in your marketplace, such as pricing anomalies and sudden decreases in market share.
- > Regularly monitor online marketplaces for infringing products.

6 Michael Balderson for TVTechnology: [Piracy, Account Sharing Resulted in \\$9B Lost Revenue in 2019 for US](#)

7 Todd Spangler for Variety: [International Piracy Ring Stole Over 25,000 movie and TV digital files](#)

8 Tim Ingham for Rolling Stone: [Music Piracy is Going Old School in the Age of Coronavirus](#)

9 Andy Chatterley, MUSO: [The New Normal? What the Coronavirus Means for Digital Piracy](#) (2020)

- > Utilise search engines' "image search" feature and/or create dedicated search and crawler tools to seek out illicit branded goods.
- > Educate consumers on how to determine product authenticity, including by telling them how to legally purchase and access your goods.
- > Implement a zero-tolerance policy to pursue and seek immediate injunctive action to remove all infringing websites.

Is your intellectual property at risk?

Counterfeiting and piracy targets often include high-volume, low-cost, and easily copied products, as well as new and "niche" items in high demand.

► Conduct Due Diligence on Your Supplier

It is always prudent to work with trusted suppliers, but with COVID-19 causing fluctuations in product demand and access to supplies. To ensure that your business can continue to function, you may need to create relationships with new suppliers. However, the less control a company has over their network of suppliers and distributors, the more opportunity exists for counterfeit products and parts to enter a supply chain. To combat this, maintain a basic 'know your supplier' process which will allow you verify the identity of all companies or individuals that you are considering doing business with.

Your 'know your supplier' process should check as many of a supplier and owners' details as possible, including:

- > researching trading names and contact details;
- > verifying bank details, tax IDs and registration numbers;
- > and authenticating the existence of brick and mortar locations and websites.

Legitimate suppliers will readily provide you with this information but conducting open source search queries to verify through secondary sources is also recommended.

If accessing goods or services online, be sure to verify that you are using the developers official distribution channels which can often be found on their website. Even if you can find the same digital goods for a lower price, choosing to access to unlicensed content is engaging in piracy, a crime which can cost you – and the product's creator at financial and reputational risk.

► Conduct Due Diligence on Products, Materials and Software

It can be tempting to buy cheap stock to trade, thinking that you have found a bargain. However, illegitimate suppliers often offer reduced price goods or digital products to entice businesses facing cashflow issues. It is also possible that illicit goods can be provided by your trusted suppliers or platforms, knowingly or unknowingly.

Taking time to ask questions and perform due diligence on products that you receive and access will help to ensure that they do not contain inferior or adulterated components or malware. Such processes should include verifying that there are no:

- > trademark violations
- > logos, markings and/or serial numbers unlawfully taken from legitimate products and manufacturers
- > documents falsely certifying that a product is of a genuine quality, or has met standard testing
- > exterior shipping or packaging defects
- > recycled or remarked components that are out of specification date

In some circumstances, you may also wish to consider the implementation of overt or covert track and trace technologies which provide the end consumer with unique verification regarding

the authenticity of a product while also auditing movement, traceability, tampering, and even a product temperature.

Verified online platforms can also help to perform due diligence faster, ensuring that products and materials comply with regulatory requirements. There are many solutions available, including some specifically adapted to the needs and means of micro-, small- and medium-sized enterprises.

Use Common Sense: If it seems too good to be true, it probably is.

You should not feel rushed or hassled to making a decision before you have a clear understanding of the entity that you are considering doing business with, the products and services that they offer and the quality of goods that they produce. If you do not perform due diligence, you may not realise that you have encountered a counterfeiter or pirate until the inferior parts and goods have already arrived or the malware has been downloaded. This will result in financial losses and can substantially delay the time it takes to get your products and services to market.

Avoid this by taking your time to ask questions and gathering information about the product and the seller. An entity that is unwilling or unable to provide the details needed to perform your due diligence process is likely operating in illicit trade and should be avoided.

► Collect and share data with law enforcement and industry stakeholders

If you are supplied with counterfeit or pirated goods, or if you find that your own products are being counterfeited or pirated and sold illicitly, it is important to report and share such matters to law enforcement and others in your industry and supply chain. Sharing data with law enforcement will help them investigate the full extent of any infringement to protect consumers against the harms that counterfeit and pirated goods can present.

► Work in Partnership

Building strong partnership through membership and dialogues with entities that represent the interests of brand holders, can help you improve your ability to recognize and combat illicit trade practices. There are many national and international organisations to engage with depending on your industry or region.

ICC created [Business Action to Stop Counterfeiting and Piracy \(BASCAP\)](#) to raise awareness of the economic and social harm of counterfeiting and piracy and to petition for greater commitments by local, national and international authorities in the enforcement and protection of intellectual property rights.

BASCAP connects and mobilises companies from businesses across industries, sectors and national borders to achieve results more effectively than any company can accomplish alone, strengthening each member's efforts to protect its brand and investments from the illegal practices of counterfeiting and piracy. View the ICC BASCAP membership guide [here](#). To learn more please contact info.bascap@iccwbo.org.

Businesses can work together to combat illicit trade risks by sharing information such as trade and smuggling routes, concealment techniques and the identities of counterfeiters and pirates, making markets fairer and more secure.

ABOUT THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.



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