Nov
17
2021

Anti-Counterfeiting Virtual Research Symposium

Summary

UNDERWRITERS LABORATORIES®

Introduction

Counterfeit products – products made or sold under a brand name without permission of the brand owner – are sold virtually everywhere legitimate goods are sold. This includes online markets.

Terrence Brady, president and CEO of Underwriters Laboratories, Inc.

"As a result of the COVID-19 pandemic, people are buying more goods online, which benefits counterfeiters. Often, counterfeit products start with social media ads, or influencers who lead consumers to websites that appear legitimate."

The increasing proliferation of counterfeit goods has also stirred interest in their environmental impact. "That impact," Brady told UL's second Anti-Counterfeiting Virtual Research Symposium, "starts with unregulated production that pollutes the place of origin and disregards the end of a product's useful life, but also concerns the disposal of goods seized by law enforcement officials." As the proliferation of counterfeit goods grows, so does the need to safely dispose of them.

Monica Mena, Director of Education and Outreach for UL

"The goal of the symposium is to anticipate anti-counterfeiting trends and bring together researchers and practitioners to discuss them in an interdisciplinary environment, in hopes of inspir[ing] new approaches and solutions."

To that end, the 2021 symposium featured presentations and discussions on

Environmental Effects of Counterfeiting,

with a presentation by Ronald Brohm of React and panelists Peter Fowler of the U.S. Patent and Trademark Office, Sarah Kafka of U.S. Customs and Border Protection, and D'Arcy Quinn of CropLife International, moderated by Bruce Foucart, former director of the U.S. Intellectual Property Rights Center.

Counterfeit Products and Social Media,

featuring presentations by Gabriele Baratto of the University of Trento and Christina Mitropoulos, former director of brand protection and manufacturing initiatives at the American Apparel and Footwear Association, and panelists Dan Burke of the U.S. Food and Drug Administration (FDA), Bogdan Cîinaru of Europol, and Lisa Deere of UL.

Addressing the Environmental Effects of Counterfeiting

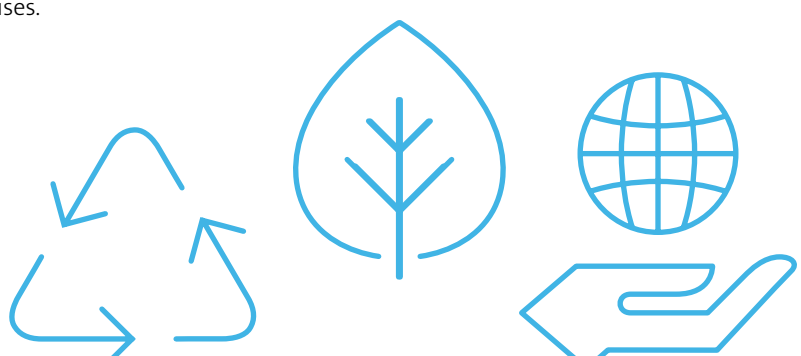
Counterfeit goods pose environmental threats at every stage of their life cycle. At one end, counterfeiters produce fake goods without regard to local environmental concerns. At the other, authorities must find a way to safely dispose goods made in substandard ways and featuring hazardous materials. Typically, customs officials bury or incinerate counterfeit goods, which can release toxic chemicals into the ground or air.

The React Approach

React, a not-for-profit organization which brings together more than 300 companies around the world in the fight against counterfeits, has sought more environmentally and socially responsible ways to dispose counterfeit products. In 2005, it launched a pilot project with Dutch customs for environmental disposal of fake goods. This project brings counterfeit goods seized in nearby nations to a customs-protected warehouse. There, React has a social workplace, working with psychiatric patients seeking reintegration into society. These patients dismantle the counterfeit goods, recycling the components they can. Fragrance containers, for example, are recycled for the paper and foil of the box, the glass bottle, and even the product itself for a cleaner or fuel. Counterfeit textiles are recycled for other purposes such as sport surfaces; electronic goods are dismantled with components sold for different uses.

This approach yields several benefits. It reduces the burden for customs officials who otherwise must store counterfeit goods and may charge brand owners for their disposal. By recycling 98 percent of the components in counterfeit products it receives, this project reduces pollution that might otherwise result while also employing those seeking re-entry into society.

React is seeking to expand its approach elsewhere. This includes involving qualified partners in the recycling industry and adopting the most sophisticated approaches for recycling. It is currently working with the University of Wageningen about the best ways to recycle different classes of goods. Ultimately, its success will depend on business, governmental, and popular support.



Challenges to Recycling

Peter Fowler,
U.S. Patent and
Trademark Office

"I think most governments are certainly in favor and promote recycling, but they don't think all the way through sometimes. Often the problem is one of coordination. Is an agricultural ministry responsible? An environmental ministry? Another government agency? There often isn't clarity among government officials as to who was actually responsible for dealing with the problem."

Fowler recalled one Southeast Asian nation inviting him to witness its destruction of counterfeit goods. "I should have asked them how they were going to do it, because they led me over to this field where they had just piles and piles of things," he said. "There were DVDs, there were textiles, there were toys and all kinds of other electronics. They just lit a match. Basically, they poured gasoline on it, and just incinerated it in an open field. I have no idea what kind of air pollution was caused from that, and how dangerous it might have been."

Hence, Fowler suggests that both coordination and capacity building are necessary to enlist foreign governments in the proper disposal of counterfeit goods.

Yet even governments who can coordinate capacity may find it easier to incinerate counterfeit goods, albeit in a more controlled environment than an open field. Sarah Kafka explained that U.S. Customs and Border Protection (CBP) tends to incinerate counterfeit goods, "because we aren't just destroying counterfeit goods at the time [and] we're limited on resources." CBP will destroy in other ways goods (e.g., tires) that should not be incinerated, but it does not segregate counterfeit goods in general.

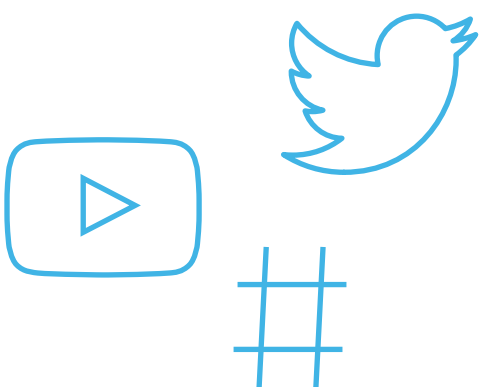
Some categories of counterfeit goods can cause more environmental harms than others. D'Arcy Quinn noted counterfeit pesticides "are not even pesticides sometimes" but can contain unknown toxic materials or plastics and "destroy a field for years to come." The damage goes beyond that to a field. Counterfeit pesticides can damage the surrounding environment and lead to insect resistance that can no longer be treated by legitimate pesticides. They can destroy the livelihood of those who depend on farming and then must migrate to cities.

Solving the environmental problem of counterfeits will require broader, more coordinated action. Quinn suggested broadening the definition of counterfeiters to include "anybody in the supply chain that profits from delivering" counterfeits and holding them responsible for all the costs of counterfeits. Forcing them, rather than governments and rights owners, to bear the costs of storage and destruction, he said, could change their "risk analysis."

Still, Brohm added, governments will need to see counterfeit disposal "more as a joint responsibility," rather than one by a single country exporting or importing such goods.

Counterfeit Products and Social Media

As counterfeits have grown, they have encompassed new markets and products. New ways of marketing have also affected how counterfeit goods are sold.



The Illegal Trade of Medicines on Social Media

The illegal trade of medicines exceeds $75 billion per year. This trade has grown with the development of online pharmacies. Recent estimates suggest there are about 50,000 pharmacies online, of which about 95 percent are illegal. The most popular medicines purchased online are so-called lifestyle medicines, but there is increasing illegal trade in other medicines, including life-saving ones.

Both legitimate and illegitimate businesses use social media to reach their customers. Still, research on the use of social media for illicit trade is somewhat scarce. Gabriele Baratto has sought to fill this gap with a focus on the illegal trade of medicines and measures to prevent it. Click here to get his book

Baratto uses the term illegally traded medicines to refer to "every kind of medicine that has been illicitly produced or distributed, even partially," outside legal production channels. "In Western countries," he said, "infiltration of illegal products in the legal supply chain are dangerous, but quite rare, and illicit products are usually traded via alternative and illegal distribution channels."

Social media sites are emerging as a venue for illegally traded medicines, Baratto said, for two reasons. First, "they are an easy, effective, and cheap way" to advertise illegal products. Second, law enforcement authorities encounter several difficulties, including the anonymity often afforded to users, in pursuing illegal trade on social media.

To combat illegal trade on their platforms, social media sites have introduced situational crime measures to identify, block, and remove content linked to the illegal online trade of medicines. Baratto's research, focusing on Facebook, Instagram, and Twitter, has sought to address whether these measures are working and, if so, to what extent. He used 76 keywords, split nearly evenly between brand names and generic terms, to determine the effect of situational crime prevention measures. He examined eight therapeutic categories of medicine, of which products for erectile dysfunction, body building, and weight loss products are the most traded illegally on social media.

Baratto found the platforms' measures are partially successful. They did spot, block, and remove some advertisements for some (not all) illegally traded branded medicines and categories and in some languages. At the same time, counterfeiters were able to find ways around the measures. For example, while social media platforms successfully blocked advertisements for illegally traded Viagra and Cialis, they did not block those for Kamagra, a similar Indian product. Linked sites selling Kamagra sold Viagra and Cialis as well.

Social media posts touting illegally traded medicines are generally of two types. One is links to other sites where these medicines are traded. The other is links to telephone or other messaging services for buying these medicines. Offenders often adopted countermeasures to efforts to ban them. These included contact methods, such as links to WhatsApp or telegram groups, that minimized risk to offenders. They also included advertisements of natural products that, in fact, contained illegally traded medicines.

Altogether, Baratto found that social media platform measures to prevent the illegal trade of medicines had some effect. But current measures are not completely effective, and methods must evolve as offenders adapt.

Gabriele Baratto discussed ways to prevent the sales of illegally traded medicines, including counterfeit product, on social media platforms.

Example of a social media ad for illegally traded steroids.

Dupe Influencers and Social Media

As social media have grown, so has the number of "influencers" on it. Merriam-Websters' dictionary defines a social media influencer as a person who generates interest in something – such as a consumer product – by posting about it. Once limited to celebrities with massive followings, influencers now include others with smaller but still substantial followings.

Most influencers, Christina Mitropoulos noted, use their platforms to promote authentic products. But a growing number, research by the American Apparel & Footwear Association (AAFA) finds, are promoting counterfeit product, or "dupes."

Dupe influencers, that is, individuals with social media followings who share links to and review counterfeit goods, use many of the tactics that legitimate influencers do. These tactics include:

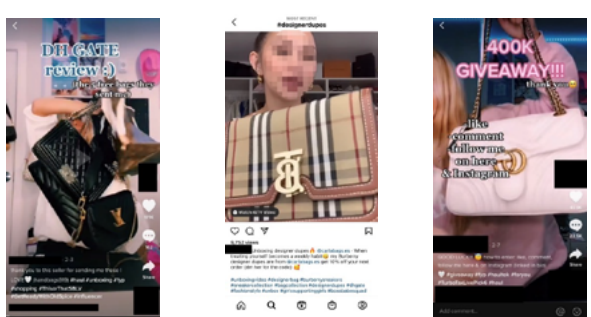
Unboxing, in which dupe "influencers showcase their packages and mostly gifted goods via carefully crafted videos," Mitropoulos said. "Through unboxing videos, dupe influencers are able to provide a full product review and, in effect . . . an interactive experience for their followers."

Haul videos, in which dupe influencers "show off the latest batch of counterfeits that they've been purchased" or received as gifts, from a single seller, Mitropoulos said. Such videos, she added, "glamoriz[e] the sale of counterfeits for their followers."

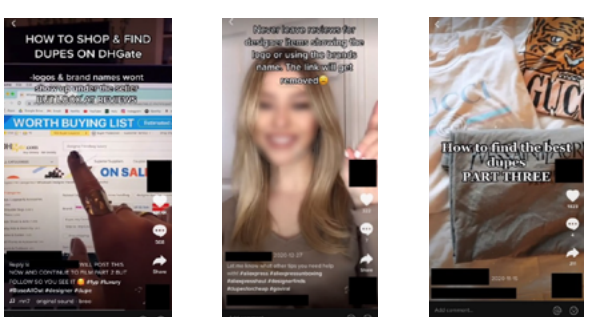
Sponsorships and giveaways. "Some dupe influencers," Mitropoulos said, "are being gifted counterfeits or provided monetary compensation to promote" counterfeit products. Dupe influencers may also promote fake products through giveaways or discount codes.

Tutorial videos, in which dupe influencers provide their followers with "tricks and tips to find popular counterfeit products online." Such videos, Mitropoulos said, help both counterfeiters and their customers avoid detection online.

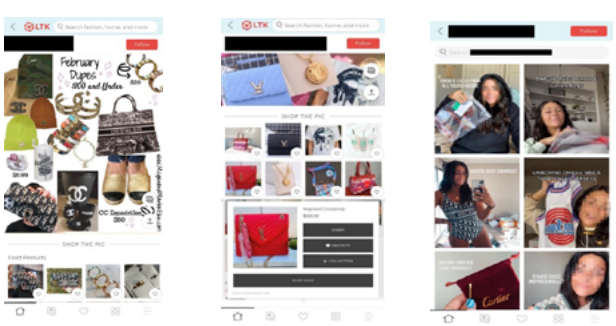
Influencer shopping apps. Such apps, Mitropoulos said, are, like the other tactics, above, also used by legitimate influencers, and were never intended for streamlining counterfeit purchases. Still, she added, dupe influencers have adapted these tools, such as one that allows users to search tags by specific dupe influencers.



Examples of dupe influencer sponsorships and giveaways



Examples of dupe influencer sponsorships and giveaways.



Examples of dupe influencer shopping apps.

The AAFA research offers five suggestions for countering dupe influencers. These are:

1. Platforms must continue to clean up their sites. "There are obvious red flags to identify accounts that are not selling authentic products," Mitropoulos said. "So more should be done by platforms to proactively seek out and remove this kind of content."

2. Platforms should block #designerdupes and related hashtags. The AAFA has had some success implementing this with Facebook, Mitropoulos said, though more is needed.

3. Platforms must terminate the accounts of dupe influencers who repeatedly promote counterfeits. This, Mitropoulos said, would be like the procedures to remove infringers on traditional ecommerce platforms..

4. Dupe influencers need to improve their product disclaimers. Often, Mitropoulos said, "dupe influencers don't actually have a full understanding of what a counterfeit is, or they aren't aware of how they could be potentially committing a federal crime by facilitating the trafficking in counterfeit goods." .

5. Consumers need more information about the reach of counterfeits. This, Mitropoulos said, should especially include "the dangers associated with the purchase of counterfeit products online."

Responding to Emerging Trends in Social Media and Counterfeits

Panelists agreed on the social media methods that sellers of counterfeit goods use. Dan Burke noted links to traditional websites, efforts to connect by telephone, and, recently, Snapchat are particularly popular. At the same time, he added, "we see different trends occur over time."

Counterfeiters will not depend on a single platform over time, but rather, said Bogdan Cîinaru, adapt as they see "what the consumers want" and the platforms they use. Enforcement efforts must be as aware of consumer platform preferences as counterfeiters are.

Social media enforcement lags that of e-commerce platforms because of the greater restrictions of e-commerce platforms, Lisa Deere said. Often, Deere noted, e-commerce sites are linked to an individual's business or taxpayer identification number. "A simple Instagram setup," she said, may have "no personal connection" to a counterfeiter. Hence, a counterfeiter "can just set up another" social media account if one is shut down.

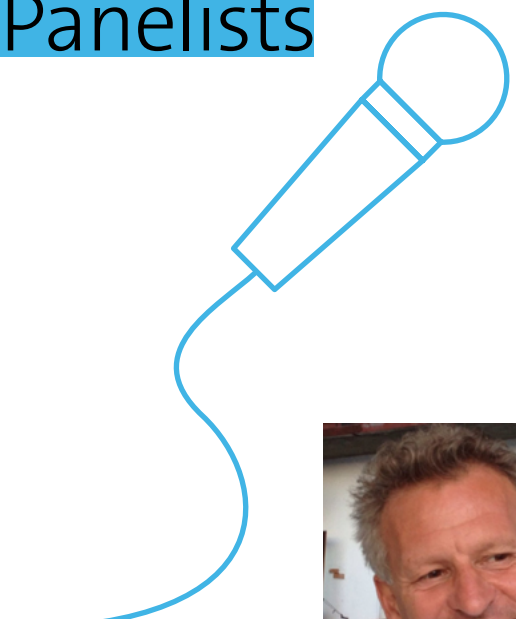
While counterfeit drugs have long been sold online, Burke said, the types of counterfeit drugs and their places of manufacture change. Recently, he added, U.S. domestic production of counterfeit drugs, particularly Xanax and OxyContin, has increased.

European authorities have taken several steps to thwart online counterfeiting, Cîinaru said. Europol has created a team to work on online crimes related to intellectual property rights. This team creates open-source intelligence reports, allowing members to "monitor the counts of different competitors that are selling or merchandising counterfeit products." Europol has also created a network of law enforcement agencies to monitor online counterfeiting in real time and provide early warning of emerging trends.

U.S. officials have also been seeking to develop broader efforts, Burke said. One effort about a decade ago held Google responsible for advertising illegal online pharmacies through its AdWords program. The FDA has recently held online opioid summits to discuss with manufacturers the sale of counterfeit drugs online. Ultimately, though, Burke suggests that platforms "have to be held accountable for" their content regarding counterfeit goods.

Above all, anti-counterfeiting efforts must be persistent. "We would often say, 'Just push them off our brand,'" Deere said. But "we don't want to just push them off to another brand. We want to push them out of this industry altogether."

The Symposium Panelists



Environmental Impact Of Counterfeit Products

Ronald Brohm, React

Ronald has a Dutch law degree in the field of Social Economical Law from the Rijks Universiteit of Utrecht (R.U.U.). He also has completed post-doctorate degrees in European Business Law from the University of Utrecht and in International Commercial Law from the University of Amsterdam.

Ronald started his career at the Chamber of Commerce in Amsterdam, however, since 1991 he has held the position of Director and founder of the business association React (The European Anti-Counterfeiting Network). He has developed React into a worldwide anti-counterfeiting network for more than 300 multinationals, who are the owners of globally famous brands, and is operational in over 100 countries. The network manages almost 90,000 anti-counterfeiting cases annually and has offices in multiple locations globally. Ronald is a speaker and short-term expert for various international bodies like WIPO, EU, OHIM, WCO on IPR enforcement issues in Central and Eastern Europe, Central Asia, Asia-Pacific Region and Latin America.

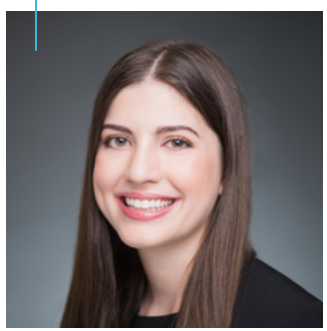
Over the years, Ronald has been the author or editor of a number of articles and papers regarding intellectual property rights, fighting counterfeiting, and brand enforcement strategy.

Counterfeit Products And Social Media

Gabriele Baratto, PhD, University of Trento

Gabriele is a postdoctoral research fellow at the Department “Faculty of Law” of the University of Trento, where he is co-owner of the course ‘eCriminology’, ‘Corporate Security and Brand Protection’ and teaching assistant of the courses “Criminology”, ‘Applied Criminology’. He is senior researcher at the eCrime research group and collaborates with the Centre of Security and Crime Studies - Universities of Trento and Verona (Centro di Scienze della Sicurezza e della Criminalit). Since 2013, he has focused on the correlations between crime and the internet. This includes counterfeiting, the assessment and evaluation of national, EU, and international policies, and strategies against crime and deviance. He has a Master’s Degree in Law, and a PhD in International Studies (research area: criminology).

Christina Mitropoulos, AAFA



As Director, Brand Protection and Manufacturing Initiatives, Christina leads the organization's Brand Protection portfolio and serves as the liaison for AAFA's Brand Protection Council. She regularly meets with government officials, members of Congress, and representatives of global e-commerce platforms to shape IP policy and to advance the online and offline priorities of AAFA's members. She is a regular speaker at industry conferences and seminars. Christina also supports AAFA's Government Contracts Committee.

Christina is a former AAFA intern and has also focused on brand protection through her past internships at the National Intellectual Property Rights Coordination Center and the Intellectual Property Department at Louis Vuitton. She received her Juris Doctor degree from The George Washington University Law School and graduated with a Bachelor of Arts degree in Classical Civilization and a minor in Legal Studies from Trinity College.

Bruce Foucart, IP Protection Consultant [Moderator]

Bruce M. Foucart is an intellectual property rights enforcement professional with 31 years of U.S. federal law enforcement experience including from the U.S. Marshals Service, the former U.S. Customs Service and DHS (Homeland Security Investigations). Since transitioning to industry in 2017, he has worked as an anti-counterfeiting and IP protection consultant for several large and small companies as well as international coalitions. Bruce helps industry navigate and collaborate with governments around the globe by creating and maintaining public private partnerships (PPPs) for both. He regularly is engaged with international capacity building and training, specifically pertaining to anti-money laundering, illicit trade, and customs proficiencies. Prior to retirement, Mr. Foucart was the Director of the U.S. National Intellectual Property Rights Coordination Center from 2015-2016.

Peter Fowler, USPTO

Peter N. Fowler is a Senior Counsel for Enforcement in the Office of Policy and International Affairs at the United States Patent and Trademark Office (USPTO). Since joining the USPTO in 1995 from private practice, he has served in several agency positions, including as the Regional IP Attach for Southeast Asia, Chief of Staff; and Senior Advisor to the Under Secretary and Director. He has worked on numerous trade agreements, including with Australia, Oman, Singapore, and Vietnam, as well as ACTA, TPP, and the USMCA. He is a member of the UN Economic and Social Commission for Asia and the Pacific Region Advisory Board of the Asia-Pacific Research and Training Network on Trade. Admitted to practice in California, he has taught at several universities, and has authored law review articles on such topics as copyright and fair use, IP protection and enforcement in ASEAN, and IP and trade issues. He has a B.A. in Political Science from John Carroll University; M.A. in Secondary Education from the University of Alabama; M.A. in Political Science from Ball State University; and J.D. from Golden Gate University School of Law.

Counterfeit Products And Social Media

Sarah Kafka currently serves as the Fines, Penalties, and Forfeitures (FPF) Officer at the Area Port of Baltimore in Baltimore, Maryland for U.S. Customs and Border Protection (CBP). In this role, she adjudicates civil liabilities arising from immigration, customs, and trade violations, including intellectual property rights and illicit trafficking. She also manages the Port's Seized Property Program. In her 16-year career with CBP, she has served in various roles within the agency including Attorney-Advisor, Congressional Liaison, and Attach . Before joining CBP she worked as a Legislative Assistant on Capitol Hill. She holds a J.D. from Catholic University's Columbus School of Law.

Sarah Kafka, CBP

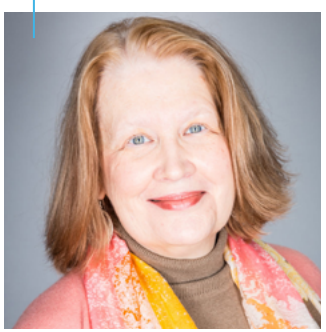
Environmental Impact Of Counterfeit Products

D'Arcy Quinn, CropLife

Mr. Quinn began his anti-counterfeiting career with the French food group Danone by eliminating counterfeiting factories in North Africa and Asia and stopping the international illicit trade of Evian mineral water. He was Legal Counsel for Merck Sharp & Dohme in the Middle East and Africa, dealing with medicines that were smuggled and counterfeited. He directed anti-counterfeiting investigations for the Pharmaceutical Security Institute. For the manufacturer of Marlboro and L&M he reduced the Russian rate of counterfeit cigarettes from 17% to less than one percent and oversaw the raids of twenty-two illegal cigarette factories in the ex-Soviet Union. Currently Mr. Quinn, with a global mandate, advises multinational agrochemical companies and governments about counterfeit and illegal pesticides, on behalf of CropLife International. Mr. Quinn, based in the EU, is a lawyer and a member of the State Bar of California.

Counterfeit Products And Social Media

Peggy Chaudhry, PhD Vilanova University [Moderator]



Dr. Peggy E. Chaudhry is an Associate Professor at the Villanova School of Business (VSB), Villanova, Pennsylvania. She received her Ph.D. in International Business with minors in International Economics and Marketing at the University of Wisconsin at Madison. Her expertise and publications center on managerial tactics to curb counterfeit trade, consumer complicity with counterfeit goods, and gray markets.

Dan Burke, FDA

Special Agent Dan Burke is Chief of the Investigative Services Division with oversight over OCI's Cybercrime, Digital Forensics and Technical Surveillance Units as well as OCI's Training and Information Disclosure Units. Dan has also been active with OCI's international expansion, liaison, and training initiatives. He currently serves as Chairman of the Permanent Forum on International Pharmaceutical Crime (pfipc.org). Over his career, Dan completed several successful cybercrime investigations spanning the globe and led the development of OCI's cyber operations.

He has been part of OCI's digital forensics cadre since 2007 and has provided a wide variety of cyber-related training to domestic and foreign law enforcement partners. Dan holds several certifications in digital forensics and a master's degree in Criminal Justice Administration from the University of Colorado-Denver and has taught online and evening classes as part of their adjunct faculty for the last 13 years.

Counterfeit Products And Social Media

Bogdan Ciinaru, Europol

Bogdan Ciinaru graduated the Romanian Police Academy in 2007 with a bachelor's law degree. He then joined the Economic Crimes Investigation Department at the Romanian Police, where he investigated intellectual property infringements and other economic crimes. In 2012, Bogdan joined the IPR department of economic crimes and concentrated his efforts particularly on internet offences area where he actively investigated cases connected to illegal IPTV streaming, torrent websites and illegal ecommerce. In June 2016, he joined Europol-IPC3 as an expert dealing with the development of both strategic and operational projects carried out in the online area of intellectual property rights and has since transitioned to the Head of Office fighting online IP crime infringements.

Counterfeit Products And Social Media

Lisa Deere, UL

Lisa serves as a Brand Protection Manager in UL focusing on the U.S. & Canada working closely with customs agencies, law enforcement and border officials worldwide, all have helped to prevent hundreds of thousands of illegal and potentially hazardous items from reaching the public. Lisa has 20+ years of experience in intellectual property, anticounterfeiting, and prosecution. Prior to joining UL (2017), Lisa spent 10+ years with a global consumer products company where she launched their Anti-Counterfeiting program.

Lisa is actively involved in several anti-counterfeiting organizations, including the International Anti-Counterfeiting Coalition (IACC), the International Trademark Association (INTA), and the Canadian Anti-Counterfeiting Network (CACN). Lisa holds a BS in Business from Concordia College, and a Professional Certification in Anti-Counterfeiting & Brand Protection from Michigan State University.

Conclusion: Exposing Counterfeiting and Educating Consumers

By its nature, counterfeiting, like many other crimes, is an act of subterfuge, that is, of deceit to achieve a goal. As such, counterfeiters, like other criminals, seek to hide their acts and intents. Today, counterfeiters find ecommerce generally, and often social media platforms particularly, amenable to their efforts to deceive the public through the sale of fake goods.

> *Until recently, Christopher Cramer, Chief Research Officer for UL noted, anticounterfeiting work, seeking to catch counterfeiters behind the scenes, was also "carried out behind the scenes." That, Cramer added, "was a mistake. Counterfeiters need to be exposed for the criminals they are, and consumers need to be educated so that they can make informed buying decisions that will keep their families safe."*

Christopher Cramer, Chief Research of Underwriters Laboratories, Inc.

Increasingly, such efforts to keep consumers safe will need to occur online, where more shopping is occurring. It will also need to consider the entire lifecycle of counterfeit products, from manufacturing to disposal, mitigating the environmental impacts of such goods. A partnership among all – law enforcement authorities, legitimate manufacturers, marketplaces, and consumers – will be necessary to expose and defeat counterfeiting.

UL and the UL logo are trademarks of UL LLC © 2022. All rights reserved. This white paper may not be copied or distributed without permission. It is provided for general information purposes only and is not intended to convey legal or other professional advice.