

Maximizing Your Brand's Value By Targeting Counterfeiters

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Counterfeiting costs U.S. businesses \$200 - \$250 billion annually and is directly responsible for the loss of 750,000 American jobs. If that's not enough to get your attention, consider this: the Food and Drug Administration estimates that counterfeit drugs comprise 10% of the global medicine market and the Federal Aviation Administration estimates that 2% of the 26 million airplane parts installed each year are counterfeit. Similar statistics extend to the electronics industry, the food industry, and various other industries affecting our day-to-day safety and your company's bottom line. The financial and safety implications of counterfeiting are overwhelming, but a strategic anti-counterfeiting program can protect your customers and your brand's value.

While governmental authorities police the borders and institute criminal actions for counterfeiting, their time and resources are limited. It is to your company's benefit to assist these agencies in their efforts. Federal statutes criminalize counterfeiting activity and impose significant penalties including imprisonment and fines. The federal government's enforcement of these statutes works to your benefit by deterring such activity and preserving your brand's value, but it is not your only recourse if your company is the victim of counterfeiting.

The ultimate objective in fighting counterfeiters is destroying their distribution channels and recouping illegal profits. The Lanham Act provides the necessary tools to successfully accomplish these goals. Vigilant policing of your mark is the first essential step in stopping counterfeit activity. Once illegal activity is detected, but prior to filing a complaint, conduct an investigation into the location of the counterfeiter's assets and

funds. This will help preserve evidence and ensure a maximum damages recovery. In the alternative, though, the Lanham Act does provide for statutory damages should accounting records be inaccurate or impossible to locate.

Instituting and prosecuting an action under Section 35 of the Lanham Act can be quite effective and efficient. Filing a complaint should be accompanied by a request for an *ex parte* Temporary Restraining Order, Seizure Order (which should seek all counterfeit products as well as the defendant's financial records), an Order to Freeze Assets, and an Order for Expedited Discovery. All of these tools are available to you in order to expeditiously stop counterfeit activity, recover illegal profits, and preserve your brand's value. Send the strong message that you vigilantly protect your brand and your customers.