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COUNTERFEITING OF AUTO COMPONENTS : AN INTELLECTUAL PROPERTY THEFT

E. Shelley Anandhavalli
Altacit Global

Counterfeiting - A Growing Issue :

Global intellectual property theft and commerce in counterfeit / pirated goods are growing at an alarming pace. Counterfeiting is most often associated with currency but in reality it reaches far beyond this. Counterfeiting also poses a major threat to Intellectual Property right holders. Any recognizable brand/product is at risk of being counterfeited and the auto components are no exception to it.

The increased demand for new brands of vehicles and manufacturers entering the Indian market increased the demand for auto parts which in turn spurs the market for the counterfeit parts. The gravity of counterfeiting, especially in auto components is under estimated and is no more a 'Victimless crime'. Counterfeiting of automotive products is a serious and rapidly growing issue, affecting automotive parts, accessories, packaging and the vehicles segment as a whole.

Counterfeiting of Auto Components Includes :

- The fraudulent manufacturing of product by intentionally copying another product which is patented, copyrighted, or trademarked
- The altering of an original product with the intent to deceive or defraud
- The distribution of any product that is lesser in value than the genuine product
- The misrepresentation of a product's properties

Counterfeiting of auto components indeed is an intellectual property theft as a counterfeit product can infringe any, or all, of the main intellectual property rights, namely trademarks, patents, designs and copyrights.

The Impact of Intellectual Property Theft :

The Federal Bureau of Investigation has called counterfeiting "the crime of the 21st century" as the technology needed to

operate sophisticated counterfeit operations has become easily accessible. Intellectual property owners have witnessed an explosion in the levels of counterfeiting and piracy, in both the domestic and international arenas.

Increasingly, the global economy is dependent upon the creation and distribution of intellectual property (IP) to drive economic growth. However, markets are plagued by fakes be it stamps, watches, cigarettes, cosmetics, pharmaceuticals, FMCG products, auto components, software, music, films etc resulting in significant loss to companies, corresponding evasion of tax duties and violation of the rights of the consumer. Studies by industry associations bear this out, the CII Alliance estimates several top brands losing up to 30% of their business due to IP crime.

The nature of the crime, its size, diversity and scope has hindered the task of coordinating a dynamic response. Lack of consumer awareness and advancement of technology are the major factors which encourage counterfeiting which is further fuelled by lax enforcement laws which make things easy for counterfeiters. The continuity of socio-economic growth and industrial competitiveness depends upon high level of IP protection and enforcement raising profound concerns of the rapidly growing piracy of IP rights and production of counterfeit goods.

Main Factors Contributing to the Growth of IP Crime :

- Widespread availability of technology.
- Increased globalization of world trade; it is easier to manufacture in one geographic location and distribute elsewhere. The result of more open borders and more trade is that it is also easier for counterfeits to flow across borders.
- Legal penalties are low; if they exist at all.
- The influence of organized crime.

Many counterfeit products today compete directly with the genuine items. In addition, consumers who are deceived into believing that they bought a genuine article when it was in fact a fake, blame the manufacturer of the genuine product when it fails, creating a loss of goodwill. Even cheaper and obvious copies that are bought in good faith represent a serious threat to the company that wants its brands associated with quality and exclusivity.

Beside direct losses of sales and goodwill, one should not forget the expenditure involved in protecting and enforcing intellectual property rights. The right owner becomes involved in costly investigations and litigation when combating counterfeiters and may also have to spend further sums on product protection. The budget for anti-counterfeiting is rarely well defined within an organization, but spans across several departments such as marketing, human resources, product development and legal departments.

Impact of Counterfeit Parts on the Manufacturer :

In the area of component counterfeiting, majority of IP violations include infringement, counterfeiting, theft of core technologies, core products, spare parts and components, trade secrets, and trademarks, wherein the manufacturer of the counterfeit may stamp or package the parts with the name or logo of a recognized producer thereby misleading the consumer as to their true provenance. Virtually every automotive part has turned up in counterfeit trade, including windshield glass, brake fluid, brakes, headlights, taillights, emissions components, tyres, belts, hoses, alternators, sheet metal, suspension parts, etc.

The Motor and Equipment Manufacturers Association (MEMA) of U.S, cites that counterfeit auto parts are violating the safety of customers globally. It is estimated that 1 in every 3 automotive parts are copied.

Original Equipment Manufacturers (OEM) are highly concerned over the issue of counterfeit products as the aftermarket components business of OEMs is usually directly proportional to the profits of the company. A large chunk of the profits are therefore lost if counterfeit products are used in the after-sales service. The cheaper alternatives not only affect the OEM profit margins but also put the vehicle using such products in serious potential danger.

It is pertinent to note sales of counterfeits parts also directly affect the reputation and goodwill of manufacturers in addition to the profits of the company. Counterfeit automobile parts cause significant harm to the automotive industry and its consumers, but perhaps the greatest danger to automotive OEM's is a piracy technique termed the 'subtle pick-off'. This form of intellectual property theft occurs at the high end of counterfeit sophistication poses a significant risk to manufacturers. In the subtle pick-off, valuable design elements resulting from millions of dollars of R&D investment are usurped and utilized under a competing brand name.

Counterfeiters worldwide operate in increasingly sophisticated ways that are designed to avoid detection and minimize the risk of detection by rights holders and law enforcement bodies. Even if detected, their methods of doing business

are designed to minimise penalties that may be imposed. Counterfeit products are more likely to be manufactured and sold in countries which are less effective than others in combating counterfeiting.

Legal Remedies :

It can be said that consumer demand drives counterfeiting, which in turn harms numerous industries. There can be no doubt that product counterfeiting is a serious and damaging economic crime. There are definitely no "major" or "minor" counterfeits.

The Copyright Act, 1957, The Patents Act 1970, The Designs Act 2000, The Geographical Indications of Goods (Registration and Protection) Act 1999 and Custom & Border measures are provided in The Customs Act, 1962. These provide for remedies against infringement. Both civil and criminal remedies are available to the aggrieved registered users of Intellectual Property rights. There are provisions under the Trade Marks Act 1999, The Copyright Act, 1957, Indian Penal Code and the Criminal Procedure Code to initiate appropriate action against such counterfeiting attacks. Conducting of surprise raids is the most effective mechanism to strike upon the counterfeiters.

India has made important changes to its IP laws and more are in the pipeline, including changes in IP and Customs laws to implement border control measures as required by the TRIPs Agreement. India has signed Customs Mutual Assistance Agreement with most of its major trade partners including EU & USA. These treaties establish formal guidelines and allow officials to share intelligence and investigative data relating to IP violations. In addition, in the last five years the Indian courts have taken a more pragmatic approach to counterfeiting. Lobbying by various brand owners' associations, and more education programmes have resulted in increased awareness and a greater understanding of IP issues among law enforcement authorities.

Conclusion :

Counterfeiting is a problem that needs to be addressed quickly and decisively. With counterfeiting so prevalent, it is the need of the day to ensure that all new products, at the early stage of their development, are appropriately protected with patents, design patents, trademarks, confidentiality agreements, etc. Assessment of IP strategy, adoption of sophisticated methods and more effective partnerships should be built between law enforcement agencies and the private sector with focus on intelligence sharing, awareness and product identification training to lessen the risks associated with increased levels of intellectual property theft.

The prevention of intellectual property theft lies in multipronged and collaborative approach on the part of the various stake holders in bringing about increased awareness amongst the public, legislature and enforcement authorities of the devastating impact of counterfeiting and intellectual property theft.

