



Protecting your BRAND

Companies need a comprehensive brand protection program, coupled with tech-based solutions to reduce counterfeiting and piracy of their products.



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expert speak

Counterfeiting and piracy are increasingly causing large losses for several industries including FMCG and other consumer-based industries, in terms of lost sales as well as damage to a brand's reputation. In addition, in several cases counterfeiting also poses grave danger to public health and allied problems.

To solve this problem, urgent attention needs to be paid to enforcement of Intellectual Property Rights (IPR), coupled with utilising the latest technology in anti-counterfeiting and anti-piracy efforts. Apart from focusing on traditional channels of counterfeiting,

brands also need to pay attention to protecting their intellectual property online.

No doubt, customs and border protection authorities seize counterfeit goods worth hundreds of crore each year, but they only represent a small fraction of the total market of such goods. The counterfeiters have been able to grow their business largely due to customers' appetite for lower priced goods vis-a-vis the branded counterparts.

Apart from counterfeiting, brands can also face problems relating to 'grey' market product diversion and illegitimate trade.

Legal remedies

It is very important for brand owners to have a comprehensive brand protection program and in its absence the costs relating to counterfeiting can be astronomical. As part of this strategy, it should include various stages including assessment, countermeasures, monitoring, and enforcement.


In addition, companies should study and compare brand

protection programs employed by leading international brands and incorporate best practises in their own anti-counterfeiting strategy.

Globally, a leading example in the brand protection program is US-based DuPont and it employs science-based products and services for anti-counterfeiting, security, identification and brand protection. In addition, this MNC also uses advanced overt and covert technologies individually, or in multilayered protection programs.

And, with growing litigation related to brand protection, Indian courts have also improvised their procedural working, and several high courts have given ad-interim ex-parte injunctions, as well as inspection and sealing orders. In addition, the courts and judicial system have tried to reduce the duration of such litigation, as was observed in the case between TVS versus Bajaj Motors.

The Supreme Court also observed; that in matters relating to trademarks, copyright and patents, the provisions relating to Order XVII Rule 1(2) of the Criminal Procedure Code should be strictly complied, and the final judgment in a case



should be normally given within four months from the date of the filing of the suit.

Apart from that, the law enforcement agencies are empowered to take action under various provisions of The Trademarks Act of 1999, along with The Copyright Act of 1957, including preventive steps against counterfeit goods. In addition, the sale of misbranded and spurious drugs is a criminal offense under The Drugs and Cosmetics Act.

FMCG and consumer-based industries

In the FMCG sector, the focus on low-cost manufacturing has also resulted in large scale counterfeiting. However, courts have passed several judgements in favour of brand owners in a number of cases. For instance, Hewlett Packard filed complaints with local police in Bangalore, New Delhi and Gandhidham, in May 2010, and conducted raids and seized over 12,000 counterfeit products, including various ink and toner packages.

Similarly, Hindustan Unilever Limited (HUL) carried out about 141 raids on retailers, wholesalers, and manufacturers in 2009 and counterfeit goods worth over Rs 37 lakh were seized.

Apart from FMCG, counterfeiting in the pharmaceutical industry is quite common, and it includes medications with wrong ingredients, insufficient active ingredients or fake packaging.

The technological aspects of pharmaceutical products are protected by provisions of The Patents Act of 2005, coupled with the Intellectual Property Rights (Imported Goods) Enforcement Rules, which includes regulations related to stop the importation of counterfeit goods in the country.

No doubt, counterfeiting of drugs is rampant, but the government and industry's focus on technology-based

Bird's-eye view

- Counterfeiting and piracy are rampant in the country
- Organisations need a brand protection program
- Courts are also trying to reduce the duration of litigation related to counterfeiting and piracy
- FMCG and pharmaceutical companies are utilising technology-based solutions to combat these problems

solutions are helping to deal with this problem. For instance, companies like PharmaSecure employ a hybrid approach that uses ID codes along with mobile phones, to provide a highly scalable and easy to implement solution to authenticate drugs.

It is also advisable for brand owners to employ additional steps including controlled delivery of products, electronic surveillance, and investigative services to identify counterfeit and pirated goods. ©R