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THE ACT OF COUNTERFEITING



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Counterfeiting is one of the oldest crimes in American history, especially when it comes to the forgery of currency. But counterfeiting is not limited to just money, the exact definition of counterfeiting as stated online by Wikipedia.com is, ¹“A counterfeit product is an imitation which infringes upon a production monopoly held by either a state or corporation. Goods are produced with the intent to bypass this monopoly and thus take advantage of the established worth of the previous product. The word *counterfeit* frequently describes both the forgeries of currency and documents, as well as the imitations of clothing, software, pharmaceuticals, watches, electronics, and company logos and brands. In the case of goods it results in patent infringement or trademark infringement”.



Counterfeiting is so widespread today, some experts say that if we decriminalized and legalized counterfeiting, that this act could be beneficial to our country as well as the economy as long as it is controlled and taxed. ²The proponents for decriminalization believe that the new tax revenues produced would help support schools, healthcare, and the impoverished, ease the pain of taxpayers, and reduce the deficit. They also believe that transgressions such as these will take place no matter, but, if properly regulated, would be safer for society in general. It would be a win, win situation. On the other hand, skeptics believe that the monetary costs for counterfeiting not only effect the lost revenues’ for companies as well as lost of tax dollars, but as stated in an article in the nytimes.com on March 16,2009 by Jennifer Lee, ³“a person’s use of counterfeit merchandise may influence other moral behavior in his or her life”. So, which side of the fence does that leave the American people in this battle? Each person has to make up their own mind to decide which the most beneficial route is for them with the least consequences for their life and their country.

When it comes to counterfeiting, people seem to think of only one thing, currency. The forgery of money goes back to the 1800’s and at some periods it was considered treasonous and

¹ <http://en.wikipedia.org/wiki/Counterfeit>

² http://www.americanthinker.com/2009/05/time_to_legalize_counterfeitin_1.html

³ <http://cityroom.blogs.nytimes.com/2009/03/16/the-moral-costs-of-counterfeiting/?scp=1&sq=counterfeiting&st=cse>

was punishable by death. ⁴During the American Revolution war counterfeiting was such widespread by the British in such large amounts that soon the Continental Currency became worthless. There is a saying that is still used to this day, “Not worth a Continental” became a popular expression, and during the Civil War, almost one half of the currency in circulation was counterfeit. At that time, approximately 1,600 state banks designed and printed their own bills. Each bill carried a different design, making it difficult to detect counterfeit bills from the 7,000 varieties of real bills.

A national currency was adopted in 1862 to resolve the counterfeiting problem. However, the national currency was soon counterfeited and circulated so extensively that it became necessary to take enforcement measures. Therefore, on July 5, 1865, the United States Secret Service was established to suppress the wide-spread counterfeiting of this nation's currency. Although the counterfeiting of money was substantially suppressed after the establishment of the Secret Service, this crime still represents a potential danger to the Nation's economy. Today, counterfeiting once again is on the rise. One reason for this is the ease and speed with which large quantities of counterfeit currency can be produced using modern photographic and printing equipment.

For years China has become the capital for counterfeit rings. Counterfeiting in China has given the country a bad name in my opinion, because to me every time I think of China, I think of the counterfeit products being imported to this country from the trademark infringement giant. Having been to China numerous times I have seen almost every type of product that could be counterfeited from golf clubs and handbags to toilet paper. Trademarks as defined in the International Business Law and its Environment textbook defines the term as, ⁵“trademarks and service marks are protected under NAFTA for ten years and can be renewed indefinitely. The owner of a registered trademark has the right to prevent others from using identical or similar signs for goods or services if it would result in a likelihood of confusion (which is presumed unless the offender can prove otherwise). NAFTA requires fair procedures for obtaining a trademark, including notice and an opportunity to be heard. Registration may be canceled if the trademark is not used for an uninterrupted period of at least two years.

⁴ <http://www.ustreas.gov/usss/counterfeit.shtml>

⁵International Business Law and its Environment P. 484

With that being said, the term trademark infringement derives from the definition of, ⁶a violation of the exclusive rights attaching to a trademark without the authorization of the trademark owner or any licensees (provided that such authorization was within the scope of the license). Infringement may occur when one party, the "infringer", uses a trademark which is identical or confusingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services which the registration covers. An owner of a trademark may commence legal proceedings against a party which infringes its registration.

There have been many filings of lawsuits against trademark infringers over the past decades. Some notably popular cases have been Adidas VS Payless back in 2008, where Payless had to pay Adidas a sum of \$304.6 Million dollars for willfully infringing on Adidas America

Inc.'s three-stripe trademark logo. Another case, ⁷Apple Corps VS Apple Computer, lasted from 1978 all the way until recently in 2007. Over the years there were many lawsuits against Apple Computer for trademark infringement against the Beatles founded holding company Apple Corps. In 1978 Apple Corps sued Apple Records for trademark infringement and was settled under a disclosed amount of \$80,000. The agreement was that Apple Computer was not going to incorporate any music within their company, but in 1986 Apple Corps again sued

Apple Computer for violation of the 1981 settlement agreement. They stated that Apple Computer added an audio recording sound chip to their computers, clearly violating the agreement, and Apple Corps won the settlement and effectively spelled the end to the future of the highly profitable multimedia field that Apple was pursuing.

Again in 1991 Apple Corps when another suit against Apple Computer in the amount of \$26.5 Million dollars for including a sampled sound system in their Macintosh operating system. In September of 2003 Apple Computer was yet again at the turmoil of Apple Corps. This time the company was being sued for breach of contract for using the Apple logo in the creation and operation of Apple Computer's iTunes music store. On May 8th 2006, a judge ruled in favor of Apple Computer stating there



⁶ http://en.wikipedia.org/wiki/Trademark_infringement

⁷ http://en.wikipedia.org/wiki/Apple_Corps_v._Apple_Computer

was no breach of contract had been demonstrated. This act led to the day of February 5th 2007, where Apple Inc. and Apple Corps settled their dispute by selling Apple Inc. all of the trademarks related to “Apple” for an amount of approximately \$500 Million dollars. This is just a sign that trademark infringement is not isolated to just China, but actually in our own backyards. In the end I feel that trademark infringement worked out for the better in this case because a large amount of people use the companies services (if not everyone, in one way or another); so it was actually beneficial to society in modern day.

The ugly side behind counterfeiting can be argued when the stealing of a person’s identity comes into play. There are numerous counterfeiting rings all over the world that try to steal your information in order to forge credit cards and wipe out a person’s credit. Recently in an article in the Dailynews.com of Los Angeles California dated March 13th, 2009 by Sue Doyle,⁸ a hidden room was found under a Sunland home in Los Angeles where equipment was allegedly used to manufacture credit cards. These manufactured credit cards were used to buy high end television sets, as well as computers and even a speed boat and a Rolls Royce. The person under arrest, Jose Carillo, is suspected to be the major player in the identity thief ring and faces many counts of felony charges. Officials state that the ring victimized as many as 10,000 credit card holders and are still on the hunt for the mastermind.

Another negative side to counterfeiting in my opinion would have to be the trademark infringement against companies that benefit off the names of the existing products. Everyone knows so well that high end merchandise such as handbags and software have been seized and confiscated over the years by customs’ agents patrolling the imports that are coming into our country. This holds true to an FBI and Chinese seizure that occurred on July 24th 2007 where authorities claim that they seized over \$500 Million dollars worth of Microsoft and Symantec computer software. As stated in the Nytimes.com article dated July 25th 2007 by David Barboza and Steve Lohr,⁹ “This is the biggest software counterfeiting organization we have ever seen by far,”



⁸ http://www.dailynews.com/search/ci_11901445?IADID=Search-www.dailynews.com-www.dailynews.com

⁹ <http://www.nytimes.com/2007/07/25/business/worldbusiness/25soft.html?scp=1&sq=software%20counterfeit>

Microsoft's associate general counsel for worldwide piracy and counterfeiting issues, David Finn, said. "This is a real milestone." The Los Angeles field office of the F.B.I. conducted two dozen searches of suspected distributors of pirated software, seizing \$2 million in software and \$700,000 in other assets.

When it comes to trademark infringement products such as clothing and accessories, this type of infringement to me is the most profitable to the infringer. Not everyone can afford a \$1,000 Louis Vuitton handbag or even a \$400 Coach handbag, so why not get a knockoff? In my own opinion, I do not think that there is anything wrong with purchasing or replicating a designer manufactured item. These companies make millions upon millions of dollars each year and they use a good portion of their money to combat anti counterfeiting units to seize and shut down anyone who is infringing on their trademarks. So is the seizure that happened here in New York City on Canal Street back on February 26, 2008. The article that I found in the Nytimes.com website dated February 26, 2008 and written by Sewell Chan,¹⁰ stated that investigators raided dozens of storefronts on a triangular block in Chinatown this morning in what officials described as a major seizure of counterfeit goods; including fake Rolex, Coach, Prada and Gucci products, with an estimated street value of more than \$1 million.



Mayor Michael R. Bloomberg and Police Commissioner Raymond W. Kelly, who announced the raids, also said that the city had obtained a temporary restraining order to shut the storefronts". The investigation uncovered counterfeits of such brands as Coach, Gucci, Dolce & Gabbana, Dior, Prada, Rolex, Fendi, Burberry, Calvin Klein, Dora the Explorer and Oakley. The building addresses in the "Counterfeit Triangle" that were raided today are 224–230 Canal Street; 232 Canal Street; 234–238 Canal Street; 106 Baxter Street; 112–116 Walker Street; 118 Walker Street; 120-124 Walker Street; and 152-156 Centre Street.

¹⁰ <http://cityroom.blogs.nytimes.com/2008/02/26/city-raids-counterfeit-triangle-shutting-32-storefronts/?scp=4&sq=handbag%20counterfeit&st=cse>

Some experts argue that the sales of counterfeit goods are linked to terrorism. In an article by the Nytimes.com dated February 12th 2007, the article states that ¹¹“Fake designer bags are part of a \$500 billion global trade in counterfeit goods, and the U.S. authorities say that some of that money is funding terrorism. In the year between October 2005 and September 2006, the Department of Homeland Security made 14,000 seizures of counterfeit goods worth a total of \$155 million. In New York alone, the trade was worth \$80 billion and it costs to the city approximately \$1 billion a year in lost sales tax revenue."It's virtually all profit and it isn't funding anything good," the city police commissioner, Raymond Kelly, told a conference on counterfeiting this month. "It is a threat to democracy and a threat to the rule of law."

In conclusion, I believe that we have a long way to go to convince our government that counterfeiting should be legalized. I do not think that the government will ever allow the legalization of counterfeiting, because if they do, then actually the government will have a lot



less control over the consumers in the country and eventually there will be no need for our type of government anymore. ¹²If universal counterfeiting ever was legalized it would prove to be the ultimate stimulus package for the economy. Employees would always have enough money and never have to go on strike. Citizens would have no trouble paying their mortgages and never face foreclosure. Everyone would gladly pay his or her taxes and there would be no need to have an IRS. Free market consumerism would return with a flourish. People would purchase whatever they wanted and stores would only have to worry about having enough merchandise on hand. Stores could charge the consumer whatever they wanted and the consumer could still afford. Every shopping day would be like the day after Thanksgiving and the day before Christmas.

¹¹ <http://www.nytimes.com/2007/02/12/business/worldbusiness/12iht-fake.4569452.html?scp=7&sq=international%20business%20and%20counterfeiting&st=cse>

¹² http://www.americanthinker.com/2009/05/time_to_legalize_counterfeitin_1.html

Unfortunately, this will not be the case in the near future anytime soon, as the economy weakens then strengthens and continues to gain control of the country again, counterfeiting and trademark infringement will continue to flourish among society who have the craving for high end products but have limited means of income to satisfy their desires.

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