

COUNTERFEITING OF AUTO PARTS

Counterfeits have become a menace with respect to the automotive industry. Counterfeiting is nothing new to our world of consumer goods. We have seen rampant counterfeiting in products such as pharmaceuticals, soft drinks, computer consumables, footwear, designer clothings, etc., the list of products being unending.

However, off late there has been a surge with respect to counterfeiting in automotive parts and accessories. This, in view of the increased demand for vehicles that have developed over the last few years. We have un-doubtedly seen a revolution in the last couple of years in form of new brands of vehicles and manufacturers entering the Indian market and the variety of cars that are available today as against a decade ago. This have directly increased the demand for auto party which in turn have led to the easy availability of the counterfeit parts to meet this demand.

It is shocking to see one of the research that had been conducted by the National Council of Applied Economic Research (NCAER) study, which had been commissioned by the Automotive Component Manufacturers Association of India (ACMA), says counterfeit auto parts constitute over 37% (37.6%) of the total market size of the

12 aftermarket auto parts chosen for the all-India study. The counterfeits are valued at Rs 1,459 crore. (*Source Economic Times*)

The figures are staggering and would continue to rise in the absence of action wither individual or collective by the industry at large. Avoiding the situation would be like behaving like an Ostrich, intentionally oblivious of the situation till the time it is not completely effected.

What are counterfeit parts?

Fakes is what we are most familiar with, when referring to counterfeit parts. However, there is more to counterfeits than just fakes.

Counterfeit parts are imitations of the original parts which have been replicated and marked in order to represent them to be original parts thereby causing the weary buyer to purchase the same believing them to be originals. In order to classify as a counterfeit the part has to be labled with the trade mark of the company which manufactures the original part. The *mens rea* in such activity is clear since it is to make the consumer believe that the part is an original. The counterfeit parts are packaged and sole in packaging which are also a replica of the original packaging. As mentioned above it is the basic aim of the counterfeiter to make the consumer believe that they are buying an original part.

Some of the parts that are commonly the target of counterfeiters are as follows;

- wheel covers
- oil, fuel and air filters
- shock absorbers
- fan belts
- disc brake pads and shoes
- air conditioning compressors
- starters
- spark plugs
- Engine mountings
- Rubber parts
- Badging
- Headlights
- Alloy wheels

It is very wrong perception that counterfeits are sold at much cheaper prices than those of the original. There might be instances where such an opportunity is given to the buyer/purchaser who if slightly aware can identify the same to be a counterfeit on the basis of its price. However, the unscrupulous elements are always a step ahead. They have been able to match the finish of the counterfeits in wake of increasing technology and hence are able to palm off their goods at the same price of the original.

In one of the cases which I had handled I had requested the client to send me samples of the originals and the counterfeits so as to enable me to prepare the case for the raid actions. However, the person who sent me the said samples forgot to label the samples. However, I took a look at both the products and tried to decipher which was the original. Not being able to do so I requested a representative of the company to be sent down to my office where he promptly came. However, before he could identify the same I took my guess as to which was the *original*. To my utter surprise the one with a bad finish and rugged look was the original and the nice polished looking one was the counterfeit. What I intend to bring to light here is the fact that it is practically not possible for an unsuspecting buyer to identify as to whether what he is purchasing is a counterfeit or not.

TYPES OF COUNTERFEITS

1. Counterfeiters who manufacture goods similar to the original and mark the same with the logo or trade mark of the original.
2. OE manufacturers who manufacture and sell beyond what is stipulated under the contract with the company. These goods might be original from all angles but would fall under the category of counterfeits since the company does not authorize them to do so.
3. Refurbished parts that have been discarded by the company or dealers of the company.

4. Import of parts through illegal channels into the country.

IMPACT OF COUNTERFEIT PARTS ON THE MANUFACTURER

Manufactures of vehicles are concerned with respect to the counterfeit parts for several reasons. The counterfeit parts undoubtedly are directly proportional to the profits of the company. This would mean that they eat into the profits of the company when it comes to after sales service and accidental jobs. It is fact apparent that the business of car manufacturers does not end by manufacturing and selling the vehicles. In today's world competition is high and there are often price wars in almost all the segments of the industry. In the race for selling more cars numerous discounts are given to the customer for luring them to purchase a particular brand of cars. However, it is the sales of spare parts and consumables pursuant to the sale of the car that have a major contribution to the profits of the car company, in the absence of which the car companies are bound to face a huge drop on the graph representing profits.

It is also pertinent to note sales of counterfeits parts also directly affect the reputation and goodwill of manufacturers. Counterfeit parts though have good looks, the same are only skin deep. Considering the fact that these goods are not made in specialized workshops and factories are not able to meet the standards of the original product. Further, the quality of the material that goes into manufacturing the said product are also compromised upon in order to provide the counterfeits at much lower costs than the originals. This is the primary reason that more and more counterfeiters are entering the market since the profits are un-imaginable.

Counterfeiting poses several other issues, other than simply monetary which are;

- a) Fake products compromise on security and safety of the vehicles.
- b) Loss of employment/ lack of adequate employment.
- c) Counterfeiting has become an organized industry as a result of which is supported by groups and gangs for funding terrorist and other illegal activities.
- d) Loss of revenue to the Government in the form of Sales tax. Excise Tax, Income Tax, Customs duty etc.
- e) Dissatisfied and disgruntled customers.
- f) Consumer action against the companies from dissatisfied and effected customers.
- g) Higher fuel consumption.
- h) Increase in pollution and normal wear and tear of the the vehicle.

WHAT RECOURSE DOES THE LAW PROVIDE

The law has provided sufficient teeth to come down heavily upon counterfeiters. There are provisions under the Trade Marks Act, The Copyright Act, Indian Penal Code and the Criminal Procedure Code to initiate appropriate action against such anti social miscreants.

The best possible course action for manufacturers is to take recourse both with criminal action and civil action. Conducting of surprise raids is the most effective mechanism to strike upon the counterfeiters. Based on the recovery made through raid actions the manufacturers should either take undertakings/ bonds etc., from the offenders or in the alternative sue for damages. It is a fact apparent that the counterfeiters would not be monetarily in a very good position to contest the cases in light of the financial backup that would be available to the manufacturers. However, it is always advisable to take undertaking in either of the circumstances.

However, the efforts to curb counterfeiting have to be initiated by the Manufacturers and awareness amongst the customers and consumers have to be brought about. Customers have to be made to understand that what they might be purchasing at a reduced price would eventually just might prove to be very expensive in monetary terms as well as with regard to their safety.

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