



Food products are now amongst the most frequently pirated consumer products and, as China has found recently, the costs can be high not only for the industry, but also the consumer.

In recent years, counterfeiting has become synonymous with Asia, and with China in particular. The reason for this is twofold. Firstly, Asia is the largest producer of pirate goods, ranging from CDs and software to clothes and electronics. These counterfeit products not only flood the regional markets, but are responsible for a large proportion of the pirated goods that penetrate markets around the globe. The top six sources of counterfeit goods seized by US Customs in 2002 were Asian, with China alone the origin of a massive 49 percent (US\$48.6 million) of pirate products apprehended. The second reason for the region's notoriety is that it is also the biggest counterfeiting market on the planet. Again, China leads the pack – in 2001, Chinese officials estimated that counterfeiting was a US\$16 billion a year industry. Its influence can now be found in most consumer markets – including the food and drink sector – and this

expansion has led authorities to estimate that counterfeiting could employ up to five million people in mainland China alone.

“There are a number of unscrupulous individuals who set up businesses and do nothing but actually copy the brand owners,” says Michael Peters, OBE, the founder of global brand agency Identica. “They are able to produce virtual look alikes and ride on the back of the original brand owners who have advertised and promoted their brands. These counterfeiters are able to take a product and, within a relatively short period of time, produce something that is almost look alike. Their skills are impeccable. A few years ago I was involved in the rebranding of Chivers Regal whiskey, and within very few weeks there was a look alike on the market.” One of the key forces for the perpetuation of this black market in Asia is the prevailing view amongst consumers that counterfeiting of brand goods does not constitute breaking the law. Many believe that piracy is a ‘victimless’ crime. But in the wake of a rash of deaths resulting from the consumption of counterfeit foods, this may be all about to change.

The problem with *fake foods*

By Neil Davey

COUNTERFEIT FOOD

Earlier this year, China was stunned when 12 babies died of malnutrition and hundreds more were hospitalised after they were fed fake infant formula by their unwitting parents. Subsequent investigations revealed that around 45 types of substandard powder were being sold in retail outlets across 10 provinces, some containing as little as one sixth of the required amount of protein needed to sustain a baby's dietary requirements. With China's dairy industry struggling to meet increasing demand for dairy goods – one of the biggest growth areas of which is infant formulas – the door was left open for counterfeiters. But in recent years, China has seen deaths and illnesses due to counterfeit foodstuffs occur with alarming regularity. Only weeks ago, six people were arrested in Guangzhou for making liquor with industrial alcohol, which resulted in the deaths of at least 11 people and the hospitalisation of a further 50. But the problem isn't confined to China.

In July 2004, two prestigious food stores located in Shatoujiao, the border between Hong Kong and Shenzhen, were found to have sold a large amount of counterfeit foods. The local authorities seized two truck loads of products from their premises, and upon inspection found the snacks had a particularly unpleasant soft centre – worms. Several years ago, fake local liquor killed consumers in Sulawesi in Indonesia. In Hong Kong, during the last year, there have been instances of counterfeit soy sauce and soft drinks. There also have been several instances of counterfeit beverages and food additives in Vietnam.

“Counterfeit brand foods are a major problem for consumers, but also for the food industry in general,” warns Ezzeddine Boutrif, Chief of the Food Quality and Standards Service at the Food and Agriculture Organization (FAO) of the United Nations. “Consumers have trust in a certain label and that the government will allow only safe food to be sold. However, if that trust is broken, consumers will lose their assurance in the government, the food industry, and the store where the food was purchased. Some of the counterfeit foods which are sold could even be deadly as they may contain dangerous ingredients or contaminants, may not have been processed or handled properly, or may simply mislead the consumer.”

Exacerbating the problem is the unsatisfactory implementation and enforcement of regional anti-counterfeiting laws. “In countries like Thailand, Malaysia, Singapore and Hong Kong there are ade-



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By Michael Peters

quate mechanisms and we carry out lots of anti counterfeiting raids on targets,” explains Nick Redfearn, Asia Pacific Director of Rouse & Co International, a consultancy specialising in the protection, exploitation, enforcement and management of intellectual property. “There is then a range of more difficult countries like the Philippines, Indonesia and Vietnam where the level of political commitment, public resources and systems weaknesses make enforcement much harder.”

ANTI-COUNTERFEITING LAWS

China is a case on its own. It has reasonable legislation following its accession to the World Trade Organization – part of WTO compliance includes the mandatory introduction of adequate anti-counterfeiting laws. However, the sheer scale of the problem in a country of China's size has meant that enforcement is very challenging. The basic enforcement is not enough, administrative fines are not deterrent and the criminal system is not often used for IP violation.

Nevertheless, Redfearn insists that this scenario is changing – if slowly. “Cases are increasing and the criminal IP laws are under amendment now and that will bring far more cases within the criminal system,” he explains. “However the implementation stage of building up the systems and capacity to handle the widespread violation of IPRs will take many years. In a country the size of China that is a slow process. In the urban centres of Beijing, Shanghai and Guangzhou that will happen faster, but in the northern provinces and the west, Beijing has more limited influence and local factors may be more influential.”

Certainly there is growing confidence in the Chinese authorities' ability to catch the counterfeiters, even amongst international manufacturers that have been the victims of piracy themselves in the past. Nestle Spokesman Francois-Xavier Perroud, for example, is satisfied that an impact is being made in the market. “There have been occurrences where offenders put products with faked Nestlé brands on the market, mostly culinary products (i.e. cooking preparations) and mainly in rural and wholesale markets (which are less regulated),” he explains. “Thanks to our close relationship with the trade and to constant supervision of what is on the market, these counterfeits were quickly detected, in some cases their sources were traced with

the assistance of the local authorities. Nestlé appreciates that the authorities now seem to be determined to act quickly and effectively in such cases.”

But Michael Peters is far less impressed with the legal process. “In the Far East and China there are people who are able to counterfeit almost to perfection, but by the time you take legal proceedings, the duplicators will probably have already made lots and lots of money and have fled and have opened up somewhere else,” he suggests. “Even if you find the criminals and take them to court, it is a long, laborious and expensive process. The manufacturer has to realise that no matter how many people he has in his legal department, he is the only one that can protect his products. Branded manufacturers must find a way of being pre-emptive – and that means using technology, design and branding skills in order to thwart them.”

THWARTING THE COUNTERFEITER

Manufacturers are indeed taking extra care to ensure counterfeit versions of their products are kept off of the black market. Manufacturers are well aware of the importance of ensuring that markets are sufficiently supplied with their goods so that there is no demand-supply gap for counterfeiters to exploit. The problem is acute in developing markets such as Asia, however, where goods can be prohibitively expensive. Companies are also ensuring that ownership of tooling remains with the brand owner through contractual obligations, which ensure that any provisions are destroyed or returned. Similarly, any subcontracting by suppliers is now being kept under close scrutiny, particularly in light of the fact that it is not uncommon for the counterfeiter to be an ex-licensee whose contract has been terminated.

Security labelling is increasingly used by manufacturers, although with piracy becoming an increasingly high-tech industry, even holograms can now be reproduced by counterfeiters. Nonetheless, even if security labelling does not stop piracy, it will at least prove an additional cost to counterfeiters and it also makes it easier for customs and any other party involved in the anti-counterfeiting campaign to recognise fakes by customs, if secure labelling is used. Security labelling technology is becoming increasingly advanced, however, and Japan-based engineering firm Teikoku Piston Ring has brought anti-counterfeiting packaging to new levels with a label taking the Lippman Hologram heat transfer foil – developed by Dai Nippon Printing (DNP) to be extremely difficult to counterfeit – and stripe-transfers it to the surface of an adhesive label.

“Nearly every brief that brand agencies such as ourselves get is wanting to use design to thwart the counterfeiter,” suggests Peters. “We produce things that are invisible to the eye but you would be able to pick up the genuine design very quickly compared to the copy, because there are ways design and branding can be used to stop something being copied. And now it’s possible through technology to have a virtual private detective agency within each bit of packag-

ing or product, because you are able to put batch numbers in that allow you to chase those numbers and find the counterfeit ones quite easily. Ultimately, I think those companies that don’t invest in finding a method by which the brand can protect themselves are going to lose their business, because they will lose their profitability.”

FACT OF LIFE

“Counterfeiting is a fact of business life in Asia,” stresses Redfearn. “Companies need to take this issue seriously for two reasons. One is the catastrophic PR from the discovery of fake foods – and the impact on genuine sales and the fear factor it will induce in your consumers. The damages could take millions of dollars in marketing to repair. Secondly, it is likely to be a necessary step for companies making products for consumption. Pharmaceutical companies are facing increasing pressure to take action – several have been sued in the USA for, in effect, not taking counterfeits seriously enough. One day, companies manufacturing safety critical foods may find themselves obliged to take proper steps to stop this problem.”

Ezzeddine Boutrif is adamant that rigorous monitoring should be employed to protect the consumer from counterfeits. “Governments and food retailers must utilise strict food inspection procedures to ensure the safety and integrity of the food supply,” he says. “Random samples can be taken to check the integrity of a product, but a systematic monitoring of the entire food chain, from the producer through the retailer to the consumer, is necessary to reduce the impact of counterfeit goods.”

Certainly the spate of deaths from counterfeit foods across Asia would suggest that tighter legislation and monitoring may well be on the horizon. The casualties have already heightened awareness of product safety laws and authorities in the region are paying closer scrutiny to public health issues, as witnessed by the jail sentences that have been handed out to those found guilty of the counterfeiting of safety critical products. With the triple pronged attack of greater public awareness of the dangers associated with counterfeit food, stricter operations by manufacturers and tighter legislation from the government, there is hope that the counterfeiting menace can be kept under control.

“I actually feel very pumped up that it is going to become more and more difficult for the perpetrators,” says Peters. “Governments are now recognising that this is a big black economy, that is eating into the revenues of different countries throughout the world through lost taxation. The revenue and the police forces and other agencies are coming together to work with the branded good manufacturers to try to fight the might of the counterfeiter.” Perroud also remains optimistic about the battle against counterfeiting in Asia, and in particular in China: “There is no doubt that with the closer involvement of China with world trade, awareness of the importance of consumer protection and of safeguarding intellectual property is rising and this is to the benefit of all parties concerned: consumers, manufacturers and the trade.” ■