

Most Australians would admit to having purchased a designer knock-off at one time or another. Let's face it, haggling with the locals over a fake watch or DVD is common practice for many visitors to destinations such as Bali and Thailand. But these days, if it's knock-offs you're after, you can save yourself an airfare.

Simply take a walk through your local market and you will find a similar selection of counterfeit goods – with everything from handbags and watches to clothes and make-up on sale for a fraction of the genuine article's price.

According to Ken Taylor, from the Trademark Investigation Service (TMIS), counterfeit items make up about 40 per cent of market trade. "The prevalence has increased dramatically," he says. "It used to be more luxury goods, but now we're seeing a lot of daily-necessity items."

While most of us understand that the practice is illegal, surveys conducted by the government agency IP Australia show that many Australians view intellectual property infringement, or counterfeiting, as a "victimless" crime.

But as consumers snap up a half-price cap or cheap sunglasses, they are supporting an industry that costs local businesses and governments hundreds of millions of dollars every year. The OECD valued the trade at \$200 billion worldwide in 2005. That is estimated to have grown to at least \$600 billion. The industry makes up an estimated 7 per cent of all world trade, having grown 10,000 per cent in the past 20 years.

While no detailed studies have been undertaken to determine the economic impact on Australia, formulas developed

... Or

Falaking it

COUNTERFEIT
GOODS COST
BUSINESS
BILLIONS – YET
THE PROBLEM
IS ONLY GETTING
BIGGER AND
CLOSER TO HOME.
NICOLE MADIGAN
INVESTIGATES.



making it?



by IP Australia put the annual cost in lost tax revenue alone at tens of millions of dollars. And that figure is expected to increase as counterfeiters expand their range to include a wider variety of items at multiple price points.

As a result, Australian businesses are now targets, with their sales and reputations being undermined in their own backyards. TMIS puts the annual cost to local business at more than \$600 million in clothing and footwear alone. “One client of ours had 43 customs seizures in 2009, in which 146,631 items were seized,” Taylor says. “If those items had been retailed at \$40 each, that would mean \$5,865,240 – just for one client in children’s wear.”

While some cases are pursued by law enforcement agencies, they represent a fraction of what is actually taking place.

Australian-owned clothing brand Unit Clothing was founded six years ago with start-up capital of just \$600. Within two years, the brand had fallen victim to counterfeiting. According to company spokesperson Paul Everest, knock-offs have remained an expensive problem, costing about \$500,000 a year. “To us, counterfeiting is like someone walking into our warehouse, taking our goods off the shelf and walking away with them,” he says. “We pour hundreds of thousands of dollars into protecting our trademarks, into marketing and into research and development – all for these parasites to leverage off.”

Distributor Global Shop Direct has also suffered extensive financial losses due to IP infringement. “Counterfeiting is a constant battle for us,” its product director, Greg Thomas, says. “It has a massive impact, not just from the lost sales that belong to the product owner, but from the man hours dedicated to policing it and the legal costs. And, of course, it does considerable damage to our brand image.”

And it’s not just a problem for big business – independent retailers and product developers also take a financial hit, while consumers waste money on substandard products. There are laws in place, yet counterfeiters thrive, brazenly displaying their fake goods at markets, shopping malls and on the internet.

According to Taylor, the prevalence of counterfeiting can be attributed to limited government resources and little enforcement of the laws. “None of these importers is the subject of criminal investigations because the cases aren’t referred to the Australian Federal Police,”

he says. “And even if they were referred, there are no resources.”

A Queensland police officer who has assisted Unit Clothing says that while some counterfeiting cases are reported to the police, the information is usually outdated. “By the time [the police] get to investigate it, the evidence may have been disposed of, or [the counterfeiters] have moved on,” the officer, who asked to remain anonymous, says.

As IP crime is officially an Australian Federal Police issue, the lines are blurred even further. “There is a communication breakdown between federal police and state police, which makes it extremely difficult to act on,” the officer says(??).

And that helps to make it virtually impossible for businesses to combat the trade. “Despite the fact that Australian businesses are losing hundreds of thousands of dollars, the government seems happy to sit on its hands and let thieves rip off our brands and pay no tax,” Everest says. “It seems the government doesn’t want to get behind entrepreneurs by tackling this problem.”

IP Australia director general Philip Noonan admits the counterfeit trade is widespread, but argues that enough is being done. He says the proposed multilateral Anti-Counterfeiting Trade Agreement is a promising initiative. “Australia’s current domestic IP settings are appropriate to respond to this challenge,” he says. His comments come only months after dedicated funding to the AFP was cut, along with the number of agents assigned to IP infringement.

Identification of counterfeiting and initiation of action is left to individual businesses and it can involve a minefield of money and red tape.

“It seems it is up to the product owner to take the necessary action,” Thomas says. “As a business we don’t have the resources to do it all ourselves and it’s a very expensive exercise.”

To assist with surveillance and subsequent dealings, some businesses use the services of anti-counterfeiting groups such as TMIS – which is another costly exercise. And while these groups communicate with the federal police and the Australian Customs and Border Protection Service, the problem is simply too large for them to control.

According to Taylor, Australia’s 1200 markets operate without any specific regulation at a state or federal level. “If a person opens a shop, they are required to register a business and display a sign, so consumers know whom they are dealing



with,” he says. “But this isn’t so with markets. [Also, while] the laws regarding the possession and sale of counterfeit goods apply wherever a person is trading, without police patrols and resources there is little to no criminal enforcement.”

Everest says markets are one of the biggest problems for his company when it comes to counterfeit goods.

Yet Kerrie Reeder, retail marketing manager of Sydney Markets (owner of Paddy’s Markets), says controlling fake goods is not the responsibility of market management. “At the end of the day we are not skilled in identifying whether something is a counterfeit,” she says.

But despite reports ??? of counterfeit offences taking place in Paddy’s Markets, no stall-holder has yet lost their position. Reeder says the market would not take action against a stall-holder unless a prosecution took place. She says that she does not know of any illegal trading.

Research by TMIS highlights the extent of the problem at markets. “If you were to visit a market and survey the stalls, the number of stalls carrying counterfeit goods would normally exceed 40 per cent,” Taylor says. “The markets’ turnover tops \$650 million per annum.”

the deal accompanied representatives of Unit Clothing to several markets in Sydney, Melbourne and Queensland. Stall-holders previously warned about the sale of fake Unit-branded products were, in many cases, hiding copies under the counter. Others were blatantly displaying a wide range of counterfeit goods.

Counterfeiting Intelligence Services

Counterfeit items are often made in sweat shops by workers who get paid very little and work in atrocious conditions.

Australasia recently identified a number of repeat offenders at Victoria’s Caribbean Gardens, Bendigo, Ballarat and Dromana markets, the Caboolture Markets in Queensland and the Prestons and Parklea markets in NSW.

Taylor says shopping centres have adopted a similarly lacklustre response. “The major shopping centre managers are unsympathetic and most written requests on the problem go unanswered. They rent casual space to tables and kiosks [where counterfeit goods are most often sold]. The permanent tenants have rules in their leases about ‘illegal activities’, [but] casual traders are just extra cash.”

According to Intellectual Property Research Institute of Australia director Beth Webster, the reason for government inaction is simple – the costs involved in seriously tackling counterfeiting and IP infringement outweigh the benefits of doing so. She suggests businesses “take it as a compliment” when IP is copied.

With the rise of the internet and online trading, this trade has become even easier. “The internet is growing the trade and allowing individuals to source all manner of counterfeit goods directly from factories in China,” Taylor says.

Counterfeit goods are found frequently on eBay. A spokesperson says the company immediately investigates notifications of fraudulent listings and removes them if proved true.

But while responsibility for action is left to independent businesses, the wider counterfeiting trade will keep booming.

Another significant issue is the counterfeiting industry’s reported links to organised crime. “I believe that criminal networks are involved in the counterfeit industry,” a Queensland police officer says. “It is much like drug dealers that work for outlaw motorcycle gangs. Counterfeit items are often made in sweatshops by workers who get paid very little and work in atrocious conditions.”

Everest believes Australia should follow Europe’s lead in targeting IP crime and applying penalties more often. “The French produce great products and they protect their businesses through their laws,” he says. “Australia also produces amazing brands, but we aren’t protected, even though we pay thousands of dollars to secure trademarks.

“We are wasting so much time defending ourselves in our own country when we should be growing our business in the international market, building our company, employing more Australians and contributing to the economy.”