



Anti-counterfeiting and Online Brand Enforcement: Global Guide

2024

**How to scale anti-counterfeiting to
thousands of cases annually**

Anti-counterfeiting and Online Brand Enforcement: Global Guide

2024

Now in its 17th year, the Anti-counterfeiting and Online Brand Enforcement: Global Guide 2024 combines the latest strategic analysis with practical country-by-country exploration of the best protection around the world, enabling brand owners to stay one step ahead of counterfeiters and build effective programmes to keep the fakes at bay.

Generated: August 29, 2024

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2024 Law Business Research



Explore on WTR [↗](#)

How to scale anti-counterfeiting to thousands of cases annually

[Adward Yudin](#), [Burak Balli](#) and [Daniil Shmyrin](#)

[BrandMonitor](#)

Summary

[ANTI-COUNTERFEITING TODAY](#)

[TARGETING DEMAND](#)

[MAXIMISING ENFORCEMENT AT SCALE](#)

[CASE STUDY: MASS TARGETED ENFORCEMENT](#)

[DOES IT BRING LONG-TERM RESULTS?](#)

[CONCLUSION](#)

More and more international companies are suffering from counterfeiting. Brand owners are investing millions of dollars every year in combating the problem, but despite this, intellectual property crime amounts to approximately 2.5% of world trade (nearly \$500 billion), according to an OECD study completed in 2021.

The rise of online trade makes it easier than ever for sellers to profit from the wide audience of consumers willing or misled to purchase counterfeit products. The constantly evolving market forces rights holders into a losing battle, leaving them always in search of new methods to fight counterfeiters, often incurring a rise in the cost of enforcement.

The arms race between brand owners and counterfeiters, which has lasted for more than 50 years now, has continued to thrive through multiple generations of anti-counterfeiting teams and executives. The impression within the community is that you can battle counterfeit, but it is not a battle that can be definitively won. Besides, does counterfeiting affect the sales and profitability of brands all that much? Even if it does, for many companies it remains a declaration of social responsibility for proper exposure in this age of information. This leads to anti-counterfeiting work being a 'check box' for many corporations, something that must be done. It continues to evolve and develop, but well within the confines and standards that were set decades ago.

These and other challenges have led us to write this article. We would like to take a deeper dive into the issues facing anti-counterfeiting today and come up with some 'ideal' methods for fighting counterfeiting.

ANTI-COUNTERFEITING TODAY

Anti-counterfeiting is not rocket science. Hypothetically, the solution is to find every manufacturer of counterfeit, every online and offline seller, and take the necessary enforcement actions to stop them. While finding online sellers and enforcing them can be done with significant effectiveness due to technology and automation, doing so offline is a different story.

Let's take Türkiye as a case study. According to UNDP's study of the textile sector in Türkiye, there are approximately 52,000 apparel manufacturers in the country. Hiring the necessary investigators to gather intelligence and the number of law firms necessary to enforce against all of those who manufacture counterfeit goods would be a gargantuan task. More importantly, it would cost a fortune. Besides this, it is important to question whether change is achievable at all by enforcing manufacturers.

Since financial limitations bind this industry, focusing on high-value targets appears not only reasonable but necessary. This seems to make sense: it would create the largest impact on the network of counterfeiters, and better yet, impose enforcements against the source of the counterfeits. Certainly, if many manufacturers were taken down simultaneously, it would significantly affect the availability of counterfeit goods. But without significant changes to the legal framework surrounding counterfeit manufacturing, this would cost many millions and be extremely difficult to execute.

Manufacturers of counterfeits are not oblivious to the consequences of their actions. They are well aware of the anti-counterfeiting industry and know that their actions are illegal. But counterfeiting is an extremely profitable business, often bringing much larger profit margins than illegal drugs and weapons, and with fewer legal ramifications. This leads to conditions

in which the potential benefits heavily outweigh the repercussions. As long as this is the case, counterfeit goods will continue to be manufactured. This persuades us to find other solutions. Is it possible to target demand in the market, instead of supply, to reduce the potential upside for manufacturers?

TARGETING DEMAND

The counterfeit market shows signs that the demand for counterfeit goods of specific brands is generated less by end consumers and significantly more by the retail sellers of these goods in comparison to traditional markets. It is important to note that the leading reason why people purchase counterfeit goods is their affordable price, not the brand. Branding still has an impact. After all, brands invest billions in marketing and fostering a reputation. Sellers tend to piggyback off these images instead of investing in building their reputation from scratch. These sellers choose which brands and products to focus on when ordering their stock. It is they who, from the perspective of the manufacturers, create the demand and then compete in the open market for end consumers' attention. This competition is mostly driven by lowering prices (and consequently, quality) while exploiting the reputation built by brands.

Since there will almost always be suppliers and manufacturers available to satisfy the demand generated by retailers, counterfeiting will continue to flourish despite the efforts of brand protection teams. One would assume that with the largest seizures every year, we would see a growing impact on the market. Unfortunately, that does not seem to be the case. More often than not, the distributed counterfeit market is flexible and sustainable enough to absorb the impacts of enforcement actions. It is able to re-adjust and rebound rapidly with new distribution routes emerging quickly to fill in the temporary void in supply. Systems of this complexity and size can rarely be broken down with a singular action.

Given the above, it appears that to have a tangible impact on the market, we must focus not only on the source of counterfeit goods (manufacturers, distributors – the proverbial 'big fish') but also on the source of the demand for the counterfeit goods in the first place; that is, the retailers.

If we were to approach the issue from the bottom up, by switching our aim to enforcement focused on sellers instead of manufacturers, how would we finance such a project? The obvious issue here is that there is a very large number of entities and locations to enforce. This sounds daunting, but there is good news too: counterfeit retailers (in contrast to manufacturers and distributors) are not part of criminal organisations. They are rarely willing to expend efforts on legal battles. It is far simpler for them to stop infringing and comply with the demands of the rights holders while moving on to other fruitful ventures.

As an outcome, we could structure our enforcement efforts in such a way as to ensure that voluntary settlement is the preferable option for the seller. This is achievable if the negative consequences of continuing the infringing activity outweigh the potential returns.

MAXIMISING ENFORCEMENT AT SCALE

Given the above, we consider two key points with regard to maximising enforcement efforts:

- the ultimate goal of a retail-level enforcement project should be an amicable settlement; and
- criminal and administrative enforcement options should be viewed as means rather than an end goal.

How do we ensure we focus on achieving an amicable settlement? The first step is to properly secure evidence of infringement. This is done in a few different ways, depending on the jurisdiction. A test purchase will usually suffice, sometimes with photos or a video recording of the process. In some countries, there are alternatives that can prove helpful: notarised test purchases (made either online or offline) or, for example, 'evidence determination', a procedure employed in Türkiye.

The end goal of evidence collection is to set up a strong foundation for potential escalation, thus increasing the potential negative consequences of non-compliance for the infringer and subsequently increasing the likelihood of a settlement.

A raid or similar action is advised as an alternative first step in cases where the potential settlement amount justifies the amount of time and effort invested. In some cases, these instruments, although generally quite effective, may lack the quickness of execution demanded by the specifics of the case at hand – a good example being the so-called trademark inspection visits conducted by the Mexican trademark office, which are difficult to organise outside of Mexico City. It is vital to consider the limited capacity of law enforcement authorities: even in countries where raids are relatively easy to organise, the resources available to conduct such raids are limited. Often only tens of raids per month, per city, can be achieved. This resource is therefore best reserved for high-value targets.

The second step is to send a cease and desist notice directly to the seller. Three key requests are included in the cease and desist:

- to destroy the remaining counterfeit stock and present evidence of destruction;
- to refrain from future infringements; and
- to pay reasonable compensation to the brand owner.

The destruction clause is not only used to reduce the costs of seizing and storing products but also ensures the goods don't find a way back into the market.

It is important to account for the financial capabilities of infringers. A settlement should always be a more economically viable option compared to lengthy and costly litigation. Requesting unreasonably high compensations can prevent a quick and efficient resolution of the infringement. As an example, our experience in Türkiye puts the 'sweet spot' for retailers at approximately \$1,000 on average, while in other countries it can be double that amount; or, conversely, it can be lower, like our experience in Latin America suggests. Paying compensation serves as a negative economic stimulus, reducing the appeal of counterfeits for the seller.

Careful consideration of enforcement methods and amounts of requested compensation can help achieve a settlement rate of 50% and above, depending on the country. Additionally, pre-trial mediation, if available, can be a great tool in certain jurisdictions, boosting the settlement rate even higher for only a relatively low investment of time and money.

The compensations received from these settlements can be used to offset the cost of legal action in part or – if done effectively – in full. It is true that some cases will inevitably take longer and will need additional investment, but if done on a large scale with careful choice of enforcement methods, the project can be financially self-sustainable due to the low cost of pre-trial settlements.

Given the points discussed, what would an effective brand protection strategy entail, and what outcomes could we anticipate for the brand? Put plainly, is it feasible to tackle thousands of counterfeit sellers while keeping legal, operational and executional costs low?

CASE STUDY: MASS TARGETED ENFORCEMENT

Trial projects were conducted to test the viability of the described approach in a variety of regions, including Central Asia (Kazakhstan, Kyrgyzstan), the Middle East (Türkiye, Israel), Latin America (Mexico, Brazil) and South Asia (India, Pakistan). What was learnt was that although some cases had to be escalated and/or incurred additional expenses, a significant number were able to be resolved quickly and amicably, provided an appropriate strategy was chosen and implemented.

Multiple variables were tweaked to see their effect on the programme: different enforcement methods were tested to maximise pre-trial settlement rates, the amounts of compensations requested were fine-tuned and enforcement protocols were standardised according to local best practices. In the end, a set of guidelines was developed to streamline the decision-making process for each instance of infringement.

The following are some typical results of a scaled project for one brand within a 12-month period:

- Total locations detected: 2,280.
- Average compensation received per case: \$1,005.
- Average number of destroyed counterfeit items per settlement: 32.

The compensations received not only fully covered the costs of successful cases but also of those cases in which settlements were not reached on a pre-trial basis and additional legal expenses were incurred. With careful implementation, the programme as a whole proved to be financially self-sustainable and scalable.

DOES IT BRING LONG-TERM RESULTS?

Seller-focused enforcement has shown tangible results as more than 70% of the retail locations ceased selling counterfeits after the first iteration of enforcement. Systematic and continuous monitoring of the enforced retailers enabled the effective processing of repeat infringements and the ability to obtain precise data on the effectiveness of the project as a whole.

In contrast to enforcing manufacturers, this scalable approach showed a significant impact on the availability of counterfeit to end consumers. While this approach is not going to defeat counterfeiting altogether, for brands that are counterfeited on a large scale this was the first time we were able to have this much impact in the offline sector.

Understandably, this approach might not work out of the box globally. Many factors affect the feasibility of this approach, including cultural attitudes towards counterfeiting, legal infrastructure, the abundance of counterfeits in the market and so on. The specifics – such as the actions taken and amounts requested – have to be tailored to each region individually. That said, within the brand protection community large strides have been taken in implementing this approach in as many places as possible, both offline and online. Our findings show that the countries which have traditionally proved to be most difficult to enforce tend to have all or some of the conditions required for such a project.

CONCLUSION

This fairly new approach has been gaining traction within the industry and the early adopters are beginning to reap the benefits. We hope that more and more brands will begin to adopt this method in favour of the current 'check-box' approach and that eventually it will become the new industry standard. Adoption will take time – a decade or more as legislative systems take time to adapt and support our industries' efforts – but we believe that in the long run, the effects will bring a dynamic shift in the overall attitude towards counterfeiting, incentivising creative design and invention to a level that has not been seen before. We believe that as a community we can dictate how the open market sells products to consumers if we come together and think outside the box: to not respond to the counterfeiting market but to take control of it.



Adward Yudin
Burak Balli
Daniil Shmyrin

adward.yudin@brand-monitor.com
burak.balli@brand-monitor.com
daniil@brand-monitor.com

Naugarduko g. 68-3, Vilnius, LT-03203, Lithuania

Tel: +370 (683) 46 864

<https://brand-monitor.com/>

[Read more from this firm on WTR](#)