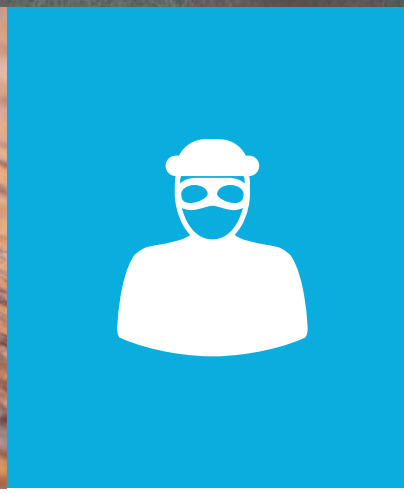










The impact of counterfeiting on online consumer rights in Europe

The risks of buying counterfeits on the Internet, and tips from the ECC-Net for consumers in Europe who want to avoid unpleasant surprises due to these products.

March 2017

Help and advice for consumers in Europe
ECC-Net
European Consumer Centre

Co-funded by the European Union

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This report was drawn up by the European Consumer Centres (ECCs).

The European Consumer Centres Network (ECC-Net) comprises 30 centres in all 28 EU Member States, Iceland and Norway. It is co-financed by the EU (Consumer Program) and by each of the participating states. The aim of the Network is to increase consumer confidence in the European Internal Market by providing consumers with information on their rights under European consumer legislation, and by giving advice and assistance in the resolution of their individual cross-border complaints.

ECC Italy, ECC Belgium, ECC Sweden and ECC Croatia were part of the working group on the basis of this report.

Help and advice for consumers in Europe

ECC-Net

European Consumer Centre

01

Introduction

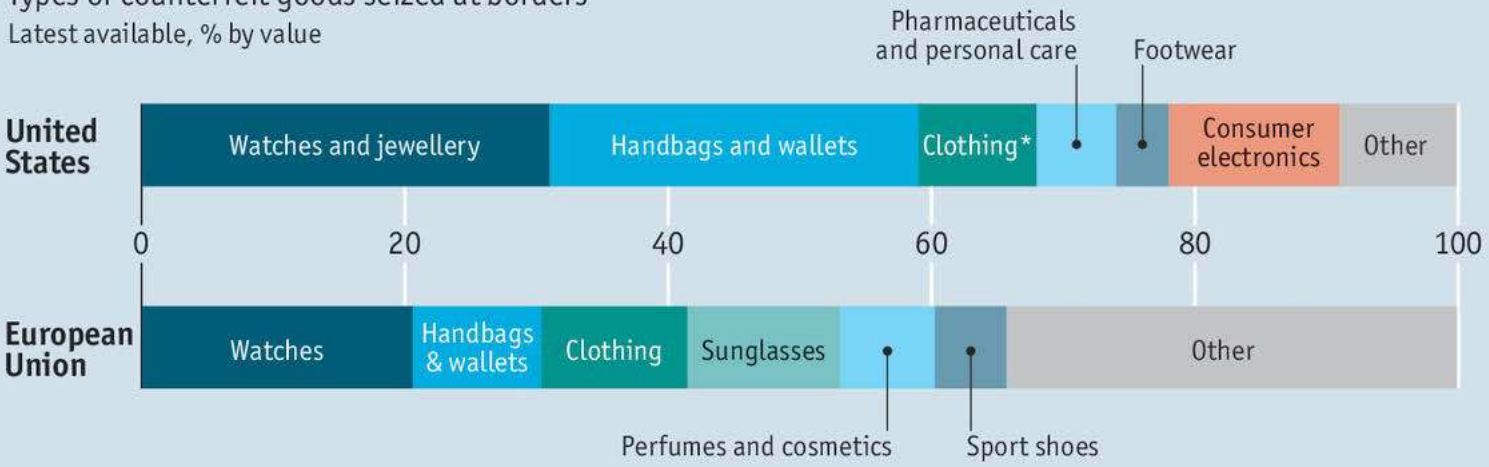
Nowadays, the consumer doesn't have to leave his home in order to buy what his heart desires: the world is at his fingertips as soon as he turns on his computer. But the increase in e-commerce is accompanied by the risk of exposure to online fraud. All sorts of constructions have been developed to trick the consumer into thinking he has come across a bargain. These bargains can be offers of illegal products, proposed in a way intended to mislead the consumer into buying the product, with a complete disregard of the legislation on health, safety, certification or intellectual property rights.

In this report, the consumer is informed about the risks of buying counterfeit products online, whether intentionally or not, and will focus on counterfeit products. In non-legal terms, counterfeiting means making goods that look like the original without the permission of the person who invented the goods or retains the intellectual property right on the product, usually for dishonest, economic or illegal purposes.

Fake!

Types of counterfeit goods seized at borders

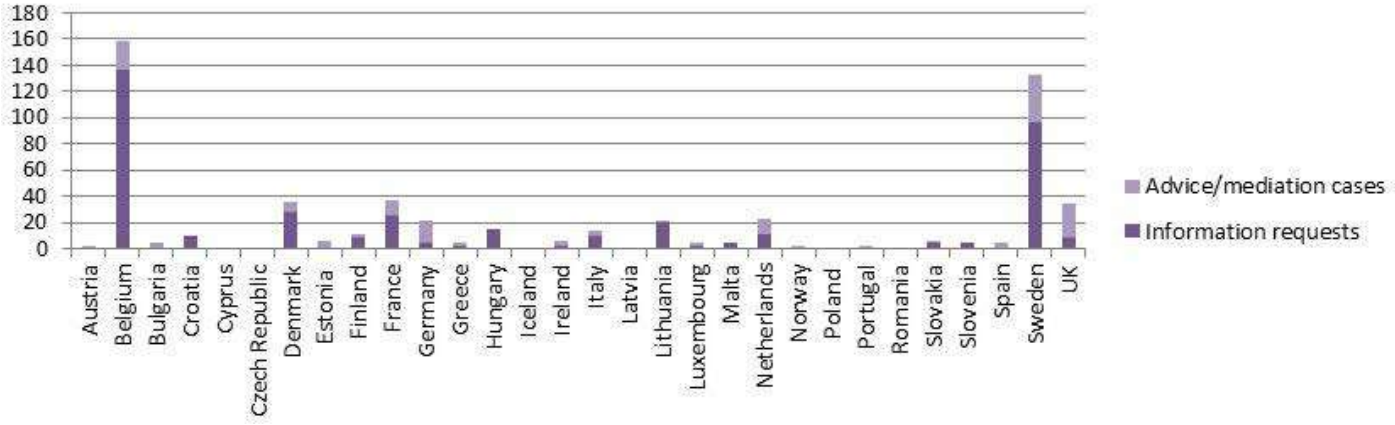
Latest available, % by value



Sources: US Department of Homeland Security; European Commission

*Includes accessories

Between March and August 2016, 562 cases regarding counterfeits were reported to the network of European Consumer Centres[1]. Most of the goods bought in these cases were clothes, shoes or electronic devices. 393 cases were reports from consumers outside the jurisdiction of the ECC-Net, because the trader was located in a non-EU country. ECC-Net still tried to guide these consumers as far as possible, however. ECC-Net intervened in the other 169 cases, as the trader was located within the European Union.

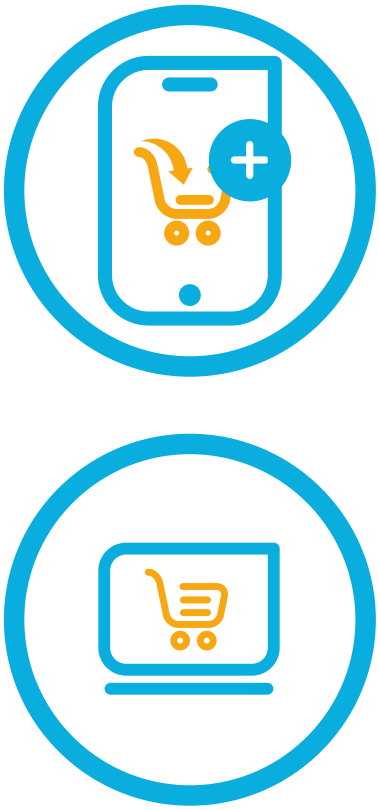


Cases registered by the ECCs represent only the tip of the iceberg.

- Some ECCs register cases regarding counterfeits, while others don't, or don't register them as such. The ECC-Net uses the COICOP classification system and, in the counterfeit cases that the ECCs receive, the case can be recorded as an online purchase that was not in conformity with the order.
- ECCs are specialised in cross-border consumer complaints, and in giving advice to consumers. Only in this sense can an ECC be contacted by consumers who have come across a counterfeit while shopping online. Customs services, enforcement authorities, police, and traders have specific departments specialized in counterfeiting.
- Many of the traders who sell counterfeits online are based outside the EU, and are therefore outside the scope of the ECCs. The assistance of ECC-Net is therefore limited to merely providing information or advice to the consumer, and no detailed statistical information on the nature of the complaint is recorded from these cases.

1 The ECC-Net statistics were obtained through a questionnaire sent to all 30 European Consumer Centres. For the purpose of this report, each centre registered the cases manually during that period.

E-commerce is one of the most important areas that ECCs handle, however. Two-thirds of the complaints handled by the ECCs in 2014 involved e-commerce transactions[2], and the trend seems to be continuing. As consumers increasingly shop online in a cross-border context, this also means an increase in problems with their online purchases. A consumer may buy a camera, but not receive it. Or the movie he bought online doesn't play on his device, even though this model was mentioned in the offer. Or he ordered red shoes, but they actually seem to be more pink than red. In such cases, the consumer can make use of either his legal guarantee right, or right to withdraw. In these cases, ECCs can often come to an amicable solution with the trader. But when cases of fraud or counterfeits arise, an amicable solution with the trader is often a 'mission impossible'. In these cases, our aim is to inform consumers before they buy, and to give them tools to help them identify fraudulent sellers. And also to work together with enforcement authorities by reporting these fraudulent traders.



2 p. 8 – The European Consumer Centres Network – 10 years of serving Europe's Consumers – Anniversary Report 2005-2015 www.eccbelgium.be/brochures/detail/ecc-net-10-years-anniversary-report



In this report, we will be focusing on the impact of counterfeiting on individual consumers who shop online, and who may thereby be confronted with counterfeit goods. The main aim of this report is to raise awareness among consumers about the possible effects of buying counterfeit products:

- What are the risks for the consumer?
- How can he recognise counterfeit products online, and avoid buying these products?
- What consumer rights does he have? And what can he do if he accidentally buys counterfeits?
- Examples of the experiences of other EU consumers
- Examples of sensitization initiatives.

02

Scope

Counterfeiting is an area with a high impact on business, governments and individuals, and touches upon intellectual property law, criminal law, administrative law and civil law. Reports and statistics are drawn up by very different stakeholders, and research is also carried out. Businesses keep track of counterfeiting because it hurts their economic interests, and it is an important topic for European and national authorities for administrative, economic and criminal reasons.

European Union Intellectual Property Office and the European Observatory on Infringements of Intellectual Property Rights, EUIPO, have published various interesting publications on counterfeiting in Europe. The network has representatives from both the public and private sector throughout Europe[3].

"A recent study that was commissioned by the International Chamber of Commerce, which was carried out in 2010, indicated that EUR 10 billion and more than 185 000 jobs were lost in the EU due to piracy alone. Other studies have observed that profits from counterfeit goods production and trafficking may exceed those of illicit drug trafficking and production. According to the International Institute of Research against Counterfeit Medicines (IRACM), USD 1 000 invested will generate a return of USD 20 000 in the trafficking of heroin or a return of USD 43 000 for counterfeit cigarettes. With the same investment in counterfeit pharmaceuticals, crime groups can expect a return of USD 500 000. Interpol evaluates the annual turnover from pharmaceutical crime as USD 75 billion. US authorities dismantled one illicit online pharmaceutical network that had earned USD 55 million in only two years."[4]

Europol has a specific, coordinated coalition unit for tackling intellectual property crime, which sends out regular press releases on the topic of counterfeiting, and publishes figures[5].

3 www.euipo.europa.eu/ohimportal/en/home
4 P 11 of the 2015 Situation Report on Counterfeiting in the European Union. www.euipo.europa.eu/ohimportal/documents/11370/80606/2015+Situation+Report+on+Counterfeiting+in+the+EU
5 www.europol.europa.eu/about-europol/intellectual-property-crime-coordinated-coalition-ipc3

It goes without saying that this topic plays an important role at an international level for police organisations worldwide, and is therefore also on the Interpol's list of criminal areas[6]. As a forum in which governments can work together to share experiences and seek solutions to common problems, the OECD has published several reports on counterfeiting[7]. The European Commission created the taxation and customs union. One of its objectives is to fight counterfeiting in the European Union, together with the various customs authorities[8]. Another network involved in this topic is the Consumer Protection Cooperation (CPC) Network. This network was also put into place by the European Commission, and is made up of authorities who can act on infringements of consumer legislation. They carried out a major sweep action in 2014, checking websites that are active on EU territory[9]. The International Chamber of Commerce (ICC) created BASCAP (Business Action to Stop Counterfeiting and Piracy) in order to mobilise business to fight product counterfeiting and copyright piracy at an international level[10].

6 www.interpol.int/Crime-areas/Trafficking-in-illicit-goods-and-counterfeiting/Trafficking-in-illicit-goods-and-counterfeiting
7 www.oecd.org/industry/global-trade-in-fake-goods-worth-nearly-half-a-trillion-dollars-a-year.htm
8 www.ec.europa.eu/taxation_customs/home_en
9 www.ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/consumer_protection_cooperation_network/index_en.htm#maincontentSec3
10 www.iccwbo.org/advocacy-codes-and-rules/bascap/welcome-to-bascap/





03

Methodology

Two analytical methods were used in this report: quantitative analysis, which consisted of a survey carried out by all the ECCs, and qualitative analysis, which consisted of a review of existing reports from the European Commission, Interpol, Bascap, etc. about counterfeiting in all its dimensions.

The ECC-Net survey was sent to all the European Consumer Centres on May 23rd, 2016. 30 ECCs responded to the questionnaire, providing relevant information about counterfeiting and its consequences in their country. Furthermore, ECCs kept track of their counterfeit cases, in order to add real examples and assess the number of cases involving counterfeits.

For the qualitative analysis, the 2015 report on "*EU customs enforcement of IPR*"[11], the 2007 report of the OECD "*The economic impact of counterfeiting and piracy*"[12], the "*2015 Situation Report on Counterfeiting in the European Union*" by the European Observatory on Infringements of Intellectual Property Rights[13] and the BASCAP publication "*Roles and responsibilities of intermediaries: fighting counterfeiting and piracy in the supply chain, March 2015*"[14] were mainly used as a starting point.

In the "*Sensitizing the consumer: initiatives and actions against counterfeiting*" section, several sectors that are making an effort to stand up to counterfeiting were selected. The intention here was not to promote the selected brands, or to imply that other brands are not putting enough effort into acting against counterfeiting. They were selected because they have launched specific campaigns, or were mentioned in the media or in one of the reports used for the qualitative analysis.

11 Report on EU customs enforcement of IPR, 2015, (IPR = Intellectual Property Rights) www.ec.europa.eu/taxation_customs/sites/taxation/files/2016_ipr_statistics.pdf
12 OECD, The economic impact of counterfeiting and piracy, 2007. www.oecd.org/sti/38707619.pdf
13 European Observatory on Infringements of Intellectual Property Rights, 2015 Situation Report on Counterfeiting in the European Union, 2015. www.euipo.europa.eu/ohimportal/en/web/observatory/observatory-publications
14 BASCAP, 'Roles and responsibilities of intermediaries: fighting counterfeiting and piracy in the supply chain', March 2015. www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/International-engagement-and-Advocacy/Roles-and-Responsibilities-of-Intermediaries/

04

What is COUNTERFEITING?

As a lot of different definitions can be found in a huge number of international, European and national legislations, ECC Net opted for the definition of EU Regulation (EC) No. 608/2013 of the European Parliament and the Council of June 12, 2013, concerning customs enforcement of intellectual property rights and the repeal of Council Regulation (EC) No. 1383/2003.

'Counterfeit goods' means:

- goods that are the subject of an act infringing a trademark in the Member State where they are found, and that bear, without authorisation, a sign that is identical to the trademark validly registered in respect of the same type of goods, or which cannot be distinguished from such a trademark in its essential aspects;

- goods that are the subject of an act infringing a geographical indication in the Member State where they are found and that bear, or are described by, a name or term that is protected in respect to that geographical indication;

- any packaging, label, sticker, brochure, operating instructions, warranty document or other similar item, even if presented separately, that is the subject of an act infringing a trademark or a geographical indication, which includes a sign, name or term that is identical to a validly registered trademark or protected geographical indication, or that cannot be distinguished in its essential aspects from such a trademark or geographical indication, and that can be used for the same type of goods as that for which the trademark or geographical indication has been registered;

'Pirated goods' means:

goods that are the subject of an act infringing a copyright or related right, or a design in the Member State in which the goods are found, and which are, or contain, copies made without the consent of the holder of a copyright or related right or design, or of a person authorised by that holder in the country of production;

The difference between "*counterfeit*" and "*pirated*" goods can be found in the intellectual property right that protects the goods. For this report, we take these two categories together under the broad definition of "*counterfeit*".



05

How much risk is really present when BUYING COUNTERFEITS?

Most people have seen the enticing prices of counterfeited products in online advertisements at least once or twice. The bag from a well-known brand for less than half of the price, a pair of designer shoes with a 60% reduction, or a perfume that smells and looks exactly like the signature scent of a famous perfumery, but only costs €15, and so on. It all sounds very alluring, but is it also safe and legal? The following paragraph will show that it is not, and that counterfeits are accompanied by a lot of risks.

Different organisations at international, European and national level provide information about the risks of counterfeiting. Some of the important overviews are provided by EUIPO European Union Intellectual Property Office, the OECD (Organization for Economic Co-operation and Development), Interpol, Europol and Business Action to Stop Counterfeiting and Piracy (BASCAP). The ECC-Net itself does not handle these risks, but might refer the consumer to the appropriate service.





5.1 The consequences of buying counterfeit products

Health

As counterfeiters do not always comply with health directives or other sanitary codes, the composition of their products can be questioned. Cosmetics and perfumes are high-risk products that are often sold online, and can cause health issues such as allergies and other physical reactions. For example: a counterfeit MAC kohl eyeliner pencil was found to contain 46 times the permitted level of copper. This can cause a serious allergic reaction.[15]

Medical counterfeits are a specific and important area of high risk. It is possible to buy medical drugs online nowadays, but counterfeiting has become a huge problem in this industry. According to the European Commission, the most counterfeited medicines are antibiotics, cancer-cure medicines and drugs for erectile dysfunction.[16] The danger to which consumers are exposed when buying counterfeit drugs is unforeseeable, because these products can include harmful chemicals. They may not even contain the active ingredient, or may be made up to an incorrect formula.[17] Antibiotics may be tainted with heavy metals, or some other dangerous ingredient, and counterfeit cancer drugs have been found that contain simply acetone and water.[18]

The Council of Europe has drafted a convention that constitutes a binding international instrument in the criminal law field on counterfeiting of medical products and similar crimes involving threats to public health (MEDICRIME Convention).[19]

As a measure to fight against falsified medicines, the European Commission has developed a logo for pharmacies/retailers operating legally online in EU Member states. The consumer can click on the logo to check if the online pharmacy website he is visiting is a legally operating pharmacy.[20]

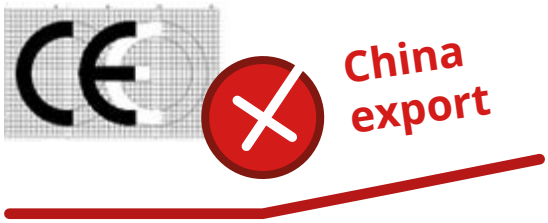


15 C. KEMP: The toxic trade in fake make-up: How counterfeit cosmetics containing dangerous levels of arsenic are being sold online to unsuspecting bargain hunters; Daily Mail, 30 September 2012, www.dailymail.co.uk/femail/article-2210884/The-toxic-trade-fake-make-How-counterfeit-cosmetics-containing-dangerous-levels-arsenic-sold-online-unsuspecting-bargain-hunters.html
16 2005 customs seizures of counterfeit goods – Frequently Asked Question; www.europa.eu/rapid/press-release_MEMO-06-421_fr.htm?locale=EN
17 The economic impact of counterfeiting and piracy, OECD, 2007, 20.
18 www.safemedicines.org/2012/08/7-most-frequently-counterfeited-medicines-are-scary462.html
19 www.coe.int/en/web/medicrime/home
20 www.ec.europa.eu/health/human-use/eu-logo_en

Safety

Many counterfeit products are not safe because counterfeiters do not always follow the European rules regarding safety. For example: inferior replacement parts in cars may have an impact on the safety of the vehicles. Steering components and airbag mechanisms are examples of items that have been counterfeited.[21] It is clear that these components can impact on the safety of the vehicle if they are of inferior quality. Another example is electronic goods, with products mostly being made with inferior insulation and wire, with the result that they can catch fire due to overheating.[22] If a product is safe, and complies with all the EU-standards, the product receives a CE mark (Conformité Européenne - European Conformity). Counterfeiters sometimes simply copy the CE-mark, however, or use a mark that is very similar to the CE-mark. There is a China Export mark that is very similar to the CE-mark from Europe, but this mark only indicates that the product was manufactured in China.[23] This makes it very difficult for a consumer to know whether he is buying a counterfeit or not.





Criminal organisations

According to the OECD, the trade in counterfeit goods is often set up by criminal organisations, which use the profit for their other criminal activities, such as tax evasion, money laundering and drug trafficking.[24] Counterfeit is easy money for criminal organisations. Since counterfeiters do not always follow the rules, it costs them a lot less to make the products, so they can sell them at a large profit. For example: 100,000 counterfeit pills were imported into the United Kingdom at the price of about 25 pence each, and were sold for 20 pounds each, thus being worth more than 1.6 million pounds in total.[25] People are also always on the look-out for a bargain and, with the many kinds of social media that are available, it becomes easier and easier to sell counterfeited goods. According to OECD, the global trade in counterfeited goods is worth almost half a trillion dollars a year.[26]



21 The economic impact of counterfeiting and piracy, OECD, 2007, 19.
22 Interpol, COUNTERFEIT PRODUCTS - Why buying fakes can be bad for your health (and more), 2.
23 Warning: don't get confused between the CE Mark and the China Export Mark; www.ybw.com/vhf-marine-radio-guide/warning-dont-get-confused-between-the-ce-mark-and-the-china-export-mark-4607
24 The economic impact of counterfeiting and piracy, OECD, 2007, 17.
25 CLARK E. (2008), 'Counterfeit Medicines: The Pills That Kill', in Telegraph, 5 April 2008. www.telegraph.co.uk/health/3354135/Counterfeit-medicines-the-pills-that-kill.html
26 www.oecd.org/industry/global-trade-in-fake-goods-worth-nearly-half-a-trillion-dollars-a-year.htm

Environment

Companies that manufacture counterfeit goods don't always take environmental rules into account, which can have a serious impact on the local environment. If, for example, a product is made from toxic substances, it is possible that this toxic substance escapes into the air when the products are burned.[27] Last but not least, the destruction of seized goods is an expensive process that creates a great deal of waste.[28]

Innovation

Companies spend a lot of time and money in making a product and protecting their idea. They protect their ideas through patents, copyrights, design rights and trademarks. Counterfeiters just steal the idea and copy the product, however. Genuine companies are therefore less likely to put effort in new concepts if they know that others will steal their ideas. For this reason, counterfeit can have major adverse effects on research and the growth of the market.[29]

Company reputation

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Unfair competition

The fact that counterfeiters do not comply with health codes, regulations on safety, environmental law, tax regulations, etc. makes it possible to sell the counterfeit goods at low prices. The genuine companies thereby lose their consumers to the counterfeiters in two cases. Firstly, they lose those consumers who purchase a counterfeit product believing it is genuine. Secondly, they lose consumers who know that the product is counterfeit, but want to buy the product for a much lower price. Because of these losses, the genuine companies are forced to raise their prices or reduce their investments and research.[32]

Ethics

Producers of counterfeit products do not necessarily obey the international rules on social conditions and human rights. For example, counterfeit products may be made by children.

Legal

Buying counterfeits not only has an impact on society as a whole, but there may also be consequences for the individual consumer who buys counterfeits. Various legislations are involved here, including national, European and international law. We will further examine this topic in the following section.



27 P. CHAUDRY AND A. ZIMMERMAN, The economics of counterfeit trade, 2009, 11.
28 The economic impact of counterfeiting and piracy, OECD, 2007, 17.
29 Ibid.
30 A. SNOWDER, The Harmful Effects of Counterfeit Goods, 2013, www.athens.edu/business-journal/spring-2013/asowder-couterfeit
31 K. BEUKEL, On the counterfeiting battlefield. Protecting firms' identity by controlling markets and reputation, 2013, www.druid8.sit.aau.dk/acc_papers/olmla10r1jcoc-p389e0uvl7tesy7.pdf
32 The economic impact of counterfeiting and piracy, OECD, 2007, 18.

5.2 Legal risks for consumers buying counterfeit products

Consumers buying counterfeits online are buying unauthorised imitations of branded goods that are protected by intellectual property rights. Within the EU, a raft of laws (Treaties, Directives, Regulations etc.) offer protection for various kinds of intellectual property rights. The form of protection depends on the type of intellectual property (patents, trademarks, copyrights, etc.). Counterfeit goods and pirated goods are mentioned separately in EU legislation[33]. As mentioned earlier, we are combining these two categories together for this report, under the broad definition of "counterfeit".

Customs authorities are currently the front line of defense for intellectual property rights at EU borders. Regulation EU No. 608/2013 of the European Parliament and the Council of June 12th, 2013 concerning customs enforcement of intellectual property rights and the epeal of Council Regulation (EC) No. 1383/ 2003, came into force on January 11th, 2014.

Regulation EU No. 608/2013 offers a unified base for customs rules within the EU; national customs authorities received more powers to confiscate and/or destroy counterfeit goods. But some sanctions against those who import counterfeit goods still depend on national law, and can therefore differ significantly from one member state to the other[34].

Counterfeited products bought online by consumers, even when bought without knowing that they were counterfeit products, can be detained or even destroyed by customs administrations when entering the EU.



33 Art 2 (5): "'counterfeit goods' means: ... infringing a trademark in the Member State ... or an act infringing a geographical indication ..." and (6): "'pirated goods' means goods that are the subject of an act infringing a copyright or related right or a design in the Member State ..."
34 European Parliament, press release "Customs infringements and sanctions: Parliament wants effective means to ensure compliance"; www.europarl.europa.eu/news/en/news-room/20161021IPR48255/customs-infringements-sanctions-ep-wants-effective-means-to-ensure-compliance

Risk of detention and/or destruction of the ordered product

Regulation EU No. 608/2013 allows national customs authorities to intervene when counterfeit and/or pirated goods enter or leave the customs territory of the union.

When national customs authorities identify goods that are suspected of infringing an intellectual property right, they can detain the goods on their own initiative. National customs authorities have to notify the consumer within one working day[35]. This practice can be beneficial for small companies who didn't realise that their rights were being infringed. Only a very small proportion of all interventions are interventions initiated by the customs authorities, however.

Customs can also act on the request of a copyright-holder (or their representatives), who will have to submit an application to the respective customs authority. The respective customs department shall notify the applicant of its decision to accept or reject the application. Once a decision has been accepted in favour of the applicant, he is hereafter referred to as a "*holder of the decision*".

Simple procedure for the destruction of goods

Goods suspected of infringing intellectual property rights may be destroyed under customs control, without any need to determine whether an intellectual property right had been infringed under the law of the Member State in which the goods were found. But only under the following conditions:

1. the holder of the decision (mostly the right-holder) has confirmed to the customs authorities in writing, and within 10 working days of the notification of the suspension of the release or detention of the goods, or within three working days in the case of perishable goods, that, in his conviction, an intellectual property right has been infringed AND has given his agreement to the destruction of the goods.

2. the declarant or the holder of the goods (mostly the consumer):

- has confirmed his agreement to the destruction of the goods to the customs authorities in writing, within 10 working days from the notification of the suspension of the release or the detention of the goods, or three working days in the case of perishable goods.
- has not confirmed his agreement to the destruction of the goods, nor notified his opposition thereto to the customs authorities within those deadlines, the customs authorities may deem the declarant or the holder of the goods to have confirmed his agreement to the destruction of those goods.[36]

If the holder of the decision does not act as described above within the deadlines stated, the customs authorities can release the goods, unless the holder of the decision has informed the customs authorities of the initiation of proceedings to determine the infringement.
If the declarant or the holder of the goods did not confirm his agreement to the destruction in writing, and could not be deemed to accept the destruction, the customs authorities shall immediately notify the holder of the decision thereof, who can initiate proceedings within 10 working days, or 3 working days in case of perishable goods, to determine whether an intellectual property right has been infringed. If the holder of the decision does not initiate this procedure in time, the goods will be released.

35 Art. 17.3 REGULATION (EU) No. 608/2013 of 12 June 2013 concerning the customs enforcement of intellectual property rights and the repeal of Council Regulation (EC) No. 1383/2003.
36 Art. 23 REGULATION (EU) No. 608/2013 of 12 June 2013 concerning the customs enforcement of intellectual property rights and the repeal of Council Regulation (EC) No. 1383/2003.

Procedure for the destruction of goods in small consignments

In order to reduce administrative costs to a minimum, a specific procedure has been introduced for small consignments of counterfeit goods, which allows goods to be destroyed without the explicit agreement of the consumer in each case. A small consignment means a postal or express courier consignment that (a) contains three units or less; or (b) has a gross weight of less than two kilograms.[37] The procedure can only apply to goods for which all of the following conditions are fulfilled:

- the goods are suspected of being counterfeit or pirated goods;
- the goods are not perishable goods;
- the goods are covered by a decision to grant an application;
- in the application, the holder of the decision has requested the use of the procedure set out in article 26 of EU 608/2013;
- the goods are being transported in small consignments.[38]

This procedure is followed in every state of the European Union, except Norway, Italy and Poland.

Early release of goods

The consumer may request the customs authorities to release the goods before completion of the procedure. In this case, the consumer has to provide a guarantee that is of an amount sufficient to protect the interests of the right-holder.[39]

Exception for goods purchased for personal use?

This method for intercepting counterfeit or piracy goods is also applicable to goods bought by consumers online, even if these goods have been bought for personal use. In Recital (4), the "*Customs regulation 608/2013*" states that the "*regulation does not apply to goods carried by passengers in their personal luggage, provided that those goods are for their own personal use and there are no indications that commercial traffic is involved.*"

This recital does not deal with goods ordered online. The Court of Justice of the EU[40] was asked whether the same reasoning could apply for goods ordered by consumers "*provided that those goods are for their own personal use, and there are no indications that commercial traffic is involved*".

In this case, a Danish consumer Mister Blomqvist, ordered a Rolex on the website of a trader not based in the European Union. The customs notified Mister Blomqvist and Rolex about this watch. Rolex confirmed that it was counterfeit, and the customs asked whether Mr. Blomqvist would agree to the destruction. Mister Blomqvist refused.

The Danish court submitted a prejudicial question to the CJEU. In a short judgement, the CJEU explained that the exception of Recital (4) is not applicable for online purchases. The CJEU explained that even if the purchase was carried out on a website outside the EU, the right-holder enjoys protection under the customs regulations if the watch is brought into the customs territory of the European Union. The watch could be destroyed. The court follows its own jurisprudence on this point[41]. Attention! Whether there is a sanction on counterfeits in the personal luggage of a passenger or not depends on national law.

37 Art 2, (19) REGULATION (EU) No. 608/2013 of 12 June 2013 concerning customs enforcement of intellectual property rights and the repeal of Council Regulation (EC) No. 1383/2003.
38 Art. 26 REGULATION (EU) No. 608/2013 of 12 June 2013 concerning customs enforcement of intellectual property rights and the repeal of Council Regulation (EC) No. 1383/2003.
39 Art. 24 REGULATION (EU) No. 608/2013 of 12 June 2013 concerning customs enforcement of intellectual property rights and the repeal of Council Regulation (EC) No. 1383/2003.
40 Case C-98/13, Blomqvist v. Rolex SA , www.curia.europa.eu/juris/document/document.jsf?text=&docid=147506&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=236535
41 Joined Cases C-446/09 and C - 495/09; Philips v. Nokia of December 1st, 2011; www.curia.europa.eu/juris/document/document.jsf?text=&docid=115783&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=518454

Other national sanctions

Apart from this possible destruction of the goods – and depending on the national law that is applicable - a consumer can be fined by a national authority if the applicable national law stipulates this.
The above-mentioned Regulation 608/2013 indeed stipulates that: "*This Regulation shall not affect national or Union law on intellectual property or the laws of the Member States in relation to criminal procedures*"[42]. The legal consequences thereby also depend on national law.
In a survey taken by the ECCs of the EU and the ECCs of Norway and Iceland, 14 ECCs stated that it was punishable by criminal, administrative or customs law to knowingly import counterfeit goods into the country. The infringer has to pay a fine, and may even be sent to jail. In some countries, however, it is only punishable by criminal law if the consumer imports counterfeit goods with the purpose of commercial traffic. In general, this motive will rarely apply to a consumer, as most consumers only buy for their own personal use. The counterfeited goods may nevertheless be destroyed by the customs authorities as mentioned in the previous chapter.

Member states where consumers can be fined by a national authority in case they bought counterfeits:

Austria	If the consumer orders counterfeit goods via e-commerce, no fine is foreseen by the customs authorities. If a consumer imports counterfeit goods when travelling, the customs authority can impose fines according to Article 7 of the Austrian Anti-Counterfeiting Act if the importation involves smuggling (fines between € 3,625 to € 15,000.-).
Belgium	Article XV 103 of the Code of Economic Rights stipulates that anyone who infringes certain rights of a holder of certain intellectual property rights in the commercial traffic with malevolent or misleading intention will be punished by a sanction of level 6 (being € 500 euro up to € 100,000 euro and/or imprisonment from 1 year up to 5 years).
Croatia	The consumer may be fined € 300 up to € 1,500 by the Customs Office or by the right-holder.
Cyprus	Monetary fine may be imposed - 10 % of the price of the goods plus the destruction costs.
Czech Republic	Punishments specified in criminal code, depending on the circumstances in each case.

42 Art. 2 §6 regulation 603/2013.

France	The Customs Code provides for a fine of between one and two times the actual value of each product. If the offences are committed by an organised group, the fine may be increased up to ten times the value of the object of fraud; A maximum imprisonment of 3 years. If the offences are committed by an organised group, the maximum term of imprisonment is increased to ten years. The Criminal Code provides: In the same circumstances (purchase of goods of a counterfeit brand abroad), the consumer risks a similar penalty, i.e. 3 years' imprisonment and a € 300,000 fine. This offence may, if necessary, result in the holder being taken into custody and being brought before a court. If convicted, this will become part of his criminal record. The customs tax penalties are cumulative with criminal penalties under common law and may be imposed on the infringer. Also: Confiscation of smuggled goods, means of transport and objects used to conceal the fraud.
Greece	Penal sanctions can be imposed on the demand of the right-holder. Consumers who buy counterfeit are not punishable by a procedure initiated by the National Authorities.
Lithuania	The customs can charge consumer for the destruction costs of items.
Ireland	Any person who imports counterfeit goods into the country is committing an offence. The punishment of the offence can vary: On summary conviction, a fine of € 5,000 or a term of imprisonment not exceeding 12 months, or both. On conviction of indictment, a fine of € 126,790 or, in the case of goods with a value exceeding € 250,000, a fine of three times the value of the goods (including duty and tax), or a term of imprisonment up to 5 years, or both.
Italy	To Art.1/7 Lgs. Decree 35/2005. This is a regulatory offence, and the consumer can appeal against the fine. The consumer will be fined in every case, but he/she can have the fine canceled if he/she proves his/her good faith.
Latvia	Individual persons can be administratively fined with a penalty from € 70 up to € 350, and legal entities from € 700 up to € 7,100.
Malta	Criminal action can be registered by the respective legal right-holder or by the police under the terms of the Criminal Code.

The Netherlands	The consumer is punishable under criminal law with a criminal sentence up to 4 years' imprisonment and a fine up to € 82,000 for the deliberate import counterfeit goods. However, this does not apply for those consumers who bought a few goods exclusively for personal use. Unfortunately, in the Criminal Code, article 337, it is not specified what a 'few goods' means.
Poland	The Intellectual Property Act says that anyone who marks counterfeit goods with a registered trademark, and has no right to use or trade such goods, shall be subject to a fine, imprisonment or imprisonment for up to 2 years, or - in the case of lesser importance – a fine. Any procedure can only be started by the holder of the title decision/ complaint.

Member states where the right-holder can claim the costs for destruction.

As the right-holder will receive a bill from the national customs authorities, he will try to claim these costs back from those who caused the costs.

The EU regulation 608/2013 stipulates indeed that "*the holder of the decision shall reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of the goods, … and when using corrective measures such as destruction of goods*"; Article 29.2 of Regulation 608/2013 leaves the possibility open for the right-holder to claim compensation for these costs from "*the infringer or other persons*", insofar as this is "*in accordance with the legislation applicable*".[43] Although the primary infringer is, of course, the counterfeiter, it is possible for a consumer to receive a financial demand from the right-holder for compensation of the latter's incurred costs. These costs can only be claimed from the consumer where the national law actually allows this.
Most of the time, these costs will be claimed by a company representing the right-holder. This could be a private company or a lawyer. If the consumer was not aware, and could not be aware of the fact that the seller would send a counterfeit, and he bought the products for his own personal use, some ECCs advise a consumer to discuss the claim with the claimant in writing. If the consumer was deceived by the seller, and the latter is therefore responsible for the offence, the right-holder can be referred to the seller.



42 Art. 29 §2 regulation 608/2013.

Austria	If the consumer does not approve the destruction of the counterfeit goods, the owner of the trademark can start a civil or criminal law procedure. The consumer can also receive a declaration of discontinuance from the lawyers of the owner of the trademark, and can also be asked to pay compensation.
Belgium	A right-holder could contact the consumer to claim compensation for its costs, but a consumer who ordered a product for his/her own use, but was deceived by a counterfeit from the seller, is advised to send a notice of dispute to the claimant.
Bulgaria	If the consumer does not approve the destruction of the counterfeit goods, a civil law procedure can consequently be started by the owner of the trademark, copyright, etc.
Croatia	The right-holder may initiate court proceedings at the Trade Court.
Cyprus	The company that owns the trademark may take legal proceedings against the consumer.
France	The customs tax penalties are cumulative with any criminal penalties that may be imposed on the infringer under common law.
Greece	The right-holder may initiate a procedure against the consumer in the civil and penal courts.
Hungary	If the consumer does not approve the destruction of the counterfeit goods, this could result in a civil law procedure started by the owner of the trademark, copyright, etc.
Italy	The trademark owner has the right to be informed about the origin and destination of the counterfeit goods in order to be able to act accordingly, for example by initiating a civil action against the final recipient, if deemed appropriate.

Luxembourg	If the consumer has ordered a product for his/her own use, the Luxembourg authorities will destroy the counterfeit good, but no proceedings will be initiated by local authorities. Private companies can claim compensation from the consumer.
Malta	Court proceedings can be registered in terms of Cap 414 Act VIII of 2000. Holders of intellectual property rights can enforce their rights in accordance with the measures and procedures under the terms of the Enforcement of Intellectual Property Rights Act, Chapter 488
The Netherlands	A right-holder could contact the consumer to claim compensation for its costs, but a consumer who ordered a product for his/her own use, but was deceived by a counterfeit from the seller, is advised to send a notice of dispute to the claimant.
Portugal	Any civil law consequence will result from the decision to be taken by the right-holder, to claim compensation for its costs incurred - yes or no.
Poland	Any civil law consequences will result from the decision taken by the right-holder. But, in general, there are no specific regulations regarding the actions taken by the right-holder against the consumer.
Slovenia	The holder of the right could claim compensation from the consumer for costs incurred by the customs authorities, but it needs to be proven (during the court proceedings) that the consumer was aware of the fact that he/she was buying a counterfeit product.
Sweden	The owner of the trademark can start a civil law procedure. The consumer can also receive a letter from the lawyer of the trademark owner, and can also be asked to pay compensation.

06

Tips to help the consumer to avoid buying COUNTERFEIT PRODUCTS[44]



44 A checklist for consumers and traders on e-commerce was established in 2014 in E-commerce report 2014: For traders: www.konsumenteuropa.se/globalassets/rapporter/ecc_e-commerce_report_2014.pdf - for consumers: www.konsumenteuropa.se/globalassets/rapporter/ecc-e-commerce-report-2014---consumers.pdf

6.1 Identify and localize the seller

Before placing an order on an Internet website, even through social media advertisements, the full identification details of the company should be checked: the name of the company, the geographical address, the contact details (email address or effective contact form, phone and fax number(s) if available) and, in some cases, the company identification number. In conformity with the EU legislation regarding consumer rights[45], an online trader based within the EU or focusing its activities on the EU market (e.g.: by using one or more language of the EU, or by quoting phone numbers from one or several specific member states) must provide all this information.

This verification is important in order to know whether the company can be easily reached in case of problem, and whether it is located within the EU/EEA or not. This last point is important with regard to the application of the EU legislation (such as the withdrawal right within 14 days, a legal guarantee of at least 2 year, etc.). Traders not located within the EU/EEA will not be subjected to EU consumer protection rules if they do not specifically target the EU consumers (e.g.: by offering a website available in one of the languages of the EU, an after-sales service located within the EU, etc.). Moreover, if a non-EU/EEA trader subject to the EU legislation does not respect this legislation, it can often be difficult for consumers to enforce their rights due to practical reasons (financial and procedural hurdles).



How can you check the identity and localisation of an online trader? Consumers need to verify the information provided on the contact page, in the legal notice, or in the terms and conditions. Company registers are a very useful tool to check the identity of the trader. If these pages do not include any concrete details about the company, the website should be automatically considered to be untrustworthy.

The URL extension of the website is not relevant in the assessment of the country of establishment of the seller. A ".be", ".fr" or ".de" does not mean that the company is actually located in Belgium, France or Germany. You could check the trader using the website www.whois.domaintools.com.

45 Art. 6 §1 (b), (c), and (d), Directive 2011/83/EU of the European Parliament and the Council of October 25th, 2011.

6.2 Search experiences of other consumers

Entering the name of a web shop or a company into internet search tools can lead you to internet forums or other websites where consumers may have left a review of their experience, good or bad. You must remain careful and critical when reading such comments, however, especially the positive ones, as they could also be fake.

Many fraudulent sellers do not hesitate to pay firms to leave positive reviews, to offer reductions on further orders to customers who leave positive comments, or to use fake profiles to give themselves better reports. This is, of course, illegal. ECC-Net has dedicated a chapter to this topic in its report on trust marks.[46]

Below, you will find some tips for checking whether the review is trustworthy or not:

- Be attentive to the tone of the language: Excessively positive or negative? Be careful! Fake reviewers have a tendency to exaggerate in either direction.
- Watch the technicality of the language used: if the review is overly technical and feels more like marketing or as if it has been copied from a manual, there is probably a fake reviewer behind it. Ordinarily consumers rarely quote a brand name or a full address in their review.
- Look up the writer: is the same person reviewing the same product or service on several websites, and does this person only write about the same, single brand? You should also check the ratio between the number of reviews and the period of time over which they are written. If there are an unusually high number of reviews in a short period of time, the reviewer cannot be considered to be trustworthy.
- Pay attention to the details: be careful if the reviewer is rather vague about the characteristics of the product or the service and what makes it fantastic or terrible. A regular consumer specifies the features he finds rather good or bad.
- Assess the fluency of the language used: be careful if you obtain the impression that the language of the review is rather choppy, and if there is no proper use of basic grammatical structures: the review might be translated, and can therefore be less trustworthy.



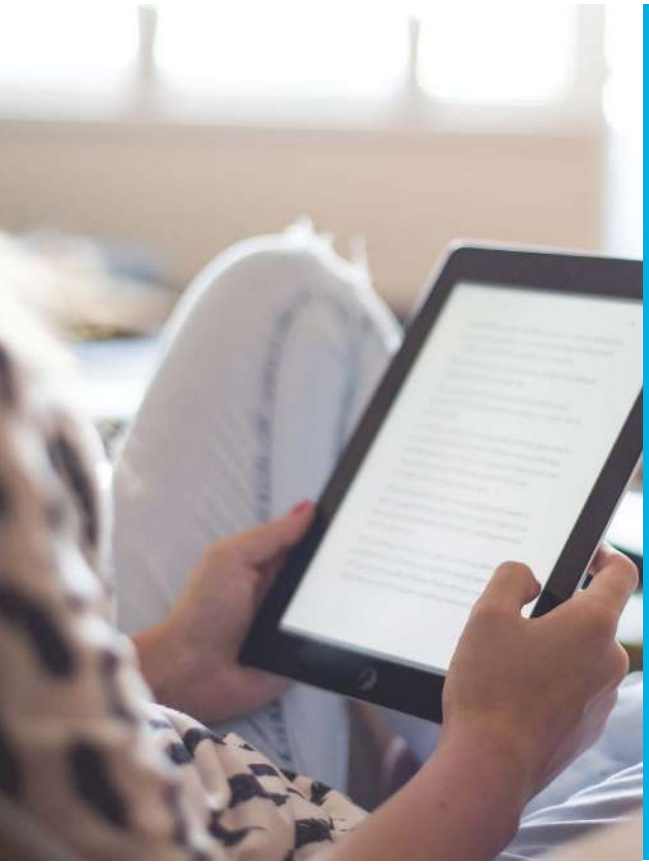
46 Trust marks report 2013 "Can I trust the trust mark?" http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/reports/index_en.htm#trustmarks

6.3 Check whether the website benefits from a trust mark

A trust mark can be defined as "*any third-party mark, logo, picture, or symbol that is presented in an effort to dispel consumers' concerns about internet security and privacy and to thereby increase company-specific trust levels. It is a label or visual representation showing participation in a trust mark scheme. A subscriber to a trust mark scheme can display a trust mark if he meets the trust mark requirements.*"[47] A plurality of trust marks is available nowadays. Most are national schemes that are relatively unknown to consumers from other EU countries, but some schemes operate across borders. And even trust marks can be falsified. In order to ensure it is not a fake trust mark, it is therefore advisable to check this on the website of the trust mark.



Under EU consumer and marketing law, it is prohibited, in all circumstances, to display a trust mark, quality mark or equivalent "*without having obtained the necessary authorisation*". It is also prohibited to claim that "*a trader (including his/their commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not been or making such a claim without complying with the terms of the approval, endorsement or authorisation*"[48].



In 2013, the ECC-Net wrote a report about the trustworthy of trust marks[49]. The conclusion of the report is that a trust mark can only be effective when:

- the consumer is aware that the trust mark implies a quality standard;
- the trust mark indicates the compliance with the EU regulation regarding consumer rights (at least);
- the trust mark system allows a trader to be sanctioned if he no longer meets the required quality standards.

To conclude: a trust mark can be a helpful tool for guaranteeing a safe online purchase, but only if the trust mark is trustworthy, and if the quality standard is in line with EU legislation.

47 Study A Pan-European Trust mark for E-Commerce: Possibilities and Opportunities IP/A/IMCO/ST/2012-04, Page 18.
48 See the «black-listed» commercial practices No 3 and 4 in Annex I to Directive 2005/29/EC on unfair business-to-consumer commercial practices.
49 Trust marks report 2013 "Can I trust the trust mark?", www.ec.europa.eu/dgs/health_food-safety/information_sources/docs/trust_mark_report_2013_en.pdf

6.4 Analyse the layout of the site

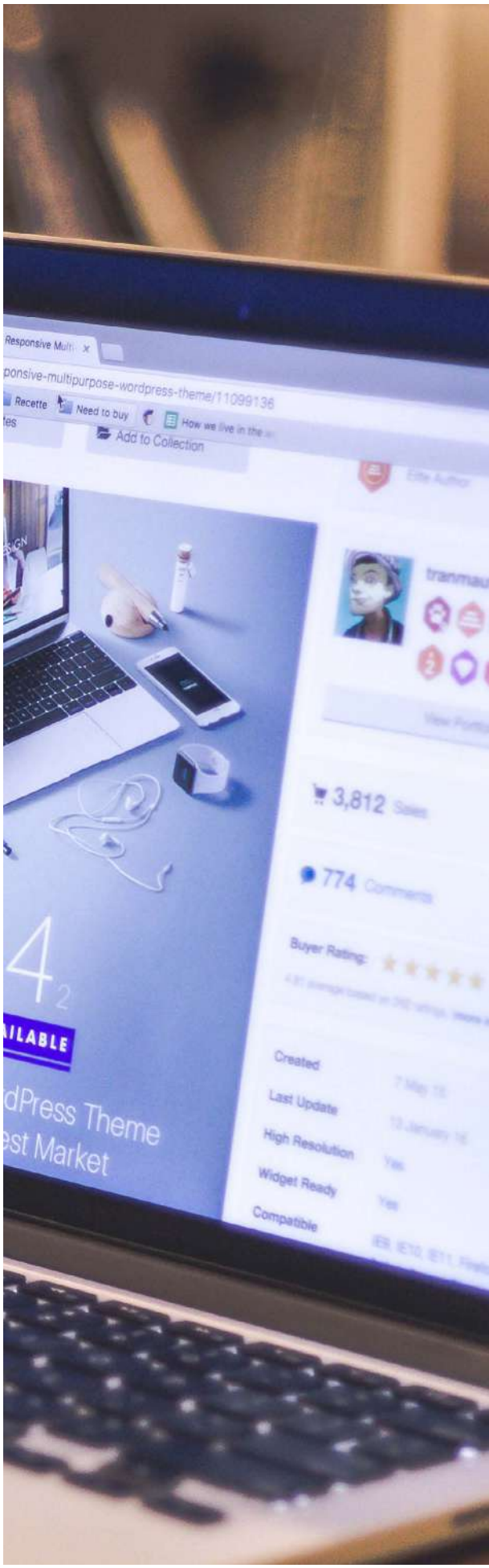
The general presentation of a website can give you an idea of the seriousness of the seller. In many cases, sites selling counterfeits do not look very professional: errors in spelling and in the grammatical construction of sentences, poor quality pictures of the products being sold or of the logos of the principal means of payment, or if the site looks like it was constructed a long time ago, etc. Moreover, the vocabulary used in the website's address can also be a useful in unmasking a litigious website. Counterfeiters often associate the name of the counterfeited brands with expressions like "*cheap*", "*outlet*", "*free*", or other words suggesting the low price of the sold goods.

Nevertheless, counterfeiters put more and more effort into making their scam look as realistic as possible. Some of them create websites in the language of the targeted consumers, and also use the URL extension of the country in which the consumer lives.

6.5 Check your consumer rights on the website

EU legislation on consumer rights obliges online traders to prominently provide clear and correct information on their website about consumer rights, such as the withdrawal right or the existence of a statutory guarantee of at least 2 years. Online sellers established within the EU should provide a link to the European platform for online alternative dispute resolution[50] on their website.

Terms and conditions must also be provided in the same language as the website. If not, the website may not comply with the EU legislation, which is a sign that the consumer may risk having no means of redress if something goes wrong with his order.

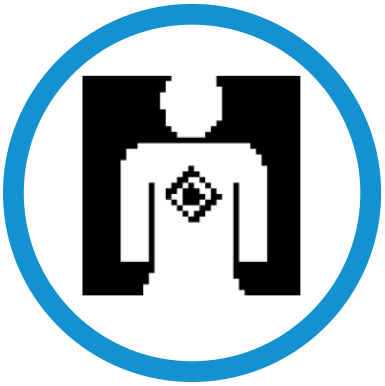


50 www.webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.chooseLanguage

6.6 Check the picture of the product

The picture of the product being sold that is displayed in the web shop is also useful for analysing whether the product is trustworthy.

Some counterfeiters will show real pictures of the counterfeit products. You may be able to unmask the fake by comparing these pictures with those shown on the official website of the brand. Check whether the product is the same: is the logo the same, and is it positioned at the same spot? Is the lining similar, is it stitched or glued? With genuine designer bags, you can assume that they are stitched.



6.7 Check the price of the product

The price is also a relevant indicator of counterfeiting. Counterfeit products are often sold at a much lower price than those quoted on the web shops of the official retailer. "*If the price is too good to be true, it usually is*" is a principle that you should keep in mind when buying on the internet.



If you find a product at a very attractive price, you need to compare it with the price displayed on the official website of the brand and other websites. You should take the total price into account when making the comparison, including, for example, any delivery and banking fees. If the online trader justifies the low price by informing you that he only sells copies, this does not mean that this practice is legal.

You should also be aware of the fact that import VAT (Value Added Tax) and custom duties may be imposed when you buy from outside the European Union.

6.8 Verify the authorised retailers and the black-listed sellers on the official website of the brand

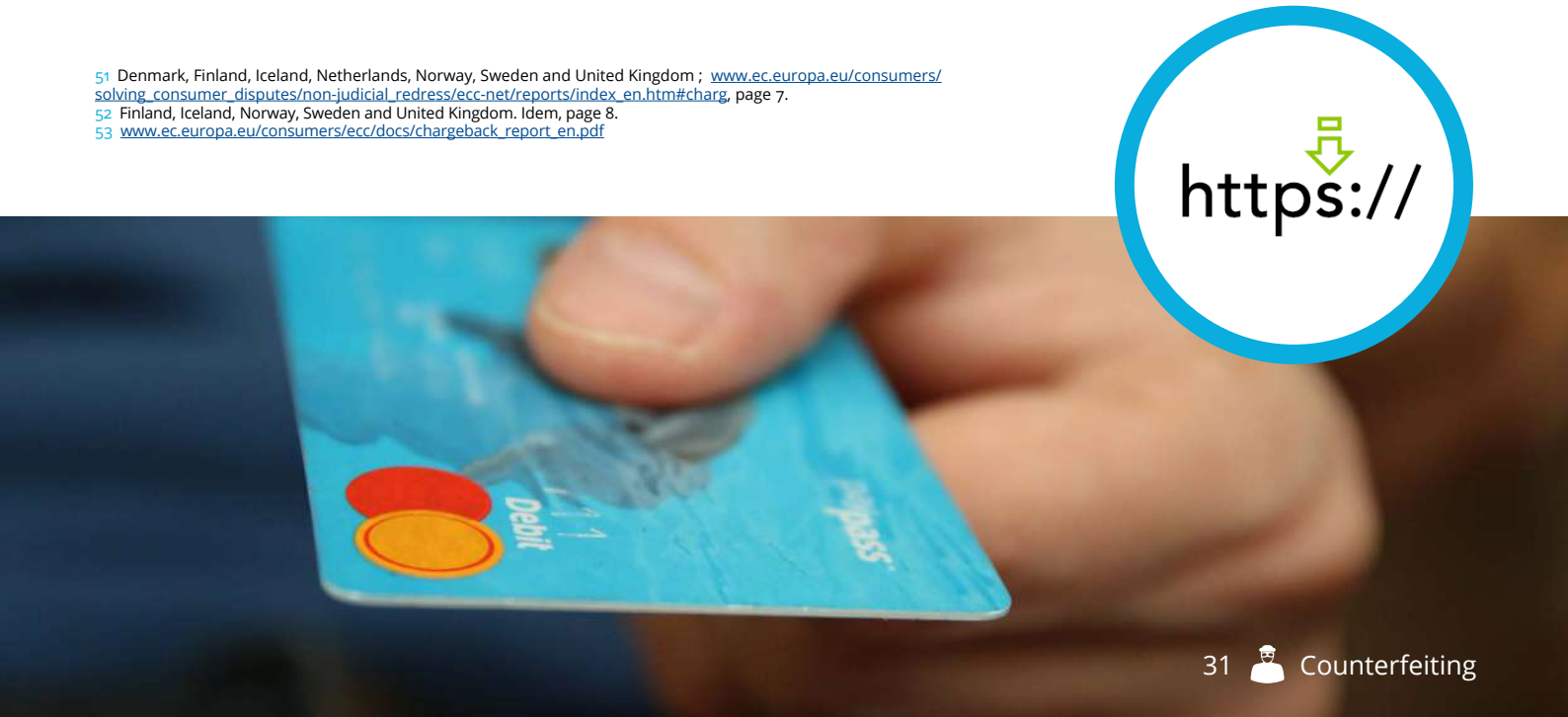
In order to fight the growing negative effects of counterfeits, many brands make use of official dealerships. A dealership is when a brand gives other companies an authorisation to sell its products. Ordering products from these retailers guarantees that you are buying original products, and many brands post a list of the authorized retailers on their website. These lists are not always easy to find, however, and sometimes only refers to physical retailers, and not those online. Other brands publish black lists of the websites of known counterfeiters, which are very useful. Such lists are not exhaustive, however, and are not always up-to-date. They therefore do not always enable consumers to buy blindly on websites that are not listed. Brands have a role to play by indicating to consumers how they can distinguish genuine products from fake ones, and by giving consumers the possibility of contacting the brand if they have questions.

6.9 Use secure means of payment

When you pay for a purchase on the internet, you need to follow 3 gold principles:

- Always check whether the payment page is secured. A logo of a padlock or a key should appear on the page, and the "*http*" in the address bar should be replaced by "*https*", where the supplementary "*s*" meaning "*secured*".
- Pay by credit card by preference. In some EU/EEA countries, credit card companies are legally obliged to refund consumers if they do not receive the ordered product from the trader[51] or if they do not receive a conforming product[52]. In other EU/EEA countries, credit cards companies employ procedures that allow consumers to contest a transaction if the goods are not delivered, or if the seller has acted in a fraudulent manner. This is called the chargeback procedure. The ECC-Net has drawn up a report[53] on this chargeback method.
- Avoid means of payment such as money transfers (Western Union, Worldremit, Worldplay, Money-corp etc.). These services are often used by scammers.

51 Denmark, Finland, Iceland, Netherlands, Norway, Sweden and United Kingdom ; www.ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/reports/index_en.htm#charg, page 7.
52 Finland, Iceland, Norway, Sweden and United Kingdom. Idem, page 8.
53 www.ec.europa.eu/consumers/ecc/docs/chargeback_report_en.pdf



6.10 Pay attention to refurbished products

Different meanings of a refurbished product exist because of the lack of a legal definition. A recent study from the European Commission explains that a refurbished smartphone is "a *used phone, which is collected, restored, updated and resold by a professional company*[54]". Generally, a "*refurbished product*" is used for refurbished smartphones, however this principle can be applied for every electronic device.

Because the original product was "*restored or updated*", something changed. This can be a repair or replacement of certain pieces by the manufacturer, a recognized seller or another professional company. Some manufacturers offer refurbished products on their website. However, when buying a refurbished product, always check the origin and identity of the professional seller. It is possible that parts used are in fact counterfeit.







54 Science for Environment Policy, DG Environment: "Refurbished mobile phones: consumer perceptions and how to increase uptake", www.ec.europa.eu/environment/integration/research/newsalert/pdf/refurbished_mobile_phones_consumer_perceptions_how_increase_uptake_449na3_en.pdf

07

Possible remedies initiated by THE CONSUMER



7.1 Good or bad faith

The principle of good and bad faith is known in most of European countries, and, in some countries, these principles are taken into account when buying counterfeits.[55] A consumer goes on the Internet to buy shoes, and finds a website that looks quite professional, with an extension from his country, that sells shoes at prices that are reduced, although not so excessively low to be suspect, and uses pictures showing the official brand. He may not realise that he is buying a counterfeit. This consumer merits more protection than a consumer who goes on the internet to willingly and knowingly buy counterfeit products at very low prices.

7.2 Consumer rights

The delivery of a counterfeit product to a consumer who has been misled by the seller can result in various negative consequences for the consumer at several levels:

1. non-receipt of the ordered product, as the product was destroyed by the customs authorities
2. non-receipt of the ordered product, as something else is delivered
3. loss of the money paid for the product
4. receipt of a financial demand from the right-holder

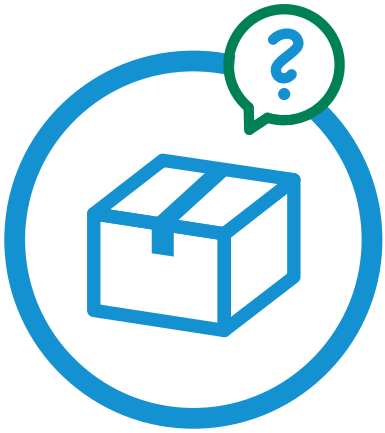
Fortunately, a consumer living in an EU member state and buying from a seller within a member state, or from a seller who is clearly targeting EU consumers (for example, by using their language, offering a call center in that country, etc.) is protected by several European laws. If the seller is situated outside the EU, it may be difficult for a consumer to obtain all his rights. If the seller is fraudulent, and thus male fide (acting in bad faith), no solution will be found, wherever he is located. The only possibility may be chargeback through the credit card company[56].



55 Sweden, Bulgaria, Spain, Belgium
56 Chargeback in the EU/EEA, A solution to get your money back when a trader does not respect your consumer rights. www.ec.europa.eu/consumers/ecc/docs/chargeback_report_en.pdf

Non-receipt of the ordered product, as the product was destroyed by the customs authorities

The Consumer Rights Directive[57] places full responsibility on the trader for the delivery of the product bought online by a consumer; Article 18.1. stipulates: "*Unless the parties have agreed otherwise on the time of delivery, the trader shall deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay, but not later than 30 days from the conclusion of the contract*".
If the customs authorities have confiscated and destroyed the products, the products have not been delivered to the consumer, who might not be aware of the confiscation/destruction, within the legally stipulated deadline of 30 days (or not within the mutually agreed period).
The consumer must take action once the delivery deadline has passed: "*Where the trader has failed to fulfil his obligation to deliver the goods at the time agreed upon with the consumer, or within the time limit set out in paragraph 1, the consumer shall call upon him to make the delivery within an additional period of time appropriate to the circumstances. If the trader fails to deliver the goods within that additional period of time, the consumer shall be entitled to terminate the contract*".



A consumer is therefore advised to contact the trader in writing (in order to have proof of his action), to inform the trader about its lack of timely delivery, and to request a delivery within a reasonable additional time period. Exception: If, prior to the conclusion of the contract, the consumer informed the trader that delivery was essential by or on a specified date, and the trader fails to deliver the goods at the time agreed, the consumer may terminate the contract immediately (without giving the trader an additional delivery period)[58].

57 Directive 2011/83/EU of the European Parliament and the Council of October 25th, 2011, on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and the Council and repealing Council Directive 85/577/ECC and Directive 97/7/EC of the European Parliament and the Council
58 Art. 18.2, 2nd al. Directive 2011/83/EU of 25 October 2011 on consumer rights.

If the trader does not respect the additional period of delivery (or the initial delivery period as explained above), the consumer can terminate the contract; the consumer is advised to contact the trader again in writing in order to express his wish to terminate the contract, and to exercise his right of reimbursement of all sums paid under the contract.

As stipulated in article 18.3 of the Consumer Rights Directive, the trader shall, upon termination of the contract, reimburse the consumer all sums paid under the contract, without undue delay. For further information about reimbursement, see below under point 3 "*Losing the money paid for the product*". The above-mentioned protection on delivery is provided by the Consumer Rights Directive, but –depending on national applicable law- the consumer may have recourse to other remedies provided by national law[59].

In Germany, for example, the consumer can bring an action against the seller if the consumer did not intend to buy counterfeit products. The seller will be held to the delivery of a new, original product. If the seller does not possess the original product, he will have to buy one. In this case, the consumer can cancel the purchase contract or has the right to ask for a price reduction if the consumer nevertheless wants to keep the product. The consumer is also entitled to compensation for damages, the damage being the fact that the consumer received a less valuable item.

59 Art. 18.4 Directive 2011/83/EU of 25 October 2011 on consumer rights.

Non-receipt of the ordered product, as something else is delivered

Goods need to be delivered to a consumer as described by the seller, and must be of satisfactory quality and fit for purpose. Art 2.1 and 2 of the Directive 1999/44/EC of the European Parliament and of the Council of May 25th, 1999, on certain aspects of the sale of consumer goods and associated guarantees (hereafter the "*Guarantees Directive*") describes this obligation as follows:

"*1.The seller must deliver goods to the consumer that are in conformity with the contract of sale.*
2. Consumer goods are presumed to be in conformity with the contract if they:

- *comply with the description given by the seller and possess the qualities of the goods that the seller has shown to the consumer as a sample or model;*
- *are fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted;*
- *are fit for the purposes for which goods of the same type are normally used;*
- *show the quality and performance that are normal in goods of the same type and that the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.*"



If a consumer ordered goods from a seller who presented them as a genuine, company product, but the seller deceives the consumer and sends a counterfeit product, the product sent by the seller is not in conformity with the contract of sale. In that case, "*the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement*" (Article 3 Guarantees Directive). All costs incurred for a repair or a replacement by the seller ("*particularly the cost of postage, labor and materials*"[60]) are the responsibility of the seller. This means that if a consumer is requested by the seller to send the product back to the seller, the consumer has the right to claim the cost of postage from the seller.

The consumer is advised to contact the seller in writing to request the repair or replacement of the product within a reasonable time; it is advisable to state an exact but reasonable deadline for delivery of a conform product; the consumer can also mention to the seller that if no repair or replacement can be sent before this final deadline, the seller will be asked for complete reimbursement or a price reduction.

Indeed, article 3.5 of the Guarantees Directive stipulates that "*The consumer may require an appropriate reduction of the price or have the contract rescinded:*

- *if the consumer is not entitled to neither repair nor replacement, or*
- *if the seller has not completed the remedy within a reasonable time, or*
- *if the seller has not completed the remedy without significant inconvenience to the consumer*"...

All the EU member states have transposed the Guarantees Directive to their national legislation, due to which there are differences between the various member states[61].



60 Art. 3.4 Directive 1999/44/EC of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.
61 ECC-Net report: Commercial warranties: are they worth the money? – 2015 www.europe-consommateurs.eu/en/consumer-topics/buying-goods-services/guarantees-warranties/legal-guarantees-in-europe/ecc-net-report/

Exception in case of awareness of the consumer

If a consumer willingly orders a counterfeit product online, he cannot apply these rights anymore, as the Guarantees Directive stipulates clearly "*There shall be deemed not to be a lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware, or could not reasonably be un-aware of the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer*".[62]

This rule is also found in German law: the consumer has no legal guarantees at all if he intended to buy counterfeit products, but it is up to the seller to prove the consumer's intention. If the consumer did not intend to buy counterfeit products, but could have known this (e.g. the price was too low for an original product), he has legal guarantees if the seller acted fraudulently. This applies, for instance, if the consumer asked whether the product was an original, and the seller answered "*yes*".

Right of withdrawal?

If a consumer ordered a counterfeit product online, he can - in principle* - still apply his right of withdrawal as described in the Consumer Rights Directive. Article 9 of this Directive, which stipulates that – except for certain services or delivery of products as mentioned in article 16 of the Consumer Rights Directive -

"*1. … the consumer shall have a period of 14 days to withdraw from a remote or off-premises contract, without giving any reason, and without incurring any costs other than those provided for in Article 13(2) and Article 14.*"

As this report focuses on the delivery of counterfeit products, the 14 days withdrawal period will expire after 14 days from the day on which the consumer, or a third party other than the carrier and indicated by the consumer, acquires physical possession of the goods, or:



62 Art. 2.3 Directive 2011/83/EU of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

"*(i) in the case of multiple goods ordered by the consumer in one order and delivered separately, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last goods;*
(ii) in the case of delivery of goods consisting of multiple lots or pieces, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last lot or piece;
(iii) in the case of contracts for regular delivery of goods during a defined period of time, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the first goods;[63]."

*As the consumer must be aware that when he sends a counterfeit product back to the seller, the product again risks being detained and destroyed by the customs authorities. And as article 14.1 of the Consumer Rights Directive stipulates that "*unless the trader has offered to collect the goods himself, the consumer shall send back the goods or hand them over to the trader, or to a person authorised by the trader to receive the goods, without undue delay and, in any event, not later than 14 days from the day on which he has communicated to the trader his decision to withdraw from the contract …*", the consumer risks being unable to send the counterfeited products back within this 14-day delay if the customs authorities intervene. And as the consumer is responsible for sending back the product[64], it is, as such, not advisable to send counterfeit products back to sellers. It would be better to convince the seller to pick up the product at his own risk.



Consumer must also be aware of the fact that when he applies his right of withdrawal, he must bear the direct costs for returning the goods, unless the trader has agreed to bear them, or the trader failed to inform the consumer that the consumer has to bear them[65].

63 Art. 9.2 (b) Directive 2011/83/EU of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.
64 Art. 11.4 Directive 2011/83/EU of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council: "the burden of proof of exercising the right of withdrawal in accordance with this Article shall be on the consumer"
65 Art. 14.1 Directive 2011/83/EU of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

Loss of the money paid for the product

If the seller (European or not) does not want to cooperate, the consumer will have difficulties in obtaining the reimbursement.
As mentioned above in this report (under the title "*Method of payment*"), consumers are advised to pay by credit card by preference, as – in some countries - credit card companies are legally obliged to refund consumers, and certain credit card companies offer commercial chargeback procedures within a limited period of time. If the consumer paid by credit card, he is thereby advised to contact the issuer of his credit card in writing as soon as possible to request a chargeback.

Receiving a financial claim from the right-holder

As mentioned earlier in this report (under the title "Legal risks for consumers buying counterfeit goods"), right-holders regularly claim back their incurred costs from consumers who have ordered a product that seems to be counterfeit; in Belgium and Austria, for example, it is very common for the legal representative of the right holder to contact the consumer when the latter receives the counterfeit (or when it is intercepted). The representative will send a letter with its claim and with a waiver that the consumer is invited to sign as accepted.
If the consumer is indeed a victim of deception by the seller, and could not have been aware of the delivery of a counterfeit product, the consumer can discuss the financial claim in writing by stating that he bought the goods in good faith, and that he could not have known he was buying counterfeit products. The consumer is advised to prove the seller's deception by making reference to the website on which he bought the product.

The right holder sometimes automatically assumes the bad faith of a consumer when the consumer has purchased goods from a website that – according to the right holder - has a reputation of selling counterfeit goods. The bad reputation of some sellers may be known to right holders or experts in counterfeits, but a consumer who occasionally buys a product online cannot be expected to automatically know the tips and tricks needed to recognize a mala fide seller.
If the consumer is faced with a financial claim, he can contact the right-holder.

What about the responsibility of a platform?

Not only the manufacturers or right holders need to cooperate in the fight against counterfeits, but every intermediary also has a certain responsibility towards the consumer. The most important intermediaries online are platform of all shapes and sizes: sites, portals, infrastructure providers and search, online advertisers and payment processors[66]. They play a significant role in e-commerce nowadays.[67]

These platforms are in an excellent position to enforce the reliable behavior of its traders through their terms of service. They usually also have their compliance procedures, and can remove traders that misuse the site/platform/portal for selling counterfeits.[68] The European Commission has already stressed that "*online platforms are well-placed to proactively reduce the amount of illegal content that passes through them*."[69] Many major platforms have already created a voluntary system to combat counterfeits on their services.[70]

But are these online platforms also liable when a consumer purchases counterfeit via their website/platform/portal? Can a consumer claim a reimbursement from the platform if, for example, he cannot reach the trader?

66 BASCAP, 'Roles and responsibilities of intermediaries: fighting counterfeiting and piracy in the supply chain', March 2015, 47.
67 Communication from the Commission to the European Parliament, Council, the European Economic and Social Committee and the Committee of Regions: A Digital Single Market Strategy for Europe {SWD (2015) 100 final}, 3.3.
68 BASCAP, 'Roles and responsibilities of intermediaries: fighting counterfeiting and piracy in the supply chain', March 2015, 48.
69 Commission Staff Working Document: Online Platforms, Accompanying the document Communication on Online Platforms and the Digital Single Market {COM(2016) 288}, page 7.
70 Commission Staff Working Document: Online Platforms, Accompanying the document Communication on Online Platforms and the Digital Single Market {COM(2016) 288}, page 21. And see f.e Amazon Anti-Counterfeiting Policy; eBay Money Back Guarantee and VERO...

Under the current European legislation[71], there is no obligation for a platform to proactively check every advertisement. As long as the role of the platform is restricted to being a mere conduit[72], or caching[73] or hosting[74] the information, the platform is not responsible for the content.[75]

The current legislation and case law of the CJEU makes it possible for the consumer to direct his actions at the platform in two cases:

In the first case, the platform is not just an intermediate, but an active partner. As we explained above, an online intermediate will only benefit from exemptions from the e-commerce directive in a "*passive role*". In the case in point, the platform played an active role in promoting the goods that were sold without the consent of the right holder.[76] Through its promotion of these goods, consumers had easy access to the products by typing certain search terms into the platform. By this judgement in 2011, the CJEU indicated that a platform can be in breach of its duty if counterfeits are sold by a seller using its service.[77]

Secondly, a platform has the duty to take any necessary measures when and if an issue arises. If the platform becomes aware of an infringement, however, it has the duty to remove the advertisements, and has the duty to take necessary measures if it becomes aware of the unlawful nature.[78]

If the intermediate fails to react, or to at least contact the trader in this context, this platform is not fulfilling its obligations. These "*Notice and Take-Down Procedures*"[79] of platforms are, in practice, mentioned and explained in a code of practice between the EU Commission and major stakeholders: the "*Memorandum of Understanding on the Sale of Counterfeit Goods over the Internet*".[80]

If you are a consumer who has bought counterfeits on a platform, do not hesitate to contact the platform. Under the current framework, however, the platform is normally not responsible for reimbursing consumers who have bought counterfeits.

ODR platform

All traders established within the European Union, engaging in online sales or service contracts, and online marketplaces established within the Union [81] should provide a link to the ODR platform on their website. This ODR platform[82] was set up by the European Commission[83], and provides consumers with an easy and inexpensive means of redress in their online consumer complaints. Through this platform, consumers and traders can bring their dispute before an independent and recognised out-of-court-settlement body.

71 E-commerce directive: Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32000L0031.
72 Art. 12 of the E- commerce directive.
73 Art. 13 of the E- commerce directive.
74 Art. 14 of the E- commerce directive.
75 Art. 15 of the E- commerce directive.
76 CJEU, C324/09, L' Oréal v. eBay, of 12 July 2011, conclusion 6 : "The operator plays such a role when it provides assistance which entails, in particular, optimising the presentation of the offers for sale in question or promoting them.
Where the operator of the online marketplace has not played an active role within the meaning of the preceding paragraph and the service provided falls, as a consequence, within the scope of Article 14(1) of Directive 2000/31, the operator none the less cannot, in a case which may result in an order to pay damages, rely on the exemption from liability provided for in that provision if it was aware of facts or circumstances on the basis of which a diligent economic operator should have realised that the offers for sale in question were unlawful and, in the event of it being so aware, failed to act expeditiously in accordance with Article 14(1)(b) of Directive 2000/31."
77 CJEU, C324/09, L' Oréal v. eBay, of 12 July 2011 : www.curia.europa.eu/juris/document/document.jsf?text=&docid=107261&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1002531
78 Joined Cases C-236/08 to C-238/08, Google France SARL of 23 March 2010, §120: "...unless, having obtained knowledge of the unlawful nature of those data or of that advertiser's activities, it failed to act expeditiously to remove or to disable access to the data concerned." www.curia.europa.eu/juris/document/document.jsf?text=&docid=83961&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1001255
79 Memorandum of Understanding on the Sale of Counterfeit Goods over the Internet, www.ec.europa.eu/internal_market/iprenforcement/docs/memorandum_04052011_en.pdf definitions 5: "any procedure, including the associated processes, by an Internet Platform, that enables a Rights Owner to notify efficiently to an Internet Platform any relevant Offer, including closed Offers, of an alleged Counterfeit Good made publicly available using the relevant services of that Internet Platform, in order to allow the Internet Platform to take appropriate action, including making the offer unavailable to the general public through the Internet platform."
80 Memorandum of Understanding on the Sale of Counterfeit Goods over the Internet, www.ec.europa.eu/internal_market/iprenforcement/docs/memorandum_04052011_en.pdf
81 ODR regulation 524/2013 on consumer ODR, art 14.
82 www.webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.chooseLanguage
83 ODR regulation 524/2013 on consumer ODR www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF

08

Contact your local ECC

The goal of this report is to make consumers aware of the dangers of buying counterfeits, and to give them the instruments to avoid such things occurring. If the consumer takes the right measures, however, but still unwillingly buys counterfeit products, he can turn to his local European Consumer Centre. The ECC can give the consumer free legal advice.

If a consumer buys counterfeit goods from a non-European country, or from a seller whose identity is unknown, the ECC can hardly offer any assistance or help, as these sellers cannot be contacted by the ECC, nor can they be referred to the European Small Claim Procedure, as this procedure is not valid outside the EU. In these cases, the ECC can only provide information. The ECC can, for example, give the consumer tips,[84] or can tell the consumer that there is a possibility to obtain a chargeback if the consumer paid with a credit card.

If a consumer buys counterfeit goods from a country located in the European Union, Norway and Iceland, the ECC can mediate between them. If a consumer buys counterfeit goods from a non-European country but a European right holder intervenes, the ECC can mediate between the consumer and the European right holder.



84 See 6. Tips on how to prevent the consumer from buying counterfeits

A SLOVENIAN CONSUMER...

ordered a T-shirt from a motorcycle brand on a website with a domain name that ended with '.it', and therefore thought the trader was registered in Italy. After some days, he received a letter from the Slovenian Customs authorities that he had to pay custom fees. He tried to contact the trader, but the website no longer existed. The Slovenian ECC advised the consumer to ask for a chargeback, as he had paid for the T-shirt with credit card.

A UK CONSUMER...

bought a perfume from a Bulgarian-based website, and paid £40. The consumer received the perfume 2 weeks later, but she then complained, as it was clearly a fake product. She returned it to the trader and asked whether they could replace it with the genuine product. They promised that they would replace it, but sent another fake perfume. She complained again, but to no avail. With the help of ECC UK and ECC BG, the consumer received a full refund.



AN ESTONIAN CONSUMER...

An Estonian consumer ordered sneakers of brand R from a UK website. When opening the package, she noticed that the sneakers were marked as being brand A. The consumer contacted the trader and asked for a refund, as the items were not in conformity with the order. The trader tried to convince the consumer that these sneakers from brand A were even better, and offered a discount for future purchase if the consumer was willing to keep the sneakers. The parcel arrived from China, and the consumer is sure that it was not an original product from brand A.

In August, a Finish consumer´s partner bought an iPhone from a professional seller through a platform. The iPhone was supposed to be new and factory-sealed. The iPhone´s camera broke down, so the consumer took it to a licensed shop, where it was found out that the phone was not new and that the cover was also probably counterfeit. The color also didn´t match. The seller claims that the phone is a custom painted model, however. The consumer wants her money back, but the trader is based in Malaysia.



A UK CONSUMER...

purchased a headlamp of brand L through the online platform of a professional seller in May 2015. He used it for a few hours, and then noticed that one of the lenses was broken. He contacted the manufacturer, who informed him that the headlamp was counterfeit and that he therefore could not have the item repaired under the 5-year warranty. After contacting the UK ECC for advice, the consumer pursued the seller via the buyer protection guarantee from the online platform.





A HUNGARIAN CONSUMER...

ordered two pairs of sunglasses from brand P on a UK webstore. The webstore stated on its website that it was the "Official Sunglasses Online Outlet Store for United Kingdom". The delivered sunglasses were not from brand P but brand R. From their appearance they seemed to be fake products. The consumer took them to a shop selling original R. sunglasses, where it was confirmed by a visual check that they were not genuine. The consumer contacted the website and declared that he wanted to exercise his right of withdrawal. The webstore kept promising to contact the trader and settle the problem, but the consumer later found that he could no longer contact the webstore. The consumer did not received an invoice, and no information concerning the identification of the webstore was found on its website. The ECC could only find out that the products were dispatched from China, and that a Chinese phone number was given on the order confirmation. As the consumer paid by bank card, he was advised to report the case to his bank and to enquire about a possible chargeback procedure.



A POLISH CONSUMER...

A Polish consumer ordered A Samsung Galaxy S5 mobile phone from an English online store. He immediately paid the order (123 euro). The consumer was informed that goods would be sent from China, but the seller ensured him that product was not refurbished, but original. After 25 days, the mobile phone was finally delivered to the consumer. Unfortunately, the buyer noticed that the item has been sent in a very bad condition (broken screen and no Samsung sign on the cover). The consumer decided to withdraw from the contract – but there was no reaction from the seller. The consumer contacted ECC Poland, and case was finally shared with ECC United Kingdom. Due to the intervention of the British Centre, the trader accepted the withdrawal and refunded the money.

AN AUSTRIAN CONSUMER...

An Austrian consumer ordered three wristbands from a Dutch seller for €59.85. A few days later, she received an envelope that was in a very bad condition and did not show the address of the sender. There was only one wristband inside, instead of three (and that was a pink one). The wristband also had a strange smell (mildewed). The consumer contacted the manufacturer of the wristbands and was told that she had received a counterfeit. She therefore wrote an email to the company demanding a refund and requesting an address to which she could return the pink wristband. Although the trader answered that she would receive a refund, the consumer never received a refund. After an intervention by ECC Netherlands, the consumer received the refund of the purchase price of €59.85.

Many stars and models like them: the trendy lamb-skin boots from Australia. The boots are expensive. The consumer was therefore excited to find a pair for a relatively cheap price on a website that showed the original logo. The consumer thought that it was the English branch of the boot company. But instead of the boots, she received a registered letter from Austrian customs: the boots appear to be counterfeit and were therefore being detained because of infringement of the EC Counterfeiting Regulation. The consumer had to decide whether she approved the destruction of the boots or not. She would have the right to enter an objection. A court would then examine whether the suspicion of counterfeiting could be confirmed. The consumer turned to the European Consumer Centre Austria (ECC) for advice.



AN AUSTRIAN CONSUMER...

bought shoes from a famous high-end brand for € 150, via a website with a misleading domain name. The consumer often watches "Sex and the city" and wanted to have similar shoes to the actresses in the TV series. According to the website, the company was registered in Germany. When the consumer received the shoes, she saw that they had been sent from Hong Kong. When she tried the shoes on, she also noticed that they had a strange smell and were not well produced (poor quality). She also found that she wasn't able to walk, or even stand in the shoes. The shoes were not the genuine product. After initiating a chargeback procedure, the consumer was able to receive a refund of the purchase from her credit card company. Some days later, the consumer received a letter from an Austrian lawyer asking her to pay compensation for infringing the intellectual property rights of the trader. After an intervention of ECC Austria, the lawyer informed the consumer that he would no longer claim compensation.

A DUTCH CONSUMER...

A Dutch consumer ordered shoes that were detained at the customs in Belgium because the customs authorities suspected that they were counterfeit. The consumer had ordered the shoes on a website. She contacted ECC Netherlands for advice, as the Belgian legal representative of the brand owner of the shoes had contacted her to claim € 200 in damages. ECC Belgium contacted the legal representative and argued that the consumer had acted in good faith, as the website had been recently positively reported in the media. The fact that the IPO (initial public offering) of the website was mentioned instills confidence in the consumer, who has the impression that the company is being audited and that its practices are being conducted legally. The ECC also added that the consumer would not have bought the shoes if she had known that they were counterfeit. The shoes were being sold on the website under the pretense that they were the original product ("2015 Fashion 100% original"). ECC Belgium asked the legal representative whether the waiver concerning the counterfeit goods would be satisfactory, since the consumer has acted in good faith and the deception of the website affected the validity of the sales agreement. The legal representative of the brand settled for the proposal, and dropped all financial claims.



A BELGIAN CONSUMER...

wanted to buy a refurbished smartphone. He compared some sellers, and decided to order one from a website ending with ".nl" (i.e. from the Netherlands). This company was also registered in the Netherlands, so the consumer trusted it. He paid for the item, but received nothing. Contacting the seller didn't help him get his money back. The consumer lost this amount, and, 7 months later, received a letter from a Dutch legal representative of the brand owner. They demanded an amount of € 75 for the cost of the destruction together with the damage to the right holder. The consumer contacted the ECC in Belgium. Through the intervention of ECC Netherlands, the consumer did not have to pay these costs, and even received a full reimbursement from the Dutch seller.



A legal representative of a right holder contacted a Belgian consumer who had bought a fake jersey of a famous football team for $62. The consumer argued that this was a reasonable price, from a decent website, and that there was nothing really suspicious about this site. He could prove that the official price at that time (end of season) was comparable, and that the website "looked" professional. The legal representative replied that if the name of the website included "outlet, shop or shirts", this made the products suspect. The consumer contacted ECC Belgium with this problem. After contacting the legal representative and discussing the legal framework, the legal representative dropped the claim against the consumer.

09

Sensitising the consumer: initiatives and actions AGAINST COUNTERFEITING



9.1 National, European and international sensitisation initiatives

It is important to inform the consumer about the effects of buying counterfeits and to provide all the necessary information: from what to look out for when purchasing online and how to recognise a mala fide web shop, to the steps a consumer can take if he is being held liable for importing counterfeit goods into a Member State.

Several Member States have already launched a few initiatives to inform the consumer about buying counterfeits.

Croatia launched the campaign called "*Ne kupujte mačka u vreći*"[85] on February 23, 2016, which translates to "*don't buy a pig in a poke*". The campaign aims to raise the awareness of the consumer about pirated and counterfeit products that are sold on the Internet as the original products, as well as pointing out to them to all the legal, financial and health risks, and the possible harmful consequences of such purchases, and to inform them how to protect themselves from buying such products.

In its news and media section, the Global Anti-Counterfeiting Network gives an overview of events on the occasion of World Anti-counterfeiting day[86]:

"*The Finnish Anti-Counterfeit Group (FACG) arranged an awareness campaign to celebrate the World Anti-Counterfeiting Day on June 4th, 2015.*"
"*Norway, NACG has joined forces with the Norwegian IPO and Norwegian Customs for a WAC day event at Oslo Airport.*"
"*The UK Anti-Counterfeiting Group (ACG), which represents over 140 international brands, celebrated World Anti-Counterfeiting Day by a major enforcement-training event, which was held at Heathrow Airport.*"



85 www.ecc-croatia.hr/vijesti/42/danas-je-predstavljena-kampanja-ne-kupujte-macka-u-vreci
86 www.gacg.org/news-media/Read/107/

A number of Danish authorities have formed a network, "*Ministerial Network against IPR Infringements*". European Consumer Centre Denmark is a member of this network as part of the Danish Competition and Consumer Authority. The network is working together with industry and other public authorities to prevent fake products from entering the legal supply chains in Denmark and to inform consumers of potential risks connected to the purchase of fake products. The Network have regular meetings, and is also operating a website with information in English[87].

In Sweden several authorities participate in a network to combat counterfeiting and to raise the issues of IPR infringements. European Consumer Centre Sweden is a member of this network as a part of the Swedish Consumer Agency. The aim is to raise the issues of IPR infringements and to inform consumers about potential risks and consequences when buying counterfeit goods[88].

In Belgium, the association Nanac (No against counterfeit and piracy) was put into place in 2010 by ICC Belgium and Customs Authorities. At the moment other ministries, brand associations, ECC Belgium and other organisations are partner of the association[89].

The European Commission has started the "*Too good to be true? The real price of fake products*" campaign. This campaign consists of a brochure and a video. Research among consumers around the world has shown that most people are not aware of the serious risks and damages that can be caused to themselves and their families when purchasing and using counterfeit and pirated goods. It is important to help consumers understand that what may seem like harmless purchases are not so harmless, and that some counterfeit products are a real threat to health and safety, jobs and the economy. It is also important that consumers understand their personal role, and their responsibility to consciously take a step away from buying and using counterfeits.

The International Chamber of Commerce's (ICC) Business Action to Stop Counterfeiting and Piracy (BASCAP) has developed "*FAKES COST MORE, I BUY REAL!*" to generate a collective and coordinated action with simple, straightforward messages and a logo that show consumers that counterfeiting is a real problem and affects all of us. The goal is to provide materials that other organisations can use to communicate these messages in a consistent manner with a common identity, creating a unifying and collective campaign and a call-to-action.
Turn Back Crime is a campaign of Interpol to raise awareness about the organised, transnational criminal networks behind various crimes that can affect the general public on a day-to-day level. In particular, those crimes that are harmful to health or that are facilitated by the internet.[90] Fake goods and medicines, cybercrime and crimes against children are all areas where the public can take steps to protect themselves and their families. For example, by only shopping at reputable outlets and by taking extra care in online activities. These changes in behavior can also help reduce the amount of money that crime syndicates divert into their illegal activities.







87 www.stopfakes.dk
88 Authorities: International Public Prosecution Office (National Intellectual Property Crime Unit), Patent and Trademark Office (Design and Trademark Department), Swedish Police, Swedish Customs (Law enforcement), Swedish Consumer Agency and Medical Products Agency
89 www.nanac.be
90 www.turnbackcrime.com/about-us

Is it safe to buy counterfeit goods?

10 ECC-Net tips on how you can avoid buying fake products on the Internet.



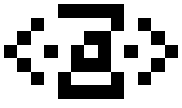
Check the identity of the seller



Search other consumers' reviews



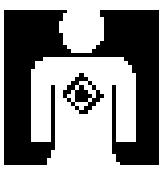
Check whether the website benefits from a trust mark



Assess the general layout of the website



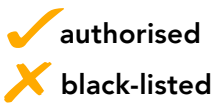
Check your consumer rights on the trader's website



Check the picture of the product



Watch the price of the good



Check the official website for authorised sellers



Pay with a secured means of payment



Pay attention to refurbished products

9.2 Actions from industry

Considering the risks mentioned above, the fight against counterfeiting is very important for industry. Companies actively collaborate in projects and within organisations in order to fight against counterfeits on a larger scale, as this is principally an infringement of their intellectual property rights. The industry also has an important role to play with regard to individual consumers who trust their trade mark. How can the individual consumer recognise the real from the fake? Where can the consumer turn to when they have a doubt? Do they collaborate with customs authorities? And how transparent is their production location and the processes used? Consumers may be reluctant to avoid counterfeiting as the difference to the genuine products seems limited. The 'Made in China' or 'Made in Taiwan' label can be found on almost all consumer goods, genuine and fake. And even the ethical aspects in the process of producing genuine products have come under fire on several occasions. This is the responsibility of the industry.

We hereby provide some examples of actions carried out by industry.

Fashion industry

Christian Louboutin has a whole section of its site dedicated to raising awareness about counterfeits. On the main page of the 'Stop fakes' section, the company states that they have adopted a zero-tolerance policy, and that they are taking action not only against the websites offering fake Christian Louboutin products, but also against the distributors of the counterfeit products, auction sites and other distribution channels.[91]

Moncler is fighting counterfeits by embedding microchips in its products. Every piece of clothing will contain a small radio-frequency identification chip (RFID), which contains a unique ID that allows the consumer to scan the chip with their smartphone or, if the consumer doesn't have a smartphone, through registration on the www.code.moncler.com website.[92]

The Italian designer house **Salvatore Ferragamo** does something similar with their shoes.[93] They insert a micro ship in the sole of the left shoe to allow the company to verify their authenticity. These chips not only serve a means for consumers to check whether they have bought the original product: the brand owner can also check whether suppliers are illegally selling excess stock on the market. Ferragamo has also worked together with the Chinese authorities to seize and destroy more than 12,400 counterfeit goods that were leaving China, in addition to the 34,000 counterfeit products that were already seized in 2015. The total estimated value of the goods was 17 million dollars.

Coach. The designer label Coach has an entire section of its website that educates the consumer about counterfeits: www.coach.com/counterfeit-education.html. On this page, they explain what counterfeits are, what Coach is doing about it, where the consumer can buy genuine Coach products (store locations and online) and where consumers can report counterfeits when they come across them.

91 www.us.christianlouboutin.com/us_en/stopfake
92 www.monclerworld.ch/fakes.htm
93 www.thefashionlaw.com/home/ferraegamo-fights-fakes-with-microchips ; www.vogue.co.uk/article/salvatore-ferragamo-counterfeit-chip-in-shoes-and-bags

Jewerly

On its website, **Tiffany & Co** informs the consumer how they "*can tell whether my new Tiffany & Co merchandise is genuine*";[94] whether "*other websites sell authentic Tiffany & Co merchandise*"[95] and if "*it's safe to order merchandise from tiffany.com*".[96]

Furniture

The furniture design industry also suffers from counterfeiting. Consumers are keen to buy design furniture online. In 2016, ECC-Net received a lot of cases against Retro Furnish Ltd., a UK company selling design and retro furniture. The complaints were mostly about delivery problems. A change of intellectual property law in the UK, protecting all designs for 70 instead of 25 years, made the British company cease its business in the UK.

Electronics

Apple warns against counterfeiting of their lightning connector accessories.[97] There is a warning for the consumer on the consequences that might occur when using counterfeit lightning connector accessories:

- The electronic device might become damaged
- The cable itself might be damaged
- The connector end may fall off, become very hot, or might not fit properly into the device
- The counterfeit charger might not work properly

They also give the consumer tips on how to avoid buying counterfeit chargers, such as:

- The consumer should compare the packaging and the text on the cable: An Apple Lightning to USB cable has "*Designed by Apple in California*" and either "*Assembled in China*", "*Assembled in Vietnam*", or "*Indústria Brasileira*" on the cable, and there is a 12-digit serial number at the end of this text.
- The consumer should compare the connector and laser etchings: there is a list of images of the lightning accessories on the web page, so that the consumer can compare when buying a charger or can check the page in advance of the purchase.

Samsung has dedicated a page of their website to warn the consumer about counterfeit printer cartridges.[98] They list the disadvantages that a consumer may encounter when using counterfeit cartridges:
Poor printing
- Damage to the printer
- Increase in paper jams
- The cartridges may not work at all

These possible consequences are followed by tips on how to recognise and distinguish counterfeit from the genuine product, such as the security label with color-shifting features.

94 www.be.tiffany.com/service/FaqDetail.aspx?faq_id=2500&FAQ_CATEGORY=119%20&Search_Key=&
95 www.be.tiffany.com/service/FaqDetail.aspx?faq_id=2506&FAQ_CATEGORY=119%20&Search_Key=&
96 www.be.tiffany.com/service/FaqDetail.aspx?faq_id=2508&FAQ_CATEGORY=119%20&Search_Key=&
97 www.support.apple.com/en-us/HT204566
98 www.samsung.com/us/business/discover/dont-be-fooled-by-counterfeit-toner-cartridges/index.html

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Conclusion: empower the consumer to help IN THE FIGHT AGAINST COUNTERFEITING

Counterfeiting produces many victims. From traders, to authorities, to consumers - all facing the same enemy, but fighting their own fight.

Traders/ brands will mainly fight against counterfeiting because it is an infringement of their intellectual property rights. Consumers may lose confidence in their brand if they are using a counterfeit product without knowing it.

Authorities fight against counterfeit because it has an impact on the economic growth of a country, and on the health and security of the citizens. The authorities protect their businesses and citizens, and collaborate with foreign authorities to achieve better results with their actions.

Consumers are also victims: they are deceived by the seller, who sends a worthless, and sometimes dangerous product. If the consumer receives such a counterfeited product, he may be exposed to all kinds or risks (health, quality, etc). Customs authorities might detain and destroy the package, so that he loses the product he has paid for, and he might even receive a demand for compensation of the destruction costs. He loses the money paid to the rogue trader, and cannot always enforce his consumer rights. And after facing these risks on the internet, consumers might be discouraged from shopping online.

In fact, all these parties are the victims of counterfeit goods, and strong collaboration is needed to fight against counterfeiting.



Consumers have their role to play, and should avoid buying counterfeits. It is important that they take their responsibility with regard to the risks that counterfeits entail. On the other hand, fraudulent sellers become more professional every day in their bid to deceive consumers. For a vulnerable consumer, but also for a normal one, it is not always easy to distinguish an original website from a fake one, and the authorities and industry thereby have their role to play in protecting consumers against the counterfeiter and improving online trade.

Traders should therefore give insights to authorities regarding their genuine products but also to consumers so that consumers who want to buy the brand they know and thrust can avoid falling into the traps of counterfeiters. If consumers know that they can turn to certain authorities or to the industry itself when they come across counterfeits, they can help to expose the rogue traders who sell such counterfeits.

With this report, the ECC-Net wants to inform all parties, but especially consumers who shop online, that they should be aware of the fact that:

- Buying counterfeit products may entail health, safety and environmental risks
- Firms that sell counterfeit products do not respect EU Consumer rights
- Buying counterfeits may have legal and financial consequences for individual consumers.

In order to make this information more accessible to consumers and to make it easier to disseminate, the ECC-Net has drawn up an interactive leaflet within the framework of this report, explaining why consumers should not buy counterfeits and providing 10 tips on how to avoid buying counterfeits.

Please spread this information, make use of it and help fight against counterfeiting.



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Help and advice for consumers in Europe

ECC-Net

European Consumer Centre

The European Consumer Centres Network (ECC-Net)

We...

- inform consumers about their rights and opportunities in Europe
- advise on cross-border consumer topics
- offer legal support for the settlement of cross-border disputes with a company in the EU, Iceland and Norway

You need individual legal advice? Call, mail or write to your European Consumer Centre.

Co-funded by the European Union

This report is part of the action 670706 – ECC-Net BE FPA which has received funding under a grant for an ECC action from the European Union's Consumer Programme (2014-2020). The content of this report represents the views of the author only and it is his/ her sole responsibility; it cannot be considered to reflect the views of the European Commission and/or the Consumers, Health, Agriculture and Food Executive Agency or any other body of the European Union. The European Commission and the Agency do not accept any responsibility for use that may be made of the information it contains.

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