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Current Aspects About the Place Counterfeit in Consumption of Goods

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Abstract

Counterfeiting already represent a scourge that affects more and more domains of activity, putting in danger not only economical activities, but also consumer's health and safety. Among products that are more likely to be counterfeited we can identify alimentary products, drugs, automobiles, IT, electronics and house appliances, music, movies, cigarettes, textiles, cosmetics, toys, games, software etc. After integration in the European Union, Romania must follow the rules imposed and to fight against counterfeiting and intellectual theft. The disappearance of frontiers allowed adulterators to bring counterfeited product in most markets that in many situations generated real economical and social catastrophes through the decline of local industries.

Keywords: Intellectual Theft, Counterfeiting, Types of Counterfeiting, Motivations of Acquiring Counterfeited Products, Proportion of the Phenomenon, Consumer

Introduction

This article is meant to make the great mass conscious on one side, but also the producers and the distributors of counterfeited products, on the other hand, in what concerns the serious consequences of the phenomenon of counterfeiting. The proportion of the phenomenon must be a signal mark so necessary in a society in which the scourge of piracy is present in all the social levels, scourge that influence us and it surely interests us all.

The massive developments of the production of consumer goods lead to the orientation of certain structures to the activity of forgery/counterfeiting of these, with the tendency of amplification because of globalizing. These actions appeared because of the increase of the turnover at global level, for different groups of products.

The major changes after 1989 in Romania, as part of political and economical evolution in Central and South-East Europe led to the removal of commercial barriers, to the intensification of commercial trades and liberalization of goods trade. One of the most important problems of the Romanian society after 1990 is counterfeiting of every products or values coming from countries from Middle or Far East (Enescu & Frisch, 1999). In order to situate better the problem of counterfeiting, some legal aspects of this global scourge must be presented. In a top of the commerce with counterfeited products, Romania is on place 17, after Thailand and Kuwait, China placing first (Paraian & Pascu, 2012). The prejudices of the great companies, at global and European level are huge, counterfeiting bringing losses to European companies between 400 and 800 millions euro on the internal market and 2 millions euro outside the borders of UE. According to some recent data, the annual rate of increase of the number of counterfeited products confiscated at the borders of countries members of UE reached 300% (www.mpublic.ro).

The harmful phenomenon of counterfeiting is unfortunately increasing, affecting almost all the domains of products, bringing material and moral prejudices to the holders of the rights of intellectual property. Having in mind the scale of the phenomenon we can talk about a globalization of counterfeiting and piracy that affects like a plague, all the states' economy. Counterfeiting represents an extremely dangerous phenomenon that affects seriously the functioning of the System of Intellectual Property, stopping technological competition and the transfer of technology, necessary in the development of the economy. In order to reduce substantial the international commerce with counterfeited products and to destroy the transnational networks involves in this commerce measures of counterwork are needed at national and international level (Petrescu & Sârbu, 2004). It can be said that there is no product that not to represent a target for counterfeiting, especially those that are sold with high prices and under prestigious marks, reason why every country in the world developed and institutional and legislative system, in order to reduce to minimum the effects of this phenomenon (Raducanu, 2002).

Statement Legal Regarding Counterfeiting

The legislation from Romania defines counterfeiting as “the creation, use or circulation without right of an object of an invention patent or any other violation of the rights given by law” if these violations were made after the date of publishing of the request for an invention patent (Law nr. 64, 1991). For the caused prejudices the holder has the right to compensations and can request the court to confiscate or destroy the counterfeited products, including the materials and the equipments that served directly to commit the crime of counterfeiting.

Studies and statistics made by organisms interested in studying the phenomenon of counterfeiting shows a special development of economical technology that allows more and more the theft of intellectual property through counterfeiting and piracy. The intellectual property can be interpreted as a product of the intellect that represents the property of an individual or of an organization. Later on, these can share this right freely, or can control its use in certain ways. The protection of products, of intellectual property generally encourages the investments, stimulates the economical growth of a country through the fact that implies the creation of new work places and new domains of activity, but also the improving life conditions.

The harmful effects of counterfeited products over a holder mark are endless. First, we can refer to a parasitic approach to known brands, to degradation of their image, when their name is being used on products of inferior quality or in any way for the selling of their own products. The exploitation of somebody else's reputation is an unfaithful practice which manifests through actions that target the transfer of the favorable image created by the reputation of some brands over their own products or services. Those who use practice this kind of acts use, in the context of commercialization and publicity of their services, expressions like: "as", "like product X", "way", "style", "brand", "taste", "following the recipe" or other similar mentions (Dima & Pamfilie, 2004). In other words, they try to draw over their products advantages of the quality guarantees of known brands. These kinds of actions are punished by Law 11/1990 in what concerns the fight against unfaithful competition, but also other special laws.

Counterfeited products reach different consumers from various directions and sometime we find them in unexpected places. These can be the goods, including their packing, on which it was applied, without authorization, a commercial mark identical with the commercial mark registered for the same type of products or which can't be distinguished through its essential aspects by that specific commercial mark, and, because of this, it brings prejudice to the mark' holder rights, according communitarian law and national law.

Law, national and European issues set the following people who contribute to extension of the spread of counterfeiting. A person who:

- holds with commercial purpose counterfeited merchandise;
- uses in commercial purpose counterfeited services;
- was found while using counterfeited services at commercial scale;
- provides services used in activities of counterfeiting, in commercial purpose;
- is severely punished according to the procedures in force at the same time is required to disclose the origin and distribution networks of goods or services which infringe industrial property right protected.

The ongoing study revealed the following (Pascu, 2011):

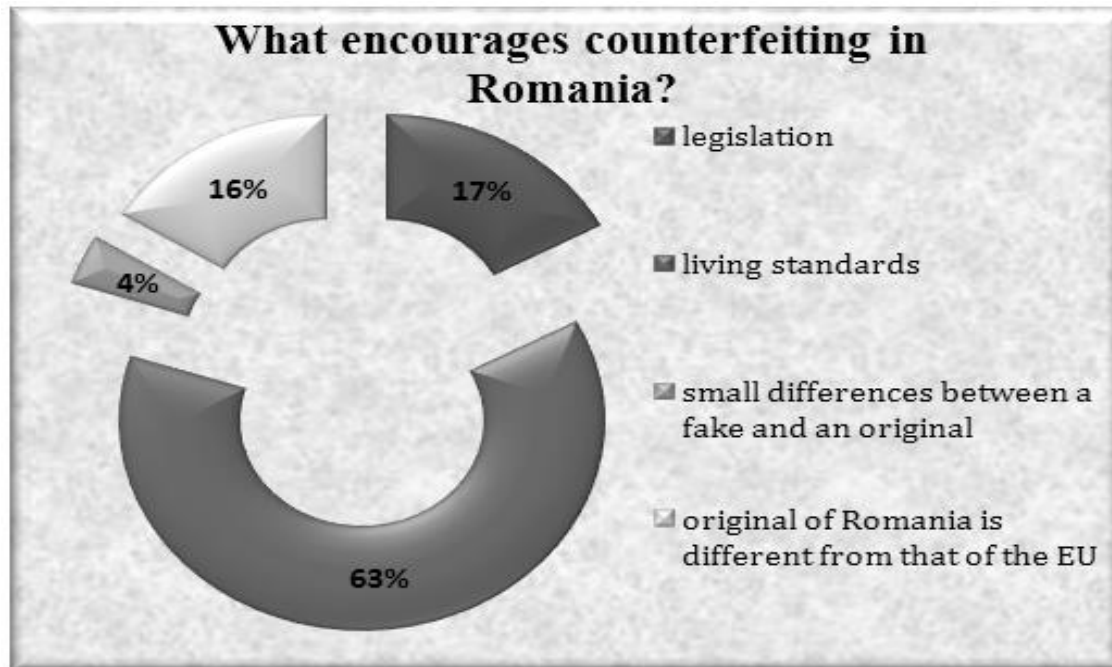


Figure 1. "Stimulus" of counterfeit products

The Proportion of Counterfeiting Phenomenon

Generally, counterfeiting has a double impact: social and economic. From economic point of view, counterfeiting of products or "the crime of 21st century, how it was named this phenomenon, have serious consequences for the rightful holders of intellectual property rights as for the affected states, in what concerns the financial losses these register, counterfeiting representing a connection with vast criminality (Viefhues & other, 2004). Because of this, putting on market counterfeited products, as for other goods that violates a right of intellectual property, causes considerable damages to producers, sellers and rights holders who respect the law (The Regulation of the Council (CE) 1383, 2003). Nevertheless, the number of counterfeited products identified is increasing, as showing in picture 2.

In France, The Union of the Producers for International Protection of Industrial and Artistically Property says that falsifying of luxury product (among them the perfumes) is a very serious problem, responsible for the following types of damages:

- damages brought to the image of the companies the products of which are counterfeited;
- damages brought by the diminishing of sales of luxury products the counterfeiting of which invades the market and are being sold at low prices;
- damages directly made by sapping the market position of a brand; the sell of products of inferior quality by using the name of a prestigious mark can bring irreversible prejudices;
- supplementary expenses that the companies the products of which are counterfeited have to support in the fight against it.

From social point of view these affect the good functioning of society and in some cases endanger the health and safety of consumers, if we remember the fact that counterfeited drugs represent 7% from the rating from global pharmaceutical industry. It is alarming the development of counterfeiting in the domain of medical products and personal hygiene that are an attempt on consumers' health and safety. A counterfeited medicine, for the treatment of health problems of the

patients contains substances different from the original recipee that replace its active substances. In this way it doesn't endanger directly and immediately the safety of the patient, but on long terms it determines supplementary costs and rising risks. The harmful effects of the commerce with counterfeited products are very well known, and those who produce or sell this kind of products bring prejudice to protected rights and seriously endanger the health and safety of consumers and also cheat and sometimes endanger consumer's health and safety.

Because of the increased profits obtained on account of inappreciable expenses, counterfeited products represent a serious threat to national industry and the safety of consumers through products of consumption: appliances, electronics, toys, textiles, shoes, perfumes/ cosmetics, and the eradication of this phenomenon being an international concern. So that, from year to year, the quantity of counterfeited products that are confiscated is alarmingly increasing. In the European Union in 2006 there were confiscated 103 millions of counterfeited and pirated products, representing a growth of over 12% comparing 2005 and of 1000% in relation with 1998, the estimation regarding the commerce with counterfeited products indicating an annual figure of 500 billions euro. Estimations show that in 2007 the commerce with counterfeited products represented 10% from the volume of global commerce, in comparison with 5% in 2000. In 2011 in community's customs there were intercepted over 250 millions of counterfeited products, implying 35935 cases. These numbers are extremely worrying if we compare with those registered in 2009 when there are confiscated 75 million articles, implying 26000 cases.



Figure 2. The volume of counterfeit products in the Community customs

For a better understanding of the spreading of the phenomenon we must analyze the factors that favor the activity of counterfeiting and the motivation of buying counterfeited goods by consumers.

Arguments for the Existence Counterfeit Products on the Market

The counterfeiting of products continues to be favored by a series of factors, among which:

- the desire and possibility of obtaining illicit gains;
- technical difficulties in identifying and establishing fast the way and the degree of forgery;

- the ease of making forgery from technical point of view, because of the technical evolution, the diversification of material resource and the modern system of packing;
- the outsource of the production of some goods from the home country of some great companies from other countries, where the force labour is cheaper; the producers of this country sell a part of the products made under their own label;
- important differences between high request and low offer for certain products;
- the insufficient level of technical and technological rules, in the laws regarding the quality of products, which facilitate the cover of forgery;
- the defective organizing, inefficient activity and lack of control in different compartments of work, in what concerns the production and the circulation of goods;

The action of these factors differs depending on the specific of the counterfeited products, on the ways and on the stage of their technical-economic circulation when the forgery takes place. In order to remove the action of the last two factors it is necessary to implement the system of quality, according to the stipulations from the ISO standards series 9000/2000. Previously mentioned study shows that in many cases consumers to know they have a counterfeit product to buy for reasons yet to emerge from the graphic:

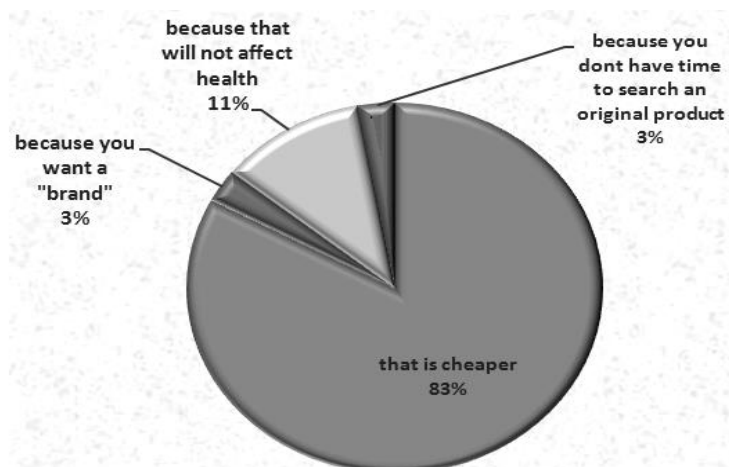


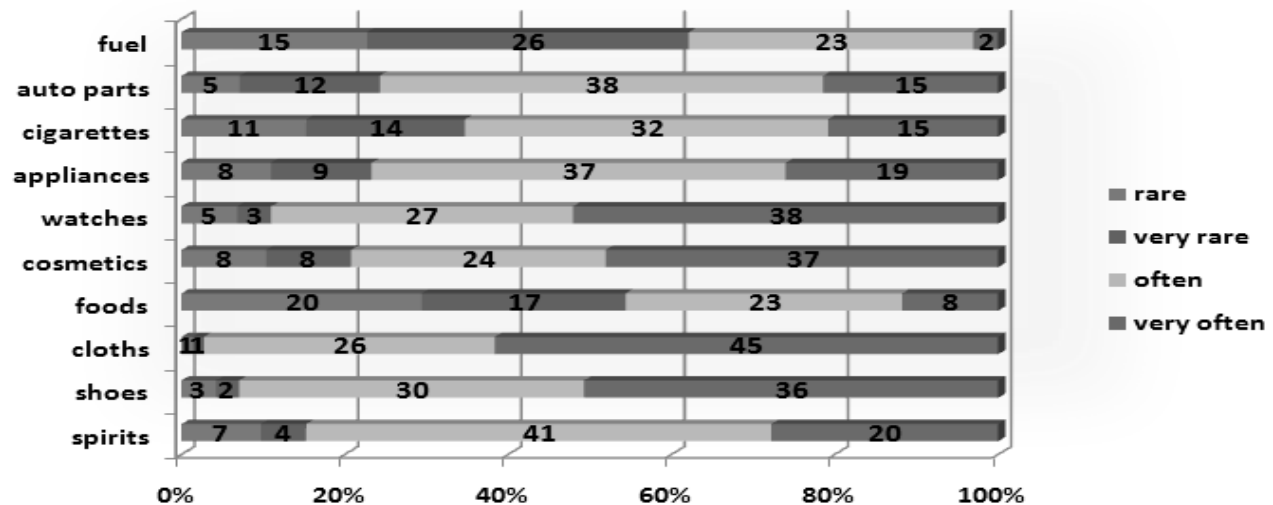
Figure 3. Reasons for buying of counterfeit products

Resuming different ways of studying the phenomenon of counterfeiting it was made the following classification of consumers who buy counterfeited product, with or without knowledge:

- buyers who can't make the distinction between counterfeited and original product;
- buyers who search willingly counterfeited products, attracted by the bargain of low prices;
- buyers who recognize forgeries and counterfeited product and still buy them because of the good way in which they were made and of the desire of having products belonging to certain brands;
- tourists that buy products specific to the geographical area where they are, because of the low amount of time they have and because they are attracted of the low prices, without realizing they are counterfeited;

- people who buy in a hurry the necessary products, being tempted by certain brands they are not used with and of the packing made through modern ways, which determine them to decide quickly to buy it, later on realizing they bought a forgery.

Which of these products are most commonly as counterfeited in Romania ?



Picture 4. The share of counterfeit products in Romania

In Romania, studying public opinion on counterfeit products in a scientific research showed that every day, knowing whether or not we are in the vicinity of inferior quality products, which sometimes voluntarily some of the reasons consumers buy them up said. These products are part of the kind which is highlighted in the following graphic for a better overview. Consumer perception is real that is better to consider when you wish to be taken some steps towards it, because they are the first recipients of poor quality and sometimes harmful counterfeit products.

To protect consumers against the use of counterfeit products in the information campaign is ongoing, but not active enough and not permanent role. A national campaign has positive effect STOP piracy is an official site (www.stoppirateria.ro) This campaign, initiated in late 2010 and proposed to bring to public attention online all information relating to strengthening institutional capacity to protect intellectual and industrial property rights, with more detail supporting active consumers, that news, dictionary terms but also the presentation of concrete cases handled by partner institutions. This campaign is supported by: the Ministry of Public Service will coordinate the work in the field of intellectual property rights, the General Inspectorate of Romanian Police, General Inspectorate of Border Police, National Customs Authority, the Romanian Copyright Office, State Office for Inventions and Trademarks. The initiative is noticeable but not strong involvement and consumer to be able to refuse and not counterfeit products to buy and more than that, to denounce people and places where such products exist, the current situation will take quite long.

Conclusions

Taking into account the elements mentioned above it is clear that the phenomenon of counterfeiting is spreading very fast and the only way to stop its rising evolution is a powerful awareness of the producers and buyers equally. The prejudices brought by the phenomenon of counterfeiting of goods to the companies that produce the original merchandise and hold the right over the marks, to the state through tax evasion and to the consumers who buy them, to those who

not only that cannot satisfy the necessities, but can endanger their health and security, determined the creation of some organisms which to apply a system of fighting against counterfeiting. That's why, the first measure of protection stands in a new attitude of the producers for packing, taking into account, except their function of protecting the merchandise and of promoting the sales, also, that of protecting of good's authenticity, especially in the case of brands.

The packing producers try to prevent counterfeiting and to protect original products, finding different solutions:

- special ink (of grating together with an invisible code, heat sensible ink that changes color when it overcomes a certain value established for the compliance of frigorific chain, UV ink etc);
- new techniques of printing using holograms;
- biotechnologies (system based on a biopolymer inserted in the label, a mobile pencil and a mobile reader for identification of products);
- RFID labeling systems.

Thus, as consumers it is better to give a higher importance to the products we buy, to the place where we buy from and not last, to the personal safety, knowing that a brand certifies the quality of the product, its concordance with certain regulated requests and with the networks of distribution. Therefore the next time when we are shopping it's better to analyze carefully when we are offered a Rolex, a Wrangler pair of jeans or an Adidas gym suit (probably counterfeited) in order not to contribute to law violation, increasing the illegal incomes of forgers and the diminishing of personal incomes buying something we don't want.

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