

LEGAL ADVICE

## Protect your products against counterfeiting

**C**ounterfeiting is serious business. It is also a thriving business.

And while most individuals and businesses believe they are immune to counterfeiting, the truth is counterfeiting affects us all.

In a recent report, the **International Chamber of Commerce** in Paris estimated that the sale of counterfeit products costs more than \$600 billion worldwide per year in lost sales, revenue and jobs.

The **Department of Homeland Security** has estimated that it costs the U.S. economy \$200 billion to \$250 billion annually.

While counterfeiting is a worldwide problem, the primary source of counterfeit goods is China. The country has long been known for its large, cheap work force, which many American businesses have tapped into for outsourcing manufacturing at low costs.

### Counterfeiting mecca

However, this practice has led to the creation of a booming mecca for counterfeiting. In fact, almost 81 percent of all counterfeit goods seized in the United States in 2006 came from China.

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Thanks to our global economy and enhanced technology, the counterfeiting industry is rapidly growing and becoming increasingly sophisticated.

Online sites such as **eBay** and **Craigslist** have become hot spots for counterfeit goods. Last year alone, eBay removed 2.2 million listings of suspected counterfeit items.

However, counterfeits are everywhere and include almost every type of

product. It is not limited to brands such as **Louis Vuitton**, **Microsoft**, **Tiffany** and **Nike**.

Even small businesses are finding their products are being copied and produced without authorization.

### Affects small businesses

In addition, counterfeiting creates much more than just an economic burden on intellectual property owners. The **U.S. Food and Drug Administration** estimates that 10 percent of all drugs sold in the United States are counterfeit and the **Federal Aviation Administration** estimates that approximately 520,000 parts installed each year in aircrafts are counterfeit.

In 2004, one baby died and several others were hospitalized for severe malnutrition in China due to low quality counterfeit baby formula. Clearly, counterfeiting is also a serious public safety concern.

New laws and treaties are in the works in the United States and internationally to bolster the current legal framework and attempt to curb this

worldwide crisis.

However, it is up to everyone to combat counterfeiting. Whether you are a consumer, a retailer, or an intellectual property owner, the most important tool against counterfeiting is investigation.

### It's probably a fake

If you are a consumer and find a designer purse that typically retails for \$350 available for \$50, it should raise a red flag that the product is probably fake.

If you are a retailer and find a wholesaler from which you can purchase large quantities of products at a price that is too good to be true, it probably is, and you are probably purchasing knock-off goods.

If you resell them, you may become subject to liability, even if you honestly believe the goods are authentic.

If you are an intellectual property owner, you have the most critical role in combating counterfeiting.

### Protective steps

Fortunately, there are many steps you can take to protect your brand:

- Create and implement a strategic anti-counterfeiting plan. This will help you to police both foreign and domestic marketplaces to ensure that others are not profiting by selling knock-offs of your goods.

- Obtain federal trademark registration, copyright registration and patent registration if applicable.

Also, secure trademark protection in China and other countries in which you do business. China's trademark registration process is very slow, so register your trademarks in China even before you begin using them if possible.

Also, register the Chinese translations of your trademarks to obtain the broadest protection from counterfeiting. Consider seeking patent protection in China if applicable.

- Carefully consider which products you will outsource to China for manufacturing. While it may be cheaper to produce your goods in China, once a product is created there, it is much easier for others to copy.

- Include your trademarks on all of your products, tags and packaging. The more frequently your trademark appears on the product and packaging, the more liability you will subject counterfeiters to.

- Actively pursue available legal remedies, both civil and criminal, against any counterfeiters who steal your intellectual property.

Counterfeiting is a global crisis that affects everyone. The best defense is to be aware of the problem and take proactive measures to protect yourself, your intellectual property and your business. ■



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STRATEGIC PLANNING

## Core competencies key to developing profitable products

**H**ow do you explain this? **Apple**, a company whose brand image is innovation, invests relatively little in research and development, yet reliably achieves new product victories, most recently its iPhone.

Apple spends only 3.7 percent of its revenue on R&D, a startling low number compared to **Microsoft's** 13.9 percent, **Nokia's** 9.5 percent and **Google's** 11.5 percent. Apple doesn't even make IEEE Spectrum's Top 100 R&D Spenders list, even though its revenue surpasses that of 30 companies on the list.

The answer to this rests in understanding core competencies.

### About core competencies

A core competency is a mega-skill of an organization—a weaving of processes, assets, specific skills, organizational norms and knowledge that collectively create unique customer benefits.

A core competency is not what you and others in your industry do — making hand-held computing devices in Apple's case.

Rather, a core competency captures how you do what you do. Apple's core competency is designing computing devices with exceptionally elegant ease-of-use.

Apple improves ease-of-use in ways that were unimaginable before its market entry. An Apple iPhone improved upon the BlackBerry PDA the way using [www.mapquest.com](http://www.mapquest.com) bested trying to select a route using multiple road maps.

### Creating a core competency

Steve Jobs, Apple's founder and CEO, knows that creating a core competency is not a matter of money. Speaking with **Fortune** magazine he said:

"Innovation has nothing to do with how many R&D dollars you have. When Apple came up with the Mac, **IBM** was spending at least 100 times more on R&D. It's not about money. It's about the people you have, how you're led, and how much you get it."

An organizational mega-skill becomes a core competency

and therefore market advantage when four hurdles are crossed:

- First, it produces a highly valued consumer benefit. Apple's easy-to-use products save time. Period.

- Second, your mega-skill becomes far superior to that of current or potential competitors. Superiority results in unique benefits for which customers gladly pay price premiums.

- Third, it is broad enough to help you win business in new markets. Apple used its core competency to create novel music players and cell phones that helped grow its revenue from \$5.4 billion in FY2001 to \$24 billion in FY2007.

Over the same period, R&D spending increased by only \$352 million. Financial leverage of this magnitude gives testimony to the profitable growth opportunities from a core competency.

- Lastly, you've made it impossible for competitors to replicate your competency. When your mega-skill depends upon organizational culture, processes, and organizational learning, competition remains far behind.

Interested? You should be. Leaders of organizations with core competencies gain laser-like focus on where to invest, whom to retain, where to cut costs, and what processes to outsource. This management

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