As Fake Products Spread, 'Fashion Victim' Gets New Meaning

The fashion industry takes the lead in thwarting international counterfeiting

By Christine Pomerantz

Imagine that you have created a fashionable handbag out of cutting-edge Italian fabric. The design迅速 spread around the world. You are careful to register the process and design of your creation with the authorities in fifty countries including China and Thailand. You sign a licensing agreement for a company to manufacture and sell your product in China. On a trip to Thailand six months later, you are surprised to find a similar product bearing a cheap imitation of your logo being sold in the local market.

This is an example of counterfeiting, the unauthorized copying of an item that is later sold as an original. It is profiting from the theft of someone else's work. In the fashion business, this includes such goods as would be Prada bags, T-shirts with unauthorized images of Kelly Clarkson, and fake Kate Spade accessories, to name a few. Original designs, technical processes, and similar intangible assets can be protected by copyrights, trademarks, or patents, and are known in legal terms as intellectual property.

Because of the fashion industry's growing interest in fighting international counterfeiting, the advisory board of FIIT's Department of International Trade and Marketing organized an event in the John E. Reeves Great Hall on March 20, 2006, as part of its Talking Trade @ FIIT guest lecture series. A spirited discussion was moderated by Dave Bonastroitz-Atlas, chairman of the International Anti-Counterfeiting Coalition and vice president of enforcement at Calvin Klein, with panelists Michael Palma, assistant vice president of legal at Tiffany & Co.; David Althoff, counsel at Kate Spade; and Barbara Kolcun, senior vice president and general counsel of Seven for All Mankind.

According to the participants, the main damage caused by counterfeiting is the devaluation of the brand's work copied, since an inferior version of the product can be obtained at a significantly reduced price.

The International Chamber of Commerce, a global organization that sets rules and standards for the conduct of international business, estimates that approximately $600 billion worth of business is lost annually to counterfeiting. As a result, it has formed the Business Action to Stop Counterfeiting and Piracy (BASCAP), to increase awareness of the problem, encourage government action to fight it, and boost respect for intellectual property rights. According to BASCAP, counterfeiting activities have been recorded in thirty countries, including India, France, Russia, and South Africa. The US Department of State estimates that some $100 billion in US tax revenue is lost annually due to counterfeiting and intellectual property operations.

With the problem escalating, the fashion industry has significantly increased its efforts to combat it. Tiffany & Co. sued eBay in 2002 for selling counterfeits. One source reported that eBay sells more "Tiffany" jewelry than Tiffany sells in its own stores. The company conducted an experiment, buying six pieces of "Tiffany" jewelry on eBay over the past 12 months. Only five percent were authentic; about 95 percent were fake and being sold as genuine. It was unclear whether the remainder were advertised as genuine (some were called "Tiffany replicas.") On March 1, 2006, The Daily Mail reported that Judge Richard Berman of the US District Court had granted a temporary restraining order against the sale of counterfeit "Tiffany" products on eBay.

Nevertheless, the tide seems to be turning in favor of designees, asserting the continuation of innovation, investment, and growth. The fashion industry continues to be a leader in protecting intellectual property rights. It is taking an increasingly aggressive and strategic approach to fighting counterfeiting, and is winning victories through legislation, enforcement, and growing awareness of the issue.

Christine Pomerantz, assistant professor in FIIT's Department of International Trade and Marketing for the fashion industries, was a senior vice president and head of structured credit services Americas at the Royal Bank of New Zealand Banking Group Limited.

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The following additional initiatives are recommended to combat intellectual property:

- Record the origin of authentic goods with customs in all countries
- Meet regularly with customs' strategic divisions
- Work with landlords, local officials, tax authorities, and state law enforcement
- Make it harder to copy your designs—one example, Kate Spade is using custom hardware to mount its trademark, the results are therefore harder to reproduce
- Consider creating face-expensive lines for younger consumers—For instance, Calvin Klein's Choice CE for juniors
- Educate consumers, retailers, and students
- Set up public relations campaigns with the press

Though still in its early stages, a new spray technology that would allow recipients of goods to test them for authenticity is being developed by a Canadian company. Even so, implementing such a process on a wide scale is daunting because of the international scope of the industry. With its countless production facilities and licensees and the multiple stages of shipping and packaging that occur between production and retail.