

The Effort to Curb Counterfeiting Requires Government Support

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Counterfeiting is becoming one of the most pervasive and costly crimes in the 21st century. From fake purses and watches, to apparel, brake pads, and even entire automobiles, the appeal to dupe just about any brand name product is growing worldwide in the name of the almighty dollar. The \$500 billion counterfeiting "industry" is hitting legitimate manufacturers' bottom lines and compromising consumer safety. And the fight to curb counterfeiting is now constant for legal advisors, business executives, and government officials.

In a recent legislative briefing hosted by the Michigan-based law firm of Miller, Canfield, Paddock and Stone, P.L.C., U.S. Congressman Joe Knollenberg discussed the mounting problem and impact of counterfeit manufactured goods and described his proposed bill, "Stop Counterfeiting in Manufactured Goods Act." If enacted, this legislation will strengthen federal criminal laws and help the U.S. seek stronger anticounterfeiting provisions in bilateral and international agreements with trading partners.

Counterfeit goods cost manufacturers billions of dollars each year, according to Jon Dudas, Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the U.S. Patent and Trademark Office, in statements made before the U.S. Senate Committee on Judiciary on March 23, 2004. In fact, in the automotive industry alone, it is estimated that counterfeit automobile parts cost \$12 billion in lost sales.

Frequently replaced auto parts such as brake pads, oil filters, fan belts and windshields are the top pirated products. When used in a vehicle, experts suspect they are the main cause of crashes and deaths, but find it difficult to prove in most cases.

"Not only would this bill provide manufacturers with greater trade protection, the revised law can provide the basis for the U.S. to request other countries, particularly China, to enact similar changes in their laws," said Congressman Knollenberg.

Positioned in the intersection of the automotive industry and global business, Miller Canfield frequently counsels organizations setting up joint ventures or subsidiaries across borders on how to prevent and detect counterfeit goods.

"Twenty-five percent of trade from Canada crosses the Ambassador Bridge between Detroit and Windsor – making Detroit a hot spot for counterfeit goods," said A. Michael Palizzi, an attorney at Miller Canfield whose practice includes patent, trademark, and trade secret litigation. "It's important for companies to work with U.S. Customs agents to train them how to spot a fake. The agents are the first line of defense and they're willing to help."

Congressman Knollenberg expects his proposed bill will help shut down illegitimate shops and hold the offenders liable. Currently, authorities have a hard time getting local Chinese police and courts to cooperate, especially if a powerful state-owned enterprise is involved.

"At this time, there are no provisions to force the destruction of instruments used to manufacture counterfeit goods," said Congressman Knollenberg. "This new bill will provide mandatory destruction of the machinery, tooling and supplies used to produce the fake goods, and amend criminal penalties." Such provisions in U.S. law will assist trade negotiators

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in demanding similar provisions abroad.

For now, what can companies do? "In addition to building relationships with U.S. Customs agents, companies can register trademarks and patents in other countries, such as China, or set up enforcement teams – investigators, lawyers, etc. – in the area near the suspected counterfeiting operation to find, seize, and stop production," suggested Palizzi.

The 330-attorney law firm of Miller, Canfield, Paddock and Stone, P.L.C. was established in Detroit in 1852 and has offices in Ann Arbor, Detroit, Grand Rapids, Howell, Kalamazoo, Lansing, Monroe, and Troy, Michigan. Other offices are located in New York City, Pensacola, Florida, Washington, D.C., Windsor, Ontario, and in Gdynia, Katowice, and Warsaw, Poland.