



Delivering Counterfeits

Do legitimate vessel companies want to work with counterfeiters and deliver counterfeits and if not what are they doing about it?



Responsibility

Counterfeiters – Who are they?

Who is primarily responsible (liable) for counterfeits?

The actual Counterfeiters

- Street vendor
- Open air market vendors
- Criminal organizations
- Mafia
- Organized crime

Any other aiders & abettors profiting from counterfeiting?



Responsibility

Vessel companies delivering counterfeits?

What “due diligence” do vessel companies undertake to ensure they are not dealing with counterfeiters and delivering counterfeits?

What would happen if vessel companies did not deal with counterfeiters?

No delivery of counterfeits to the destination country?

All brand owners should encourage vessel companies not to deliver counterfeits.



Vessel companies are often Brand Owner service providers delivering authentic product (as well as counterfeits)

Do Brand Owners ask vessel companies delivering their legitimate products, to initiate anti-counterfeiting programs to avoid dealing with counterfeiters and counterfeits?

Any **due diligence** by vessel companies to avoid counterfeiters **before** they ship the goods? Ideal situation.

Role of the Brand Owner AUDIT department:

Should audit departments in Brand Owners be asking this question of their vessel company service providers?

This is corporate governance issue, not only an IPR issue.



Paraguay

Constant fraud in shipping documents

Consignees do not exist

Notify parties do not exist

Telephone numbers are incorrect

Importers do not exist

Banks do not exist

Legitimate brand owners would be prosecuted if they did this,
but not the counterfeiters and their aider and abettors.

Counterfeiter bank accounts/money do exist!

Are vessel companies paid when they deliver counterfeits?



Bill of Lading: Contract between vessel company and exporting counterfeiter [shipper]

ABOVE PARTICULARS DECLARED BY SHIPPER.
CARRIER NOT RESPONSIBLE.

The Line is nor responsible for any damage or loss to the cargo or extra costs resulting from customs inspections/sampling and/or government regulations. Shipper, Consignee and holder of this B/L will each be fully responsible for any costs, fines or penalties incurred as a result of such inspections/sampling and/or customs actions and/or government regulations.

All claims and disputes arising under or in connection with this bill of lading shall be determined by the COURTS of MARSEILLE at the exclusion of the courts of any other country.



Who really ends up paying for storage and destruction of the counterfeits despite BOL contract?

The legitimate brand owners.

Counterfeiters and their aiders & abettors take zero risk as legitimate brand owners pay all costs for storage and destruction.

No financial 'de-motivator' to stop shipments of counterfeits.



Conclusions

Legitimate vessel companies negligently or unwittingly:

- Transport counterfeits
- Engage in no due diligence re who they work with, including counterfeiters?
- Take no responsibility for the counterfeits, including storage and destruction costs, which are paid by the injured brand owners



1. Vessel companies should engage in minimal level of **due diligence** to avoid transporting counterfeits

- Message: Do legitimate vessel companies want to work with counterfeiters and ship counterfeits and if not what are they doing about it?
- Message: Without the 'delivery' there would be no transfer of counterfeits from the source to the consumer.
- Message: Vessel companies that have a Know Your Customer program will dissuade counterfeiters, thus those vessel companies that don't have said programs will be known by customs at the incoming ports and counterfeits will be detected easier through customs 'profiling' programs.
- Message: Vessel companies that have a Know Your Customer program will have a reputational advantage over those that do not engage in 'due diligence'.
- Message: Do audit departments in Brand Owners ensure their companies avoid service providers that aid and abet counterfeiters?



2. Vessel companies should pay **storage and destruction costs** for seized counterfeits instead of brand owners

- Message: Why should legitimate brand owners and their shareholders subsidize counterfeiters by paying for storage and destruction costs?
- Message: Is the practice 'unfair business practices' or fair under current law? Is this an IPR issue or 'unfair competition' issue?
- Message: Unless counterfeiters and those that profit from counterfeits pay for storage and destruction there is no economic disincentive for the counterfeiters.
- NEXT STEPS, COLLABORATION WITH VESSEL COMPANIES

