

Product Responsibility Best Practices	SUBJECT	Counterfeit Goods, Patent, Copyright and Trademark Infringement	LAST UPDATE	July 2018
	APPLIES TO	<ul style="list-style-type: none"> Suppliers Distributors 	FOCUS ON	What constitutes counterfeit goods and patent, copyright and trademark infringement, and how to comply with U.S. regulations.
	QUICK LINKS	<ul style="list-style-type: none"> PPAI Corporate Responsibility: www.ppai.org/corporate-responsibility UL: industries.ul.com/premiums-promotional-and-licensed-goods Consumer Product Safety Commission: www.cpsc.gov 		

Italic grey text indicates a hyperlink listed in the Online Resources section of this document.

Counterfeit Goods

Counterfeit goods are manufactured goods of lesser quality that mimic or otherwise duplicate a brand-name good in appearance, brand name and/or trademark details without the approval of the brand owner. Many goods that are imported into the United States are counterfeit.

Counterfeit goods are generally indistinguishable from patented, copyrighted and/or trademarked goods in that they are sold under the brand name of the product being counterfeited. Many genuine and branded products may have patent, copyright and trademark protections, and counterfeit goods may be in violation of all of these intellectual property rights.

Patent Infringement

Patent infringement occurs when a product or service has violated the rights of the patent owner for a patent covering all or part of a product or service. Design patents may be issued for the ornamental design of a product and are intended to protect the way a product looks. A utility patent is another type of patent that is typically granted to inventors for a new and useful process or way an item is made and used. Manufacturing, selling or importing a product in whole or in part which is covered by a patent, without the patent owner's permission, is considered theft. In short, patent infringement is the unauthorized use of property. Patented products usually have a patent number printed on or molded into the product or component. Design patents are denoted with the letter "D" (e.g., "Pat. #D12345678") to represent the patent's registration number, while utility patents are typically identified by a series of numbers without a letter designation (e.g., "Pat. #12345678"). Products that are pending patent approval are usually noted by "Pat. Pending."

Copyright Infringement

Copyrights typically provide protection to the authors of original work inclusive of photos, graphic designs, songs, works of art, movies, books, publications and much more. Copyright infringement is considered to take place when a copyrighted work is reproduced, then publicly displayed or distributed without the copyright owner's permission. Copyrighted materials are typically noted with a "©" mark on the protected work or product.

Trademark Infringement

A trademark is an easily recognizable sign, symbol, name or logo identifying a product or service from a specific organization, brand or individual. Trademarks typically protect phrases, words, slogans, names, logos or titles. Trademark infringement occurs when the trademark is used without the authorization of the trademark owner or licensee. An owner of a trademark may proceed with legal action based on the intent to counterfeit their product or service. Trademarks are usually indicated, adjacent to the trademarked property, such as a logo or name, with either a "TM" or "®" mark.

Effect On The Promotional Products Industry

In the promotional products industry the issues of counterfeiting, patent infringement, copyright and trademark infringement are a real concern for many due to the custom nature of the many products. When an organization receives a sample from one supplier, then sends it to another to duplicate it, they risk infringing on a patent, copyright or trademark as they are making a counterfeit product. Thus, the offending party may be subject to criminal penalties as well as civil liabilities.

Promotional products professionals often assist in the development of products, slogans, artwork and campaigns. Therefore, understanding the difference between copyrights, patents and trademarks is critical in order to avoid counterfeiting or infringing on another's rights.

- Trademarks usually apply to the brand logo itself, for both hard and soft goods. In order for a slogan, logo, word, or phrase to be trademarked it must be used as part of the brand.
- The application of industry decorations is typically considered artwork, which would be covered by copyright laws with regard to the configuration or design of the artwork only (images and graphic designs). Copyright laws typically would not apply to the words and phrases in this instance.

Consequences

In addition to the legal ramifications of counterfeiting and patent/copyright/trademark infringement, there are often unintended consequences in the form of product responsibility issues. Rarely are counterfeit goods made to the same specifications and quality standards of the original product. This poses a legitimate risk for all who use the product. Additionally, everyone involved in the supply chain will be liable should an incident occur.

Online Resources

The United States Patent and Trademark Office: www.uspto.gov/page/about-trademark-infringement

StopFakes.gov: www.stopfakes.gov/consumer-tools/report-fake-goods

United States Department of Commerce: www.commerce.gov/

United States Consumer Product Safety Commission: www.cpsc.gov/

United State Copyright Office: www.copyright.gov/

How To Avoid Counterfeiting Goods And Infringing On Patents, Copyrights And Trademarks

- Make patent, copyright and trademark reviews a standard protocol for custom designed products, as well as trendy items.
- Conduct business only with established, well-known industry suppliers. Be extremely cautious when working through unknown brokers and importers.
- For licensed or branded products, work with authorized suppliers and licensees and request documentation regarding their licenses.
- Be mindful that if it sounds too good to be true, it often is.
- Register your designs, processes, trademarks and other protectable works in the countries where you manufacture and sell.
- Record your patents, copyrights and trademarks with customs offices where your products are imported so they can be searchable by others seeking to avoid infringement.
- Monitor websites for your patents, copyrights, trademarks, licenses, etc.
- Duplicate another's product only with great caution and after determining you are not violating any intellectual property laws.
- Search the *U.S. Patent and Trademark Office (PTO)* grants when creating custom products.
- Check federal and state registers for actual and pending trademark applications.
- Do not copy another's written work without giving proper reference to the source.

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