

Chambre de Commerce Franco-Thaïe



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Counterfeiting: Where Does It Stop?

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Counterfeiting: Where does it stop?
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Lamps, pet food, medicines, auto parts, mobile phones, toothpaste, sunglasses, T-shirts, bearings, shampoo, luxury bags, pencils, glue, chocolate, and motorbikes: At first view, these products have little in common. In fact, what unites them is that they have all been seized by the Royal Thai Police, the Department of Special Investigation, the Thai Customs Department, or their counterparts in the past couple of years, all for forging or imitating a trademark.

The U.S. government stated in 2008 that up to USD 600 billion of internationally traded products were counterfeit. The Organization for Economic Co-operation and Development estimated that phony goods were equivalent to the national gross domestic product of more than 150 countries in 2005. Given those numbers, it should not be a surprise that consumers have little difficulty purchasing these products in open markets, in stores, and on the Internet.

In Thailand, imitation goods can be bought everywhere. Pantip, MBK, Patpong-Silom, Nana, and Kao San Road are all prime destinations for those in search of knockoffs. Even travel guides list the places to purchase fakes as musts on a Bangkok sightseeing tour, along with the Reclining Buddha and the Grand Palace.

That said, Thailand is no longer one of the main countries manufacturing counterfeits. The usual source of these products is China, but the products can also come from South Korea and Taiwan.

If Thailand is still a huge counterfeit market, this can be attributed to its location between Malaysia, Myanmar, China, Laos, Cambodia, and Vietnam, and its significance as a transborder shipping hub. Monitoring all the containers arriving or departing by land, sea, and air is an immense challenge.

Contrary to general belief, means to address the problem do in fact exist. Thailand has mechanisms in place to combat counterfeiting, and in most cases, those regulations meet the basic obligations contained in the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights. The legal framework for protecting intellectual property can be found in Thailand's Trademark Act, Copyright Act, Patent Act, Customs Act, Export/Import Act, and Civil and Commercial Code, among other statutes.

Legislators are intent on creating laws with teeth. Under the existing legislation, the seller, distributor, or importer can be held liable for counterfeit. The Thai government is pushing forward amendments to the Copyright Act and the Trademark Act to cover offenses for any person who buys counterfeit goods and pirated products in Thailand. In addition, the proposed amendments would allow actions to be taken against landlords who allow retailers to rent commercial space where the sale of counterfeit and pirated products takes place.

Tips

As a manufacturer or importer, companies should think about whether their products should be protected by intellectual property rights law, and maintain the validity of these rights; monitor the market for possible counterfeiting; conduct due diligence on their partners; and review their distribution or franchising agreement in order to cover their rights.

A consumer should take into consideration three important points: (1) the place where the product is sold, (2) the packaging of the product, (3) and the price. As it is commonly said, if it seems too good to be true, it probably is.

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