

SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR JUDICIARY COMMITTEE HEARING
"COUNTERFEITS AND THEIR IMPACT ON CONSUMER HEALTH AND SAFETY," APRIL
27, 2016

Questions for Shelley Duggan (Procter & Gamble)

1. Could you please elaborate on how the tactics of counterfeiters are evolving, and how you are keeping up with these criminals?

Answer: P&G sees the following evolution of the counterfeiters' business models--

Direct Sales to Consumers

Most P&G counterfeits are produced in China and then exported to other markets. However, counterfeiters are modifying their business models to take advantage of the rise of eCommerce and the Internet and lower costs to ship directly to consumers. These small shipments are growing. CBP seizures (both in terms of number and value) have increased in express delivery and mail shipments and the ocean category has decreased. Smaller packages of counterfeits are more difficult and less likely to detect.

In-Country Assembly

P&G is seeing fewer shipping containers of finished counterfeit product and a rapid rise of in-country assembly. Counterfeiters import bulk counterfeit components and packaging materials into a region then assemble in the destination countries. We work with local and federal law enforcement agencies to shut down these operations, which produce substandard (and often unsafe) products and are dangerous facilities.

Counterfeiting is a global and ever-changing industry. P&G has had a robust brand protection program for many years. Like many companies, the program's early years focused on seizures. But with the exponential and rapid growth of eCommerce and the Internet, it became clear the Company needed a multi-pronged approach to remain as agile as possible to fight the counterfeiters' new business model. Firstly, we frustrate the counterfeiters' supply chain. Secondly, we work to influence and enable third parties to help us in our fight and thirdly we make our products difficult to copy and counterfeits easier to detect. P&G's written testimony explains each prong in depth.

2. Could you give us more information on what best practices you encourage or engage in to fight against the sale of counterfeit products? Do you have best practices specifically designed to protect consumer health and safety?

Answer: P&G's Global Brand Protection program incorporates many of the best practices identified by industry associations and governments. We believe a key best practice is to stop the manufacture of counterfeits and keep them out of consumers' hands in the first place. P&G works with local and federal law

enforcement agencies around the world to shut down these operations, which produce substandard (and often unsafe) products and are dangerous facilities.

We manufacture our products pursuant to good manufacturing practices and in compliance with applicable laws and regulations. Contrast this with counterfeiters who manufacture without any regard for consumer health and safety or product integrity. Counterfeit products are always substandard and can be harmful to consumers' health and safety. P&G's investigations regularly discover unsanitary and dangerous counterfeit manufacturing operations.

A rise in consumer complaints is one indication that P&G consumers may have purchased a counterfeit product. Consumers' health and safety is put in jeopardy because the content of the counterfeit products is unknown and untraceable. If a safety issue arises, there is no reliable way of tracing the counterfeit product's origins. If there is an issue with a legitimate P&G product, the Company has processes and detailed records that can be used to quickly identify the issue and respond accordingly. If a consumer has an issue with one of our products, the consumer can call a toll free number and consumer relations will address their concerns.

3. What characteristics of products in the health and personal care industry make their counterfeiting such a sensitive problem for consumers? Can you elaborate on the specific harms in the health and personal care product industry?

Answer: Protecting consumers against counterfeits is consistent with P&G's purpose to touch and improve the lives of consumers around the world. Our products are used by billions of consumers as a part of their daily routines and lives. Consumers wash their hair with our shampoo, brush their teeth with our toothpaste, and use our razors to shave. As such, P&G takes counterfeiting very seriously.

For consumer products industry, counterfeit packaging has improved with the availability of cheaper technology but the product inside remains exceptionally poor. Better packaging makes consumer detection especially difficult.

P&G manufactures in compliance with applicable laws and good manufacturing practices. Counterfeiters manufacture without regard to consumer health and safety. P&G believes any counterfeit health or personal care product should be deemed unsafe and a threat to consumer health and safety. We have seen consumers cut by counterfeit razors and experience skin irritation from counterfeit shampoo.

4. Is there anything that Congress should consider in terms of legislation to help address the counterfeiting problem and specifically counterfeits that directly impact the health and safety of consumers?

Answer: The U.S. has a legal framework with robust civil, customs criminal and Internet enforcement rules that together weave an effective and multi-pronged approach to fight counterfeits. The recently passed TF&TE bill has provisions allowing for information sharing between CBP and rights holders. Outside the U.S., we support strengthening intellectual property rights, including the ability to interdict suspected counterfeit goods in transit.

5. Do you think that provisions in the Trade Enforcement and Trade Facilitation Act of 2015 will help companies in the fight against counterfeiting?

Answer: P&G was pleased to see the Trade Facilitation & Trade Enforcement Act (TF&TE) recently pass. We testified in support of TF&TE before Senate Finance in 2013 citing the disclosure and information-sharing between CBP and rights holders (such as unredacted images and samples) as a positive development. We are looking for quick implementation of these information sharing provisions and other provisions so that CBP can work more efficiently with rights holders.

6. What has been your experience with addressing counterfeiting problems with foreign law enforcement? Are certain countries' law enforcement more willing to deal with the problem than others?

Answer: IP theft is a crime that does not get the necessary attention in some countries. That's not the case in the U.S. Collaborative relationships between P&G, law enforcement and government agencies around the world demonstrate the public-private partnership that is a crucial element to an effective IPR enforcement regime. Anti-counterfeiting efforts undertaken by law enforcement agencies overlap and intersect with those undertaken by individual rights holders like P&G.

7. Has your company ever worked with the USPTO to get assistance in enforcing your intellectual property rights abroad?

Answer: P&G has had positive experiences with the IP Attachés that are a part of the USPTO's Overseas IPR Attaché program. We appreciate these efforts by the US government to assist American companies abroad and encourage the Program's continuation.

**Questions for the Record of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
Hearing on “Counterfeits and Their Impact on Consumer Health and Safety”
April 27, 2016**

Questions for Shelley Duggan, Proctor and Gamble

1. Proctor & Gamble has developed sophisticated operations to respond to the challenges of counterfeiting. Small businesses may not have that capacity. What is the business community doing to collaborate and share information to help report and prevent counterfeits, and what more can be done to encourage and facilitate such collaboration? What resources are available to small businesses?

Answer: The scope and nature of the counterfeit problem means everyone must take an active role in the fight against fakes, including small businesses and we encourage small companies to actively participate in the fight against fakes.

We appreciate that small businesses may not have the resources to combat counterfeits, but all legitimate businesses, even small ones are at risk. We encourage smaller companies to join trade or industry associations to collaborate and share information with larger companies. In these industry associations, located around the world, with appropriate legal parameters in place businesses share best practices, benchmark, exchange information and coordinate training for government officials, to fight the counterfeiters. P&G assists many small businesses on an informal basis to help them with their brand protection efforts.

There are also free resources available from governments. In the US, the USPTO, the IPR Center and the Department of Justice, all provide instructions and how-to guides on protecting a company’s intellectual property and fighting counterfeits-- all at no cost to businesses.

2. Increasingly, counterfeits are entering the country in small parcels sent directly to consumers, instead of in large shipments that are easy for Customs & Border Protection to detect. Is Proctor & Gamble experiencing this problem, and what steps are you taking to address it? Is there more that law enforcement and entities in the private sector, including delivery services, can do to address this problem?

Answer: Most P&G counterfeits are produced in China and then exported to other markets. However, counterfeiters are modifying their business models to take advantage of the rise of eCommerce and the Internet and lower costs to ship directly to consumers. These small shipments are growing. CBP seizures (both in terms of number and value) have increased in express delivery and mail shipments and the ocean category has decreased. Smaller packages of counterfeits are more difficult and less likely to detect.

P&G’s Global Brand Protection Program has evolved to meet the change in the counterfeiters’ business model, including the shift to small packages and direct to consumer sales. P&G has trained customs’ officers on this trend, has made its products more difficult to copy and fakes easier to detect and has worked directly and indirectly

with intermediaries to develop and implement best practices to prevent counterfeiters from using their services.

Again, the scope and nature of the counterfeit problem means everyone must take an active role in the fight against fakes. It is important for governments to train Customs and law enforcement officers at express ports and to develop systems, processes and tools that make it easier for customs officers to identify, detail, evaluate and seize express shipments of counterfeits.

Intermediaries are entities such as carriers, shipping companies, websites, platforms, portals and payment processors that connect manufacturers and consumers and are essential for legitimate business. The inherent complexity and inter-connectedness of intermediary channels make them attractive to counterfeiters who infiltrate their processes to facilitate their illicit activity. Intermediaries have a vested interest in keeping counterfeits out of consumers' hands. Intermediaries should continue to actively work with companies like P&G to identify and mitigate vulnerabilities in their supply chain. Also, intermediaries should educate themselves and institute best practices, for example those outlined in BASCAP/ICC's March 2015 report entitled *Roles and Responsibilities of Intermediaries*.

3. External packaging for counterfeits has evolved such that it is difficult for consumers to detect counterfeits from the outside alone—but the product inside still poses potential health and safety risks. Does Procter & Gamble support consumer education about this issue? What should consumers know to help them avoid such counterfeits?

Answer: Raising awareness and consumer education are essential in decreasing the demand for counterfeits. Effective education helps consumers understand the health and safety risks associated with counterfeits and identifies steps they can take to stop purchasing them. But counterfeiters have improved the packaging (due to technology) and now price their products so as not to raise suspicion so we find that many consumers do not know they are purchasing a counterfeit product. For that reason, P&G supports the underlying principle that consumers must be educated on the proliferation of counterfeits-- they impact every product category-- so they can make educated purchases and if their experience with a product is inconsistent, to be suspicious that it may be counterfeit. All stakeholders need to make the development and distribution of outreach and effective consumer awareness a priority.

4. You have experience working collaboratively with third parties including government, intermediaries and industry to fight counterfeits. What types of voluntary efforts have been the most successful? What can each stakeholder do better?

Answer: Counterfeited products are always substandard and defraud consumers so P&G's Global Brand Protection Program focuses on doing what we can do to stop the counterfeited products from getting into consumers' hands in the first place. P&G's multi-pronged approach to fighting counterfeits allows us to attack counterfeits at every point in the supply chain.

To do this, we collaborate with law enforcement, intermediaries and other third parties, either directly or via trade associations. We support several voluntary initiatives, including eCommerce take down programs and consumer awareness programs such as the BASCAP's "Fakes Cost More, I Buy Real campaigns." We are proud of the success we had in shutting down major counterfeiting manufacturing operations. But as the OECD report makes clear, the counterfeit problem is increasing for all industries and brands so we cannot be complacent.

It is our experience that the most successful voluntary efforts are those where the stakeholders acknowledge the growing problem with counterfeits, is willing to make necessary changes to address the issue and remains agile to modify strategies or tactics if they are not working.