

United States Senate Committee on Judiciary
Hearing entitled “Counterfeits and Their Impact on Consumer Health and Safety”
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Responses to Questions for the Record
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Questions from Chairman Grassley

1) How are counterfeiters’ tactics evolving, and how are you keeping up with these changes?

Until three years ago, Revision encountered the marketing of forgeries on vendor web sites, which were often small businesses, commonly located in Europe. The identities of the counterfeiters were usually easy to obtain from the information contained on the website, and if not, the data under which that site had registered its URL. With that information, cease and desist and take down demands made by counsel in the country in which it was posted were easily issued to known parties and compliance with such requests was high. Often the counterfeiters offered manufacturing source information, which, more often than not lead to sources in Asia. The case-load was usually less than 200 each year and while a burden was relatively manageable.

However, with the emergence of large online retailers such as Alibaba and Amazon, product vendors no longer had to develop and maintain their own websites. They could now simply use the large online retailer platform to market their counterfeits worldwide. In addition, the particulars of their company were only shared with the online retailer, which, in turn, could choose what they shared with the customer. The fact that online retailers also began assuming all of the transactions associated in fulfilling the orders, there developed a glaring lack of transparency regarding the true source of the product that had otherwise been better revealed when offered direct through the vendors own websites.

Not only were the vendors much harder to identify as counterfeiters increased their use of large online retailers, the volume of counterfeit product increased exponentially. The ease of use and reduced cost of posting a retail offering has greatly benefited the world economy. Small offerors can reach a worldwide market, which is a benefit that needs to be preserved. However, these benefits are also enjoyed by the counterfeiters and vastly simplified market entry has had its affect.

With the increased volume of counterfeiters, Revision has had to hire more staff and devote more resources to the thousands of postings that are now occurring. Staff has had to learn and implement the various and different complaint registrations and complaint filing procedures and processes implemented by the various large online retailers. While the online processes are efficient, each site is different and not all online retailers are equally responsive to take down requests.

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?

Revision has implemented the following best practices:

- Obtained patents, trademark registrations and copyrights for our products, not only in the US, but also in countries in which Revision markets our products and in countries where we need to most defend ourselves from counterfeits.
- Recorded our trademarks with the CBP, IPR Enforcement program. This has resulted in interdiction of counterfeited product.
- Actively monitor online content on a daily basis.
- Aggressively pursue complaints against those who market counterfeit products on the internet.
- Pursue criminal remedies against egregious offenders.

With regard to protection of consumer health and safety:

- Obtain and test counterfeit products;
- Educate distributors, retailers and customers regarding the dangers of counterfeit products and the need to assure that products are obtained from reliable retailers.

3) What has been your experience working with local, state, and federal law enforcement to protect against counterfeits? Are they responsive to your concerns? What can be done to better improve law enforcement efforts?

Revision has recorded our trademark with Customs and Boarder Protection, IPR Enforcement and that has led to five seizures of counterfeited product. CBP personnel have been professional, responsive and helpful regarding confirmation that such products were counterfeit, offering a sample for product testing, and ensuring that such products do not enter the stream of commerce in the United States.

This past January, Revision decided to escalate action against an especially challenging counterfeiter, which had repeated instances of online offerings of counterfeit goods. In conjunction with the Dearborn and Ohio County Prosecutor's Office in Indiana, Revision participated in a sting operation at the SnowSports Industries America (SIA) Snow Show in Denver, Colorado. The target was Guangzhou Botai Optical Visor Co., Ltd. ("Guangzhou Botai"), a company based in Guangzhou, China. Guangzhou Botai has been producing unauthorized counterfeit versions of Revision's Desert Locust goggle. The company's U.S. representative and part owner was arrested by local authorities on the showroom floor and arrest warrants were

issued for two other co-owners and a sales associate for this company. The four are facing six felony charges, including counterfeiting, theft, and corrupt business practices, as well as conspiracy to commit for each.

In the end, it is a question of resources. CBP should receive adequate funding to protect Americans from the import of counterfeit goods. Federal, state and local law enforcement should have adequate resources to enforce the laws in place regarding the sale of counterfeit goods.

Questions from Ranking Member Leahy

1) Businesses like yours in Vermont and across the country spend years developing their products so that customers know and trust their brand. How does counterfeiting affect the brand you've worked so hard to develop at Revision?

The most significant impact of counterfeiting on customer safety is the erosion of confidence that customers have developed regarding protective eyewear. Protective eyewear has irrefutable benefit regarding the prevention of serious injuries to the soldier, the police officer or anyone who is put at risk of being injured by flying projectiles or debris. It is confidence that has been build due to reliability and the comfort and ease of use that has been painstakingly developed through the investment of Revision resources over the years. The moment that this confidence is eroded through negative experiences with counterfeit products that fail or perform badly is the moment that people will be less likely to be safe.

Like the erosion of confidence in the product, there will be erosion of confidence in Revision and our line of personal protective equipment. Consumers have come to rely on Revision and as a result Revision has continued to reinvest in safety and comfort improvements to improve our products. Given this important connection to the consumer, Revision employs Americans and strives to protect not only those who put their lives on the line to protect our safety but provides critical eye protection for all who wear Revision products.

2) Law enforcement officers around the country rely on Revision products for safety. The samples you brought to the hearing demonstrate how hard it can be to spot counterfeits. What advice do you give to local law enforcement agencies to combat the risk of counterfeiting? Are there consumer education efforts that the federal government can help support?

Law enforcement officers are perhaps the most vulnerable consumers of counterfeit eye protection. Often a law enforcement officer's eye protection is purchased out of an equipment allowance that is offered to them by their department. In order to stretch the buying power of this allowance for all of the officer's safety and protective needs, any online offering of product that is much cheaper than the same product offered elsewhere will become an attractive option, particularly if it has every appearance of being legitimate. Online retailers give the impression of legitimacy, whereas the actual product sold can be quite different.

It is therefore a best practice for police departments to procure protective eyewear directly for the use of its officers. If they do not procure directly, better guidance can be provided by police departments as to approved eyewear through approved dealers. Police departments should also take care to use reliable retailers and distributors. Meanwhile, retailers and distributors must ensure that they are selling genuine product.

Consumer education is a key component regarding the dangers of counterfeit goods. First, consumers need to be made aware that counterfeit protective eyewear will not function properly to provide desired protection. Second, consumers need to be educated on the need to exercise caution when they purchase items.

Better consumer education resources should be developed to highlight the dangers posed by counterfeit products. There are several, sector based, counterfeit education programs that currently exist, having been developed by industry trade associations. However, there is a lack of well known, comprehensive education programs. Perhaps one the best comprehensive presentations has been developed is the UNReal Campaign by the International Trademark Association: <http://www.inta.org/Advocacy/Pages/UnrealCampaign.aspx>.