

# In ongoing challenge for luxury brands, influencers tout counterfeits online

By **Melissa Ritti**

(December 5, 2024, 9:46 PM GMT) -- Online shoppers are generally well-versed in the dangers of purchasing certain counterfeit goods — household electronics, pharmaceuticals and the like, which are ineffective at best and unsafe at worst. Consumers may not always be adept at spotting a fake, but they know it's something to avoid.

There is a different psychology entirely for counterfeit luxury products.

When it comes to handbags, jewelry and other high-end fashion accessories, most counterfeits are purchased knowingly and purposely, by consumers motivated not just by cost-savings but also by the thrill of the hunt.

— Hedonic motive —

The Center for Anti-Counterfeiting and Product Protection, or A-CAPP, at Michigan State University says hedonism is the strongest predictor of counterfeit purchase intentions and past behaviors. In the same study, A-CAPP said young consumers are more likely to derive pleasure from their bootlegged buys. For every year increase in age among study participants, the likelihood of seeking out a counterfeit drops by 2-5 percent.

Stepped-up enforcement efforts are paying off at the US border, where customs officials say the nature of seized goods is changing. Handbags and wallets, watches and jewelry have surpassed pharmaceuticals and consumer electronics as the most common counterfeits being imported to the US over the last three years, leading to an 80% rise in the overall MSRP of goods seized.

Now, some opportunistic influencers are positioning themselves to cash in on the trend by transforming their social media feeds into a fete for fakes.

— Due diligence —

It's a practice that can catch trademark owners off guard and leave them reeling, but it's important they take action, Preetha Chakrabarti, partner in Crowell & Moring's Intellectual Property Department and Advertising & Brand Protection group, told MLex.

There is an understandable reluctance to wade into a public spat with an influencer who boasts millions of followers, or one with a following that overlaps substantially with that of the victimized luxury brand. In such circumstances, Chakrabarti says due diligence is key.

She recommends trademark owners investigate not only an influencer's problematic posts but also their followers and most active commenters before taking "aggressive action."

If alienation seems likely, a notice under the Digital Millennium Copyright Act could be a low-cost, low-conflict first step. While the statute is meant to halt online copyright infringement — and its application to what is, essentially, counterfeiting advocacy seems tenuous — some platforms, like TikTok, have been responsive to takedown requests nonetheless, according to Chakrabarti.

"Influencers move quickly," she added. "Rather than have to fight something like that, they'll just drop it."

For those who don't, or won't, litigation may be inevitable.

— Ethical considerations —

Amazon successfully sued influencer Kelly Fitzpatrick for false advertising over social media posts touting counterfeit Gucci and Dior products. Fitzpatrick directed her followers to the Amazon storefronts of several seller co-defendants and provided them with instructions on how to purchase fakes via "hidden links" on the e-commerce platform.

The case ended in a \$27,000 consent judgment, which was entered by the US District Court for the Western District of Washington last year.

Long before squaring off in court against an influencer, however, luxury brands should make their case directly to consumers by explaining how the quality of craftsmanship and use of only the best materials is reflected in the price tag. Additionally, Chakrabarti says luxury brands should regularly educate their tried-and-true customers on which patterns and styles are authentic, so they are better positioned to spot a counterfeit in the wild.

An appeal to ethical considerations is also worth making.

By shining a spotlight on the ugly and often unseen consequences of what has become a \$2 trillion international criminal enterprise, consumers with hedonic motivation may find their latest counterfeit purchase less pleasurable.

The most direct route to becoming a mass counterfeiter begins with an overworked and underpaid workforce. That's why the majority of counterfeits imported to the US originate in countries with lax labor laws.

US Customs and Border Protection says 90 percent of goods seized in 2023 came from China and Hong Kong, where child and forced labor are not uncommon.

With limited exceptions, those same goods must then be destroyed and disposed of, clogging landfills already exceeding their capacity.

— Malice —

Luxury brands, for obvious reasons, lose out as well — and not just on sales.

The diminished goodwill associated with a shoddy item a purchaser mistakenly believes to be genuine is difficult to quantify, but so are the hard feelings of a purchaser who splurges on the real deal only to see replicas flood the market soon thereafter. For the brand, decades spent carefully curating a reputation of exclusivity can be rapidly undone.

Ironically, it is that same rarified air that makes counterfeiting so profitable and hardens some buyers to the societal and environmental harms of their purchase.

The more limited the run for a genuine product, the greater the demand for a suitable fake.

The more expensive the original, the greater the lengths some consumers will go for a cheap substitute.

"It can feel like whack-a-mole," Chakrabarti admits.

She recommends brands outsource the job of scouring the internet for dupe influencers to third-party vendors, if only for their own peace of mind.

"It's a monthly cost, and it can take a bit, but I really think that teams should build it into their advertising budgets," Chakrabarti says. "Ten years ago, it was easy enough to have a social media manager, or a college intern [to monitor social media], but influencers, especially the ones acting with malice, know how to not get caught."

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