

Publication	Industrial Products Finder	Date	February-2019	Page No.	130
Client Name	Havells	Edition	National		

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Tips to stop counterfeit menace in electrical equipment industry

The widespread menace of counterfeiting in India is acting as barrier in the growth path of manufacturing sector. Counterfeiting is a problem that needs to be addressed quickly and decisively. According to Harsh Aggarwal, the brand owners in partnership with law enforcement agencies should look for technological solutions for fighting counterfeits.

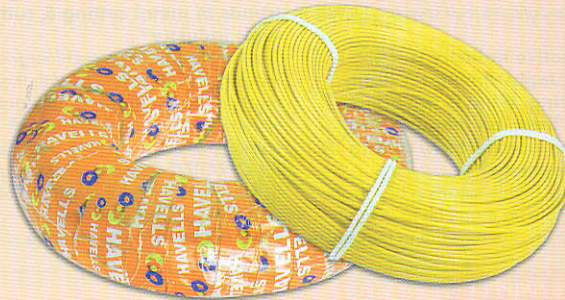
The market for counterfeited goods is thriving in India and counterfeiting is today one of the biggest challenges faced by the domestic industry. India has the potential of becoming a global manufacturing hub. However, the widespread menace of counterfeiting is acting as barrier in achieving this goal.

Counterfeiting not only affects the sales and revenue of the industry but also dents the reputation of brand owners as it threatens their profits, reputations and, potentially, the lives, safety and loyalty of their customers as sub-standard raw materials are generally used to make counterfeit goods for cheap imitations of reputed brands that customers trust.

Counterfeit goods affect multiple industries such as apparel, fashion accessories, medicine, cigarettes, automotive parts, consumer goods, toys, electrical and electronic goods, etc. Consumers purchase the branded products believing them to be genuine only to realise afterward that they do not meet industry requirements. Sometimes counterfeits get passed off under a brand name but are actually not manufactured by that company and are made of low quality materials that cannot perform the necessary functions required.

Counterfeiting is very heart-breaking for the innovators also as they put in a lot of imagination and time in coming up with an innovative and quality product and in no time the counterfeiters start reaping the benefits of their innovation by supplying the fake substandard quality products at lower cost.

Trades in counterfeits can be



broadly divided into two categories:

1. Consumers knowingly purchase counterfeit products and there is no element of deception, and
2. Consumers intend to buy original products but are deceived into buying counterfeits and certainly, there is deception

Trades in the first scenario involve products like clothing, footwear and fashion accessories. Such transactions infringe the copyrights and trademarks of the brand owners, but they do not represent any form of cheating qua the consumer. The second scenario involves products such as printer cartridges, auto parts, mobile phones and related accessories. Given the nature of these products, they will not affect the health and safety of the user.

However, counterfeits of life saving devices like MCBs, electricals wires, medicines, cosmetics etc. pose a serious threat to life and safety of unsuspecting consumers. No consumer would knowingly buy counterfeits of such products and would certainly be deceived into buying fakes of such products under a false pretext. As such there is

always an element of cheating in such transactions.

Existing legal framework

In India, there is no legislation to impose strict punishment and/or imprisonment for counterfeiting and piracy. Procedurally, section 115(4) of the Trade Marks Act, 1999, provides for search and seizure by the police in case of offences under section 103 (applying false trademarks, trade descriptions, etc.) and section 104 (selling of goods or providing services to which false trademarks or false descriptions are applied). However, a proviso to section 115(4) also mandates obtaining a prior opinion from the Registrar of Trademarks on the facts of the offence.

Obtaining such an opinion is a time-consuming process, which generally delays the action to be taken, giving counterfeiters ample time to evade the law. Although a brand owner has the option of filing a complaint before a magistrate to investigate under section 156(3) of the Criminal Procedure Code, 1973, alongside the issuance of warrants

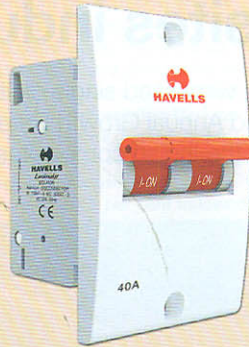
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for search and seizure under sections 93 and 94, this too is cumbersome and prevents speedy anti-counterfeiting action.

Accordingly, all brand owners across industries adopt a simpler route in invoking section 64 of the Copyright Act, 1957, for search and seizure, as well as getting a first information report (FIR) registered against the wrongdoers which offence is bailable. However, stricter provisions from Indian Penal Code under section 420, 468 like cheating, forgery etc. which are non-bailable offences are generally not invoked by police authorities despite ingredients of such serious offences being completely made out.

Most brand owners devise strategies against the sale of counterfeit goods with the sole objective of creating deterrence, culminating in offenders facing criminal actions. However, in the absence of strict and specific laws in India against counterfeiting, retailers continue to flood the market with



sub-standard counterfeits of special products with impunity, posing serious public safety issues. Therefore, there is an urgent need to keep a vigil on notorious markets and e-commerce platforms which sell products on highly discounted and unrealistically low prices.

Conclusion
Counterfeiting is a problem that

needs to be addressed quickly and decisively. There is an urgent need for the government to frame dedicated legislation to deal with the counterfeiting of critical products and strict actions should be taken against those who are involved in such malpractices. The brand owners in partnership with law enforcement agencies should look for technological solutions for fighting counterfeits and in the time being use stricter provisions of law available within the legal framework in order to take the culprits to task.

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About the Author:

Harsh Aggarwal is the Joint General Manager of Havells India Ltd - one of the largest electrical equipment companies in the country. Havells India - which owns brands like Havells,

Lloyd, Crabtree, Standard Electric, and Promptech - offers products such as home and kitchen appliances, lighting, LED lighting, fans, modular switches and wiring accessories, water heaters, industrial and domestic circuit protection switchgear, industrial and domestic cables and wires, induction motors, and capacitors among others.