

Consumers and counterfeited products

Speech delivered by Monique GOYENS, Director-General, BEUC, at the High level conference on counterfeiting and piracy organised by the EC Commission on May 13th, 2008 – panel 2 : implications on health and safety of consumers

Introductory remarks – reactions to previous speakers

The issue of counterfeiting is an important one, though it is not withheld among the priorities of consumer organisations. Indeed, in all areas we are working in, all our resources are devoted to promoting the consumer interest with regard to branded products – those that are produced and marketed by their legal producer/distributor. So, counterfeiting, representing still a minor part of consumer markets, is not high on our agenda.

I would also like to stress that the parallelism : “it comes from China – or any other third country -, thus there is a risk”, should not be made too easily : many brands have chosen themselves to delocalise their production out of the EU for many reasons; this implies that 80 to 90 % of all goods, in some branches, are made in China or in any other country; we all remember the toy safety scandal last year, where the products were branded products, produced in China in accordance with the terms of references of the European undertaking.

Having been invited to address the conference on this panel, I should limit my intervention on issues of health and safety. However, I would like to stress here that issues of counterfeiting and piracy bear a particular importance for consumers in the area of the digital environment, and in particular for online markets. In this context, consumers are too often criminalised and described as pirates. We are aware that people are cheating and we do not support them; however, in too many instances, consumers are being told what they can not do, rather what they can do, and consumers see their rights more limited in the digital sector than in the traditional sectors when it comes to intellectual property right. In this context, BEUC particularly believes that the graduated response, as considered by the French legislator, constitutes an unfair and inadequate tool for enhanced author protection. We invite the cultural industry to be more creative and to propose to adapt the business models and intellectual property provisions to modern technologies as proposed and sold to consumers.

Brand producers are not the only victims of counterfeiting

There are voices that say that consumers are the allies of counterfeiters, as they buy counterfeited products and therefore provide for the necessary market outcome of these illegal activities. Now let's make things clear right from the start : consumer organisations recognize the right to image, the right of intellectual property (as long as it is not misused, as sometimes is the case, but this is not on the agenda today) and they do not recommend to consumers to buy counterfeited products, and this is even more the case in areas where there can be dangerous implications for consumers. We do not defend those consumers who knowingly buy counterfeited products to have a good bargain.

The fundamental question there is however : when does the consumer know that the product he buys is counterfeited. This is certainly the case when the price is far under the price asked for by the right holder. I heard this morning that when you make a good deal on a “Lacoste” shirt, then you should know that it is counterfeited. But this should be nuanced : if you buy it for 5 € on the beach, a reasonable person should know that this cannot be an original shirt; but if you buy it for 25 € in a shop, you could think it is last years’ rebates, or any other end of season bargain, or “dégriffés, ...

In many cases, the price difference could be explained by other reasons (products from the previous season, dégriffés, as we say in French, end of season sales, etc.), sometimes, there is no huge price difference at all at the level of the retail market. Sometimes, also, the counterfeit concerns only a spare part of a branded product, and it is even more difficult for the consumer to become aware of it, certainly in sectors where there is huge price competition (PCs, mobile telephones, etc.).

In counterfeiting, the brand producer is often – and rightly – described as a victim. He is however not the only one : consumers are also victims of counterfeiting, because they are brought to believe that they buy a product that corresponds to some specific expectations : safety, quality, design, authenticity, image while in reality, they don’t. From the point of view of the producer, you can speak of brand theft, from that of the consumer you can speak of fundamental deception !

The implications of counterfeiting on consumer health and safety

In certain areas, and certainly in that of pharmaceuticals, technical products, such as cars or medical devices, or any other electrical equipment, counterfeited products theoretically bear more risks than the original product to provoke health or safety problems for consumers, as it is supposed that the counterfeiter does not use the same care in production than the original producer. I would like to make two remarks on this issue :

- there are no statistics within the EU on specific accidents linked to counterfeited products, even though accidents have been reported in Asia or in developing countries. I would by the way also like to stress that branded products are not totally free from consumer health and safety risks, as show the weekly notifications registered by the European Rapex system.
- The development of internet technologies can, to a certain extent, contribute to the development of markets for counterfeited products, as the tracking down of the distribution channels is more difficult to carry out.

Proposals in the pharmaceutical sector

In the area of pharmaceuticals, given the potential hazards linked to counterfeited products, BEUC would like to contribute to the debate by the following thoughts :

- it is important not to confuse between generic products and counterfeited products : the pharmaceutical industry sometimes let this confusion : generic products are legally produced products that benefit from the expiry of a licence and that enable the poorer, or the national health systems to have access to cheaper but still safe alternatives;
- it is also important not to confuse between counterfeiting of products and parallel trade in branded products. Consumer organisations are in principle in favour of parallel trade as it enhances competition and brings prices down. However, in the pharmaceutical sector, parallel trade could be organised to the detriment of consumers in poorer countries and it has still to be checked whether parallel trade brings any financial benefit to the consumer.
- the traditional distribution channels of pharmaceuticals are rather well organised, and therefore the risks lie mainly with the internet. It is therefore important to increase public information, but also the information addressed to health care professionals, because they have the right to know but also could have an active role to play in reporting suspicious cases to the competent authorities.
- It is important to take strong actions against counterfeiters, not only by providing stronger tools for authorities to tackle the problems, but also by imposing stronger penalties. Cooperation between national authorities should also be enhanced, not only within the European Union, but also with third countries
- Technology should be developed to better trace products and identify counterfeit products on the market. However, such technologies should respect consumer privacy and safety (eg RFID). It is important to make this technology available for developing countries.