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CONCEPT AND CAUSES OF COUNTERFEITING

Abstract. This article deals with the issues of basic aspects of unfair counterfeiting. An attempt was made to indicate and define basic terms related to this area. In addition, the group of causes of the phenomenon were determined, i.e. economical, psychological, socio-political, technological and intra-organizational factors and they have been characterized in details.

Keywords: brand management, unfair competition, brand protection

POJĘCIE I PRZYCZYNY ZJAWISKA NIEUCZCIWEGO NAŚLADOWNICTWA

Streszczenie (abstrakt). Niniejszy artykuł porusza problematykę podstawowych aspektów dotyczących zjawiska nieuczciwego naśladownictwa. Podjęta została próba wskazania i zdefiniowania podstawowych terminów związanych z tym obszarem. Dodatkowo, zdeterminowano grupy przyczyn fenomenu, tj. czynniki ekonomiczne, psychologiczne, polityczno-społeczne, technologiczne, wewnątrzorganizacyjne oraz szczegółowo je scharakteryzowano.

Słowa kluczowe: zarządzanie marką, nieuczciwa konkurencja, ochrona marki

Introduction

The conditions of the modern market economy, that is the high variability of the organization's environment, globalization, as well as the intensification of competitive activities, require companies to create strong and distinctive brands. Building brand value requires to incur expenditures, meanwhile dishonest imitators use the potential of a product (service) marked with a recognizable brand. Therefore, it seems advisable to consider the understanding of the concept and the reasons for the phenomenon of counterfeiting.

Concepts related to the phenomenon

In the literature there are concepts closely related to the problem of unfair activities in the area. These include: brand protection, dishonest imitators, counterfeiting, brand imitation, brand piracy and like products.

Brand protection are all activities taken by the brand owner, aimed at securing products (services) and other brand components against the actions of dishonest imitators.

A dishonest imitator is *an entity whose activities are contrary to law or morality, if it threatens or violates the interests of another entrepreneur or client, in particular by misleading the business name, false or fraudulent designation of the goods or services geographical origin, misleading designation goods or services, breach of business secrets, imitation of products, accusation or dishonest praise*¹.

The actions of dishonest imitators can be divided into: misleading and not misleading clients (consumers)²:

- a) actions misleading clients (consumers) are characterized by the fact that buyers are convinced of the original brand purchase. The product (service), packaging, visual identification system, price and distribution channel are confusingly similar to the offer of the brand owner, so the customer is deliberately misled. In this case, there is a real threat to the user, especially in the case of purchasing product (service) categories directly affecting health and human life.
- b) actions that do not mislead clients (consumers) are characterized by the fact that the buyer is aware of buying the product of an unfair imitator. There is a whole range of indications that the product (service) is not a genuine brand - low price, unauthorized distribution channel (e.g. bazaar) or evident differences in appearance.

The analysis of collected definitions: counterfeiting, brand imitation and brand piracy, showed significant discrepancies among them.

In the case of counterfeiting, the cited authors are focused on violating various elements of the brand-copying the product³ or only identifiers⁴. In addition, the criterion of introducing the client (consumer) into the confusion about the authenticity of the product is taken into account - most authors believe that misleading is purposeful in this approach, while A. Nia and J. Zaichowsky claim that there is a phenomenon of counterfeiting, which is not fraudulent.

¹ Ustawa o zwalczaniu nieuczciwej konkurencji z dnia 16 kwietnia 1993 z późniejszymi zmianami

² *The Economic Impact of Counterfeiting and Piracy*, Organization for economic co-operation and development, OECD 2008, p. 15.

³ *Inter alia*: I. Phau, G. Prendergast, L. Chuen, H. Kay, G. McDonald, C. Roberts, A. Nia, J. Zaichowsky, T. Papadopoulos.

⁴ *Inter alia*: G. Urbanek.

Table 1. Summary of definitions: counterfeiting

I. Phau G. Prendergast L. Chuen ⁵	Exact copying of a brand product aimed at deceiving consumers who should believe that it is an authentic product.
G. Urbanek ⁶	Marking products with identifiers confusingly similar to a known brand.
H. Kay ⁷	Making reproduced copies that are identical to the legitimate articles including packaging, trademarks, and labeling.
G. McDonald C. Roberts ⁸	Making counterfeit good which the manufacturer produces with the intention of deceiving the customer by leading buyers to believe that they are purchasing the genuine article. A deliberate attempt therefore is made to conceal the deception by as precise a duplication as possible.
A. Nia J. Zaichowsky ⁹	The production of counterparts whose characteristics depend on the intentions of an dishonest imitator. In the case of fraudulent counterfeiting, the consumer is misled and acquires the product being convinced that it is a genuine brand. In the case of counterfeiting, which is not fraudulent, the consumer realizes that he buys a counterfeit product, as it is indicated by many features such as: price, place of purchase, quality.
T. Papadopoulos ¹⁰	Designing counterparts in such a way that they can pretend to be a genuine product, usually marked with a particular trademark or trade name. The counterfeit product is designed to resemble a brand product, which in turn will cause the consumer to be misled.

Source: Own elaboration

Brand imitation, according to the majority of authors¹¹, consists in the production of products that are not identical, but are confusingly similar to brand names. In turn,

⁵ I. Phau, G. Prendergast, L. Chuen, *Profiling brand-piracy-prone consumers: An exploratory study in Hong Kong clothing industry*, Journal of Fashion Marketing and Management, No 5/2001, p. 45-55.

⁶ G. Urbanek, *Zarządzanie marką*, Polskie Wydawnictwo Ekonomiczne, Warszawa 2002, p. 238.

⁷ H. Kay, *Fake's progress*, Management Today 1990, p. 219 [in]: Ang S., Cheng P., Lim E., Tambyah S., *Spot the difference: consumer responses toward counterfeits*, Journal of Consumer Marketing, No 3/2001.

⁸ G. McDonald, C. Roberts, *Product Piracy. The problem that will not go away*, Journal of Product and Brand Management, No 4/1994, p. 55-65.

⁹ A. Nia, J. Zaichowsky, *Do counterfeits devalue the ownership of luxury brands?*, Journal of Product and Brand Management, No 7/2000, p. 485-497.

¹⁰ T. Papadopoulos, *Pricing and pirate product market formation*, Journal of Product and Brand Management No.1/2004, p. 56-63.

¹¹ *Inter alia*: A. D'Astous, E. Gargouri, I. Phau, G. Prendergast L. Chuen.

G. Urbanek does not specify the degree of similarity to the brand offer, only defines imitation as copying of the product and brand indicators.

Table 2. Summary of definitions: brand imitation.

A. D'Astous E. Gargouri ¹²	Brand imitation is a profitable marketing strategy based on the utilization of similarity (package, design, brand name, advertising, etc.) in order to facilitate the acceptance of a brand by consumers. Because it resembles the successful (original) brand that it intends to imitate, the brand imitator may be attributed the original brand's properties (quality, performance, reliability, origin, etc.) and such generalization is thought to have a significant impact on brand attitude and purchase.
I. Phau G. Prendergast L. Chuen ¹³	Manufacturing products that are not identical to the original ones, but similar in composition, name, form, meaning or design to a well-known product.
G. Urbanek ¹⁴	Copying the product and applying the appropriate brand indicators.

Source: Own elaboration

However, the biggest differences are in the meaning of the term: brand piracy. G. Urbanek treats piracy as the overriding term for other characterized ones, while the other authors¹⁵ indicate the characteristics of customers who consciously acquire the counterparts, agreeing to a lower quality and price.

Table 3. Summary of definitions: brand piracy.

I. Phau G. Prendergast L. Chuen ¹⁶	The consumer is aware that the good is fake, usually sold as a fraction of the price of the original product.
G. Urbanek ¹⁷	It can take many forms: imitation, counterfeiting, taking precedence in the ownership of the brand in a given area.
G. McDonald C. Roberts ¹⁸	A pirated product is one with which the intention is not to deceive the customer. On the contrary, the consumer is all too aware that the product he or she is buying is pirated. The awareness of the customer that the product is fake stems from the purchase motive, i.e., it is a conscious act on the part of the buyer to seek out and purchase a fake product.

¹² A. d'Astous, E. Gargouri, *Consumer evaluation of brand imitations*, European Journal of Marketing, No 1/2, 2001, p. 153-167.

¹³ I. Phau, G. Prendergast, L. Chuen, *Profiling brand-piracy-prone consumers: An exploratory study in Hong Kong clothing industry*, Journal of Fashion Marketing and Management, No 5/2001, p. 45-55.

¹⁴ G. Urbanek, *Zarządzanie marką*, Polskie Wydawnictwo Ekonomiczne, Warszawa 2002, p. 238.

¹⁵ *Inter alia*: G. McDonald, C. Roberts, T. Papadopoulos, I. Phau, G. Prendergast L. Chuen.

¹⁶ I. Phau, G. Prendergast, L. Chuen, *Profiling brand-piracy-prone consumers: An exploratory study in Hong Kong clothing industry*, Journal of Fashion Marketing and Management, No 5/2001, p. 45-55.

¹⁷ G. Urbanek, *Zarządzanie marką*, Polskie Wydawnictwo Ekonomiczne, Warszawa 2002, p. 238.

T. Papadopoulos ¹⁹	Piracy, like counterfeiting, relies on the unauthorized reproduction of branded products in which intellectual property rights are infringed, but the consumer is not misled. Pirate products are targeted at price-sensitive buyers who do not pay attention to the quality or appearance of the product.
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Source: Own elaboration

The analysis above allows to formulate conclusions regarding the understanding of particular terms. Thus, counterfeiting is copying the external form of the product by technical means of reproduction, if it can mislead customers as to the identity of the producer or product²⁰. It also seems necessary to introduce the term: brand falsification, which concerns only one of the elements of the brand, namely copying of any of the components of the visual identification system.

Imitating a brand means creating products that are confusingly similar to branded products, so-called like products. The Polish Association of Branded Product Manufactures ProMarka defines a like product as *a product that resembles a brand product with its general appearance, combining some explicit visual features inherent in the brand, with some distinct features. The final result is a similar overall look of both products*²¹. G. McDonald and C. Roberts formulated the following classification of like products²²:

- a) products that look similar to their brand matches (look-alikes);
- b) products named similar to their brand matches (sound-alikes);
- c) products fragrant similar to their brand matches (smell-alikes).

Brand piracy is the *production of goods being subject to an act infringing copyright or related right or design in the Member State, in which they were disclosed and which are a copy or contain a copy made without the consent of the copyright, related right or design holder, or without the consent of the person authorized by the holder in the country of manufacture*²³.

Causes of counterfeiting

There are a number of reasons why dishonest imitators decide to counterfeit brands. The decision to start or continue the practice of dishonest instigation may be influenced by factors: economic, psychological, socio-political, technological and intra-organizational.

¹⁸ G. McDonald, C. Roberts, *Product Piracy. The problem that will not go away*, Journal of Product and Brand Management, No 4/1994, p. 55–65.

¹⁹ T. Papadopoulos, *Pricing and pirate product market formation*, Journal of Product and Brand Management, No 1/2004, p. 56-63.

²⁰ Ustawa o zwalczaniu nieuczciwej konkurencji, art. 13.

²¹ Polskie Stowarzyszenie Wytwórców Produktów Markowych ProMarka www.promarka.pl.

²² McDonald G., Roberts C., *Product Piracy. The problem that will not go away*, Journal of Product and Brand Management, No 4/1994, p. 55-56.

²³ Rozporządzenia Parlamentu Europejskiego i Rady (UE) nr 608/2013 z dnia 12 czerwca 2013 r. w sprawie egzekwowania praw własności intelektualnej przez organy celne oraz uchylające rozporządzenie Rady (E) nr 1383/2003, Dz. U. L 181 z 29.06.2013, art. 2.

A. Economic factors are mainly: chance for big profits and bearing a small financial risk.

1. Chance for big profits.

It seems that the most obvious reason for which, both in Poland and in the world, the market for infringements is so attractive, there are large profits for imitators, with relatively low expenditures. By counterfeiting a known brand it is not necessary to bear huge costs of building marketing value – it is enough to organize technical implementation and to introduce on the market.

2. Bearing a small financial risk.

Another reason for the counterfeiting phenomenon (closely related to the first one) is that the imitators have relatively low financial risk. It should be noted that the only outlays are production and distribution channel, while the risk associated with the introduction of the brand on the market and acceptance by consumers already were incurred by the brand owner. Introduction of the brand to the market is very capital-intensive: in addition to the need to invest in the creation of a new brand (incurring research expenses, developing a design, creating a graphic packaging solution, registration and legal protection, appropriate positioning and advertising campaign), it is also necessary to ensure the infrastructure of the production process, legal distribution channels and points of sale, as these elements also contribute to building brand value.

B. Psychological factors: consumer needs unification and the celebrities cult phenomenon.

1. Consumer needs unification.

An important reason for the emergence of counterfeit products and services is the unification of consumer needs. Consumers living in different places around the world want to have access to the same brands. The consequence of this was the appearance of dishonest imitators who, instead of introducing products and services to foreign markets in accordance with the law (e.g. obtaining a license or offering services on a franchise basis), prefer using cheaper, but unfair methods.

2. Celebrities cult phenomenon.

The psychological trend in the field of consumer behavior that can be observed in the modern world is the so-called cult of celebrities, people who are widely known and recognizable - mainly music and film stars. This phenomenon is effectively supported by the continuous media coverage of the celebrities lives, mainly the image, on which can be seen many brand products used by celebrities in everyday life and during major events. In addition, this is deepened by the product placement, the technique used to place a product (brand) in the message (film, series, computer game, etc.) in such a way that it appeals to the consumer without using classic advertising. It is very likely that the average consumer, who wants to feel like a star for a moment, but does not have enough assets to buy an original product, will be willing to buy a replacement.

C. Socio-political factors: low threat of punishment, complicated redress, transformation of economies, globalization of trade, high taxes on brand trade and the expansion of free trade areas.

1. Low threat of punishment.

Counterfeiting is treated as a crime under the laws of many parts of the world. Formally, the law provides for significant penalties for brand violation: duty to redress the damage, fine, restriction or deprivation of liberty. In practice, however, the use of these sanctions is limited. For example, in Poland, in 2012, 671 people were tried in court proceedings concerning copyright infringement, of whom only 361 were convicted legally. In most cases, due to the negligible social harmfulness of the act, dishonest followers were subject to a fine only (181 sentences), which usually did not exceed PLN 1,000 (131 judgments). In relation to 154 people, a prison sentence was imposed, however, in 151 cases, the sentence was suspended. The remaining people were sentenced to restriction of liberty, which was most often met in the form of public works²⁴.

2. Complicated redress.

Public consultations carried out by the Ministry of Culture and National Heritage unambiguously demonstrated the low effectiveness of the procedure for pursuing claims related to violations²⁵. Long-lasting lawsuits, inconsistent case-law, high costs of proceedings and gathering evidence may discourage brand owners from claiming their rights.

3. Transformation of economies.

Another reason for the recently developed counterfeit market has been the attractiveness of countries in transition. This consisted of both imperfect legal regulations in these countries and the specificity of customers (consumers) living in them. It was possible to observe the phenomenon that citizens of these countries, despite obtaining low revenues, appreciated prestigious brands. Unable to afford original products or services, they could choose to buy counterfeits, usually at a lower price.

4. Globalization of trade.

The ongoing globalization, which has the consequence of the shrinking world phenomenon²⁶, allows for easier dissemination of information about products (services), as well as providing them to consumers, which can be used by dishonest imitators.

5. High taxes on brand trade.

The sale of certain goods (alcohol, medicines, car parts) is subject to high taxes in many countries. This may lead to entering the market of dishonesty imitators who may offer their products in these categories without incurring fees for the state.

6. Expansion of free trade areas.

²⁴ *Program na rzecz ochrony praw autorskich i praw pokrewnych 2014 – 2016*, Zespół do Spraw Przeciwdziałania Naruszeniom Prawa Autorskiego i Praw Pokrewnych, Ministerstwo Kultury i Dziedzictwa Narodowego, Warszawa 2014, p. 15-16.

²⁵ *Ibidem*, p. 14-15.

²⁶ M. Komańda, *Marka kultowa jako przejaw współczesności w teorii zarządzania*, [in:] *Spoleczne i organizacyjne czynniki rozwoju przedsiębiorczości*, Politechnika Łódzka, Łódź 2013, p. 310–319.

The consequence of creating free trade zones is the abolition of control over the flow of goods, which may mean easier organization of the activities of the infringers.

D. Technological factors: technology development and new distribution channels.

1. Technology development.

With the development of technology, more perfect machines are constructed, which allow very good quality production of components, similar to the original. New production technologies, on the other hand, reduce production costs in comparison to previous years, where it was necessary to incur huge investment costs to create a whole production park²⁷.

2. New distribution channels.

The development of the Internet has led to the creation of new distribution channels, as well as the opportunity to reach the potential buyers around the world with the announcement of the offer. E-commerce thus has facilitated the exchange of goods and services for both brand owners and dishonest imitators. The Internet turned out to be a tool that caused the spread of counterfeit products and services, both through online stores and auction websites.

E. Intra-organizational factors, that is, activities of individual enterprises that can influence the encouragement of dishonest followers to attempt to violate. Intra-organizational factors include: the lack of legal supply and the lack of brand security.

1. The lack of legal supply.

Brand owners, responding to changes occurring in the environment, make strategic decisions about entering or leaving concrete markets. These decisions can be dictated by such considerations as tightening the law or distribution problems. This means that it is not always the lack of demand that causes the withdrawal of the product, and the consumer who would like to buy a brand product, but has no access to it, may be willing to buy a counterfeit product²⁸.

2. The lack of brand protection.

Lack of company's activity in the area of brand protection, lack of a strategy to protect it, as a consequence, may lead to facilitating copying by other entities²⁹.

Summary

The phenomenon of counterfeiting in the modern world is increasingly expanding³⁰. This article is an attempt to organize the definitions and identify the causes of unfair imitators. It

²⁷ J.M. Murphy (red.), *Branding: a key marketing tool*, The MacMillian Press Ltd, London 1987, p. 63.

²⁸ R. Post, P. Post, *Zarządzanie ochroną marki*, Oficyna Wolters Kluwer, Warszawa 2011, p. 20

²⁹ *Ibidem*

³⁰ Detailed information: Sałamacha A., *Zachowania rynkowe nieuczciwych naśladowców we współczesnej gospodarce*, [in:] Karczewski L., Kretek H. *Etyczne i społeczne uwarunkowania biznesu, gospodarki i zarządzania*, Politechnika Opolska, Opole 2016

has been shown that the phenomenon has many varieties, moreover, the economics growth facilitates the operations of unfair competition. Therefore, it seems advisable to develop a solution that supports companies in area of brand protection.

Bibliography

- d'Astous A., Gargouri E., *Consumer evaluation of brand imitations*, European Journal of Marketing, No 1/2, 2001.
- Ang S., Cheng P., Lim E., Tambyah S., *Spot the difference: consumer responses toward counterfeits*, Journal of Consumer Marketing, No 3/2001.
- Komańda M., *Marka kultowa jako przejaw współczesności w teorii zarządzania*, [in:] *Spółeczne i organizacyjne czynniki rozwoju przedsiębiorczości*, Politechnika Łódzka, Łódź 2013.
- McDonald G., Roberts C., *Product Piracy. The problem that will not go away*, Journal of Product and Brand Management, No 4/1994.
- Murphy J.M (red.), *Branding: a key marketing tool*, The MacMillian Press Ltd, London 1987.
- Nia A., Zaichkowsky J., *Do counterfeits devalue the ownership of luxury brands?*, Journal of Product and Brand Management, No 7/2000.
- Papadopoulos T., *Pricing and pirate product market formation*, Journal of Product and Brand Management, No.1/2004.
- Phau I., Prendergast G., Chuen L., *Profiling brand-piracy-prone consumers: An exploratory study in Hong Kong clothing industry*, Journal of Fashion Marketing and Management, No 5/2001.
- Post R., Post P., *Zarządzanie ochroną marki*, Oficyna Wolters Kluwer, Warszawa 2011.
- Polskie Stowarzyszenie Wytwórców Produktów Markowych ProMarka www.promarka.pl.
- Program na rzecz ochrony praw autorskich i praw pokrewnych 2014 – 2016, Zespół do Spraw Przeciwdziałania Naruszeniom Prawa Autorskiego i Praw Pokrewnych, Ministerstwo Kultury i Dziedzictwa Narodowego, Warszawa 2014.
- Rozporządzenia Parlamentu Europejskiego i Rady (UE) nr 608/2013 z dnia 12 czerwca 2013 r. w sprawie egzekwowania praw własności intelektualnej przez organy celne oraz uchylające rozporządzenie Rady (E) nr 1383/2003, Dz. U. L 181 z 29.06.2013, art. 2.
- The Economic Impact of Counterfeiting and Piracy, Organization for economic co-operation and development, OECD 2008.
- Urbanek G., *Zarządzanie marką*, Polskie Wydawnictwo Ekonomiczne, Warszawa 2002.
- Ustawa o zwalczaniu nieuczciwej konkurencji z dnia 16 kwietnia 1993 z późniejszymi zmianami.