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Combating Pirates and 'Parasites'

Counterfeit and diverted products are problematic and, in some cases, dangerous.

By **Joanna Cosgrove**
Online Editor

These days, shoppers in search of the latest beauty or personal care products needn't trek out to the nearest mall. A couple of moments spent surfing the Internet is usually enough to find what they need. In fact, they might even find a deal that saves them a few bucks. After all, "A penny saved is a penny earned," right? Not always. While there are a handful of legitimate online retailers, there are scores more that routinely sell counterfeit, diverted and even expired products under the guise of legitimacy. In the case of these websites, a more fitting slogan might be "Buyer Beware."

While most consumers aren't concerned about the far-reaching implications of patronizing such websites, manufacturers of the products sold by unauthorized sites are, and they're working hard to get to the root of how their products wind up in unscrupulous hands.

JuE Wong, senior vice president, global business for N.V. Perricone, M.D. Cosmeceuticals, is one such manufacturer. After stumbling across her company's products being sold on one of the web's most renowned culprits, she became incensed.

"Niche and emerging brands are suffering," she said. "What such sites are doing (is) no different (than) identity thieves. They destroy brands and reputations when the products they sell may be fakes, have quality problems and as such compromise the brands' integrity and reduce their revenue.

"I really think we, in the beauty business, need to take a stand against these parasites."

Ms. Wong suspected the path products take to unauthorized sellers take one of four routes: trade accounts, contract manufacturers, company employees or rogue international distributors. Trade accounts, she explained, can earn a quick turnover from these websites, even though the products they're selling could be from dis-enfranchised accounts to recoup potential losses. Contract manufacturers might also take advantage of the opportunity to sell leftover run products that weren't delivered to the client. And finally, company employees, taking advantage of deep discounts and an allocated inventory access, might be tempted to make a few bucks by selling products on the side, or even on eBay.

It seems no company is immune to this malady. According to the Associated Press, L'Oréal recently launched legal proceedings against eBay in France, Germany, Britain, Belgium and Spain for allegedly turning a blind eye to the sale of counterfeit cosmetics and perfumes.

"L'Oreal has been facing an increasing volume of illicit trade in fake fragrances and fake cosmetic products on some online auction sites," the company said in a statement given to the AP.

A spokeswoman for eBay's French subsidiary told the AP that "the companies had been in talks since May regarding the sale of counterfeit goods that resemble L'Oréal products, as well as the reselling of L'Oréal products through eBay's website."

Stemming the Flow

Companies have tried a variety of methods to outwit unauthorized sales, either by coding their products or getting a better handle on tracking product shipments, but each solution has its own limitations.

"One of the ways we try to track possible re-selling and diversion is we discreetly mark our inventory against specific accounts we ship to and when we find products on the unauthorized websites we buy them hoping to find the mark," said Ms. Wong. "However, this is difficult when you have 200 different accounts and multiple distributors and hundreds of employees."

Rob Holmes is CEO of [IPCybercrime.com](http://www.IPCybercrime.com), an affiliation of the International Anti-Counterfeiting Coalition that investigates and exposes cyberspace counterfeiters to brand owners and the authorities. His company's investigations have led to the takedown of thousands of internet servers, websites and auctions; the closing of many

overseas factories; the seizure of over two billion dollars in counterfeit goods worldwide; hundreds of arrests; and millions of dollars in recovered judgment money. He declined to mention specific names, most likely because ironically, some of the companies fronting these websites will threaten legal action if they feel their reputations are being impugned.

Mr. Holmes offered some advice for company executives who discover their products on these sites and it involves a little stealth.

"I always recommend hiring an investigator to take undercover 'test purchases' of their product from all of these sites," he said. "Without the knowledge of whether it is counterfeit or grey market, their attorney is not able to make an educated decision. Once samples are made, and if found to be grey market, their counsel may choose to track the goods to their origin based on covert markings that have been placed on the packaging in the factory. Since sources/shipments of grey market goods are sporadic, additional 'test purchases' may lead to varied results. If the goods are counterfeits, they may pursue criminal or civil action."

Despite legal action, these websites thrive, even if under a different domain or company name, fueled by the cold, hard reality that today's consumers base many purchase decisions primarily on price, especially when it comes to prestige cosmetics, fragrances and skin care products —products that might otherwise be unattainable. But what these bargain shoppers don't realize is that buying from these "grey" markets could potentially hurt them.

"The danger in the grey market is that, since these shipments are unauthorized, and most deliveries are don't-ask-don't-tell, it is easy to fill an order with counterfeits instead of the real thing," warned Mr. Holmes.

"Cosmetics are based on chemicals. The wrong chemicals can harm your skin or worse, kill you. I have worked on cases where I have seen this harm first-hand. From my many years of experience, I give everyone the same advice: If you are not buying from an authorized dealer, there is no guarantee that you will receive genuine product."

Taking Action

Counterfeiting, diversion and product tainting is a global epidemic. The European Union (EU) recently reported that counterfeit cosmetics, personal care products, food and drink seized at EU borders have climbed 40 percent since 2005. In response, last month the EU suggested that Europe work together to establish an anti-piracy pact with the United States, Japan and Korea to tighten the noose on sellers of counterfeit goods.

According to a story published by the AP, this pact would "set out new global standards for protecting intellectual property rights that guarantee a stream of revenue for developers of new products because they can license their designs for others to make." At press time, all parties except Korea agreed to participate in the talks.

Closer to home, John Paul Mitchell Systems has long been at the forefront of advocating the purchase of its products only from salons, going so far as to place print and television ads, as well as printing warnings on their product packaging that reads "guaranteed only when sold in a professional salon otherwise may be old, stolen, counterfeit tampered with or diverted."

"Diversion is very damaging to our brand and to the professional beauty industry as a whole. If a consumer buys a professional product, like the Paul Mitchell brand, outside of a salon, they could be getting an inferior product," said Vikki Bresnahan, director of product distribution control for John Paul Mitchell Systems. "That poor experience with the product damages our brand and our reputation and damages the credibility of professional stylists."

Ms. Bresnahan says her company has legally binding contracts with its distributors and salons specifying how the product is to be sold.

"Those contracts specifically prohibit the sale of our product into the diversion market and via any electronic means (fax, phone order, Internet etc.)," she said, noting that the company imposes per bottle fines on its distributors whose bottles end up in the open market. "We monitor the sale of our products very closely and cease business immediately with anyone that breaches the contract or is involved in diversion practices."

She went on to say that not only could products sold outside the salon environment be old, stolen, counterfeit, tampered with or diverted, it also impacts reputable salon businesses.

"When 'big box' stores and internet sites carry our products and consumers purchase product there instead of from salons, salons lose money making it difficult for them to compete and stay in business," she said. "Additionally, some online sites are selling Paul Mitchell products, like color, bleach and relaxer (which) are not designed to be used outside of a salon environment. If these 'professional use' products are used by untrained individuals, bodily harm could occur."

Ms. Bresnahan suggested companies plagued by diverted and counterfeit activity network with others in the industry, talk about what works and what doesn't. Form a united front.

"Have good contracts in place with you distributors/customers. Know who you are selling your products to and know who their customers are," she concluded. "Have a means to track your product so that you can identify leaks in your supply chain."

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