

PEARLS OF LAW

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Counterfeiting in the Fashion Industry

Alexander Wang was awarded \$90 Million dollars in damages for a cybersquatting and counterfeit case last week. This was the court's ruling against 45 defendants operating 459 domain names and as fate might have it, the defendants did not appear in court. A default judgment was awarded in his favour including \$90 Million in damages, he was also granted ownership of 459 domain names that were offering counterfeit goods for sale or using the Alexander Wang brand name for their websites such as cheapalexanderwangbags.com, these websites are so similar to the actual Alexander Wang website and are likely to cause confusion in the minds of customers looking for authentic Alexander Wang goods. Although Alexander Wang can heave a sigh of relief for obtaining this ruling, it would be difficult to enforce because it is a default judgment, secondly, these websites are usually registered under false names and it is almost impossible to trace the owners of the domain names. A spokesperson for the brand has acknowledged these facts in his statement to the press, he explained that "The court system regularly awards very large amounts for the symbolic significance, as a means of deterring other individuals and parties. In other words, Alexander Wang is unlikely to receive \$90 million."

The scourge of counterfeiting has also been experienced by other top luxury brands such as Louboutin, Louis Vuitton, Coach and Chanel. In 2012, the US Customs and Border protection destroyed 20,457 pairs of Louboutin at the Los Angeles/ Long Beach Sea Port. The fake shoes were imported in five different shipments from China but the shoes are actually manufactured in Italy. Similarly, Louboutin sued a China Town Landlord for permitting the sale of counterfeit goods at seven different locations.

Counterfeit goods have an adverse impact on the luxury goods market. A study by the European Union revealed that 10% of all fashion related products are counterfeit which results in an approximate total of \$28.5 million dollars in losses. This percentage is on the increase due to the presence of online channels which make tracing fraudsters very challenging, this leads one to consider the topical issue of counterfeiting in the luxury fashion industry.

The existence of counterfeit goods is a well-known fact, very often one who comes across these goods find that they are being sold online or instore at extremely ridiculous prices. One might even be curious to actually find out why individuals still purchase these goods in spite of their questionable origin and the answer that readily comes to mind is the fact people view these prices as deals and they are more concerned about getting a bargain and not overly concerned about the authenticity or the origin of the goods they purchase.

Experts in the fashion industry exploring the high



incidence of counterfeiting have discovered that the availability of a variety of products released by different brands, to stay relevant and the innate desire of customers to purchase new trends at a budget price, is the perfect breeding ground for counterfeiters.

Luxury brands have responded to counterfeiting by fighting the counterfeit supply chain from the manufacturers, wholesalers, retail operators and website owners, as well as distributors in the markets. Some designers have introduced litigation campaigns to reduce this such as Alexander Wang in the above scenario. Coach in 2009, started an anti-counterfeit campaign called "Operation Turnlock" which is a civil litigation strategy. Coach has sued about 700 counterfeiters, these lawsuits are primarily against vendors as direct infringers and flea market operators as "hosting sites". As part of this operation it initiated a suit against Swap Shop Inc. for the sum of 5.5 million. The US Immigration and Customs Enforcement raided the shop and seized the counterfeit products. Coach also sent cease and desist letters to Swap Shop stating that the flea market was deliberately allowing vendors to sell counterfeit Coach products. Afterwards, Coach brought an action against Swap Shop in March 2013 before the US District Court for the Southern District of Florida claiming that the flea market vendors had engaged in copyright and trademark infringement and dilution. It further stated that Swap Shop was liable for contributory and vicarious copyright and trademark infringement and dilution. As part of its reliefs, Coach demanded for injunctive relief and damages between \$1,000 and \$2 million for each violation. Other anti-counterfeiting measures introduced by companies

include registering their trade mark with worldwide customs and adding anti-counterfeiting labels to their products.

The measures adopted by these global luxury brands are laudable and in the very near future Nigerian fashion designers have to adopt measures to protect their goods from counterfeiting locally and internationally. Nigeria seems to be a good market for the sale of fake products. According to a survey on "pharmaceuticals, luxury goods, software and computer hardware, audio and visual sector, motor vehicle spare parts, food and beverages", the volume of counterfeit goods in Nigeria is about 60 – 80 per cent. Apart from harming the local economy counterfeiting stifles the growth of locally-made goods.

In Nigeria, counterfeiting is tackled through laws these are the TRIPS Agreement; and Paris Convention for the Protection of Industrial Property. The TRIPS agreement aims to address the gaps in international Intellectual property enforcement by introducing border control measures. It allows manufacturers or intellectual property right holders who reasonably suspect the importation or exportation of pirated/counterfeited versions of their works, to make applications to the appropriate authorities (administrative or judicial) for the seizure of such counterfeits at the borders by customs officials.

Regulatory agencies also combat counterfeiting, these include the National Agency for Food and Drug Administration and Control (NAFDAC), Nigerian Customs Service (NCS), Standards Organization of Nigeria and the Nigerian Copyright Commission.

The Nigerian Customs Service has an "Enforcement, Investigation, Inspection, and Intelligence" department which amongst others coordinates all anti-smuggling measures at the international borders. The Customs Service also carries out specific campaigns to address counterfeiting. In 2010, the Presidential Task Force for 100% Inspection was established to prevent the importation of smuggled goods and ensure the complete inspection of all consignments selected for physical examination. This task force intensified inspections on consignments with more tendencies to default, than on every shipment. The NCS further established an independent unit- the Customs Intelligence Unit (CIU) – with trained officials which is responsible for obtaining and gathering information necessary to combat counterfeiting and piracy.

Conclusion

Notwithstanding the measures enumerated above, it is sad to note that the sale of counterfeit products including luxury goods is still flourishing in Nigeria. To effectively combat counterfeiting, companies should develop an exhaustive strategy to protect their intellectual property rights which should include developing a framework to monitor infringement, protecting their rights by registration and engaging Intellectual property lawyers. The Nigerian Customs Service also has to ensure it effectively monitors imports, boosts capacity and promotes the integrity of its officers.

INTELLECTUAL PROPERTY RIGHTS WITHIN THE CONTEXT OF ONLINE MEDIA CONTINUED FROM PAGE 14

considerations a little trickier to identify. To understand the difficulty in assessing damages, it is important to understand how money is made from online publication.

Making Money from Online Media.

Traffic. Traffic. Traffic. There may be the occasional commission, advertisement/endorsement or sale arrangement. But, the major source of income of people who publish their writing online and run a personal or professional blog is the traffic generated by visitors to their sites.

There is a direct relationship between the number of visitors to a site and the amount of income generated by the site. Even the capacity of a website or personal blog to generate income is dependent on the amount of visitors to the site. As such, it is an infringement to use the content of a website in a way that prevents visitors from coming on to a site.

The drive to generate as much traffic as possible and therefore make as much money as possible is usually motivation for authors who publish their work online. So say for example, I run a personal blog and I understand that the number of articles I publish daily would affect my monthly income. It is only natural that I would publish as many articles as I can to attract as many visitors as possible to my site. Of course, the nuances are more complicated than the number of articles published.

I also need to ensure the nature, format and subject matter of the posts published are such that people would be interested in reading them. This takes a lot of work. There are also considerations about publicity and visibility; putting in work to ensure that people are aware of your posts and visit your site.

For less established blogs and websites, this aspect of publicity and visibility is vital, tricky and tedious. Now imagine after exerting the effort to write, publish and publicise a post someone else (organisation, person or website) strategises and makes a business off of stealing your material and traffic.

That act is plagiarism within the context of online media.

Plagiarism within the Context of Online Media

Any action that is designed to take advantage of the traffic (and eventually income) generated by an online publication and divert such traffic to another site other than the source of the post is plagiarism. It is even worse when the plagiarist acts to prevent the source from generating any income from the material published. As illustration, let us use a very typical example.

Website A, which is a smaller and relatively unknown platform, publishes an article with the potential for viral readership. Website B which is a popular platform happens upon the post and lifts the entire content of the post and publishes it on its own website with or without acknowledgement. The natural progression of events is that the post would go viral but all traffic would be generated to Website B and even if Website A is acknowledged as the author of the post, it would generate no income from its publication. Website B on the other hand would probably generate so much income that it would be able to afford accommodation in one of the most expensive real estate locations in the world; by doing no work.

Plagiarism as Theft

Plagiarism involves reproducing the content of another person's

work without the consent of the author of the work and in such a way as to deprive the author of legitimate earnings from the work.

An understandably justifiable way to approach plagiarism is to treat it as theft- theft of earnings. The online plagiarist enjoys the financial benefit of intellectual labor for doing no work at all. Or at the most, doing work that is remarkably similar to the "work" done by robbers when they stake out their victims to determine against whom to strike!

How Not to Be a Plagiarist

Plagiarism, especially of online media content is so easy to avoid that the theft really should not be left to go unpunished. First, no website should publish the full content of a post of another website without due authorisation. At best, only a few sentences of the post should be published.

Secondly, any website referring to or borrowing content from another website must create an automatic backlink to the website of source. This ensures that the source website can generate traffic and income from its publication.

For the purpose of information, plagiarism (of online and traditional) content is actionable under the Nigerian legal system and a victim of intellectual heist can seek and obtain remedy in the courts through a creative reading of the Copyright Act and the Criminal Code.

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