

# How to avoid buying, reselling and losing credibility to counterfeit goods

By [Jarred West](#)

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With over 2 billion digital buyers worldwide, experts project that retail e-commerce sales will reach [\\$4.9tn this year](#). But the internet, and particularly social media, has become a major enabler in the sale of online counterfeit products, ensuring anonymity and providing counterfeiters with access to a global market.



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Indeed, the war against fake goods is rapidly moving from the trenches of brick-and-mortar shops to vast online battlefields.

Furthermore, counterfeiters are using sophisticated tactics to trick consumers into believing that counterfeited products are the real thing.

In fact, a [2016 study](#) by Markmonitor found that keyword searches used by consumers on search engines brought up more than seven times as many counterfeit websites as genuine retailers.

And, although there is no limit to the products being sold online, the most visible counterfeit products seem to be perfumes, cosmetics, clothing and footwear; some, masked as “factory rejects” and “overruns”, or advertised as “parallel imports”.

## Let the buyer beware

Alarm bells should start to ring for the consumer when it comes to price because, if it seems too good to be true, it usually is.

Counterfeiters will even go so far as to use authentic images from the websites of genuine retailers to advertise their counterfeit products, making it next to impossible for an unsuspecting consumer to determine whether an item is counterfeit based on the images alone. The price would, in most instances, be the key indicator.

## Let the reseller beware

For resellers, too, it is important to be aware that counterfeited products are commonly offered to small businesses for re-sale. Many distributors make use of an agent or intermediary business model, duping those third parties into believing that

the products they buy, online or offline, and resell, online or offline, are genuine goods.

The suppliers tend to be very convincing and the “deal” seems to be an easy way to make a quick buck. Again, watch out for unbelievable pricing here. This is a major red flag.

Unfortunately, when law enforcement comes knocking, it is not the distributors who take responsibility, but the agents or intermediaries. The onus is on every person who offers any goods for sale to ensure that those goods are authentic. If you have doubts as to whether goods are genuine or not, simply pick up the phone and call the local office of the brand to enquire as to the legitimacy of your supplier and/or the goods.



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## Let the small business beware

For the small business owner or startup brand, counterfeiting can be a double-edged sword. In a sense, once your goods are counterfeited, you know you have a successful brand – but the fight to protect your brand starts at the same time.

How do you defend against your goods being counterfeited? Know, to begin with, that prevention is difficult. But you can certainly take steps that will enable you to enforce against counterfeiting, if and when it occurs.

The first step is to register the trade marks that are associated with your brand. Once your trade marks have been registered, you can enforce and protect them. By doing so, you are not only protecting your brand and its credibility, but you’re also contributing to the official database used by local authorities to nab offenders.

And the bottom line is this: Even if your business is comparatively small, one of the best practices to adopt as an entrepreneur is to register your intellectual assets. Doing so is not only for ‘the big guys’.

Once your trade marks have been registered, lodge a Customs Recordal with the South African Revenue Service, allowing Customs officials to stop and detain any suspected counterfeit goods that may be identified at South Africa’s ports of entry. This is your first and most important line of defence.

Unfortunately, the reality is that some counterfeit goods will inevitably be smuggled into South Africa undetected. As a reactive strategy, once a target counterfeiter has been identified, you will have the right to lodge a complaint with an inspector. You can request that a search-and-seizure warrant be issued and executed at that perpetrator’s premises and for those counterfeit goods to be seized.

And what of online enforcement? Online enforcement most often involves closing down websites and removing social media posts. In some cases, however, it's possible to convert the online investigations into offline enforcement actions.

In our experience, a multifaceted approach has the best chance of success.



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## Threat to modern, innovation-driven economies

Trade in counterfeit goods is a vital threat to modern, innovation-driven economies, as well as a worldwide phenomenon that is growing in both scope and magnitude. In fact, [it's estimated](#) that by 2022, counterfeiting will be a \$4.2tn industry and global damage from counterfeit goods will exceed \$323bn.

Your safest bet? Healthy skepticism if you're a consumer or reseller, and trade mark registration if you're a brand owner – no matter how small your business.

## ABOUT THE AUTHOR

Jarred West is a Partner and Attorney at Spoor & Fisher South Africa. He is a Trade Mark Practitioner with a BCom(Hons) (Tourist Management) and an LLB. With many years of experience in anti-counterfeiting, Jarred has a specific focus on marketplace enforcement. He has also presented numerous seminars on the topics of anti-counterfeiting and brand protection to officials of the Department of Customs and Excise and members of the South African Police Services (SAPS). He is a Fellow of the South African Institute of Intellectual Property Law (SAIIPL) and a Member of the American Chamber of Commerce Anti-Counterfeiting Committee.

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