

PROTECTING YOUR BRAND

ON THE WEB AND IN SOCIAL MEDIA



Davis Wright
Tremaine LLP
DEFINING SUCCESS TOGETHER



Counterfeit and piracy sales represent 5 to 7 percent of world trade or \$500 - \$600 billion in sales annually.

Source: US Trade Representative's 2012 Annual Special 301 Report

- More than 3 times the \$165 billion combined annual revenue of the entire US Clothing retail store business

First Research, <http://www.firstresearch.com/Industry-Research/Clothing-Stores.html>

- Almost twice the estimated annual profits from the sale of illegal drugs worldwide (\$321 billion)

Thematic Debate of the 66th Session of the UN General Assembly on Drugs and Crime, <http://www.un.org/en/ga/president/66/Issues/drugs/drugs-crime.shtml>

- Almost twice the total prescription drug sales in the United States (\$320 billion in 2011)

IMS Institute for Healthcare Informatics, www.imshealth.com



Online counterfeiting will soon surpass the volume sold by street vendors and in other physical markets

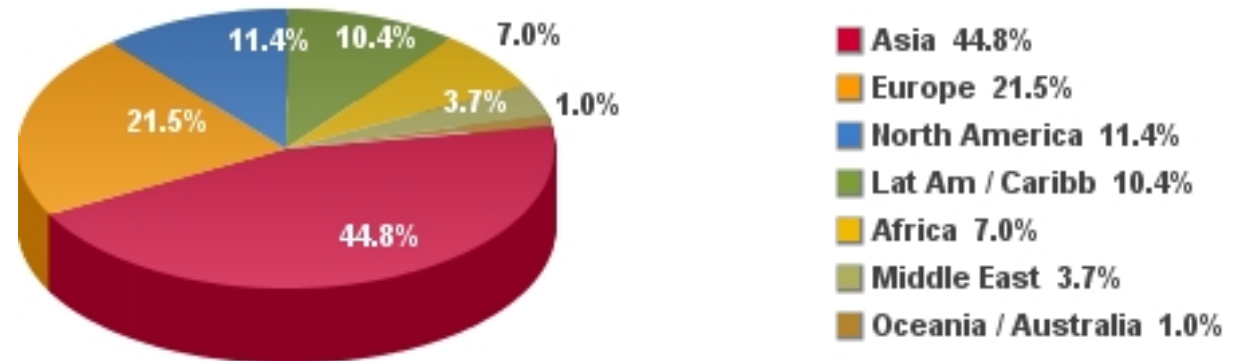
Source: US Trade Representative's 2012 annual Special 301 Report

**WHAT DOES THE RISE OF ONLINE
COUNTERFEITING MEAN?**

MARKET FOR COUNTERFEIT GOODS IS RAPIDLY CHANGING AS IT MOVES FROM PHYSICAL MARKETS TO THE INTERNET

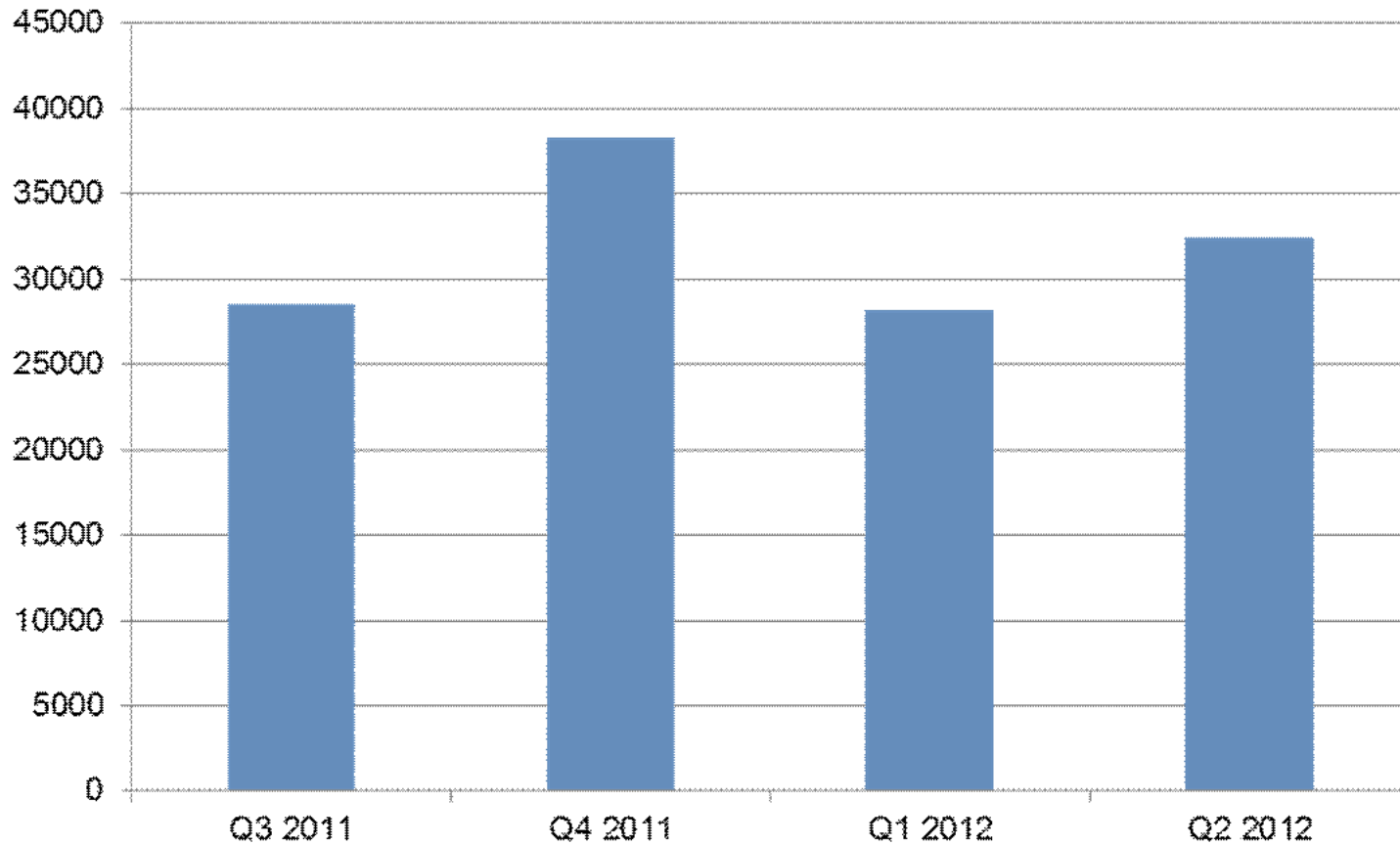
**No longer confined to
New York's Chinatown
Beijing's Silk Alley or
LA's Santee Alley**

**Internet Users in the World
Distribution by World Regions - 2012 Q2**



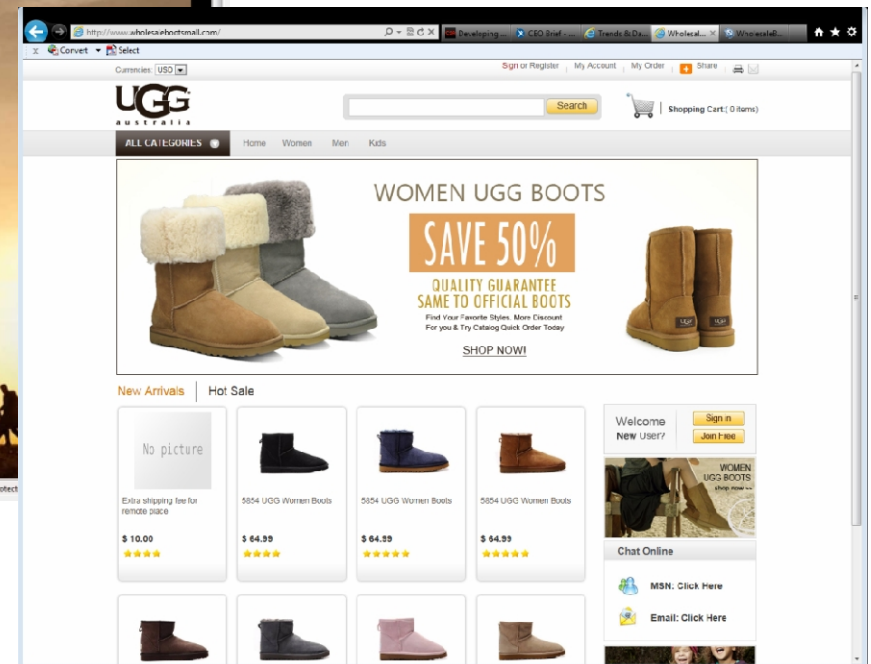
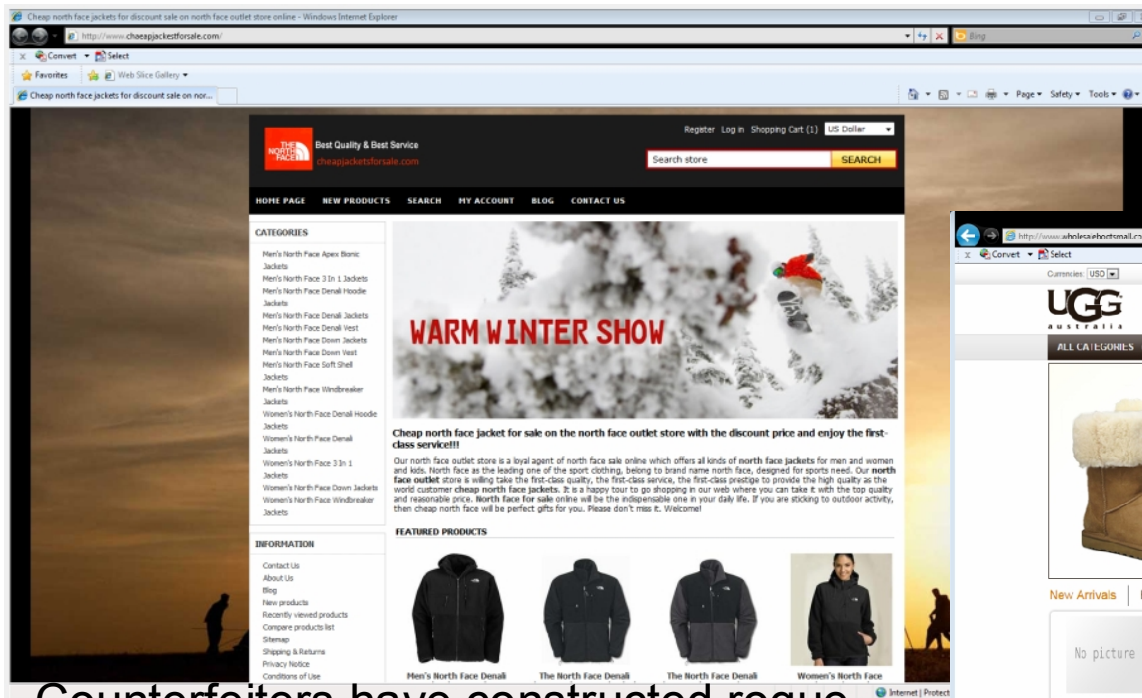
Source: Internet World Stats - www.internetworldstats.com/stats.htm
Basis: 2,405,518,376 Internet users on June 30, 2012

New Counterfeit Websites Created by Quarter in the Apparel Industry



Courtesy MarkMonitor

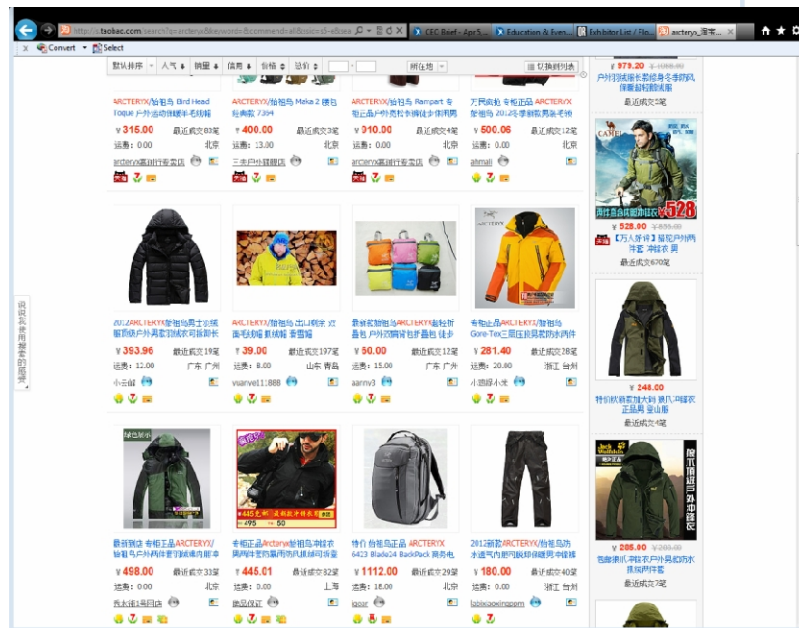
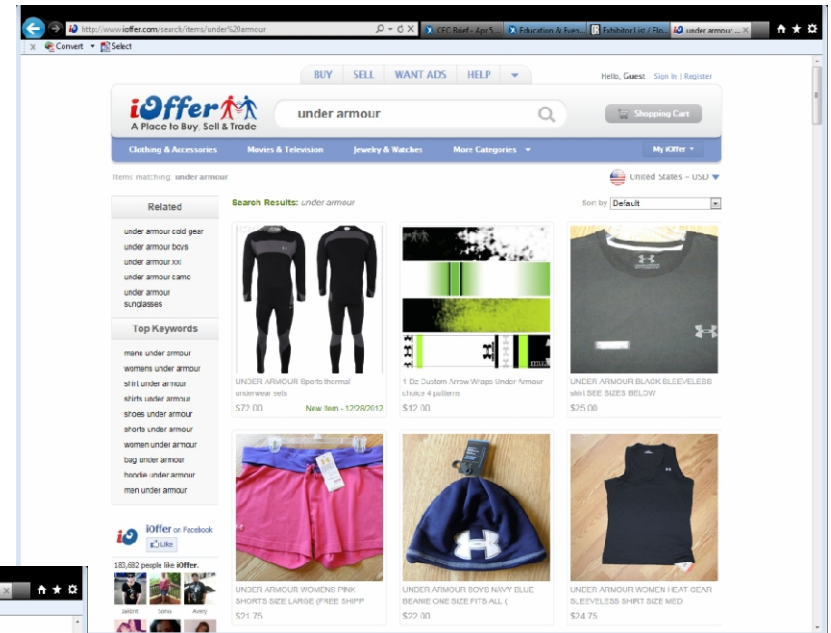
COUNTERFEITS USE SOPHISTICATED GRAPHICS AND DESIGN



Counterfeiters have constructed rogue website sales platforms that appear highly professional and even seem to be authentic. They are lifting text and photographs from brands' own sites and employing sophisticated web design to fool the consumer and give the impression of polish.

Websites

ELECTRONIC COMMERCE ENABLES NONPROFESSIONALS WITH LITTLE CAPITAL AND NO TIES TO TRADITIONAL COUNTERFEITING DISTRIBUTION CHANNELS TO TRADE IN COUNTERFEIT GOODS



Auction Sites, Tradeboards

COUNTERFEITERS ARE FOUND ON THIRD PARTY RETAIL WEBSITES

The screenshot shows an Amazon.com search results page for "box dvd sets". The search bar at the top contains the text "box dvd sets". The page displays several product listings:

- The Movie Box, 1981-2007 (Nov 23, 2009)**: Priced at \$75.39 (DVD). It features a 5-star rating and is available for purchase. The listing includes a small image of the DVD box set.
- Magic Show with Instructional DVD by Cadaco**: Priced at \$14.99. It features a 4.5-star rating and is available for purchase. The listing includes a small image of the DVD box set.
- Musicals Classics 50 Movie Pack Collection**: Starring Judy Garland, Frank Sinatra and Fred Astaire (Apr 15, 2005). Priced at \$24.99 (DVD). It features a 4.5-star rating and is available for purchase. The listing includes a small image of the DVD box set.
- Masters of Horror: Season One Box Set (Aug 20, 2007)**: Priced at \$34.50 (DVD). It features a 4.5-star rating and is available for purchase. The listing includes a small image of the DVD box set.

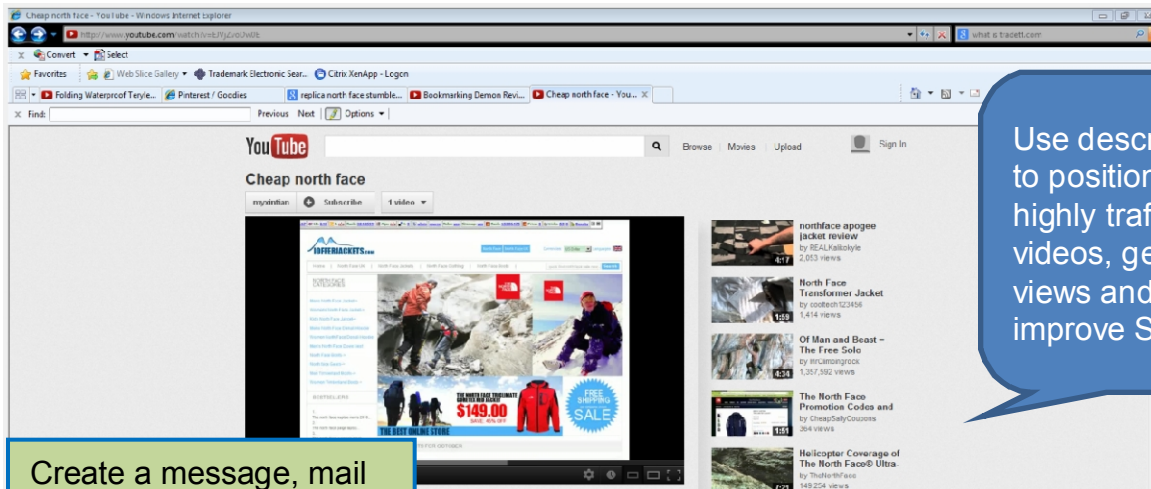
On the left side of the page, there are several promotional banners:

- Listmania!**: A banner for "How to be a Film Critic: A list by Brett Feicher" and "1929 - the poorest year in film: A list by calvinme".
- Kindle Fire HD**: A banner for "Over 22 million movies, apps, songs and more."

The page also includes a navigation menu at the top with options like "Shop by Department", "Search", and "Go". The search results are displayed in a grid format with product images, titles, prices, and ratings.

Online Retail Marketplaces

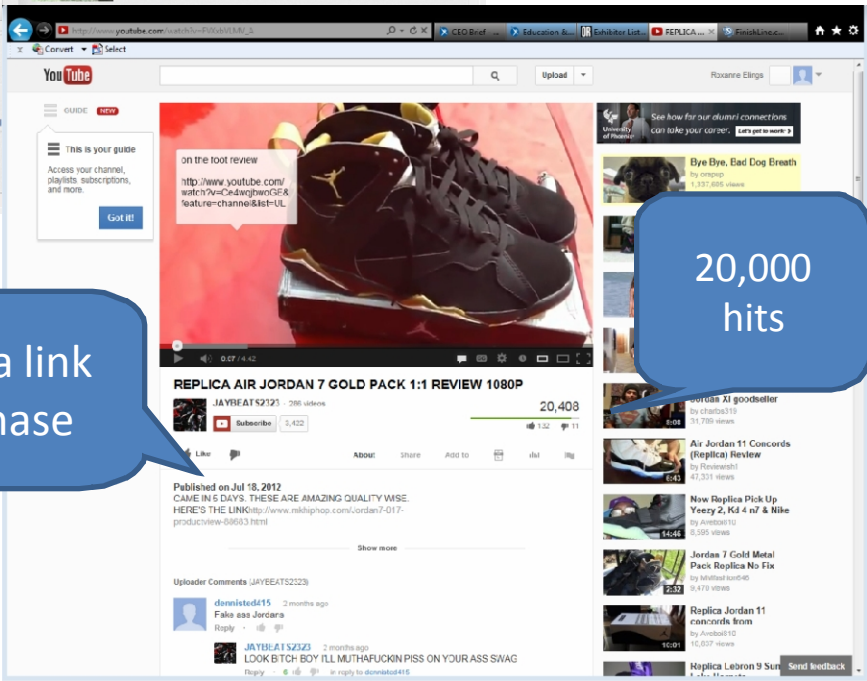
Counterfeiters have enthusiastically and adeptly employed social media and other Internet-based means as marketing tools. Google and other search engines are by far the primary drivers of ecommerce, and counterfeiters aggressively elbow up Google rankings by using search engine optimization measures which must constantly change to keep up with evolving search algorithms.



Use descriptors to position with highly trafficked videos, get more views and improve SEO

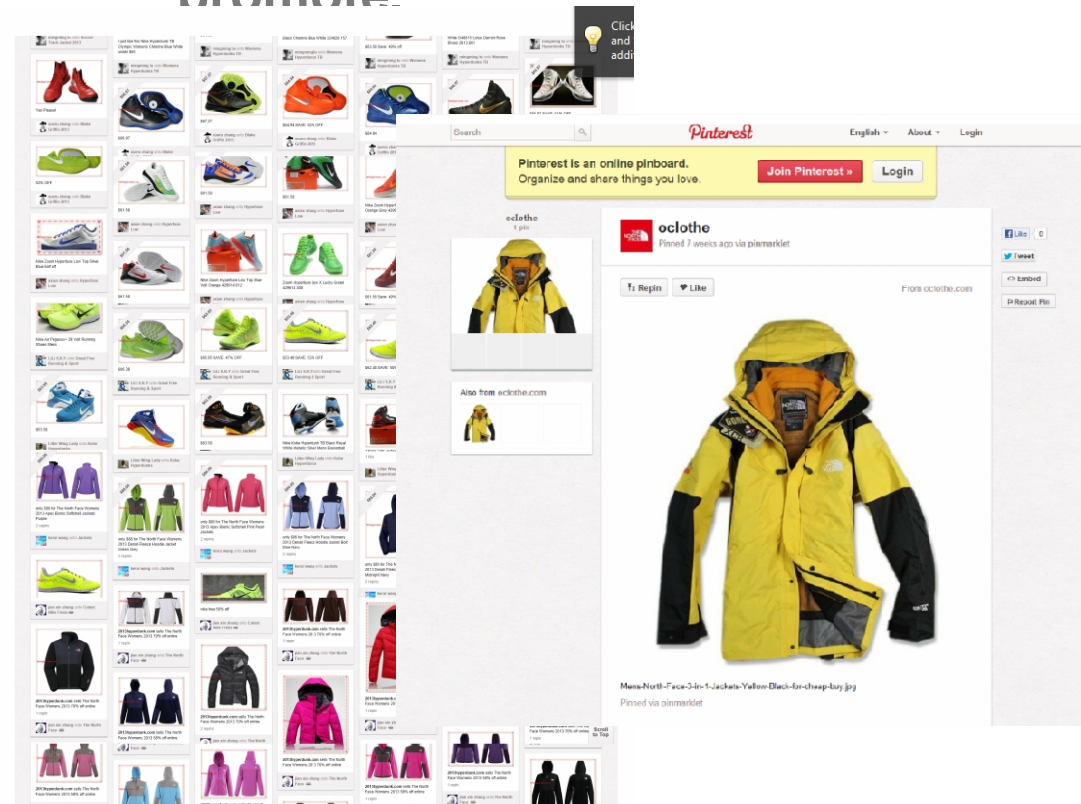
Create a message, mail merge username, create multiple versions of the message with different content and the same call to action. Schedule the sending of messages to YouTube users that have been harvested at the rate of about 20 messages per hour. Something like: Hey “username” I saw that you commented on a video about XYZ and wanted to let you know about another similar video and would love your opinion.

Provides a link for purchase

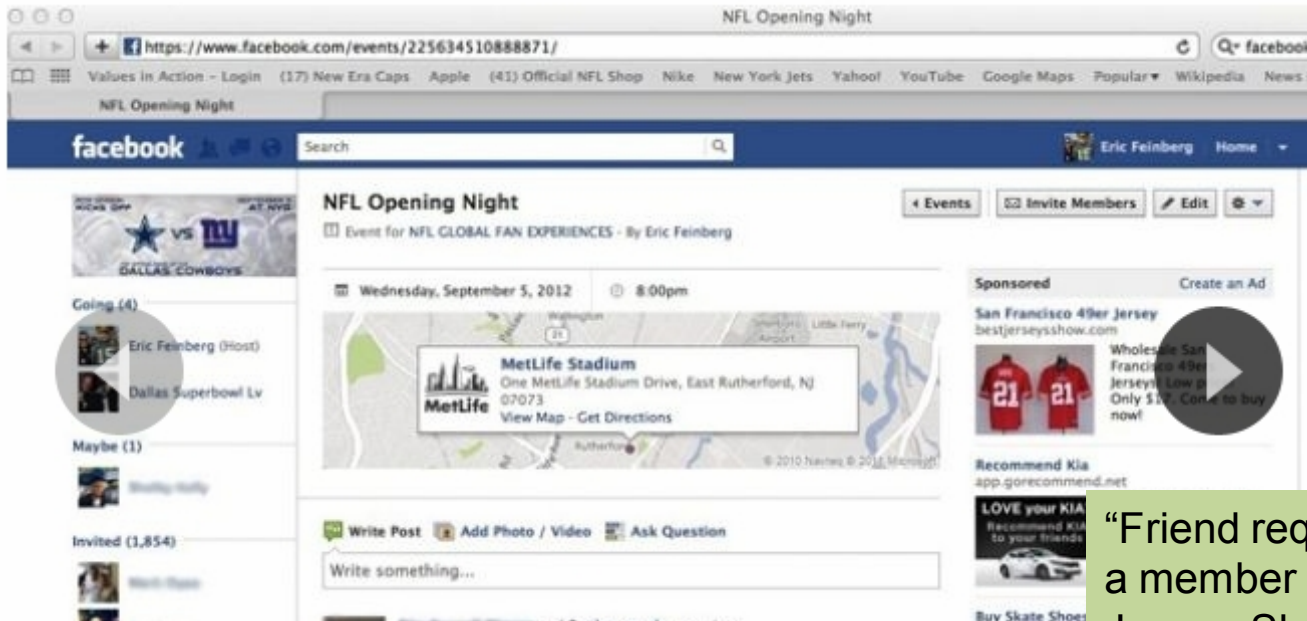


20,000 hits

Software sets up multiple social bookmarking accounts and then randomly picks content to promote



Pinteres
t



An NFL-related event page draws an ad for a fake team jersey

"Friend requests" also appeared from a member named "Nflcn JerseysShop," which then posted links on wall to a China-based website offering a variety of sports apparel.




Ad for knockoff LVMH handbags appear on profile page one day after posting a cover photo related to designer brand

Facebook

RL twitter (ralphlaurenoutlet).pdf - Adobe Acrobat
File Edit View Window Help WorkSite
Create [Icons]
1 / 2 [Navigation] 200% [Zoom] [Tools] Comment

12:38:46 PM 11/9/2012

Home Connect Discover Me



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8.50 x 11.00 in

Click on Tools, Comment and Share to access additional features.

Globalization and Recessionary Economic Pressures Have Changed The Market And Counterfeiters Have Adapted

“The prices of the imitators are rising, confusing customers who are looking for the real deal at a discounted price. Still, the higher-priced fakes are just a fraction of what a real item would cost.”

-- Fashion Fakes Get More Sophisticated
The Wall Street Journal, June 30, 2011

Price Conscious Shoppers Find Fakes While Looking for Bargains

“MarkMonitor conducted a study, analyzing the relationship between online shoppers, the search terms they use and the sites they visit when seeking apparel and luxury goods. They surveyed almost five million shopping sessions during this time.

Full Study Period – United States	Legitimate Session Conversion Rate	Counterfeit Session Conversion Rate
Sessions Involving Searches for Counterfeits	10%	16%
Sessions Involving Searches for Bargains Only	12%	16%
Full Study Period – Europe	Legitimate Session Conversion Rate	Counterfeit Session Conversion Rate
Sessions Involving Searches for Counterfeits	4%	9%
Sessions Involving Searches for Bargains Only	3%	17%

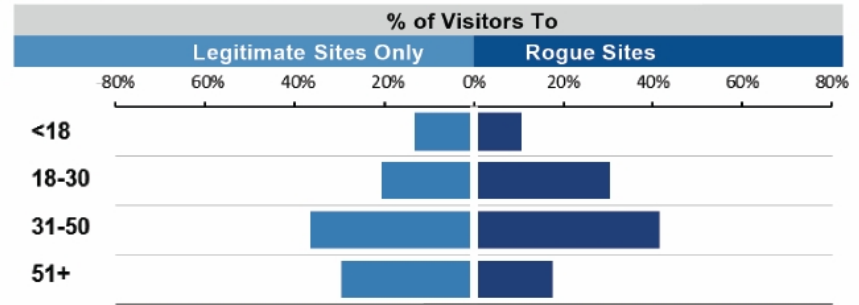
About one in five U.S. and European bargain hunters (e.g., those searching on terms such as cheap, discount, or outlet without brand names) land on sites selling counterfeits and they were more likely to convert—in other words, put something in the shopping cart—than those who land on a site selling legitimate merchandise.”

“When we compared the shoppers who visited sites selling counterfeits with the shoppers who never visited sites selling counterfeits, we were surprised to learn that from a demographic perspective, very little separates visitors to sites selling counterfeit goods and visitors to sites selling legitimate goods. Across age, income, education levels, household size and other factors, the demographic differences are minor.”

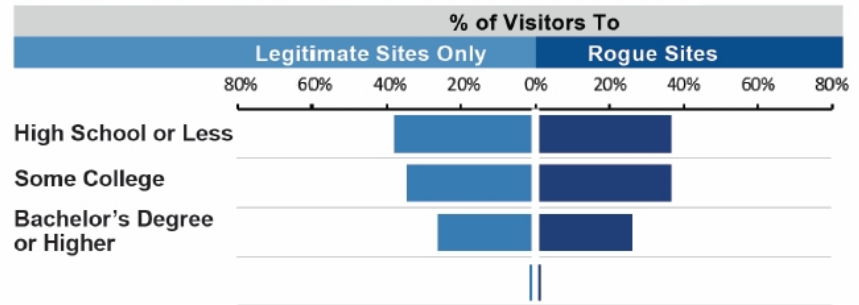
Demographic Profile—United States

July 2011—March 2012

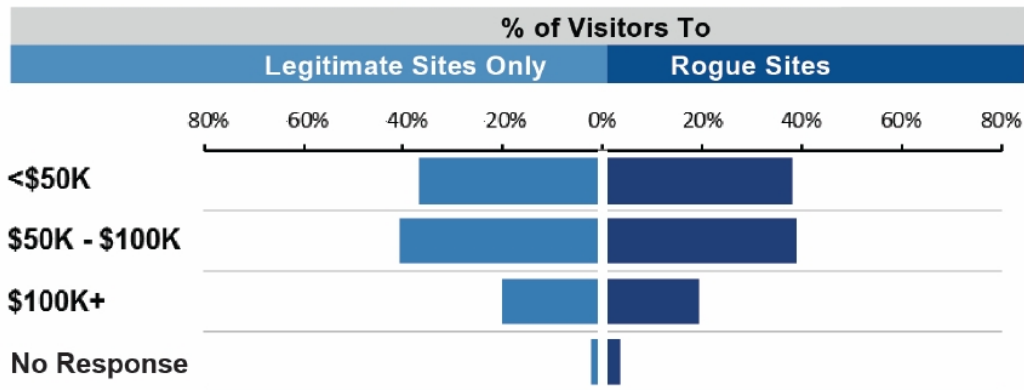
Age | United States



Education | United States



Household Income | United States



MarkMonitor Shopping Report
Fall 2012

What Does Online Counterfeiting Mean For The Brand?

IMPACT ON BUSINESS

Multinational brand owners lose approximately 10% of their top-line revenue to counterfeiters.

-- Secretary-General
International Chamber of Commerce

- » Traffic is diverted from legitimate distribution channels to counterfeiters who can offer very competitive pricing
- » Marketing costs rise when illicit sellers bid up paid advertising costs and/or erode legitimate search engine optimization
- » Increased brand protection costs
- » Increased costs to handle increased consumer complaints

IMPACT ON BRAND VALUE

- » Perceived brand value plummets when counterfeits become or appear to be plentiful
- » Quality problems with fake goods affect the legitimate brand's customer base
- » Product safety issues



How Does a Brand Respond?

- The first and most important step is for brand owners to understand the scope of their problem, which varies across industries and even across brands.
- In attacking the problem, there is no one-size-fits-all approach and it usually makes sense for brand owners to employ various tactics simultaneously.
- Imperative to create an effective online brand protection strategy to ensure that brand integrity, marketing investments and customer trust are not being undermined.

Remedies/Resources Available To The Brand Owner

Government Resources

- The National Intellectual Property Rights Center's Operation In Our Sites targets websites that sell counterfeit goods.
- Domain names are seized and redirected to display a seizure notice.
- The IPR Center -- with the U.S. Department of Justice -- prosecutes and convicts individuals, as well as seize profits.
- 1,719 domain names have been seized since June 2010. These websites have received more than 112 million individual views.



See Operation In Our Sites,
NATIONAL INTELLECTUAL PROPERTY RIGHTS COORDINATION
CENTER, <http://www.iprcenter.gov>.

Third Party/Own Resources

- Take down postings/websites
 - » Report posts to trade boards/auction websites
 - » Work with ISPs/file UDRPs
- Work with Third Party Suppliers
 - » Report violations to search engines/social media
 - In June 2012, Google, AOL, Facebook, Twitter, and the Interactive Advertising Bureau formed Ads Integrity Alliance (StopBadware).
 - In 2011, Google disabled 130+ million ads and 800,000 advertisers, including ads that promoted counterfeit goods.
 - » Report websites to payment processing networks
 - IACC and G2 Web Services developed the IACC Portal Program, allowing participating brand owners to alert payment processing networks of counterfeit websites.
 - As of October 2012, 906 individual merchant accounts were terminated as a result of rights-holder reports.
- Educate Consumers
 - » Create “black lists”

Judicial Resources

- The North Face Apparel Corp. vs. Fujian and its progeny
 - » Take down websites en masse
 - » Disrupt revenue flow to counterfeiters
 - » Take down online social media
 - » Educate consumers
 - » Track counterfeiters' changing methods of business



Polo And North Face Prevail In Web Counterfeiting Case.

WWD | September 16, 2010 | Steigrad, Alexandra | Copyright

Byline: Alexandra Steigrad

Polo and North Face Prevail In Web Counterfeiting Case

Polo Ralph Lauren Corp. and VF Corp.'s North Face unit scored a major victory against Chinese cybersquatters, but collecting the damages may be another matter entirely.

A court in the Southern District of New York awarded the brands \$78 million, which is believed to be the highest sum of damages ever awarded in an Internet counterfeiting case.

Initially filed in March, the lawsuit pitted the apparel brands against a network of more than 130 Chinese Web sites selling counterfeit goods to U.S. customers through up to 6,500 domain names such as laurenpolo.com and officialnorthface.com. ...

December 2010

“the concern I have is that the defendants are going to be quicker than the plaintiffs. The defendants have the ability, limited only by imagination... to create [new domains], to evade any process of this Court.”

~ Judge Hellerstein

The rise of counterfeiting is a global problem that requires an aggressive solution and international cooperation. Brand owners should not lose hope – a comprehensive brand protection strategy, including a legal enforcement component, will lead to a return on investments for years to come.

Roxanne Elings



Questions?
Questions?