



**Corporate Social Responsibility
in the fight against
counterfeiting and piracy**

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Corporate Social Responsibility (CSR) in the fight against counterfeiting and piracy

Introduction

➔ Overview on CSR in general and its subject areas

➔ CSR and its relevance in connection with counterfeiting due to increasing problem of counterfeiting and its negative impact for society and companies

➔ Problem approach in respect of fake goods as part of the companies marketing strategy and possible CSR reporting obligations of public-interest entities

CSR refers to the global social impact of business conduct

Nowadays the top management must generally pay attention to CSR with regard to business decisions due to rising expectations of sustainable management by shareholders, customers and government

WHAT IS CORPORATE SOCIAL RESPONSIBILITY?

Corporate social responsibility (CSR) refers to companies taking responsibility for their impact on society.

Companies can become socially responsible by following the law (compliance) and by integrating social, environmental, ethical, consumer, and human rights concerns into their business strategy and operations.



CSR refers to the internal and external global dimension of business conduct

EU Commission's motivation on enforcement of CSR strategy

CSR is important. It is good for companies, promotes transparency, creates market incentives for responsible business conduct, and ensures corporate accountability.



In the company's interest: CSR provides important benefits to companies in market position and reputation, customer relations and loyalty, meeting moral standards, part of risk management, cost savings, access to capital, HR management



In the EU's interest: CSR makes companies more sustainable and innovative, which contributes to a more sustainable economy



In the society's interest: CSR offers a set of values on which we can build a more cohesive society and base the transition to a sustainable economic system

Acting against counterfeits is part of the Corporate Social Responsibility

IP-Crime affects the general public. Acting against counterfeits not only is in the company's interest but also in the public's interest. It leads to a win-win-situation i.s.o. shared value.

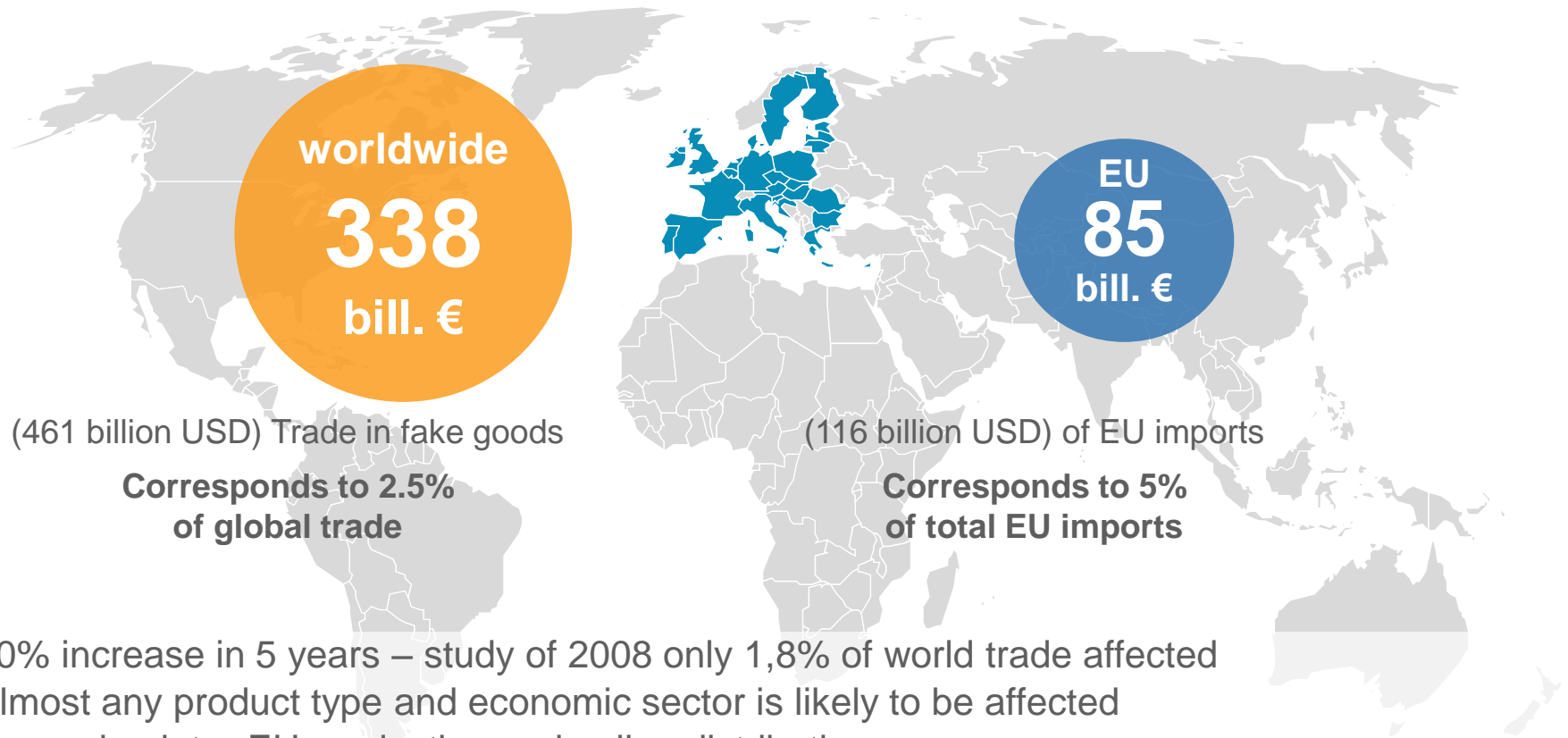
WHY ARE COMPANIES RESPONSIBLE TOWARDS SOCIETY?

- Original products are causal for the social cost caused by counterfeits
- Companies create a demand of the original by branding and marketing
- Outsourcing of production facilitates the possibilities of counterfeiting
- Tolerance means indirect support of
 - Organized crime, terrorism, corruption, money laundering
 - Violation of environmental and labour standards and social concerns by counterfeiters
- Disregard of consumer risks (health, safety, assets)

 Companies have to face the increasing threat of counterfeits not only in their own economical interest but also in their corporate social responsibility towards society

Global damages caused by IP crime are enormous

Size and scope of counterfeit and pirated products is on the rise. In 2013 international trade in those products represents up to 2.5% of world trade, and amounts up to 5% of all EU imports



- 80% increase in 5 years – study of 2008 only 1,8% of world trade affected
- Almost any product type and economic sector is likely to be affected
- Increasing intra-EU production and online distribution
- Companies are generally ill-prepared for the threat – most react instead of being proactive
- Emerging risk of loss of revenue, trust and reputation but also social cost and risks for customers' health and safety

Source: OECD EUIPO Study April 2016 „Trade in counterfeit and pirated goods: Mapping the economic impact”

There exists an emerging threat of faked products on the internal market

Report of EU Commission on EU Customs Enforcement of IPR

- ➔ In 2016 customs authorities detained more than **41 million** fake and counterfeit products at the EU's external border
- ➔ The number of detained articles rose by **2%** compared to 2015
- ➔ Cigarettes were the top category (24%), followed by toys (17%), foodstuffs (13%) and packaging material (12%)
- ➔ China remains the clear leader when it comes to the provenance of fake goods: 80% of fakes originate from China in 2016

Primary cause of the increased phenomenon of piracy and counterfeiting is the general lack of problem awareness

Explanations for increase of counterfeiting and piracy

- Lack of awareness of dimensions, economical impact und risks for consumers
- Common social acceptance and tolerance towards IP crime
- “Act of protest” against premium brands
- Undetected fakes in legal supply chain channels due to improved modus operandi
- Socio-cultural background in countries of provenance, fake as the highest form of recognition
- One of the most lucrative criminal enterprises with low risk of detection
- Reluctant prosecution, problems of complex international law enforcement, low penalties render IPR crime attractive
- Increased distribution via online marketplaces, e.g. social media and shopping apps as well as the darknet

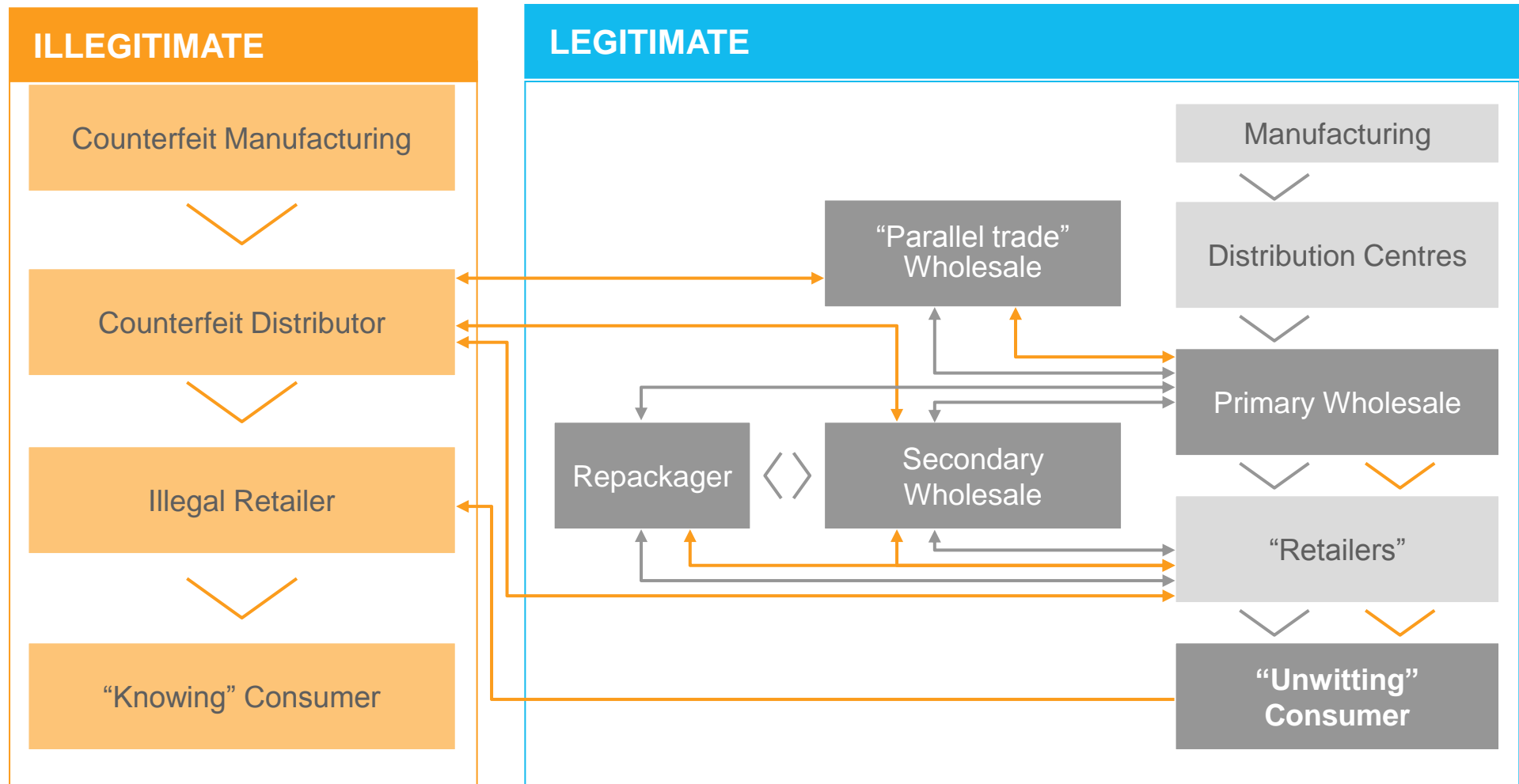
“In 2013/2014, the sale of counterfeit goods via social media rose 15% while the sale of counterfeit goods via online auction sites rose by just 2%.”

(see 2013/2014 IP Crime Report UK)

”

An ever-growing problem is the infiltration of the legitimate retail supply chain with undetected fakes

Confusion is growing about what constitutes a legal or an illegal source. According to EUIPO study on IP perception in 2013 on average, 6% of EU citizens have purchased counterfeit goods as a result of being misled. This varies significantly by MS, especially in Romania (20%) and Bulgaria (17%).

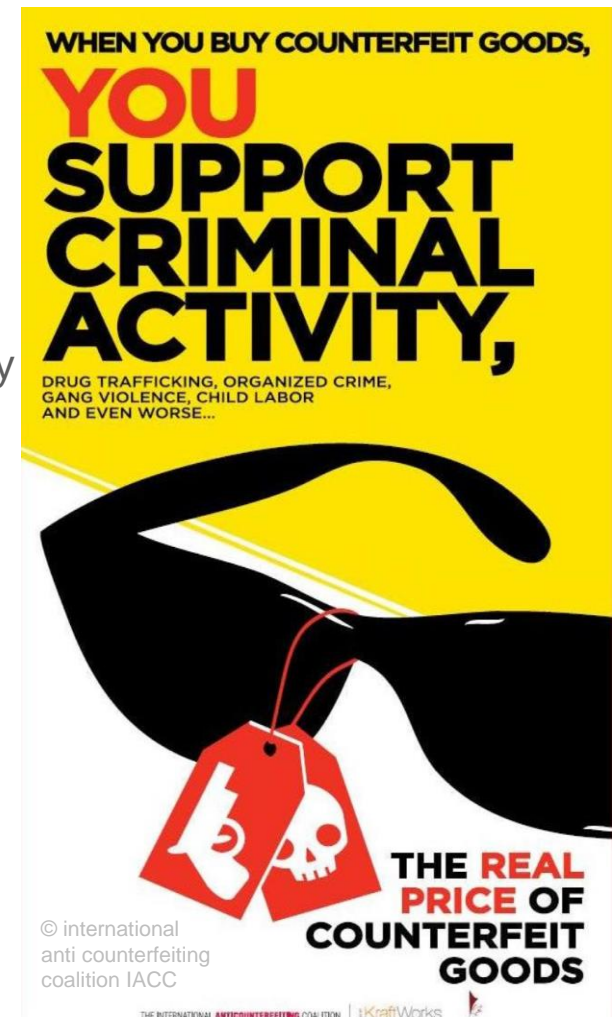


Source: Europol und EUIPO "2015 Situation Report on Counterfeiting in the European Union" and Report 2013 "European Citizens and IP - Perception Awareness and Behaviour"

The social cost of counterfeiting and piracy are immense

Diverse negative consequences of counterfeiting and piracy for society

- Tax losses and lower GDP
- Job losses
- Increased government spendings on public safety due to
 - Organized crime rises
 - Money laundering / corruption
 - Financing of Terrorism
- Risk to safety and health of consumers due to poor product quality
- Burden on welfare systems
 - Healthcare system
 - Social security
- Increase of human rights abuses (working conditions, child labor) and pollution by counterfeiters
- Loss of confidence in the internal market and government
 - Undetected fakes
 - Misuse of certification labels
 - Data theft (personal data, credit card and smartphone data)
 - Reduction of investment in the innovation Union 2022



The damages for the industry are substantial

Negative impact of counterfeiting for companies

- Loss of revenue, reputation, trust and competitive position
- Wasted investments in Marketing and R&D
- Unfounded liability claim suits due to undetected fakes
- Cost of product recalls
- Cost for legal actions
- Financial impact: lower brand value, enterprise value and licence fees and consequences for valuation of IPR, tax issues; investors relations

Counterfeiting is a global problem and the revenue loss has worldwide dimensions

Example: Number of counterfeit smartphones sold



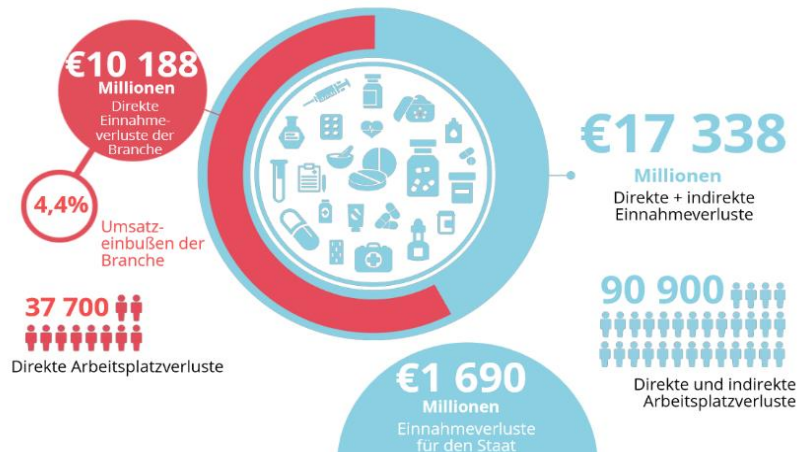
Source: Branchenspezifische Studien des EUIPO

Counterfeit goods cause high damages for the industry AND society

Sectorial studies of EUIPO show the economic impact of counterfeiting and piracy and quantify enormous economical damages for the industry but also the corresponding social cost

PHARMACEUTICAL SECTOR

- 4.4 % of sales lost annually
- € 10.2 billion of revenue lost annually
- € 7.1 billion of revenue lost annually in related sectors
- 37 700 direct jobs lost annually
- 90 900 direct and indirect jobs lost annually
- € 1.7 billion of government revenue lost annually (taxes and social contributions)



SPIRITS AND WINE SECTOR

- 3.3% of sales lost by the sector due to counterfeits (4.4% of spirit sales and 2.3% of wine sales)
- € 1.3 billion of revenue lost annually by the sector
- € 1.7 billion of sales lost in related sectors
- 4,800 direct jobs lost.
- 23,300 direct and indirect jobs lost in the EU economy of which 8,600 jobs are lost in agriculture and 6,100 jobs are lost in the food industry.
- € 1.2 billion of government revenue are lost (taxes, social contributions and excise duties).



Despite the complex challenges, there are many initiatives and good practices by the authorities aiming to address the problems to society

Measures of public authorities in the EU

- Creation of IP-Awareness (esp. SME and consumers)
- Europol's IP-Campaign “Don't F*** Up”
- Cooperation between public authorities (EUIPO, Europol, Commission, customs) and industry
- Foundation of the Observatory
- Strengthening of IPR law enforcement (Enforcement-Directive, Border seizure regulation; Knowhow-Directive)
- Publication of studies, reports and achievements



Information on involved products, health and safety risks and detection of fakes in order to prevent a purchase

Over 4.500 illicit domain names seized for selling counterfeit products by Europol

“This excellent result shows how effective cooperation between law enforcement authorities and private sector partners is vital to ultimately make the internet a safer place for consumers.”

(Press Release Europol of 28th November 2016)

Proactive brand protection should be part of the CSR marketing strategy

Besides an active marketing strategy (advertisement) there is a need for a defensive marketing strategy.

Brands need to be protected against the negative impact of fakes

- Trust and image are key factors of the brand value
- Protection of customers' health and safety risks
- Shareholders' protection and reporting obligations
- Risk management

 **CSR should be part of the defensive marketing strategy.**

TOP 10 BRANDS (MIO. USD)

1		109.970
2		107.141
3		106.396
4		87.016
5		76.265
6		66.219
7		65.875
8		62.211
9		61.998
10		47.832

Source: Interbrand Ranking 2016

Customers' awareness and consequences in loss of reputation should not be underestimated

1. EU citizens oppose the purchase of counterfeits and know about the negative impact on society

- 81% feel buying counterfeit goods ruins businesses and reduces jobs
- 71% feel buying counterfeit goods supports child labor and illegal trafficking

2. Markmonitor Survey Nov. 2016 on Online-Shopping

- 85% feel brands should be doing more to protect customers from unintentional counterfeit purchases
- 51% of consumers worrying about unknowingly buying a fake
- 23 % of consumers have unwillingly bought a fake product online
- Of those that were duped, 71% said the experience had a negative impact on their perception of the genuine brand with 59% saying they were more cautious when interacting with the company in future and **12% saying they wouldn't buy from that brand again**

¹ Source: Report 2013 "European Citizens and IP - Perception Awareness and Behaviour" and 2 survey Markmonitor Report 2016 <http://bit.ly/2Aj2ykm>

Firms should use a multi-faceted CSR approach to discourage counterfeiters and protect their customers, profits, and legal rights

Businesses need to implement individualized best practices according to their specific risk profile.

- ➔ IP Investment to allow legal actions
- ➔ Anti-Counterfeiting-Strategy
- ➔ IP Awareness and Code of Conduct
- ➔ IP Supply Chain Management
- ➔ Product identification technology
- ➔ Monitoring of sales channels
- ➔ Anti-Piracy-Communication and Cooperations

Use of anti-counterfeiting communication can be a competitive factor

Sustainable anti-counterfeiting concepts can have a positive impact to the brand image and can help to distinguish the brand clearly from that of its competitors for the benefit of customers and society



“Fight against illegality.”

hansgrohe

“Zero-Tolerance-Strategy against fakes means customer protection – counterfeiting is no trivial offense.”



Pernod Ricard
Créateurs de convivialité

“Helping consumers spot fakes.”

CASIO®

“Responsibilities to Customers – Counterfeit product removal and consumer protection activities.”



Rolls-Royce®

“Fake products. Profit for a few – Harm for many.”

lenovo™

“Commitment to Social Responsibility: Lenovo respects the intellectual property rights of other companies and individuals, having helped lead the way in fighting piracy in China.”

External communication of anti-counterfeiting measures

BMW's campaign pursues the aim to protect customers from buying fakes

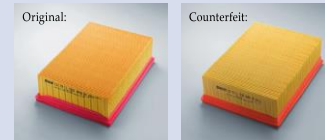
BMW Group communicates the risks of fakes and informs customers in order to prevent a counterfeit purchase



ACCEPT NOTHING LESS.

Original BMW Group Parts and Accessories adhere to stringent quality and environmental testing and are the result of intense research and development. With an original product, BMW Group customers can legitimately rely on the highest quality standards. Counterfeit products may have a huge negative impact on the safety of a vehicle, not only causing wear and tear and damage but also accidents, as shown in the examples below:

AIR FILTER ELEMENT.



Safety risks of counterfeit products:
 - Increased dust permeability.
 - Insufficient water stability.
 - Inferior capacity.

Possible consequences:
 Increased, premature engine wear and tear, shorter service intervals.

OIL FILTER.



Safety risks of counterfeit products:
 - Leaking end discs which break off in the hot engine oil.
 - Decreased burst pressure.
 - Very poor dust absorption capacity.

Possible consequences: Serious engine damage.

BE ON THE SAFE SIDE.

Product counterfeiters are highly inventive in making counterfeit products look like the original. For this reason, consult your authorised BMW or MINI Partner for advice. If you come across a suspicious product, share your observations and help contain product piracy:

Brand-Protection-Team@bmwgroup.com

WHEEL RIMS.



Safety risks of counterfeit products:
 - Inferior materials.
 - Inferior construction and finishing.
 - Insufficient strength and stability.

Possible consequences:
 Structural failure, tyre pressure loss, unstable vehicle handling.

BRAKE PADS.



Safety risks of counterfeit products:
 - Lower friction coefficient.
 - Poor fitment to braking system.
 - Very poor component connection.

Possible consequences: Much reduced braking effect.



COUNTERFEIT PRODUCTS – REAL THREATS.

The products of the various BMW Group brands are particularly attractive and desirable. This is a good thing to know, but it does have a darker side.

Trends in recent years reveal a significant increase in the illegal production and global distribution of counterfeited Original BMW/MINI Parts, Original BMW/MINI Accessories and products in the Merchandising & Lifestyle category. What may appear to be an unbeatable bargain at first sight can soon prove to be of inferior quality and a danger to your personal safety. The economic repercussions are also immense.

Counterfeited products are not only illegal, they can also have disastrous consequences for drivers, passengers, the vehicle and other road users.

Protect yourself and others against the consequences of counterfeit products by purchasing original parts and accessories exclusively from your authorised BMW or MINI Partner, or by seeking their expert advice.

THE DANGERS AND IMPACTS OF COUNTERFEIT PRODUCTS.

1. INCREASED SAFETY RISK.
 Counterfeit parts are not subject to the BMW Group's high quality standards. They can seriously impair the functions and safety of your vehicle.

2. REDUCED SERVICE LIFE.
 The frequently encountered inferior quality of counterfeit parts can be a source of wear and tear and vehicle damage that simultaneously increases repair and maintenance costs and shortens the life of the vehicle.

3. LESS DRIVING PLEASURE.
 Counterfeit parts are not tested for compatibility with the models for which they are offered. As a rule, they cannot ensure the same driving dynamics and safety as original products that are developed and precisely manufactured for BMW and MINI vehicles.

4. NEGATIVE IMPACT ON THE ENVIRONMENT AND THE ECONOMY.
 The production of Original BMW Group Products fulfills the most stringent environmental standards – such high standards are rarely observed in the case of counterfeit parts. Moreover, for every counterfeit part jobs are put at risk which negatively impacts the economy.

5. WARRANTY AND LIABILITY CLAIMS.
 The warranty and liability claims for the vehicle may no longer apply if damage is caused by a counterfeit part.

Attention should to be paid to new reporting obligations on CSR activities in the non-financial statement acc. CSR Directive 2014/95/EU.

Commission takes further steps to enhance business transparency on social and environmental matters. The aim is to boost corporate transparency and performance for investors and consumers, as well as encourage companies to embrace a more sustainable approach.

- CSR Directive expands reporting requirements of the Accounting Directive 2013/34/EU as of 2018 on information relating to the financial year 2017 in the non-financial-report included in the management report
- Applies to large undertakings which are public-interest entities such as publicly-listed companies, banks and insurers employing more than 500 staff members – approx. 6,000 companies accross EU
- Obligation to disclose information on strategies in the field of CSR – “*Comply or Explain*” - Description of policies and outcome, principal risks relating to non-financial matters and how risks are managed - OR - give a clear and reasoned explanation for not doing so
- Understanding of development, performance, position and impact of company’s activity, relating, as a minimum, to matters of environment, society and employees, respect for human rights, anti-corruption and bribery
- Members of the administrative body, management body and supervisory body are responsible
- MS must provide effective, proportionate and dissuasive **penalties** (Art. 51 2013/34/EU).

How does the CSR Directive fit to the subject of counterfeiting and piracy?

➔ Does not expressly reflect IP rights and counterfeiting

➔ But named subjects are not exhaustive

➔ Counterfeits do, however, fall within the objectives pursued by the CSR Directive, namely matters of environment, society and employment, human rights, anti-corruption and bribery

➔ Acc. to EU Commission's **Guidelines on non-financial reporting** (2017/C 215/01) companies should also **disclose any other material information** to provide a comprehensive picture of a company.

A paradigm shift concerning CSR and IPR lies ahead. The top management and supervisory bodies must address the problem with utmost importance

Conclusion



- The phenomenon of counterfeits gains in economical and public importance. It is part of the white-collar crime



- Companies must face the problem with high priority. They need an anti-counterfeiting strategy and must adjust their supply chain management



- **A paradigm shift concerning CSR and IPR lies ahead**
 - Concerns and expectations of consumers, investors and authorities regarding fakes will grow
 - Acting against counterfeits must be part of CSR, close alliances with stakeholders are necessary
 - Intermediaries, e.g. banks, credit card companies, trading platforms and social media are affected
 - Reporting obligations should be taken into account



The problem must be on the companies' top agenda and faced with high priority.