

The dark side of 'Black Friday' - How to protect your business against the multi-billion pound counterfeiting industry

31 Oct 2016

Everything business owners need to know about the UK's Intellectual Property laws

As the UK's hordes of bargain-hunting consumers brace themselves for 'Black Friday' on November 25th 2016, you can rest assured that the authorities will be watching on with added interest.

According to statistics from Experian and IMRG, an eye-watering £3.3 billion was spent by shoppers in the UK over the four-day weekend between Black Friday and Cyber Monday in 2015. The former accounted for the lion's share of this incredible spend, with £1.1 billion being shelled out on the Friday alone.

Major retailers like Amazon have certainly profited from this relatively new-fangled pre-Christmas phenomenon. Indeed, senior figures at the firm told the Press Association that they had been "blown away" by the level of interest shown in its cut-price goods, as the company recorded its biggest ever day of sales in the UK on Black Friday 2015, with more than six million items being ordered.

There's every chance that records will tumble again in 2016 and smaller, less established merchants will undoubtedly want to muscle in on things too – but retailers need to proceed with caution.

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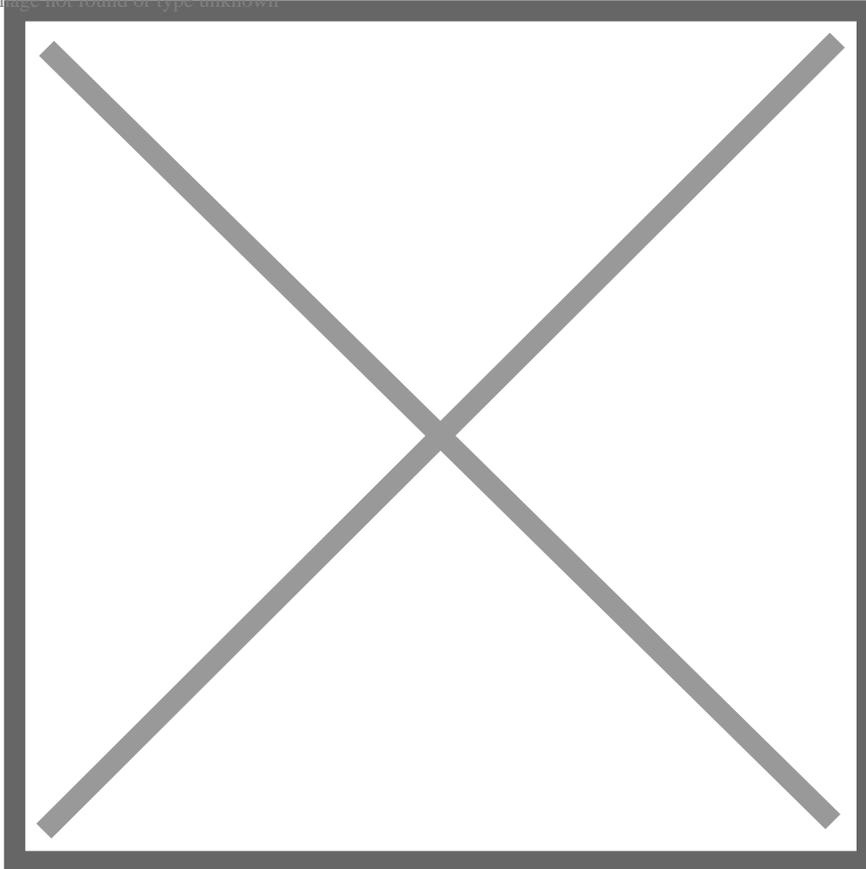
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The dark side of Black Friday – A window of opportunity for counterfeiters...

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The dark side of Black Friday – A window of opportunity for counterfeiters...

With so much money to be made, it's inevitable that counterfeiters will ramp up their attempts to cash in at this time of year. This isn't merely to the consumer's detriment. In fact, it's the retailers themselves who stand to be the biggest victims overall.

Here are a few statistics that highlight just how big the counterfeiting problem has become...

- In April 2016, the OECD revealed that global imports of counterfeit goods were worth nearly half a trillion dollars a year.
- EU customs officials seized around 40 million fake products worth nearly €650 million (£579 million) in 2015 – up by 15% on 2014.
- US companies are the most likely to have their Intellectual Property rights infringed – the UK is seventh in the list.
- 86% of all counterfeit products originate in China and Hong Kong, according to the US Chamber of Commerce Global Intellectual Property Center.

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- Customs authorities are seizing as little as 2.5% of the value of counterfeit goods that are estimated to be in circulation worldwide.
- A Government report published in early 2016 showed that Cheetham Hill – a small inner-city area in Manchester – is one of the most problematic counterfeiting hotspots in the UK. £5 million worth of fake goods were seized during a week-long operation in the area in November 2014.

Usually, news articles that draw links between popular sales such as Black Friday and the wide availability of counterfeit goods tend to be aimed at the consumer; warning them to be vigilant and instructing them on how to spot rogue products.

This guide, however, is specifically aimed at traders, explaining the potential penalties involved if you are found to be selling counterfeit items (whether knowingly or unknowingly), how you can ensure your supply chain is completely legitimate, and what to do if you are accused of breaching the Trade Marks Act 1994.

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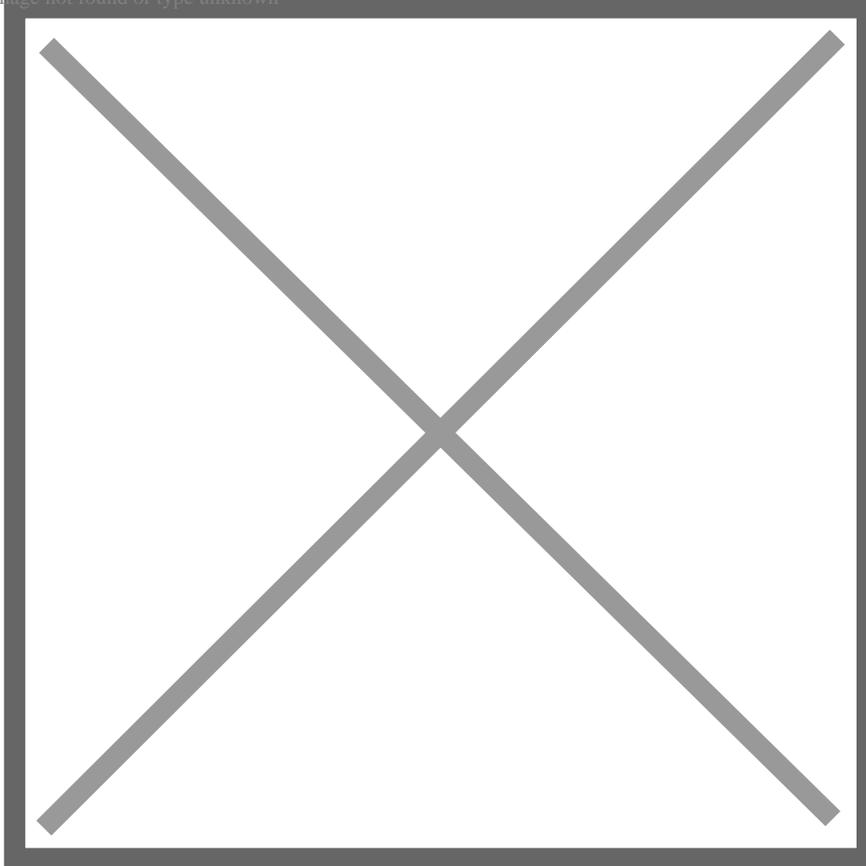
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What penalties will I face for breaching Intellectual Property laws?

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Before we start to discuss the nuances of the counterfeiting industry, it's worth pointing out the kind of penalties that business owners can face if they are found to be breaking the law.

Aziz Rahman, Senior Partner at Rahman Ravelli, outlined the standard punishments:

“If a case goes to Magistrates’ Court, the maximum penalty is six months in prison or a fine of up to £5,000. But if a case involving a breach of the Trade Marks Act 1994 goes to Crown Court, a person found guilty can face unlimited fines and up to 10 years in prison.

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“What also must be remembered is that under the Proceeds of Crime Act , the authorities have the power to confiscate the assets of anyone who has obtained them through illegal activity. This means that any money gained from selling counterfeit goods or any items bought with that money can be seized by the authorities if a person is convicted for trading in counterfeit goods.

“Prosecutions can be brought under the Act against anyone in the chain of counterfeit goods: from manufacture, packaging and distribution through to them being offered for sale.”

You can find out more about what to do if your assets are confiscated [here](#).

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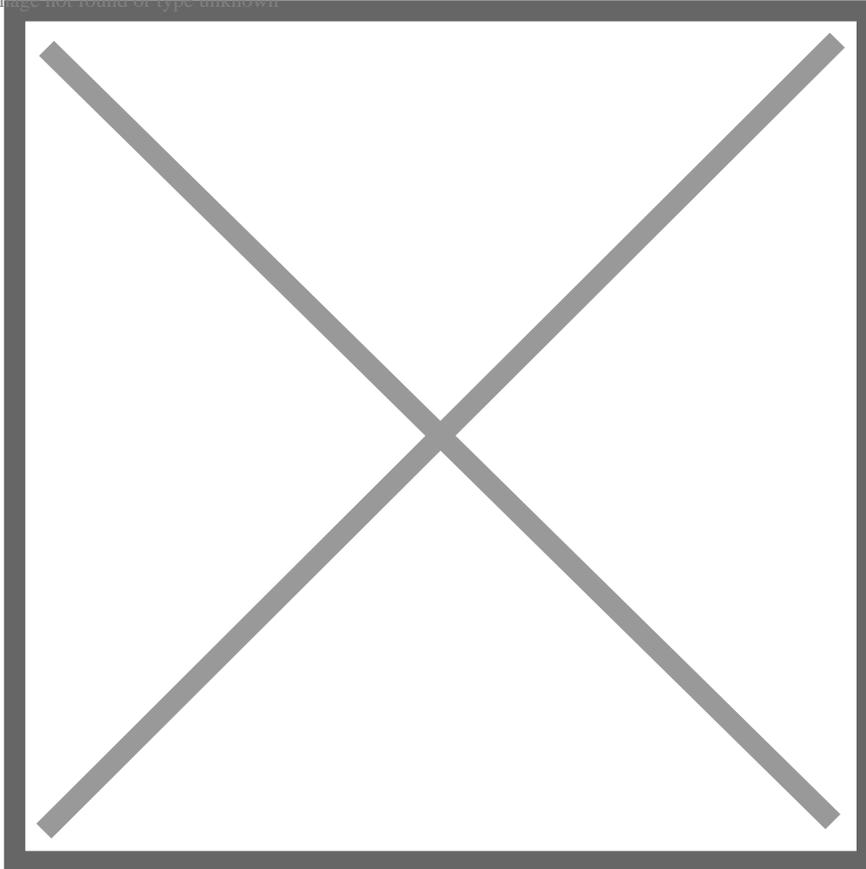
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What penalties have been handed out in recent cases?

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In 2014, two men were jailed for three years each after being found guilty of operating a global counterfeit ring.

An estimated £17 million of bogus goods were uncovered following a five-year investigation. At the time, it was said to be the largest haul of fake goods ever uncovered in the UK, and it consisted of more than 80,000 items ranging from Louis Vuitton bags and designer fragrances, to imitation Rolex watches.

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More recently, it was revealed that Trading Standards and Border Control officers in Yorkshire had seized nearly £10 million worth of fake designer handbags so far this year (as reported by the Huddersfield Daily Examiner here).

The growth of online commerce platforms – many of which are run through popular social media networks – has exacerbated the problem further. Numerous smaller cases have involved traders who have used Facebook and other similar platforms to peddle fake goods.

This is just the tip of the iceberg, and with online sales rocketing at this time of year, it's far easier for counterfeiters to sell their goods.

Why ignorance is no defence – even if you believe you are the victim

In many cases, traders have no idea that they are selling counterfeit goods to their customers. Even so, ignorance is no excuse.

Mr Rahman continued: "It can be the case that people accused of selling counterfeit goods genuinely do not know that what they are selling is fake. These are the people who are in most need of the appropriate legal representation.

"Ignorance is certainly no defence in such cases. Anyone found to be trading in counterfeit goods will receive little sympathy from the authorities. The Trade Marks Act 1994 carries heavy penalties for selling fake goods and offers little scope by way of legal defence."

It's down to business owners to make sure they are complying with the law, and this means introducing stringent processes throughout your supply chain.

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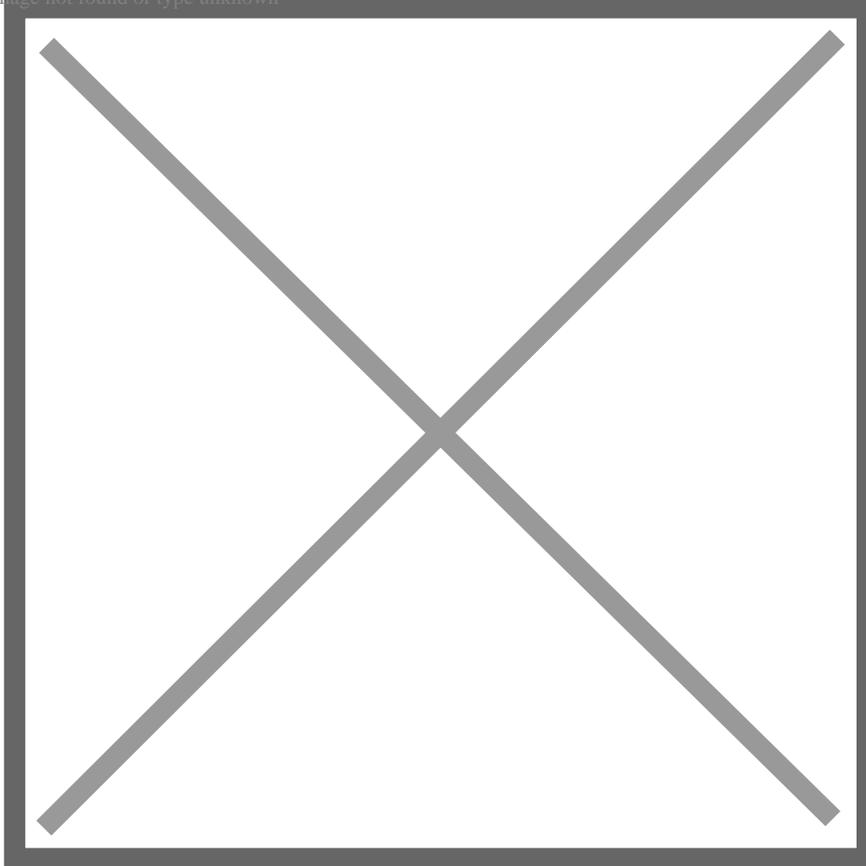
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How to protect your business against counterfeiters: steps you need to follow

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This is where smaller retailers can learn from their more illustrious counterparts. Large companies will have robust measures and policies in place to ensure they are only dealing with suppliers of genuine goods.

Here's a useful six-step process to follow...

1. **Analyse your existing supply chain**

Just because you've been working with a supplier for years, it doesn't necessarily mean they've been completely legitimate. For smaller traders, this can be a tricky measure to take, as you don't want a long-standing relationship to sour. However, you should explain that the checks you're undertaking are

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now company policy and are a routine measure to ensure you're both protected.

2. **Demand to see proof of manufacturing credentials**

If you've been selling, or intend to sell, Levi's jeans for example, your supplier should be able to provide proof of documentation that the items have been made in a bona fide Levi's facility.

3. **Go directly to the original source**

The more links there are in a supply chain, the more likely you are to encounter bogus goods. If you're not satisfied with the documentation that a supplier has given you, it's best to err on the side of caution and go directly to the original source (whether that be Levi's, Louis Vuitton or whoever). You need to be absolutely sure that the items you're selling are genuine and that you have permission to sell them.

4. **Keep organised records**

Keeping your essential paperwork and digital records in order can pay dividends if you are ever accused of wrongdoing.

Mr Rahman added: "When it comes to mounting a defence case, you will have a far better chance of avoiding the maximum possible penalties if you can show that you did make some or all of the checks mentioned here regarding whether the goods are genuine.

"If you have made an honest mistake, then the challenge is to assemble all available evidence that can back up your argument that you did take some – or even all – precautions to avoid becoming embroiled in selling counterfeit goods."

5. **Be mindful of different laws when forging overseas partnerships**

As we've already discussed, the counterfeit industry is very much a global entity. Nevertheless, some countries will have stronger trade mark laws than others. If you're looking to build an international supply network, it pays to do your research and ensure that your suppliers are playing by the same rules as your own business.

6. **Make use of new technology**

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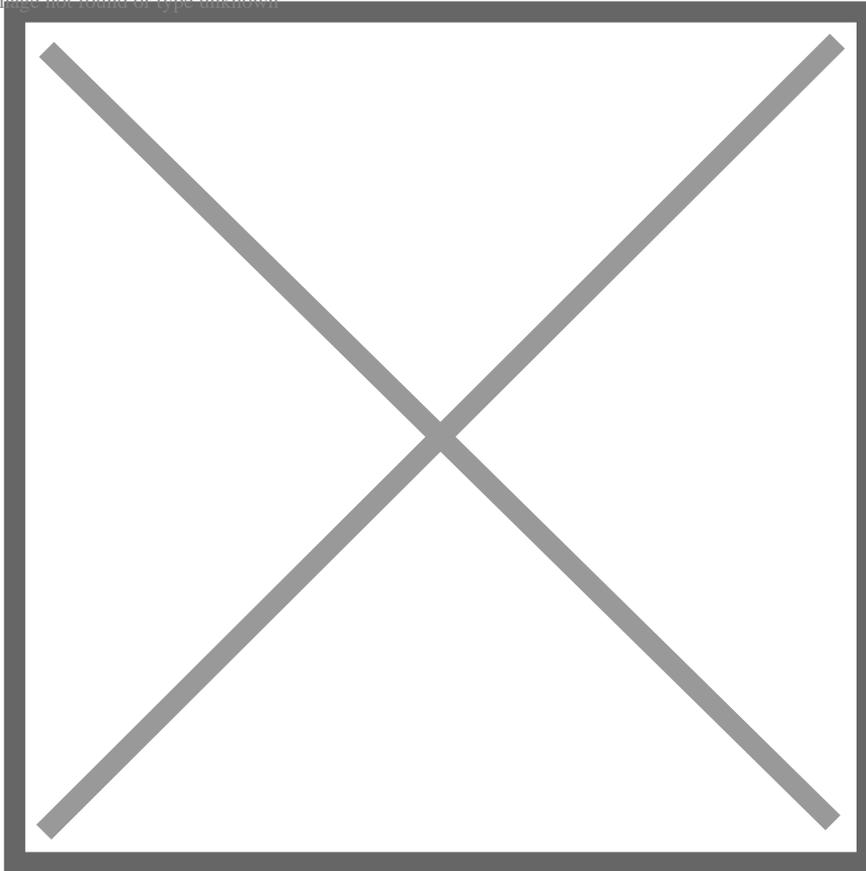
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A lot of larger businesses with hugely complex supply chains are using technology such as radio frequency identification (RFID) tags to ensure they're only dealing with genuine goods. RFID tags optimise stock control and also make it easier to flag up any erroneous products that might have entered your supply chain.

If you've followed this handy six-point guide and yet you've still been accused of handling or selling counterfeit goods, then it's crucial that you seek legal advice immediately.

What does the future hold? Is the situation under control?

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The fact that, as mentioned earlier, only a paltry 2.5% of the global value of counterfeit goods are being seized suggests that the problem is far from being under control. Naturally, the uncertainty surrounding the UK's involvement in the EU has raised further concerns. However, Mr Rahman insisted that while the exact terms of the 'Brexit' may affect the way counterfeiting cases are investigated when they involve organisations in more than one member state, the UK already has its own anti-counterfeiting laws in place.

"The UK has many different organisations, such as trading standards departments, HM Revenue and Customs and the Federation Against Copyright Theft, that will prosecute any breaches," he continued.

"It is also worth noting that as the vast majority of counterfeit goods originate from China and Hong Kong, closer links with the authorities over there are at least as important as European-wide cooperation when it comes to tackling the problem."

For more information on what you should do if you are accused of serious wrongdoing, please don't hesitate to get in touch with the experts at Rahman Ravelli. We have a 24/7 emergency team on hand to deal with your enquiries. Contact us here.

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