



Anticounterfeiting Benchmarking Report

May 2023

Thank You to Our Sponsors

Strategic Sponsor



www.wanhuida.com

Gold Sponsor



www.lancerindia.com

Silver Sponsor



www.lexorbis.com

Acknowledgements



MMR Strategy Group provides litigation surveys, expert testimony and survey rebuttals for trademark and false advertising disputes. Their survey experts have extensive experience conducting consumer perception surveys for federal and state courts and other venues, including the FTC, the Trademark Trial and Appeal Board, and the National Advertising Division. They have expertise in matters involving the Lanham Act, the Federal Trade Commission Act, and state false advertising and unfair competition laws. Clients rely on their insights to make better strategy decisions.

Introduction

Counterfeiting is a significant and growing threat to brand owners worldwide. To gauge the extent of the problem and identify some of the key challenges facing brand owners today, the International Trademark Association (INTA) conducted a benchmarking survey of its global corporate membership. The *Anticounterfeiting Benchmarking Report* presents the survey findings, and provides practical insights for companies and their advisors, as well as for INTA, in their anticounterfeiting efforts.

The Report provides deep insight into how brand owners view questions such as the scale of counterfeiting, where it is increasing, how to tackle the problem, allocation of resources and budgets, use of external resources, and knowledge gaps. In addition to addressing counterfeiting in detail, it touches on related issues such as gray goods/parallel imports, fraud, and illicit trade.

The Report is also one of the first data driven attempts to quantify the effects of the COVID-19 pandemic on counterfeiting and hones in on the impact of the pandemic and how the significant shift of consumers to e-commerce during the COVID-19 lockdowns fueled the proliferation of counterfeiting.

In addition to a wealth of data, the Report includes several detailed comments from brand owner respondents on their own experiences and perspectives. As one respondent said: “Anticounterfeiting efforts have unfortunately become a cost of doing business.”



Methodology

The survey was conducted in the final quarter of 2022. In-house legal teams of 121 corporate members participated in the survey, of whom 92 answered all of the survey questions.

The respondents to the survey represent a wide range of industries and jurisdictions, broadly reflecting INTA's diverse global membership. Many of the respondents represent large multinational brand owners with significant trademark portfolios and worldwide operations.

Once the survey was closed, the data collected was analyzed with the help of research partner MMR Strategy Group to identify trends and key findings. These are presented in the Report, which is available as a user-friendly PowerPoint presentation.

The report is sectioned by topic, as follows:

- Setting the Stage
- About the Survey and Respondents
- Main Findings
- Key Concerns and Threats
- Strategy and Tactics
- Internal Company Resources
- Budget Allocation
- Budget Priorities
- Authentication Technologies
- Collaboration
- Impact from Anticounterfeiting Strategy
- Impact of the COVID-19 Pandemic
- Priorities for INTA

The Report is designed so that in-house and external council can easily present its findings to internal decision-makers and clients, respectively, and make a clear case for increased focus and reallocation of resources to anticounterfeiting activities.

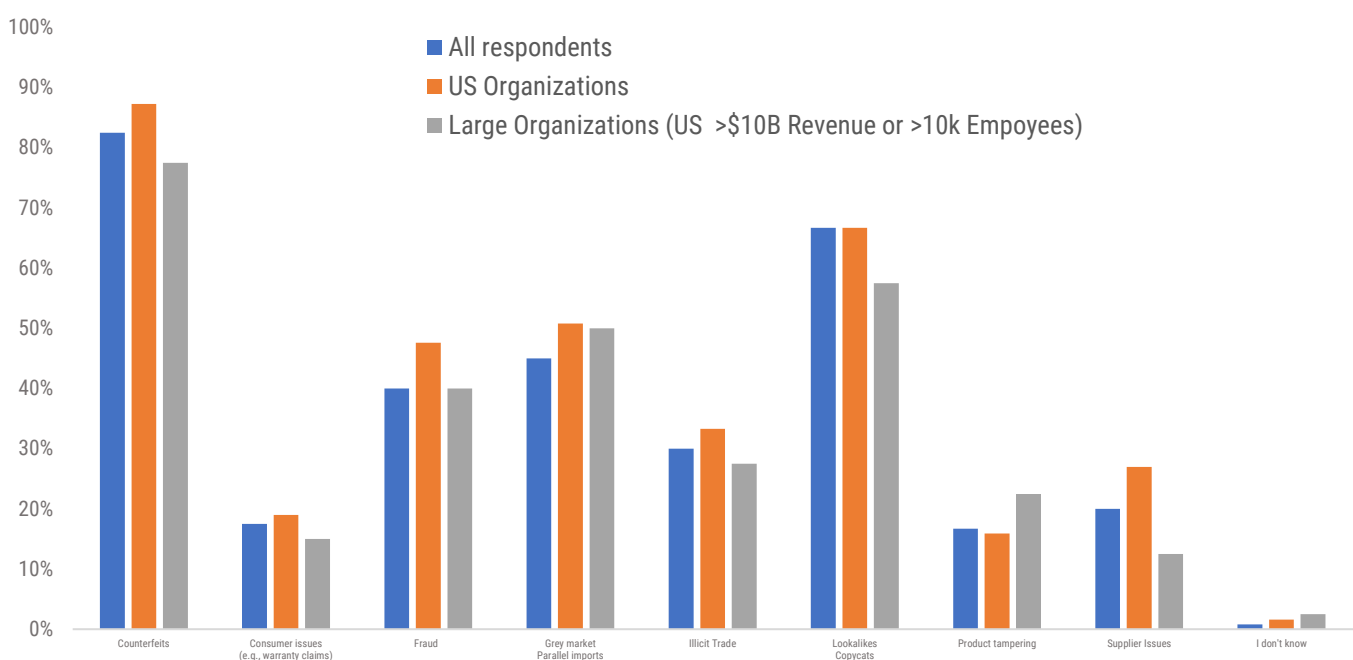
Setting the Stage

The Report reveals the extent of the counterfeiting threat faced by companies globally. A majority of respondents said that counterfeits are becoming a larger issue for their companies and that counterfeiting-related problems have increased as a result of the COVID-19 pandemic. This reflects the findings of other studies and anecdotal evidence that indicate a shift to online shopping among consumers, bargain hunting, and disruption of normal trade channels have all increased as a result of the pandemic.

According to the Report, respondents identified factors including the economic downturn, growth of online marketplaces, and direct sales to consumers as among the more recent events and trends compounding the anticounterfeiting challenge. These developments make it easier for counterfeiters to target consumers directly, and more difficult for brand owners and enforcement agencies to detect and remove counterfeits from the market.

While the vast majority of survey respondents believe their corporate anticounterfeiting program has been impactful, most are managing with very limited resources in terms of staff and budgets. Moreover, while most respondents believe their organizations are not investing enough human resources or money in the problem, less than half expect investment to increase in the near future. This is concerning given the growing scale and sophistication of counterfeiting.

We compare all respondents with respondents from large organizations and US organizations. Respondents of all categories expect Counterfeits and Lookalikes/Copycats” to become a substantial threat in the next 1-3 years.

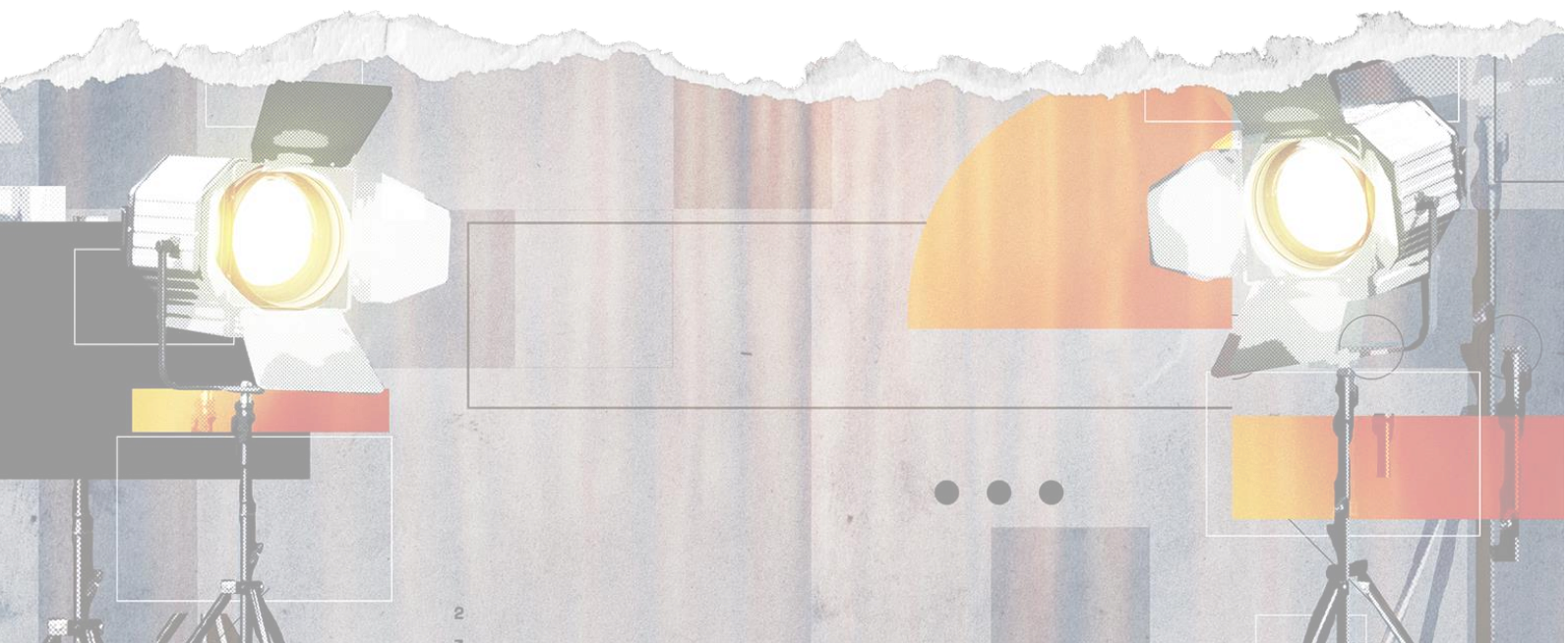


Setting the Stage

These findings raise the question of what can be done to address the increasingly complex anticounterfeiting challenge. To this end, the Report provides several useful insights:

- First, it examines to what extent, and in what areas, companies are outsourcing anticounterfeiting activities to professional advisors, such as law firms, investigators, and technology companies.
- Second, it looks at the use of technology to combat counterfeits. With fewer than half of respondents using authentication technology and just two percent saying they currently use blockchain technology, there is potential to do a lot more in terms of leveraging such technologies for anticounterfeiting activities.
- Third, it identifies areas where collaboration is taking place or can be enhanced, to provide brand owners with more efficient solutions.
- Finally, the Report considers what areas INTA itself should prioritize as it works to support its global membership in the anticounterfeiting battle.

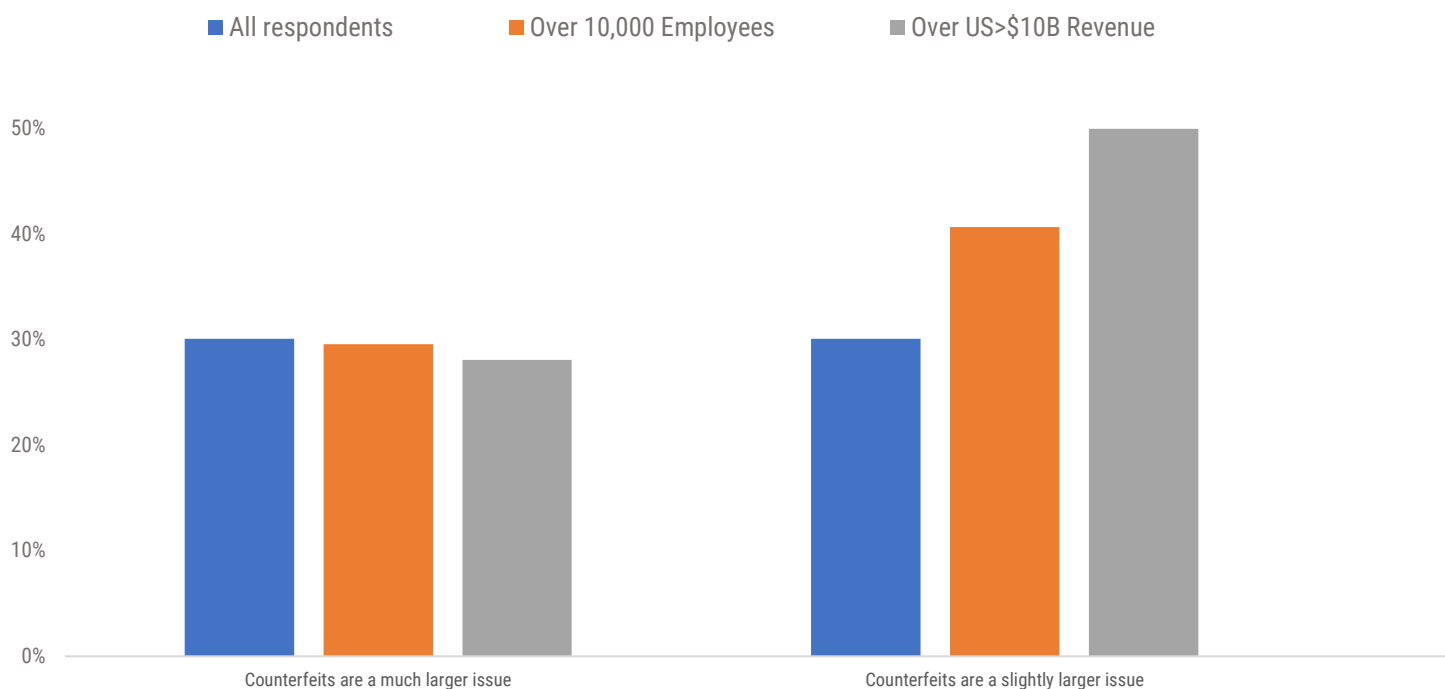
The impact of the COVID-19 pandemic on counterfeiting is not yet fully understood. Respondents identify to what extent, and how, the pandemic has impacted counterfeiting in their workloads and their industry. They also share their own perspectives, with observations such as how the pandemic shifted the focus from offline to online counterfeiting and increased misuse of brands on the internet.



Key Findings

Among the extensive and detailed findings available in the Report highlights include:

- The top concerns identified are counterfeits, lookalikes/copycats, and gray market/parallel imports.
- Counterfeits are becoming an increasingly significant issue, with counterfeiting-related problems increasing as a result of the COVID-19 pandemic for more than 60 percent of companies.
- Respondents identified the economic downturn, the growth of online marketplaces, and direct sales to consumers as among the key reasons for the growing challenge.
- Over 90 percent of respondents said their anticounterfeiting program has been somewhat, moderately, or highly effective over the last five years.
- More than half of respondents say their organization outsources key anticounterfeiting activities.
- The majority of respondents are of the opinion that they are investing too little money and human resources in anticounterfeiting initiatives—yet only 40 percent expect anticounterfeiting investment to increase in the next one to three years.
- About 40 percent of respondents use authentication technology, with marking technologies being the most common type. Only 2 percent use blockchain technology.



The Report

Above all, the Report underscores that counterfeits and related challenges are a significant and growing problem for brand owners, and that tackling them is becoming progressively difficult. Counterfeiters are increasingly sophisticated, and they continually develop new means of avoiding detection. However, the Report also highlights some critical ways in which brand owners can improve their anticounterfeiting efforts.

For in-house counsel, brand managers, and other executives in brand-owning companies, the Report is an invaluable resource as they allocate resources to anticounterfeiting activities, and plan and implement their anticounterfeiting strategies.

For law firms and service providers, the Report provides deep insight into how companies are working to address counterfeiting (including allocation of resources and budgets) and working with external resources, and it unveils opportunities to refine service offerings to better suit the needs of brand-owning companies. They can also use the Report as a basis for providing up-to-date information to clients and helping them understand the counterfeiting landscape.

The Report is essential reading for intellectual property (IP) lawyers, trademark attorneys, investigators, IP technology providers, and others who work in the anticounterfeiting field who need to keep abreast of the latest trends and emerging challenges in this area.

Counterfeits are a threat to brand value, undermine consumer trust, diminish tax revenues, and can pose a threat to health and safety. It is imperative that the global IP community build on the Report findings to enhance anticounterfeiting efforts together. No doubt, counterfeiting is one of INTA's policy priorities. This Report is an important contribution to our goal to work in partnership with all stakeholders to advocate for stronger anticounterfeiting measures online and offline, to promote cooperation in enforcement efforts across agencies and borders, and to increase awareness of the harms of counterfeiting.



International
Trademark
Association