



## **THE CRIME OF BRAND COUNTERFEITING IN COMMERCE**

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### **Abstract**

Brand counterfeiting in trade is a serious challenge that affects economic sustainability and consumer safety. In a global context, countermeasures must involve international cooperation, strengthening security technology, strengthening the legal framework, and increasing public awareness. The study results show that brand counterfeiting is detrimental to companies and consumers. Legal protection needs to be strengthened to prevent abuse. Brand rights support the economy and build consumer trust. Countermeasures require strong laws, effective enforcement, and government-industry cooperation. Technologies such as digital watermarks and QR codes can increase protection. International cooperation is necessary to create a fair and safe business environment. This article details strategic suggestions, including the development of security technology, legal strengthening, educational campaigns, and collaboration between government and industry, to create a hostile environment for brand counterfeiters. An emphasis on active consumer participation, effective law enforcement, and cross-border cooperation are key to maintaining brand integrity in a complex trade environment.

**Keywords:** brand counterfeiting, trade, public awareness, consumers, government, industry, law enforcement.

## Introduction

Trademarks as Intellectual Property Rights are basically signs that can be visually identified to distinguish the origin of the product. The main function of a brand is as an indicator of origin or identification mark of a company, allowing consumers to identify products or services from a particular company (Bhattacharya & Sen, 2003). A brand is not just a symbol or name, but also includes other elements such as color, shape and sound that can differentiate a product or service from its competitors.

Brands are at the forefront of trade in goods and services because they provide identity and image to a company. By having a strong brand, entrepreneurs can build relationships with consumers, create loyalty, and increase trust in product quality (Cici & Mardikaningsih, 2022). Brands also act as a means to market products and increase their appeal in the market.

Apart from being an identification mark, a brand also acts as a guarantee of quality. Consumers often associate brands with certain quality standards, and entrepreneurs who care about their brand reputation will try to maintain the quality of their products or services. This creates a mutually beneficial relationship between the company and the consumer, where the consumer can trust that the product or service they purchase will meet expectations.

Based on the opinion of Prawirayuda et al. (2020), legal protection of brands is very important to prevent misuse and counterfeiting, which can harm brand owners and result in confusion in the market. Therefore, through brand rights, companies can protect their investments and reputation, and create a fair and ethical business environment. Brand rights are also a tool to prevent unfair competition, avoid consumer confusion, and maintain brand integrity in the long term (Mardikaningsih & Darmawan, 2023).

Legal protection of brands creates a strong legal basis to empower brand owners to fight against harmful practices. According to Petty (2012), trademark law gives owners the exclusive right to use, control, and profit from their brands. This includes the right to prohibit other parties from using similar or identical marks for similar products, avoiding the possibility of use that could mislead consumers (Abdugopirovich, 2021).

Along with technological developments and globalization, the challenges of brand protection are increasingly complex. The internet, for

example, opens the door to opportunities for online fraud and counterfeiting that can quickly and widely damage a brand's reputation. Therefore, the sustainability and effectiveness of the brand protection system is becoming increasingly important in facing the challenges of the times.

Brand rights provide benefits to the brand owner, and have a positive impact on consumers. By having exclusive rights to a brand, brand owners have an incentive to continuously improve the quality of their products or services, create innovation, and provide added value to consumers. This creates a dynamic and competitive business environment, where consumers can choose from a variety of high-quality products or services.

Thus, legal protection of brands is not only about protecting business interests, but also supporting consumer interests and maintaining market integrity. According to Sarmilah (2015), success in creating and maintaining brand rights not only creates economic benefits for companies, but also supports overall economic growth by encouraging innovation, competitiveness and consumer trust. Therefore, an effective brand protection system is a key element in building a strong foundation for economic growth and sustainability.

Brand infringement is often the result of unethical economic motivations, where certain parties seek to gain personal gain in ways that harm and damage brand integrity. Brand infringement cases can include a variety of actions, ranging from attempts at imitation to deliberate counterfeiting to deceive consumers. This phenomenon is detrimental to brand owners, and has a broad impact on the economy, both on a national and local scale.

Brand infringement, especially through imitation or counterfeiting of well-known brands, can create inequality in business competition. Brand infringers seek to profit from the positive reputation already established by a well-known brand without having to invest time, effort, and resources in developing their own products or services. This not only harms brand owners who have worked hard to build a positive image, but also creates unfairness in the business environment.

Brand infringement cases often give rise to legal action, where brand owners try to protect their legally recognized rights. Such legal proceedings not only require significant effort and resources on the part of the injured

party, but can also be time consuming and hinder normal business activities. Therefore, effective legal protection is important to suppress brand infringement practices and ensure that brand owners can maintain the integrity and reputation of their brands.

The impact of brand infringement can also create uncertainty in the market and harm consumers. Consumers who are deceived by counterfeit or imitation products or services may lose trust in the brand and the market as a whole. Additionally, brand infringement can stifle innovation, as companies may be reluctant to invest in research and development if they feel that their products can be easily imitated without significant legal consequences.

Brand infringement is not only directly detrimental to the brand owner in an economic aspect, but also has a wider impact on business fairness, innovation and consumer trust. Cases like this can disrupt the market by creating inequalities that harm those trying to protect and build their brands. The negative impact is also felt at the level of innovation, because brand infringement can hinder the motivation to create and develop new products. In addition, consumer confidence in the brand can be shaken, considering that the inability to protect the brand can be interpreted as a weakness in management and product quality. Therefore, it is necessary to increase awareness of the importance of brand protection, as well as strengthening the legal system to handle brand violations in order to maintain balance and integrity in the business environment.

In the era of globalization and ever-developing technology, the existence of brands (trademarks) is a vital identifying symbol. The brand contains economic values, innovation and consumer trust. The crime of brand counterfeiting is a serious threat that can damage a company's reputation, harm brand owners, and create inequality in business competition. This requires a study to investigate countermeasures against the crime of brand counterfeiting in trade. Apart from that, this study will also analyze how legal protection of brands can contribute to supporting innovation and building consumer trust in a dynamic business environment. In addition, the question of to what extent increasing awareness of the importance of brand protection can be key in reducing brand infringement practices in the world of commerce will be the main focus of this research. Through awareness of this problem, it is hoped that

it can make a positive contribution to the development of policies, brand protection systems, and a better understanding of the challenges in maintaining brand integrity in an era of ever-evolving trade.

## Method

In responding to the complexity of brand counterfeiting crimes in trade, a literature study approach is a critical basis for understanding this challenge thoroughly. This study takes a literature analysis approach to develop an in-depth narrative regarding efforts to overcome brand counterfeiting crimes, legal protection of brands, and the role of increasing awareness of the importance of brand protection in reducing brand infringement practices.

Literature analysis involves investigating a variety of sources that include scientific articles, books, research reports, and related publications. This literature study provides the theoretical framework needed to understand the essence of brands as a key element in trade and the negative impacts that arise due to brand counterfeiting crimes.

By combining findings from various literature sources, this study forms a comprehensive narrative detailing the challenges, strategies, and implications of brand protection in commerce. Through this in-depth understanding, it is hoped that we can provide rich insights and valuable information for stakeholders in an effort to maintain brand integrity in an era of ever-evolving trade.

## Result and Discussion

The crime of brand counterfeiting is a phenomenon that requires serious attention because it has a broad and detrimental impact on various levels of society. Economically, the practice of brand counterfeiting can cause significant financial losses for companies. Declining sales, harm to brand owners, and overall damage to brand value can threaten the economic sustainability of a company. In addition, aspects of consumer health and safety are involved, because the counterfeit products produced often do not meet regulated quality or safety standards. Therefore, paying attention to the crime of brand counterfeiting is essential in maintaining consumer welfare.

Furthermore, brand counterfeiting creates inequality in business competition, harming companies seeking to create strong brands and quality products. These unauthorized practices can damage brand reputation and deceive consumers, disrupting market integrity and fair competition. Additionally, brand counterfeiting can be considered intellectual property theft, robbing companies of the investment, research and marketing efforts they have made.

In the era of globalization and technology, brand counterfeiting can easily spread through international and online trade channels. Therefore, attention to these crimes has become increasingly important to maintain the integrity of global trade and ensure brand protection worldwide. Related to this, brand protection also supports the empowerment of the business ecosystem. Brand owners who feel safe to innovate and invest can create jobs, drive economic growth, and make a positive contribution to the development of society.

By paying attention to the crime of brand counterfeiting, efforts to maintain economic integrity, protect consumers, and support business sustainability and innovation can be carried out effectively. Therefore, seriously addressing the crime of brand counterfeiting is a must to ensure fairness and sustainability in the global business world.

### **Legal Framework Relating to the Crime of Brand Counterfeiting in Trade**

Regulations for legal protection of brands in Indonesia have existed since the Dutch colonial period, namely the Reglement Industriële Eigendom (RIE), which was then replaced in 1961, namely by Law Number 21 of 1961 concerning Company Marks and Commercial Marks and lasted for 31 years.

The regulations regarding trademarks were replaced again with Law Number 19 of 1992 and replaced again with Law Number 14 of 1997 until finally Law Number 15 of 2001 came into force. Currently a new law has come into force, namely Law Number 20 of 2016 concerning Brands and Geographical Indications. The latest law regulates several things such as:

- a. Article 100: Regulates trademark rights violations, including trademark counterfeiting. The article states that Article 100 paragraph (1) of Law Number 20 of 2016 concerning Marks and Geographical

Indications states, Every person who without right uses a mark that is completely the same as a registered mark belonging to another party for similar goods and/or services. produced and/or traded, shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).

- b. Article 101: Regulates criminal sanctions for trademark rights violations, with a maximum imprisonment of 5 years and/or a maximum fine of IDR 2,000,000,000.
- c. Article 102: Regulates the confiscation and forfeiture of evidence related to trademark rights violations.

Apart from that, it is also regulated in the Criminal Code (KUHP). Article 263 regulates falsification of letters, including falsification of trademarks. Article 378 regulates fraud, including fraud committed using fake marks.

Law Number 8 of 1999 concerning Consumer Protection is in Article 62 which regulates the prohibition on producing and/or trading goods and/or services that do not comply with the required standards. Article 82 regulates consumers' rights to obtain correct, clear and honest information regarding the condition and quality of goods and/or services.

Government Regulation Number 51 of 2007 concerning Industrial Business Licensing in Article 24 which regulates the obligation of industrial entrepreneurs to include the SNI mark on their products. Article 30 regulates sanctions for industrial entrepreneurs who do not include the SNI mark on their products.

Regulation of the Minister of Industry and Trade Number 27/M-IND/PER/9/2013 concerning Procedures for Providing SNI Marks in Article 13 which regulates supervision of the use of SNI marks. Article 14 regulates sanctions for violations of the use of SNI marks.

The jurisprudence is in the Supreme Court Decision Number 794 K/Pid/2003 dated March 25 2004 concerning cases of trademark counterfeiting. Apart from that, there is also the Supreme Court Decision Number 1312 K/Pid/2007 dated April 24 2008 concerning cases of trademark counterfeiting.

International Treaty, namely the Paris Convention for the Protection of Industrial Property: Regulates the protection of trademark rights at the international level. Apart from that, there is the Agreement

on Trade-Related Aspects of Intellectual Property Rights (TRIPS): Regulates the protection of intellectual property rights, including brand rights, under the international trade framework.

The description includes various regulations related to brand protection. This overall legal framework creates a strong basis for combating brand counterfeiting crimes and maintaining trade integrity at national and international levels.

### **Efforts to Overcome the Crime of Brand Counterfeiting in Trade**

Efforts to overcome the crime of brand counterfeiting in trade can involve several steps and strategies (Staake & Fleishch, 2008). Strengthening the legal and regulatory framework related to brands as well as strict law enforcement are key steps. This includes increasing sanctions and penalties for perpetrators of brand counterfeiting to provide a deterrent effect.

Strengthening laws and law enforcement related to brand counterfeiting in trade is an essential step to address this serious challenge. The expansion of the legal framework involves increasing sanctions and harsher penalties for perpetrators of brand counterfeiting (Green & Smith, 2002). This aims to take brand infringement seriously and to create a stronger deterrent effect. By imposing significant penalties, authorities can send a firm signal that the practice of brand counterfeiting is considered a serious act that cannot be tolerated.

In addition, effective law enforcement plays a central role in ensuring the success of strengthening these laws. Firm enforcement actions and quick response to brand infringement can have a significant deterrent effect. Successful law enforcement can also ensure that the judicial process is efficient, with sanctions imposed in line with the level of the violation. Continuing consistent law enforcement will provide legal certainty and provide encouragement to prevent brand counterfeiting crimes as a whole (Bitton, 2012).

Strengthening the law and law enforcement is not just about delivering punishment, but also involves efforts to improve the effectiveness of the justice system. This includes providing adequate resources, training for law enforcement officials, and adopting advanced technology to support investigations and legal action. Clarity and firmness in regulations and law enforcement can create an unfavorable climate for

brand counterfeiters and, in turn, provide stronger protection for brand owners and consumers.

By recognizing the need to strengthen laws and enforcement, society can build a solid foundation for protecting brands, encouraging innovation, and ensuring fairness in an increasingly complex business environment. This increase is not only an investment in fighting the crime of brand counterfeiting, but also a critical step in supporting the sustainability and integrity of global trade.

Strengthening laws and law enforcement related to brand counterfeiting in trade is an essential step to address this serious challenge. Government and industry can work closely together to create a strong and effective framework. The government needs to strengthen the law by establishing heavier sanctions and penalties for perpetrators of brand counterfeiting. This step not only provides a firm response to brand infringement, but also creates a strong deterrent effect.

Collaboration between government and industry plays a crucial role in overall response efforts. The government can work closely with brand owners to increase monitoring and law enforcement against counterfeit products. By sharing information and resources, the two can form an efficient alliance to overcome brand counterfeiting crimes (Hoecht & Trott, 2014). Industry can also provide valuable information and support to the government in identifying and taking action against perpetrators of brand counterfeiting.

The success of strengthening laws and law enforcement depends on government efforts, and on the active participation of industry stakeholders. By supporting the government in the monitoring and enforcement process, industry can act as additional eyes and ears, helping to identify the circulation of counterfeit products, and mitigating the risk of brand counterfeiting crimes. Solid cooperation between government and industry strengthens brand protection, and creates a safer and more ethical business environment.

By establishing this close cooperation, strengthening law and law enforcement can achieve more optimal results in fighting brand counterfeiting crimes. This joint initiative can have a positive domino effect, creating an effective framework and providing better protection for brand owners and consumers. Through synergy between government and

industry, a fairer, safer and more integrity trading environment can be created.

Increasing public awareness about the dangers and negative impacts of counterfeit products is the main basis for efforts to overcome the crime of brand counterfeiting. This awareness can open the door to more effective preventive measures in protecting consumers and brand owners. Through widespread education and outreach campaigns, the public can be empowered with the knowledge to be smarter in recognizing genuine products and avoiding counterfeit products.

Educational campaigns can include in-depth information about the characteristics of genuine products, the differences between genuine and counterfeit brands, and the potential health and safety risks associated with using counterfeit products. Socialization through mass media, online platforms and community activities can be an effective channel to convey this message to the wider community.

The importance of increasing public awareness also lies in the active role of consumers in creating demand for original products. By understanding the risks associated with counterfeit products, consumers can make smarter choices and support ethical commerce. This awareness not only engages individuals as consumers, but also strengthens their role as citizens who contribute to creating a fair and safe business environment.

The importance of this effort is increasingly prominent considering the phenomenon of globalization and e-commerce penetration which facilitates the circulation of counterfeit products. By increasing public awareness, society can be at the forefront of fighting the crime of brand counterfeiting. In the long term, this increased awareness can create a smarter consumer culture, motivate authorities to enforce stricter penalties, and overall help protect brand integrity and consumer safety.

The use of technology and sophisticated security systems is an important foundation in protecting brands from the threat of counterfeiting. In an era where technology continues to develop, implementing innovative solutions can provide stronger protection against brand counterfeiting attempts. A number of security technology methods have proven effective in mitigating the risk of counterfeiting, and companies can adopt them as a proactive measure to maintain the integrity of their brands (Manara & Roquilly, 2011).

One example of the application of security technology is the use of digital watermarks, where unique elements that are difficult to imitate can be embedded in products. This technology allows authorities, distributors and consumers to easily verify product authenticity quickly and accurately. Meanwhile, the use of QR codes on product packaging provides an efficient way to instantly access authentication information via smart devices, helping consumers verify product authenticity before purchase.

The application of Radio-Frequency Identification (RFID) chip technology is also becoming an increasingly common solution. These chips can be embedded in products to enable tracking and verification of products from the production stage to the final consumer. With an RFID system, companies can monitor the movement of their products in the supply chain in real-time, reducing the risk of counterfeit or illegal products entering distribution (Tuttle, 1997).

Apart from involving consumers in checking product authenticity, this technology can also increase efficiency in handling logistics and supply chain management (M'zungu et al., 2010). The integration of these security technologies helps create a safer business environment, builds consumer trust, and relieves uncertainty in the marketplace.

The importance of using technology and security systems not only creates an additional layer of protection against brand counterfeiting, but also unlocks the potential to increase operational efficiency and optimize overall brand management. By keeping abreast of technological developments and implementing the right security solutions, companies can maintain consumer trust, protect brand reputation, and ensure business continuity in the face of increasingly complex counterfeit threats.

The crime of brand counterfeiting knows no national borders and often involves complex international networks. Therefore, the importance of international cooperation in efforts to combat this crime cannot be ignored. Cross-border cooperation is one of the key strategies in combating brand counterfeiting, considering that this activity often involves parties from various countries (Stevenson & Busby, 2015).

The importance of international cooperation can be seen in the exchange of information between countries. By sharing data on brand counterfeiters, modus operandi and latest trends, countries can provide each other with valuable insights to improve collective understanding of

this challenge. In addition, the exchange of information also allows authorities to respond more quickly to emerging threats of brand counterfeiting.

The training aspect is also a main focus in international cooperation. By holding joint training programs, countries can increase the capacity of their law enforcement officials to tackle brand counterfeiting more effectively. This includes equipping them with the latest skills and knowledge in the detection, investigation and prosecution of perpetrators of brand counterfeit crimes.

The existence of international cooperation is also reflected in law enforcement. Countries can jointly pursue and prosecute perpetrators of brand counterfeiting through bilateral or multilateral agreements. This legal framework can include extradition, legal harmonization, and joint law enforcement measures to increase effectiveness in tackling brand counterfeiting crimes.

Bilateral or multilateral agreements are a strong foundation for regulating international cooperation in combating brand counterfeiting (Matthews, 2008; Mercurio, 2012). By developing shared rules and procedures, countries can work together in a more structured and coordinated manner. This creates a more robust framework to collectively combat brand counterfeiting, reduces legal loopholes, and provides a strong impetus for more effective prevention and enforcement.

Thus, international cooperation is an urgent need, and the key to success in global efforts to protect brands from the threat of counterfeiting. Through cross-border collaboration, the international community can increase effectiveness, increase responsiveness, and shape strategies in maintaining brand integrity on the global stage (Berman, 2008; Queder & Sohel, 2016).

### **Legal Protection of Brands Can Support Innovation and Consumer Trust in a Dynamic Business Environment**

Legal protection of brands can support innovation and consumer trust in a dynamic business environment in several ways. Efforts to increase consumer trust are a positive consequence of legal protection for brands. The existence of a legally protected brand guarantees consumers that the products they buy come from legitimate producers or providers and have

met certain standards. Legal protection of brands provides a sign of authenticity and integrity that is officially recognized (Florek & Insch, 2008).

Modern consumers tend to consider brands as a determining factor in purchasing decisions. Legal protection creates assurance that the brand has been recognized and recognized by legal authorities, giving consumers confidence that they are dealing with a legitimate and trustworthy entity (Berutu et al., 2021). Thus, the existence of brand rights is an important factor in building consumer trust in the brand. Consumers can have confidence that the brand they choose has a well-maintained reputation. In a market environment full of choice, consumer trust is a valuable asset that can differentiate a brand from its competitors.

The importance of consumer trust is not only limited to the individual level, but also has a broader impact on economic stability and business sustainability (Sirdeshmukh et al., 2002). High consumer trust triggers a positive cycle where consumers tend to maintain loyalty to brands that have been proven reliable (Darmawan, 2018). Over time, the brand can build strong relationships with consumers, creating opportunities for growth and expansion.

Therefore, legal protection of brands provides benefits to brand owners, and makes a positive contribution to the overall consumer experience. Trust built through legal protection creates a stable business environment, provides incentives for innovation, and strengthens the economic foundation by fostering solid relationships between producers, brands, and consumers.

Legal protection of brands acts as a shield against infringement and counterfeiting, and is a catalyst for creating innovation in the business world (Hasibuan et al., 2021). Legal protection mechanisms provide strong incentives to manufacturers or providers to conduct research and development, build strong brands, and create added value that differentiates their products or services from competitors.

Investments in brand development can cover a wide range of aspects, from market research to product design, and legal protection provides assurance that the results of such efforts will not be easily duplicated or misused by others. Innovation is the main strategy in maintaining relevance and competitiveness in an ever-growing market, and legal

protection provides certainty that the results of innovation will not be taken without permission.

Legal protection of brands forms a stable basis for the creation and utilization of intellectual property (Petty et al., 2010). By having exclusive rights to a brand, manufacturers or providers feel more secure in investing their resources in research and development. This creates an environment where innovation is valued and recognized as a key element in achieving competitive advantage (Ernawati et al., 2022).

Continuous innovation also drives a positive cycle where consumers are continuously exposed to better products or services. In an effort to maintain and strengthen their brands, manufacturers tend to continue to innovate to meet the changing needs and expectations of consumers. Therefore, legal protection of brands not only supports economic growth, but also forms the foundation for an innovation-driven society (Carayannis & Campbell, 2018).

The importance of legal protection as a driver of innovation is not only limited to the company level, but is also systemic in maintaining a dynamic business ecosystem. By creating an environment conducive to innovation, legal protection of brands creates an impetus for economic growth and progress in various industrial sectors. Successful innovation not only brings benefits to brand owners, but also permeates the entire fabric of society, creating widespread positive impacts (Kostadinović et al., 2021).

Increasing awareness of the importance of brand protection has a significant impact in reducing brand infringement practices in commerce (Wilson & Grammich, 2020). This higher awareness has positive implications for the behavior of businesses and consumers, as well as triggering changes in the legal framework and law enforcement.

Understanding the legal consequences is one of the crucial factors that emerges as awareness of brand protection increases. Business people who are more aware of the importance of brand protection will tend to understand the risk of legal consequences that can arise from brand infringement (Wilson, 2017). They recognize that brand infringement can result in lawsuits, sanctions and substantial financial losses. This awareness plays an important role in forming a more careful attitude and respect for brand rights.

Increased consumer awareness also plays a key role in reducing brand infringement practices. Consumers who are more informed about brand protection will be more likely to choose genuine products and avoid counterfeit products. Thus, demand for counterfeit products may decrease, encouraging businesses to avoid brand counterfeiting in order to meet the expectations of consumers who are increasingly brand conscious.

Another factor that emerges along with increased awareness is strengthening the law and more effective law enforcement. Greater awareness encourages society and governments to advocate for policy changes and stronger regulations in brand protection. This creates a stricter legal environment and provides the basis for strict action against trademark infringement.

Education and campaigns are the main instruments to expand this awareness. Campaigns targeted at businesses, consumers and the general public can provide comprehensive information about the importance of protected brands. This campaign can educate about the negative impacts of brand infringement and provide guidance for consumers to recognize genuine products. Thus, education and campaigns become important tools to strengthen awareness and stimulate behavioral changes that support brand protection.

## Conclusion

The crime of brand counterfeiting in trade is detrimental to companies, consumers and market integrity. Legal protection of brands is important to prevent misuse. Brand rights provide economic benefits, encourage innovation, and build consumer trust. Even though regulations in Indonesia already exist, brand counterfeiting is increasingly complex with technology and globalization. Countermeasures require strengthening laws, effective enforcement, and government-industry cooperation. Public awareness and technologies such as digital watermarks, QR codes, and RFID can increase protection. International cooperation through bilateral or multilateral agreements is needed to create a fair, safe and integrity business environment, protect brands and increase consumer safety.

Brand infringement, including counterfeiting, is detrimental to all parties. Brand owners lose their rights and profits, consumers are deceived with low-quality products, and the country's image is tarnished. Efforts to

overcome this require collaboration. The government needs to strengthen regulations and law enforcement. Brand owners must be proactive in protecting their rights and educating consumers. Consumers need to be smart in choosing products and have the courage to report violations. Technology can help track and prevent the circulation of counterfeit products. Cooperation and active role of all parties is the key to combating brand infringement and creating a fair and competitive market. This is a crucial step in efficiently fighting the crime of brand counterfeiting.

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