

## Head-on Collision: Toyota's Anti-counterfeiting Strategy in Turkey

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Counterfeiters imitate a wide range of products from pharmaceuticals to handbags and clothes, cosmetics, electronic products, cigarettes and automobile spare parts. According to the Ankara Chamber of Commerce's 2010 Counterfeit Economy report, 58 percent of Turkish consumers prefer counterfeit products, demonstrating the economic and political strength of counterfeiters.

Sophisticated counterfeiters who manufacture high volumes of counterfeit products to be distributed internationally are familiar with Turkish laws, are organized and use gaps in trademark laws to their advantage. Therefore trademark owners should confront these counterfeiters with a long-term strategy instead of short-term solutions.

Toyota has been successful in obtaining observable results in its fight against the counterfeit market since developing a customized anti-counterfeiting strategy with our IP department in 2007.

Before Toyota began its strategic long-term plan in 2007, counterfeit Toyota spare parts could be found easily in car repair and service shops across Turkey and the Toyota trademark was used on signboards, business cards and other commercial documents in a manner inconsistent with the scope of fair use in trade.

Toyota's long-range plan reversed these abuses and a similar method could be used by other trademark holders seeking to reduce the quantity of their counterfeit products in the Turkish market. Several important pillars of the plan are described below.

### Monitoring

Toyota began its program by working with an investigation company on a regular basis. The investigation company kept an eye on the counterfeit spare parts market by inspecting local markets, service stations and fairs and making test purchases. Through this method it soon determined how many counterfeit products were being sold in specific cities or shops, noted addresses that could be targeted for seizures and made a thorough analysis of the counterfeit market.

Long-term investigations into the counterfeit market can reveal the origin and quality of counterfeit products and the main actors in the market. It is no exaggeration to say that surveillance of the counterfeit market in Turkey yields information not only on the domestic counterfeit market, but also on the flow of international counterfeit products.

### Seizures

Conducting seizures at the addresses determined by the investigation company is the main component of the anti-counterfeiting program. Seizures are important for several reasons. Apart from preventing counterfeit products from entering the market, seizures demonstrate that the trademark owner is protecting its trademark and will not allow counterfeiters to use it easily. In other words, it is a silent message to the counterfeiters implying that the next seizure could be in their shops.

Most trademark owners base their decisions about where to conduct seizures by considering the number of counterfeit products likely to be obtained. This focus is actually a mistake. Toyota's seizures were conducted without regard for possible seizure amounts and succeeded in wiping counterfeit products from the market. In some seizures only 20 products were seized while thousands were found in others.

In some cases, where relatively few products were seized, a shop owner may submit evidence (such as an invoice) to the court, which reveals a major manufacturer or distributor of counterfeit products. Therefore, the number of counterfeit products in a shop is not the only criterion that should be considered when planning a seizure.

The first year of Toyota's seizures in Turkey revealed that there was one large distributor selling the same products to every small or medium-sized shop. This distributor knew the gaps in Turkish trademark law, acted carefully and created its own method to avoid detection. Even though it was a large company it did not keep counterfeit products in its registered office. Seizures revealed that this company was distributing counterfeit spare parts using trucks. Surveillance of the trucks revealed that the company kept its counterfeit spare parts in an unofficial, hidden storage facility.

The subsequent raid on the facility captured 60,000 counterfeit Toyota products. During the raid it was discovered that the company was importing unmarked products and working with a packaging company to manufacture identical packaging for well-known automobile brands. Therefore the seizure of 15 to 20 counterfeit products not only prevented 60,000 counterfeit products from entering the market, but also revealed important information about the counterfeit market in Turkey.

## Monitoring Imports and Exports

According to the European Union's 2010 Report on Customs Enforcement of Intellectual Property Rights, Turkey is one of the top five countries of origin for infringing products. This report shows that customs is one of the most important points at which the import or export of counterfeit products can be prevented. Since the beginning of its anti-counterfeiting program Toyota has registered its trademarks before customs and evaluated each notification received from the customs authority.

Naturally, receiving a notification from customs does not mean that the products are definitely counterfeit. In most cases the products did not bear any trademark or were parallel imports. However, careful evaluation of all notices is important when considering the possibility to prevent hundred of products from passing through customs.

## Cease and Desist Letters

It is almost impossible (and prohibitively expensive) to initiate legal or criminal action against every shop that sells counterfeit products or uses a certain trademark on its signboard or website. Instead, the trademark owner might prefer sending cease and desist letters to shop owners who are committing more minor

trademark violations. This allows trademark owners to make their presence felt.

After completion of the intense seizure period Toyota proceeded with sending high volumes of cease and desist letters to hundreds of shop owners. After these letters many shops removed their signboards bearing the Toyota trademark. Undoubtedly, the letters have been a sign of Toyota's presence in the counterfeit market and reduced counterfeit product numbers.

## Professional Associations

Within the Turkish market, it is not possible to assume that every counterfeiter is aware of the laws against counterfeiting. While large manufacturers and distributors are well aware of the law and seek to exploit it there is a small contingent of counterfeiters who do not know the rights granted to a trademark owner or the legal and criminal consequences of manufacturing or selling counterfeit products. Raising awareness in this group is also important in the fight against counterfeiting.

In order to reach more possible counterfeiters, Toyota not only contacted professional associations within the automotive and spare parts industry, but also sent informative letters to professional associations within the packaging and publishing sector that manufacture packages for counterfeiters. Toyota placed advertisements in magazines and publications for the automotive or packaging industry to raise awareness among the companies working in these sectors.

### Training Customs and Other Public Organizations

Since customs is an important point for combating counterfeit products, educating customs officers about trademark law and company trademarks is an important investment.

Customs officers might pay less attention to trademark issues due to their busy schedule and the time-sensitive nature of their jobs. To overcome this risk, customs officers should be educated and exposed to a company's trademark. By building awareness of counterfeiting the officers will notice counterfeit products and inform trademark owners who have registered before the customs authority.

## Internet Monitoring

Internet monitoring has become increasingly important in the last 10 years as counterfeiters sell not only clothing, designer bags and fragrances online, but also automobile spare parts, tires, car accessories and many other articles bearing automobile brands (such as key holders or lighters). Since most of these counterfeiters do not have a registered company or a valid address, investigations in the field will not reveal these counterfeiters.

Toyota continuously monitored online marketplaces, relevant databases and websites and sent cease and desist letters to the counterfeiters. Toyota also joined eBay's verified owners' program and reported the listings that infringed its rights.

The number of counterfeit Toyota products in the Turkish market has dropped significantly as a result of this program. It is difficult to find a shop to target for a seizure these days and shop owners realize that Toyota will not let any third party sell counterfeit products in the market.

More importantly, by the end of the fifth year most of the actors in the spare part and repair service industry have learned the consequences of selling counterfeit products and understand that it is defined as a crime in Turkish trademark law.

Other trademark owners can experience the same results by implementing customized, long-term strategic plans to combat the counterfeit market in Turkey. Therefore, trademark owners should not hesitate to initiate their own fight against counterfeiters.

It might be costly and time consuming to undertake a comprehensive and effective strategy, but once the counterfeit products start coming off the market the initial expense will be more than mitigated by recaptured earnings.

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