

When Is It Okay To Buy Counterfeit Goods?

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Our law firm frequently challenges online e-commerce sellers for their unlawful sale of counterfeit goods. We are often asked about counterfeit goods: why should you “pay more” for genuine products? Is it legal to purchase and use a cheap knockoff? What about artwork—can you purchase and use the counterfeit? Can I lose my rights if I manufacture in China? In this article, we will discuss copyrighted artwork, unlawful counterfeits, and the serious penalties under U.S. law for copyright infringement.

In the U.S. and many other countries, an artist owns her copyright at the moment of creation. No special registration is required (although registration provides other benefits). If you are an artist, the good news is that you already own the copyright in your artwork. And your copyright is a property right. You own it. Although your artwork may be stolen and displayed by others, you hold the copyright in your artwork and their actions are illegal.

We frequently evaluate cases where foreign manufacturers misappropriate copyrighted artwork for sale on the internet. It is important to dispel some of the myths surrounding these unlawful and counterfeit goods, and to explain why it is never okay to buy counterfeit goods. Some of the myths we have observed recently:

- Myth 1: If you use a Chinese manufacturer, you lose your intellectual property rights;
- Myth 2: Foreign manufacturers can freely make copies of your copyrighted artwork and distribute it worldwide, including in the U.S.; and
- Myth 3: Counterfeit goods sold on Amazon do not violate U.S. law and are okay to purchase and re-sell.

Of course, these statements are false, and the identified conduct is unlawful. The problem of counterfeits, fakes, and knock-offs is a serious problem worldwide; and those who sell or display counterfeit copyrighted works face serious legal liability and damages. Here are a few points to remember.

Foreign Manufacturers Do Not Have the Right to Steal your Work. When copyrighted artwork is displayed, sold, or distributed in the U.S. without authorization, those actions are unlawful. Where such goods are distributed in the U.S.—*whether on Amazon or elsewhere*—the artist has legal remedies available in U.S. courts against the counterfeiters. These remedies may include money damages (against both the infringers and promoters of counterfeit goods) and an injunction against the sale of such goods.

Counterfeit Goods are Illegal. Make no mistake: counterfeit goods are illegal. There is no “get out of jail free card” because the goods are made in China. The U.S. Customs and Border Protection provides helpful resources at a page titled “Fake Goods. Real Dangers,” available at <https://www.cbp.gov/trade/fakegoodsrealdangers>. As U.S. Customs explains:

It is illegal to purchase counterfeit goods. Bringing them into the United States may result in civil or criminal penalties and purchasing counterfeit goods often supports criminal activities, such as forced labor or human trafficking.

The legal consequences of purchasing counterfeit goods counsel against such actions. Even worse, the resale of such goods may even be a crime, as discussed below.

Displaying or Using Copyrighted Works is Illegal. Copyright infringement occurs when the copyrighted work is reproduced, distributed, performed, or displayed without authorization of the copyright owner; it can also occur when a copyrighted work is made into a derivative work. In other words, a person who purchases and displays copyrighted works, without authorization, violates U.S. copyright law. Similarly, a person that makes derivative works from copyrighted artwork, without authorization, violates U.S. copyright law. This is reassuring for the copyright owner, as you are protected even when your artwork is stolen.

Copyright Law: Not a Free for All. E-commerce has brought the world closer together. By some estimates, nearly 60-percent of goods on Amazon are listed by third-party marketplace sellers. However, the copyright laws of the U.S. still apply to the sale of goods. Just because an item is listed for sale on Amazon does not mean it is authentic; rather, it may be the case that a counterfeiter is selling goods without Amazon's knowledge of the counterfeiting. When we buy goods on Amazon, we must use care to avoid counterfeits; and of course, the willful purchase of counterfeit goods on Amazon is illegal and potentially criminal.

Willful Counterfeiting is a Crime. The Department of Justice ("DOJ") prosecutes criminal copyright infringement: 17 U.S.C. § 506(a) outlines criminal copyright infringement, which is investigated by the FBI and prosecuted by the DOJ. Criminal prosecution is available where a valid copyright is willfully infringed for a commercial advantage. For example, the purchase and display of counterfeit goods—for financial gain—is a criminal act if undertaken willfully. Penalties for criminal copyright infringement are stated in 18 U.S.C. § 2319 and include fines and prison time. In practice, such penalties are reserved for willful infringers profiting from their reproduction and distribution of copyrighted works.

The exciting news for artists and sellers is that U.S. copyright laws are a powerful tool against those who steal copyrighted works, and criminal penalties are available against the worst infringers. In our experience, copyright is a powerful tool for artists and honest sellers seeking to protect their goods from counterfeiters and from those who promote counterfeit goods.

If your business is experiencing challenges with counterfeiters and copyright infringers, you may need some help with the many enforcement tools that are available. If you need help, please contact Brian Platt or Tim Nichols.

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