



Katrina Pounds Trademarks

It's good and bad that hurricane survivors are getting counterfeit wares.

The ripple effects of Hurricane Katrina extend even to intellectual property law, as professor Susan Scafidi explains.

Just in time for the fall fashion shows, the federal government has become a mass distributor of counterfeit goods. Thousands of previously seized items are heading to survivors of Hurricane Katrina. The result? Displaced children get clothes for school, with “designer” labels no less, and the Bureau of Customs and Border Protection gets extra warehouse space.

The plan is legal and charitable. It's also a trademark owner's nightmare.

Unless a cadre of customs officials armed with tiny scissors and indelible pens has been deployed to carefully remove or obscure the trademarks on knockoff jeans, shoes, baseball caps, and even toys, these items proudly—and falsely—declare their designer origin. The companies that make the real deals have no control over the copies' quality or safety. Perhaps even worse, they have no control over the channels of distribution. Very few corporations have spent millions in advertising only to be associated with shelter chic.

Would any prominent brand be churlish enough to tear a faux-designer blanket away from a shivering family? Surely not. Indeed, savvy trademark holders should publicly express appreciation that the items are being put to good use. But IP lawyers must secretly regret this setback to the public's already tenuous belief in the evils of counterfeit goods.

After all, if Customs really believed that illegally imported knockoffs were harmful in the same way as recreational drugs or contaminated fruit, officials wouldn't be distributing them to hurricane survivors. Free imported marijuana with that counseling session? Not a chance. By contrast, the alleged danger of a pirated handbag is far more subtle.

Besides claims regarding quality control and consumer confusion, trademark owners' most persistent argument is that counterfeit goods represent billions of dollars in lost sales. This trans-

lates not only to millions in lost tax revenue, but also to a potential source of funding for terrorism and other unsavory activities.

MIXED MESSAGE

Still, it's hard to believe that buying a pair of faux sunglasses is an act of terrorism. Like unauthorized file sharing on the Internet, copying a trademark doesn't necessarily seem like stealing. Especially now that the government is handing out fakes for free.

On a global level as well, the Bush administration is sending a mixed message with respect to counterfeit goods. The United States has been at the forefront of international IP law enforcement, exerting political pressure against nations that make knockoffs, demanding raids on factories and warehouses, and applauding the mass destruction of seized goods. Now, faced with an emergency situation, the government has chosen to return infringing items to consumers.

Should nations across the globe do the same for refugees of other disasters or conflicts? On an even greater scale, should counterfeits be redirected to alleviate the suffering of the poor? And if so, what does this policy say about our concerns regarding consumer safety and quality assurance?

Like the administration's implicit threat to disregard the Cipro patent during the anthrax scare, the current policy undercuts the U.S. position on IP protection and devalues other nations' suffering in comparison with our own.

The unfortunate people of New Orleans and the Gulf Coast should be able to sleep under new sheets tonight and dress in fresh clothes tomorrow morning, regardless of the labels on those products. But the government's large-scale redistribution of counterfeit items raises major questions about our belief in the value of trademarks.

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