



European Communities Trade Mark Association

“Postal Freight and Counterfeit : a sensitive equation”
**Report on the Conference organised by the Groupe La Poste and the French Customs
in Paris on 16 and 17 November 2009**

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Postal parcels are an increasingly used means for the acquisition and circulation of counterfeit goods – including exportation and above all importation into the EU Member States and other relevant economic areas in the world (USA and Canada, Japan, Korea, among others).

Counterfeiting through postal parcels has been booming during the last few years with distance sales on the Internet. In Japan, for example, they estimate that over 90% of counterfeit products circulate through postal services. These services are, moreover, the ideal means for the purchase and sale of products of certain kinds, as is paradigmatically the case of counterfeit medicinal products: it is estimated that not less than 50% of the medicinal products purchased through the Internet are false.

These amounts tend to increase in certain periods of the year. In France, for example, it is expected that, for the 2009 Christmas season, not less than 80% of purchases will be made via the Internet. Paradoxically, the recognised efficacy of the postal services in many countries has given rise, as a negative effect, to an increase in the circulation of counterfeit goods and a greater difficulty in handling this phenomenon.

As happens in respect of any type of border measures, enforcement against the circulation of goods through the postal services is incumbent on the Customs authorities. However, the first players to take into consideration for these measures are Postal operators, not only because the service of transportation of goods itself is carried out through them, but also because they are the ones that have to interact with the Customs, providing information in respect of suspicious cases so that these authorities take the adequate measures. Therefore, border measures in respect of postal parcels depend on the intervention of two different entities, the Customs authorities and the Postal operators.

Nevertheless, the awareness of Postal operators seems to be rather recent regarding the fact that the problem of counterfeiting is a matter which directly concerns them and that they also must help to fight against it. This is particularly the case of France (it is recognised that, at least among the EU Member States, this country represents the “state of the art” in anti-counterfeiting) where the LA POSTE Group was contacted with regard to this issue only three years ago – with the accusation that they were a “*partner in counterfeiting*”...

This Conference was in fact the first conference on counterfeiting hosted by a Postal operator and the first one also from the perspective of the specific issues which characterise their activity.

The conference was well organised, in respect of both the selection of the matters for discussion and the quality of the speakers. Approximately 200 persons attended this event,



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mainly including persons from Postal operators of various countries (with a high number of absences from the EU Member States), Customs and consumer associations.

The sessions on the several themes of the conference were all in the form of round tables. The subjects covered were “*From luxury to drugs, the old and new dangers*”, “*Adaptation of the legal framework to the evolution of practices*”, “*Internet, distant selling*” and “*International cooperation*”. The themes dealt with on the second day were “*Posts in action*”, “*Technology at the service of protection*” and finally “*Raising awareness among consumers*”.

The conference covered many of the aspects usually raised in respect of counterfeiting and its negative economic and social effects, such as its criminal origin and purposes, unemployment, the loss of income and taxes and also the risks to consumer health and safety (with a major focus on false medicinal products, of course). None of these issues are new to the “*veterans*” of anti-counterfeiting, but we must obviously take into account that a large part of the attendees of this conference were “*newcomers*” in this field (in particular the representatives and employees of the Postal operators).

In any case, the conference was extremely interesting for everybody, including the IP professionals, above all because it stressed precisely the existence of the Postal operators as another partner to take into account in the fight against counterfeiting, providing much information as to the functioning of these operators and their international organisation, in addition to how they interact with other entities and particularly with the Customs. In this regard, the event was useful because it made it possible to identify and discuss the problems which specifically concern anti-counterfeiting within the scope of the activity of the said operators.

The main problems indicated and commented on by the various speakers were:

- Traffic by mail is characterised by a large number of cases of “*small quantity of counterfeits*”.
- It is more difficult to detect the counterfeit products, given that the risk indicators are less effective in this domain.
- The anonymity of the offer which frequently occurs in distance sales further complicates the situation, being often difficult to detect individual senders.
- The excessive data protection benefits counterfeiters and criminals.
- There are considerable differences between the various Postal operators of the various regions of the globe and the way in which they operate.
- It was expressively reported, as regards that which is undoubtedly the main cause of counterfeiting – demand – that consumers are as a rule not very receptive to the problem of counterfeiting, even when serious matters are at issue, such as “*organised crime*” or “*unemployment*”: they feel that “*it is not their problem*”.
- Security devices (applied to both products and letters or parcels) may have some efficacy but still have some limitations, including costs and the difficulty of acceptance as judicial proof.

In the discussion concerning the position to take with regard to this problem, it was mentioned that, although the Postal operators are not responsible for the contents of postal parcels and also that they are not enforcement agencies, several operators are already highly motivated for the fight against counterfeiting. It was unanimously sustained by all the



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speakers that it is absolutely fundamental to increase cooperation, not only among the various Postal operators, but also between them and the Customs. Regarding other measures already underway or being prepared in respect of the fight against counterfeiting (specifically as regards postal parcels or not), the imminent agreement between the UPU and ICANN was referred to, i.e. the Milan Pilot Project of August 2009 (cooperation between the Postal operators and the Customs), as well as the Capacity Building Program of the WCO, the “Déclaration de Cannes” and, of course, the ACTA agreement.

Concerning solutions, it was stated that there are no “*miracle solutions*”, nor a single solution to solve the problem. Multiple solutions are required. In any case, a few solutions were set forth in the conference, to be implemented or consolidated, namely:

- The creation of a global security system within the scope of the WCO, supported by a fund to be also managed by the said Organisation.
- The accession of the developing countries to the Universal Postal Union for “the capacity building” of their Postal operators.
- The creation of an infrastructure in respect of the Internet which would make it possible to secure exchanges by postal parcel.
- The identity of sellers through the Internet should be very clear, being important to “remove the anonymity of the offer” of goods via the Internet.
- For the same purpose, it would be important to insist on the correct filling in of the postal forms.
- To raise the awareness among the various Postal operators.
- A more adequate application of the law for protection of personal data.
- The classification of counterfeiting as a “Customs offence” (as happens for example in France).
- The non-application by the WTO Member States of article 60 of the TRIPS agreement concerning “de minimis” importations.
- The use of technological security means in parcels.
- “Follow the money”: chasing the consignees of the goods and particularly the owners of the accounts to which payments are made.

In his conclusion on the working sessions, Mr. Jean-Paul Forceville, director of external relations at La Poste, mentioned that the “*maîtres mots*” of the conference were unquestionably the sharing of information and cooperation, not only among the various Postal operators and the other entities (mainly the Customs) but also between these entities and the right holders, as well as the public. He ended by saying that this initiative should be repeated.