

# Businesses Must Be Wary of Counterfeiters, Social Media

by Jim Stickford

The auto industry has valuable brands that need protecting from trademark infringement and from counterfeiters.

That's how Eric Fingerhut described one of the industry's issues as he spoke during a special discussion at the Dykema Auto Institute March 20.

The discussion, through video conferencing, covered the counterfeiting and trademark practices that affect Detroit-area auto suppliers.

Speakers were Christine Lofgren, managing counsel of Toyota Legal One and Fingerhut, leader of Dykema's trademark practice.

In pointing out the potential problems with counterfeiting, Fingerhut said Ford's brand alone is worth an estimated \$19.6 billion.

Lofgren said the automakers and their suppliers run "lean" operations and times are difficult right now. The European market shrank by 8 percent in 2012 and companies like BMW, Volkswagen and Mercedes are trying to make up the slack by selling more cars in North America, she said.

But, she added, brands are hurt by counterfeit parts, of which an estimated 80 percent are believed to come from China.

The Motor & Equipment Manufacturers Association (MEMA) estimates that counterfeit parts cost suppliers around the world to lose \$12 billion in sales. That figure is \$3 billion for the United States alone.

Damages from counterfeit parts sales extend far beyond lost revenue, Lofgren said, noting that there is loss of reputation because when a counterfeit part breaks down, it's the OEM or the supplier that gets blamed and it's their reputations that suffer.

Counterfeit parts also pose health and safety risks, Lofgren said. She cited the example of counterfeit airbags that don't so much deploy as explode, showering the drivers with shrapnel.

Counterfeit auto parts range from seat covers to airbags to brakes, filters, spark plugs and windshields, Lofgren said.

"The list of fake parts could go on for pages and pages," she explained. "I just named a few examples, but every OEM has thousands of parts that go into a vehicle. And they all have multiple suppliers on multiple levels."

The end result is that counterfeiters have a lot of opportunities to create fake parts. Lofgren said that when people affected by fake parts were asked where they got them, investigators were often told the parts were bought on eBay or from an independent parts dealer.

Fighting the problem isn't easy, but there are some things manufacturers can do, Lofgren said. First, they should register their copyrights and trademarks with U.S. Customs and then help educate Customs officials about their parts.

That way, Customs officials know what to watch for and can act quickly in cases that are suspicious because they have a relationship with manufacturers.

When asked what constitutes suspicion, Lofgren said Toyota's part come in via the ports at Los Angeles and Long Beach, Calif. If "Toyota" parts were suddenly submitted to Customs officials at the port of New Orleans, red flags would be raised and that shipment would get extra scrutiny – because there was a relationship between Toyota and Customs.

Lofgren said OEMs and suppliers need to train people to keep an eye out for parts and not be afraid to take people to court.

"Relief is only temporary," Lofgren said. "You have to maintain constant vigilance."

Fingerhut brought up the subject of protecting trade secrets. In order to enjoy legal protection of trade secrets, companies must be able to demonstrate that they have made "reasonable efforts" to protect those secrets. He cited the formula for Coca-Cola as the classic example of a successful effort.

But when a company employs thousands of people, the hush-hush job becomes hard. So systems must be in place to protect secrets and these systems must be followed by everyone, Fingerhut said.

While social media can be wonderful for businesses, it poses challenges, Fingerhut said. Employee posts using a company's social media outlets like Twitter might be protected by free speech and this might expose companies to liabilities. It's also just as easy to write something on Twitter or Facebook that makes your company look bad.

Fingerhut pointed out a *New York Daily News* article about how the son of the New York fire commissioner lost his EMS job because of racist tweets. So it's important, first, for a company to have social media policies in place.

And, secondly, "It's not enough to have a policy," Fingerhut said. "It has to be enforced."

Employers must also have policies in place for when they hire workers from other businesses, he said, noting that many businesses don't allow new employees to upload to their computers, which prevents trade secrets from being passed from one company to another. It protects everyone, Fingerhut said, and that is never a bad idea.

Social media, Fingerhut said, can also cause public relations nightmares. He explained that it's wise to assume that all legal correspondence will be posted online, so companies should always be aware of how something will look to the public.

He cited an example of an airplane manufacturer sending a boilerplate legal letter to someone who sent a drawing of a plane with a note saying they wished the company would make



Dykema attorney Eric Fingerhut recently spoke on the importance of trademark protection in the age of social media at a special Dykema presentation in Detroit.

that plane. The company's answering letter was in legalese and stated they did not take unrequested submissions.

The problem, Fingerhut said, was that the person who submitted the drawing of the "cool" plane was eight years old and the drawing and note were in crayon. The boy's father saw the letter and started tweeting about it, making the airplane manufacturer look foolish.

A positive example of a company protecting its trademark without alienating the public, Fingerhut said, was what the Jack Daniels company did.

An author published a book and the cover looked like the Jack Daniels label. The company sent a cease-and-desist letter that complimented the author and thanked him for choosing the Jack label as a thoughtful homage. The letter went on to state that Jack Daniels is, by law, required to protect its trademark label or it would lose that trademark. So, "regretfully," the com-

pany asked the author to change the book cover.

That, Fingerhut said, is how a company protects a trademark without looking like a bully or a fool.

Ultimately, both Fingerhut and Lofgren said that companies have to be alert to counterfeit parts and dangers to trademarks. They must have policies and make sure those policies are followed.

Also, companies must assume everything goes public and act accordingly.

## Sterling Chamber 'Social Media for Business' Session

The Sterling Heights Regional Chamber and the Detroit Metro Convention and Visitors Bureau are presenting a "Social Media for Business" seminar as part of their "After 5" business events.

Lisa Edwards, the chamber's marketing director, and additional social media experts will present an in-depth seminar covering all aspects of each of the social platforms, and how to get the most out them.

This seminar is designed to help businesspeople who feel left out, or need help in developing effective social media plans. It takes place Tuesday, March 26 from 5:30 to 8:30 p.m. at Ike's Restaurant & Banquet Center, 38550 Van Dyke in Sterling Heights.

Cost for pre-registered chamber and DMCVB members is \$10, and for "Not Yet" members and walk-ins \$15. Complementary appetizers will be provided, and a cash bar will be available.

To register, [www.shrcci.com](http://www.shrcci.com) or call Lori Cline at 586-731-5400, ext. 11, or email [lccline@shrcci.com](mailto:lccline@shrcci.com). This event is sponsored by Michigan Insurance Source, Russ Vallee State Farm Insurance and *The Macomb Daily*.

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