



Supply chain security and Covid-19



by *Bruce Foucart*

Supply chain security remains a high priority for any business involved in global trade. Breaches in the legitimate supply of trade will often damage or disrupt legitimate business, leading to unnecessary costs, inefficient delivery schedules and a risk to intellectual property.

According to Finnish Professor Daniel Ekwall, there are generally two kinds of supply chain threats, antagonistic and non-antagonistic. Antagonistic threats are deliberate or caused illegally as defined by law, and sometimes a consequence of hostile acts, such as a terrorist event. Non-antagonistic threats to supply

chain security are often unforeseen in nature, such as those related to catastrophic weather, hurricanes, floods and typhoons, or as in the case of the coronavirus, health-related incidents.

Counterfeit

The Covid-19 pandemic has presented opportunities for organized criminal groups to infiltrate the food, medicine and other supply chains with inferior and adulterated or counterfeit components and parts due to a decreasing supply of legitimate raw materials. We have already seen several law enforcement seizures of counterfeit coronavirus testing equipment and personal protection equipment. During the week of March 3 -10 2020, Interpol reported as part of Operation

Pangea XIII that its member countries seized approximately 4.4 million units of illicit pharmaceuticals worldwide.

Additionally, it reported more than 37,000 unauthorized and counterfeit medical devices were also seized, the vast majority of which were surgical masks and self-testing kits (HIV and glucose), but also various surgical instruments.

BASCAP – business action to stop counterfeiting and piracy - has previously recognized in its 2015 publication Roles and Responsibilities of Intermediaries that the presence of multiple raw materials and component suppliers, typically the first intermediaries in supply chains, creates opportunities for counterfeiters to integrate fakes into supply chains or mask the true origin of the

product.

Now, because of the Covid-19 pandemic, this problem is compounded by the fact the world has experienced major shortages of raw materials and components. Numerous factories making these products have had to close and have been slow to open. At the time of this writing it is not known when factory workers globally will return to full capacity to make up for the shortages of certain authentic products.

Devastating

BASCAP believes that the long term effects of the lack of genuine products and supplier disruption will continue to be devastating to legitimate business, with declining supply chains, and reduced production to adjust to decreasing supplies



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of raw material. Some of the most vulnerable companies may have to leverage manufacturers and suppliers that may not be as diligent as they should regarding where and how they procure their raw materials from.

The pandemic and associated supply shortages has provided many opportunities for criminal elements who seek to take advantage of the rise in demand and subsequent shortages of many parts and products.

Certain counterfeiters have already exploited weaknesses in legitimate supply chains by offering lower than normal prices for source and raw materials. Such threats are everywhere tainting legitimate supply chains, and can be continuous within all sectors. For example, on March 31, 2020, according to the National Customs Service in Chile, it seized over 1.1 million food supplement capsules valued to be over \$15,000.

Harmful

Based on the risk profiles and documentary analysis, Chilean Customs detected this fraudulent import that contained ingredients with potential harmful effects to the consumer. The Chilean Institute of Public Health concluded toxic components such as yohimbine and sibutramine were found in the retained goods.

Companies should be aware that inferior or adulterated components and parts may contain the classic counterfeits bearing trademark violations, logos, markings and sometimes legitimate serial numbers lifted from products of a respected manufacturer. But some of these products also bear no brand names shipped with documentation falsely certifying that

the product is of a certain quality, has met required standard material testing, or possess important properties.

The intended or non-intended purchase and use of low-grade, inferior raw materials and products cuts costs tremendously, boosts profits and allows the counterfeit manufacturer to undercut the authentic competition.

Reputation

Businesses coming out of the current crisis may be seeking to save initial outlay, but counterfeit and adulterated raw materials and products purchased, used, and final products sold will expose them to potential loss of reputation, and possible civil or criminal sanctions should they not take care to procure from vetted, trusted suppliers and manufacturers to ensure supply chain security.

Additionally, brands need to be cognizant that shortages in the global supply chain will drive consumers to source goods from elsewhere and towards criminals who will offer imitation counterfeits of their final products. This will have a lasting effect on a company's market share as they compete with counterfeiters who have knocked off their brands.

Vulnerabilities

The goal of all companies should always be to recognize and eliminate vulnerabilities within their supply chains that enable the infiltration of counterfeit goods and inferior products. However, the increasingly shortages of supply and increasing demand created by the Covid-19 pandemic has created new risks and enhanced the ability of supply chains to be tainted by counterfeiters. Companies must be cognizant of these vulnerabilities and exposure of their supply chains.

Bruce Foucart is the deputy director of BASCAP – business action to stop counterfeiting and piracy - which is part of the International Chamber of Commerce.

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The Easing of the Lockdown

by Jonathan Mansfield



The Government is encouraging a return for those who cannot work from home while "remaining alert".

When staff do begin to return, firms will need to reconsider almost every aspect of their usual procedures and expectations. The UK government is continually updating its guidance to employers (<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>), but it remains broad, and firms will need to think through carefully their specific needs and options, particularly to prioritise health and safety, as a fresh outbreak could require closures once more.

Sector specific guidance has been issued. To ensure social distancing requirements, are followed. General guidance includes:-

- Making regular announcements for staff and/or customers to observe social distancing advice and wash hands
- Providing additional pop-up handwashing stations or facilities if possible, providing soap, water, hand sanitiser and tissues and encouraging staff and customers to use them.
- Regular cleaning of key contact points - door handles, lift buttons, keypads stair/escalator handrails

Employers have a duty under the Health and Safety at Work Act 1974 to provide a safe working environment and ensure health, safety and welfare at work.

Employers need to have a system in place to keep abreast of government advice. This could be internal or external such as a law firm. In addition,

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a risk assessment of the workplace should be carried out. Adaptations such as seating plans and partitions may be considered as well as other social distancing plans like staggered hours and increased use of videoconferences.

The law also requires specific risk consideration for young people and pregnant women, and it will be important to consider other staff who may have a heightened risk. Failing to take into account a specific employee's attributes (e.g., age or a disability) could constitute indirect discrimination.

Particularly risky for employers are protections, contained in ss 44 and 100 of the Employment Rights Act 1996, for employees who have a reasonable belief that they may be in "serious and imminent danger" if they return to work. This will also cover risks from, for example, a dangerously overcrowded commute. Firms will need to ensure that they do not breach the law in this area, but also remain prepared for the likelihood that there may be some complaints and claims. Employers should take great care to avoid subjecting employees who raise health and safety concerns to any detriment because they have "blown the whistle".

For advice on these difficult issues please contact Jonathan Mansfield at Thomas Mansfield Solicitors jonathan.mansfield@thomasmansfield.com or 07947598148.

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