School of Business, Economics and Law
GÖTEBORG UNIVERSITY

A Time of Reckoning
-Counterfeiting and anti-counterfeiting strategies in the light of brand theory and consumer behaviour: Case study Nokia Mobile enhancements and Vertu Handset

Sofia Gunnarsson

Graduate Business School

Intellectual Capital Management
Master Thesis No. 2006:19
Supervisor: Ulf Petrusson

A time of reckoning[1]

- Counterfeiting and anti-counterfeiting strategies in the light of brand theory and consumer behavior

Case study: Nokia mobile enhancements and Vertu handsets

Sofia Gunnarsson

[1] My aim is to give a complementing perspective than that of which Mr. Wright, Vice Chairman, GE, and Chairman and CEO, NBC Universal, delivered to the attendees of the third annual anti-counterfeiting and piracy summit: *Threatening Health, Safety, and Jobs: The True Cost of Counterfeiting and Piracy*, at the U.S. Chamber of Commerce, Washington, D.C., September 29, 2006, http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/timeofreckoning-bobwright.pdf

ABSTRACT

The harmfulness of counterfeiting to sales of genuine goods aside, this paper will focus on the effect counterfeiting has on the brand value of the counterfeited brand. The empirical results indicate that counterfeits allow the consumers to delink the brand from the product, making the general anti-counterfeiting strategies poorly adjusted to this reality. The challenge for the brand owner is to assert the brand related rights in a way that supports, and even enhance, the profit potential of the brand. Hence, the brand owner must understand customers' value experiences of the brand, consumption patterns and consumers' purchase choice criteria regarding counterfeit branded goods.

Based on my experience at Nokia Brand Protection, this paper will elaborate to what extent counterfeit is harmful to the high end luxury brand Vertu of Nokia and the low end mobile enhancements brand. Conclusively, the main purpose of this paper is to serve as a facilitator in this process of insight, by presenting a thorough analysis of available consumption studies, and providing a model for efficient targeting of anti-counterfeiting activities.

SWEDISH ABSTRACT

Bortsett från skadan som tillfogas försäljningen av äkta varor kommer denna uppsats att fokusera på den effekt som plagiering (counterfeiting) har på värdet av ett plagierat varumärke (brand). De empiriska resultaten indikerar att existensen av plagiat tillåter konsumenten att separera varumärke från produkt, och på så sätt göra dagens varumärkesskyddsstrategier (anticounterfeiting strategies) illa anpassade till denna verklighet. Utmaningen för varumärkes ägare är att använda de varumärkes relaterade juridiska rättigheterna på ett sådant sätt som stödjer, och till och med förstärker, varumärkets vinst potential. Varumärkes ägaren behöver alltså förstå konsumenters värde upplevelse av varumärket, deras konsumtions mönster, och konsumenters köpkriterier rörande plagierade produkter.

Baserat på mina erfarenheter från Nokias Varumärkesskyddsenhet (Brand Protection) kommer denna uppsats utforska till vilken grad plagierade produkter är skadliga för hög status märket Vertu och låg status produktkategorin mobil accessoarer. Sammanfattningsvis, är huvudsyftet med denna uppsats att underlätta i denna omställning av varumärkesstrategi, genom att presentera en analys av tillgängliga konsumtionsstudier, samt att erbjuda en modell för effektivt urval av varumärkesskydds aktiviteter (anticounterfeiting activities).

ACKNOWLEDGEMENTS

I wish to express my deepest gratitude towards the Brand Protection team of Nokia and to entire Helsinki staff of Nokia IPR, amongst *Auli Lukkanen-Lääperi* and *Xavier Carpentier,* whom I had the pleasure to work alongside this past summer.

A special thanks goes out to *Lucy Nichols*, I thank you a lot for your effort of getting me onboard in the first place and for the generosity and encouragement you displayed during my time with your team. I also would like to extend a my thanks to my dear tutor and great source of both wit and wisdom, *Kaisu Korpua*, for taking such great care of me while in Helsinki and for looking after my interest while tutoring this thesis.
Of course I would like to say thank you and *kiitos* to my dear colleges this past summer, in no particular order; *Taru, Angel, Catherine, Sarita, Terhi, Kari, Elaine, Sam, Mary, Harriet and Cindi*. It has been an inspiration to work with all of you! You really made me feel like part of the team, and for that I am ever so grateful!

I am also in gratitude towards the admirable *Natasha Hellsby* and *Ian Jackson* of KPMG's Intellectual Property, London, UK, for support and cooperation on economic modeling of the magnitude of counterfeiting.

I would also like to thank my institution, the brilliant Center for Intellectual Property Studies, CIP, for giving me new perspectives and a new sense of self confidence that comes with doing things in real life. Special thanks goes out to the fantastic *Bo Heiden*, for making me look beyond accepted constructs and to search for the underlying mechanisms. I am most indebted to you for daring to set me up for the Nokia internship opportunity in the first place.

And so last but not least, I would like to give the warmest thank you to my dear and wonderful *family and friends*. I am most grateful to you all for letting me go on and on regarding a subject that I am sure appeared abstract and difficult to grasp. Thanks for your encouragement and support when the frustration was high.

Love, Sofia Gunnarsson
Borås, 28th December 2006

LIST OF ABBREVIATIONS AND DEFINITIONS

For the benefit of the readers, I have included a short definition of some of the specific notions which we come across in this paper.

"Backdoor production": products that are produced and branded without license. This offense also includes patent infringement, as the producer's manufacturing license is limited to the right to produce a certain quantity of the licensor's products, any additional production is considered as infringement of the Licensor's property rights.

"Brand": is a mixture of attributes, tangible and intangible symbolized in a trademark, which, if managed properly creates value and influence.[2] In addition, the brand could represent many things at the same time. The brand could be the symbol of a corporation, a country, a lifestyle, a person, a product. The brand is more than the distinctive symbol used in marketing to attract customers; it represents the customer promises of a certain value experience that the customer is supposed to enjoy when consuming the brand. From a management point of view, the brand is the ways of governing the relation with the company on the one hand and on the other hand the audience, whether it might be the employee, investor, business partner, regulatory authorities, competitors, or consumers.

"Brand Equity": a set of assets, and liabilities, linked to a brand's name and symbol that adds to, or subtracts from, the value provided by a product or service to a firm and/or that firm's customers.[3]

"Counterfeiting": is used in this paper used in the broadest sense if not stated otherwise, and encompasses trademark infringing goods, as well as copyright infringements, copying of packaging, labeling, and any other distinctive features of the product. I have chosen to use the notion *"true counterfeits"* as a more narrow definition, used in relation to product types that involve a troublesome deviance in quality of performance of the product in question, e. g. low quality counterfeits and non genuine products that potentially are safety hazardous. Hence, the more narrow notion does not include backdoor production/overruns, inbox-stripping, outbox-enhancements, and high quality counterfeits as they are assumed to not influence the value experience of the desired customer to a significant degree.

"Intellectual Capital": value adding intellectual property. Put more elaborative, intellectual capital is the refinement of intangibles, through the stages of intellectual assets, intellectual property and finally, of intellectual capital. According to Professor Ulf Petrusson of CIP, Intellectual capital is value adding, useful, intangible property, taking on a more functional view rather than the traditional accounting based perceptions (Stewart, Sullivan, Edvinsson) of capital as "hidden assets" of the firm's balance sheets.

"Inbox enhancements": the enhancements that are included in the original product box of the handset.

"Inbox stripping": This activity is when a person strips the inbox, the packaged product offering, from inbox enhancements. These enhancements are then offered separately and the original packaging is discarded and the handset is repackaged, under non complacent terms with the contractual relationship with the right owner firm. This act includes copyright infringement, breach against any repackaging license, trademark infringement, etc.

---

[2] Quoted from the glossary site of Interbrand's website Brandchannel, http://www.brandchannel.com/education_glossary.asp

[3] See Aaker; D. A., (1996), *Building Strong Brands,* The Free Press, New York.

"Incremental sales": Units of the product sold to distributors, retailers, or consumers through the efforts of Brand Protection above the amount that would have been sold in the absence of the Brand Protection team.

"Mobile Enhancements" or *"Enhancements"*: The Mobile enhancements Product portfolio includes two groups of Accessories, Basic Accessories including batteries, jewelry, covers, connectivity cables, carrying cases, memory cards, data cables, fixed car chargers and car holders and Headset accessories including wired, wireless and loop sets. Then the third product category is Peripherals including input/output devices, and the fourth product category includes car phones, handset integration products, plug & play, and car kits.

"Outbox enhancements": in contrast to the Inbox enhancements, an outbox enhancement is an enhancement that is not included or offered in the handset box. Outbox enhancements are purchased individually from any handsets.

"Value": in marketing terms is customer specific and subjective to each customer. It represents the perceived benefits that customers believe they will receive from ownership or consumption of a product or a service (or as we shall learn) or a brand.

ABSTRACT **2**

SWEDISH ABSTRACT **2**

ACKNOWLEDGEMENTS **3**

LIST OF ABBREVIATIONS AND DEFINITIONS **4**

1. INTRODUCTION **8**

1.1 BACKGROUND 11
1.1.1 The internship: Developing a framework for attributing monetary value to the Brand Protection function 11
1.1.2 The thesis project: A balanced approach to counterfeiting *11*
1.1.3 Initial discussions *13*
1.2 PURPOSE AND METHODOLOGY 14
1.2.1 Research questions *15*
1.3 DELIMITATIONS 17
1.4 DISPOSITION 18
1.5 INTRODUCTION TO BRANDING THEORY 19

2. GOVERNING THE VALUE CREATION THROUGH THE BRAND **21**

2.1 THE BRAND AS BUSINESS ASSET 21
2.1.1 The function of the brand *22*
2.1.1.1 The brand value of customers 22
2.1.1.2 The brand value of the company 23
2.1.2 The brand and the product *24*
2.2 THE CONTROL DIMENSION OF INTELLECTUAL PROPERTY AND BRAND BUILDING 25
2.2.1 The relation between Brand and Legal Rights *25*
2.2.2 Structural Control *26*
2.2.3 Managing the Customer relation through the brand *28*
2.3 VALUE EXTRACTION: THE NOKIA/VERTU BRAND AND THE BUSINESS MODELS 29
2.3.1 The business model of a OEM of mobile phones enhancements; Nokia *29*
2.3.1.1 The Nokia brand as a strategic asset 30
2.3.1.2 Nokia's anti-counterfeiting strategy regarding Mobile Enhancements 31
2.3.2 The business model of a Customized Design Manufacturer of mobile phones; Vertu *32*
2.3.2.1 The Vertu brand as a strategic asset 33
2.3.2.2 Vertu's anti-counterfeiting strategy 34

3. THE MECHANISMS OF CONSUMER BEHAVIOR IN A COUNTERFEIT CULTURE **35**

3.1 INTRODUCTION TO COUNTERFEIT TRADE 35
3.1.1 Magnitude and scope of counterfeiting *35*
3.1.1.1 Substitution degree 36
3.1.2 Demand and supply side of counterfeiting *36*
3.1.3 Product range of genuine to counterfeit products *37*
3.1.4 Types of consumers *38*
3.2 COUNTERFEIT-BRANDED PRODUCT CONSUMPTION 39
3.2.1 The consumers' search process of counterfeit branded products *39*
3.2.2 Consumer attitude towards lawfulness, ethical standards *40*
3.2.3 Consumer expectations of the product performance *41*
3.2.4 Extrinsic cues and Product-Investment-at-risk *42*
3.2.4.1 Brand 43
3.2.4.2 Retailer 45
3.2.4.3 Price 45
3.3 OBSERVATIONS OF BRAND'S DEGENERATION REGARDING THEIR SOCIAL VALUE AND LOYALTY 47

4. CONCLUSIONS **49**

4.1 VALIDATING THE BUSINESS CONSTRUCTS: IMPLICATIONS ON THE TARGETING CRITERIA OF ANTI-COUNTERFEITING MEASURES 49
4.1.1 The protection of a brand *49*
4.1.2 Designing a Brand Protection strategy *50*
4.2 SOLUTION: PRESENTING THE CONSUMER CENTERED ANTI-COUNTERFEITING TARGETING MODEL 51

4.3 How to interpret and apply the consumer centered methodology 53
4.3.1 Limitations with the models............ 55
4.3.2 Final words 56

5. LITERATURE............ 57

5.1 Books 57
5.2 Articles 57
5.3 Legal Sources 61
5.3.1 Case law 61
5.4 Internet resources............ 61
5.4.1 Podcasts............ 62
5.4.2 Blogposts 62
5.5 Interviews............ 62

6. APPENDIX 1. THE CONSUMER CENTERED ANTI-COUNTERFEITING TARGETING TOOL 63

7. APPENDIX 2) THE DISCUSSION OF THE IMPACT OF COUNTERFEITS ON A BRAND OWNERS' BUSINESS............ 66

1. INTRODUCTION

This chapter outlines the background to this paper and presents the purpose behind the initiation of the Nokia brand protection projects which I experienced as summer intern and later in the autumn as a Master Thesis student.

Over the recent years, the tone of the public debate has hardened. It is marked by a speech given Friday 29th of September titled *A Time of Reckoning*[4] before the U.S. Chamber of Commerce, NBC Universal chairman and CEO Bob Wright said the threat piracy poses to the country's economic security was nearly equivalent to the threat terrorism poses to the physical security of the U.S. He further said that: *"At risk is every sector of the economy where creativity, innovation and invention drive the creation of economic value and high-wage jobs… If we do not step up our efforts to protect the foundation of future economic growth, our nation and our children have a bleak future. This issue needs to be moved up on the agenda of every business leader, every trade organization and every congressional office."*

Then, what is this economic terrorism? A layman's definition of *counterfeit* would be *plagiarism* or a *fake*, i.e. an imitation usually made with the intent to deceive the customer of the content or origin, by free riding on the original brand owner's good reputation. According to the Agreement on Trade-related Aspects on Intellectual Property Rights[5] (the TRIPS Agreement), counterfeiting and piracy is defined as follows:

> "*Counterfeit trade mark goods shall mean any goods, including the packaging, bearing without authorization a trade mark which is identical to the trade mark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trade mark, and thereby infringes the rights of the holder of the trade mark in question under the law the country of importation.*
>
> *Pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation."*

The word counterfeit is for the most part used to describe forged currency or documents, but can also describe clothing, software, pharmaceuticals, watches, or any other manufactured item, branded without proper license. What is more interesting is that a number of activities, such as legitimate parallel trading and factory over-runs, have in the business arena been accepted to be included in the concept of counterfeiting, as a result of a successful lobbying from trademark owners.

The author does not contest the harmfulness of counterfeit branded goods; on the contrary, I am of the opinion that free riding a legitimate trader's good reputation is indeed a bad thing. Counterfeiting does hit the brand owner's sales and the brand reputation, which in the long perspective translates into decreased brand value. The indirectly damages to the brand owner includes such as increased enforcement costs and erosion of customer goodwill. In the same vein, the retailers in the counterfeit transaction chain will also suffer from the trade of

---

4 Address by Bob Wright, Vice Chairman, GE, and Chairman and CEO, NBC Universal, Delivered to the attendees of the third annual anti-counterfeiting and piracy summit: *Threatening Health, Safety, and Jobs: The True Cost of Counterfeiting and Piracy*, at the U.S. Chamber of Commerce, Washington, D.C., September 29, 2006,

http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/timeofreckoning-bobwright.pdf

5 See Article 51, TRIPS Agreement.

counterfeit as they are likely to see more products returns and loss of goodwill. Society will take a hit in form of loss of tax revenues and jobs, worsened competitiveness of the affected industry etc. Moreover, the consumer's experience and perceived value of the brand will also be affected; in which way we do not know how, yet. The consumer is the final part of the counterfeit transaction chain, participating either as a victim, unknowingly of the fake product, or as an accomplice, making conscious choices to purchase known or suspected counterfeit branded goods.

The harmfulness of counterfeiting to genuine goods in terms of decreasing sales aside, this paper will make an effort to paint the picture using scales of grey, and refrain from merely a black and white perspective. This paper will focus on the effect counterfeiting has on the brand reputation of the counterfeited brand, notwithstanding the fact that high levels of sales contribute to a high brand value. In particular, this paper will elaborate to what extent counterfeit is harmful, the interesting point being the substitution degree of counterfeit branded goods to genuine goods and in which ways the targeted customers' value experiences are affected. The substitution degree, i.e. to the extent that consumers' would knowingly purchase a range of counterfeit goods, is interesting as it mirrors the peoples' value expectations and value experiences of a certain offering.

> *"Who steals my purse steals trash; …*
> *But he that filches from me my good name*
> *Robs me of that which … makes me poor indeed."*
> Iago in William Shakespeare's Othello (III, iii)

The above cited work gives you as a reader a flavor of the duality of the branded product; on the one hand there is a physical purse, and on the other there are a symbol of trust and respect. What Iago gives expression to is that his name carries more importance and holds greater power of communication than the physical product. In this scenario, the value comes from Iago's name that symbolizes a certain set of moral values, which altogether reduces the material product's importance as a value proposition. The duality of the intangible asset of the brand implies that for an effective control of the brand, a brand owner should also relate to the consumers' perception of the brand, which is also true in the brand control phase as it is more efficient to limit the level of control to the amount that a particular set of circumstances demands.

The criminalization of intellectual property rights infringement rests on the assumption that harm to the private property represents harm to society at large.[6] This paper is to test this assumption to see whether it stands for the intellectual property of the brand – the author's assumption is that it is not:

[Hypothesize 1]

> *There is a disparity between the harm to the intellectual property of the brand and harm to the perceived image of the brand (i.e. society). In other words, the author assumes that there is a duality of the intellectual property brand, in which case the IPRs might be infringed but the brand itself might not be as harmed.*

Ergo, the challenge is for the brand owner to assert the brand related right in a way that supports, and even enhance, the customers' value experiences of the brand. Thus, the brand owner must understand consumption patterns and consumers' purchase choice criteria regarding counterfeit branded goods. As a facilitator in this process of insight, this paper

---

[6] See Firth, A., (1995), *Application of criminal law to intellectual property",* in Loveland, I., ed., *Frontiers of criminality*, London, Sweet & Maxwell.

presents a thorough analysis of available consumption studies, and a model for efficient targeting of anti-counterfeiting activities is provided.

1.1 Background

I first got in contact with the issue of counterfeiting this past June 2006, when I was to live and work for Nokia in Helsinki for a period of three months. My mission was to perform an internship project for the Brand Protection team, within the Nokia IPR portfolio. This paper, my Master Thesis project, is a continuation project of the study I performed for Nokia this past summer. The internship project concerned the value creation of the brand protection function within Nokia. The thesis is a continuation project, but with a new and exciting twist to it; whereas the internship served as a comprehensive introduction to the complex subject of brand protection, the thesis project has provided an opportunity for the participating actors to further reflect and represents a more balanced approach to the threats and opportunities of counterfeit and imitative products. In addition, the internship project was a commissioned project for Nokia, whereas this paper is performed on a general level so to achieve greater representatives and a wider circle of audience.

1.1.1 The internship: Developing a framework for attributing monetary value to the Brand Protection function

The internship with Nokia Brand Protection circled around the performance of a valuation study during the period of June-August 2006. The focus of that study has been to attribute a monetary value to the combined activities of the Brand Protection team. In other words, I faced the challenge to estimate the value contribution of the Brand Protection team, consisting in two branches: the IPR branch, including the registration, opposition and clearance of Trademarks, Designs, Domain names, and the Anti-counterfeiting branch.
My mission was to construct a framework which I could later perform a monetary valuation of the value contribution of the Brand Protection team. My mandate was very wide in scope, a responsibility which I took with excitement and an open mind. I choose to focus on making their value contributing process visible and understandable to the internal organization at Brand Protection. I believed that a first target would be to level the playing field and reach the same speaking terms. In the same vein, I clarified the brand protection function's role in the bigger picture of how brand value is created and governed, by using a, to me, familiar concept of the refinement process of Intellectual Capital. Since I now had come to understand what objects of value that the team generated, the second phase consisted in getting familiarized with the phenomenon of counterfeiting, the disposition of market channels, and internal company politics such as disposition of power and reading up on the Nokia product portfolio. When I entered into the third phase of the study, now knowing my way around the characteristics of counterfeiting, Nokia's organization, product line, and disposition of revenues, time had come to revise existent economical valuation methodologies in order to find a suitable framework. My studies led me to believe that there were no complete valuation frameworks out there, which did not leave me with another choice but to modify the flora of analyzed methods in order to construct one myself.

The internship resulted in the Market defense valuation tool, which I hope is a suitable tool, considering the importance of being able to value of the management function's contribution to the organization. To my great joy, Ms. Hellsby of KPMG:s IP division validated the model in November, after thorough analysis. Further scenarios were included and facts were doubled checked.

1.1.2 The thesis project: A balanced approach to counterfeiting

This paper is my contribution to the discussion of the harmfulness of counterfeiting and the *true* value for the brand owning companies to fight this phenomenon for the benefit of their customers. What I offer is a mere complement to the body of studies to this end. In line with the purpose of complementing the predominant perception of counterfeiting, I have made problem identification with the objective to illustrate the complexity of the issue, see below. Through the process of the internship and the following reflections during the thesis project, I have come to identify problems that restrain the brand owning companies from realizing the full potential of the value creation of their brands.

First, the discussion of the economic impact of the prevalence of counterfeit-branded goods in the international community is troublesomely one sided and unfortunately too generalized. The discussions treat the counterfeit phenomena as something inherited in the market system and as a symptom of market failure[7]. Moreover, the economic impact of the counterfeited goods is not adjusted to the accurate substitution degree, or with respect to the particular brand positioning of an affected brand.

Second, in the context of anti-counterfeiting strategy, the brand is not treated as the intellectual assets as it is; the brand is dependent on the perceptions and relation of consumers. There is little, if no, connection with the anticounterfeiting activities and the emotional relation to the brand customers. It is the author's opinion that the targeting and the priorities of anti-counterfeiting measures should reflect the impact counterfeited products have on the brand's target customer and not merely potential sales figures and hypothesized consumers. If the brand owners would shift focus from sales to a consumer oriented standpoint, the difficult correlation between anti-counterfeiting success and increased sales efficiency would in fact be overcome to a satisfactory degree.

Third, talking about counterfeiting one cannot ignore the evident issue of economic disparities that serves as a backdrop to counterfeiting in the low cost labor areas. The economies of today rely heavily on the multinational interests where the information is a valuable commodity. It is a fact that the fastest growing industries in the industrialized world are the ones that base their global competitiveness on serious investments in information embodied in software, pharmaceuticals, biotechnology, entertainment, electronics and communication technology. It has been presented[8] that it is in the interests of the western world, which are the primary market for the manufactured goods that it is in the best interests of the *international community* to ensure the protection of strong intellectual property laws which have international scope and supported by effective enforcement. Moreover, the business models of high tech manufacturers are based on effective resource allocation, which is perceived requires by default, outsourcing of production to low cost labor countries, predominately China. At the same time, new technology brings means of ease of copying and lucrative opportunities of a global market to trade the products in. Conclusively, the manufacturers expose themselves to an increased risk of counterfeiting and piracy.

Fourth, when protecting a brand, it has to be taken into account that whereas the legal trademark right is created by an authority's decision, brands are created in concert with consumers and competitors over time. This implies that the brand is better defended not on a case by case basis but from a long term strategy aligned with business model and consumer perceptions. Hence, the mechanism of consumer perceptions is a dimension of the holistic

---

[7] See Grossman, M., and Shapiro, C., (1986), *Counterfeit-Product Trade*, Working Paper no 1876, National Bureau of Economic Research.

[8] A rather strong expression of this standpoint is made by B.A. Lehman (1996) *in Intellectual Property: America's competitive advantage in the 21st century*, Columbia Journal of World Business, nr 6, at page 6. Mr. Lehman, Assistant Secretary of Commerce, Commissioner of Patents and Trademarks and Chair pf the Information Task Force, argues that *"In the next century, U.S. economic growth and competitiveness will be determined by the extent to which the United States creates, owns, preserves and protects its intellectual property, and the extent to which the federal government can foster economic growth by creating incentives for private sector investments in research and development, promoting stronger intellectual property protection abroad, reducing barriers to trade and serving U.S. business interests throughout the world."*

brand protection strategy that is missing, or in best cases, under represented. However, I have reasons to believe that this limited perspective has its roots in the incomplete perception that the brand owning companies have of themselves. My experience from Nokia is that generally, the organization thought of itself to be a sales driven organization. I am sure that it is correct, as the bottom line is the entrance fee in the game of business. My Brand Protection Director expressed interesting concerns that their value contribution was over shined by the performance of the sales organization. Her concerns are worth to be taken seriously, as it gives expression to a bigger problem that that of identifying the added value of a business department; Nokia's (which I am sure they are far from alone to have this perception) self image as a delivered of value is to some extent blurred by the sales perspective.

These issues, provide the brand owner with two major challenges; one, to get a thorough understanding of how the consumer consumption of counterfeit branded goods influences the perceived brand value, and secondly, to align their brand protection strategy to this new insight.

1.1.3 Initial discussions

The initial discussions with Nokia centered on how Nokia worked with the issues of efficient protection of the brand and with whom they interacted within the Nokia organization in order to jointly design and validate the Nokia brand. These discussions resulted in the chapter of the intellectual capital of the brand protection team, how they create brand equity, which was conceptualized in a model I named the Brand Equity Triangle. When I came to the Brand Protection of Nokia this summer, I soon faced the mythical perception of the brand that was dominant on the IPR department. There was a limited understanding of the brand building process: How to build it? What it was worth in practice? It is true that almost everyone knew of the agreeable valuation the Nokia brand have had from Interbrand rating being the 6^{th} most valued brand in the world (i.e. 2005 $ 23 B and in 2006 $ 30 B). But few knew how the legal creation and safe guarding of the brand brought value to Nokia. Even fewer knew how the fruit of the Brand Protection team influence the ratings of the Interbrand model.
Moreover, the director of brand protection was concerned to find a measurement method which in a non arbitrary way explained the correlation between an increase of sales and an efficient brand protection effort, as opposed to previous attempt which did lead towards an explanation where the increase of sales was due to more efficient sales methods.
The director also was clear to point out the importance of the valuation study respected the uniqueness of the brand protection team, as it is a function which supports primarily the business units; thus, the success of the anti counterfeiting measures are determined by the effects that the business people consider in their decision making.
This contributed to the fact that the Brand Protection team had difficulties in conveying their importance for Nokia's business and thereby did not have the role their value contribution actually earned them.

Furthermore, I felt that the understanding of the targeted brand customer was limited at the anti-counterfeiting department. In the trademark planning process, there were an evident understanding of the behavior and preferences of the targeted customers. From what I observed from my time at the Brand Protection team at Nokia, the Brand Management function provided the IPR branch with support regarding the first two stages of brand building, i.e. trademark planning process and the trademark implementation process. Conversely, it was not in Brand management's task to research consumer behavior of brand and product counterfeiting, nor was it in their line of duties to provide support to the Anti-counterfeiting team as to which brand infringement would be a priority from a brand image perspective.

I have tried my best at incorporating these concerns in the process of designing the framework for which the brand owner can apply to make her anti-counterfeiting strategies incorporated to the insights of studies of consumer consumption of counterfeit branded goods.

1.2 Purpose and Methodology

The main purpose of this paper is to shed some light on the phenomenon of counterfeiting and imitative products with regards to the effects it has on consumers, brand value and consequently, its' implications on the anti-counterfeiting strategy of the brand owner. It is the author's objective to give substance to the hypothesis that there is a disparity between the harm to the private property of the brand and harm to the perceived image of the brand (i.e. society).

This study is limited to consumer electronics, the high end luxury Vertu brand and its' CDM business model and the low end accessory brand Nokia and its' volume based OEM business model. Illustrative examples will be taken from the fast moving consumer goods ("FCMG"), which leaves out pharmaceuticals, auto parts, etc. This study will be directed to brand owners, but will consider the important aspects of consumer behavior, strategic brand management (including legal issues). The legal relevance of this paper consists in the importance for the legal practitioner to truly understand the consequences of her legal decisions and of the interrelations of consumer behavior and the value contribution of an intellectual property.

Hence, this paper will make an effort to unveil the true value of fighting counterfeiting by presenting a balanced picture of the demand-side of this phenomena and second, present a management targeting tool (*the Consumer centered anti-counterfeiting targeting tool*) to aid brand owners to value and select their anti-counterfeiting activities from a consumer conscious, strategic point of view. This management model will be based on an analysis of conscious consumer consumption of counterfeit branded goods, put forward by theoretical studies and supported by several empirical studies, chiefly Block, Bush & Campbell 1993; Cordell, Wongtada & Dieschnick 1996; Gentry et al. 2000. As will be presented in this paper, the conclusions of these analyses of consumer consumption of counterfeit branded goods will constitute the bedrock of the next part; i.e. how consumer behavior and responses to the presence of counterfeits in the market influences the consumers' perception of the brand's social value and brand loyalty. This part of the paper will be supported by empirical observations of consumer perceptions of a few chosen brands in the fast moving consumer goods industry (FMCG), which have useful traits of being victims or winners due to effects similar to those of counterfeiting.
All in all, the paper will conclude by drawing together the *crème de la crème* of previous parts by presenting a discussion regarding how this may or may not affect the brand owning companies' brand protection strategies.

The development of this targeting tool is based on the assumption that the brand control stage of a brand owning company is not carried out in harmony and with respect to lessons from consumer purchase choice criteria and brand theory. This paper argues that it is not enough to have two thirds of the brand building process (the planning and implementation part) aligned with marketing theory. It is true; even so for legal remedies to have the desired effect, they must be linked and founded in consensus with the stakeholders. The brand owner has to develop an understanding of consumer behavior in relation to the final stage of brand building; how to control the brand in the market, i.e. learn to foresee how ones' brand is perceived and affected by consumers in a counterfeit culture as ours.

The method I have used to perform this analysis is based on my experiences when I was as a summer intern 2006 at the Brand Protection team in the IPR department of Nokia Corporation. During this summer I worked closely with brand protection strategies and the coordination of the global anti-counterfeiting strategy of Nokia, though from a European-Middle East- Africa perspective. In order to accomplish my purpose, I have dedicated a substantial part of this paper to presenting the underlying marketing theories of consumer behavior and effective brand building, and to get these theories in the context of counterfeiting I have used complementary articles, taking on a qualitative analysis. Since the purpose of this report is to study the effects on the perceived image of the brand subjected to counterfeiting and its' implications on anti-counterfeiting strategy, I have put emphasize on marketing research regarding consumer purchase choice patterns. Additionally, I have studied brand protection strategy in general and have used my experiences and impressions from my experiences with the brand protection team at Nokia Corporation to design the management tool provided in this paper.

1.2.1 Research questions

As the purpose of this paper is to give a balanced view of counterfeiting and its' effects on consumer perceptions and the brand owners' business, I need to further elaborate on five question areas. It is my firm belief that by exploring the answers and reasons for these questions will help the brand owner to understand the "real" cost of counterfeiting to the brand owner's business.

Question area 1:

How does the brand contribute value to the company, consumer, and society?

Firstly, I must unveil the value of a brand in order to see how to make use of it in business and hence protect it.

Follow up questions: *Moreover, how does counterfeiting affect the brand owner's business? When would counterfeiting be positive for the brand owner's business? When would it have virtually no impact? When does it have a major impact?*

The objective with this question area is to show how the brand contributes value in the Mobile phone industry in order to assess the implications of counterfeiting. Moreover, with regards to the follow up questions, for the sake of innovative research I have to keep my mind open and look outside the box in search of new possibilities.

Question area 2:
How can a brand be controlled? In particular, how does the control dimension of the brand allow it to play a strategic role in the business model?

The objective with the following section is to show how the brand contributes value in the Mobile phone industry in order to assess the implications of counterfeiting. As previous section elaborates on the brand being a symbol of available means to govern the value creating process, realized by the business model in place; the objects of study for this question area is the high end luxury Vertu brand and its' Customized Design Manufacturer business model and the low end accessory brand Nokia and its' high volume based Original Equipment Manufacturer business model.

Furthermore, I am interested in the effect counterfeiting has on the brand value of the counterfeited brand, which is why next question area must be sorted out. Therefore I will study how anti-counterfeiting activities are designed in general, after which I will introduce this model with the subsequent findings from studies of the mechanisms of consumer behavior.

Question area 3:
What are the mechanisms of consumer behavior that forms the basis of purchase decision? What are the drivers of purchase, and drivers of satisfaction?

This area allows me to elaborate on the underlying reasons for the existence of demand for counterfeit products and most importantly, what cues are the fulfillments of the consumers' purchase objective. This area has an important role in the evaluation of the fulfillment of consumers' expectations. Moreover, knowing how consumers' react to certain features, allows me to foresee the consumers' reaction towards counterfeit products of various quality.

Question area 4:
How do counterfeiting and the presence of imitative goods affect the consumers' perceived value of the counterfeited brand?

Follow up questions: *Which types of consumers are there and how are they affected by the presence of counterfeit branded products and the consumption of said goods? How does the consumption of counterfeit branded goods affect the desired brand image (brand vision/value experience) amongst the targeted customers ("brand loyalists")?*

When studying consumer group of the Counterfeit apt consumers, it is extremely interesting to hypothesize if and how the Brand Loyalist group, may or may not be affected by group number ones consumption of counterfeit-branded goods. To the best of my knowledge there are no studies of this interrelation, I have chosen to briefly observe how the value of Fast Moving Consumer Goods (FMCG) have devalued and studied the underlying reasons, in order to be able to draw parallels to the case at hand.

Question area 5:
How do the insights of the mechanisms of consumer behavior in a counterfeit culture affect the design and assertion of brand protection strategies?

In order to make an illustrative point and produce some tangible result, I have to put these questions in its context and consider:
*) The brand value for VERTU mobile phones and Nokia mobile enhancements in general and at Nokia;
*) Brand Protection team's contribution to value of TM, design, etc. to brand value in general/at Nokia; and,
*) Brand Protection team's contribution to value of TM, design, etc. to brand value in mobile phones in general/at Nokia.

Follow up questions: *What is the preferred definition of "counterfeiting" in the company´? How do the brand owning companies use this concept normatively, in the line of their communication? How does this affect how counterfeiting is perceived by the community?*
How is the Brand Value concept constructed and maintained by asserting the brand owners' legal rights? What aspects of consumer consumption are included in the brand protection strategies?
How is the support structure in a brand owning company organized? Is there cooperation between the "legal" assertion team and the brand management team?

After this section I will raise some interesting points of the alignment of the selection and targeting of anti-counterfeiting actions with brand theory and insights of consumer behavior. These conclusions will be encompassed in a tangible targeting model, provided at the back of this paper.

1.3 Delimitations

This paper focuses on the third stage of the cross functional process of governing the brand building, i.e. focused on the structural control over the brand, look and feel, traits, etc. the desired image.

1) Brand planning, and selecting
   Since before, the design and selection process of a suitable brand, and its' constituting IPRs has previously been aligned with brand theory and legal requirements.[9]

2) Brand implementation
   This stage of the brand building process requires a correct usage of the trademark and brand attributes in the enactment of marketing, communication, etc.

3) *Brand control*
   The brand control stage includes the assertion of legal rights one, in a defensive, static way, making the brand secured by so called static property right: i.e. the right to fence off competitors, infringers and misuse; and second, as a dynamic property right, part of claiming and building new business constructs which the brand owning company can claim ownership to and reap the benefits of.

Influenced by my experiences at cell phone manufacturer Nokia I have chosen to limit this paper to discuss the effects of counterfeits of the mobile phone market; excluding pharmaceuticals, auto parts, currency, or the FMCG industry. However, I will use examples from the FMCG product category to illustrate the point of the relation of customer perceived value in a counterfeit context. This limitation is motivated by the fact that I want to make a good report with valid arguments and conclusions, and the issues surrounding counterfeit pharmaceuticals is of another dimension than those of electronics, notwithstanding the potential safety hazards there are with batteries. The differences consist in completely different regulatory landscape, e.g. it is stated in law that the parallel importer of pharmaceuticals has the right to repackage the medicines.

This paper will briefly touch upon the financial value that brands have for their company, if managed successfully. I have chosen not to dig deeper into this aspect of brand as a valuable business asset, but for the interested reader I kindly refer you to the excellent site of Interbrand, http://www.brandchannel.com; http://www.interbrand.com. On the same topic there are an admirable bachelor thesis paper on the subject of brand valuation, please see Samuelsson, J., and Johansson, D., (2004), *What is the brand Nudie worth? A study in valuation methodologies' applicability and validity*, School of Economics and Commercial Law[10].

One of my assumptions of this paper is that the process of brand control is not aligned with consumer behavior and the value creating aspects of the brand, depends to a certain extent on the nature and discipline of branding. If branding is treated as merely a marketing tool, I am afraid that it is too restricted, and does not allow the company or the consumers to reap the full potential of the brand. The factors that led me to this assumption were two: *first*, in general I have got the perception that the brand protection's organization limited to legal creation and assertion of IPRs; and *secondly*, most importantly, I also have the perception that there is limited knowledge of how the brand value and customers' perception of said brand is affected by a

[9] See e.g. the admirable Master Thesis of Faxheden, T., (2005) *The Legal Trademark Right in the Light of Brand Theory*, Master Thesis, CIP.

[10] See Samuelsson, J., and Johansson, D., (2004), What is the brand Nudie worth? A study in valuation methodologies' applicability and validity, School of Economics and Commercial Law, Företagseknomi och redovisning.

consumer group's consumption of counterfeit branded goods. There is a limited understanding of the different effects of counterfeiting to the brand owners' businesses. However, I have reasons to believe that this limited perspective has its roots in the incomplete perception that the brand owning companies have of themselves. My experience from Nokia is that generally, the organization thought of itself to be a sales driven organization. I am sure that it is correct, as the bottom line is the entrance fee in the game of business. My Brand Protection Director expressed serious concerns that their value contribution was over shined by the performance of the sales organization. Her concerns are worth to be taken seriously, as it gives expression to a bigger problem that that of identifying the added value of a business department; Nokia's (which I am sure they are far from alone to have this perception) self image as a delivered of value is to some extent blurred by the sales perspective. The solution to this issue is of such a complex nature that though it is extremely interesting, even for this paper, I will leave this subject for the benefit of some one else, more knowledgeable than myself.

One final issue that has forced me to limit the detail of my observations is the secrecy aspect of having the great pleasure to work closely to a multinational company. However, I have no doubt that the paper will be able to communicate the important implications regardless.

1.4 Disposition

This paper has four main parts plus a management tool in form of a consumer centered anti-counterfeiting targeting model.

The first part is the introduction, which lays the foundation for the rest of the paper as it sets the framework for the author's quest and gives the reader the frame for further reading and a position to for him/herself value what I as the author presents in this paper. Moreover, the first part sets the tone of this study, as it starts with a problem identification of the current situation and management of counterfeit branded products.

The second part explains the added value to the company and consumer of a strong brand. What is more, this section presents the background to the initiation of this project as it explains the considerations and ambitions of the brand protection team of Nokia. My hope is that this section will give the reader an understanding to the complexity and importance to the brand owner of having a well aligned and flexible brand protection strategy.

Moving on to *the third section*, the reader will gain insights of the different mechanisms of consumer behavior regards consumption of counterfeit branded goods. The relation of how the prevalence of fakes influences targeted consumer behavior and brand image, will also be touched upon.

The conclusions will be presented in *part four*, which will summarize the lessons learned from previous parts in the form of the presentation of the implications consumer behavior and brand image have on the process of designing a brand protection strategy.

Finally, the concluding part presents a model that assists the Brand Protection Manager in the selection and targeting of anti-counterfeiting actions.

1.5 Introduction to Branding theory

This section intends to set the theoretical frame of the thesis by introducing one of the main areas needed to create the basis of our analysis, namely brand management.

There are two disparate streams of marketing theory: the traditional so-called *transactional* approach, and the concept of *relationship* marketing. Where the transactional approach tend to focus on single sales, the relational approach have a more long term perspective and emphasize customer retention; and when the first highlights product features, the latter stress customer value. Sales are maximized by being fashionable, i.e. following trends, and being very flexible and focused on the short term of events. A customer relationship is focused on quality and service, which constitutes a base of a relationship, which in turn is means of retaining the customer, which will lead to a higher profitability over time[11]. Hence, a strong brand relationship between brand owner and its customers means sustainable business. The relationship marketing paradigm was first introduced by Berry[12], and developed by others[13], urging the industry to take on a more long term perspective to marketing. This first version of relationship marketing as defined by Grönroos[14]: *"The purpose of marketing is to establish, maintain, enhance and commercialize customer relationships so that the objectives of the parties involved are met. This is done by the mutual exchange and fulfillment of promises."*

Branding is part of the relationship marketing discipline; it is a refocusing of traditional marketing with emphasize on the creation of customer value. *"Customer value is the summation of all the positive effects that a supplier has upon the customer's business or, in the case of end users, their personal satisfaction."*[15] Creating or enhancing customer value clearly requires a detailed understanding of the customer's value chain and, in particular, whereabouts in that chain the opportunities for the value enhancement lie. Historically, branding has in fact been viewed as an effective marketing tool for consumer products. The main categories of brand research are brand management and consumer behavior. Both of these disciplines have an internal and external perspective; e.g. the internal brand management aspect focuses on the brand owner; whereas the external consumer behavior focuses on the consumer herself. According to Professor Melin[16], there are three main direction of branding:

---

[11] This fact has been demonstrated by Ehrenberg, A., in 1972 when he presented the conclusion of 40 years of data collecting that product penetration is correlated with purchase frequency, as quoted in Kapferer (2004), *The New Strategic Brand Management,* pp. 1.

[12] See Berry, L.L., (1983), *Relationship marketing*,, in Berry, L.L., Shostack, G.L., and Upah (eds), *Emerging Perspectives on Services Marketing*, American Marketing Association, Chicago, pp. 25-28.

[13] E.g. Levitt, T., (1983), *After the Sales is Over*, Harvard Business Review, September-October, 87-93; Rosenberg, L.J., and Czepiel, J.A., (1984), *A Marketing Approach to Customer Retention*, The Journal of Consumer Marketing; Jackson, B., (1985), *Build Customer Relationships that Last*, Harvard Business Review, November-December, 120.128; Crosby, L.A., and Stephens, N., (1987), *Effects of relationship marketing on satisfaction, retention and prices in the life insurance industry*, Journal of Marketing Research, 24, November, 404-11; McKenna, R., (1991), Relationship Marketing, Century Business, London; Gummesson, E., (1981), *Marketing costs concepts in service firms*, Industrial Marketing Management, No.3; Grönroos, C: (1978), *A Service-Oriented approach to marketing of services*, European Journal of Marketing, 12, 588-601.

14 See Grönroos, C., (1990), *Relationship approach to marketing in service contexts: the marketing and organizational behavior interface*, Journal of Business Research, 30, No. 1, 3-11.

[15] Payne, A., Christopher, M., Clark, M., and Peck, H., (1995), *Relationship Marketing for Competitive Advantage*, published Butterworth and Heinemann, 1998.

[16] See Melin, F., (1999), *Varumärkesstrategi: Om konsten att utveckla starka varumärken*, Liber Ekonomi, Malmö.

1) Brand management: the brand from a marketing perspective, the marketing director, marketing analyst, advertising department, management consultants.

2) *Consumer behavior*: the consumers' needs, behavioral pattern, and consumption behavior.

3) Strategic brand management: the synthesis of branding, as it is the combination of perspectives, e.g. product, cognitions, communication and the emotional bonding.

In fact, the brand is one of the most powerful and effective ways to define the product there are. As people are both the brain and heart of business, controlling people through the brand would truly be worth to seek after. The brand affects the organization of the firm, the qualification of the employees, the packaging of the product, etc. Brand building is part of the product packaging process, and as such, it should be cross-functional and support the life cycle of the two dimensions of the product: the tangible and intangible dimension, which makes the control phase of the brand/product the most important step.

All of the above mentioned directions of branding are to some extent touched upon in this paper; since it aims at presenting a consumer oriented; long term targeting implications on the counterfeit supply focused anti-counterfeiting strategy.

2. Governing the value creation through the brand

This section continues with the concept of brand as a valuable business asset presenting the common perspectives in which the brand receives a meaning. On the path towards the purpose, this section continues to elaborate in the relationship between the brand and the product. For a brand to contribute value to the company, the brand owner must ensure adequate level of protection. After setting the theoretical frame of the subject, this chapter narrows its scope and presents the business model of Nokia mobile enhancements and Vertu handsets in order to pave the way for understanding the strategic value of the brand and so, the important role of brand protection.

2.1 The brand as business asset

"A brand is a set of mental associations, held by the consumer, which add to the perceived value of a product or a service"[17].

Jean-Noël Kapferer puts it quite eloquently when quoted above saying that the brand is the set of added perceptions to a product or service. The value creating capabilities of a brand consists in its capacity to connect on an emotional level with consumers and thus encompass the customer value. The success of a company is to a large extent determined how well the business model is adapted. Kapferer counts the most important sources of value of the brand as the factors of production, service, staffing, distributing, innovating, pricing and advertising.
In the 1980's it was an era marked by high priced acquisitions of high profile brands, such as Buitoni, Rowntree, Moulinex, and Orange. The value of a company was no longer solely determined by its' tangible assets; the value was intangible and consisted in the consumer appeal of their offer. The purchase of Rowntree, was not about purchasing a chocolate manufacturer, but the capacity of Rowntree's brand to generate future cash flows based on brand awareness, image, trust, reputation, built up over time. However, the value of brand experienced a financial crisis in the early 1990's, when there was a drastic fall of share prices of Marlboro cigarettes (April, 1993), which brought down all consumer goods. Following the thoughts of Kapferer among others, the recession was a proof of the fact that the value of brands does not consist in the brand as in the registered trademark, but in the communication and marketing done by the company. Inevitable, the brand is based on the product/service's capacity to fulfill the customer expectations.

From the financial asset approach brand value is the future cash flows attributed to consumers' willingness to pay a higher price for a branded (presumable better) product. The opportunity for premium pricing is made possible by the beliefs and the emotional bonds that are developed over time in the minds of the consumers. Customer equity is financial equity. Brands have financial value because of they have created assets in the minds and hearts of consumers. These assets are the so-called *consumer-based assets*[18] of brand awareness, beliefs of exclusivity and superiority of some valued benefit, and emotional bonding. The brand is furthermore a *conditional asset*, because in order for the brand to create value, it has to work in conjunction with other assets, such as production. Moreover, the brand needs to be carried by a product that embodies the brand and thus making the brand real.

Brand assets, are the sources of influence of the brand (awareness/saliency, image, type of relationship with consumers), and rights based control position. If these assets are managed correctly and realized in a feasible business model, they result in the profit potential of the brand, i.e. brand value. Without any benefits there is no brand value. The brand must convey some added perceptions to have a profitable economic future. In addition, it is not the brand that solely brings the added value; it is realized and delivered to the consumer by a viable

[17] See Kapferer, (2004), *The New Strategic Brand Management, p. 1.*

[18] See Kapferer, (2004), *The New Strategic Brand Management,* p. 10.

business model. Moreover, the brand value is built over time, it tales time to build relations and acquire the trust of consumers. According to Kapferer, a brand is in essence a name that influences buyers, becoming a purchase criterion.

From a *legal perspective*, the brand is "*a sign or set of signs certifying the origin of a product or service and differentiating it from the competition"*[19]. From the day that brands become a property though an administrative action, it is the brand owner's task to defend and uphold this property right against infringers and counterfeiters. Other threats against the business value of the brand are: one, no renewal of trademark registration; two, unsuccessfully defended in court; and three, brand degenerescence, which occurs when the brand is a generic term which leads to the loss of the trademark right. When protecting a brand, it has to be taken into account that tough the legal trademark right is created by an authority's decision, brands are created in concert with consumers and competitors over time and is thus defended not on a case by case basis but from a long term strategy aligned with business model and consumer perceptions.

2.1.1 The function of the brand

The brand is the perceived symbol of the company's ability to enhance value and deliver it to the stakeholders. In other words, the brand is the symbol and grade of the company's value generating processes. The brand is a tool to manage the relations of the stakeholders; company employees, investors, business partners, regulatory and the customer relation. The more important the trademark is, and in an even increasing cluttered market, the leverage of symbolism is paramount for gaining customer awareness. Through case law the ECJ have established that the specific subject matter of the trademark right was "*to guarantee the proprietor of the trademark right that he has the exclusive right to use the trademark for the purpose of putting a product into circulation for the first time and therefore to protect him against competitors wishing to take advantage of the status and reputation of the trademark".*[20] The courts standpoint was reaffirmed in *Ballantines*[21] and in *Philishave*[22], where the Court stated that the trademark right is a guarantee for product quality and source of origin and undistorted competition.

2.1.1.1 The brand value of customers

A brand has not a worth on its own, only in context of supporting a viable business model. Brand is not always necessary though. It is crucial when the customer losses his or hers traditional reference points, such as for branded wine. Brand reduced perceived risk of an investment/purchase and exist therefore where and when there is perceived risk in the market place.

Brands serve as a cue for choice, and saves time. The brand mitigates risk; see more in section 3.3.3.1. Brand as extrinsic cue. As technology evolves and becomes common place, through standardization, matured markets etc, the variance of product quality in the western world is reducing[23]. This means that the brand name has become exceptionally strong cue for quality, as it is one differentiating feature. The brand is a sign whose function is to disclose the hidden qualities of the product which are inaccessible to contact (sight, touch, hearing, smell) and

---

[19] See Kapferer, (2004), *The New Strategic Brand Management,* p. 11.

[20] See ECJ, C-102/77, (1978), *Hoffman-La Roche*, 23rd of May 1978, item 6.

[21] See ECJ, C-349/95, (1997), *Ballantines*, 11th of November 1997, item 22.

[22] See ECJ, C-299/99, (2002), *Philishave*, 18th of June 2002, item 30.

[23] See Carsky., Dickinson, and Canady III, (1998), *The Evolution of Quality in Consumer Goods,* Journal of Macromarketing, 18 (fall), pp. 132-144

possibly those which are accessible only though experience but where the consumer does not make the risk of buying the brand. In addition, a famous brand adds an aura of make believe of the product when it is consumed, e.g. the constant reinvention and innovativeness of Nokia, the coolness of Apple, etc.

The brand has eight main functions, categorized in five groups. Firstly, the value of *identification*[24] and *practicality*[25] concerns the essence of the brand. Secondly, the brand serves as mitigating the perceived risk associated with the product/service by representing the value of *guarantee*[26], *optimization*[27] and functions as a *badge*[28]. Thirdly, the brand gives the consumer a sense of permanence, or *continuity*[29]. Forth, the brand has a *hedonistic*[30] purpose as well, and finally, the brand represents moral values and *ethics*[31]. The importance of these functions depends on the product group, as well as on the type of consumer and his or hers degree of involvement in the purchase.

2.1.1.2 The brand value of the company

Brand value is simply the ability of brands to deliver profits and represents that profit potential of the brand. The brand is one of the few strategic assets of a company providing a sustainable competitive advantage. The other means include R&D, a customer orientation, cost cutting culture, employee involvement, and the capacity to change and respond to external changes rapidly[32]. The more accepted the trademark/symbol is the more important is the brand for the company's profitability. The brand becomes a vehicle for emotional value experiences. "The 'product' is no longer merely an item but a whole bundle of values that satisfy buyers; an *augmented* product[33]. People buy expectations, not things. Therefore can a brand become a value proposition on its own, not dependent to the link to the physical product. There are concrete examples such as for instance entire business models built on this notion, e.g. franchising, merchandizing, trademark licensing, Customized Design Manufacturer business model etc.

---

24 According to Kapferer (2004), *The New Strategic Brand Management,* p. 23. *"… the identification function of the brand is to be clearly seen, to make sense of the offer, to quickly identify the sought-after products".* (p 23)

25 See Kapferer (2004): *"To allow savings of time and energy through identical repurchasing and loyalty".*

26 See Kapferer (2004), *"To be sure of finding the same quality no matter where or when you buy the product or service".*

27 See Kapferer (2004*): "To be sure of buying the best product in its category, the best performer for a particular purpose."*

28 See Kapferer (2004): *"To have a confirmation of your self-image or the image that you present to others."*

29 See Kapferer (2004): *"Satisfaction created by a relationship of familiarity and intimacy with the brand that you have been consuming for years".*

30 See Kapferer (2004): "*Enhancement linked to the attractiveness of the brand, to its logo, to its communication and experiential awards."*

31 See Kapferer (2004): "*Satisfaction linked to the responsible behavior of the brand in its relationship with society (ecology, employment, citizenship, and advertising)."*

32 See Kapferer, (2004), *The New Strategic Brand Management,* p. 1.

33 See Levitt, (1983), *After the Sales is Over*, Harvard Business Review, September-October, 87-93.

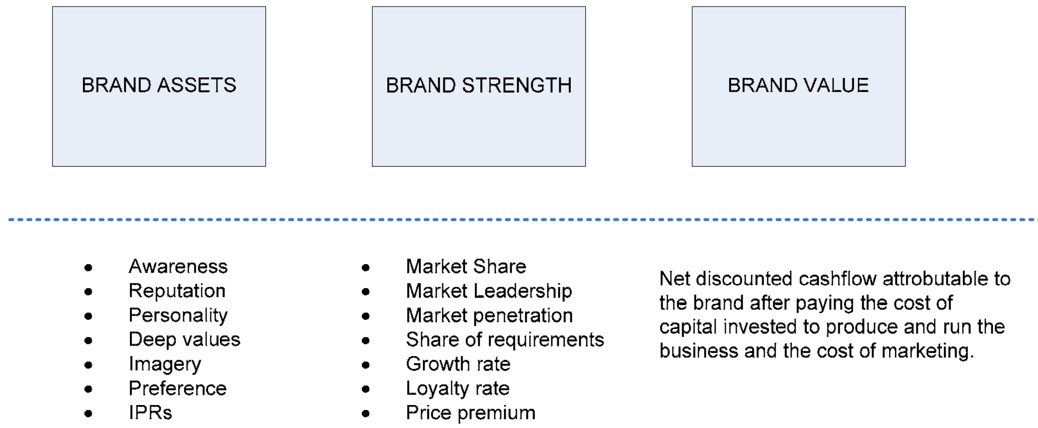


Fig 1. From brand awareness to financial value[34]

Investors does not like risk more than consumers does, therefore, the brand act as risk mitigation for investors alike. The financial value of a brand is the difference between the extra revenue generated by the brand and the costs associated with the brand. The number of years is determined by the buyer, the auditors. The discount rate used to adjust these future cash flows is determined by the confidence or the lack of it that the investor has in his or her forecast. It is a fact that the more trusted and stronger the brand is, the smaller is the perceived risk with the profitability of the valued company. Hence, future net cash flows are most certain when brand strength is high.

Brand assets are learnt mental associations and affects. They are acquired over time, from past direct or vivid, material or symbolic interaction with the brand. *Brand strength* is the present status of the successfulness of the brand, within a specific market and competitive environment. Brand strength is captured by behavioral competitive indicators such as: market share, loyalty rates and price premium. *Brand value* is a projection into the future of the financial market's confidence in a brand's profitability. The economic value that brands produce is measured by the concept of *Economic Vale Added* (EVA)[35] which is a measurement of the earnings that is attributable to the brand itself.

2.1.2 The brand and the product

To understand the demand side of the counterfeit trade, this section will elaborate on the interrelation and difference of the brand and the brand carrying product. It sheds light on the anti counterfeiting strategy because simply protecting the product has still not stopped the counterfeiters from infringing the brand owners' rights and consumers to purchase these products.

The brand is not the product but it gives the product meaning and defines its identity[36]. That explains why the best product is not necessary the leader in its market segment. Historically, brands are born out of a product or a service innovation that outperformed its' competitors. Over time, thorough continuous innovation and performance quality, the product evolved into a strong brand and becomes a value proposition on its' own.(see section 2.1.1.2.). The key role of brands is by its brand positioning to ensure customers of desired benefits which constitutes the exclusive strength of the brand. This effect has been identified of psychologists as the *Halo*

[34] Taken from Kapferer, (2004), *The New Strategic Brand Management,* p. 14.

[35] See Stewart, *Intellectual Capital.*

[36] See Kapferer, (2004), *The New Strategic Brand Management,* p. 5.

effect and is considered a major value contributing factor of the brand. The Halo effect is the fact that the knowledge of the name of the brand does influence the consumers' perception of the product advantages beyond what the visible cues had themselves indicated. In addition, there are the emotional tiers beyond product satisfaction such as the pure intangible associations which originates from the brand's values, vision, philosophy, its targeted consumer, brand personality etc.

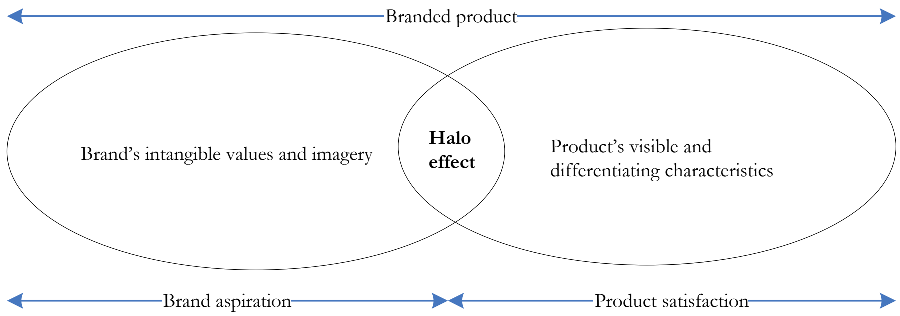


Fig 2. The product and brand relationship[37]

The double nature of brands is illustrated in the picture above (fig. 2) and allows for an emotional satisfaction beyond the product satisfaction. Brand management (assets, strength and value) is more than marketing, but marketing serves the important end to forecasting the needs of specific consumer segments and drives the organization to customize products and services to these needs.

2.2 The control dimension of Intellectual Property and Brand Building

The objective with this section is to outline the complex layers of control in the context of intangible property as the brand. This part continues with a basic presentation of the behavioral aspect of control that the brand encapsulates, that is the management of the customer relation. Notwithstanding, the importance of the structural control elements, one cannot overlook the behavioral elements of control, especially when the consumers are partakers in the value creation process as in the creation of brands. This section will complement the above presentation of structural control by introducing the reader to the consumer relation perspective.

2.2.1 The relation between Brand and Legal Rights

As we have learned, the brand has several dimensions which in concert with a business plan aligned with consumer expectations and experiences create value to the brand owner. The two main dimensions of the brand is one, the commercial dimension which aims at making the branded product consumer appealing in order to generate, and secure a demand for the products; two, the control dimension, of which the legal aspects are paramount. I will look further into the elements of structural control in the following section (2.2.2.) and which tools that the brand owner has in order to govern the commercialization of its' branded products and services. However, a clarification is needed in order to understand the overlapping concepts of brand and trademark. As Faxheden[38] points out, the separation of the brand and the legal right of the trademark is blurred due to semantics. It is a fact that the Swedish language lacks the distinction between a brand and a trademark. The most suitable Swedish word for the

[37] Taken from Kapferer, (2004), *The New Strategic Brand Management*, p. 43.

[38] See Faxheden, T., (2005), *The Legal Trademark Right in the Light of Brand Theory*, Master Thesis, CIP, Gothenburg University, 2005, p. 8.

phenomena is *varumärke*, which is attuned to the legal aspect of the brand, but not to the marketing aspect.

2.2.2 Structural Control

There are several ways to establish structural control of a physical object as it is *rival* as it can be consumed by one at the time, and it is said to be *scarce* as it cease to exist after having been consumed. Conversely, intangible objects are, due to their inherent non-physical nature, non-rival and non-scarce. The control dimension gives the intellectual property owner a two sided weapon; the ability of being both defensive and proactive by ensuring sufficient structural control over the use of the brand. Following the CIP model of structural control, there are five different elements of structural control:

1) Technical control
2) Market power
3) Secrecy
4) Right based property
5) Contracts based property

With regards to the tangible conveyer of the brand, the product, the brand can be controlled by various methods of *technical control*, such as established national, industry standards, Digital Rights Management ("DRM") measures, and non-interoperability of either hardware or software.

Market power yields structural control since the brand owner in question is less dependent on other parties and has a favorable bargaining position, thus having more room of maneuver. An example of the more favorable position of market power is that the trademark right e.g. affords a famous trademark a wider scope of protection than "ordinary" marks[39].

The third way of establishing structural control is by ensuring absolute *secrecy* regarding the brand. Secrecy is often used as a complementary protection to the other means of control. In this respect, the innovation can be to a certain extent efficiently protected by secrecy, as disclosing the entire patentable invention in the patent letter is not required. Aspects of the brand that could be protected by secrecy: brand traits, internal brand development and organization, internal brand management tools, brand trends, future development, brand in the pipeline, and consumer preferences and consumer analysis, brand positioning in relation to the competitors.

The special means of control for intangible assets are the process of transforming them into legally recognized *rights based property*. Within this category, we will find the various Intellectual Property Rights, such as patents, trademarks, copyrights, domain rights, design rights etc. control of technical functions is by means of patents, the control of the patentable invention; whereas the company protects the symbol of its ability to enhance value by the means of the legal right of trademarks.

---

[39] The trademark law (swe) has as a requirement for infringement of product similarity (VML § 6 1), this rule means that the more alike the products are, the more the trademarks has to differ, and vice versa (See Koktvedgaard/Levin, at p 370; and the ECJ C-39/97 Canon). However, there is an exception to the rule of product similarity in VML 6 § 2 paragraph, in Sweden previously known as the Kodak-rule, which states that the decisive role in the assessment of infringement is if the use of the alleged infringing mark is a famous one and if it risks damaging the trademark owner or enjoying an undue advantage thereof. Thus, the scope of protection for the famous mark is considerable wider within the product categories.

The final category of structural control is the control that can be achieved by *legal contracts*. When it comes to intangibles, the license contract is a very important tool, and it is crucial in the context of counterfeiting as it is one of the factors of the existence of counterfeits. At the same time, the license contract is a way of establishing control over the use of the intangible property, e.g. brand license, but on the other hand, the license is a tool in construction of business and as such, it also exposes the brand for threats. Hence, it is very important to design a license with care, so the risks to the license object are kept to a minimum.

The control aspect of intangible property of a brand is more difficult and infinite more complex than controlling a physical object. Apart from the obvious, physical control, there is a constant duality of the intellectual objects such as brands. On the one hand, the claimed brand owner has to control the product, the bearer and realization of the brand promise, and on the other hand, the brand owner is compelled to relate to the perception that the consumer has developed of the brand[40]. Where the brand is the consumer perception of the *idea*, or *identity* of a product or a company, the IPRs are legally recognized forms of establishing control of this non-rival and non-scarce object. The IPRs makes it possible (at least in theory) for the brand owner to regulate and control the use and perception of the brand even after the physical/intellectual transaction.

Although that it is mostly the trademark that is used to embody the brand, infringements statistics from the EC Counterfeiting Survey shows that other rights are used as well, namely copyright, patent, design rights. This studies does not surprisingly, show a dominance of trademark infringements, as much as 78 % of infringements in the EC in 2001[41], and whereas a mere 15 % was related to copyrights, 6 % to design rights, and 1 % to patents. This picture does not reflect the goods *per se* that have been counterfeited, although the counterfeited products are high quality designer products with great visibility and market presence. The main reason why trademark infringement is the preferred choice of brand owners' is that it is like a "quick fix" of counterfeit cases. Pursuing counterfeiters under the auspices of trademark infringements is a strategic decision from Brand Protection managers, based on the advantages that the trademark system provides the brand owner, namely; i) the trademark system has a high enforcement value as it is the most recognized system on a global scale, ii) it is a rather quick and less costly procedure comparing to the more rigid process of a patent infringement case, iii) the remedies are most often more satisfactory than copyright, design.

The brand could be used to create *entry barriers* to the brand owner's market, by managing the actual customer offer via brand management. Creating such an entry barrier, makes it difficult for competitors to enter the market which might yield a high present value of future profits. The Vertu business model is a great example as they position themselves as the first luxury mobile phone, which places the stakes high for upcoming competitors. If I was to categorize the brand as a control measure, it is a control mechanism of the market – as it yields control over current and future demand (i.e. control over a customer base). The value creation ability of the brand consists in the symbolic representation of the customer utilities and an unfulfilled market need; the value creation in monetary terms can never occur without a certain level of control over these value creating utilities. The challenge for the successful company is to use these tools of structural control in a way to support the realization of the promised customer value, ultimately, fulfilling the targeted customers' value expectations.

Interestingly, there are several indications of the failure of the traditional barriers to entry of the handset commercialization. On the one hand, there are recent studies of the consumer industry and branding implies that there has been a significant change, consisting in the separation of the

---

[40] *"Like all intellectual property, trademarks are created and developed by human effort and human reaction.",* See, Parr. R., L., Smith, G., V., Valuation of Intellectual Property and Intangible assets, (2000), at p. 43

[41] See (2001) *EC Counterfeiting Survey.*

brand and the "brand conveying" product[42]. On the other hand, there is the interesting ARC chart report of the future of handset customization[43], which is putting forward evidence of the failure of the barriers of entry to the handset commercialization in several phases of the value chain of mobile handset manufacturers. According to the main authors of this report, the general sophistication of mass manufacturing technology means a standardization of the OEMs products' to the harm of differentiation. Moreover, the counterfeiting opportunities provided by failing structural control elements, further challenges the control position of the leading handset manufacturers. Following the purpose of this paper is the importance of pondering the possibilities of controlling the counterfeit phenomena by managing the customer relation through the brand, which will be presented in the next section.

2.2.3 Managing the Customer relation through the brand

"Like all intellectual property, trademarks are created and developed by human effort and human reaction"[44]

The notion of the relationship chain builds upon the ideas of Gluck (1980)[45] and Porter (1985)[46] who both recognized the importance of business processes as a sequence of events which generated value and incurred costs. Business wide process, integrated through various parts of the organization because the organization must be designed to promote the creation of superior customer value. However, Petrusson (2004)[47] shares the belief that business operations are intertwined, though he disagrees that these processes are sequential, when they are, in fact, parallel. As the unfulfilled customer needs, which are at the core of the firm, the competitive market, not to mention the regulatory landscape, are under a continuous development.

The fact that the brand is becoming more and more important is due to a shift from transaction focused to relationship focused business, the markets being global and technological convergence thus increasingly cluttered, shift from tangible objects to intangibles. Levitt (1983)[48] stressed that it is inevitable that transactions becomes relationships, considering the products are too complicated, repeat negotiations too much of a hassle and too costly. In addition, the seller and buyer have different capital structures, competitive conditions, costs, and incentives driving the cooperation and need to make a commitment. In this vein, marriage is both necessary and more convenient, which reflects in this colorful quote: *"The era of one-night stand is gone… Interface becomes interdependence."*[49]

---

[42] See Gentry, Putrevu, Shultz II, and Commuri, (2000), *How Now Ralph Lauren? The Separation of Brand and Product in a Counterfeit Culture,* College of Business Administration, http://www.cba.unl.edu/faculty/igentry/acr2000.htm, (2006-11-01); Elaborated in section 3.2.4.1

[43] See Constantinou, A., et al., (2006), *The New Age of Handset Customization: 2006-2011*, ARCchart Research, 2006-08-01, http://www.archchart.com/reports/uch.asp, (2006-11-27).

[44] See, Parr. R., L., Smith, G., V., (2000), Valuation of Intellectual Property and Intangible assets, p. 43.

[45] Gluck, F.W., (1980), Strategic choice and resource allocation, The McKinsey Quarterly, Winter, 22-23.

[46] Porter, M., (1985), Competitive Advantage: Creating and Sustaining Superior Performance, Free Press, New York.

[47] See Petrusson, U., (2004), *Intellectual Property and Entrepreneurship: Creating wealth in an intellectual value chain*, CIP Working paper.

[48] See Levitt, T., (1983), *After the Sales is Over.*

[49] See Levitt, T., (1983), *After the Sales is Over.*

2.3 Value extraction: the Nokia/Vertu brand and the business models

To meet my objective with this paper, and to make an illustrative point, the following section will make an effort to show how the brand contributes value in the Mobile phone industry in order to assess the implications of counterfeiting. As previous sections taught us, the brand is the symbol of available means to govern the value creating process, realized by the business model in place. The favorable control position of the brand owner is ensured by structural control and by managing the customer relation properly. The objects of study is the high end luxury Vertu brand and its' Customized Design Manufacturer business model and the low end accessory brand Nokia and its' high volume based Original Equipment Manufacturer business model.

According to Kapferer[50] the brand is not all; it captures the fame but it is made possible by the business model. The brand's profit potential, i.e. brand value, cannot be understood without relating to the business model as the latter is the realization of the brand's customer promises. As Petrusson[51] states, the brand should ultimately be understood as a means to govern the value creating process, in fact, it is the value creating process: "*as a company asset, the brand will always be a reflection of the ability to govern the interaction of values on the basis of the basis of the firm"*.

2.3.1 The business model of a OEM of mobile phones enhancements; Nokia

The business model of an OEM of mobile phones is characterized by control over the commercialization chain, especially the R&D and sales department tightly controlled and with outsourced manufacturing. The core of Nokia's business model is to have an organization that is customized to make available affordable personal accessories as opposed to just a communications tool[52]. World wide market leader in handsets manufacturer reflects in the ranking as the worlds 6th most valuable brand. Nokia's primary strength lies in the mobile phone area, which reflects in the fact that the sales of handhelds represents as much as 59 % of net sales.[53] Nokia has positioned itself as the world market leader with its 36 % [54] market share in the mobile handset industry. Nokia's offers include multimedia, mobile phones and networks which they govern in a joint venture with Siemens. Nokia produces user-friendly mobile devices with many features for different segments of the global market, primarily targeting the high-volume category sales. However, the Nokia owned subsidy, luxury brand Vertu is the exception that confirms the rule, a high profile exclusive mobile phones targeting a small niche market segment.

For an OEM in the mobile phones industry it is vital to create insurmountable barriers to entry: controlling the cost of the factors of production; mastering technology and quality; domination through image and communication (brand) and using the possibilities of brand extension as means to use up the range of products to limit competitors' room of maneuver. For a telecom company such as Nokia, it is extremely important to control the distribution channel, as the availability of the product offerings are a major source of market share and that the opposite situation (unavailability) is shown to be a trigger of grey trading.[55]

---

[50] See Kapferer, (2004), *The New Strategic Brand Management*, at page 3.

[51] See Petrusson, U., (2004), *Intellectual Property and Entrepreneurship: Creating wealth in an intellectual value chain*, p. 227.

[52] See Engler, B., (2006), *Marketing Magic*, Brandchannel, p. 4.

[53] See Nokia in Q3 2006, October 19, 2006, Annual and Quarterly information (2006) Nokia, at http://www.nokia.com/A4126495

[54] See Nokia in Q3 2006, October 19, 2006, Annual and Quarterly information (2006) Nokia, at http://www.nokia.com/A4126495

[55] The EC's Green Paper (1998) point out that in the Western Europe and North America, the easiest way of meeting consumer demand for a cheaper product is to engage in grey market trading (parallel trading). See Commission of the European Communities, (1998), *Combating Counterfeiting and Piracy in the Single Market,* p. 6.

The major revenue streams of enhancements are based on high volume sales to a relative high profit margin, which Nokia is able to sustain due to the price premium that the brand commands. However, there is a threat to the sustainability of the OEMs' business model that spells commoditization. People in the telecom industry identify a risk that profit margins for mobile terminals will diminish and that hardware will become a commodity, as have been the case in the computer industry. The process of commoditization means that a company's product becomes better and better and you reach the point where the end users are not beneficiated by a better product and accordingly, their willingness to pay a better price for an improved product diminishes to the point that you can not get pricing to stick for an improvement. As a result, it is impossible to get a premium price for a commoditized product as the ability to differentiate the product disappears. This process is a very natural result of the interaction of technological progress and customers' ability to utilize that progress.[56]
As a result of this value reducing process of the handsets, the average selling price ("ASP") has decreased, leaving the OEMs with a profit margin shrinking to 11 % in 2005. Analyst expectations on Nokia are to sell around 330 million phones at the Average Sales Price (ASP) of around € 100 per unit. This process have been enhanced by generous subsides from mobile operators (so-called *pre paid phones*), which have transformed mobile phones into customer electronics items, increasingly perceived as low-value product. Naturally, the industry is characterized by cost cutting through e.g. outsourcing.

The product portfolio of Nokia Mobile Enhancements is a complementing portfolio to the Nokia Mobile phone and Nokia Multimedia product offerings. Mobile enhancements include self expression products such as earphones, hands free, covers etc. and car-kit installation packages, these product categories is then further organized after handset models.. The mobile enhancements are a product extension of the Nokia handsets, as well as an enhancing feature of the user experience of Nokia genuine products.

2.3.1.1 The Nokia brand as a strategic asset

The main functions of the brand in the OEMs' mobile enhancements' business model are *first*, to govern the relation with distribution chain, and second to create a consumer pull, so the products are pulled through the distribution chain towards the consumer. The mobile enhancements' market is characterized by mass market approach, high volume sales, low point of entry technology; and on the distribution chain's side, cost conscious, availability of stock, the necessity and cost of holding large quantities of stock, bulk purchasing, parallel trading. The legal protection of the brand makes it possible to draft contracts that regulate IPR compliance and audit provisions, in order to respond to parallel trading, non authorized re-packaging, counterfeit branded goods purchasing etc. *Second*, to achieve favorable shelf-space, mind share, and market share, the brand owner must market the product to create the desired consumer pull effect. The competitive landscape is harsh, as original mobile enhancements are competing with other branded products, no logo products and other technological solutions altogether. The brand serves as a symbol of the promised value extraction of the distributor, retailer, etc as dealing with these particular branded products will command a higher price setting and attract customers to the distributor and retailer. *Third* and perhaps even more interesting, the brand is a shield to commoditization as the branded product is an augmented product. Behind the brand building process are processes of distinctiveness, design, unique technical features, which are only sustained under continuous innovation.

[56] Christensen, Clayton. (16/03/2004) *Capturing the Upside.* Open Source Business Conference in San Francisco, published by ITConversations. http://www.itconversations.com

2.3.1.2 Nokia's anti-counterfeiting strategy regarding Mobile Enhancements

When fighting counterfeiting there are two main strategies to discourage counterfeit consumption, either structural, or behavioral. Cordell et al[57] presents Messick and Brewer's typology[58], saying that strategies to discourage counterfeit consumption could be either structural (e.g. devaluing the payoff to the consumer by making the purchase illegal) or behavioral (i.e. eliciting consumer cooperation to cease purchases). This is a reflection of the duality of the brand: *structural*, the control represented by e.g. the IPRs; and *cognitive*, the behavioral consequences of the structural claiming, which translates into the perceived value of the symbol.

With regards to Nokia, though this particular product portfolio includes relatively low point of entry technology (possible with an exception of the Bluetooth™ headsets) and low image products, counterfeit products increase the risk of potential safety hazards. One top priority of the Brand Protection team is to proactively manage potential safety hazards. The anti-counterfeiting strategy is focused on cooping with the counterfeit supply chain and is thus predominantly product focused. The strong focus on the product could be explained by the fact that similarity of the imitative product and the genuine product is thought to induce a perception of equivalence[59]. Building upon this, the anti-counterfeiting activities are generally initiated by determination of the Brand Protection staff and its' resources whether a possessed product is genuine or counterfeit. After having defined the products' legal status, a reasonable response is taken. As a first step, is an ordinary cease and desist letter sent, commanding the end to the illegal activities and the forfeit of any other items of the same sort, combined with liquidated damages claim. Depending on the response of the alleged infringer, the issues are solved or, taken to negotiation and in some cases to court.

One of the competitive edges of Nokia's brand protection team is the multidisciplinary team and its cross functional integration of on the one side, IPR clearance, filings and oppositions and on the other hand the anti-counterfeiting activities. The organization is decentralized to the different action areas, managed by local expert coordinators as Brand Protection Managers. The external organization consists in close cooperation with national customs, local private investigators, local legal counsels and various industry bodies.

---

57 See Cordell, Wongtada, and Kieschnick Jr., (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants,* Journal of Business Research 35, p. 51.

58 See Messick, D. M. and Brewer, M. B., (1983), *Solving Social Dilemmas: A Review*, in Review Of Personality and Social Psychology.

59 See Kapferer, (2004), *The New Strategic Brand Management, p.* 201.

2.3.2 The business model of a Customized Design Manufacturer of mobile phones; Vertu

"There is an appetite for luxury products everywhere in the world" [60]
Vertu President Alberto Torres

The Customized Design Manufacturer[61] ("CDM" a term alleged to be coined by ARCchart[62]) is a new business model in the mobile handset industry, born out of the unfulfilled market need of uniquely customized handsets on-demand for consumer brands and third parties. The target market is the niche market of uniquely customized handsets ("UCH"), a market forecasted to reach less than 0,5 % of the global handset market in 2006. However, this market is though of experiencing a rapid market growth in the next few years, amounting to 234 million sold UCH units in 2011, accounting for about 19 % of the global market[63]. The UCH industry seems to have a bright future. The targeted market segment of the CDM business model addresses the number of individuals worldwide that had at least $1 million in financial assets, grew to 8,7 million in 2005 from 4,5 million back in 1996, according to Merrill Lynch and Cap Gemini[64].

A CDM is an integrated business that combines brand licensing with handset industrial design, outsourced manufacturing, strict quality control, distribution, reverse logistics retailing and possibly after market sales, on-demand service proposition as part of the customer offer. Basically, a CDM is a specialized, however vertically integrated service hub that is a one stop shop for brands wishing to enter the mobile phones business or providing manufacturers opportunities to capture a new market segment out of reach of their existing brand portfolio and business models. There are various ways of realizing this business model, and the Chinese-French OEM TLC Alcatel, like the Nokia subsidiary Vertu, has formed an in-house CDM business unit, dedicated to designing, manufacturing, ands marketing their branded, customized devices for niche segments. The in-house CDM hub often has its own R&D, and at the same time bases the technology on its' mother company benefiting from economies of scale. This multidisciplinary team leverages the human capital of the organization thus, cutting time to market and cost.

Throughout the mobile phone value chain the CDM business model have been embraced; the mobile operator Vodafone has launched Vodafone Simply; the handset manufacturer Nokia has its' Vertu brand and the Aston Martin customized Nokia 8800 phone, Alcatel's has its' blockbuster ELLE phone and Emporiallife phone. Additionally, the CDM business model offers lucrative brand extension opportunities for consumer brands. Which is why brands as Versace, D&G, B&O, MTV, TagHeuer, and Aston Martin could all now consider themselves to be into the mobile phone business. The incentive for CDM model is twofold; first to differentiate the brand, and second to capture the market for unique, branded handsets. For consumer brands, this business model provides means to get a foot in the $1 billion a year handset market. The ELLE GlamPhone No 1 handset sales have exceeded 100,000 units in 1Q06 and the sales of the entire group will amount to approximately 250,000 units by the 3Q06.[65]

---

[60] See Sanderson, R., (2006) Reuters, *Nokia's Very rings up sales of $338,500 phone*, 19th October 2006, https://today.reuters.com/news.

[61] See Constantinou, A., et al., (2006), *The New Age of Handset Customization: 2006-2011*, ARCchart Research, 2006-08-01, http://www.visionmobile.com/blog

[62] See Constantinou, A., et al., (2006), *The New Age of Handset Customization: 2006-2011*.

[63] See Constantinou, A., et al., (2006), *The New Age of Handset Customization: 2006-2011*.

[64] See Sanderson, R., (2006) Reuters, *Nokia's Very rings up sales of $338,500 phone.*

[65] See Constantinou, A., et al., (2006), *The New Age of Handset Customization: 2006-2011,* p. 2.

Vertu, is the luxury business unit of Nokia and the most profitable unit of the company according to Sanderson[66]. Vertu's *Signature Cobra*, a sapphire and gold phone with a diamond and ruby snake slithering down its sides, was launched in 8 examples in October this year at a price of €270,000, or $ 338,500[67]. Nokia's operating margin is 13 %, due to low cost phones in emerging markets such as Africa, South America, and Asia, whereas Vertu's margins at its luxury line are still above 20 % according to the Vertu President Alberto Torres[68]. The famous customers include Beyonce, David Beckham. When analyst expectations on Nokia is to sell around 330 million phones at the Average Sales Price ("ASP") of around € 100 per unit, Vertu is selling phones in the tens of thousands, but in a price range between € 5,555 to € 270,000[69]. Vertu targets the high end luxury watches, where 1 or 2 % of sales can account for 30 % of total industry value, according to President Torres. Rival Motorola has launched the D&G co-branded model RAZR, but it is aiming for lower end accessible luxury and might not earn as much momentum as Vertu.

2.3.2.1 The Vertu brand as a strategic asset

The CDM is a brand centered business model addressing many of the threats and embracing the opportunities of new business for the consumer appealing branded products. A brand's place in this context of commoditization is ensuring differentiation, providing new business opportunities by vertically integrating parts of the value chain.

With the ongoing commoditization of the handsets, decreased *average selling price* ("ASP"), and profit margins of the OEMs shrinking to 11 % in 2005, the CDM model proves some interesting points. According the the ARCchart report, as much as 84 % of the global handset market in 2005 is controlled by the top six OEMS, leaving competitors with limited remaining market share[70]. In addition, the available means of entry barriers that Nokia make use of is the domination thorough image and communication, and by controlling the distribution chain. However, the turn of events have brought new business models and concepts to overcome the lack of market clout for being a player in the mobile phone industry. As an example, the popularity of using the handsets and mobile software platforms as brand extensions (MSN Messenger, Nokia 8800 Aston Martin edition, etc) and the emergence of the Customized Design Manufacturing business model are means to unravel the structural control of the old incumbents such as Nokia, Samsung, Ericsson, LG, Motorola etc. If it was not for the brand attractiveness of the Nokia brand, the position of Nokia would be seriously threatened.

The aura of the brand realized by an on demand handsets business model provides a solution out of this deadlock. Brands who want to engage in this new market have to place brand appeal above pricing considerations. The Vertu brand is built on exclusivity, on the obsession of craftsmanship. This obsession is realized through a promise of perfect control over the entire value chain to uphold the state of the art quality of the product. The featured concierge service is the core service of the Vertu brand, a global around the clock private concierge service. Vertu has organized the concierge service as a network, where the phone is merely (too bad to say that of a crafted, diamond incrusted handset) a platform for value added distributor realized through appealing brand extensions. Another important factor of outmost strategic value is the fact that the early launch of the CDM business model of Vertu, gave Nokia the possibility to name their

---

[66] See Sanderson, R., (2006), *Nokia's Vertu rings up sales of $ 338,500 phone.*

[67] See Sanderson, R., (2006), *Nokia's Vertu rings up sales of $ 338,500 phone.*

[68] See Sanderson, R., (2006) Reuters, *Nokia's Very rings up sales of $338,500 phone.*

[69] See Tan, P. (2002), *Vertu – Upwardly Mobile,* 18th of March 2002, Brandchannel,

http://www.brandchannel.com/print_page.asp?ar_id=61&section=profile (2006-10-12).

[70] See the ARCchart report, by Vision Mobile, p. 2

product. The Vertu subsidy announced that they were making the world's first true luxury phone. Moreover, according to President Torres Vertu has a favorable strategic brand positioning of the brand in relation to the "affordable luxury" position of the Motorola D&G RAZR[71]. This position could serve as a buffer against counterfeiters, as the RAZR targets the big market segments were the big bucks are.

2.3.2.2 Vertu's anti-counterfeiting strategy

Since the core of the Vertu brand is scarcity and exclusivity, the anti-counterfeiting strategy of Vertu is focused on upholding quality and the surfacing of counterfeited Vertu branded products. The threat of poor quality and a skewed value experience that counterfeit Vertu branded handsets would pose is the erosion of the exclusivity of the Vertu brand. As part of the brand protection program for a Unique Customized Handset such as Vertu, it is crucial to exercise a tight control over the sales points. The Vertu brand has few, carefully selected exclusive places, jewelry boutiques and the Nokia flagship stores, which serves to makes it difficult for the consumers to unknowingly buy a counterfeit product. Another dimension of the threat that counterfeits poses to the Vertu brand's trustworthiness is the threat of upsetting the target customers due to the availability of counterfeits being displayed by the "wrong" customers. This act would potentially tarnish the aura of exclusivity of the Vertu brand, which would inevitably result in eroding the platform for the CDM business model.

---

[71] See Sanderson, R., (2006) Reuters, *Nokia's Very rings up sales of $338,500 phone.*

3. THE MECHANISMS OF CONSUMER BEHAVIOR IN A COUNTERFEIT CULTURE

As we learned from the previous section, there are limits to what legal remedies alone can achieve, especially regarding the consumption of goods. This chapter starts out with a general introduction to counterfeit trade and anti-counterfeiting strategy, touching upon the estimated magnitude of counterfeiting. This section continues with an analysis of the nature of consumer behavior and the nature of perception in order to pave the way for understanding the mechanisms of consumer behavior in a counterfeit culture.

3.1 Introduction to counterfeit trade

3.1.1 Magnitude and scope of counterfeiting

The clandestine nature of counterfeiting and piracy means that there are very poor data available to assist brand owners in their pursuit of an overview of the phenomena of counterfeiting. If there are any estimations of the magnitude, then the statistics are most often based on data from customs seizures, and publicly available criminal action information, which makes them difficult to relate to actual market figures.

The most widely cited figures, are those of the International Chamber of Commerce and OECD which are estimations of the counterfeit phenomenon in share of world trade in value terms. The ICC states that the counterfeiting level in 1997 that counterfeit accounted for 5-7 %[72] of world trade, which results in the astonishing number of approximately € 250 billion per year. The same industry body estimated that the counterfeit level 6 years later, in 2003 was 6 %[73] of world trade, corresponding to $ 450 billion. The Organization for Economic Co-operation and Development estimates that the counterfeit level equals 7-9 %[74] of world trade each year. Important to notice is that the estimation of the impact of counterfeit goods are based on the wide definition of counterfeit, thus including legitimate parallel traded goods and backdoor production products. However, the final report for the European Commission regarding how to properly count counterfeits in the Single Market performed by the Centre for Economics and Business Research (2002)[75] offers a method for estimating the revenue losses due to counterfeiting that adjust the resulting losses for the degree of substitution between genuine and counterfeit products.

Table 6: Annual revenue and profit losses due to counterfeiting

	Annual lost revenues		Annual lost profits
	Percent of total revenue	Millions of EUR	Millions of EUR
Clothing and footwear	3.2	7,581	1,266
Perfume and toiletries	7.2	3,017	555
Torys and sports goods	11.5	3,731	627
Pharmaceuticals	5.8	1,554	292
Total		**15,883**	**2,740**

Source: CEBR (2000)

Note: Lost revenue and profit in EUR millions (1998 prices).

---

72 See, ICC, *Countering Counterfeiting: A guide to protecting and enforcing intellectual property rights,* (1997) Counterfeiting Intelligence Bureau, International Chamber of Commerce

73 See ICC, http:///www.icc-ccs.org .

74 See ACG, *Essential Information- the extent of counterfeiting,* (2005), at http://www.a-cg.com.

75 Centre for Economics and Business Research, (2002), *Counting Counterfeits: Defining a method to collect, analyse and compare data on counterfeiting and piracy in the Single Market*, Final report for the European Commission Directorate-General Single Market, 15 July 2002.

In addition, the CEBR applied the marginal profitability ratios across the aggregated revenue losses suffered by each industry in the EU, estimating the impact of counterfeiting on industry profits (see Table previous page).

3.1.1.1 Substitution degree

General reservations can be made to how the above cited data has been obtained. For one, these figures are value based data, which have a limited use as it does not reflect the actual counterfeit level for a specific brand owner in a certain industry. The reliability of these figures is further hampered by the lack of transparency of how these organizations derived those particular percentage numbers. Moreover, these figures have been rightfully criticized[76] to lack substance and empirical evidence, and are more likely to have gained legitimacy based on repeated use. Most importantly, there is little evidence that the counterfeited products represent potential sales at the prices charged for the genuine products. The OECD report of 2005 points out that many studies, such as the above cited, tend to link the estimated quantity of counterfeit goods to the quantity of lost sales, rather than adjust the resulting losses for the degree of substitution, which will lead to a risk of overstating the impact of counterfeiting.

> "*One must bear in mind that in most cases, fake products are not perfect substitutes for their genuine counterparts, and even if they were, some consumers would never acquire a genuine product due to pure cost considerations – even if no fakes were available at a lower price.*"[77]

Hence, it is the actual degree of substitution between genuine and counterfeit goods for a particular product for specific types of consumers that are the key in order to unveil the true value of fighting counterfeiting. For the benefit of this paper, I am sorry that there are no available studies of a reasonable substitution degree regarding mobile phones or mobile phones enhancements. Nevertheless, for this paper, I have been able to make a fairly good conclusion what type of products in the product range of genuine- counterfeit that might and might not have a significant impact on the perceived brand value of Nokia/Vertu. The discussion of the possible implications of counterfeits on a brand owners' business are presented in the back as appendix 2.

3.1.2 Demand and supply side of counterfeiting

As previous chapters have made clear, the brand has a dual nature and is created in concert with stakeholders. In the same vein, a substantial portion of the brands' profit potential lies in the company's ability to govern the value expectations and consequently the value experiences of its' consumers. Hence, it is important for the brand owners to focus on the demand side of counterfeiting, taking a interrogative approach to its' consumers and their objectives. Finally, in spite of the limitations of the current estimations of losses attributed to counterfeiting, the mere scale of alleged losses provides reasons for brand owners to address the demand for counterfeit goods.

The counterfeit phenomenon is a two sided coin, consisting of a supply and demand dimension. The consumption of counterfeit requires an exchange between two parties, a buyer and a seller,

---

[76] The critics are of mixed backgrounds, anyone from OECD, or the CEBR in their 2005 report to the EC and Mr. Salmon have gone at length to criticize these anecdotal statistics. See e.g. Salmon, F., *All counterfeit statistics are bullshit,* (2005), http://www.felixsalmon.com.

[77] See Olsen, K., OECD Secretariat (2005) *Counterfeiting and Piracy: Measurement Issues*, Background report for the WIPO/OECD Expert Meeting on Measurement and Statistical Issues, Geneva, 17-18 October 2005, pp. 29-30.

making the consumer an accomplice or a victim. The opportunities given to the supply side of the phenomena lies in the ease and low cost of copying, and the high profit levels that high profile brands provide. Legal remedies are focused on the supply of goods, reducing the supply requires multilateral cooperation that is not always harmonious with the local culture which can create enforcement difficulties. Strategies focused on securing the product, high-tech methods, nr, etc. The demand side exists because counterfeit goods offer better price advantages than genuine products and that there are a world wide demand for high profile brands.

Historically, the phenomenon of counterfeiting have been approached mostly from a product perspective, based on the theory that if purchasing decision were made on perfect information; no consumer would knowingly purchase counterfeit branded products. Thus, the unknowingly consumer is often portrayed as a victim[78]. Products are divided into two groups, *deceptive products* which are branded as to deceive the customer about its origin, and the *non-deceptive products* that are open with its origin. The volatile consumption of counterfeits concern in particular status goods. In these cases, the consumer is a willing accomplice, contributing to the flourishing industry that is being compared to economic terrorism.

From now on, this chapter will focus on the demand side of counterfeit consumption from a brand perspective.

3.1.3 Product range of genuine to counterfeit products

As previously stated, the concept of *"counterfeiting"* is used in this paper in the broadest sense, if not stated otherwise, and encompasses trademark infringing goods, as well as copyright infringements, copying of packaging, labeling, and any other distinctive features of the product. I have chosen to use the notion *"true counterfeits"* as a narrower definition, used in relation to product types that involve a troublesome deviance in quality of performance of the product in question, e. g. low quality counterfeits and non genuine products that potentially are safety hazardous. Hence, the narrower notion does not include backdoor production/overruns, inbox-stripping, outbox-enhancements, and high quality counterfeits as they are assumed to not influence the value experience of the desired customer to a significant degree.

As presented by Gentry et al[79], there are six main types of products in the genuine-counterfeit product range, see fig 3 below.

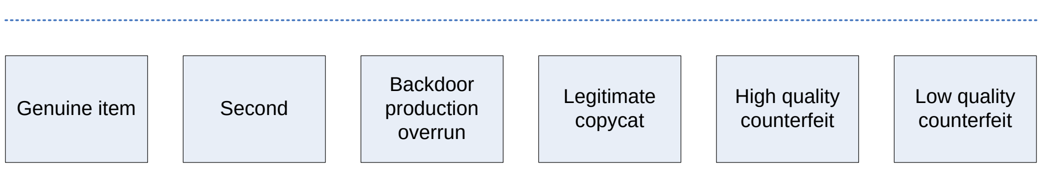


Fig. 3. Product range of Genuine-Counterfeit

Genuine item, is original product with full warranty. *Secondary*, is manufacturer authorized products with defects or out of date. *Overrun/backdoor production,* is manufacturer unauthorized locally produced to original standards. These products are produced and branded without license, an offense that also includes patent infringement, as the producer's manufacturing

[78] See Grossman, G. M., and Shapiro, C., (1988), *Foreign Counterfeiting of Status Goods.*

[79] See Gentry, Putrevu, Shultz II, and Commuri, (2000), *How Now Ralph Lauren? The Separation of Brand and Product in a Counterfeit Culture.*

license is limited to the right to produce a certain quantity of the licensor's products, any additional production is considered as infringement of the Licensor's property rights.

In this category I would like to add, based on my experience from Brand Protection at Nokia, products as result of *inbox-stripping*[80] and *outbox-enhancements*[81]. *Legitimate copycat,* includes retailers such as H&M copy designs from fashion houses. *High quality counterfeit,* are products not produced to original standards, yet similar on key product attributes. *Low quality counterfeit,* are **s**ignificantly different from original on several key attributes, e.g. the trademark of Nokia is spelled on the product and packaging as "Okia", or the interior of a mobile phone charger is of poor quality.

3.1.4 Types of consumers

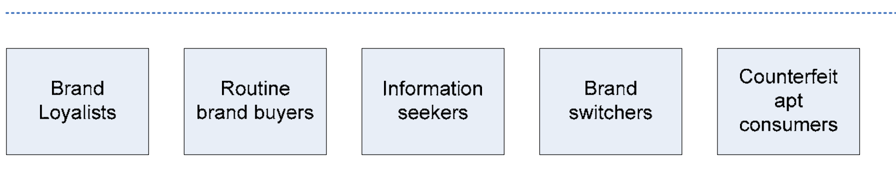


Fig. 4. Categories of consumers according to involvement in the purchase[82]

The *Brand Loyalist* group has strong emotional links to a favorite brand. As Buckley[83] points out, this group tends to link the brand's product category to ones' own personal relevant consequences. In addition, these people are the ones that seek the best brand for their needs, and feels that the product itself is an important part of their life and lifestyle.

[80] *"Inbox stripping":* This activity is when a person strips the inbox, the packaged product offering, from inbox enhancements. These enhancements are then offered separately and the original packaging is discarded and the handset is repackaged, under non complacent terms with the contractual relationship with the right owner firm. This act includes copyright infringement, breach against any repackaging license, trademark infringement, etc.

[81] *"Outbox enhancements"*: in contrast to the Inbox enhancements, an outbox enhancement is an enhancement that is not included or offered in the handset box. Outbox enhancements are purchased individually from any handsets.

[82] Taken from Buckley, A., (1997), *The Essence of Consumer Behavior,* Prentice Hall, p. 142; for further reference see Peter, P.J., and Olson, J.C. (1994), *Understanding Consumer Behaviour.*

[83] See Buckley, A., (1997), *The Essence of Consumer Behavior,* Prentice Hall, p. 142.

3.2 Counterfeit-branded product consumption

The sociological literature is limited. Consumer attitudes studied from a marketing perspective, though not in any greater detail. The available studies, three in total to this date[84] of my knowledge, were all conducted outside the US, and establish a rational-choice perspective on the part if consumers toward the purchase of counterfeit branded goods, governed by a calculus of desire, price, and risk (Block, Bush & Campbell 1993; Cordell, Wongtada & Dieschnick 1996; Gentry et al. 2000). The issue has been studied in terms of intellectual property rights, however, the focus have been limited to describe the phenomenon of counterfeiting and what remedies that could be available for brand owners. The fact still remains that there are a limited connection between anti-counterfeiting remedies and consumer consumption studies.

3.2.1 The consumers' search process of counterfeit branded products

Traditional, the process that every consumer goes through when facing a purchase decision involves two steps: 1) the determination of the preferred brand(s) though some kind of evaluation process that compares the brands across different main attributes, and 2) the systematic search for the lowest price on the identified brand across stores based on a cost/benefit tradeoff[85]**.** The order of the two steps is unclear, and is thought to vary from consumer to consumer[86]. However, this general order of events is based on pre-purchase search, which have been heavily criticized[87]**.** To serve as an illustration, Bloch et al.[88] acknowledges the existence a market segment that will continue to be involved in the purchasing assessment, and not limited to those moments in time when a need to purchase has been recognized.

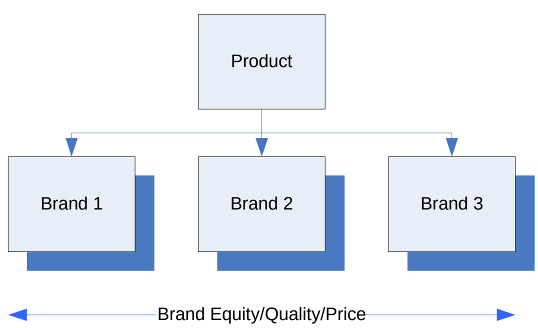


Fig 5., Typical Search Behavior[89]

However, Gentry et al[90], stresses that this picture (fig. 5) is complicated by the introduction of counterfeits, as it implies that the consumer does another search within the product, to determine which degree of product performance is needed. Consequently, Gentry et al presents the typical search process made complicated, in figure below (fig. 6.) as a revised search model

---

84 I.e. November, 2006.

85 See Putrevu and Ratchford, (1997), *A Model of Search Behavior with an Application to Grocery Shopping*, Journal of Retailing, 73, No. 4, pp. 463-486.

86 See Gentry et al., (2000), *How Now Ralph Lauren? The Separation of Brand and Product in a Counterfeit Culture.*

87 See Bloch, P. H., Sherell, D. L., and Ridgway, N. M., (1987), *Consumer Search: An Extended Framework*, Journal of Consumer Research 13, June 1987, pp. 119-126.

88 See Bloch, P. H., Sherell, D. L., and Ridgway, N. M., (1987), *Consumer Search: An Extended Framework.*

89 Taken from Gentry et al (2000). *How Now Ralph Lauren? The Separation of Brand and Product in a Counterfeit Culture.*

90 See Gentry et al., (2000), *How Now Ralph Lauren? The Separation of Brand and Product in a Counterfeit Culture*, p. 2.

regarding the conscious consumption of counterfeit branded goods. The study concludes that the consumers are when buying a counterfeit, reaching for a specific brand and they are willing to compromise on the product performance.

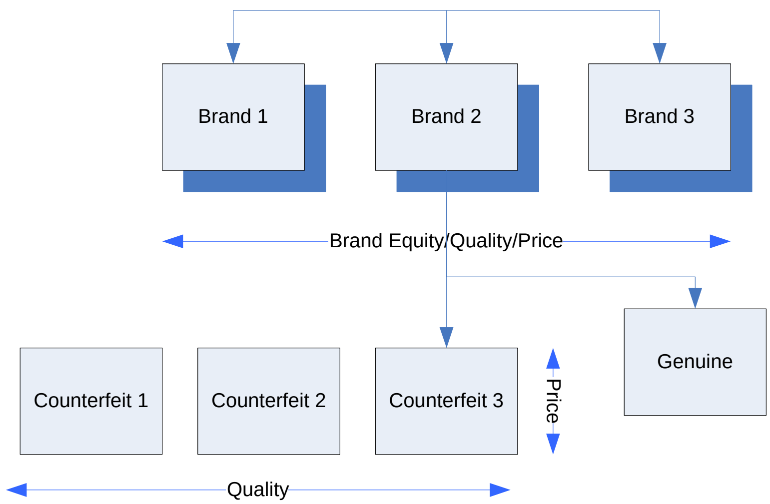


Fig 6. Revised Search Model[91]

The authors observe that *"while the purchase of a counterfeit represents the consumption of the brand (brand decision), it does not appear to represent a "product" decision"*.[92] As the picture illustrates, the consumers must still choose among the various counterfeits of the brand and yet to agree on the price of the product.

3.2.2 Consumer attitude towards lawfulness, ethical standards

Cordell et al.[93] explains consumer participation in the purchase of counterfeits as an attitude-intention-behavioral linkage between the consumer's respect for lawfulness and their willingness to buy counterfeits. Kohlberg's[94] moral competence theory suggests that personal behaviors are dictated by a subjective sense of justice. Emler and Reicher[95] have found a general correlation between attitudes towards institutional authority and compliant behavior toward institutional structures. Emler and Reicher characterize this relationship as "the attitude model of legal socialization"[96] that is alleged to explain the hierarchy of effects relationships between attitude and behavior in this dimension of human psyche.

According to Cordell et al. the conscious purchase of counterfeit branded goods falls in the class of *non normative consumer behavior*[97]. The tolerance of the participation in illegal activity

---

[91] Taken from Gentry et al (2000*), How Now Ralph Lauren? The Separation of Brand and Product in a Counterfeit Culture.*

[92] See Gentry et al (2000), *How Now Ralph Lauren? The Separation of Brand and Product in a Counterfeit Culture.*

[93] See Cordell et al (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants*, p. 42.

[94] See Kohlberg, L., (1976*), Moral Stages and Moralization: The Cognitive Development Approach*, in Moral Development and Behaviour: Theory, Research and Social Issues, Lickona, T., ed., Rinehart, Holt, and Winston, New York, pp. 31-53.

[95] Emler, N., Reicher, S., (1987), *Orientations to Institutional Authority in Adolescence*, Journal of Moral Education, 16(2), pp. 108-116.

[96] See Emler, Reicher, (1987), *Orientations to Institutional Authority in Adolescence.*

[97] See Cordell et al., (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants, p.* 42, second paragraph.

(although the purchase of counterfeit is not criminalized, though the manufacturing and supply of it is) is often justified by neutralization, whereby the perpetrator excuses himself from blame either by denial of wrong or blaming the victim[98]**.** This is nothing but double standards, whereby consumers hold themselves in lower ethical standards than the business with which they exchange counterfeit products with[99]. DePaulo[100] explains these double standards with the consumers' need to neutralize the perceived unfair advantages and tactics that the seller possesses. Non normative consumer activities, such as this conscious consumption of counterfeits, have been studied in research under the auspices of consumer fraud and consumer ethics. Examples of these studies include Wilkes'[101] study of middle income housewives, respondents' condemnation of overt criminal actions were stronger than of failing to correct obvious retailer errors that benefited the consumer; and Cole[102] found that self reported behavior in consumer fraud declined as subjective wrongness of the activity rose. Cordell et al, are focusing in the consonance between attitudes and behaviors with respect to participation in counterfeit trade. Consumer purchases of counterfeit branded goods are not criminal; the sales of such items are. In concert with Kohlberg, Emler and and Reicher[103], and Cole[104], the lawfulness attitudes will predict willingness to engage in counterfeit trade. Cordell et al.[105] found in their study that although 97 % of the subjects though of counterfeiting being a criminal offence; they do not feel accountable for the purchase. It is a double standard, as consumers do not hold themselves as accountable as the other party of the transaction. Situational ethics facilitates illegal activities, illustration of the tolerance of western consumers towards consumer fraud and unethical behavior. This suggests limited effectiveness of the structural approach to legalistic anti-counterfeiting activities.

3.2.3 Consumer expectations of the product performance

Conscious purchase of a counterfeit product at a significantly lower price than the genuine article provides the buyer of a different set of utilities than the genuine article[106]. Cordell et al.[107] by the same token, the prestige utility is preserved through physical reproduction of a socially desirable asset, so long as the status symbol, the trademark, is visible and has a high social value. The idea of it is the better product that gains in competition, is muddled with the presence of counterfeits. In this context, it is highly likely that the counterfeit product will not outperform the genuine product, as the manufacturer of the fake one lacks incentives to strive for achieving good will (as the mark is missing).

---

98 Sykes, G. M., Matza, D., (1957), *Techniques of Neutralization: a Theory of Delinquency*, American Sociological Review 22, December 1957, pp. 664-670.

99 See Cordell et al., (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants, p.* 42, second paragraph.

100 See DePaulo, P. J., (1986), *Ethical Perceptions of Deceptive Tactics Used by Salespersons and Customers: A Double Standard*, Proceedings American Psychological Association, American Psychological Association, Washington, DC, pp. 101-103.

101 See Wilkes, R. E., (1978), *Fraudulent Behaviour by Consumers,* Journal of Marketing 42, October 1978, pp. 67-75.

102 See Cole, C. A., (1989), *Deterrence and Consumer Fraud*, Journal of Retailing 65, Spring 1989, pp. 107-120.

103 See Emler, Reicher, (1987), Orientations to Institutional Authority in Adolescence.

104 See Kohlberg, L., (1976), Moral Stages and Moralization: The Cognitive Development Approach, in Moral Development and Behaviour: Theory, Research and Social Issues; Emler, Reicher, (1987), Orientations to Institutional Authority in Adolescence; Cole, C. A., (1989), Deterrence and Consumer Fraud.

105 See Cordell et al., (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants*, p. 50.

106 See Grossman, G. M., and Shapiro, C., (1988), *Foreign Counterfeiting of Status Goods*, Quarterly Journal of Economics 92, February 1988, pp. 79-100.

107 See Cordell et al, (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants.* at page 43

A counterfeit product will only possess prestige utility as long as its quality performs at a certain minimally acceptable level. According to studies by Cordell et al.[108], the better the expected functional performance of the counterfeit product, the more likely that the consumer is apt to buy counterfeits.

3.2.4 Extrinsic cues and Product-Investment-at-risk

The literature of extrinsic cue utilization by consumers has evolved – the most studied cues are brand, retailer, and price. According to Cordell et al[109] findings generally support the fact that each of the cues acts as an independent product evaluation cue[110]. Rao and Monroe[111] found positive relationships of both brand and price with perceived product quality. The relationship between retailer and perceived quality was positive, though marginal.

Perceived risk is a central concept in marketing, suggesting that the consumer seeks to reduce the uncertainty and unfavorable consequences of a purchase decision[112]**.** However this notion build on the assumption that the value experience of the brand is dependent on the quality and performance of the product. Ways for the hesitant consumer to manage this situation, and reduce the perceived risk, is for him to rely on certain extrinsic cues, such as brand, retailer, and price. Roselius's[113] studies show a decreased perceived risk by purchasing of a famous brand name, shopping at a well renowned retailer, or paying a low price.

The concept of perceived risk is multi-facetted, consisting of financial, performance, physical, psychological, and social dimensions[114]**.** Cordell et al.[115], emphasize that the *perceived financial risk* (i.e. the actual price paid by the consumer) and *the perceived performance risk* (the likelihood that the product will perform to a certain expected functional minimum) is central to this mechanism of risk mitigation. Taking these factors together, we have the fundament of the consumer's *perceived investment-at-risk*. One example of such risk would be that the perceived investment-at-risk for a counterfeit mobile phone should be higher than that of a counterfeit purse, as the likelihood that the mobile phone will fail to function in the future is higher than the purse. Thus, the expected loss from the purchase of a counterfeit mobile phone would exceed that of

---

108 See Cordell et al., (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants.*

109 See Cordell et al., (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants.*

110 See Andrews, I. R., and Valenzi, E. R., (1971), *Combining Price, Brand, and Store Cues to Form an Impression of Product Quality,* Proceedings, 79th Annual Convention of the American Psychological Association, American Psychological Association, Washington, DC., pp. 649-650; Dodds, W. B., Monroe, K. B., and Grewal, D., (1991), *Effects of Price, Brand and Store Information on Buyers' Product Evaluations,* Journal Of Marketing Research 28, August 1991, pp. 307-319; Gardner, D. M., (1974), *Is the Price/Quality Relationship Important?*, Working Paper #186, Faculty Working Papers, College of Commerce and Business Administration, University of Illinois, Urbana 1974; and Render, B., and O'Connor, T. S., (1976), *The Influence of Price, Store Name, and Brand Name on Perceptions of Product Quality,* Journal of the Academy of Marketing Science 4, Fall 1976, pp. 722-730.

111 Rao, A. R., and Monroe, K. B., (1989), *The Effects of Price, Brand Name, and Store Name on Buyers' Perceptions of Product Quality: An Integrative Review*, Journal of Marketing Research 26, August 1989, pp. 351-357.

112 Bauer, R. A., (1960), *Consumer Behaviour as Risk Taking,* in *Dynamic Marketing in a Changing World,* Proceedings of the 43rd National Conference of the American Marketing Association, Hancock, R. S., ed., American Marketing Association, Chicago, pp. 389-398; and Cox, D. F., (1962), The *Measurements of Informational Value: A Study in Consumer Decision-Making*, Emerging Concepts in Marketing, Decker, W.S., ed., American Marketing Association, Chicago, pp. 413-421.

113 See Roselius, T., (1971), *Consumer Rankings of Risk Reduction Methods.*

114 See Jacoby, J., and Kaplan, L. B., (1972), *The Components of Perceived Risk*, in *Proceedings, Third Annual Conference of Association for Consumer Research,* Venkatesan, M., ed., Association for Consumer Research, Chicago, pp. 382-393.

115 See Cordell, Wongtada, and Kieschnick Jr., (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants*, p. 43, second paragraph.

the purse. Cordell et al., raises a caution to the general applicability of the above, as each consumer's extrinsic cue mitigation strategy depends on each consumers' risk adverse profile and of the fake product's condition/investment-at-risk attributes. The influence of extrinsic cues (brand, retailer and price) on a consumer's willingness to buy counterfeit branded goods will differ by the product's investment-at-risk attributes.

3.2.4.1 Brand

Let us refresh, the function of the brand in the eyes of the consumers is to distinguish the source of origin and ensure quality. Besides, the fact that the brand could be a status symbol, representing a certain, desirable lifestyle, that rubs off on the carrier of the branded product. It is once we have bought a product that we are able to discover their inner qualities. It is generally more difficult for the consumer to assess the quality of a high risk product, as certain product attributes cannot be assessed before the purchase, such as battery quality of a mobile phone, active ingredient of a drug. As customers' involvements in the purchase are of different character, it is paramount for the external signs to highlight the internal qualities of the product. In the counterfeit context, it is thus important for the brand owner to communicate these inner qualities of the genuine goods and the uncertain quality features of the counterfeit product.

Reducing the consumer perceived risk is either done through brand loyalty or the purchase of a famous manufacturers' brand[116]. Cordell et al. quotes studies of Akaah and Korgaonkar[117] and Hawes and Lumpkin[118] that have demonstrated this effect on products in general and particular products such as cars[119]. The Roselius' study[120] states that in most cases, brand loyalty and purchasing a famous makers' brand, was found to be the most helpful strategy in preventing a possible financial loss from product purchases. Moreover, knowing the manufacturer is more important regarding high-risk performance products, than of low-risk performance products e.g. clothing. The quality of product performance is less interesting regarding apparel and shoes than of consumer electronics, and within that class, mobile enhancements is in general less risky than mobile phones, and mobile phones earplugs are less risky than Bluetooth™ headsets, etc. The performance risk is relative to the level of technological sophistication involved, and level of investment needed for the experience of the product[121]. However, these studies have all been based on the fact that the product in fact was genuine, and not counterfeit, which naturally limits the ability to draw conclusions from them.

In the context of a suspected counterfeit product, Cordell[122] argues that the goodwill attached to the brand is nullified. Furthermore, Cordell argues, that the good will of the manufacturer is absent if the consumer cannot identify and thus utilize the actual manufacturer. Besides, the manufacturer of the counterfeit cannot reveal its identity, which means that the manufacturer

---

116 Cordell, Wongtada, and Kieschnick Jr., (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants,* p. 43.

117 See Akaah, I. P., and Korgaonkar, P., (1998), *A Conjoint Investigation of the Relative Importance of Risk Relievers in Direct Marketing,* Journal of Advertising Research 28, August/September 1988, pp. 38-44.

118 See Hawes, J. M., and Lumpkin, J. R., (1986), *Perceived Risk and the Selection of a Retail Patronage Mode,* Journal of the Academy of Marketing Science 14, Winter 1986, pp. 37-42.

119 See Havlena, W. J. and DeSarbo, W. S., (1991), *On the Measurements of Perceived Consumer Risk*, Decision Sciences 22, September/October 1991, pp. 927-939.

120 See Roselius, T., (1971), Consumer Rankings of Risk Reduction Methods.

121 See Cordell, V. V., (1992), *Effects of Consumer Preferences for Foreign Sourced Products,* Journal of International Business Studies 23(2), pp. 251-269.

122 See Cordell, , Wongtada, and Kieschnick Jr., (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants,* p. 44.

has no chance of getting the consumer to repurchase – no sustainability or base for customer loyalty. Following the reasoning of Cordell et al., if the counterfeit product is associated with low investment-risk, the consumer is more likely to reap the benefit of prestige of the product without suffering undesirable consequences of inferior quality[123]. On the contrary, with a high investment-at-risk, brand image is more likely to relive the consumer of anxiety. Add to this picture that the development of electronics is more reliable in quality and brand image has been more explicit in the marketing of the branded product, which provides business opportunity for counterfeit products carrying the brand.

I would say that if Cordell is right depends on the product and on the consumer. He has right, if the suspected product is of bad quality (dangerous, not enough functional), making the counterfeit trademark on the product is not trustworthy, if the consumer in question was a brand patriot or simply averse of buying counterfeit products. Depends on what kind of brand we are talking about. Is it a lifestyle brand or a generic brand? Gentry et al.[124] adds another dimension to this issue that adds weight to the brand as an influencing cue. As the variance of product quality in the western world is reducing as stated by Carsky, Dickinson, and Canady[125], (1998), the brand name has become exceptionally strong cue for quality.

The studies undertaken by Gentry et al. gives clear indication of a separation of brand and product of the counterfeit consumers' mind, in a counterfeit culture. The authors' have found that consumers search for brands within a product. Even after the consumer make a brand choice in a purchase context; a further evaluation will take place assessing the quality of the genuine and counterfeit branded goods. Their study suggests, that when brand equity begins to symbolize strongly an image rather than more traditional, tangible product performance attributes, consumers may begin to regard the brand and the product as separate entities. Applying the Petrusson operational theory[126], it follows from the fact that the more accepted the promised values symbolized by the brand is, the more the brand gains a character of a value proposition on its own; it becomes a *meta-intellectual property*, soaring above the structural constructions as powerful symbols of relationship with and lifestyle of consumers. The relief of the perceived risk of product performance is one of the brand's most important tasks in the consumer purchase situation. Hence the consumers' of the apparel (lifestyle) business are less averse to the brand cue as a product quality sign. However, the apparel industry is to a large extent based on the brand being a status symbol, detached from the actual product as Gentry et al. (2000) concludes.

The high risk industries are creating strong brand identities to mitigate risk. Mobile phones, Nokia, Motorola, SonyEricsson, Samsung, Qualcomm. Automobiles, Volvo, Saab, Ford etc. Following this notion, having a well renowned brand would mean that quality of the brand-enabling product would be less important for the consumer, as the brand is also an important status symbol. The fact that the brand could function as a status symbol is the aspect of the brand that provides the "open" industry of counterfeiting with its' business opportunity.

---

123 Ibid.

124 See Gentry, J. W, Putrevu, S., Shultz II, C., and Commuri, S., (2000), *How Now Ralph Lauren? The Separation of Brand and Product in a Counterfeit Culture,* College of Busienss Administration http://www.cba.unl.edu/faculty/igentry/acr2000.htm, (2006-11-01).

125 See Carsky, Dickinson, Canady III, (1998), *The Evolution of Quality in Consumer Goods,* Journal of Macromarketing, 18 (fall), pp. 132-144.

126 See Petrusson, U., (2004), Intellectual Property and Entrepreneurship: Creating wealth in an intellectual value chain, CIP Working Paper, p. 225.

3.2.4.2 Retailer

Retailer reputation and fear of being ripped of by a non legitimate dealer reduces perceived risk[127]. The reputation effect in risk relieving extends to distributors as well in a direct marketing context[128]. Moreover, prestige stores such as the flagship stores, evoke greater confidence when the consumers' are facing purchasing decisions that involves a significant social risk[129]. Retailer mode influences risk perception, and catalogue purchases, which can be compared to online shopping, is perceived to involve a higher risk than store purchases[130].

Why? Implied warranty, deals with consumers' product dissatisfaction. Consumer risk is reduced either by the reduction of the likeliness of something going wrong or the enhancement of a successful redress. For the high risk products, this is believed to have a deterring effect; whereas with low risk products, the subjects of Cordell et al.'s studies were less inclined to make a redress. Cordell et al.[131] finds that the consumer is heavily influenced by the reputation of the retailer regarding knowingly purchase counterfeit products regarding the high-investment-at risk products. Concerning the low investment-at-risk products, the retailers' reputation does not carry as much weight for the purchase decision.

3.2.4.3 Price

There are three different price-related strategies to mitigate purchase risk[132]. There are best value, target combination of price and quality; price aversion, in which the consumer seeks the lowest priced product; and price seeking, in which the consumer seeks the highest priced product. Lower price is associated with lower quality[133], still perceived risk could be reduced with lower prices suggests studies by Akaah and Korgaonkar[134], and Havlena and DeSarbo[135]. Counterfeits that are non deceptive of its origin, is priced based on a fraction of the genuine products' price. Cordell et al.[136], suggests that consumers' willingness to purchase counterfeit products due to price concessions are greater with low investment-at-risk products, but not with

---

127 See Hawes, J. M., and Lumpkin, J. R., (1986), *Perceived Risk and the Selection of a Retail Patronage Mode,* Journal of the Academy of Marketing Science 14, Winter 1986, pp. 37-42; and Roselius, T., (1971), *Consumer Rankings of Risk Reduction Methods*, Journal of Marketing 35, January 1971, pp. 56-61.

128 Akaah, I. P., and Korgaonkar, P., (1988), *A Conjoint Investigation of the Relative Importance of Risk Relievers in Direct Marketing,* Journal of Advertising Research 28, August/September 1988, pp. 38-44.

129 See Dawson, S., (1988), An Exploration of the Store Prestige Hierarchy: Reification, Power, and Perceptions, Journal of Retailing 64, Summer 1988, pp. 133-152..

130 See Festervand, T. A., Snyder, D. R., and Tsalikis, J. D., (1986), *Influence of Catalogue vs. Store Shopping and Prior Satisfaction on Perceived Risk*, Journal of the Academy of Marketing Science 14, Winter 1986, pp. 28-36; and Hawes, J. M., and Lumpkin, J. R., (1986), *Perceived Risk and the Selection of a Retail Patronage Mode.*

131 See Cordell, Wongtada, and Kieschnick Jr., (1996), Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants, p. 44.

132 See Tellis, G. J., and Gaeth, G. J. (1990), *Best Value, Price-Seeking, and Price Aversion: The Impact of Information and Learning on Consumer Choices*, Journal of Marketing 54, April 1990, pp. 34-45.

133 See Olson, J. C., (1977), *Price as an Informational Cue: Effects on Product Evaluations,* in Consumer and Industrial Buying Behavior, Woodside, Sheth, Bennett (eds), North-Holland Publishing, New York, pp. 267-286.

134 See Akaah, I. P., and Korgaonkar, P., (1988), *A Conjoint Investigation of the Relative Importance of Risk Relievers in Direct Marketing.*

135 Havlena, W. J. and DeSarbo, W. S., (1991), *On the Measurements of Perceived Consumer Risk.*

136 See Cordell, Wongtada, and Kieschnick Jr., (1996), Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants, p. 44.

high investment-at-risk products. Surveys of counterfeit culture in Gentry et al.[137] suggest that brand owners should be hesitant to play the price card in the game of discourage counterfeiters. Actually, reducing price and profit margins might lessen the "best value" reason to buy a counterfeit; but be counterproductive as a low price may be perceived as an indicator of lower quality.

[137] Gentry, Putrevu, Shultz II, and Commuri, (2000), *How Now Ralph Lauren? The Separation of Brand and Product in a Counterfeit Culture.*

3.3 Observations of brand's degeneration regarding their social value and loyalty

To pursue the purpose of this paper, it is interesting to study the effects of counterfeits on the perceived social value and the fulfillment of customers' value expectations. To the best of my knowledge there are no studies of this interrelation, hence, I have chosen to observe how the value of Fast Moving Consumer Goods (FMCG) have devalued and studied the underlying reasons, in order to be able to draw parallels to the case at hand.

At first, I have included two observations when brand owners were able to reinstate their brand value through strengthening their *quality control*, namely *Burberry*® and *Disney*® brands. The once high end fashion label Burberry took in the 1990's a plunge in terms of brand value due to over exposition and most importantly due to poor quality products, the pitfall of brands have been named *the Burberry effect*. Maureen Hinton, senior retail analyst at Verdict Research[138] has said that the Burberry effect was due to that Burberry issued licenses almost haphazardly. Later, the Burberry brand was able to reinstate its' brand as a high end British brand by tightening the quality control by means of tightly restricted licenses and of flagship stores. By fiscal year 2001, Burberry's sales for the first half year were up a 38%[139]. Disney had higher degree of market presence in China long before the Disney Corporation allowed licensed manufacturing to this region. Counterfeiters had brought fake children's towels, replica Mickey Mouse watches, flood of pirated Chinese pirated videos and counterfeit merchandize.[140] Launching a brand licensing program to counter this development, Disney succeeded to regain control over their businesses in China and to increase their license revenues. Another part of this effort was to make the legitimate Disney stores visible for the public, as it was observed that the Chinese consumers would not know where to buy genuine products and therefore missed out of the opportunity[141].

The other part of this observation regards the notion of *exclusive identity*, here represented by the luxury brands *Cristal*®, and *Louis Vuitton*®. There is a danger to tie the brand core to exclusivity and scarcity, and subsequently a certain well defined identity, especially as counterfeiting overcomes these barriers and makes consumers other than its target ones display the branded product.

Cristal, a luxury Champagne brand, created by the French vineyard Louis Roederer for the enjoyment of the Russian Tsar, but during the '90's and 2000, the preferred brand of the bling bling hip hoppers. After a rather concerned statement by Frederic Rouzaud, President of Champagne maker Louis Roederer, of where the brand identity were going regarding the main clientele was now primarily the bling bling Americans as opposed to the original crowd of the upper 1-2 % of European aristocrats, the Bling Bling clan lead by Jay-Z chose to boycott the champagne[142]. Mr Rouzaud was quoted in The Economist[143] saying that the company is

---

138 See Davidson, (2006), *Battle of Brands*, Sunday Herald, 25th of June, http://www.sundayherald.com/print56346, (2006-10-18).

139 See Davidson, R., (2006), *Battle of Brands*.

140 See Weber, J., (2002) *The Ever-Expanding, Profit-Maximizing, Cultural-Imperialist, Wonderful World of Disney: The Serious business of selling all-American fun,* Wired October 21002, http://www.wired.com/wired/archive/10.02/disney.hrml, (2006-12-14); and **Figment! (2005),** *Fake Disney merchandise in China*, posted by Figment! @ 8:23 2005, http://www.webdisney.com/news/2005_09_01_default.asp, (2006-12-01).

141 See Chandler, C., (2005), *Mickey Mao*, Fortune Magazine, April 28th 2005, http://money.cnn.com/magazines/fortune/fortune:archive/2005/04/18/8257022/index.htm , (2006-12-14), p. 5.

142 See Kyles, K., (2006), Rappers stand up, but for what?, Chicago Tribune, June 23rd 2006, http://redeye.chicagotribune.com/news/columnists/red-062306-kyles,0,5644186.column , (2006-10-18); According to AmericanBrandstand.com, the pricey champagne was the 8th most mentioned brand on Billboard's Top 100 chart in 2005 with 35 mentions, being promoted by the likes of Kanye West, Trina, Lloyd Banks, The Game, Mariah Carey, and others, Strong, N., (2006), Managing Director Of Cristal Not Impressed With Rap Patronage, 6th of June 2006, All Hip op.com, http://www.allhiphop.com/Hiphopnews/?ID=5753 , (2006-10-18).

powerless to stop those in the "bling lifestyle" from buying Cristal. *"We can't forbid people from buying it,"* Rouzaud told "The Economist." *"I'm sure Dom Perignon® or Krug® would be delighted to have their business."*. This June, Jay-Z stepped up a boycott of Cristal champagne he began in the beginning of June after what he called "racist" comments from Mr Rouzaud. This Cristal incident is an example of what can happen after the brand has to a certain extent, lost contact and understanding of its' primary consumers. The rhetorical question is whether the President of Cristal was foolish and lost business or did he defend the clients and identity of his brand? Time will tell us.

Then we have the example of the *overexposure* of the *Louis Vuitton*® ("LV"). As cited in The Sunday Herald's feature, *"Battle of the brands",* that 60% of young Japanese women own a LV handbag. LV reinvented itself by launching a new flagship store at Champs Elyseés and tightly controlling the distribution and quality.[144] Controlling points of contact is crucial, just as Vertu, and as an attempt to preemptive the internet, LV launched the ecommerce luxury site, e.luxury.com. LVMH® is pursuing a policy to raise the public awareness of the counterfeit problem.

It is important to state that there is a limited applicability of the examples of the FMCG industry as mentioned above, due to the substantial different requirements that characterize the brand owners' conditions. The main difference consists in the fact that there are apparent potential safety hazards in the mobile phone product category that are not as obvious of consumer apparel and lifestyle products. Nevertheless, I believe that Brand Protection Managers could get valuable guidance of said examples in terms of foreseeing consumer behavior and to gather an understanding of the demand side of counterfeit product trade.

---

143 Rachman, G., (2006), Intelligent Life Summer 2006, The Economist, http://www.economist.com/intelligentlife/luxury , (2006-10-18).

144 See Marinovich, S., (2006), *Louis Vuitton*- King, 13th November 2006, Brandchannel.com, http//www.brandchannel.com, (2006-12-11).

4. CONCLUSIONS

4.1 Validating the business constructs: Implications on the targeting criteria of anti-counterfeiting measures

As stated in the beginning, the brand owner now faces two major challenges: one, to get a thorough understanding of how the consumer consumption of counterfeit branded goods influences the perceived brand value, and secondly, to align their brand protection strategy to this new insight. This section will present a summarization of the consumer behaviour with regards to counterfeit consumption and how to align the brand protection strategy to this new knowledge.

4.1.1 The protection of a brand

In spite of strenuous anti-counterfeiting activity from brand owners, national customs agencies, international trade organizations, famous brands are getting knocked off and to royal sums. Up until now the anticounterfeiting tactics have predominantly relied on a focus on the supply chain of counterfeit product trade, where the first step of action was to determinate the legal status of the product instead of assessing the damage to the customers' experience of the product. This paper argues that there would be valuable for the brand owner, consumer, and society, to take another starting point, to apply an understanding of the demand side of counterfeit branded product consumption.

The brand owners face a challenging task to develop, maintain and sustain proper level of control over the brand on a global scale. Considerations of brand owners include limited budget, increasing enforcing costs, IPR maintenance costs. Brand Protection Managers have to enforce their rights in a global market space, in disparate jurisdictions and different consumer and enforcement culture. All in all, the situation of success of failure of an enforcement action is not glass clear, and adds to the level of risk. As can easily be understood, this is both a time and resource consuming mission. Therefore I believe that Brand Protection Managers would find it valuable to have a sorting mechanism of targeting appropriate anti-counterfeiting actions that focuses on the possible damage of the alleged counterfeit product in the eyes of the relevant consumers. That is why I have created the Consumer centered **a**nti-counterfeiting targeting model, presented in the next section. If the Brand Protection Manager would have access to information of consumer behavior for a certain product, she would have an easier time to foresee the potential value loss, and thereby targeting that particular needle in the great haystack of IPR infringements. To support this argument is the conclusions of Cordell et al (1996)[145], there is a limited effectiveness of the structural approach to legalistic anti-counterfeiting activities. In fact, moral implications and legal considerations of the action of engaging in counterfeit branded goods trade is limited in its' effectiveness. Cordell et al, found in their study that although 97 % of the subjects though of counterfeiting being a criminal offence; they do not feel accountable for the purchase.

Interestingly, there are several indications of the failure of the traditional barriers to entry of the handset commercialization. On the one hand, there are recent studies of the consumer industry and branding implies that there has been a significant change, consisting in the separation of the brand and the "brand conveying" product[146]. On the other hand, there is the interesting ARC chart report of the future of handset customization[147], which is putting forward evidence of the

---

[145] See Cordell, Wongtada, and Kieschnick Jr., (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants,* p. 50.

[146] See Gentry, Putrevu, Shultz II, and Commuri, (2000), *How Now Ralph Lauren? The Separation of Brand and Product in a Counterfeit Culture,* elaborated in section 3.2.4.1

[147] See Constantinou, A., et al., (2006), *The New Age of Handset Customization: 2006-2011.*

failure of the barriers of entry to the handset commercialization in several phases of the value chain of mobile handset manufacturers. The brand lives in people's minds and hearts, which is why this paper concludes that the consumer herself is the best guide to effective legal action.

A counterfeit product will only possess prestige utility as long as its quality performs at a certain minimally acceptable level. According to studies by Cordell et al., the better the expected functional performance of the counterfeit product, the more likely that the consumer is apt to buy counterfeits. Ways for the hesitant consumer to manage this situation, and reduce the perceived risk, is for him to rely on certain extrinsic cues, such as brand, retailer, and price.

We have learned that while price is a cue of high quality, it also serves as a driver of demand of counterfeit branded goods. We also now know that reducing price and profit margins might lessen the "best value" reason to buy a counterfeit; but ca at the same time be counterproductive as a low price may be perceived as an indicator of lower quality.

4.1.2 Designing a Brand Protection strategy

For starters, a good example on a bad product-centered "anti-counterfeiting strategy" is the one exercised by the heavy metal band Metallica® with regards to their long awaited "Download this CD", in July 2000. The 74 min long CD contained one track of the length of 55 min, suitable named *"Napster Begone",* and a 19 min interview with drummer Lars Ullrich during which he answered one question. *"We realized that we couldn't stop the Napster movement, so we decided to make a Napster-proof album"*, he says. *"The Napster Begone track is so long and so horrible that no one in their right mind would take the time to download it. Our loyal fans will buy it though, because most have spent so much money on our merchandise that they can't afford a computer".*[148] Where is the perspective and consideration of the consumer?

The picture below (Fig 7.) is an illustration of how the Brand Protection team is participating to first create tools to make business and later to construct business models. The shadowed boxes represent the added value parts in this process that I have added as a result of my research for this paper. The new input expresses itself by the reconnection to the factors forming consumers' value perceptions, which would have helped Metallica to enforce its' rights *while* attending to their customers. This is why the Brand Manager is advised to start the consumer centered anti-counterfeiting targeting model analysis with the consumer and his/hers drivers of purchase and drivers of satisfaction, instead of defining the legal status of the alleged counterfeit product.

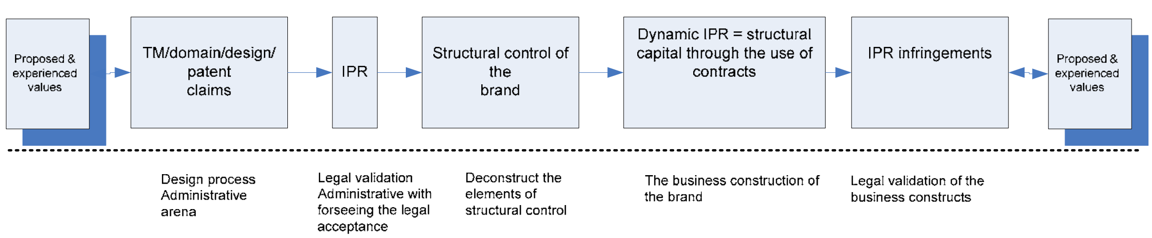


Fig 7. The Brand Protection as a design, validation, and construction process[149]

I also suggest that the Anti-counterfeiting strategy should reconnect with the moral values so the business construct is aligned with the desired, target customers. The prioritized customers

[148] Quoted in Acton, J., *The Ideas Companion*, (2005), Think Publishing, Robson Books, at p. 27.

[149] Taken from Petrusson, U., (2004), *Intellectual Property and Entrepreneurship: Creating wealth in an intellectual value chain.*

should be the recurring customers in order to make this group grow, together with the group of consumers that are knowingly purchasing counterfeit branded goods as they should be kept at a minimum. This demand driven perspective has organizational implications as it requires a certain level of coordination with Brand Management to benefit from synergies, and together reaching a deeper understanding of brand dependent business model. There is a great need to perform own studies of desired brand consumer types in order to know ones' customers drivers of purchase, drives of satisfaction, expectations with the purchase – in relation to counterfeit products and the events of a purchased product of inferior product performance.

Moreover, the demand focused anticounterfeiting strategy will have implications on the targeting of anti-counterfeiting activities. Products should be evaluated in relation to the experienced effect of consumers' expectations and to their experiences. The analysis of the greatest harm to the consumers' perception of the consumers' perceived value of the brand (long term the brand's profit potential), serves as a filter determining in the first case which actions to pursue. I conclude that the factors of *) type of customer and *) realization of purchase objective, most probably are the crucial factors in determining the impact on customers' perceived value. This is due that the brand value is created by the customers' expected value and the experienced value of the purchased product. This evaluation is depended on the type of consumer – whether she is a Brand Loyalist or a Counterfeit Apt consumer – and where the point of contact was with the deliverer of the value proposition, i.e. the distribution chain. The own distribution chains are in fact contaminated with a certain amount of counterfeited goods, either truly counterfeited, or refurbished, parallel imported, backdoor production and branded without proper license. Honestly speaking, the real threat to the Nokia/Vertu brand is poor product performance (in relation to the expected performance of the specific customer) and a skewed value experience that poor quality products offer. Conversely, when the products are perceived by the customers to delivering their brand promise, the products are not harmful to the perceived profit potential of the brand – regardless of its' legal definition.

Explore the business opportunities that this insight provides; do not address the backdoor production by anti-counterfeiting means, but rather by tighten the control of corporate security and the manufacturing licenses. Do not hesitate to explore a more generous licensing policy where the high quality goods are given a proper license tightly regulating sanctions if IPRs are infringed and ensuring high quality of the manufactured products.

4.2 Solution: Presenting the consumer centered anti-counterfeiting targeting model

The process of creating these anti-counterfeiting models is preceded with studies of the behavior of the consumers, as to capture the "right" triggers to purchase and drivers of a positive perception of the brand. To aid my work in this aspect, I have had access to some studies of Nokia Brand Management of date 2006. The study focuses on which elements, values, utilities, and circumstances that for Nokia consumers was important for their Nokia purchase, and due to confidentiality reasons I will not disclose anything further.

I have identified the two main choke points in the counterfeit demand chain as
1) Drivers of purchase and drivers of satisfaction with purchase; and
2) The quality of the distribution channels products, especially in the *authorized* channels.

Regarding the second choke point, the partakers in the distribution chain is very important as they deliver the value proposition to the consumer. One underlying assumption, supported by numerous studies[150], is that Brand Loyalists does not seek out known or suspicious counterfeit trading market places and vice versa. Based on this assumption, the brand loyalist has therefore no cues to warn her for a potential counterfeit product when purchasing the item in an authorized retail chain. In this case, the consumer would not be able to make an own informed decision and if the authorized retailer's stock was contaminated by true counterfeits the brand loyalist would end up with a counterfeit product believed to be genuine.

This paper have led me to conclude that the way to come around these choke points is to prioritize the brand consumers and use the mechanisms that shapes their value perceptions as starting point. In the case at hand, i.e. Nokia mobile enhancements and Vertu handsets, we are dealing with typical high-level involvement purchases. Of which I have chosen to focus on two opposite types of consumers, the brand loyalists and the counterfeit apt consumers.

---

150 See e.g. Chakraborty, G., Allred, A. T., and Bristol, T., (1996), *Exploring Consumers' Evaluations of Counterfeits: The Role of Country of Origin and Ethnocentrism*, Advances in Consumer Research 23, p. 384.

4.3 How to interpret and apply the consumer centered methodology

The targeting model contains four steps which are all there for their particular reasons. As all tools this model is simplified regarding the different elements in the consumers' purchase decision and how perceptions are formed. I have simplified the model for the sake of user friendliness. I appreciate the expertise and innovativeness of the Brand Protection Managers at Nokia, al the same, this tool is intended for the Brand Protection Managers and the Brand Protection Director, to serve as a complementary perspective in the decision-making process of initiating anti-counterfeiting activities. This model adds an element of the demand dimension of counterfeiting, not solely focusing on the supply chain of counterfeits.

Step one: Identification of the priority consumers

Being a demand focused targeting tool, this section requires the Brand Protection Manager to identify her priority consumer and start the anti-counterfeiting campaign from there. As we are interested in how counterfeiting is affecting the consumers' subjective value experience of the brand, we have to take a subjective starting point: the specific consumer. This identification process should be preceded with a joint session with the Brand Management group.

A) <u>Brand loyalist</u>

This group of recurring customers represents the most valuable consumer for companies. Their concerns include, but are not limited to:
*) The drivers of purchase, drivers of satisfaction, as the core of this model is value expectations and value experiences.
*) Having a beneficial brand relationship is important to this consumer type.

The issue of reducing the demand of counterfeit branded goods is complex and requires a multidisciplinary competence and cross-functional cooperation. Therefore it is advisable that there is coordination on a strategic level between the different brand related departments in order to design a *Loyalty protection* and an *Image protection* that deals with the demand side of counterfeiting. The Loyalty protection aims to strengthen the brand relationship, through various rewards and incentives. Moreover, for the sustainability of the brand's social value, brand owners should also implement an *Image protection*, that would guarantee quality control throughout the value chain. It is crucial that the product, marketing, treatment from representatives of the brand owner can fulfill the consumers' expected value experience. The image protection would also serve the interest of securing future brand growth, to make more consumers brand loyalists. It is crucial for the brand owner to increase the perceived value of the genuine product. Suitable measures could be personalized service in flagship stores (common in the clothing and apparel luxury industry), support etc.

If the Brand Director starts thinking about these issues, she will realize that there are already activities ongoing that could be resembled as these behavioral protection measures. However, when things are not recognized by their real names, they miss out of their true potential because they do not get the attention of the right people.

As I have mentioned, I am worried about the interrelation of the consumption of counterfeited goods and the consumption of genuine goods, in terms of how the brand loyalists' value experience is affected. Studies suggest that it is the brands' social value that is the weakest one, which means that the implementation of a loyalty and an image protection program would be a proactive reaction.

B) <u>Counterfeit apt consumer,</u>

In order to reduce this group of consumers, it would be beneficial to communicate the uncertain quality features with counterfeits as part of the *Image protection program.* A counterfeit product will only possess prestige utility as long as its quality performs at a certain minimally acceptable level. According to studies by Cordell et al. (1996), the better the expected functional performance of the counterfeit product, the more likely that the consumer is apt to buy counterfeits. Since it is difficult for the consumer to assess the quality of a high risk product, especially as certain product attributes cannot be assessed beforehand (such as battery quality of a mobile phone, active ingredient of a drug) studies by Cordell et al. (1996) suggest good success rate when communicating the uncertain quality features of the product.

If the parallel imported goods, backdoor production and the high quality counterfeits are made legitimate by means of licenses, the author assumes that the quality of the remaining counterfeits are poorer, which reduces the value for money for this type of consumer. The author assumes that the counterfeit sweatshops and booths will be cleaned up and overseen by the former, now *converted* ex-counterfeiters.

Step two: Prioritize among the brands

Based on which type of consumer, the Brand Protection Manager now chooses to perform the study on a certain brand.

The prioritization between brands could take into consideration the following issues:

- the brand's importance to the brand's business model

Regarding the Vertu brand, the business model is built on the consumer appealing feature of exclusivity of the lifestyle of the brand consumer. This implicates that the counterfeiter has not only to recreate the satisfactory level of product performance, but in addition the brand image as well. This depends on the fact that the value proposition of VERTU is the brand itself and in particular the lifestyle of the bearer it communicates; the drivers of purchase of VERTU consumers are that they belong to the defined clientele of VERTU for real. If authenticity is revered and embraced by the brand, I believe that this is more difficult for the counterfeiters to be able to recreate satisfactory brand image. Since the Vertu brand is explicitly marketed as a personal entity, a lifestyle brand, the brand enjoys not one, but two barriers of entry. For one, there is the barrier though the product having a satisfactory level of product performance, and second, there is also the emotional barrier of brand image. It might seem cliché, but it is true that products can be faked, but not relationships with the same ease. Conversely, the Nokia and OEM, mobile enhancements: brand image is not that explicitly marketed such as Vertu, which suggests that the emotional barriers of entry are weaker. This brand has one main control barrier, which is to ensure a satisfactory degree of product performance.

- the brand's quality promise vs importance of fulfillment of product performance (avoid safety hazards)

The design, validation, construction of the brand has implications to the extent that the brand is going to suffer from counterfeiting. The examples of Burberry, Cristal, etc. has let me to believe that, brands built on the core of having an exclusive identified targeted consumer are more vulnerable to consumption of counterfeit, thus making the Vertu brand top priority.

Step three: Use the model for the priority consumer and brand

The consumer centered anti-counterfeiting targeting tool has four steps.

The *first step* deals with mapping the consumer specific drivers of purchase. Which factors are the most important for a typical consumer type before purchasing the branded product? Try to assess both in relation to the brand, e.g. brand promise, brand identity, brand's social status, moral values it represents, etc., and in relation to the value proposition, the product.

The next step, *step two*, lists the consumer specific drivers of satisfaction. This step is very important as we are interested to see whether the purchased product, regardless of its classification, fulfills the consumer's expected value experience. How will we be able to evaluate whether the purchased product delivered or not, if the elements of the consumer's satisfaction were unknown or overlooked by us?

The *third step*, forces the Brand Protection Manager to look at the point of contact between brand and consumer. The quality of the distribution channel's products has been identified as one major chokepoint in the fulfillment of the consumers' value experience when counterfeit products are involved.

The fourth step reconnects with the second step, as it is an evaluation of the consumers' satisfaction with the purchase. This step is means to assess which category of product – genuine, backdoor production, copy cat, high quality counterfeits, and poor quality counterfeit – that delivered the consumers' expected value. This step will lead the Brand Manger to two different outcomes, either she will be merely suggested to ponder the idea of licensing the production regarding the backdoor product and the high quality counterfeits; or, she will be suggested to initiate anti-counterfeiting actions. However, some defects cannot be seen at the time of purchase and depending on its type and localization, there is a potential safety hazard. There are certain factors that override a quality clearance from the consumer, and safety hazards would be one of these factors.

Step four: Attach the anti-counterfeiting supply chain strategy

At the final stage, when identifying which value propositions (products) that are able to fulfill the consumers' purchase objective it is suitable to attach the counterfeit supply chain anti-counterfeiting strategies. Doing this, allows Brand Protection team to target the activities that have the most harmful potential to consumers' perceived value of the Nokia/Vertu brand.

4.3.1 Limitations with the models

For secrecy reasons I have not been able to disclose any specific material on Nokia/Vertu consumers. However, I believe that real insight in the mechanism of Nokia counterfeit consumers is missing and should be very valuable for the effective targeting and prioritization of Nokia anti-counterfeiting measures.

Regarding to the outlooks for a successful implementation of this consumer centered targeting model, it requires a sort of attitude shift in the brand owning companies from being product focused to consumer focused. I judge the chances of Nokia Brand protection as promising, as the team I worked with expressed concerns that highlighted this problem.

As I have said, it appears that the multinational companies are too focused on the physical transaction in terms of product, sales volumes, and not on the intellectual value transaction of the tarnishment of the brand. Therefore the company misses out on a very important part of the business transaction and its construction of its business. To this end, the Anti-counterfeiting team needs to redefine the battleground- talk about "brand market" instead of geographical market. There is a danger to get caught up in sales focused strategy, as it will distract the brand protection efforts from refraining from making generalizations of their brand customers and level of substitution. One other benefit of applying a more balanced, brand value centered attitude towards the management of counterfeit products is to reap the beneficial side effects of said phenomena. If this is to happen, the brand owners will have to move away from sales focus. If they are able to do so, greater efficiency and value for the customers will be the outcome.

4.3.2 Final words

I set of this paper to test the hypothesize that *"there is a disparity between the harm to the intellectual property of the brand and harm to the perceived image of the brand (i.e. society). In other words, the author assumes that there is a duality of the intellectual property brand, in which case the IPRs might be infringed but the brand itself might not be as harmed"*. As I have followed the path that my quest has led me to, I humbly conclude that it is supported to a satisfactorily extent. I would like to have say that the hypothesize is proven, that the answer is undoubtedly "yes", however, as there are numerous black holes in theory and unsatisfactorily empirical studies available on this subject, I cannot.

This paper also had as its' objective to shed light on the true value of fighting counterfeiting. The only real truth that has been unveiled is that someone else can always teach us something about oneself. Thus, great things happen when people come together and create things together. The business model of CDM showing the way as it is reaping the benefits of licensing, quality control, sharing wealth, seeing their product as a platform for added value services rather than the end product.
As technologies have torn down the barriers of control, the clever thing to do is to adapt the business model and the brand protection strategy so it fits with a reality where wealth is created when shared. The most evident things that becomes more valuable when shared are intangibles; knowledge, relationships – love and contacts -, and experience. Nevertheless, it is still true that some of the most profitable businesses have been based on limiting the value, but then most of these businesses have also faced a downfall, e.g. tulip crisis in middle age Netherlands, modern music industries monopoly in distributing music which is rather locked into the physical product concept, etc. A common denominator of these examples is exclusivity, tied to a physical product. Are such business models sustainable? I am not convinced. Past examples of later brilliant business ideas, the Nordic Walking sticks, Skype, MySpace, eBay, the modern mass market mobile phone, etc, are examples of people who identified and addressed an unfulfilled market need of added value.

How can a brand be compared to this? The easiest is the fact that brand awareness has a proved link to a higher level of profitability, according to Ehrenberg, A. (1972) is product penetration correlated with purchase frequency. Say that a company chooses to not act on the basis of parallel trading products and x, what happens? Sure, the company will lose a few sales, but in its' place harvest the market presence of parallel traded goods in terms of increased brand awareness. The agony to see the sales figures take a dip is less painful when the company realizes that these clients would not anyway have been their consumers. The real value comes from engaged stakeholders (including high involvement consumers, and business partners) who participate in the learning process of the mobile market. I take my chance at put myself out there, (hey it is only a students' thesis paper) and raise the point that maybe it is time to question the holy cow of a manufacturing company; the sales department. There is a place when sales does not come first, and I have reason to believe that the time of reckoning is here when it comes to consumption of counterfeit goods and the fight against it. The customer has always right. *Right?*

5. LITERATURE

5.1 Books

Aaker, D. A., (1991), *Managing Brand Equity*, The Free Press, New York

Aaker, D. A., (1996), *Building Strong Brands,* The Free Press, New York.

Acton, J., (2005), *The Ideas Companion*, (2005), Think Publishing, Robson Books.

Blythe, J., (1997), *The Essence of Consumer Behaviour,* published by Prentice Hall, Cornwall, 1997.

Clifton R., (2003), *Brands and Branding – The Future of Brands, (2003),* The Economist.

Kapferer, J-N, (2004), *The New Strategic Brand Management: Creating and Sustaining Brand Equity Long Term,* Kogan Page Ltd.., London And Sterling.

Koktvedgaard/Levin, (2002), *Lärobok i Immaterialrätt: Immaterialrättens grunder*, Upplaga 7:1, Norstedts Juridik, Stockholm.

Melin, F., (1999), *Varumärkesstrategi: Om konsten att utveckla starka varumärken*, Liber Ekonomi, Malmö.

Parr. R., L., Smith, G., V., (2000), *Valuation of Intellectual Property and Intangible assets.*

Payne, A., Christopher, M., Clark, M., and Peck, H., (1995), *Relationship Marketing for Competitive Advantage*, published Butterworth and Heinemann, 1998.

Petrusson, U., (2004), *Intellectual Property and Entrepreneurship: Creating wealth in an intellectual value chain*, CIP Working Paper.

Shakespeare, W., (1603), *The Tragedy of Othello, the Moore of Venice.*

5.2 Articles

A

Abalos, R. J., (1985), *Commercial Trademark Counterfeiting in the United States, the Third World and Beyond; American and International Attempts to Stem the Tide*, Boston College Third World Law Journal 5, June 1985, pp. 152-178.

ACG, **(2005),** *Essential Information- the extent of counterfeiting,* (2005), at http://www.a-cg.com

Akaah, I. P., and Korgaonkar, P., (1998), *A Conjoint Investigation of the Relative Importance of Risk Relievers in Direct Marketing,* Journal of Advertising Research 28, August/September 1988, pp. 38-44.

Andrews, I. R., and Valenzi, E. R., (1971), *Combining Price, Brand, and Store Cues to Form an Impression of Product Quality,* Proceedings, 79th Annual Convention of the American Psychological Association, American Psychological Association, Washington, DC., pp. 649-650.

B

Bauer, R. A., (1960)*, Consumer Behaviour as Risk Taking,* in *Dynamic Marketing in a Changing World,* Proceedings of the 43rd National Conference of the American Marketing Association, Hancock, R. S., ed., American Marketing Association, Chicago, pp. 389-398.

Bearden, W. O., and Shimp, T. A., (1982), *The Use of Extrinsic Cues to Facilitate Product Adoption,* Journal of Marketing Research 29, May 1982, pp. 229-239.

Berry, L.L., (1983), *Relationship marketing,* in Berry, L.L., Shostack, G.L., and Upah (eds), Emerging Perspectives on Services Marketing, American Marketing Association, Chicago, pp. 25-28.

Bloch, P. H., Sherell, D. L., and Ridgway, N. M., (1987), *Consumer Search: An Extended Framework*, Journal of Consumer Research 13, June 1987, pp. 119-126.

Bloch, P. H, Bush, R. E., and Campbell, L., (1993)*, Consumer "Accomplices" in Product Counterfeiting: A Demand Side Investigation,* Journal of Consumer Marketing, Vol. 10, No. 4, pp. 27-36.

C

Carducci, V., (2005), *Confidence Games on Canal Street: The Market for Knockoffs in New York City,* New School for Social Research, Vol. 6, No. 2, May 2005, https://netfiles.uiuc.edu/dtcook/www/CCnewsletter/6-2/Carducci.html, (2006-11-01).

Carsky, M. L., Dickinson, R., and Canady III, C- L., (1998), *The Evolution of Quality in Consumer Goods,* Journal of Macromarketing, 18 (fall), pp. 132-144

Centre for Economics and Business Research, (2002), *Counting Counterfeits: Defining a method to collect, analyse and compare data on counterfeiting and piracy in the Single Market*, Final report for the European Commission Directorate-General Single Market, 15 July 2002.

Cole, C. A., (1989), *Deterrence and Consumer Fraud*, Journal of Retailing 65, Spring 1989, pp. 107-120.

Chandler, C., (2005), *Mickey Mao*, Fortune Magazine, April 28th 2005, http://money.cnn.com/magazines/fortune/fortune:archive/2005/04/18/8257022/index.htm , (2006-12-14).

Constantinou, A., et al., (2006), *The New Age of Handset Customization: 2006-2011*, ARCchart Research, 2006-08-01, http://www.archchart.com/reports/uch.asp, (2006-11-27).

Commission of the European Communities, (1998), *Combating Counterfeiting and Piracy in the Single Market.*

Cordell, V. V., (1992), *Effects of Consumer Preferences for Foreign Sourced Products,* Journal of International Business Studies 23(2), pp. 251-269.

Cordell, V.V., Wongtada, N., and Kieschnick Jr., R. S., (1996), *Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants,* Journal of Business Research 35, pp. 41-53.

Cox, D. F., (1962), The *Measurements of Informational Value: A Study in Consumer Decision-Making*, Emerging Concepts in Marketing, Decker, W.S., ed., American Marketing Association, Chicago, pp. 413-421.

Chakraborty, G., Allred, A. T., and Bristol, T., (1996), *Exploring Consumers' Evaluations of Counterfeits: The Role of Country of Origin and Ethnocentrism*, Advances in Consumer Research 23, pp. 379-384.

Crosby, L.A., and Stephens, N., (1987), *Effects of relationship marketing on satisfaction, retention and prices in the life insurance industry*, Journal of Marketing Research, 24, November, pp. 404-11

D

Dawes, R., (1980), *Social Dilemma*, Annual Review of Psychology 31, pp. 69-93.

Dawson, S., (1988), *An Exploration of the Store Prestige Hierarchy: Reification, Power, and Perceptions,* Journal of Retailing 64, Summer 1988, pp. 133-152.

DePaulo, P. J., (1986), *Ethical Perceptions of Deceptive Tactics Used by Salespersons and Customers: A Double Standard*, Proceedings American Psychological Association, American Psychological Association, Washington, DC, pp. 101-103.

Dodds, W. B., Monroe, K. B., and Grewal, D., (1991), *Effects of Price, Brand and Store Information on Buyers' Product Evaluations,* Journal Of Marketing Research 28, August 1991, pp. 307-319.

E

Emler, N., Reicher, S., (1987), *Orientations to Institutional Authority in Adolescence*, Journal of Moral Education, 16(2), pp. 108-116.

Engler, B., (2006), *Marketing Magic*, 25th of May 2006, Brandchannel, http://www.brandchannel.com/print_pageasp??ar_id=1242&section=paper, (2006-10-12).

F

Festervand, T. A., Snyder, D. R., and Tsalikis, J. D., (1986), *Influence of Catalogue vs. Store Shopping and Prior Satisfaction on Perceived Risk*, Journal of the Academy of Marketing Science 14, Winter 1986, pp. 28-36.
Firth, A., (1995), *Application of criminal law to intellectual property",* in Loveland, I., ed., *Frontiers of criminality*, London, Sweet & Maxwell.

G

Gardner, D. M., (1974), *Is the Price/Quality Relationship Important?*, Working Paper #186, Faculty Working Papers, College of Commerce and Business Administration, University of Illinois, Urbana 1974.
Gentry, J. W, Putrevu, S., Shultz II, C., and Commuri, S., (2000), *How Now Ralph Lauren? The Separation of Brand and Product in a Counterfeit Culture,* College of Busienss Administration http://www.cba.unl.edu/faculty/igentry/acr2000.htm, (2006-11-01).
Gluck, F.W., (1980), *Strategic choice and resource allocation*, The McKinsey Quarterly, Winter, 22-23.
Grossman, M., and Shapiro, C., (1986), *Counterfeit-Product Trade*, Working Paper no 1876, National Bureau of Economic Research.
Grossman, G. M., and Shapiro, C., (1988), *Foreign Counterfeiting of Status Goods*, Quarterly Journal of Economics 92, February 1988, pp. 79-100.
Grönroos, C: (1978), *A Service-Oriented approach to marketing of services*, European Journal of Marketing, 12, pp. 588-601.
Grönroos, C., (1990), *Relationship approach to marketing in service contexts: the marketing and organizational behavior interface*, Journal of Business Research, 30, No. 1, 3-11.
Gummesson, E., (1981), *Marketing costs concepts in service firms*, Industrial Marketing Management, No.3.

H

Havlena, W. J. and DeSarbo, W. S., (1991), *On the Measurements of Perceived Consumer Risk*, Decision Sciences 22, September/October 1991, pp. 927-939.
Hawes, J. M., and Lumpkin, J. R., (1986), *Perceived Risk and the Selection of a Retail Patronage Mode,* Journal of the Academy of Marketing Science 14, Winter 1986, pp. 37-42.

I

ICC, (1997), *Countering Counterfeiting: A guide to protecting and enforcing intellectual property rights,* Counterfeiting Intelligence Bureau, International Chamber of Commerce

J

Jackson, B., (1985), *Build Customer Relationships that Last*, Harvard Business Review, November-December, pp. 120-128.
Jacoby, J., and Kaplan, L. B., (1972), *The Components of Perceived Risk*, in *Proceedings, Third Annual Conference of Association for Consumer Research,* Venkatesan, M., ed., Association for Consumer Research, Chicago, pp. 382-393.

K

Kohlberg, L., (1976), *Moral Stages and Moralization: The Cognitive Development Approach*, in *Moral Development and Behaviour: Theory, Research and Social Issues*, Lickona, T., ed., Rinehart, Holt, and Winston, New York, pp. 31-53.
KMPG and AGMA, (2005), *Managing the Risks of Counterfeiting in the Information Technology Industry*, White paper.

L

Lehman, B.A., (1996) *Intellectual Property: America's competitive advantage in the 21st century***,** Columbia Journal of World Business, no. 6, p. 6.
Levitt, T., (1983), *After the Sales is Over*, Harvard Businss Review, September-October, 87-93

M

Mackenzie, R. (2000), *Protecting Transnational Investment in Intellectual Property Rights; Legal Issues and Risk Management Strategies*, European Business Law Review, March/April, at p 105-111.
Marinovich, S., (2006), *Louis Vuitton-* King, 13th November 2006, Brandchannel.com, http//www.brandchannel.com, (2006-12-11).
McKenna, R., (1991), *Relationship Marketing*, Century Business, London.
Messick, D. M. and Brewer, M. B., (1983), *Solving Social Dilemmas: A Review*, in Review Of Personality and Social Psychology, Wheeler, L., and Sharver, P., eds., Sage, Beverly Hills, CA.

O

OECD, (1998), *The Economic Impact of Counterfeiting*, Paris: OECD Secretariat.
Olsen, J.E., Granzin, K. L., (1992), *Gaining Retailers Assistance in Fighting Counterfeiting: Conceptualization and Empirical Test of Helping Model*, Journal of Retailing, spring, pp. 90-109.
Olsen, K., OECD Secretariat (2005) *Counterfeiting and Piracy: Measurement Issues*, Background report for the WIPO/OECD Expert Meeting on Measurement and Statistical Issues, Geneva, 17-18 October 2005.
Olsen, K.,(2005), *Counterfeiting & Piracy: Measurement issues,* Background report for the WIPO/OECD Expert Meeting on Measurement and Statistical Issues Geneva, 17-18 October 2005, OECD Secretariat.
Olson, J. C., (1972), *Cue Utilization in the Quality Perception Process*, In Proceedings, Third Annual Conference of Association for Consumer Research, Venkatesan, M., ed, Association for Consumer Research, Chicago, 1972, pp. 167-179.
Olson, J. C., (1977), *Price as an Informational Cue: Effects on Product Evaluations,* in Consumer and Industrial Buying Behavior, Woodside, Sheth, Bennett (eds), North-Holland Publishing, New York, pp. 267-286.
Olson, M., (1965), *The Logic of Collective Action*, Harvard University Press, Cambridge, MA.

P

Payne, A., Christopher, M., Clark, M., and Peck, H., (1995)*, Relationship Marketing for Competitive Advantage,* published Butterworth and Heinemann, 1998.
Porter, M., (1985), *Competitive Advantage: Creating and Sustaining Superior Performance*, Free Press, New York
Putrevu S., Ratchford, B. T., (1997), *A Model of Search Behavior with an Application to Grocery Shopping*, Journal of Retailing, 73, No. 4, pp. 463-486.

R

Rao, A. R., and Monroe, K. B., (1989), *The Effects of Price, Brand Name, and Store Name on Buyers' Perceptions of Product Quality: An Integrative Review*, Journal of Marketing Research 26, August 1989, pp. 351-357.
Render, B., and O'Connor, T. S., (1976), *The Influence of Price, Store Name, and Brand Name on Perceptions of Product Quality,* Journal of the Academy of Marketing Science 4, Fall 1976, pp. 722-730.
Roselius, T., (1971), *Consumer Rankings of Risk Reduction Methods*, Journal of Marketing 35, January 1971, pp. 56-61.
Rosenberg, L.J., and Czepiel, J.A., (1984), *A Marketing Approach to Customer Retention*, The Journal of Consumer Marketing;

S

Salmon, F., (2005), *All counterfeit statistics are bullshit,* http://www.felixsalmon.com

Samuelsson, J., and Johansson, D., (2004), What is the brand Nudie worth? A study in valuation methodologies' applicability and validity, Master Thesis, School of Economics and Commercial Law.

Sanderson, R., (2006) *Nokia's Very rings up sales of $338,500 phone*, Reuters, 19th October 2006, https://today.reuters.com/news.

Schultz, C. J., and Saporito; b., (1996), *Protecting Intellectual Property: Strategies and Recommendations to Deter Counterfeiting and Brand Piracy in Global Markets*, The Columbia Journal of World Business, Spring 1996, pp. 18-28.

Sykes, G. M., and Matza, D., (1957), *Techniques of Neutralization: a Theory of Attitude: Behaviour Delinquency*, American Sociological Review 22, December 1957, pp. 210-221.

T

Tan, P., (2002) *Vertu – Upwardly Mobile,* 18th of March 2002, Brandchannel, http://www.brandchannel.com/print_page.asp?ar_id=61&section=profile (2006-10-12)

Tellis, G. J., and Gaeth, G. J. (1990), *Best Value, Price-Seeking, and Price Aversion: The Impact of Information and Learning on Consumer Choices*, Journal of Marketing 54, April 1990, pp. 34-45.

W

Weber, J., (2002) *The Ever-Expanding, Profit-Maximizing, Cultural-Imperialist, Wonderful World of Disney: The Serious business of selling all-American fun,* Wired October 21002, http://www.wired.com/wired/archive/10.02/disney.hrml, (2006-12-14).

Wiener, J. L., and Doescher, T. A. (1991), *A Framework for Promoting Cooperation,* Journal of Marketing 55, April 1991, pp. 38-47.

Wilkes, R. E., (1978), *Fraudulent Behaviour by Consumers,* Journal of Marketing 42, October 1978, pp. 67-75.

Wright, B., (2006), *A Time Of Reckoning,* 3rd Annual Anti-Counterfeiting and Piracy Summit: Threatening Health, Safety, and Jobs: The True Cost of Counterfeiting and Piracy, at the U.S. Chamber of Commerce, Washington, D.C., September 29, 2006, http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/timeofreckoning-bobwright.pdf

5.3 Legal Sources

Swedish Trademark Act (1960:644)
TRIPS Agreement
European Community Treaty of Nice

5.3.1 Case law

ECJ, C-102/77, (1978), *Hoffman-La Roche*, 23rd of May 1978
ECJ C-39/97, (1997), *Canon*, 1997.
ECJ, C-349/95, (1997), *Ballantines*, 11th of November 1997
ECJ, C-299/99, (2002), *Philishave*, 18th of June 2002

5.4 Internet resources

Interbrand's website Brandchannel, http://www.brandchannel.com/education_glossary.asp
http://www.interbrand.com.
ICC, http:///www.icc-ccs.org

ACG, http://www.a-cg.com
Nokia's Annual and Quarterly information of 2006 , at http://www.nokia.com/A4126495

5.4.1 Podcasts

Christensen, Clayton. (16/03/2004) *Capturing the Upside.* Open Source Business Conference in San Francisco. Published by ITConversations. http://www.itconversations.com

5.4.2 Blogposts

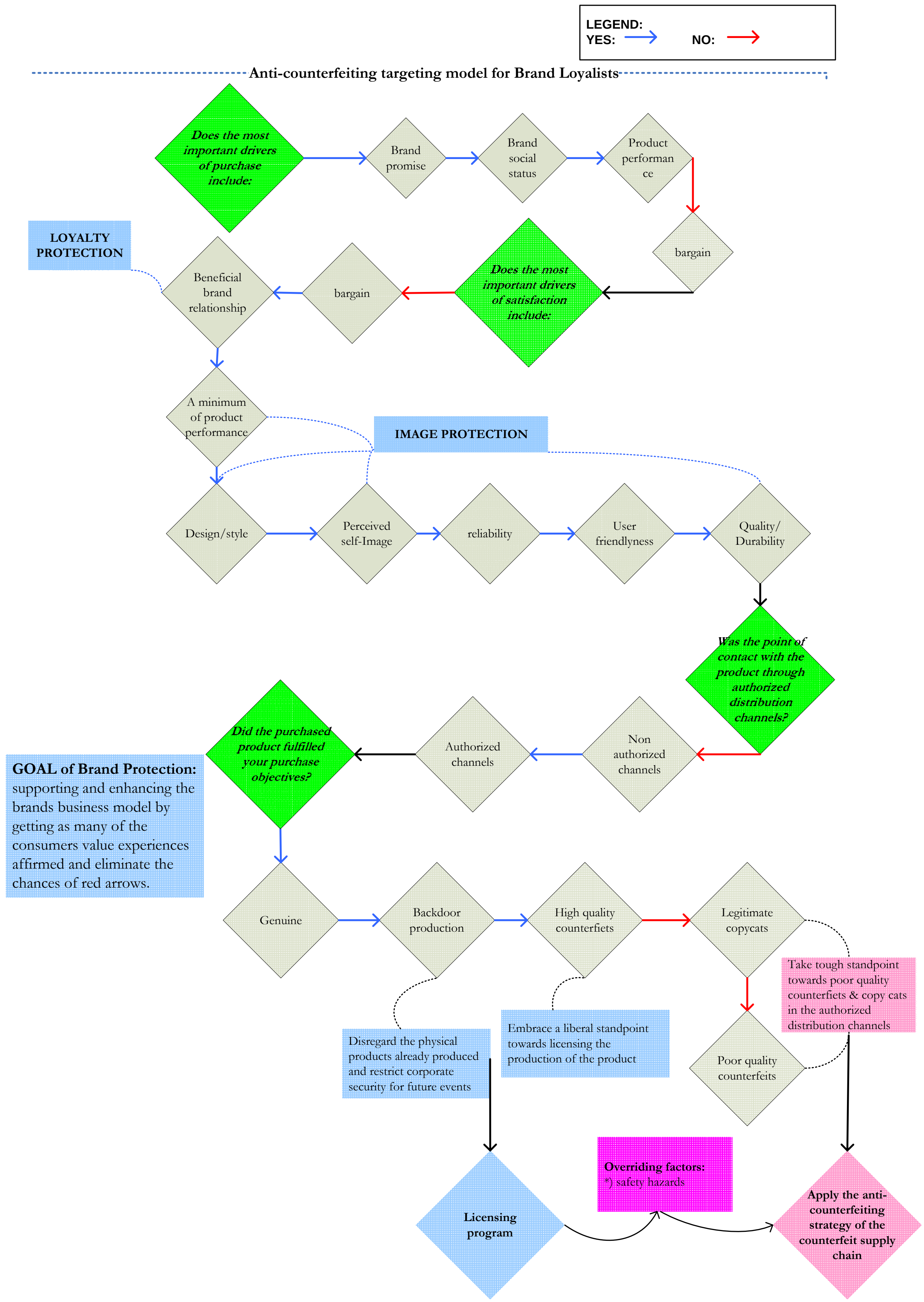
Constantinou, A., (2006), *Customised Design Manufacturers are here,* September 21, 2006, @ 10:15, http://visionmobile.com/blog, http://visionmobile.com/blog/2006/09/customised-design-manufacturers-are-here/ , (2006-11-27).
Figment! (2005), *Fake Disney merchandise in China*, posted by Figment! @ 8:23 2005, http://www.webdisney.com/news/2005_09_01_default.asp, (2006-12-01).

5.5 Interviews

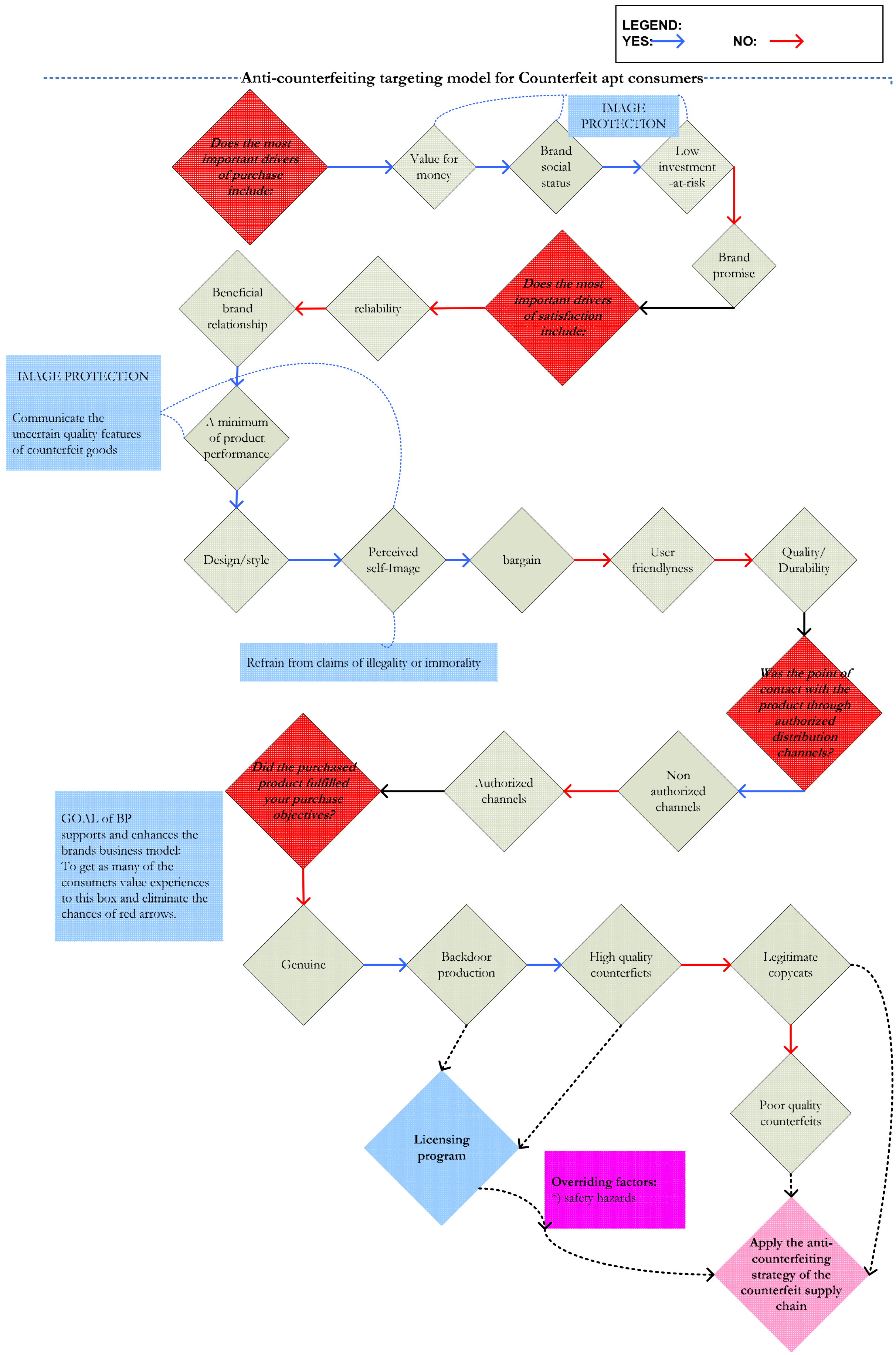
Nokia Corporation

Kaisu Korpua, Senior Trademark Manager, Nokia Oy, Finland.
Lucy Nichols, Director IPR, Brand Protection, Nokia Corporation, USA.
Angel Escoriaza, Legal Counsel, Brand Protection, Nokia Oy, Finland.
Julia Spiers, COIN, Brand Management, Nokia Ltd. UK

6. APPENDIX 1. THE CONSUMER CENTERED ANTI-COUNTERFEITING TARGETING TOOL



LEGEND:
YES:
NO:
Anti-counterfeiting targeting model for Brand Loyalists
Does the most important drivers of purchase include:
Brand promise
Brand social status
Product performan ce
bargain
LOYALTY PROTECTION
Beneficial brand relationship
bargain
Does the most important drivers of satisfaction include:
A minimum of product performance
IMAGE PROTECTION
Design/style
Perceived self-Image
reliability
User friendlyness
Quality/ Durability
Was the point of contact with the product through authorized distribution channels?
Did the purchased product fulfilled your purchase objectives?
Authorized channels
Non authorized channels
GOAL of Brand Protection: supporting and enhancing the brands business model by getting as many of the consumers value experiences affirmed and eliminate the chances of red arrows.
Genuine
Backdoor production
High quality counterfiets
Legitimate copycats
Take tough standpoint towards poor quality counterfiets & copy cats in the authorized distribution channels
Disregard the physical products already produced and restrict corporate security for future events
Embrace a liberal standpoint towards licensing the production of the product
Poor quality counterfeits
Overriding factors:
*) safety hazards
Licensing program
Apply the anti-counterfeiting strategy of the counterfeit supply chain


LEGEND:
YES:
NO:
Anti-counterfeiting targeting model for Counterfeit apt consumers
IMAGE PROTECTION
Does the most important drivers of purchase include:
Value for money
Brand social status
Low investment -at-risk
Brand promise
Does the most important drivers of satisfaction include:
reliability
Beneficial brand relationship
IMAGE PROTECTION
Communicate the uncertain quality features of counterfeit goods
A minimum of product performance
Design/style
Perceived self-Image
bargain
User friendlyness
Quality/ Durability
Refrain from claims of illegality or immorality
Was the point of contact with the product through authorized distribution channels?
Non authorized channels
Authorized channels
Did the purchased product fulfilled your purchase objectives?
GOAL of BP
supports and enhances the brands business model:
To get as many of the consumers value experiences to this box and eliminate the chances of red arrows.
Genuine
Backdoor production
High quality counterfeits
Legitimate copycats
Poor quality counterfeits
Licensing program
Overriding factors:
*) safety hazards
Apply the anti-counterfeiting strategy of the counterfeit supply chain

7. APPENDIX 2) THE DISCUSSION OF THE IMPACT OF COUNTERFEITS ON A BRAND OWNERS' BUSINESS

Unfortunately, the accurate substitution degree of Nokia/Vertu products is unknown to us, and more regrettable unexplored. As mentioned before, the accurate degree of substitution between genuine and counterfeit goods for a particular product for a specific types of consumer is the key in order to unveil the true value of fighting counterfeiting. For the benefit of this paper, I am sorry that there are no available studies of a reasonable substitution degree regarding mobile phones or mobile phones enhancements. Nevertheless, I have taken the liberty out of sheer interest to venture out on a thought experiment based on the material I have presented to you in this paper. Regarding the substitution degree, the situation will stay unclear of the brand owners are not willing to investigate themselves what the average substitution rate for their most valuable brands are.

These scenarios A1, B1 and C1 assumes a western perspective, where the consumer have access point to the products via authorised distribution channels, i.e. ordinary retail stores, in the European, and American markets.

Scenario A1)

Counterfeiting would have virtually no impact to the brand owner's business

A) the counterfeit goods are non-deceptive[151] AND
B) the sale of the counterfeit goods does not affect the perceived image of the brand in the eyes of the target customer, AND
C) a certain required minimum of product performance exists, AND
D) there are calculated safety risks and no more, AND
E) [Type of consumer] The customer would not buy a genuine product in the first place, and
F) [Realization of purchase objectives?] The own distribution channels were not contaminated with "true" counterfeits. Because if so, the consumer is not in the position of making a conscious decision to purchase counterfeit over a genuine product. If the products are included in the wider interpretation of counterfeits, i.e. products branded without proper license, they do not deviates from the expected product performance and has little, if non, effect on the consumers' perception of the branded product.

From the above scenario I conclude that factors E) type of customer and F) most probably are the crucial factors in determining the impact on customers' perceived value. This is due that the brand value is created by the customers' expected value and the experienced value of the purchased product.
This evaluation is depended on the type of consumer – whether she is a Brand Loyalist or a Counterfeit Apt consumer – and where the point of contact was with the deliverer of the value proposition, i.e. the distribution chain. The own distribution chains are in fact contaminated with a certain amount of counterfeited goods, either truly counterfeited, or refurbished, parallel imported, backdoor production and branded without proper license. Honestly speaking, *the real threat to the Nokia/Vertu brand is poor product performance (in relation to the expected performance of the specific customer) and a skewed value experience that poor quality products offer. Conversely, when the products*

151 See Grossman, G. M., and Shapiro, C., (1988), *Foreign Counterfeiting of Status Goods*.

are perceived by the customers to delivering their brand promise, the products are not harmful to the perceived profit potential of the brand – regardless of its' legal definition.

Although it is suggested by Gentry et al (2000) that the brand and product is separated to some degree, the product still has to showcase adequate product performance and the brand must be perceived true to its' promised added value. However, it is only the *true counterfeits* (i.e. not including backdoor production and parallel traded goods), where there is a troublesome deviance in quality of performance of the product in question. Thus, there are reasons to further examine the quality of the backdoor production and the parallel traded goods, to ascertain whether they uphold the expected quality or not.

Scenario B1)

Major impact

1) The customer want to buy a genuine product, and
2) The own distribution channels are contaminated with true counterfeit branded goods of poor quality; and/or
3) The product had a safety hazard and caused harm to the consumer

This scenario has an augmented risk of disappointing the customer if the product underperforms, since it is assumed that this customer is loyal to Nokia and hence its' most valuable customer, making any change in volume of this group will have a major impact on Nokia sales, social status and consumer loyalty. Then of course would an occurred safety hazard have a negative impact on the business of Nokia.

Scenario C1)

Little impact

1) the customer might buy a genuine product
2) the own distribution channels are contaminated with counterfeit branded goods

Result: brand is risk mitigant and guarantee of performance, disappointment with purchase potentially dangerous for Nokia. Risks loosing recurring customers which translates into risk of loosing growth potential as this group represent possible future customers of Nokia products.