

CHAPTER 1 - INTRODUCTION

“There are two categories for the things that are counterfeited.

There is everything and there is anything...” (interview with

Police Intellectual Property Crime Unit Officer).

The trade in counterfeit and pirated goods is stated to be one of the fastest growing businesses in the world (Lin, 2011). The World Trade Organisation estimates that 7% of all global commerce is counterfeit (UNODC, 2015). The World Economic Forum goes further, suggesting that in 2015 counterfeiting and piracy equated to 10% of the global trade in merchandise, costing the global economy \$1.77 trillion (World Economic Forum, 2015: 3; see also UNODC, 2015). We must acknowledge that, of course, no one knows the scale of counterfeit trade, and there are problems with the estimates – when faked goods are valued as directly losing the value of the originals, which assumes all purchasers of counterfeits would have bought a full price original, and more generally a reliance on heroic estimates from reputable bodies and a tendency for large estimates to trump smaller ones (Andreas 2010; see also Intellectual Property Office, 2017). Despite the caveats, it is reasonably safe to accept the international law enforcement agencies’ view that the trade in counterfeit and pirated goods is now one of the world’s most profitable illicit markets.

Product counterfeiting takes place in a number of dimensions, which include safety critical and non-safety critical goods, deceptive and non-deceptive counterfeits, and high and low-quality fakes. The level of imitation and intellectual property (IP) infringement can also vary from the unauthorized use of a brand name, to the use of intentionally incorrect names and logos that resemble a brand or the unauthorized sale of a legitimately produced designer product (see Lin, 2011: 5). Indeed, ‘counterfeiting’ has become catch-all phrase used to encompass the illicit production and distribution of goods and packaging that infringe intellectual property rights (IPRs). The category includes patents, trademarks and copyrights, as well as poor quality and fake goods which use ‘fake brands’ created by the counterfeiters themselves and therefore do not involve IP infringement (Shen, 2017). In some instances it can be useful to situate the production and distribution of fake goods in their respective legal categories, which include counterfeiting (goods violating a trademark, design rights or patent), piracy (tangible goods violating a copyright), imitations, grey area products and custom-made copies (Prendergast et al. 2002 in Gessler, 2009:36). This is the focus of this book, though we shall clearly show how other forms of illicit and licit trade become entangled within that ambit – as when counterfeit trade is compounded by customs misdeclaration or plain old smuggling to evade duties, which can also involve original products, and trade based money laundering for instance.

As the opening quote suggests, the scope of product counterfeiting covers virtually every type of commodity.¹ Statistics on seizures of tangible goods suggest burgeoning markets in both non-safety-critical goods such as jewellery and watches, handbags and luggage, sports goods, clothing and footwear (Wall and Large, 2010), as well as safety-critical goods that can pose a significant risk to consumers, including food, alcohol (see Lord et al., 2017; Shen, 2017; Shen and Antonopoulos, 2016), tobacco (Shen et al., 2010), children's toys and games, cosmetics, pharmaceuticals (Hall and Antonopoulos, 2016), pesticides, defence/military equipment (Sullivan and Wilson, 2016), electrical equipment and appliances, and car and aeroplane parts (Yar, 2005). Official knowledge indicates that if we look at the market in fast moving consumer goods for instance, then 6.5% of all sports(wear) goods, 7.8% of cosmetics and 12.7% of luggage/handbags sold in the EU are in some way counterfeit (Office for Harmonization in the Internal Market, 2014; 2015).

The seriousness of harms associated with counterfeit products tends to be ignored or underestimated. The International Chamber of Commerce (ICC) suggests that the infiltration of counterfeit goods in the legal supply chain 'creates enormous drain on the global economy, crowding out billions in legitimate economic activity and facilitating an "underground economy" that deprives government of revenues for vital public services, forces higher burdens on tax payers, dislocates hundreds of thousands of legitimate jobs and exposes consumers to dangerous and ineffective products' (ICC, 2011:1). As we shall show different modalities of counterfeiting create one or all of these effects. But it is worth contrasting the popular discourse that it is 'fun' choosing cheap imitations, with the number of international cases that highlight the serious health risks associated with counterfeit safety-critical goods. Recent examples include the 45 percent of road fatalities in Oman that can be attributed to counterfeit spare parts in 2012 alone (Interpol, 2014) and estimates claiming that the trade in counterfeit, falsified and substandard medicines is responsible for the death of up to one million people worldwide every year (Southwick, 2013; Ossola, 2015; see also IRACM, 2013; Hall and Antonopoulos, 2016; Hall et al. 2017). It is too simple though to divide counterfeiting that deceives the consumer and that in which they collude. In the UK, the Home Office estimates the social and economic costs of counterfeiting – which include lost revenue to legitimate business, lost revenue to the exchequer, lost jobs, and enforcement costs including criminal justice costs – at £400 million per annum (Mills et al., 2013). All too clearly, knowledge of such

¹ The European Union Intellectual Property Office (EUIPO) identifies 12 categories of counterfeited products: 1. Foodstuff, alcoholic and other beverages; 2. Body care items; 3. Clothing and accessories; 4. Shoes including parts and accessories; 5. Personal accessories; 6. Mobile phones including parts and technical accessories; 7. Electrical/electronic and other equipment; 8. CD/DVD, cassette, game cartridges; 9. Toys, games (including electronic game consoles, and sporting articles; 10. Tobacco products; 11. Medical products; 12. Other products (e.g. labels, tags, stickers, packaging material, vehicles including accessories and parts).

economic costs and social harms depend on a number of contextual variables such as the reporting and recording of incidents, the level of intensity of law enforcement and the priorities of various state agencies.

In recognition of the sheer volume of fake goods permeating various markets, regulatory and law enforcement agencies are paying increasing attention to product counterfeiting. However, outside of studies associating the revenue streams of counterfeit markets with the activities of violent groups in conflict², little is known about the everyday financial management of the counterfeit trade. Whilst flows of counterfeit goods involved in the trade have been placed under academic and popular scrutiny, financial mechanisms that enable these flows have largely escaped attention. For instance, Chaudhry and Zimmerman's (2008) conceptual framework does not mention finance in either trading environment or kinds of remedial actions undertaken (see also Chaudhry, 2017). This is despite the fact that over the last two decades official and media discourses have paid increasing attention to 'organised crime' finances in general, often portraying crime-money as a corruptive force, a threat to social life and the stability of national and global financial systems (for a critique see van Duyne & Levi, 2005; Reuter, 2013; see also Antonopoulos and Papanicolaou, 2018).

Yet these accounts have little to say about the everyday nature and dynamics of 'criminal' investment practices, and research on the financial management of illegal markets and other manifestations of 'organised crime' remains limited. Although considerable work has been done on the disposal of the *proceeds* of crime, global money laundering (Schneider, 2012; 2016) and the financing of terrorism (e.g. Levi, 2010a; Silke, 2000), little has been done in terms of analysing the individuals, structures and processes involved in the '*preceeds*' of crime (Levi, 2010b: 38; see also Reuter, 1985; Moneyval, 2005; Petrunov, 2011; Kruisbergen *et al.*, 2012; Soudijn and Zhang, 2013). Indeed, as the Head of Europol's Financial Intelligence Unit noted in an event held at the Dutch Ministry of Security and Justice in 2015, "very little is known about the financial management of organised crime..." (Navarrete, 2015). This is surprising given the fact that financing is a horizontal issue for all illicit markets (Hicks, 2015: 1). One exception is the Financing of Organised Crime Project (CSD, 2015), which specifically

² Counterfeiting has been linked with terrorist and separatist groups in Northern Ireland, Spain and Chechnya, as well as with Hezbollah, Al-Qaeda, and ISIS, who are reported to be using the revenue generated from the counterfeiting business as a funding source for conflict (see Union Des Fabricants, 2016). Allegedly even the North Korean regime has been involved in the counterfeiting and international distribution of cigarettes and currency (see von Lampe, 2016). In the UK, it has been suggested that the Irish Republican Army (IRA) has been involved in the counterfeiting of CDs, game consoles, and designer clothes as a means of buying arms. However, "it is unknown how much of the money generated by these counterfeiting operations goes to terrorist groups and how much is retained for criminal profits" (EUROPOL, 2013: 2). So whilst it is clear that some terror groups do use counterfeit goods to finance themselves, it is not the case that the majority of counterfeit trade is implicated in such financing – despite tendencies in the media and by lobby groups to imply it is so.

focused on the processes and structures involved in financial investment and management in the illegal tobacco trade, cocaine market and VAT fraud across European member states (see also Antonopoulos and Hall, 2015; Hall and Antonopoulos, 2017). Another is the relatively sound understanding of finance-related issues in drug markets more generally (see Reuter *et al.*, 1990; Naylor, 2004; Brå, 2007); existing work addresses prices, costs of doing business (Caulkins *et al.*, 1999; Moeller, 2012), investments and money laundering. At the other end of the scale there is good aggregate data on the uses of legitimate trade to enable illicit flows of finance (e.g. Cobham *et al.*, 2014).

The gap in knowledge about financial management in the counterfeiting business raises various questions: What are the various forms and sources of financing in counterfeit markets? Which financial processes and practices are used by those involved in product counterfeiting? What (if any) interconnections exist between criminal structures involved in counterfeiting and legitimate businesses or financial institutions? Do information and communication technologies (ICTs) and e-commerce markets offer enhanced financial opportunities for counterfeiters, and, if so, in what ways? How do these online processes interact with physical flows of counterfeit goods? Moreover, it raises questions about the role of the nature and forms of the money involved. It asks about the relationship of digital and physical money forms, and different quasi-money forms that might be exchanged. It also picks up from classic theorising about money that emphasises that it serves precisely as an abstract form – with Georg Simmel arguing in *The Philosophy of Money* the meaning of money is confined exclusively to its quantitative sum and that only money is ‘free from any quality and exclusively determined by quantity’ (2004: 210, 301). Money means only that which it can purchase and dissolves its own traces and origins. This cleansing effect is a sentiment echoed in Paul Stoller’s (2002) work on West African crafts commodified and turned into art in New York, where a Muslim trader sells what are, to him, idolatrous images, and reinvests the money in paying for more to be made, in order to feed his family; for him ‘money has no smell’. Money derived from illicit trades such as counterfeiting clearly walks a tightrope, of seeking to lose its origins, of being ‘laundered’ and itself ‘laundering’ the gains, yet risking being tainted by its origins – of having a bad smell. We shall show that the forms and kinds of money generated and used have ‘social meaning’ and not just in legal senses, but in how they are purposed, understood and exchanged (Zelizer, 2011).

This book grapples with these questions. The overall aim is to investigate techniques of financial management in the counterfeit trade. In doing so it will suggest that the transnational counterfeit trade is not some ‘other economy’ run by a separate class of criminal actors, but rather it is intimately tied to ordinary trade, local criminal entrepreneurs and congeries of actors finding arbitrage opportunities created by shifting goods across consumer markets. Focusing on tangible goods, it addresses the ways in which capital is secured to

allow counterfeiting businesses to be initiated and sustained, how entrepreneurs and customers settle payments, the costs of conducting business in the counterfeiting trade, and how profits from the business are spent and invested. The study covers the UK in the broader context of what is a distinctly transnational trade. To map the main physical and financial flows in counterfeit markets, the project focuses on trade with the People's Republic of China (hereafter, China). Not only is China a dominant manufacturing force in the global economy with an advanced export infrastructure, it is also the major global source of counterfeit items (Intellectual Property Office and Foreign & Commonwealth Office, 2015; see also Lin, 2011, Chaudhry & Zimmerman 2008). The study explores illicit businesses and financial flows between the UK and China and how they are implicated in the transnational organisation of the counterfeit trade (see Andreas, 1999).

The book consists of five chapters including the introduction. Chapter 2 provides a general overview of the methods and data used in the study. Chapter 3 offers an account of the nature and dynamics of the counterfeiting business. Chapter 4 deals with the financial aspects of the trade in counterfeit goods. Chapter 5 outlines the main conclusions from the study and suggests some directions for future research in the area of counterfeit commerce.