

QUALITATIVE STUDY ON RISKS POSED BY COUNTERFEITS TO CONSUMERS



Contents

FOREWORD	3
EXECUTIVE SUMMARY	4
INTRODUCTION	7
METHODOLOGY	9
GENERAL FINDINGS	15
ANALYSIS OF RISKS	17
CONCLUSIONS	39

QUALITATIVE STUDY ON RISKS POSED BY COUNTERFEITS TO CONSUMERS

JUNE 2019

FOREWORD

QUALITATIVE STUDY ON RISKS POSED BY COUNTERFEITS TO CONSUMERS

One of the most popular misconceptions about counterfeiting is that idea that producing and selling fake goods is a victimless crime. As those who are closely involved in combatting this issue can attest, this is far from being the case.

Members of the public are being misled about the quality and the source of what they purchase and are often also put in danger. The increasing production and distribution of dangerous counterfeits has been a recurrent topic raised by enforcement authorities, right holders and other representatives of private sector associations and federations at the seminars, conferences and training courses that have addressed the issue.

However, before the current study there was no clear picture about the kind of risks that this phenomenon poses for society, the most common being exposure to hazardous chemicals and toxins. Toys, medicines, and motor vehicle parts are all being targeted. This qualitative study covers seven common risk types facing consumers from dangerous goods marked as counterfeit by market surveillance authorities.

It sets out to provide a detailed and scientifically viable analysis of the dangers presented. As such, it is a first step towards understanding better the scope of the problem and will help enforcers target their actions in response.

Christian Archambeau
Executive Director, EUIPO

EXECUTIVE SUMMARY

QUALITATIVE STUDY ON RISKS POSED BY COUNTERFEITS TO CONSUMERS

Research has shown that counterfeit goods are often produced by criminal networks¹. Enterprises involved in the production of goods that wilfully infringe intellectual property rights (IPR) are not usually concerned with the quality, and more importantly, the safety of their products. They can contain substances or components that do not meet European safety requirements and therefore present potentially dangerous risks to the health and safety of consumers, thus going against the requirement that only safe products² can be placed on the EU market.

The European Observatory on Infringement of Intellectual Property Rights (the Observatory) has investigated the relationship between counterfeit and unsafe goods from the perspective of both IP infringement and the non-conformity to health and safety requirements in place. For this, various options to collect the available qualitative and quantitative data that could be useful for this study were investigated.

This qualitative study shows the extent of the dangers to health posed by counterfeit goods, as evidenced by the alerts submitted by EU market surveillance authorities (hereinafter, MSAs) in the European Commission's "Rapid Alert System for dangerous non-food products" (RAPEX system); the only system available to report measures taken by authorities against unsafe products found in the markets across European countries³.

In fact, RAPEX system relates to products bearing the double characteristic of being unsafe and counterfeited, or at least suspected of being a counterfeit, and marked as such by the operating MSA. The report concentrates on the seven most common risks reported in the alerts analysed. These are: chemical, injuries, strangulation, choking, electric shock, Damage to hearing and Fire risks . They

¹ 2017 Situation Report on Counterfeiting and Piracy in the EU: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Situation%20Report%20EUIPO-Europol_en.pdf

² "Safe product" as defined in article 2.b of Directive 2001/95/EC on general product safety

³ EU Member States + European Economic Area (EEA) countries (Norway, Iceland and Liechtenstein) https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/index_en.htm

represent nearly 92% of all the risks identified through those alerts. The analysis of RAPEX alerts from 2010 to 2017 shows that:

- 97% of recorded dangerous counterfeit goods were assessed as posing a serious risk.
- Toys are the most popular type of product followed by Clothing, Textiles and Fashion Items. In fact, the end users of 80% of the goods reported to be dangerous and counterfeit were children (toys, childcare items and children's clothing).
- The most common danger reported (32%) was related to exposure to hazardous chemicals and toxins that could cause acute or long term health issues from immediate or long term exposure.
- 24% of the dangerous products recorded as counterfeit posed more than one danger to users.
- The causes of the risks identified ranged from poorly constructed products, use of inferior supplies and components to the lack of understanding of regulations or safety mechanisms.
- China was recorded as the largest source of dangerous counterfeit products within the EU with 73% originating from the country between 2010 and 2017 while the European Union accounts for 13% of products.

Upon review of these data sources it was clear that while the information available is enough to describe the risks related to goods suspected of being counterfeit and to show the implications through clear examples, the dataset was not sufficiently large enough to serve as a base a quantitative report.

While market surveillance authorities (MSAs) should notify in RAPEX all measures that are taken against dangerous products and include indications whether such products are or maybe counterfeit from the analysis we can deduct that not all measures taken against such products that also constituted an IPR infringement have been reported. The research thus highlights a potential opportunity for further collaboration with MSAs to understand the reasons behind counterfeiting and provide assistance to them when they encounter these possible counterfeit products, including the possibility to grant them access to the EDB database.

The term "dangerous" has often been quoted in press releases and in statements by operating law enforcement agencies when detaining certain types of goods. However, assessments into the potential risks posed to consumers by the goods are rarely conducted. Conversely IPR infringing goods are destroyed shortly after their illegal nature has been confirmed by the relevant right holders, in

accordance with the provisions contained in the Regulation (EU) No 608/2013⁴. As such, they are not tested for potential risks they pose

The abovementioned shortcomings highlight that there is not a clear picture of the phenomenon of dangerous counterfeited goods in the EU and more needs to be done to gather information on the subject.

The study has therefore helped identify areas where further action can be taken in the coming years:

- The Observatory could invest in activities to obtain more data from cases and operations through the analysis and tests of the goods that are potentially both counterfeit and dangerous, in conjunction with the relevant authorities. This cross information would allow a more detailed analysis in the future.
- If considered useful, the Observatory could help MSAs and Customs authorities to gain a better understanding of the working procedures of both parties – to find the easiest possible way to target both problems while investing in reporting to get a better understanding of the problems.

Finally, it is important to increase awareness of the phenomenon of organised crime selling counterfeits that may be a danger to the health and safety of EU citizens. This issue has wider implications than simple IPR infringements so more should be done in partnership with enforcers and the EU Commission to shed a light on this phenomenon.

⁴ Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013R0608>

INTRODUCTION

QUALITATIVE STUDY ON RISKS POSED BY COUNTERFEITS TO CONSUMERS

Regulation (EU) No 386/2012⁵ lays down the mission and range of activities of the European Observatory on Infringements of Intellectual Property Rights (the Observatory). One of the main goals of the Observatory is to provide of facts and evidence for use in the formulation of effective IP policies by policymakers and the creation of resources to sharpen the fight against IPR infringements. These goals will be achieved by implementing key initiatives, defined by taking into account the input and feedback received from Member States (MS), EU institutions and other Observatory stakeholders.

The purpose of this study is to report on the current situation of counterfeiting in the EU with specific regards to those goods that are or may be dangerous to the health and safety of potential consumers. The scope of the report was suggested by a number of public sector representatives during the Enforcement Working Group meeting in 2017, because of the threats posed by these goods to consumers and to society as a whole.

This suggestion was motivated by the lack of official reports focusing on counterfeited goods classified as “dangerous” and also the lack of reports dealing with the “risks ” associated with these goods.

Even though the detection of IPR infringements is sometimes associated with the term “dangerous product” when certain counterfeits are detained or seized by law enforcement authorities, these authorities are not able to provide a sufficient data or scientifically sound analysis of the dangers presented by these products. This is partly because counterfeits are often immediately destroyed once the relevant rights holders have confirmed them as “fake”. Hence no safety testing is performed by the operating authority on these products. Conversely MSAs extend deepen their verification to check the authenticity of the logos or names attached to the allegedly dangerous product due to a lack of understanding of what constitutes a counterfeit or because these tasks fall generally outside their competences restricted to identifying goods that do not comply with safety regulations.

⁵ Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0386>

EU rules on product safety are laid down in Directive 2001/95/EC⁶ of the European Parliament and of the Council of 3 December 2001 on general product safety (“Directive 2001/95”). Under Directive 2001/95 any product placed on the market in the EU needs to be safe under normal or reasonably foreseeable conditions of use. If there are no specific regulations or relevant EU standards, the conformity of a product to the general safety requirement shall be assessed by taking into account the following elements in particular, where they exist:

- (a) voluntary national standards transposing relevant European standards
- (b) the standards drawn up in the Member State in which the product is marketed;
- (c) Commission recommendations setting guidelines on product safety assessment;
- (d) product safety codes of good practice in force in the sector concerned;

- e) the state of the art and technology;
- (f) reasonable consumer expectations concerning safety.

However Directive 2001/95 does not contain rules about aspects related to infringements of Intellectual Property Rights. On the other hand, EU Market Surveillance legislation⁷ establish a cooperation obligation between customs and market surveillance authorities and to carry out controls of on products entering the EU market and to suspend the release of free circulation of those products that are unsafe to consumers.

Taking into consideration the information available, the Observatory decided to pursue a qualitative analysis and dedicate this study to the description of the risks posed to consumers by certain types of counterfeits in order to develop, as precisely as possible, a picture of the implications of the relevant risks

⁶ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety https://eur-lex.europa.eu/legal-content/EN/ALL/?WT.mc_id=Twitter&uri=CELEX:32001L0095

⁷ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93

METHODOLOGY

QUALITATIVE STUDY ON RISKS POSED BY COUNTERFEITS TO CONSUMERS

1.1 DEFINITION OF THE DATASET AND LIMITATIONS

The Observatory, in agreement with its public and private stakeholders participating in the Enforcement Working Group, decided to explore various options to collect the available qualitative and quantitative data that could be useful for this study. The following sources, in particular, were investigated:

1. **Academic research:** very limited information was available that either referred to unsafe products or to counterfeits. No academic study has been found where both types of goods are associated. This makes this study even more relevant as a pioneer research into this correlation.
2. **Counterfeits reported in The RAPEX system:** even though this system is used by MSAs to inform their counterparts about unsafe products removed from the internal market, it can also be used to report whether the goods were “counterfeit” or “possible counterfeit” as part of the information related to each case. It must be noted that the indication of whether a dangerous product is also (or possibly) counterfeit is not a compulsory requirement to submit an alert in RAPEX. Therefore the Observatory has analysed the cases provided by RAPEX.

The RAPEX data received permitted an in-depth analysis of the types of risks posed by counterfeit or possible counterfeit goods removed from the market. It provided for an initial basis and examples for qualitative analysis on the risks posed and the consequences for different types of consumers (for example children).

It must be noted that from a quantitative point of view, the size of this dataset does not allow to use the outcome of our analysis as statistically significant to assess the correlation between counterfeits and dangerous goods (191 out of 15,459 alerted products were recorded as counterfeit or potentially counterfeit products between 2010 and 2017)

1. **Further analysis on RAPEX data:** the Observatory undertook a more in depth analysis on a sample of the 15,459 alerts published in RAPEX during the same period in order to understand how many alerts could potentially be counterfeits though they were not recorded as such. The

sample consisted on 2021 alerts related to 2017 it was only possible to detect further potential cases based on the images published., as there was no possibility to verify that the dangerous goods in question were in fact counterfeits due to the limited information available, this analysis remains to a large degree conjecture⁸.

2. **Information provided by private sector stakeholders:** Observatory representatives from the private sector in the Enforcement Working Group were invited to share any report related to dangerous counterfeits especially those focusing on the technical analyses describing the composition of these goods. Although a number of interesting reports were received many were not relevant as they covered product types that are not included in this report, were from sources that could not be corroborated, or were not recent enough to be applicable. However, some have been used to provide additional information and evidence of the potential dangers.
3. **Storage and destruction facilities:** in order to further broaden the research on the quantitative side, it was decided to continue the research for additional data through an alternative approach suggested by the Enforcement Working Group. The Observatory requested the support of public sector representatives in the Enforcement Working Group to contact companies that offer services related to the storage and/or destruction of confiscated goods in their countries. Customs representatives from Czechia, Latvia, Malta, Austria and the Belgian Ministry of Economy reported that in their countries, companies like these do not perform any technical analysis on counterfeit goods when these are sent to their premises for destruction. For certain goods, there are specific procedures in place to destroy them (in order not to damage the environment) but nothing is recorded on the composition or technical features of these goods.
4. **Open Source information:** some information reported by online newspapers related to accidents which happened when consumers bought or used counterfeits. However this information was limited and, in most cases, outdated. It therefore presented enormous difficulties should the Observatory have to assess the source and corroborate the information reported by contacting the public authority concerned.

Upon review of these data sources it was clear that while the information available is enough to describe the risks related to goods suspected of being counterfeit and to show the implications through clear examples, the dataset was not sufficiently large enough to serve as a base a quantitative report only.

⁸ The sample related to 2021 alerts from 2017. It was only possible to detect further potential cases on the basis of the images published. Due to the limited information available it was decided not to take these into consideration.

For this reason research is to be based on the information contained within the European Commission’s RAPEX system as this relates to products bearing the double characteristic of being unsafe and counterfeited, or at least suspected of being a counterfeit, and marked as such by the operating MSA.

As mentioned above, RAPEX does not cover all types of products. Therefore, this report does not analyse products like food, animal feed, medicines for example. Information on the risks posed by the counterfeited goods in these product groups would have to be obtained from additional sources and would require further analysis.

1.2 THE EC RAPID ALERT SYSTEM FOR DANGEROUS NON-FOOD PRODUCTS (RAPEX)

Thanks to the Rapid Alert System (RAPEX), authorities in 31 European countries exchange information on the specific measures they have taken at national level against dangerous goods every day found in their markets, so that authorities in other EU/EEA countries can act quickly to keep consumers safe by withdrawing them from their own markets or issuing warnings.⁹

The system is managed by the Directorate-General Justice and Consumers of the European Commission. Article 12 of Directive 2001/95/EC on general product safety establishes the RAPEX system, whose functioning is based on the Guidelines for the management of the European Union Rapid Information System ‘RAPEX’¹⁰ (latest updated on November 2018). According to the Guidelines, RAPEX gives MSA the possibility to indicate in their alerts whether a product is counterfeit or potentially counterfeit, although this information is not compulsory and alerts can be submitted without such information.

The RAPEX system serves two main functions.

- Identify the threat

In the first phase, manufacturers, distributors or national authorities identify the presence of dangerous goods in a given Member State and apply preventive or restrictive measures to the product (withdrawal

9

https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/index_en.htm

¹⁰ <https://eur-lex.europa.eu/eli/dec/2019/417/oj>

from the market, recalls or stop at the border, etc.). Following this, the relevant MSA uses the RAPEX system to inform the European Commission of the risks posed by the product and the measures taken.

- Share information.

Once an alert is received, the European Commission verifies and validates the information and makes it available to all relevant national authorities through the RAPEX system. This allows authorities in other Member States to search for the notified product in their own territory and take appropriate measures to reduce the risks posed to the general public.

The information exchanged between the European Commission and the Member States is made public (with the exception of certain fields for confidential issues) through an online alert tool called Safety Gate¹¹. This enables consumers, businesses and any interested party to identify products that are dangerous in their own Member State and act accordingly.

RAPEX exchanges information on non-food consumer products, excluding medical devices and pharmaceutical goods. The product categories include, among many others:

- Childcare articles and children's equipment
- Clothing, textiles and fashion items
- Cosmetics
- Decorative articles
- Hobby/sports equipment
- Motor vehicles
- Toys

The risk types used by RAPEX are as follows:

- Asphyxiation
- Burns
- Chemical
- Choking
- Cuts
- Damage to Hearing
- Damage to Sight
- Drowning
- Environment
- Fire
- Health Hazard / Other
- Injuries
- Incorrect measurement
- Microbiological
- Security
- Strangulation

¹¹ https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=main.listNotifications

- Electric Shock
- Electromagnetic disturbance
- Entrapment
- Suffocation
- Other

Over 22,000 alerts have been submitted via the RAPEX system since it was set up in 2003. In 2017 alone, 2,201 alerts were sent by Member States via the RAPEX system, relating mostly to toys, motor vehicles and fashion items. Risks related mostly to injuries, chemical risks, choking and electric shock. Furthermore, Member States submitted nearly 4,000 reactions to original notifications during 2017 (mainly relating to motor vehicles).

RAPEX does not cover the risks caused by pharmaceuticals, medical devices or food and feed. However, specific regimes are in place for these product sectors which include authorisation procedures and licensing or prescription requirements prior to their being placed on the market. Information on risks concerning counterfeited goods included in these product groups would have to be obtained from additional sources and would require further analysis.¹²¹³

Arrangements are also in place with the General Administration of Customs China (GACC) to exchange information on the measures taken against products of Chinese origin. This allows the relevant Chinese authorities to investigate these cases and take relevant action where appropriate.

1.3 SCOPE OF THE RESEARCH

This report covers seven common hazard types. The hazard types studied for the purposes of this document have been taken from data supplied to the EUIPO by RAPEX and are derived from all RAPEX alerts pertaining to counterfeit, possible counterfeit and suspected counterfeit goods that have been deemed to pose a hazard to public health and safety across the 31 participating European countries.

As the number of products recorded in RAPEX as both dangerous and counterfeit is relatively low (a yearly average of 23) the dataset was too small to assess the most common dangers. Therefore the whole dataset taken from RAPEX (counterfeit and non-counterfeit) was used to identify the most common dangers posed.

¹² Relevant stakeholders for an analysis in this sector include, in addition to the European Commission, the European Chemicals Agency (ECHA), the European Food Safety Agency (EFSA) and the European Medicines Agency (EMA).

¹³ For instance the European Commission manages another alert system called “RASFF” (Rapid Alert System for Food and Feed) while EMA has established a notification system among national pharmaceutical authorities and agencies. Other types of counterfeits, not detected by MSA due to their specific market (e.g. ball bearings, plane spare parts), will also be covered in a separate report that could complement this research at a next step.

The examples that are taken from the RAPEX dataset are not necessarily the most recent but have been selected because they are either particularly illustrative of a given threat or trend or display a distinct attribute that supports the assertion that counterfeit items are often dangerous.

To complement the research and not be restricted only to the alerts that specifically indicate that a dangerous product is also (or possibly) counterfeit in RAPEX, further analysis was carried out using images from alerts published on the RAPEX website to identify goods that were potentially counterfeit but not recorded as such.

Many of the images published were of products that displayed the logos and branding of well-known and trusted companies but have a somewhat different appearance to that of the known originals. Given this and the fact that the originals from trusted brands meet the required European safety requirements and very rarely present specific safety risk, the assumption is that such products may indeed have fact been counterfeit. Examples of other “potentially counterfeit products” have also been detailed in the study, differentiating these from the ones originally marked as counterfeit in RA

GENERAL FINDINGS

QUALITATIVE STUDY ON RISKS POSED BY COUNTERFEITS TO CONSUMERS

Below is a presentation of the main findings of the Observatory analysis on the dangerous products marked as counterfeit or potentially counterfeit, looking at three main areas: type of product, origin and type of hazard. It must be noted that all findings and percentages relate to 191 products identified in RAPEX as counterfeit or potentially counterfeit and not to the totality of RAPEX alerts.

Toys were the **most common product type** reported as **dangerous and counterfeit** within RAPEX between 2010 and 2017. They represented almost 50% of the alerts. Most of the dangerous products that pose a chemical hazard were toys.

Another significant category of products is Clothing, Textiles and Fashion Items which accounts for nearly 30% of the alerts.

As regards the **origins of the dangerous and counterfeit products** reported, most were found to be from outside of the EU. However, a limited number of alerts were for products that originated within the European Single Market. The main countries of origin were

- 73% related to products originating from China
- 13% related to products originating from EU
- 6% related to products originating from Turkey

When analysing the **types of risks reported** it was found that many RAPEX alerts reference more than one hazard type. Certain risks are often seen in parallel as well as individually, meaning that a comprehensive analysis of all instances of a given hazard, rather than an examination of cases where only one hazard was referenced was needed. This dissection of the 2010 – to 2017 RAPEX alerts pertaining to dangerous counterfeits resulted in the following statistics:

- Chemical 32.0%
- Strangulation 17.3%
- Injuries 16.0%
- Choking 11.6%

- Electric shock 6.7%
- Damage to hearing 4.0%
- Fire 4.0%
- Other 8.4%

Therefore, from 191 related alerts starting in 2010, it has been possible to derive 225 individual instances of a specific danger being referenced. This is because some alerts contained in the RAPEX system reported more than one hazard. Of these reports 97% were recorded as having a serious risk to the health and safety of consumers.

The seven most common of these (Chemical, Injuries, Strangulation, Choking, Electric shock, Damage to hearing and Fire) form the foundation of this report and a chapter had been dedicated to each one.

ANALYSIS OF RISKS

QUALITATIVE STUDY ON RISKS POSED BY COUNTERFEITS TO CONSUMERS

1.4 HAZARD TYPE: CHEMICAL

The most common hazard found in the dataset was the danger of chemical risks. This can present both an immediate danger, for example toxic substances that can poison a consumer immediately upon ingestion, and longer term issue, such as carcinogenic substances that can cause cancer with long term exposure.

Within this category, many of the goods identified were toys, and, as a consequence, possible harm to children using the products was high. In all of the cases presented, the goods were withdrawn from the market, thus avoiding any possible negative consequences.

1.4.1 DANGEROUS COUNTERFEIT EXAMPLES

In 2015 there were six cases of counterfeit products with chemical risks reported in RAPEX. The UK and Germany both reported two separate cases of dangerous IPR infringing products in the toy category with an additional case identified in Cyprus. A further chemical hazard was also reported in the chemical products category in the Czechia.



Figure C.1. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing dolls found in UK

Analysis of these cases reveals that the first UK case, reported in February 2015, pertained to the identification of counterfeit plastic dolls from China that contained prohibited di-(2-ethylhexyl) phthalate (DEHP). This is harmful to the health of children and causes possible damage to the reproductive system.

According to the registration Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation¹⁴ the phthalates DEHP, DBP and BBP are prohibited in all toys and childcare articles. Therefore the hazard level posed by the plastic dolls was assessed as “serious” and the items were destroyed.

The second UK case dated from September 2015 and, as with the February 2015 case, related to Chinese counterfeits of similar-branded plastic dolls, the heads of which were again found to contain illegal levels of DEHP.



Figure C.2. RAPEX Counterfeit Alerts 2010 - 2017. IPR infringing dolls found in UK

RAPEX shows that these products were also destroyed before they could pose any further hazard to child welfare.

The 2 German alerts were submitted in October 2015 and related to the discovery of counterfeit light up balloons in the marketplace. Both batches originated in China and in both cases the amount of nitrosatable substances released by the balloons was found to be too high. Nitrosamines can be carcinogenic via inhalation, ingestion or dermal exposure. Therefore, a ban on further marketing of the products was imposed, before they could pose any further hazard.

Figure C.3. RAPEX Counterfeit Alerts 2010 - 2017. IPR infringing balloons found in Germany



¹⁴ Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1907R\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1907R(01))

The counterfeit toys identified in December 2015 in Cyprus and found to pose a chemical hazard were a collection of eight Chinese manufactured animal figurines in a cardboard box carrying a well-known brand. Like the dolls found in The UK, these figurines were identified as containing illegal levels of DEHP as well as di-butyl phthalate (DBP). Both of these phthalates are harmful and can cause damage to the reproductive system. In this case, the products were withdrawn from the market.

Figure C.4. RAPEX Counterfeit Alerts 2010 – 2017.

IPR infringing figures found in Cyprus



The only non-Toy categorised chemical hazard identified as counterfeit through RAPEX in 2015 was submitted by Czechia in March. It related to a branded cleaning product that had significant differences to the original product, both in terms of the packaging and the liquid inside. The packaging was described as a white bottle with spray pump and transparent cap. It differed from the original as it had different markings (there was no expiry date on the bottom and there was different marking on the material used for the bottle) and there was no gap between the spray cap and the neck of the bottle. More troubling however was the finding

that, due to its high acidity, the mixture inside the bottle could cause chemical burns and therefore, the product did not comply with the requirements of Directive 1999/45/EC¹⁵ relating to the classification, packaging and labelling of dangerous preparations. The counterfeit cleaning fluid was withdrawn from the market

¹⁵ Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31999L0045>

Figure C.5. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing products found in Cyprus



1.4.2 EXAMPLE OF POTENTIALLY COUNTERFEIT DANGEROUS GOODS NOT RECORDED IN RAPEX



A series of branded child car seats were reported in Denmark, Slovenia and Spain in 2015.

The tissue covering the car seats contained and released the flame retardant, tris (1, 3-dichloro-2-propyl) phosphate (TDCPP) which can be harmful to children, potentially causing cancer, affecting the reproductive system and disrupting normal development.

The seats, which were judged as posing a serious chemical hazard to children’s health, were recalled from the end users.

Figure C.6. RAPEX Alerts 2010 – 2017. Potential further infringements

1.4.3 ADDITIONAL INFORMATION

Spain features prominently in statistics related to counterfeit and potentially dangerous cosmetic and perfume products both in value and volume. The perceived spread of counterfeit perfumes (and the dangers thereof) were recognised and studied by the Spanish Asociación Nacional de Perfumería y Cosmética (STANPA) in a 2015 report.¹⁶ STANPA realised that it was important to highlight the health risks that counterfeit perfumes posed, given that they do not go through the same rigorous inspection that authentic products do so the chemical makeup may be different and may even contain dangerous chemicals.

With this in mind, STANPA commissioned a series of scientific comparative analyses between genuine and counterfeit perfumes that had been identified in the marketplace to better understand the potential dangers counterfeits pose. The laboratory commissioned by STANPA inspected counterfeit and genuine versions of four well known fragrances, using a gas chromatography mass spectrometer to separate and measure the chemical compounds within each. The chemical make-up of each sample of the first branded product, proved to be very different.

The genuine perfume was comprised of 36 separate compounds in unequal measure but only 14 of these were found to be present in the counterfeit version.

Furthermore, the counterfeit perfume was found to contain 16 compounds that are not part of the original product's formulation and therefore, had not passed approval for this product and could pose a chemical threat. Where the products did share compounds, the concentration was found to be much lower in the counterfeit sample, detrimentally affecting its quality.

Figure C.7. Comparative analysis #1



When the laboratory tested the second set of products, the results were even more alarming. Of the 31 compounds found in the original, only 8 were replicated in the copy. Additionally, the counterfeit contained 13 separate compounds which were not found in the original and were therefore untested, uncertified and potentially dangerous. Similar findings were made when further samples were tested.

¹⁶ INFORME SOBRE EL ANÁLISIS COMPARATIVO ENTRE PERFUMES AUTÉNTICOS Y FALSIFICADOS, Conclusiones principales, 2018, stanpa, Spain https://www.stanpa.com/files/noticias//2018-12-11_NdP_Elconsumidordebeestarinformadodelgraveimpactoydelosperifumefalsos.pdf

The conclusion of the report concluded that there were multiple differences between the original perfumes and the counterfeit versions. The main solvent used in the original perfumes was highly refined ethyl alcohol, which is in line with the solubility of the oils used. The counterfeit perfumes contained a lower alcohol purity (less defined chromatogram peaks) in a lower concentration than the originals.

The composition of the solvent levels also revealed the genuine and counterfeit products to be significantly different. In the counterfeits, ethanol is combined with diethylene glycol and diethylphthalate, while in the original products, ethanol and propylene glycol are present. Diethylene glycol, found exclusively in the counterfeits, is a toxic substance whose use, beyond mere traces is forbidden in cosmetics.

Compounds that act as ultraviolet UV filters were present in all the original products, but not in the counterfeits. These filters reduce photo degradation of perfume materials, which maintains the colour and odour during the product's useful life.

The counterfeits therefore, were not only less complex and of a much lower quality than the originals, they also all contained solvents, compounds or other substances which were not present in the originals and could pose a chemical hazard, being untested, and unapproved.

Other studies have also highlighted a series of dangerous counterfeit products associated with chemical risks .

The consumer focused “Dangers of Fakes” report produced by the Anti-Counterfeiting Group (ACG) identifies and explains the threats posed by various product groups¹⁷. Fake alcoholic spirits were found to contain high levels of methanol, a chemical that can cause blindness, coma, and even death.

The report specifically references the UK Food Standards Agency (FSA) issuing several warnings about the counterfeiting of a well-known Scotch whisky brand, which was seized by enforcement officers across the UK. Perfumes are also referenced as potentially chemically dangerous, as are counterfeit cigarettes, which contain excessive levels of tar and nicotine, presenting an increased hazard to smokers.

¹⁷ The Dangers of Fakes, UK, ACG <https://www.a-cg.org/media/publications/2017/04/27/4.pdf>

1.5 HAZARD TYPE: STRANGULATION

The second most common hazard reported in RAPEX related to counterfeit goods is the danger posed by potential strangulation. This risk mainly affects children through clothing garments and includes dangers such as cords or drawstrings getting wrapped around a child's neck causing strangulation.

1.5.1 DANGEROUS COUNTERFEIT EXAMPLES

Analysis of RAPEX reports from 2015 reveals that Bulgarian authorities identified two counterfeit, dangerous items of clothing that posed a risk of strangulation.

The first instance, reported in September, concerned the identification of a children's outfit that bore the counterfeit trademark of a high-end fashion label. It was found to be dangerous because the cords in the hood and waist areas are longer than the allowed values established in the relevant standards and may become trapped, potentially causing strangulation or other injuries. The tracksuits, which were of unknown provenance, were withdrawn from the market.

Figure S.1. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing clothes found in Bulgaria



In the second case, reported the following month, similar items of clothing were discovered. This time they were illegally branded with a famous sports clothing trademark. Once again, it was ascertained that the drawstrings in the hood were too long and might become trapped during

various activities of a child, causing strangulation. The garments, which again were of unknown origin, were withdrawn from the market.



Figure S.2. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing clothes found in Bulgaria.

Besides clothing, two separate strangulation risks were identified in the toys product category in 2010 and 2011 (clothing garments with a play value, i.e., costumes, are classified as toys for safety rules purposes).

The first, reported by Finland in July 2010 concerned the identification of a toy superhero outfit that was found to be counterfeit. The product, which originated in Taiwan, was dangerous specifically because it posed a strangulation hazard and possible injuries because it had functional cords that were intended to be tied at the back. The items were recalled.



Figure S.3. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing toy found in Finland

The second instance of dangerous counterfeit toys was reported by Hungarian officials in November and concerned the identification of counterfeit children’s mobile phones. In addition to other risks , they were found to pose a danger of strangulation because the phone cord was too long. These items, which came from China, were removed from the market by the responsible authorities.

1.5.2 EXAMPLE OF POTENTIALLY COUNTERFEIT DANGEROUS GOODS NOT RECORDED IN RAPEX

One potential example of this would be the identification of what appears to be a design infringing puffer ball toys which closely resemble the products of a well-known entertainment corporation. The items were found in Malta in October 2017 and had originated in China. It was discovered that small parts could be detached from the toy and the elastic cord could be considerably stretched during use. As a result, children could put the small parts in their mouth and choke, or the cord could get wrapped around the child's neck, causing str removed from the market and recalled from end customers.



Figure S.4. RAPEX Alerts 2010 - 2017 Potential further infringements

1.5.3 ADDITIONAL INFORMATION

Figure S.5. EN 14682: 2014

Requirement	Worn below waist	Other garments
Free end of drawstrings	<20 cm	<14 cm
Protruding Loops	No free ends	
Toggles	Must be fixed garment	
Functional Cords	<20 cm	<14 cm
Decorative Cords	<14 cm inc. embellishment	
Adjusting tabs in waist area	<14 cm	
Tied belts/sashes	<36 cm from point at which intended to be tied	

The European Standard for Safety of Children’s Clothing – Cords and Drawstrings on Children’s Clothing – EN 14682:2014¹⁸ specifies the acceptable length for items of cordage used in children’s clothing and is detailed in figure S.5.

An in depth scientific analysis of counterfeit products in this category is rarely necessary, as simple measurements or visual assessments will suffice. Anything in excess or in contravention of these standards could be considered an infringement.

¹⁸ Commission Implementing Decision (EU) 2015/1345 of 31 July 2015 on the publication of the references of standards on cords and drawstrings on children’s clothing, on carry cots and stands, on safety barriers and on changing units for domestic use in the Official Journal of the European Union pursuant to Directive 2001/95/EC of the European Parliament and of the Council <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32015D1345>

1.6 HAZARD TYPE: INJURIES

The category related to mechanical dangers such as sharp edges that can cause lacerations or tight openings in which someone can trap their fingers.

1.6.1 DANGEROUS COUNTERFEIT EXAMPLES

In December 2015 Bulgarian MSAs identified a batch of IPR infringing, children's leisure trousers that displayed images of protected cartoon characters. The authorities ascertained that the drawstrings in the waist were too long and could become trapped during various activities and cause injuries. The items were imported from Turkey and deemed to pose a serious hazard of injury, and were therefore removed from the market.

A further case of dangerous counterfeit products in Bulgaria was reported in February 2012. Authorities identified a number of folding metal play table set that displayed various pictures and inscriptions that were IPR protected. It was decided that the products posed a serious danger of injury because the table and chair did not have a braking or blocking mechanism and the distance between the moving parts was too small.

These products, which had originated in China, were withdrawn from the market and recalled from consumers by order of the authorities.

The only automotive product case reported was in 2015 and concerned the identification of a series of counterfeit branded motor racing harnesses. These posed a serious danger of causing injuries as the harness could fail at multiple points causing the wearer to be thrown out of a vehicle in the event of a crash. In this case, the authorities in the UK took action by warning consumers of the risks of purchasing and using these items. RAPEX allowed their French and Greek counterparts to react to that alert, leading to further actions in these MS.

Figure I.1. RAPEX Counterfeit Alerts 2010 – 2017. IPR infrinaina seat belts found in UK, France and Greece.



1.6.2 EXAMPLE OF POTENTIALLY COUNTERFEIT DANGEROUS GOODS NOT RECORDED IN RAPEX

Figure I.2. RAPEX Alerts 2010 – 2017. Potential further infrinaements



In March 2018, Spanish authorities identified illegally branded safety shoes, imported from China, that were found not to meet European standard EN ISO 20345¹⁹ for Personal Protective Equipment.

In this case the toecaps were too weak and could result in an injury to the user's feet in the event of an impact. This import was successfully rejected at the border before any threat could be posed to EU citizens.

¹⁹ Personal protective equipment — Safety footwear <https://www.iso.org/obp/ui/#iso:std:iso:20345:ed-2:v1:en>

**Figure 1.3. RAPEX Alerts 2010 – 2017.
Potential further infringements**



Another potential example of counterfeit products not being reported as such would be the identification of what appears to be trademark infringing power tools which closely resemble the products of an established multinational machinery manufacturing corporation. The items were found in Finland in July 2017 and had originated in China. It was discovered that the protection guard of the angle grinder could come loose and provided insufficient protection against loose flying fragments generated during use. Therefore, the product did not comply with the requirements of Directive 2006/42/EC²⁰ on machinery and the relevant European standard EN 60745, and the items were removed from the market and recalled from end users

1.7 HAZARD TYPE: CHOKING

Choking is a life threatening emergency caused by the blockage of the air passage into the lungs. In regards to RAPEX reports and counterfeit products, a choking hazard usually involves small parts that may come loose from a product and be swallowed by a user. In most cases this relates to loose parts from toys being swallowed by children.

1.7.1 DANGEROUS COUNTERFEIT EXAMPLES

In September 2017 MSAs in Cyprus identified a batch of multi-functional, battery-operated game consoles in the shape of a well-known animated figure, with counterfeit branded packaging. The toy was battery operated and it was found that the cover of the battery compartment could be easily opened without any tools making the batteries accessible.

²⁰ Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32006L0042>

If swallowed, these pose a clear danger of choking and could cause damage to a child's gastrointestinal tract. As the product did not comply with the requirements of the Toy Safety Directive and the relevant European standards EN 62115²¹, the counterfeits, which originated in China, were removed from the market.

Figure Ch.1. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing toys found in Cyprus.



Figure Ch.2. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing decorative items found in Bulgaria



Bulgarian authorities recovered a series of decorative candles which they believed could be counterfeit in June 2016. The candles were shaped as foodstuffs and were deemed dangerous due to the potential for being mistaken for real food and if pieces were detached they could become lodged in a child's windpipe. The goods were also illegally branded and originated in China. As the product did not comply with the requirements of Council

Directive 87/357/EEC²² concerning products which, appear to be other than they are, endangering the health or safety of consumers and were withdrawn from the market by the authorities.

²¹ Toy Safety Directive 2009/48/EC https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/toys_en

²² Council Directive 87/357/EEC of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31987L0357>

Dangerous counterfeit clothing items that posed a hazard of choking were found in 2013 in Hungary in the form of girls' pink T-shirts with the inscription "Minnie", decorated with rhinestones. The rhinestones posed a choking hazard for small children because they could be easily detached and placed in the mouth. The countermeasures taken by the authorities in this instance included a recall of the product from end users, as well as the withdrawal of the remaining T-shirts from the market.

1.7.2 EXAMPLE OF POTENTIALLY COUNTERFEIT DANGEROUS GOODS NOT RECORDED IN RAPEX

In March 2017, Lithuanian authorities identified dangerous toys in the marketplace. The items were described as yellow hard plastic sports cars with four wheels which were affixed by small metal screws. There were colourful stickers with plastic foil attached to the toy and in the housing of the car there was a transparent box with sweets. The toys also carried the CE mark²³.

Test found that small parts could easily become detached from the toy car (front wheels, driver's figure, exhaust) and that a small child may put them in its mouth and choke. As the product did not comply with the requirements of the Toy Safety Directive 2009/48/EC²⁴ and the relevant European standard EN 71-1²⁵, a ban was placed on any further marketing of the product. No IPR infringement was recorded despite the use of logos in the form of the stickers on the toy that are likely to be IPR protected

**Figure Ch.3. RAPEX Alerts 2010 – 2017.
Potential further infringements**



²³ CE Marking https://ec.europa.eu/growth/single-market/ce-marking_en

²⁴ Toy Safety Directive 2009/48/EC https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/toys_en

²⁵ Safety of toys - Part 1: Mechanical and physical properties https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/toys_en#This%20is%20the%20first%20publication

1.7.3. ADDITIONAL INFORMATION

As choking on small items is one of the leading causes of death and injury in infants and toddlers, a number of tests and standards apply in EU legislations (and others worldwide) to consumer goods to ensure that they are safe for end users. As highlighted in the fire section of this report, standards can vary, depending on the classification of the goods in question. One of the current methods of testing for small parts in toys is a device named the small parts test fixture (SPTF) that mimics the size of the fully expanded throat of a toddler. If a product does not fit inside the cavity of the SPTF, then it is deemed safe to play with because it will not fit in the oesophagus of a child.

EU standard EN 71-1 covers nearly all aspects of toy safety for the EU, including the types of tests that the goods must pass. One test for potential choking risks is to place the toy or component under examination (without compressing it and in any orientation) in a cylinder having dimensions of a set size. The choke test in this instance is not complicated and does not require laboratory conditions, as opposed to much of the wealth of other scrutiny to which toys must be subjected to be certified as safe. If an item fits into the SPTF, it is rejected.

Figure Ch.4. Small parts test fixture (SPTF) test

In 2017, the European Commission published 'Too good to be true? The real price of fake products'²⁶ in which it is noted that fake toys can contain dangerous materials. Examples of this include paint containing poisonous chemicals and detachable small parts, which are prohibited according to the EU toys safety legislation for

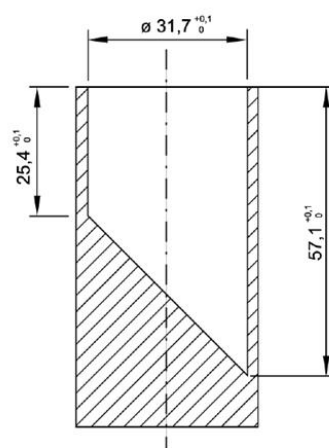


Figure 18 — Small parts cylinder



posing a choking hazard to children. Many further reports, bulletins and pieces of advice have made similar observations, in terms of both toys and other product types but it is challenging to identify concrete cases of choking by counterfeit, as the two words have been, until now, relatively un-associated.

²⁶ <https://ec.europa.eu/docsroom/documents/26721/attachments/1/translations/en/renditions/native>

1.8 HAZARD TYPE: ELECTRIC SHOCK

The electrical shock risk is a further hazard included in the RAPEX system. This danger is from live electrical parts that can cause users to receive an electric shock. In this type of risk, newer cases were found in the RAPEX system where counterfeit or suspicion of counterfeit was marked.

1.8.1 DANGEROUS COUNTERFEIT EXAMPLES

Figure E.1. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing electrical products from UK



In November 2017 UK authorities reported the discovery of a batch of counterfeit branded hair straighteners originating from China. These products were found to be dangerous in that the electrical insulation was inadequate which could lead to the accessible metal

plates becoming live. As the product did not comply with the requirements of the Low Voltage Directive 2014/35/EU²⁷ (LVD) and the relevant European standard EN 60335²⁸, the importer was forced to withdraw the product from the market.

Figure E.2. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing electrical products from UK



In August of the same year, UK agents also reported the identification of a series of counterfeit black, UK 3-pin, USB wall chargers for mobile phones, which were packaged in a clear plastic bag. It was found that these illegally branded items posed a threat of electric shock because the main cover detached from the body of the charger whilst it was charging, leaving the internal live parts exposed. Once more, in contravention of the Low Voltage Directive 2014/35/EU, the products were ordered to be recalled from the end users by the importer. The

²⁷ The Low Voltage Directive (LVD) (2014/35/EU) https://ec.europa.eu/growth/sectors/electrical-engineering/lvd-directive_en

²⁸ Standard EN 60335 Safety of household and similar electrical appliances https://ec.europa.eu/eip/ageing/standards/home/sensors-actuators-and-alarms/en-60335_en

goods had been manufactured in China.

In July 2017, Swedish authorities reported the recovery of a number of counterfeit USB mobile phone chargers and adaptors. Despite using the CE logo (a common feature of counterfeit electrical items), the devices, which originated in China, were found to have insufficient insulation and therefore, not to comply with the requirements of the Low Voltage Directive and the relevant European standard EN 60950²⁹. The goods were recalled from end users.



Figure E.3. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing electrical products from Sweden

1.8.2 EXAMPLE OF POTENTIALLY COUNTERFEIT DANGEROUS GOODS NOT RECORDED IN RAPEX



In November 2017, Polish authorities identified a batch of dangerous hammer drills from China that were found not to comply with the requirements of the Machinery Directive³⁰ and the relevant European standard EN 60745³¹, as live elements of the motor were accessible to the user. Furthermore, the appliances were found to overheat, which could also lead to the user receiving burns. These products were recalled from end users.

Figure E.4. RAPEX Alerts 2010 – 2017. Potential further infringements

²⁹ Information technology equipment – Safety IEC 60950 https://ec.europa.eu/eip/ageing/standards/home/sensors-actuators-and-alarms/iec-60950_en

³⁰ Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0042>

³¹ Hand-held motor-operated electric tools — Safety — Part 1: General requirements EN 60745-1:2009

Whilst these goods were not recognised as IPR infringing, they are in fact highly likely to have been in contravention of intellectual property, either as design infringements, or infringing copyrights. IPR law therefore could also have been used in the legal measures taken against the importers, had the drills been identified as counterfeit.

1.8.3 ADDITIONAL INFORMATION

A number of the products referenced in this chapter relate to counterfeit and potentially dangerous branded mobile phone chargers or accessories. All products produced by legitimate manufacturers for European distribution are designed to comply with international safety standards as well as standards set in EU directives such as the Low Voltage Directive (2014/35/EU³²) and Electromagnetic Compatibility (EMC) Directive (2014/30/EU³³). Regulatory conformity is strictly maintained by internal supervising processes during both manufacturing and sales.


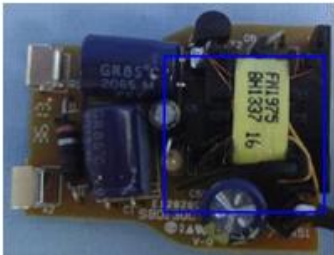

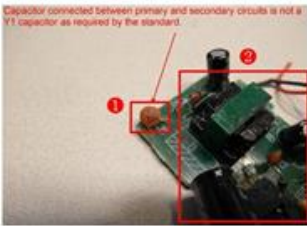
Dangerous counterfeits do not comply with the requirements in the directives above, however, as demonstrated in a series of comparative tests performed on seven items that were recovered in Sweden.

Upon analysis of a counterfeit travel adaptor there were a number of significant differences. Firstly, the name of the product was misspelt which highlighted its counterfeit nature. Secondly, and more significantly, the components used in the device were completely different to those of the legitimate product and had not undergone safety testing, and were therefore potentially dangerous. As the products were counterfeit, they are unlikely to have been manufactured to the required regulatory standard and could therefore pose a hazard of electric shock, fire or other injuries should they malfunction.

³² The Low Voltage Directive (LVD) (2014/35/EU) https://ec.europa.eu/growth/sectors/electrical-engineering/lvd-directive_en

³³ Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0030>

Figure E.5. Comparative analysis #1

	ORIGINAL Products	Counterfeit Products
Differences	<p>1. Label</p>  <p>2. PBA</p> 	<p>1. Label</p>  <p>Märknamn: CE- TE: Mod: Märkdata: input: 240V - 50/60Hz 0,15A, Output 5v 0,7A Serien: S/N SC3GL618FD/7-E</p> <p>2. PBA</p>  <p>Capacitor connected between primary and secondary circuits is not a Y1 capacitor as required by the standard.</p>
Summary	<p>1. Label</p> <ol style="list-style-type: none"> 1) No existing S/N(SC3GL618FD/7-E) in ORIGINAL product 2) TA model name different (Purchased product uses the alphabet 'O', ETAQU10EBE. ORIGINAL product uses the number '0'. <p>2. PBA</p> <ol style="list-style-type: none"> 1) No Y1 component is used for ORIGINAL product 2) Layout and components are different 	

The counterfeit was found to use an incorrect capacitor between the primary and secondary circuits, as opposed to the Y1 device used by the ORIGINAL, which is a requirement according to safety standards. Tests on six further items revealed similar results and uncovered additional dangers, such as the counterfeit Intelligent Identification USB Charger, which was found to break into pieces when examined.

Significantly, nearly all of the counterfeits were found to illegally display the CE safety mark. This is a danger as consumers would be misled into thinking that they are purchasing a safe, compliant and fully tested product, rather than a potentially dangerous counterfeit.

1.9 HAZARD TYPE: DAMAGE TO HEARING

The noise hazard as defined in the Annex to the RAPEX guidelines is present in a product that makes a noise that is too loud and can damage the user's hearing capacity. In the specific case of toys, this means children. The examples in this report are all toys as they represent most of the goods reported as a possible cause of damage to hearing. However, the hazard related to hearing damage is also found within pyrotechnic articles and machinery. Counterfeit machinery is a particular danger in this respect as

strict guidelines exist as to the decibel levels that are acceptable for safe use, predominantly under Machinery Directive 2006/42/EC³⁴.

1.9.1 DANGEROUS COUNTERFEIT EXAMPLES

Figure H.2. RAPEX Counterfeit Alerts 2010 – 2017. Potential further infringements.



In March of 2017, authorities in Estonia discovered a consignment of illegally branded toy mobile telephones which had been imported from China. They were deemed to pose a serious danger of damage to hearing as the sound level was too high. The risk of damage to hearing is set out in European standard EN 71-1³⁵ which, amongst other provisions, sets limits on the acceptable level of noise emissions for toys that make emit sounds. As these items were found to exceed the maximum limit deemed to be safe for a child to use, they were withdrawn from the market.

Soon after, a second similar batch was also recovered in Estonia, this time with different IPR infringing branding. In the same way as the first batch, the toy operated by making sounds as the buttons were pressed and these noises were once more found to exceed the provisions in European standard EN 71-1. These dangerous counterfeits were also withdrawn from the market in Estonia.

More dangerous counterfeit mobile phone toys were reported by Hungarian authorities in 2012. The illegally branded replica devices not only posed a danger of damage to hearing due to sound levels being too high, but also constituted a burns hazard due to potential overheating issues and a choking hazard due to an easily accessible battery compartment.

³⁴ Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0042>

³⁵ Toy Safety Standards https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/toys_en#Note%202.1



**Figure H.3. RAPEX Alerts 2010 – 2017.
Potential further infringements.**

The combined risks of this toy rendered it a seriously dangerous counterfeit and the IPR infringing branding lent it an air of authenticity and quality that it did not at all possess.

As they were in no way compliant with the standards in of the Toys Safety Directive and the relevant European standards EN 71-1 and EN 62115³⁶, all items were withdrawn from the market and a recall of the product from end users was issued. The goods were manufactured in China.

1.10 HAZARD TYPE: FIRE

This type of risk relates to heat or fire hazard, such as a heater fan that overheats, catches fire and causes burns, as defined in the annex to the RAPEX Guidelines. Three interesting cases were found in the sample analysed.

1.10.1 DANGEROUS COUNTERFEIT EXAMPLES

In October 2015, authorities in Sweden identified a number of what were described as imported ‘novelty lighters’. The items were illegally branded and were therefore classed as counterfeit. Significantly, the lighters were designed to appeal to children, but were not child resistant. Children could therefore play with the items and cause a fire.

As the lighters did not comply with Commission Decision 2006/502 EC³⁷, prohibiting placing novelty lighters on the market, or with the relevant European standard EN 13869³⁸, the import was rejected at the border and the products were destroyed.

³⁶ Toy Safety Standards https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/toys_en#Note%202.1

³⁷ Commission Decision of 11 May 2006 requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006D0502>

In June of the same year, authorities in Czechia reported the presence of dangerous branded long-range voice monitors, in the shape of a car key. It was found that the product was not resistant to random power surges in the electrical circuit and could therefore cause a fire. The devices, which originated in China, were subject to a ban on the marketing of the product and accompanying measures were also taken by the authorities.

1.10.2 EXAMPLE OF POTENTIALLY COUNTERFEIT DANGEROUS GOODS NOT RECORDED IN RAPEX

Shortly before Christmas 2017, Croatian authorities identified the existence of a number of potentially IPR infringing night lights, which plugged directly into a mains socket outlet. The product was described as having a design that strongly resembled an IPR protected figure which is attractive to children, but the products were not recorded as IPR infringing. Tests found that the electrical insulation was insufficient and could lead to accessible parts becoming live, or cause a fire. Croatian authorities placed a ban on the marketing of the product and forced its withdrawal from the market.

Figure F.3. RAPEX Alerts 2010 – 2017. Potential further infringements.



³⁸ Commission Implementing Decision (EU) 2017/1014 of 15 June 2017 on the publication of the references of the European standards EN 13869:2016 on child safety requirements for lighters and EN 13209-2:2015 on baby carriers in the Official Journal of the European Union pursuant to Directive 2001/95/EC of the European Parliament and of the Council <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32017D1014>

CONCLUSIONS

2019 STUDY ON RISKS POSED BY COUNTERFEITS TO CONSUMERS

This qualitative study shows the extent of the dangers to health posed by counterfeit goods as evidenced by the alerts in RAPEX, the only European system available to record the withdrawal of unsafe products from the EU market.

This report concentrates on the seven most common risks present in the alerts analysed: Chemical, Injuries, Strangulation, Choking, Electric shock, Damage to hearing and Fire risks . They represent nearly 92% of all the risks identified through those alerts. An analysis of RAPEX alerts from 2010 to 2017 shows that:

- 97% of recorded dangerous counterfeit goods were assessed as posing a serious risk.
- Toys are the most popular type of product followed by Clothing, Textiles and Fashion Items. In fact, the end users of 80% of the goods reported to be dangerous and counterfeit were children (toys, childcare items and children's clothing).
- The most common danger reported (32%) was related to exposure to hazardous chemicals and toxins that could cause acute or long term health issues from immediate or long term exposure.
- 24% of the dangerous products recorded as counterfeit posed more than one danger to users.
- The causes of the risks identified ranged from poorly constructed products, use of inferior supplies and components to the lack of understanding of regulations or safety mechanisms.
- China was recorded as the largest source of dangerous counterfeit products within the EU with 73% originating from the country between 2010 and 2017 while the European Union accounts for 13% of products.

The analysis performed during this research emphasizes that there is a lack of understanding as to the scale of the problem of dangerous counterfeit goods due to the lack of there being a clear picture of the phenomenon. The reasons identified for this include: the following

There is a general lack of data and contrasting information at EU level making it difficult to gather robust evidence based conclusion of the quantitative relationship between counterfeits and dangerous goods. As illustrated in the Introduction, several steps were undertaken by the Observatory to find additional quantitative data to establish this type of a relationship but there was insufficient information available.

An evidence base of the real risks posed by dangerous counterfeit products is not gained when products are identified. This is because assessments to analyse the potential danger of the products if they were to enter the market are rarely conducted, and in accordance with provisions in Regulation 608/2013³⁹ IPR infringing goods are destroyed shortly after their illegal nature has been confirmed by the relevant rights holders.

With specific regards to the analysis of non-recorded counterfeit RAPEX data, it seems that MSAs do not always identify unsafe products as also being counterfeited in the RAPEX system.

As the report highlights a lack of information and awareness related to dangerous and counterfeit goods more needs to be done to gather data on the phenomenon. The Observatory will look into the possibility of assessing possible ways of obtaining more data from cases and operations through analysis of products that are potentially both counterfeit and dangerous in conjunction with the relevant authorities. This contrasting information would allow for a more detailed analysis to be conducted in the future.

If considered useful, the Observatory will continue to assist MSAs and Customs authorities in gaining a better understanding of the working procedures of both parties – to find the easiest possible way to target both problems while at the same time investing in reporting in order to get a better understanding on the problems at stake.

This study has found that the risks posed by counterfeit goods can potentially be very dangerous to the end consumer. Counterfeit products made from substandard materials and components do not meet relevant standards even though they may be marked as if they do and can pose risks that range from minor injuries to fatal accidents. The report is in fact a first step in order to increase awareness on the phenomenon of organised crime selling counterfeits that may be a danger to the health and safety of EU citizens

³⁹ Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013R0608>

QUALITATIVE STUDY ON RISKS POSED BY COUNTERFEITS TO CONSUMERS

