



# CONSUMER NEWS

## SAN DIEGO CITY ATTORNEY'S OFFICE

### Counterfeiting

August 2010

California and federal law prohibit manufacturing or selling counterfeit products and passing off counterfeit items as real.

This newsletter discusses the laws in California that prohibit counterfeiting and provides tips to avoid being fooled by those selling or passing a counterfeit product. The City Attorney's Consumer Protection Unit prosecutes violations of these laws.

#### *COUNTERFEIT DESIGNER PRODUCTS:*

The term "counterfeit" has different meanings depending on the law involved. In all cases, it is synonymous with "fake."

A "counterfeit mark" is a mark that is identical with or confusing similar to a mark that has been registered with the Secretary of State or the U.S. Patent and Trademark Office.

Anyone who willfully manufactures, intentionally sells, or knowingly possesses for sale a product with a counterfeit mark commits a crime. If there are less than 1,000 articles or the total retail market value of the real product is less than \$400, the crime is a misdemeanor punishable by a fine of \$5,000 and 1 year in jail. Otherwise, it is a felony, punishable by 3 years in prison and a fine of \$250,000.

Police often find individuals selling counterfeit designer products at swap meets. On occasion, high end clothing stores will also misrepresent counterfeit designer products as the real thing and charge the going rate for the real product.

Consumers can do the following to avoid purchasing counterfeit designer products:

- Ask the seller whether the item is real.
- Visit the website of the holder of the

trademark to learn how the item is packaged and marked.

- Purchase from businesses that have a fixed location or from a store that is affiliated with that brand name.
- Check out the rating the business has from the local Better Business Bureau.
- Be wary of prices that are significantly lower than the prevailing retail price for the product.

#### *COUNTERFEIT MOVIES AND COMPACT DISCS:*

Recordings and audiovisual works are also protected by California law. The selling and giving away of recordings are also referred to in the popular press as "pirating." The record labels and distributors of music in the U.S. have formed a group called the Recording Industry Association of America which

brings civil actions on behalf of its members alleging piracy of their products. Separately, prosecutors in the state bring criminal actions when the piracy violates state law.

Anyone manufacturing, advertising for sale, renting, or selling any recording or audiovisual work which does not disclose the true name and address of the manufacturer of the work on its label commits a crime. The violation is a misdemeanor if it involves less than 100 articles, and is punishable by a fine of \$25,000 and one year in jail. Violations involving more than 100 articles are felonies punishable by a fine of \$250,000 and 3 years in prison.

Consumers can do the following to avoid purchasing counterfeit movies and compact discs:

- Inspect the package label to determine if it looks like it was produced by the original artist or distributor.
- Avoid purchasing movies that have not yet been released in DVD or Blu-Ray format.
- Check with the RIAA website to determine whether the music you wish to download is from a site that has permission from the recording studio that owns the rights to the music.
- Make purchases from established business locations.

*COUNTERFEIT MONEY, ID CARDS, TICKETS, CHECKS, AND MONEY ORDERS:*

It is a crime under both Federal law and California law to make, possess or pass with intent to defraud another person, any counterfeit bills, like dollar bills, or coins.

It is also unlawful to make or possess a counterfeit driver's license or identification card with intent that the card will be used as though it was the real thing. In addition, anyone manufacturing, selling, or furnishing a deceptive identification document violates the law unless the words "NOT A GOVERNMENT DOCUMENT" are conspicuously printed on the document along with the name of the manufacturer.

Anyone who counterfeits tickets for railroad or steamship travel or who knowingly passes or sells them as real with the intent to defraud the railroad or steamship company, commits a crime.

It is also a crime to make, possess or pass with intent to defraud another person, any counterfeit checks or money orders as though they were real.

These crimes are all considered forgery and are punishable as misdemeanors or felonies.

You can avoid being misled by someone trying to pass a counterfeit item as real by doing the following:

- Familiarize yourself with the security

features that have been added to dollar bills at the U.S. Secret Service website:

[www.secretservice.gov](http://www.secretservice.gov)

- If someone wants to pay you by check or cashier's check, meet the person at his/her bank and cash the check there.
- If someone presents to you an identification document, verify its authenticity by checking the website of the issuer for tips on security features on its cards.
- Buy tickets from the official seller for transportation rather than from people advertising tickets in the newspaper or online.

*ENFORCEMENT:*

The U.S. Secret Service investigates reports of counterfeiting of U.S. currency. Other counterfeiting violations are investigated by the local police. If you observe a violation of these laws, call your local police.

Police agencies refer these matters to the City Attorney's or District Attorney's Offices for prosecution when they have sufficient evidence of a crime.

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This newsletter was written by Assistant City Attorney Tricia Pummill.

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Sources: California Penal Code sections 350,653w, and 470-483.5..

The information provided in this newsletter is intended to convey general information and is not intended to be relied upon as legal advice.

To report violations of consumer protection laws, call the City Attorney's Hotline at **(619) 533-5600**.