Counterfeit Auto Parts: A Growing Industry Epidemic

By Neal Zipser

What you don't know about counterfeit parts can seriously jeopardize your shop.

Imagine servicing a vehicle with what you think are high-quality brake pads. But instead of friction material, the pads are made from compressed grass or sawdust. Or imagine installing an oil filter that contains crunched-up newspapers or rags and no filter element.

Brian Duggan, a director with the Motor & Equipment Manufacturers Association (MEMA), said distinguishing between real and counterfeit parts can be quite difficult.

"The problem is that the counterfeit products today have been designed to look like almost perfect replicas of the genuine product, so people don't know a counterfeit when they see one," said Duggan.

It used to be a common perception that counterfeiting was a victimless crime. Who really gets hurt buying a knockoff Coach purse or fake Rolex watch? But times have changed, and counterfeiting has become a serious issue. Fakes and knockoff parts have found their way into the aftermarket industry over the past several years.

Take Mordekhav Levy as an example. Levy was recently arrested twice in a 12-month period for selling counterfeit Ford Motor Co. parts, all packaged, labeled and distributed as genuine Ford parts. Levy, a wholesale auto parts dealer in Queens, N.Y., supplied these products to taxi and limousine fleets.

Counterfeiting in the automotive industry is not a new problem. In fact, it was one of the industries the U.S. government discussed in the 1980s when counterfeiting first became a visible threat to businesses. But the issue was swept under the rug way to soon.

Counterfeiting has made a huge comeback, thanks in particular to the enormous amount of goods coming from China and the rest of the Far East. Because of today's sophisticated global economy - with its easy and widespread access to technological advances such as computers, copiers and scanners - there are virtually no product lines that escape the reach of counterfeiters. Never before has it been so easy to re-engineer products or duplicate labels, packaging and logos with such speed, accuracy and relative anonymity.

"Counterfeiting causes economic harm, defrauds consumers, constitutes unfair competition to legitimate business and poses a danger to public health and safety. And that's where the concern is with the aftermarket industry," Duggan said.
An Uphill Battle

Just how bad is it? The problem of quantifying the costs associated with counterfeit parts is hard to do because of the lack of data of how much is actually out there. In 1997, the Federal Trade Commission estimated that counterfeiting cost the global auto industry $12 billion - $3 billion alone in the United States. It is the consensus of aftermarket parts manufacturers that those estimates are far too conservative today.

A new study by the U.S. Chamber of Commerce revealed that Ford alone is losing about $1 billion annually from counterfeit auto parts. "And that doesn't include the health and safety ramifications of fake or faulty items such as auto glass, brakes, tires, suspension and coupling mechanisms, and even seat belts. Driver safety is simply not quantifiable," said Joe Wiegand, Ford's global brand protection manager.

According to MEMA, FBI officials now put automotive parts at the top of counterfeiting activities, along with computers and apparel. Initially, counterfeiters focused on cosmetic items like car accessories and body parts. But in recent years, they have moved to safety-related components such as brake pads and suspension components.

The cost of counterfeiting falls predominantly on the aftermarket parts manufacturers. In addition to lost sales in the United States, counterfeiting prevents manufacturers from expanding into new markets, not to mention the significant costs involved in investigating suspicious companies and the ensuing litigation.

"There are also significant costs involved with changing packaging, implementing anti-counterfeit technologies and fraudulent warranty claims," Duggan said. "But what bothers manufacturers the most is the destruction of their brand names and the potential threat to consumer safety. Service facilities have to be aware of what they are putting on vehicles and the ramifications that unsafe products can pose."

According to Duggan, virtually all aftermarket products impact safety - from belts and hoses to brakes and electrical components. "The last thing anyone wants is an accident that occurs because of fake parts," he said.

Counterfeit automotive products are just a piece of the entire counterfeiting epidemic. The U.S. Chamber of Commerce estimates that counterfeiting costs U.S. businesses $200 billion to $250 billion annually, and counterfeit merchandise is directly responsible for the loss of more than 750,000 American jobs.

Since 1982 the global trade in illegitimate goods has increased from $5.5 billion to approximately $600 billion annually, according to the International Trade Commission (ITC). Bank robberies, by contrast, generally involve less than $70 million per year. The ITC adds that approximately 5 percent to 7 percent of the world trade is in counterfeit goods.

And it's just not hitting U.S. businesses in the wallet - it's also a matter of national security. Low risk of prosecution and enormous profit potential has made criminal counterfeiting an attractive enterprise for organized crime groups. Recently, there have
also been reported links between counterfeiting and piracy and terrorist organizations that use the sale of fake and unauthorized goods to raise funds and launder money.

According to a report from the International AntiCounterfeiting Coalition (IACC), "In order to survive, a terrorist organization must first develop and maintain reliable and low-key sources of funding. Behind the suicide bombers, hijackers and gunmen stand criminal entrepreneurs and financiers in suits who understand the best way to bankroll Armageddon is through the capitalist system."

**If It Sounds Too Good to be True ...**

While a better price may be appealing to a service facility looking to increase margins, it's important to realize that a zipper not working correctly on a fake Coach purse is a lot different than brakes not working on a car going 65 mph.

If the industry thinks safety concerns over counterfeit parts are overblown, it need only look to the aviation industry for proof that such problems can be serious and widespread. Between 1973 and 1993, the Federal Aviation Administration attributed 166 aircraft accidents to what it calls "unapproved parts;" that is, counterfeit or knockoff parts identified as substandard.

In one instance, "unapproved" bolts and bushings in a charter airliner were identified as the reason it disintegrated over the North Sea, killing all 55 people aboard. In another case, counterfeit parts installed during routine maintenance were the cause of a helicopter crash over New York's Hudson River, killing a traffic reporter and the flight crew.

Duggan warns that counterfeiters follow the volume, which is why parts that get replaced most often are most susceptible (e.g., brakes, filters, belts, spark plugs). However, the real giveaway to a service facility and consumer should be price, Duggan noted.

"Prices for brand-name parts that sound too good to be true have always been a tip-off for buyers to beware, but such caution alone isn't going to be enough," he said. "In the aftermarket, there have already been reports of savvy counterfeiters raising prices to just below OEM levels in order to avoid such concerns."

Counterfeiters stay in business because end-consumers rarely see the product they've purchased; it goes immediately into their vehicles. For this reason, the bargain-obsessed consumer - the one who insists that a repair person go with the least expensive option - is a contributing factor.

In addition to installing a product that threatens consumer safety, service providers have to be concerned about civil and criminal penalties.

According to Anthony Lupo, a partner with the law firm, Arent Fox, any service facility may be held liable for selling counterfeit products if it knew or had reason to know that the products were counterfeit. "Knowledge can be demonstrated by several factors - including but not limited to - the quality, price and manner of distribution of the products," Lupo said.
Lupo added that "knowledge" may be established through "willful blindness" where the service facility fails to inquire about the authenticity of the products for fear of what such inquiry may yield. This occurred in Louis Vuitton S.A. vs. Lee, where the resellers of counterfeit Louis Vuitton and Gucci leather goods clearly knew or should have known that the goods were counterfeit. The goods at issue were purchased by the resellers from "itinerant peddlers at bargain-basement prices." Furthermore, the goods demonstrated poor quality workmanship unlikely to be associated with high-end Louis Vuitton and Gucci goods. The resellers' experience in the retail handbag and luggage business and the well-known association of the Louis Vuitton and Gucci brands with high-end goods should have alerted the resellers to question the legitimacy of these goods. The court said that such willful blindness was sufficient to establish knowledge and liability.

Once knowledge has been established, a service facility may be held civilly and criminally liable for installing or selling counterfeit products. Lupo noted that a plaintiff may seek statutory damages where there is insufficient information or evidence to establish actual damages. A plaintiff may be awarded damages in the range of $750 to $150,000, and up to $1 million if the violation is willful.

**Tips on Avoiding Counterfeit Parts**

It is hard to tell if many products such as oil filters, alternators and belt tensioners are counterfeit because you would have to disassemble them to tell the difference. When disassembled, however, the inferior quality and workmanship is obvious.

So what can you do to make sure you do not become a victim of accepting counterfeit products?

- Check the price. If the deal sounds too good to be true, it generally is. Be careful when you are purchasing products that are deeply discounted, include different terms than you are used to seeing, etc.
- Know who you are buying from. Many service shops purchase their products from the same distributor or directly from the manufacturer. Be careful of someone you have never met saying they are representing the manufacturer. Ask for a business card and follow up accordingly.
- Inspect the packaging. Sometimes the packaging may be compromised. Some counterfeiters will use flimsy packaging and do not reproduce the colors you are accustomed to seeing, etc.
- When in doubt, call the manufacturer. If you suspect someone has tried to sell you fake goods or you may be in receipt of counterfeit products, call the genuine manufacturer directly. They will be more than happy to make sure your product is legitimate.

"Today's products are near replicas of the real products, so knowing what is and isn't genuine is easier said than done," said Brian Duggan, a director with the Motor & Equipment Manufacturers Association.

According to Duggan, most service facilities deny coming across counterfeit products and don't think this is an issue that could affect them. However, would they ever know if they did come across a fake part?

Earl Dohner, owner of E&E's Garage in Brookville, Ohio, and director of ASA's Mechanical Division, said his shop has yet to encounter any suspicious products. "We have a standing rule to only use two vendors for our products, so we feel we have good control of quality," he said. "I would like to think we would probably know the difference in real and fake products, based on quality and fit."
Dohner added that it's those service facilities and distributors who are trying to undercut competitors and look for the cheapest products that may be the companies that will get into trouble.

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