

ABERCROMBIE & FITCH:

Commercialization of counterfeit products and trademark adulteration.

The company

Abercrombie & Fitch is the namesake brand of Abercrombie & Fitch Co., and is sold through more than 220 stores globally and at www.abercrombie.com. Abercrombie & Fitch believes every day should feel as exceptional as the start of the long weekend. Since 1892, the brand has been a specialty retailer of quality apparel, accessories and fragrance.

Through initiatives like the Abercrombie Equity Project, A&F aims to create a sense of belonging among its customers—to empower all voices and make an impact by generating funding, enabling change and sharing the experiences of underrepresented communities.

Abercrombie & Fitch



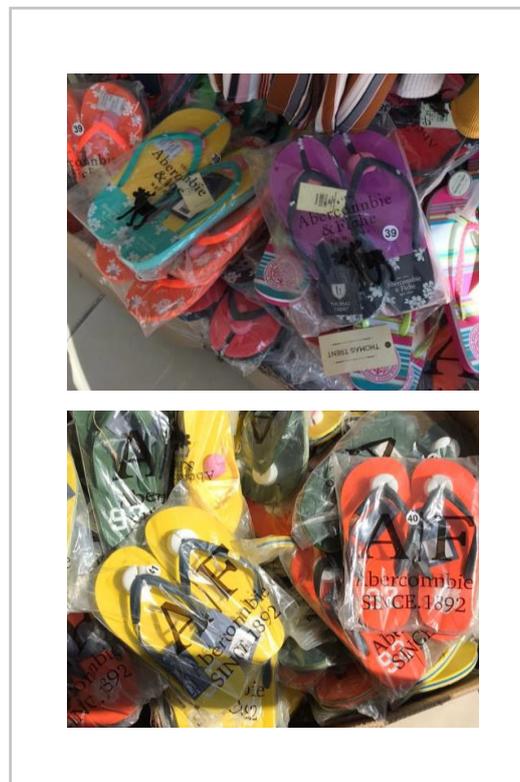
Backgrounds

In November 2020, we became aware of the commercialization of products allegedly infringing Abercrombie's intellectual property rights. Following several days of investigation, we found that a famous chain of hypermarkets in our country was offering counterfeit footwear on its shelves which improperly used Abercrombie's trademarks.

The hypermarket involved has several large branches offering a wide variety of products. In such premises, it is possible to find household supplies, household appliances, hardware products, furniture, perfumes and cosmetics, automobile articles, among many others.

Simultaneously, as a result of the investigation carried out by the anti-piracy division, we identified the company that was importing the counterfeit products. Following this, we visited the commercial premises of the importer, which is located in a well-known shopping center in the city of Montevideo, and there we detected that the merchandise in question was likewise being commercialized.

This company is engaged in the sale of clothing and footwear for adults and children, and has a large showroom where it is possible to find all the clothing on display. In addition, the company distributes merchandise to different stores in the country, including the well-known hypermarket.



Trademark infringement: Counterfeit and adulteration

The infringing merchandise displayed Abercrombie's trademarks, both word and figurative. The distinctive signs were visible on the product itself, as well as on the the packaging.



Moreover, some footwear models showed an adulteration of the trademarks. The expression "Abercrombie" was used instead of "Abercrombie". In other words, the letter "m" was replaced by a double "n". On the other hand, the name "Fitch" was replaced by the term "Fiche".

This evidences the bad faith of the manufacturer of the merchandise in question in attempting to mislead the consumer public.



Actions taken

Once the investigation was completed, it was defined the strategy to follow, which consisted on initiating extrajudicial actions through Abercrombie’s representatives in Uruguay, with the intervention of a notary public.

The first step was to proceed to purchase the infringing product, both in the hypermarket and in the importing company, with due notarial verification, in order to obtain valid evidence regarding the commercialization of the merchandise.

At the same act, a notarial notice was sent to those responsible for said companies, requesting to cease the use of the trademarks owned by Abercrombie, as well as to cease the commercialization of the merchandise in question, all of this under penalty of initiating the pertinent legal actions in case of non-compliance.

Result of the strategy

The extrajudicial actions carried out were succesful , achieving that the offenders withdrew the infringing products from sale. In addition, the managers of these businesses contacted Abercrombie’s representatives in Uruguay, expressing their intention to settle the matter. Thus, after several negotiations, an out-of-court settlement

ABERCROMBIE is the holder in Uruguay of the following trademarks:

In process of renewal with number **508.686**, which protects the products within international class 25.

ABERCROMBIE & FITCH

In process of renewal with number **508.684**, which protects the products within international class 25.

A & F CO.

Granted with number **408.796**, which protects the products within international class 25.

FITCH

In process of renewal with number **517.935**, which protects the products within international class 25.



In process of renewal with number **517.936**, which protects the products within international class 25.



Law No. 17.011, article 81: “Whoever that with the purpose of profiting or causing damage uses, manufactures, falsifies, adulterates, or imitates a trademark registered by another person, shall be punished with six months of imprisonment to three years of penitentiary arrest.”

agreement was reached, where the infringers committed themselves under the following terms:

- ▶ Not to use or commercialize products identified with trademarks owned by A&F in trademark infringement.
- ▶ Not to oppose, hinder or interfere with A&F's intellectual property rights.
- ▶ Hand over the remainder of the infringing merchandise for destruction, bearing the corresponding costs.
- ▶ Cover all the expenses incurred by A&F derived from the trademark infringement.
- ▶ Payment of a sum of money as a fine in case of breach of the agreement.

Furthermore, it is important to note that the importing company informed about the origin of the merchandise, providing the invoice corresponding to the purchase of the apocryphal products. It was found that the goods came from China.

Sustainable destruction of counterfeit merchandise

Within the framework of the sustainable strategy being developed by the law firm Cervieri Monsuárez, actions have been taken with respect to the destruction of infringing merchandise, in order to develop environmentally friendly and recycling solutions.

Thus, a strategic partnership was reached with URUPLAC, a company specialized in recycling, whose main purpose is to provide a new destination for the waste generated by both individuals and companies, creating new products and placing them on the market, within the framework of a strong commitment to the circular economy.

Therefore, the unused merchandise is destroyed in a shredding machine, and with the result obtained new products are created, as is the case of the plates, which are used to create different structures, thus replacing wood, plastic, steel, among other materials.

Destruction process:



New products:



Conclusions

It was discovered in the Uruguayan market the circulation of counterfeit merchandise in infringement of Abercrombie’s Intellectual Property rights. As a result of a thorough investigation, we were able to identify the two companies responsible for the importation and commercialization of the infringing products.

The merchandise in question represented a meticulous and detailed counterfeiting, which used the word and figurative trademarks owned by Abercrombie. Furthermore, the word marks were as well adulterated by making minor alterations to the terms “Abercrombie” and “Fitch”, replacing them with “Abercrombie” and “Fiche”.

The extrajudicial actions taken against the infringers were successful, resulting in the withdrawal of the apocryphal products from sale. In addition, after several communications, the conflict was resolved by means of an out-of-court settlement, in which the infringers undertook not to use in the future any trademarks owned by Abercrombie in infringement, nor to commercialize products containing such distinctive signs.

Finally, as part of a sustainable strategy, the infringing merchandise was destroyed by a company that specializes in recycling, thus providing a useful destination for the waste.

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