

NJORD Latvia: buying expensive brands cheap on the internet. Does the low price outweigh the risks?

Some websites (not exclusively Chinese) offer branded merchandise for a fraction of a price we might get in the store or the official online store. Buying something expensive cheap sounds very tempting, but we believe that one might consider the following before doing so next time.

Buyers must be aware that they are responsible for making sure that the purchased products are not counterfeit (pirated copies). Counterfeit goods are never labelled as such, however, the significantly lower price should raise some suspicion – one cannot buy for 50 euro something that costs 1000 in the official store. The court will most probably consider that buying at such price is a buyer's calculated decision to buy counterfeit goods or consider such an act as a gross negligence by the buyer, so there will be no possibility to argue that one didn't know.

The buyer should also have in mind that such purchases not only cause economic damage to both the owner of the brand and to the state, but also support multi billion criminal activities across the globe.

Also counterfeit products, such as medical drugs, toys and toxic plastic packaging, may even cause harm to the purchaser's health.

Customs seizures

If the ordered product reaches Latvia and there is a suspicion that it is counterfeit, the Customs Board has the right to detain it. The Customs Board themselves do not have the competence or right to assess whether a product infringes trademark rights, so they request this information directly from the trademark owner or their appointed local representative. The trademark owner also receives information about the detained product's characteristics, photos, the amount and the origin.

The representative informs the Customs Board in 10 working days whether products are counterfeit and whether they want the products to be destroyed. The Customs Board destroys products once they have received a clear order to do so.

Needless to say that in the event described above the Buyer will receive no compensation for purchase price or delivery costs.

Criminal Liability

Infringement of the rights of the trademark owner and trade of counterfeit goods is a criminal offence according to the Latvian Criminal Law. Section 206 of the Latvian Criminal Law states that illegal use of a trademark, counterfeiting a mark, or using or distributing (trading) a counterfeit mark, if it has been committed on a significant scale or it has caused substantial harm to the interests of a person protected by the law is punishable by imprisonment (up to 2 years), community service or a fine.

The punishment is more severe in case the infringement is committed in large amount or if a group of people is involved.

Of course it is not a criminal offence if someone buys a single piece of merchandise for own use, however it should be taken into account that such person most probably *buys stuff from the criminal*, although the seller does not necessarily look like one.

The trademark owner's right to claim damages from the infringer.

Even if a person purchases the counterfeit product for personal use and do not plan to trade counterfeit goods, he/she still commits an infringement of the right of the trademark owner and will be liable under the Latvian Trademark Law. In addition to possible criminal penalties described above, and which can only be implemented by a public authority, the trademark owner might consider filing a claim against the consignee for compensation of damages, including loss of profit. The size of the claim depends on the number of products and their value.

Conclusion

So does the low price outweigh the risks? Everyone must decide for themselves. We suggest that when ordering something online it is important to make sure that the ordered products are not counterfeit, otherwise it might end up getting claims for damages or (in some case) criminal proceedings. The price of the products can often help to determine whether the product is an original or counterfeit.



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