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To
EPAL licensees

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What EPAL is doing to fight counterfeit EPAL Euro pallets

Dear EPAL licensee,

The counterfeiting of EPAL Euro pallets and the supply of counterfeit EPAL Euro pallets remains one of the central topics for EPAL's daily work and that of the EPAL National Committees. In the past few months we have been repeatedly asked by licensees about what EPAL is doing to tackle the counterfeiting of EPAL Euro pallets. For this reason we are taking the opportunity to inform you about our activities and to answer some of the most important and most frequently asked questions. If you have further questions, please do not hesitate to contact us or your National Committee by phone or e-mail.

1. What are counterfeit EPAL Euro pallets?

Counterfeit EPAL Euro pallets are pallets which bear the marking "EPAL in oval", although they have not been produced by a company which holds an EPAL licence to produce EPAL Euro pallets. The counterfeiting happens either during production of the pallets or when pallets, which at first have no marking on the corner blocks, are marked with the "EPAL in oval" trademark at a later time.

2. How do I recognise that an EPAL Euro pallet is counterfeit?

Counterfeit EPAL Euro pallets are generally distinguishable because they frequently have one or several of the following signs of counterfeiting:

- Missing EPAL control staple
- Missing or incomplete EPAL ID number
- Faulty EPAL ID number or discrepancy between the EPAL ID number and the appearance of the pallet
- Missing or faulty IPPC/ISPM 15 marking
- Faulty "EPAL in oval" marking
- Use of nails without the head marking
- Faulty nail position
- Quality faults in the pallet

A clear and unfailing sign of counterfeiting is if used pallets are ordered and instead, new or like-new EPAL Euro pallets with a uniform appearance are delivered, or if new pallets are found with no wood discolouring in amongst the used pallets in conspicuously large numbers.

These are the typical ways of bringing counterfeit EPAL Euro pallets into circulation.

3. What is the safest way to avoid receiving deliveries of counterfeit EPAL Euro pallets?

The safest way to avoid receiving deliveries of counterfeit EPAL Euro pallets, is to buy EPAL Euro pallets from an EPAL licensee.

EPAL recommends this to users of EPAL Euro pallets, and it also applies to EPAL licensees purchasing EPAL Euro pallets.

As the seller is an EPAL licensee, they are subject to the obligations in the Licensing Agreement with EPAL, including the obligation to refrain from any infringement of the "EPAL in oval" trademark. This means that in this case, the buyer does not need to inspect the pallets before transport nor carry out further monitoring measures (cf. point 4). If counterfeit (or inferior quality) EPAL Euro pallets are nevertheless delivered, because for example, the EPAL licensee has arranged for another company to make the delivery, EPAL assists the buyer to assert their rights.

4. How can I avoid receiving deliveries of counterfeit EPAL Euro pallets if the seller isn't an EPAL licensee?

If new EPAL Euro pallets are bought from a company that doesn't hold a EPAL licence, the buyer should ask the seller before ordering, which EPAL licensee is providing the pallets and/or ask for proof of delivery.

It should be made clear in the order, that there is an obligation to supply original EPAL Euro pallets and that counterfeit pallets will be rejected, for example, it says in writing, "original EPAL Euro pallets".

In principle, the pallets should be inspected during loading before transport (certification), if the delivery is being made from another country. Frequently this is not done, because of the associated costs. Instead, the buyer should ask the seller to photograph the stacks of pallets when loading, and to send the photos to the buyer. The marking on the central block must be visible in the photos. This is a simple way for the buyer to inspect the pallets at least provisionally, without incurring any costs. Then, during delivery and unloading of the pallets, the usual goods inward inspections can check, if the pallets are the same as in the photos, and if these display the above mentioned signs of counterfeiting (cf. above point 2).

5. What else should I look for when buying EPAL Euro pallets to reduce the risk of buying counterfeit pallets?

The first indication of an increased risk of counterfeit EPAL Euro pallets being supplied, is a striking difference in the price offered compared to the usual market price, especially if despite a long delivery route, delivery is offered for free. Another way to detect dubious offers is to see if there is an address and/or website provided for the seller. If an address is provided, a search of Google Maps often shows that at the given location there are no business premises, only residential housing or other buildings. If the seller is a "limited" (Ltd) company, under British law caution should likewise be exercised, as well as for ordering from companies headquartered outside of the EU that are not EPAL licensees.

6. Should I accept the seller's demand for payment in advance of the purchase price?

It is strongly advised when buying EPAL Euro pallets from companies that are not EPAL licensees, that the purchase price not be paid before receipt of the pallets.

If it is found during delivery, that the pallets are counterfeit, e.g. during inspections by the customs authorities or by the recipient of the pallets, the pallets have to be destroyed (cf. below point 13). In this case, the buyer may claim reimbursement of the purchase price that has already been paid. However, EPAL's experience shows that the seller almost always refuses to reimburse the purchase price or the buyer can no longer reach them.

A legal assertion of the repayment of the purchase price almost never takes place, because legal proceedings abroad, in particular in Eastern Europe, involve considerable costs and risks. Consequently, the buyer is generally left with the loss of the wasted purchase price.

7. What are the specific legal consequences of counterfeiting EPAL Euro pallets?

The counterfeiting of EPAL Euro pallets constitutes an infringement of the “EPAL in oval” trademark. The “EPAL in oval” trademark is internationally protected, so that EPAL can take action against pallet counterfeiting worldwide. This applies particularly and without exception, if counterfeit EPAL Euro pallets are imported into the European Union.

EPAL has a legal right that the counterfeiting of EPAL Euro pallets be ceased, and will enforce this right by issuing a warning or initiating legal proceedings. EPAL may also claim the payment of compensation for damage and the right to obtain disclosure of information about additional parties and the counterfeit pallets’ delivery route.

Infringing the “EPAL in oval” trademark is also a criminal offence. In serious cases therefore, EPAL reports the offence.

8. Is the producer of the counterfeit pallets the only party responsible?

No. The owning of counterfeit EPAL Euro pallets, the offer, the sale and the delivery of counterfeit EPAL Euro pallets also constitute an infringement of the “EPAL in oval” trademark.

The legal consequences are fundamentally the same as for the pallet counterfeiter (cf. above point 7). In every single case, EPAL checks if there is any intentional or in any other way culpable behaviour, and decides on this basis whether to initiate legal steps. This also depends on whether the EPAL licensee immediately reported the delivery of counterfeit pallets to EPAL (cf. below point 11) and cooperates with EPAL in pursuing the matter through legal means.

9. What special considerations apply if counterfeit EPAL Euro pallets are sent directly to the customer of the buyer/EPAL licensee (i.e. drop shipments)?

EPAL licensees who buy EPAL Euro pallets from other companies, that are not EPAL licensees, and have the pallets delivered straight to their customers (i.e. drop shipments), also have a special duty to inspect if the EPAL Euro pallets are original or counterfeit. This is in the licensee’s own interest:

If counterfeit pallets are delivered, the customer can be liable themselves. Certainly, EPAL is keen that the customers and users of EPAL Euro pallets suffer no disadvantage, if they have not knowingly purchased counterfeits. However, the possibility cannot be excluded, that the customer may claim compensation for damage from the supplier through their own lawyers. Since EPAL Euro pallets are normally required at very short notice, a replacement purchase could incur considerable extra costs, which can be claimed as compensation for damage alongside the costs of the lawyers. It is even worse, if the counterfeit pallets are used by the customer as goods transport, because they haven’t realised that they are counterfeit. If the goods are rejected by the recipient due to the counterfeit pallets or stopped by the customs or the plant protection authorities, the seller of the pallets may face further quite considerable claims for compensation for damage.

10. What does EPAL do to uncover counterfeit EPAL Euro pallets?

EPAL has requested that the customs authorities in all EU member states, seize counterfeit pallets. In continuous cooperation between EPAL, the customs authorities and the EPAL National Committees, HGVs which transport unladen pallets, are inspected at the borders and with domestic checks in domestic monitoring.

EPAL’s inspection companies support these checks, and are at the same time instructed, when inspecting licensees, to also check if counterfeit EPAL Euro pallets are located in their business premises and warehouses.

In addition, EPAL supports the users of EPAL Euro pallets in inspecting the pallets delivered to them, if it is suspected that the pallets are counterfeit. In this case, the inspection company is instructed to inspect the pallets at EPAL’s expense.

EPAL collaborates with customs and other authorities as well (police, plant protection, tax authorities, etc.), because from experience, alongside EPAL’s trademark rights, other legal provisions are infringed when EPAL Euro pallets are counterfeited.

11. What should I do as an EPAL licensee, if I receive a delivery with counterfeit pallets?

Under the Licensing Agreement, EPAL licensees are obliged to inform EPAL about any trademark infringement and to assist them in legal proceedings. In practice, this means that EPAL licensees are obliged to immediately inform EPAL about the delivery of counterfeit pallets and upon request by EPAL, to provide the name of the supplier and other persons and companies involved.

If EPAL is not immediately informed, it gives the impression that the licensee intends to bring the counterfeit pallets into circulation, for example, to profit from the lower purchase price. This constitutes a breach of the Licensing Agreement and a separate trademark infringement and is usually punished by EPAL with the imposition of a contractual penalty.

12. What must I do as an EPAL licensee, if I have ordered EPAL Euro pallets from abroad and the customs authority has seized the pallets, because it is suspected that they are counterfeit pallets?

In this case too, the EPAL licensee is obliged to immediately inform EPAL, even though EPAL generally gets this information directly from the customs authorities. EPAL instructs the inspection company to carry out an immediate inspection of the pallets in the customs authorities' warehouse. If the inspection company finds that the pallets are counterfeit, EPAL requests the customs authority to destroy the pallets.

The customs authority is only requested to destroy the pallets if the recipient of the pallets agrees. EPAL therefore urges the licensee to agree to the destruction of the counterfeit pallets. As the licensee is obliged under the Licensing Agreement to support EPAL with pursuing trademark infringements, the licensee is also contractually obliged, in this case, to agree to the destruction of the counterfeit pallets. If the licensee does not grant this agreement, in accordance with the legal provisions EPAL is forced to initiate legal proceedings against the licensee within ten days. At the same time, EPAL examines if by refusing to grant the destruction and thereby breaching the Licensing Agreement, a contractual penalty is also to be imposed.

13. What happens to the counterfeit pallets?

In accordance with the legal provisions, as a rule, counterfeit goods are to be destroyed. This applies also to counterfeit EPAL Euro pallets. This can only be disregarded in exceptional cases. These kinds of exceptional cases are however rare, so in almost all cases when counterfeit pallets are identified, EPAL enforces their destruction.

The owners of counterfeit pallets sometimes ask that instead of destroying the pallets, the "EPAL in oval" markings are removed or blackened, for example, because of the financial loss arising from the destruction of pallets.

This is rejected by EPAL, because not destroying counterfeit pallets could encourage more counterfeiting of EPAL Euro pallets. Counterfeit EPAL Euro pallets are often produced and sold at low prices, corresponding to the price of a single-use pallet. If this value remained with the buyer, because EPAL didn't destroy pallets, there would be no economic risk associated with counterfeiting and buying/selling counterfeits. Alongside the risk of legal sanctions, in particular for buyers of pallets, the risk of losing the purchase price should have an effect, which through appropriate measures ensures that no counterfeit EPAL Euro pallets are delivered.

14. Why does EPAL go to such great lengths to fight against counterfeit EPAL Euro pallets?

Counterfeit EPAL Euro pallets don't only infringe EPAL's trademark rights. In almost all cases they exhibit considerable quality faults, which endanger the safety of the goods and transport logistics. Campaigning against pallet counterfeiting therefore mainly serves to guarantee the safety and quality of the EPAL Euro pallet pool. The fight against pallet counterfeiting is an important part of EPAL's quality assurance.

Just as important is protecting the interests of EPAL licensees. The supply of counterfeit pallets is unfair competition to the detriment of EPAL licensees. Counterfeit pallets are offered at significantly lower prices, because the counterfeiters are not subject to quality assurance and are therefore able to use inferior quality and cheap materials. This has a negative effect on EPAL licensees and the users of pallets.

Therefore, campaigning against pallet counterfeiting also serves to guarantee fair competitive conditions for EPAL licensees.

15. Summary

Purchasing EPAL Euro pallets from companies, that are not EPAL licensees is associated with various risks and can lead to considerable financial losses. EPAL therefore recommends that users of EPAL Euro pallets, and EPAL licensees, purchase the EPAL Euro pallets that they need from EPAL licensees.

If EPAL Euro pallets are nevertheless purchased from companies, that are not EPAL licensees, the EPAL licensee has a greater duty of care when inspecting the pallets in goods inward inspections. EPAL licensees are obliged to deploy trained staff to do this and to check if any of the above mentioned signs of counterfeiting are present. This applies particularly if, due to the circumstances of the deal (very reasonable price, delivery of new or like-new pallets with uniform appearance despite an order of used pallets, etc.), it is strongly suspected that the pallets delivered are counterfeit.

If it is found during goods inward inspections, that the EPAL Euro pallets are counterfeit, the pallets must not be sold on or delivered. Instead, EPAL must be informed immediately.

If you have any other questions about EPAL's actions against counterfeit EPAL Euro pallets, please let us know. We will try to answer your questions as soon as possible.

Yours faithfully,

European Pallet Association e.V.