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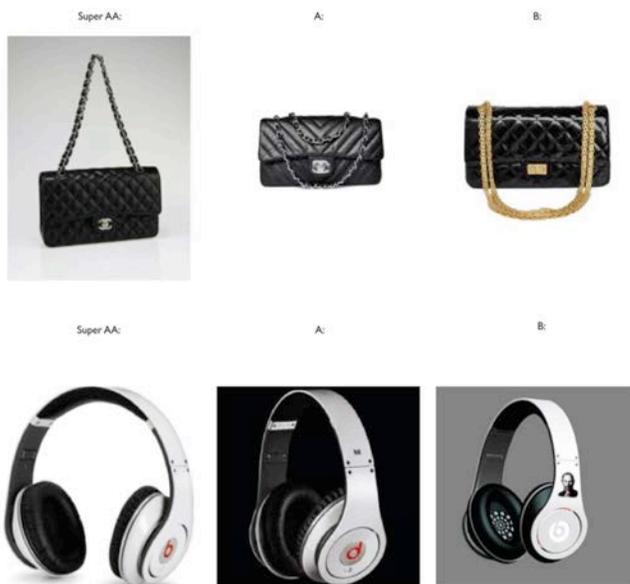
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Improvisation and the Agency of the Commons: Notes on Counterfeiting as a Form of Radical Speech

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- In Mandarin Chinese, counterfeit goods are referred to as Jiahuo, Fangmaopin, Kelong, Bangminpai, or Shanzhai.
- Jiahuo and Fangmaopin are both words for 'counterfeit,' and are generic terms used inclusively to refer to a number of different types of counterfeiting or bootlegging. Kelong is a transliteration of the English word 'clone.' Bangmingpai, can be understood by separating it into its constituent signifiers: 'Bang' meaning 'next to' and 'Mingpai' meaning 'brand names.' Thus the term refers to adjacency rather than duplication. Shanzhai, which refers to a 'mountain fortress,' is meant to evoke the idea of bandits living in mountain fortresses who rob from the wealthy who reside in the valleys to redistribute to their communities in the fashion of Robin Hood. For this reason, Shanzhai has implications of revolt, resistance, and piracy. In a contemporary context, it also has vaguely anti-colonial undertones.
- While these terms are not used strictly, they do isolate various methodological differences between the various iterations of counterfeit goods, and thus can be useful in distinguishing between significantly different types.
- **KELONG:** a simulated or copied (cloned) good that is reverse engineered from the original and is meant to simulate that item. Kelong goods are broken down into classes. (see Figure A)

KELONG GOODS



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B: common, and easily distinguishable from the original because of low quality, differences in design and appearance (such as plastic instead of leather).

A: not immediately distinguishable from the original but still usually has poor quality finishes, and cheap material substitutions (such as low grade leather for leather, or chromed hardware rather than gold or silver hardware).

AA: higher quality than the A level but still not of the same quality as the original.

Super AA: exact copy of the original in both materials and detailing.

Even Supper AA versions contain some difference from the original, and these differences grow as the levels descend. Thus the lower the fidelity, the more interpretive choices and thus the more unique the copy becomes. This shift in fidelity offers increased insight into the nature of the counterfeit good, at times indicating regional origin, or most often, clearly emphasizing what elements of the original are most highly prized as being authentic or marks of authenticity and value, thus leaving a fingerprint of the “interpreter” of the original design who is left to privilege certain aspects over others. The result, in each instance, is a kind of abstraction of the original, rife with cultural, social, and political implications. (see Figure B)



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• **BANGMINGPAI**: is when the brand or brand logo of a particular producer is affixed to a good that shares affinities with, but is not an exact replica of an actual product of that brand. These are most commonly products for which it seems plausible that a particular brand might produce it or something similar, but in fact does not. For example, underwear with Louis Vuitton logos on it (a product the Vuitton corporation doesn't make but which is not far removed from the products that it does offer). Sometimes these goods are combinations multiple products distilled into one, as in a single counterfeit Chanel handbag that has details drawn from multiple different handbags produced by Chanel. (see Figures C and D)



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- The earliest Chinese counterfeits were cars. “First released in China in the early 2000s, the popular QQ model was developed by Chinese car maker Chery as an imitation of General Motor’s Chevrolet.” The low price of the Chevrolet (marketed under the name *Spark*) was cut in half by the Chery automaker, making the Shanzhai good a runaway success, and serious cutting into the market of the Chevrolet. See “Chinese carmaker ambitious, controversial”. (see Figure G)



2006 CHEVY SPARK



2006 CHERY QQ6

Detroit News, Christine Tierney. <http://www.detnews.com/2005/autosinsider/0501/02/A08-47232.htm>.

- Cell phone counterfeiting erupted after a Taiwanese cell phone chip designer called media tek developed and marketed low price, multifunction cell phone chips to Chinese cellphone workshops in 2006. After that time, it became possible to simulate and innovate a line of cellphones on a relatively modest scale, opening up the market to small producers, operating in regional or isolated markets. It also created a huge variability in the range of products created, each factory responding to local demands, or individual factory manager’s ideosyncracies.

- Media Tek’s chairman, Ming Kai Tsai has been described as the “Godfather” of shanzhai cell phone manufacturing, having made possible the easy reproduction of brand name, and small run cell phones.

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- The power of the Shanzhai makers in China is illustrated in the shanzhai cell phone called the “Any Cat,” modeled after Samsung’s “AnyCall.” A touchscreen phone, the AnyCat had achieved a high level of popularity, selling for one fifth the price of the Anycall. Samsung investigated the Anycat and found that the pirated version was not inferior to the real one, in fact, the anycat included functionality that was not present in the original. Samsung then approached the company and proposed a collaboration, to which they were rebuffed. (see Figure H)



- Fake Apple Store in China (see Figure I)



- The manufacturer of one of many copies of the new iPhone 5 prompted by the leaks of design specs and parts, the Goophone i5, is planning to sue Apple for copyright infringement if and when they begin selling the iPhone 5 in China. (see Figure J)

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- Wholesale counterfeit markets are often outside of major urban centers. For example, the major wholesale counterfeit markets in China are Hanzhen Jie (located in Wuhan City, Hubei Province); Linyi Market (Linyi, Shandong Province); Nansantiao Market (Shijiazhuang, Hebei Province); China Small Commodities City (Yiwu City, Zhejiang Province); and Wuai Market (Shenyang, Liaoning Province). Less is this is a tactic to protect the markets from domestic police inspections, but more so to reduce the chances that westerners might find their way to these markets, publicize them, or spread awareness of their presence.
- The most frequent counterfeiters are those factories that once produced goods for a particular brand, but lost the contract, often as a result of being underbid by another factory. Already in possession of parts, knowledge, and experience with the brand, they are uniquely capable of producing knock-off products with a high degree of fidelity, and in addition, can extrapolate logical extensions of the brand identity, producing new goods with highly convincing logos and designs.
- Shanghai's major counterfeit malls are Yatai Shenghui Mall, Qipu Road, and Email Fashion Department Store.

THE POLITICS OF COUNTERFEITING

- The earliest known example of counterfeits were in Arles in 27 BCE where locals made counterfeits of Italian wines for consumption by Roman soldiers and expats who would pay handsome sums for wines with the seals of Italian merchants on their stoppers. The largely illiterate French locals emblazoned the stoppers with hash marks standing in for the names of particular Italian producers, and filled the bottles with cheap local wine. The irony that France, one of the most aggressive forces behind customs enforcement, and international laws relating to counterfeiting, would be the origins of bootlegging for anti-colonial purposes seems lost on those who claim outrage over counterfeiting.
- In 1975 tangible assets of Fortune 500 companies were close to seventy percent of their total worth, the remaining assets being held in non-tangible goods, or “intellectual property” (IP), a ratio of 7:3.
- Today, that ratio is almost reversed, with approximately 80 percent of the value of companies listed on the S & P Fortune 500 listed as intellectual property.
- The protection of IP is complex, as there is no tangible good to keep locked away, it travels in the ether of social life, accessible to anyone who acknowledges its value. In essence to think it is to possess it, or at least, momentarily borrow it, and with each consumer, or each time the brand identity is thought, it is changed or added to by those individuals. Consider how the lurching that ended the run of the luxury Audi 5000 transformed into a slang term which meant to leave abruptly, playing off both the luxury the brand represented, and its idiosyncrasies in one gesture. What is more, if companies do not enforce their IP rights, then they run the risk of loosing them, which is why Coca-Cola is one of the most vigilant enforcers of their brand, as it came dangerously close to becoming a common term referring to a any carob derived carbonated beverage, and thus free from restrictive copyright. Intellectual property laws thus must seek to do the nearly impossible, and freeze the meanings of cultural symbols, preventing their application to varied contexts. Traditionally, the owners of trademarks that became most wealthy and powerful were also best able to police their brands. This process leads to a consolidation of brand power, and a geometric accumulation of control over speech in the public sphere: in short, the more valuable a particular brand becomes, the more resources become available from public and private sources to defend it

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(as the government is often called upon to enforce these laws on behalf of multinationals), further increasing the “purity” or “magic” of those brands (using the terminology used respectively by judges in their decisions to protect the brand identities of “SafeWay” and “The PGA Masters Tour” from protest uses of their graphic identities). The most powerful of these brands, for example LVMH are powerful enough to lobby for changes to foreign policy. This creates a further consolidation of power within those already powerful brands. Beyond the consolidation of wealth, what one sees is a similar oligopoly of meaning, and these brands become further protected or insulated from scrutiny, public access, and competition.

- Despite the outrage intoned by brands who are being counterfeited, the rise of bootleg versions of brands also signifies their power, and for many companies bootlegging offers an opening into emerging markets, and into the hands of consumers who otherwise would not be aware of, and certainly could not afford those brands. In short, the counterfeit often acts as training wheels for would be consumers, allowing them to “try on” various brands without allocating the funds to do so, creating brand recognition and creating aspirational associations for that brand.

- Those companies who either license their brand, or produce their products abroad, are most vulnerable to counterfeiting. Apple computer, for example, saw a huge explosion of counterfeit devices entering the market a short time after they relocated their production to China. The reason being that the availability of authentic parts (which are often used in tandem with other components), in addition to the availability of expertise in the function of the brand and its products, makes their counterfeiting that much easier, increasing the quality and prevalence of counterfeits. All of this has boosted Apple’s brand identity in China, and made it one of the most instantly recognizable brands in the country. Despite the goods themselves being well beyond the reach of average citizens, many individuals own items with apple logos, making the brand name almost ubiquitous. Recent unrest in the Chinese factories producing Apple goods will likely only increase the leakage of components and design specifications into the Shanzhai market.

- In outsourcing production to countries with cheap labor, poorly maintained working conditions, and few human rights laws, brands such as Nike, The Gap, Gillette, Apple, and the like must guard against a similar outsourcing of their brand identities. These companies make use of such conditions to minimize costs, but exploiting the flexibility allowed in the global market place works both ways, subjecting their brand identities to a similarly flexible zone of use and ownership.

- Counterfeiting as a form of political speech has a long history, in both the West, and in Asia. From the early bootlegging of Roman wines, to Shanzhai goods in China, most counterfeits are mounted in instances of inequal distribution of wealth, and often take the form of anti-colonial or counter-hegemonic speech. In the early 1990s, from Harlem to Watts and nearly every urban enclave of black youths in between, black variations of the popular cartoon grade-schooler Bart Simpson, became the most enduring T-shirt images as the popularity of the Simpsons had reached its pinnacle . . . “There is a suppressed rage in the cartoon that black people are picking up on,” [said Russell Adams, chairman of the Afro-American Studies Department at Howard University] . . .

Only a few months before they first appeared, the T-shirt of choice in certain neighborhoods was an image of Malcolm X next to the words, “It’s a Black thing. You wouldn’t understand.” Now a dark-skinned Bart Simpson has taken Malcolm’s place, declaring, “I’m Black Bart. You wouldn’t understand.” (see Figure K).

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The speed of this act of appropriation indicates the potency of this form of speech, which is able to both outflank many attempts at quelling it both in their quickness, but also their scale (as the producers are small scale and often more expensive to bust than to let operate). Twentieth Century Fox, holder of the Simpson's trademark, had to accept that they could not shut down the illegal usage of their brand, but rather could only demonstrate attempts to preserve their property in the eye of the law, and wait out the trend.

- INTERPRETATION:

The characteristics of the Shanzhai marketplace rhymes more completely with the vision of capitalism set forth by Adam Smith, as a field of small producers, generating differentiated products, and operating in direct competition with one another. This model of capitalism, pure monopolistic competition, is anathema to the model current deployed in the west which privileges oligopoly, the running of market or industry by a small number of large scale sellers, who collude with one another, creating deep barriers to entry. IP is key in the oligopoly protecting practices of western governments, for IP favors those who have amassed the power to enforce the IP, and thus creates increasingly rapid consolidations of market power. (see Figure L)

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Smith himself was anti-oligopolistic, commenting that businessmen if allowed would engage in a “conspiracy against the public or in some other contrivance to raise prices.” In an attempt to squeeze maximum profits out of buyers, they will attempt to usurp the function of the market through collusion or government interventions. “. . . in any particular branch of trade or manufactures, is always in some respects different from, and even opposite to, that of the public...The proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention.”