

Workshop 0: Counterfeit Parts

What Does “Counterfeit” Mean?
And How Do We Prevent It?

Workshop Outline

- **Approved/Unapproved Parts**
- **Counterfeiting Laws**
- **Other Aircraft Parts Fraud Laws**
- **Counterfeiting Problems Affecting Aircraft Parts, Today**
- **U.S. Government Initiatives**
- **Tips for Identifying Counterfeit Aircraft Parts**

The World of Parts

Unapproved
Parts

Counterfeit
Parts

Approved
Parts

Approved Parts

- 14 C.F.R. § 1.1
- *Approved* means:
 - Approved by the FAA or
 - Approved by any person to whom the FAA has delegated its authority in the matter concerned, or
 - Approved under the provisions of a bilateral agreement between the United States and a foreign country or jurisdiction

Approved Parts: Regulatory Standards

- 14 C.F.R. § 21.9 (a) If a person knows, or should know, that a replacement or modification article is reasonably likely to be installed on a type-certificated product, the person may not produce that article unless it is—
 - (1) Produced under a type certificate;
 - (2) Produced under an FAA production approval;
 - (3) A standard part (such as a nut or bolt) manufactured in compliance with a government or established industry specification;
 - (4) A commercial part as defined in §21.1 of this part;
 - (5) Produced by an owner or operator for maintaining or altering that owner or operator's product; or
 - (6) Fabricated by an appropriately rated certificate holder with a quality system, and consumed in the repair or alteration of a product or article in accordance with part 43 of this chapter.

Approved Parts: Representations

- 14 C.F.R. § 21.9(b) Except as provided in paragraphs (a)(1) through (a)(2) of this section, a person who produces a replacement or modification article for sale may not represent that part as suitable for installation on a type-certificated product.
 - (a) (1) Produced under a type certificate;
 - (a) (2) Produced under an FAA production approval;

Categories of “Approved” Parts

- PMA
- TSOA
- TC Prepositioned Parts
- TC & APIS
- PC (incl. DSA)
- BAA/BASA
- 21.8(d)
- Standard Parts
- Owner/Operator Produced Parts
- Repair Station Produced Parts and other Maintenance-Produced Parts

What is Counterfeiting?

Lanham Act

- Unauthorized use in commerce of a trademark so as to cause
 - confusion,
 - mistake, or
 - deceit

Trademark Law

- Protects distinctive marks from use by others in commerce that leads to confusion, deception, or mistake
- **EXAMPLE:** “palming off” something you created *as if it were* the OEM’s product
- **EXAMPLE:** “reverse palming off” something the OEM created *as if it were* something that you created

Basic Guidance

- Make sure you properly identify articles that you sell
- If a part is an aftermarket part, it is OK to identify the part that it replaces, as long as you are clear and do not imply that the part is the replaced part

- OK:

P/N: A1234567 (replacement for [OEM Name] Q345987)

- NOT OK:

P/N: A1234567 (same as [OEM Name] Q345987)

Trademark Hypothetical

- Jason's Parts is an aircraft parts dealer.
- Some of the parts in its inventory are overhauled OEM parts.
- In addition, Jason's Parts manufactures and sells aircraft parts:
 - Approved by the FAA for type certificate aircraft
 - Approved by the armed forces, for defense related aircraft

Trademark Hypothetical

- OEM “X” sells a part described as 1526771
- Jason’s Parts obtains Air Force source approval to create a replacement that has the part number J1526771.
- OEM “X” wants to know if this part from Jason’s Parts is a counterfeit?

Several Cases Have Addressed This Issue

- A single letter prefix or suffix that distinguishes OEM parts from aftermarket parts is inadequate
 - Could be confused for an OEM revision identifier
- Parts must be uniquely identified in a fashion that will make it possible to establish the source of such part even in the event of failure
- FAA Order 8110.42 permits multi-character prefixes and suffixes that identify source
 - So Jason1526771 might be an acceptable part number

What Other Laws May Apply?

False and Misleading Regulation - Definitions -

- 14 C.F.R. § 3.5 Statements about products, parts, appliances and materials.
 - (a) Definitions. The following terms will have the stated meanings when used in this section:
 - *Airworthy* means the aircraft conforms to its type design and is in a condition for safe operation.
 - *Product* means an aircraft, aircraft engine, or aircraft propeller.
 - *Record* means any writing, drawing, map, recording, tape, film, photograph or other documentary material by which information is preserved or conveyed in any format, including, but not limited to, paper, microfilm, identification plates, stamped marks, bar codes or electronic format, and can either be separate from, attached to or inscribed on any product, part, appliance or material.

False and Misleading Regulation - No Fraud -

- 14 C.F.R. § 3.5 Statements about products, parts, appliances and materials.
 - (b) Prohibition against fraudulent and intentionally false statements. When conveying information related to an advertisement or sales transaction, no person may make or cause to be made:
 - (1) Any fraudulent or intentionally false statement in any record about the airworthiness of a type-certificated product, or the acceptability of any product, part, appliance, or material for installation on a type-certificated product.
 - (2) Any fraudulent or intentionally false reproduction or alteration of any record about the airworthiness of any type-certificated product, or the acceptability of any product, part, appliance, or material for installation on a type-certificated product.

False and Misleading Regulation -No *Materially* Misleading Statements-

- 14 C.F.R. § 3.5 Statements about products, parts, appliances and materials.
 - (c) Prohibition against intentionally misleading statements.
 - (1) When conveying information related to an advertisement or sales transaction, no person may make, or cause to be made, a material representation that a type-certificated product is airworthy, or that a product, part, appliance, or material is acceptable for installation on a type-certificated product in any record if that representation is likely to mislead a consumer acting reasonably under the circumstances.
 - (2) When conveying information related to an advertisement or sales transaction, no person may make, or cause to be made, through the omission of material information, a representation that a type-certificated product is airworthy, or that a product, part, appliance, or material is acceptable for installation on a type-certificated product in any record if that representation is likely to mislead a consumer acting reasonably under the circumstances.

False and Misleading Regulation

- Truth is a Defense -

- 14 C.F.R. § 3.5 Statements about products, parts, appliances and materials.
 - (d) The provisions of § 3.5(b) and § 3.5(c) [*the false and misleading provisions*] shall not apply if a person can show that the product is airworthy or that the product, part, appliance or material is acceptable for installation on a type-certificated product.

False and Misleading Regulation - Defensive Tips -

- **Be careful of the allegations you make about an aircraft part**
 - Certify only what you know
 - If your knowledge is limited, then make that clear
- **Be wary of customer-provided certifications**
 - Read carefully before signing
 - Even if it appears to be a standard form, like a SPEC 106
- **Best practice is for distributors to pass along the documentation they received, and limit the C of C to the scope of those received documents**

Criminal Fraud Involving Aircraft Parts

18 USC § 38 “Fraud involving aircraft or space vehicle parts in interstate or foreign commerce”

- This criminal statute is violated by a person who knowingly and with the intent to defraud:
 - Falsifies or conceals a material fact concerning any aircraft part
 - Makes any materially fraudulent representation concerning any aircraft part
 - makes or uses any materially false record concerning any aircraft part
 - Exports from any aircraft part by means of a fraudulent representation
 - Imports any aircraft part by means of a fraudulent representation
 - Sells, trades, or installs any aircraft part by means of a fraudulent representation

U.S. Defense Industry Experiences Counterfeiting Problems

- Commerce and GSA have issued reports
- Congress held hearing on this subject in November 2011
 - Many of the counterfeits identified were discrete electronic parts that had been purchased by OEMs

Boeing's Testified Before Congress

- Boeing noted that they had verified that all parts supplied did conform to appropriate physical properties
- Congress took the position that even if the parts can be shown to conform to all physical properties, counterfeits are considered “non-conforming”
 - [*** Congress changed the law to support this position! ***]

Congressional Conclusions about Counterfeits

- Many come from China (this was in the published report)
- Law needs to be changed (it was changed)
 - Prime contractors will be held responsible for counterfeits
 - Discrete electronics will be bought from OEMs and “trusted suppliers”

Bloomberg

China Counterfeit Parts in U.S. Military Aircraft

By Tony Capaccio - Nov 8, 2011

Dozens of suspected counterfeit parts have been installed on U.S. defense equipment from [Raytheon Co. \(RTN\)](#), [L-3 Communications Holdings Inc. \(LLL\)](#) and [Boeing Co. \(BA\)](#), including aircraft deployed to Afghanistan.

The Senate Armed Services Committee found counterfeit parts -- usually from China -- on at least seven aircraft, including the [Lockheed Martin Corp. \(LMT\)](#) C-130J transport plane, Boeing P-8A Poseidon maritime patrol and L-3 27J Spartan transport.

"Suspect electronic parts from China were installed on military systems and subsystems that were manufactured by Raytheon Co., L-3 Communications and Boeing," said a memo from the committee's staff, released yesterday before a hearing today.

"There is a flood of counterfeits and it is putting our military men and risk and costing us a fortune," committee Chairman [Carl Levin](#), a Michigan Democrat, said. None of the examples found by the committee were connected to lives lost or dramatic failures causing an aircraft crash, and the companies involved cooperated with the investigation, he said.

[China](#) supports the fight against [counterfeit goods](#), Chinese Foreign Ministry spokesman Hong Lei said at a briefing today in Beijing.

"China's government is actively promoting cooperation in fighting fake or counterfeit goods with relevant authorities in other countries and such efforts are welcome," Hong said.

Deployed Aircraft

Separately, the Pentagon's Defense Criminal Investigative Service is investigating about 40 cases involving various counterfeit items, Assistant Pentagon Inspector General for Investigative Operations James Ives said in an e-mail. The agency is conducting 225 investigations "involving potentially defective or substandard parts and components," he said.

"The cases may involve counterfeits or improperly made parts," Ives said.

Two new L-3 Air Force C-27J Spartans deployed to [Afghanistan](#) have displays with suspect parts, according to the committee. L3's Integrated Systems unit notified the Air Force on Sept. 19 that 38 suspect video memory chips were installed in the display units on eight of the first 11 aircraft delivered.

New Legislation

- 2012 National Defense Authorization Act requires the Secretary of Defense to implement a program to “enhance contractor detection and avoidance of counterfeit electronic parts”
- This program will essentially shift the burden for detecting counterfeit parts onto contractors by requiring them to establish policies and procedures to ensure counterfeit electronic parts do not enter the supply chain
- A trusted supplier program will be part of this (Section 818 of the 2012 NDAA)

NDA Section 818(c)(3)(A)

- (3) TRUSTED SUPPLIERS- The revised regulations issued pursuant to paragraph (1) shall—
- (A) require that, whenever possible, the Department and Department contractors and subcontractors at all tiers—
 - (i) obtain electronic parts that are in production or currently available in stock from the original manufacturers of the parts or their authorized dealers, or from trusted suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers; and
 - (ii) obtain electronic parts that are not in production or currently available in stock from trusted suppliers;

Counterfeits and Civil Aviation

- On March 20, the FAA held a meeting in South Florida with distributors to discuss parts issues
- The FAA provided a series of examples of acceptable documentation
- The FAA provided an example of documentation from counterfeit parts that the U.S. Government bought

Press Release

TWO MIAMI-BASED AIRCRAFT PARTS SUPPLIERS PLEAD GUILTY IN PROCUREMENT FRAUD SCHEME

April 12, 2010

FOR IMMEDIATE RELEASE

Four Others Previously Convicted for Their Roles in Counterfeit Airplane Parts Scheme

Jeffrey H. Sloman, United States Attorney for the Southern District of Florida, Marlies T. Gonzalez, Special Agent in Charge, U.S. Department of Transportation, Office of Inspector General ("DOT-OIG"), Miami Field Office, Amie R. Tanchak, Resident Agent in Charge, Defense Criminal Investigative Service ("DCIS"), Laura DeJong, Commander, Air Force Office of Special Investigations, Detachment 802 ("AFOSI"), John V. Gillies, Special Agent in Charge, Federal Bureau of Investigation ("FBI"), Anthony V. Mangione, Special Agent in Charge, U.S. Immigration and Customs Enforcement ("ICE"), Office of Investigations, and Carol Kisthardt, Special Agent in Charge, Southeast Field Office, Naval Criminal Investigative Service ("NCIS"), announced the April 7, 2010 guilty plea of defendants **Mariella Bianchi**, 51, and **Juan Beltran**, 28, both of Davie, for their participation in a massive procurement fraud scheme designed to defraud the U.S. Air Force and Navy, and the commercial aviation sector. The defendants pled guilty to conspiracy to commit airplane parts fraud, in violation of Title 18, United States Code, Section 38(a). They are scheduled to be sentenced on July 7, 2010 before U.S. District Court Judge Marcia Cooke. At sentencing, the defendants each face a statutory maximum sentence of 10 years in prison.

These convictions are part of Operation Wingspan, a two-year investigation into the manufacture and sale of counterfeit military and commercial airplane parts. To date, the loss in Operation Wingspan is estimated at more than \$5 million. In addition, this Operation has resulted in the seizure of more than \$150,000 and the revocation by the Federal Aviation Authority ("FAA") of at least 2 FAA Repair Station Certificates.

Defendant Mariella Bianchi was the owner of The Airborne Group, a military and commercial aircraft parts supply company in Miami. Juan Beltran was the Director of Military Sales at the Airborne Group. Bianchi and Beltran bid and were awarded contracts to supply the U.S. Air Force with various aircraft parts, including the KC-135 or E-3 military aircraft. Once they were awarded a contract for the aircraft parts, defendants Bianchi and Beltran contacted unauthorized local manufacturers, including Julio Zerene of Zerene Aerospace, to manufacture the parts, in violation of the specific contract specifications that required either new surplus parts or parts that had been manufactured by Boeing or other approved sources. Once the parts had been illegally manufactured, defendants Bianchi and Beltran would complete false Certificates of Conformance, also known as a "Parts or Material Certification Form" or "ATA 106" forms, and other paperwork, including packing slips and invoices, all falsely representing either the condition or manufacturer of the parts. Defendants Bianchi and Beltran then forwarded the completed fraudulent paperwork and the counterfeit parts to the U.S. Air Force for use in military aircraft.

Also charged and convicted in connection with this conspiracy were defendants **Julio Zerene**, 49, **John Falco**, 56, **Jorge Cascante**, 54, and **Willie McCain**, 53, all of Miami. On October 2, 2009 and February 9, 2010, defendants Zerene and Falco, respectively, were sentenced to 37 months in prison. Cascante is scheduled to be sentenced on June 16, 2010, before U.S. District Court Judge Jordan; McCain is scheduled to be sentenced on May 20, 2010, before Senior U.S. District Judge Daniel Hurley. The defendants face a maximum statutory sentence of 10 years

in Miami. Zerene illegally manufactured aviation aircraft skins, wings, and control surfaces on various aircraft including the U.S. military version of the Boeing 707/320 commercial airplane, the U.S. Air Force's E-3 Sentry, and U.S. Air Force's Airborne Warning and Control System (AWACS) airplanes, by using improper materials, uncalibrated machinery, and unapproved technical schematics and drawings. Zerene sold these parts to various airplane manufacturers, including defendant John Falco, owner of Falcon Aviation, and defendants Mariella Falco and John Falco. These defendants would, in turn, sell and ship the counterfeit parts to the U.S. Air Force and to others in the commercial aviation industry to misrepresent the origin and authenticity of the counterfeit parts.

The Airborne Group, an FAA-certificated Repair Station, was the primary intermediary between illegal airplane parts manufacturers, including defendant John Falco, owner of Falcon Aviation, and the Airborne Group. The Airborne Group and The Airborne Group certified the authenticity of the counterfeit parts, and the Airborne Group and The Airborne Group were FAA-certificated Repair Stations, and their capabilities list.

The Department of Transportation, Office of Inspector General, Office of the Inspector General, U.S. Office of Special Investigations, and U.S. Attorney Marcia Cooke are providing their valuable assistance.

For more information, contact the U.S. Attorney's Office for the Southern District of Florida at (305) 536-6000.

Results of the S. Florida Meeting

- The documentation offered in support of the counterfeit defense parts did not meet AC 00-56 standards
- Distributors agreed that they would not have accepted the paperwork offered in support of the counterfeit defense parts transaction

Commercial and Defense Receiving Standards Differ

- Many of the practices that Defense is now implementing to prevent counterfeits were implemented by civil aviation in the 1990s.

Tips for Identifying Counterfeits

- **Know your suppliers**
 - Rely on programs like AC 00-56 that help ensure adequate quality systems

Tips for Identifying Counterfeits

- **Have a Robust Receiving Inspection Process**
 - Use the process to protect your company
 - Train your inspectors
 - Investigate red flags

Unusual Finish and No Inspection Stamp



Tips for Identifying Counterfeits

- **Look at the Parts – Not Just the Paperwork**

- Look for visual discrepancies

- Make sure the parts match the paperwork

Part Number Appears to Be Vibrapeened



Tips for Identifying Counterfeits

- **Read the documentation**
 - Identify and investigate incongruities
 - If it does not look right, or if looks different from usual, then figure out why!

No Documentation (OOP)



Documentation Review Tips

- Make sure part numbers match the part number listed on the documentation
- Make sure serial numbers match the serial number listed on the documentation
- Make sure the part that arrived matches the purchase order description
- Look at the signatures – do they appear to be robo-signed and is this normal?

Different Finish



Thank You

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