

Crime and Business

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Does Economic Warfare Exist?

Criminal organizations threaten businesses just as much as they threaten states and citizens; but there is also such a thing as “economic warfare,” which manifests another face of crime, another type of threat to economic interests. The term may be polemical and somewhat alarming, but the reality it refers to is indisputable. Today’s businesses compete hard to capture markets that are increasingly coveted by a plethora of competitors. This has become particularly evident as China, Brazil, and India unleash their enterprises in “Western” markets. And states are also a part of this gigantic commercial competition. In fact, the strategic challenges of tomorrow are predominantly economic. None of the other subjects of confrontation have disappeared, but they rank as secondary priorities in the global arena.

So what concretely lies behind the term “economic warfare?” Many things: industrial espionage, intrusions into or straightforward burglary of research laboratories, the poaching of senior executives (as a form of “hostile recruitment”), attacks on public image, the undermining of leaders, and so forth. But in a word: crime. Its motives certainly vary in form, but they all converge in the expectation of turning a profit.

The manipulation of information, in particular, goes from strength to strength.

An interesting example is that of Whitehaven Coal. In January 2013, a certain association, judging their business activities to be too polluting, used the headed paper of a large bank to propagate false information and thus to bring down the stock value of the company.² For no apparent reason, the share price recorded a sudden brutal drop of around 10%. Following a suspension of trading, an investigation uncovered the publication of a false memo purportedly from the fourth largest Australian bank, ANZ.

The document appeared to announce the discontinuation of financing facilities (of around a billion euros) for the Maules Creek open-cast mine, one of the largest on the planet (and a crucial site for Whitehaven Coal). The fake memo emphasized “the risks associated with the mine’s reputation and with analysis of its profitability, in the current highly volatile climate of the coal export market.”³ The markets, rather feverishly, did not hesitate to react. Once the subterfuge was unmasked, activists from the Frontline Action Group (an environmental association opposed to the mine, which they claimed was dangerous to the environment) admitted to being the true authors of the memo.

Hostile takeovers of businesses also stand out as being among the most sophisticated and dangerous threats of the moment.

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² See Charles Gautier, “Des Écolos en lutte contre une mine se font passer pour des banquiers,” *Le Figaro*, January 8, 2013.

³ Translator’s note: Quotation back-translated from the French-language version of this article.

We must finally mention the particular problem of social networks. Today the interactive Web constitutes a potential source of information leaks for businesses, as indicated in the following summary.

The Protection of Businesses' Immaterial Assets: Information Leakage and Social Networks⁴

–1 out of every 7 profiles, all social networks included, is the source of an information leak.

–30% of people publish professional information on the Internet

–58% of people publishing professional information do so on Facebook.

Internal Fraud

The danger often comes from within organizations themselves—beginning with fraud. Let us explore this question through a fictional scenario. Here are a series of exchanges taking place between the brand HERCULE, part of the retail group HERAKLES, and Risk Team (a provider of economic intelligence), following the discovery of a case of internal fraud.

Report on Meeting of February 18, 2012, called by Risk Team:

Following our interview on Tuesday February 14, 2012, with Mr. NÉMÉE and Mr. LERNE, we have been advised of the following:

A tax audit having been carried out on the Nice branch of HERCULE, false in-

voices, implicating local associations, have come to light. The information has been brought to the attention of the National Tax Fraud Squad. Following the discovery, a tax claim (dated November 14, 2000) has been made against HERAKLES (the company that owns the HERCULE brand). The associations have also turned against HERAKLES. These fraudulent practices are apparently not endemic in the region, since nothing similar had been discovered in Cannes.

Mr. MINOS, the official in charge of the case, wished to go to the Etampes branch (whose manager was appointed in 2010). But because of damages sustained to the files of that store (which were kept in poor conditions and destroyed for the period 2002–2005, and are missing for the period covering 2006–2008 and the second half of 2009), Mr. MINOS agreed to focus on the Amiens branch instead.

In regard to the above, our recommendations are as follows:

– The interview with Mr. DIOMEDE, manager of the Nice branch since 2010, should include a series of precise questions, which we propose to explore with Mr. NÉMÉE.

– It is necessary to audit urgently the Amiens branch, so as to verify various things: the absence of any activity similar to that discovered in Nice, the respect for procedures concerning cash receipts for the associations (on certain products in particular), and the general good conduct of the store in regard to all legal obligations.

⁴ See the study carried out by IFOP for the Atelier BNP Paribas Group (November, 2010), entitled “*Le Personal branding au service de la marque*” (“Personal Branding in the service of the brand.”)

- It is equally essential to prepare the manager of the Amiens branch to be able to satisfy the administration's requests with optimum effectiveness, cooperation, and psychological and behavioral appropriateness.

- Finally, although the Etampes site was not selected in the first stage, it is nevertheless important to proceed with its examination as soon as possible. There is nothing to indicate that it will not be the object of a later investigation. The question of the records remains unclear: although a bailliff's report dated December 28, 2005, testifies to the destruction of the records following bad weather, we must examine the reasons for the absence of any such finding for the second period concerned. This point must be clarified as soon as possible, the branch must be examined to ensure it conforms to regulations, and the classification and conservation of accounting records must in general be evaluated for all HERCULE outlets.

As crisis measures, we suggest the following:

- So as to reassure all branch managers of the confidence necessary for good, healthy working relationships and efficiency, it would be useful to organize an information meeting concerning the administration's investigation into the Nice branch (summarising that, during the carrying out of its work, the tax office responsible has brought to light breaches of certain legal procedures that the HERCULE group has made every effort to ensure are followed by all staff). It is indispensable that we ensure branch managers' continued confidence in the executive committee, which is employing all

the means at its disposal to treat this affair calmly, responsibly, and with respect for the law and for the persons involved.

- In addition, it is necessary to use this information meeting to reiterate the procedures that the directors of HERCULE have always indicated to its managers and staff, especially concerning the specific rules around the sale of alcohol to associations (conditions relating to the identification of cash payments, their acceptability above the authorized amounts, and so forth.)

Summary sheet (origin: NÉMÉE):

As detailed in the memo of February 18, 2012, the essential facts of the matter are as follows:

- A tax audit having been carried out on the Nice branch of HERCULE, fake invoices (involving local associations) came to light.

- In accordance with the provisions of article 40 of the Code of Criminal Procedure, the tax office revealed the facts to the local public prosecutor on November 14, 2011.

- These facts were subsequently brought to the attention of the National Economic Investigation Squad. The head of the unit in charge of the file visited another site: Amiens (March 16–18, 2012). The three days he spent there brought no problems to light.

- So as to control further possible developments of this affair, to circumscribe it, and to avoid any major risk of damage to the activities or the image of HERCULE and the HERAKLES group, members of

the executive committee have been put in touch with specialists in risk management to shed light on these events, and to assure the tax office that we are taking charge of the situation.

– We have learned the following by sending our representatives to Nice:

- Sales of alcohol to associations accounted for cash receipts of more than one thousand euros, without presentation of a HERCULE card, without verification of the identity of the purchaser, and without mention of vehicle registration numbers. This is contrary to the procedures of HERCULE, in line with the regulations.
- It turns out that under the compromised responsibility of the former director of the store, Mr. DIOMEDE, drinks manager Mr. AUGIAS had covered up this failure of procedure, giving instructions to this effect to the cashiers.

The major risks are as follows:

- The escalation of legal responsibility to the executive committee.
- Media exploitation of the affair.

Faced with these events, we have taken the following steps:

- Preparing the manager of the Amiens branch so as to best reply to the questions of the tax office.
- Checking of the delegation of power between Mr. GERYON, regional director during the period concerned, and Mr. DIOMEDE. Currently, it appears that

criminal liability in regard to the delegation goes no further than the level of the director of the establishment—that is, Mr. DIOMEDE.

– Initiating a process of internal communication beginning with the last works committee (reiterating the regulations in force with respect to the opening of accounts for associations, cash receipts, and other modes of identification of payers for cash payments), with the aim of:

- Reassuring staff so as to avoid rumours
- Reminding staff of the directors' ongoing concern (as testified by earlier circulars [annexed to the works-committee report]) for compliance with legislation (including that relating to the conservation of records required by the tax office).

The actions underway or being planned are enumerated below:

- A series of interviews with (current and former) staff of the Nice branch.
- An audit of the Estampes branch, which is likely to be visited by the tax office (in particular, to verify the proper maintenance of accounting records).

We have a strong position in relation to the tax office in regard to the following:

1. All identifiable and useful facts relating to the affair have been put in good legal order, so as to give the judicial authorities every assurance of good faith and transparency on the part of the directors of the HERAKLES/HERCULES group on the national and executive level.

2. The results of the internal audit that would permit the group (at the correct moment, if necessary) to itself bring a civil action in regard to the actions of certain of its delegates (namely, Mr. DI-OMEDE) and the consequences of those actions, have already been compiled, and will continue to be compiled as the internal inquest progresses.

3. The involvement of Risk Team, an external service provider, to guide the approach to internal information, which, to the eyes of the tax office, evidences a will to clear up the affair, not to suppress it.

Counterfeiting

Counterfeiting is a veritable scourge for business today. Already confronted with increased competition, they must also confront this illegal production which diminishes their market share, threatens jobs, and inevitably degrades their brand image. When this problem is mentioned one usually thinks of its impact upon the luxury industries that were its first victim. In this regard, French brands figure amongst the most counterfeited in the European Union in the domain of cosmetics, perfumes, clothing, and so forth.

However, for some years now counterfeiting has not been limited to the luxury sector alone. It has undergone a definite change of direction toward everyday consumer products. No company is safe from it any longer. The story of a certain Saint-Étienne-based SME, a shoe manufacturer, is particularly revelatory. The commercial site of the brand Archiduchesse.com, 70% of whose sales are transacted over the Internet, was hacked by a Chinese outfit, includ-

ing its content, logo, and images (including the photo of the French manager). A complete, faithful copy of the French site offers counterfeit versions of the of the SME's products for sale at a sixth of the price. "At the moment this has no impact for us since this site's sales seem to be limited to Chinese markets, but if it were to be translated into French, the counterfeit products could potentially be sold in France, and that would be the end of us,"⁵ said the manager of the SME, Patrice Cassard.

It is thus quite clear that counterfeiting can have devastating effects on SMEs (which constitute 70% of the French economic fabric). What is more, in the face of this criminal phenomenon, SMEs are at a disadvantage relative to larger companies.

Any tackling of the problem presupposes the prior putting into place of a monitoring system so as to detect acts of counterfeiting. Before being able to mount any kind of response to defend one's rights, one must firstly know that one is a victim. In addition, launching a legal procedure implies significant expenses, which are often difficult to afford for SMEs. In a case like that of the Archiduchesse brand, the manager of the company would have to spend around fifty thousand euros to appeal to a bailliff to observe the counterfeit production, and then appoint a lawyer to fight the case.

Counterfeiting is a polymorphous phenomena that covers many different economic and legal situations. From a strictly legal point of view, the term "counterfeiting" refers to the violation of intellectual property rights (such as a patent, brand, designs, and models), but in its everyday sense it designates broadly the whole range of acts of parasitism, imitation, and unfair competition. What is more, this polymorphous

⁵ "Contrefaçon: une entreprise de chaussettes démunie," *Le Figaro*, April 19, 2012, <http://www.lefigaro.fr/societes/2012/04/19/20005-20120419ARTFIG00662-contrefacon-une-entreprise-de-chaussettes-demunie.php>.

character is illustrated by the existence of different types of counterfeiting: namely, the “fake-fake,” fabricated with the incorrect raw materials, the “fake-true,” made with authentic raw materials and imitating or reproducing a product partly or totally, without the authorization of the holder of the intellectual property rights; and finally the “true-fake,” a product identical to the original, sometimes manufactured in the same factories, and sold directly through a dishonest subcontractor, without the originator’s being aware of it. All of which allows us to appreciate more clearly the complexity of the struggle against counterfeiting.

This criminal market is still poorly known and probably underestimated. Although it is difficult to evaluate a market that is by definition invisible, numerous reports published in recent years estimate the turnover of counterfeiting at around five hundred billion euros per year (that is, between 7 and 10% of global commerce).⁶ Besides this, we see channels of counterfeiting becoming truly professionalized, a development accentuated by the possibilities offered by the Internet. This phenomenon has today become an industry in its own right. At the other end of the chain, counterfeit commerce costs two hundred thousand jobs every year in Europe, thirty thousand of which are in France.⁷ Consequently, the struggle against counterfeiting activity is a crucial challenge for the protection of businesses.

However, beyond the gigantic losses suffered by the economic actors and by the populations of the territories where they are based, counterfeiting above all poses grave problems in terms of security and public health. Numerous counterfeit products prove to be dangerous or even deadly. This

is particularly the case with contraband cigarettes manufactured in the Chinese provinces (which contain scraps of fabric or plastic that are hazardous to health) and counterfeit medicines (false viagra), as well as food products (adulterated alcoholic drinks) or spare parts for aeronautics.

A Laundry List of Threats

Of course, the threats described above do not represent an exhaustive list. There are numerous other dangers we have not yet mentioned. An EDHEC study on malevolent acts committed against businesses (based on a survey carried out in eighty-two large European, American, and Japanese companies) revealed the following “hit parade” among the attacks listed:

- 84%: thefts of product and equipment
- 67%: internal fraud
- 39%: hacking into information systems and piracy
- 34%: armed attacks
- 33%: identity theft of businesses
- 17%: kidnapping and hostage taking
- 7%: murder of employees
- Two cases of maritime piracy

So there is no lack of subjects. Beginning with racketeering (particularly widespread in the waste-processing industry), we should note in particular that its most elaborate form today is piracy in public procurement contracts. This involves control over the awarding of a contract (and thus necessitates a strong collusion with local political authorities).

As for the theft of merchandise, it is concentrated in cargo theft (electrical appliances, perfume, wines and spirits, textiles,

⁶ Alain Bauer and Christophe Soulez, *Une Histoire criminelle de la France* (Paris: Odile Jacob, 2012).

⁷ Mickaël Roudaut, “Crime organisé: un acteur global,” in *Sécurité Globale* 5 (Fall 2008).

telephony, delicatessen foodstuffs, and so forth). Very well organized gangs (drawn from itinerant criminals or urban criminal groups) are the principal culprits. The technique consists of diverting convoys or stealing tons of merchandise from warehouses (acting on inside information).

Misappropriation in general also grabs the attention. It manifests itself in three forms:

- Money laundering (mafias and South American cartels)
- The diversion of logistical capacities to criminal ends (triads and Turkish and Albanian mafia can utilise regular road traffic to transport drugs or clandestine migrants across Europe).
- Counterfeiting (misappropriation of technical knowhow or of a brand). The Chinese triads and Russian criminal and terrorists organizations are particularly active in this domain (counterfeiting of luxury goods, pharmaceuticals, textiles, CDs, agribusiness, and aeronautics).

Certain zones of the world accumulate specialities. For instance, the Gulf of Guinea seems to be a particularly difficult space for the petrol industry. This industry exploits the oilfields situated in Nigeria (where 10% of Shell's annual production takes place). So-called "ethnic" criminal action (above all the doing of young people given alcohol, drugged, or conditioned by witchcraft rituals) is a regular reality here. This violence comes from the communities surrounding the extraction zones (which are, it is true, victims of runaway elite corruption and of a glaring inequality in the distribution of the petrol profits). The offending acts (understood and undertaken as a form of pressure or lobbying) aim to

obtain the recruitment of laborers or their being kept on in the job after the end of projects. The action of these ethnic gangs has proven particularly brutal in the Niger Delta, which has seen regular attacks on sites, the boarding of barges and platforms, and the abduction and assassination of expatriate staff.

As can be readily seen, these various crimes can easily be enumerated one by one, like an eclectic laundry list. What is said above does not aim to furnish a complete catalogue, but to draw attention to what are now strategic threats for businesses, seriously jeopardizing their development and sustainability.