The age of the app has collided with the era of fake designer goods. Firms are now using social media and crowdsourcing to keep track of their intellectual property, but may still struggle in a world where demand for fake designer goods continues unabated.

Witness the rise of apps such as uFaker, designed by Epstein Drangel, the US lawyers of the games company behind Angry Birds, Rovio. The uFaker app allows anyone to take pictures of counterfeit goods they find and receive a reward for reporting them to the trademark owners.

But what hope do intellectual property owners really have when there are so many people who don’t differentiate between fakes and the real McCoy?

As costs of production have dropped and international logistics have improved, counterfeit goods appear alongside the genuine article, and intellectual property lawyers look to find ways of controlling these illicit markets. Sometimes it’s easy to tell the fake from the genuine, but not always.

All of which might make people wonder what we mean by “genuine” in the first place.

**Genuine fakes**

It used to be that a trademark – “Coke”, say, or “Nike” – really only identified where the product came from – that the drink was produced by Coca Cola Amatil, or those sneakers were genuinely made by Nike Inc. of Beaverton, Oregon.

Although this may still be true of many products, there are lots of things consumers buy because it says something about the purchaser, not the product.

Think of the kid wearing a NY Yankees baseball cap, or a Brisbane Broncos jersey, or the Man U strip. The proud owner doesn’t think the apparel was made by a sportsman in his time off, and usually doesn’t care where the product was made or by whom.

They just care that it signals a connection with their favourite team, with some conception of cool, or with some other association that they care about.

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This kind of use by consumers – call it the “signalling function” of brands – is most evident in luxury products, where we buy things for their status value.

As the American economist and critic of capitalism Thorstein Veblen explained more than 100 years ago, status symbols function as signals of “invidious comparison.”

In other words: I can afford this Hermès bag and you can’t, therefore, by purchasing or wearing this bag, I am richer, more refined, and generally better than you.

As the signalling function of brands has become more important, entrepreneurs have stepped in to meet a different breed of consumers: those who can’t afford the genuine, licensed product but who still want to associate themselves with the brand.
Thus we have witnessed the rise of international counterfeiting, most obviously seen in areas such as luxury handbags and Angry Birds plush toys, but more seriously in consumer goods such as toothpaste and aircraft parts and in pharmaceuticals.

(I hate to be the one to tell you this, but all those online pharmacies hawking cheap Viagra, Cialis and Lipitor aren’t selling you the real thing.)

**Countering the counterfeiters**

Years ago, when I was a young intellectual property lawyer, the partner would send us out to markets in plainclothes (no suits) to make “trap purchases” of knockoff products.

With the uFaker app, this job can be crowdsourced by an army of would-be amateur detectives, armed with iPhones and a burning sense of outrage at the existence of counterfeit handbags. It’s Nancy Drew and the Case of the Knockoff Pradas, fast-forwarded to the era of selfies and Snapchat.

Smartphones are perfect for this sort of thing: not only can they take photos of the offending product and allow the user to enter all sorts of info about the merchant and the product, they can use GPS to geo-locate where the knockoff was found.

With this kind of information reported back to a central server, trademark owner who signs up for uFaker can map the flow of counterfeit products.

A cute little feature of the system uses Google Maps to visualise counterfeiting sites, with stick pins dotting the reported locations. Now Rovio knows where knockoff Angry Birds products are being sold, and can understand the connections between companies selling knockoffs they previously had no idea existed.

**Supply meets demand**

Of course, uFaker is only as useful as the people who use it, and for every fashionista who is disgusted at counterfeits, there are ten people of modest means for whom knockoffs are a way of capturing a sense of style and belonging.

I used to work just near Canal Street, the heart of knockoff handbag territory in New York City, and I would often see groups of tourists who would actively seek out the touts, in search of a cheap Louis Vuitton Alma bag, or a Céline Mini Luggage.

> Is that real Louis Vuitton? Who cares? Shoppers on Canal St, New York City. Anthony Catalano

I would watch as the prospective purchasers were led into the backroom of an innocuous store – or, for a while, into blacked out vans parked on the street – emerging half an hour later with multiple bags, bought at some tiny fraction of the cost of the genuine article.

I spent some time interviewing these women and their motivations were much more complicated than “I wanted the bag but I didn’t want to spend the money”.

Often the explanation had more to do with the woman’s self-esteem, and whether they thought it appropriate to spend a couple of thousand dollars on a frivolous item for themselves.

Other times, women would tell me that they actually had the same bag at home – given to them by their husband or boyfriend, typically – but they felt uncomfortable taking out such an expensive piece to certain places.

It’s these attitudes that are fuelling a roaring trade in fake goods. And as long as these kinds of consumers exist in
significant numbers, intellectual property owners will struggle to compete.

App or no app.