

Anti-Counterfeit Strategy for Brand Owners

Rod Kinghorn

Jeremy M. Wilson

A-CAPP Backgrounder

October 2013

There are many approaches brand owners can take to prevent and respond to product counterfeits. This Backgrounder outlines a strategic approach whereby brand owners consider product counterfeits as a fundamental risk to the brand, and brand protection as an integral component of the larger intellectual property protection program.

Consider a Total Business Solution

Since 1984 when the Federal Anti-Counterfeiting and Trademark Act was passed in the United States, brand owners have had the opportunity to include law enforcement assistance in their anti-counterfeiting strategy. With some success, this law and many others that followed it in the US and internationally have provided some remedy to brand owners in the ongoing fight to protect their business from the reputational and economic damage created by counterfeiters. However, like other demand driven products (illicit drugs, for example), the availability of counterfeit products continues to be a significant part of the global economy. While widely agreed upon to be in the billions of dollars, there are currently no measurements that credibly provide accurate information on the extent of the problem or its implications. Enforcement efforts have not eliminated the product-counterfeiting problem and it may in fact be larger now than it was in 1984.

There is some evidence that the counterfeiter has become more closely aligned with legitimate supply and distribution chains and many products are nearly identical in price and appearance to the genuine. (One exception being non-deceptive counterfeits where low prices continue to be obvious cues of a counterfeit product.) The fact that counterfeit product today is not as easily detected in the marketplace as it once was, is

why brand owners should consider integrating their brand protection program into a total business solution process. This business solution expands the brand protection program from being reactive to counterfeit product identified in the market to a more proactive program. This proactive approach includes controls and processes implemented throughout the brand owner's supply chain designed to alert the brand owner of business activities that put the brand at risk.

Treating protection of the brand as part of the overall intellectual property protection program most likely will involve integration into the business culture of processes and controls to protect the brand from product conception through development, manufacturing and distribution. Treating protection of the brand as part of the overall intellectual property protection program requires a different level of organizational commitment than strictly relying on one where the primary efforts are reactive.

Recognition of the Problem

Brand owners that believe they don't have or will never have a brand protection problem should consider that the more successful they are and the better recognized their brand becomes, the more likely it is they will be a victim of counterfeit product. The question is, should brand owners wait to implement a program until after they have become a victim

and identified counterfeit product in the marketplace? After all, as previously described, this is the more typical approach. Yet at the same time the approach to protecting other intellectual property within the organization may already be integrated into the business process to provide protection of the property from concept to market. Most often one of the reasons for this is the company's desire to keep intellectual property out of the hands of competitors. This is part of the long-term strategy to stay ahead of the competition in terms of protecting proprietary information, product features, technology and other business processes that drive demand and protect or increase market penetration.

Product counterfeiters should be viewed as the unknown or unseen competitor that uses the brand owner's investment in research, development, product demand and market penetration to their own advantage with the unauthorized use of the brand owners name, trademark, distribution system, marketing and in some cases product. Recognize that the counterfeiter only has some basic needs to be successful. These are brand or trademark recognition, product demand, and entry into the marketplace. Brand owners provide most of the resources necessary for the counterfeiter to be successful by funding research and development, manufacturing, advertising and market penetration. The more popular the product becomes the more likely it is to be counterfeited. When the popularity of the product exceeds supply, the counterfeiter will fill that gap with product that is most often inferior to the brand owner's.

Unauthorized use of the brand owner's trademarks to market products that may or may not perform as expected provides low risk and high margins of profit for the counterfeit competitor. The reputational and economic risk to the brand owner is easily as damaging as a legitimate competitor acquiring the brand owner's other intellectual property through illicit or illegal means. The

reputational damage can be much more difficult to recover from, especially when the counterfeit product proves to be a risk to the health and safety of the consumer.

Support and Metrics

The first step in developing a business solution to the counterfeit problem is recognition by senior management that brand protection must be included in the overall intellectual property program. Without this recognition by senior management followed by implementing tangible business processes that support this direction, the business solution will not be successful. In other words, to achieve success, performance-driven metrics must be developed for all business processes related to brand protection just as they are for other business processes.

Identifying the best processes for protecting the brand within a business is somewhat dependent on the business model and product to be protected. Like other business solutions, the processes should be designed to mitigate or eliminate identified or known risks. For example, if it is known that suppliers have previously produced unauthorized product that they distributed outside of their contractual rights, even though it was not represented as genuine, then this is a risk that needs to be eliminated or mitigated as part of the total business solution as this provides an opportunity for a counterfeiter to obtain product. If no information is available on risks to the brand because the business is too new or no problems have been identified until counterfeit product appeared in the market, a risk assessment should be conducted to identify the risks that exist within the business model. This becomes part of the performance management requirements and each operational unit should develop processes and controls with specific metrics that measure their compliance with the process. Performance metrics should include how individual departments participate in meeting the overall brand protection program

objectives. In other words, it must be a team approach from concept to market that has been included by senior management in the business strategy. When the metrics are included in individual performance evaluations affecting compensation, they are most likely to be implemented by the management team.

Protecting Your Brand

Effective business processes should be designed to provide prevention, detection and continuous improvement opportunities for protecting the brand. Design of the business solutions should have controls that alert management to a problem that puts protection of the brand at risk. Once this alert has been identified, there should be a clearly described directive for reporting, investigating and resolving this risk. This is where the reactive approach fits in the business solution process and where it can be the most effective in protecting the brand. Many of the risks will manifest themselves outside the organization and will need to be corrected with action taken outside of the organization. Management should expect that when the total business solution is implemented that the increased level of counterfeit awareness in the organization is likely to result in an increase in the number of risks identified. Strategic planning should include providing additional internal and external resources to appropriately react and resolve these risks.

Continuous Improvement

Once actions have been taken to mitigate or eliminate the identified risk, the results should be used to strengthen the internal and external business processes and controls to prevent the issue from re-occurring during ongoing business operations. Using the “fruits of the investigation” to correct identified internal risks can be accomplished regardless of whether a total business solution has been implemented. If a total business solution has

been implemented then the reactive phase is not the entire program, but one piece of an integrated business solution.

Many of the identified risks will occur external to the business and provide opportunities to strengthen relationships with suppliers, contractors, distributors, consumers and law enforcement by involving them in the total business solution.

It is important to treat the brand protection process as one that is circular, not linear. Elements of the program that need to be in place to create a culture of continuous improvement include:

- Senior management recognition that brand protection is a business risk that needs top management support and direction
- Brand protection is included as part of the intellectual property protection program
- Ongoing program of risk assessment that identifies opportunities created within the routine operations that would provide support for producing, marketing and distributing counterfeit product
- Creation of business processes that have controls developed to alert management of potential opportunities for counterfeiters
- Clearly identified process to report, investigate and eliminate counterfeit opportunities or counterfeit product identified
- Using the fruits of the investigation to educate employees on the product counterfeit risks and improve business processes

- Creation of performance metrics related to brand protection that are used in the evaluation of employee performance for compensation considerations
- Internal and external audit program that actively audits business operating units and external partners monitoring compliance with brand protection policies, processes and contracts.

From Theory to Practice

Identifying the need to establish or improve a brand protection strategy is a first step in what should be a continuous process. Although difficult to implement, the process is integral to protecting both the brand owner and consumers from counterfeit products. What we have described herein is a framework for conceptualizing brand protection and implementing a strategy of continuous improvement similar to already existing business processes. To own the strategy, the next steps are to design and implement a brand protection initiative that is risk-based and integrated within the business model of the brand owner.

This A-CAPP Backgrounder was supported by Whitlam Label Company, Inc. The ideas expressed herein are those of the authors and do not necessarily represent the opinions of Whitlam Label Company, Inc.



The Michigan State University Center for Anti-Counterfeiting and Product Protection (A-CAPP) is the first and preeminent academic body focusing on the complex global issues of anti-counterfeiting and protection of all products, across all industries, and in all markets, and on strategies to effectively detect, deter, and respond to the crime. Linking industry, government, academic, and other stakeholders through interdisciplinary and translational research, education, and outreach, the A-CAPP serves as an international hub for evidence-based anti-counterfeit strategy. For more information and opportunities to partner, contact Dr. Jeremy Wilson, Director of the A-CAPP, at (517)353-9474 or jwilson@msu.edu. Additional information can also be found at <http://www.a-capp.msu.edu>.