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Intellectual Property Attaches’ from the USPTO serve as a valuable resource for Brand Protection Professionals. In our Cover Story, we learn about this program’s origin, the IP attaches’ scope of duties and their unique ability to assist US rights holders with protection and resolution of crucial IP challenges in key regions around the world.
Dear Fellow Brand Protection Practitioners,

I am pleased to introduce The Brand Protection Professional ("BPP"), a publication that will become your go-to place for the information you need, on the issues you are most interested and that are essential to your in-house practice. As a derivative of a leading university center in anti-counterfeiting and product protection, The BPP has unique access to world-class research, education and outreach capabilities. But, uniquely positioned as an industry journal, The Brand Protection Professional is written exclusively for the in-house brand protection community.

In my years in the brand protection field as Director of Brand Protection for Deckers Brands, I often attended conferences and seminars for content, but also for the benefit of meeting with colleagues on the challenges they were facing, hear of the solutions, and in return share what I was finding as successful practices. In my work with the A-CAPP Center as an Industry Fellow, we began to explore the need for an industry journal to serve as a resource to practitioners and as a place to hold conversations and information beyond those passing discussions.

The BPP is a publication of Michigan State University’s Center for Anti-Counterfeiting and Product Protection (A-CAPP) in collaboration with Underwriters Laboratories (UL). Please join the conversation and read and share your knowledge. In addition to looking for submissions of articles, we are also looking for poll participants, see Temperature Test participants in the BP Forum, a question to professionals and their answers, and listings of events/new resources and announcements for The Bulletin. Please see more detailed policies and guidelines on submissions on the opposite page.

Leah Evert-Burks
Managing Editor & Industry Fellow
Center for Anti-Counterfeiting and Product Protection
Michigan State University

mission statement

The Brand Protection Professional: A Practitioner’s Journal (BPP) is a quarterly resource dedicated to reporting on brand protection issues, research and professional information for in-house brand protection practitioners. The BPP aims to advance brand protection through the establishment of an accessible, comprehensive forum containing essential information for the brand protection community.
Disclaimer:
The BPPs offered as a service to the brand protection community. While every effort has been made to check information given in The BPP, we provide no guarantees or warranties, express or implied, with regard to content provided in The BPP. We disclaim any and all liability and responsibility for the qualification or accuracy of representations made by the contributors or for any disputes that may arise. It is the responsibility of the readers to independently investigate and verify the credentials of such persons and the accuracy and validity of the information provided by them. This publication is provided for general information purposes only and is not intended to provide legal or other professional advice.

Submissions:
The BPP encourages submissions from a wide range of experts, so long as the subject of the contribution fits the mission of the journal. Contributors are encouraged to draw on experience for their articles and to write articles that reflect what is important to brand protection practitioners. Publication decision is in the absolute discretion of the editorial team. To learn more, including submission guidelines, instructions, and tips, please see our policy and statements guide.

Copyright:
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Welcome to the inaugural edition of The Brand Protection Professional. UL is a very proud partner and supporter of this unique journal that will provide valuable information to help protect our brands. The Journal will help increase awareness, provide relevant and timely information and support a community of rights holders who work to protect society from the risks of counterfeit products.

Intellectual property theft is a serious international crime that has reached epidemic proportions. This illicit activity robs billions from the global economy, endangers the health and safety of consumers, and nourishes the growth of organized criminal organizations. In order to stay ahead of these globalized and adaptive criminals, and succeed in protecting the consumer and our brands, we must remain vigilant and continuously seek out new and innovative solutions to meet the ever shifting threats. I truly believe the Brand Protection Professional is one such solution that will lead to greater coordination and partnerships between rights holders around the world.

For over 120 years, UL has been a leader in advancing safety while enabling goods to flow in an increasingly borderless world. UL will continue to do our part by working with our many international partners and dedicate our thought leadership and resources where required to support global efforts to defeat this transnational crime.

UL thanks Michigan State University’s Center for Anti-Counterfeiting and Product Protection for collaborating with us on this very worthwhile initiative.

Keith Williams  
President & CEO  
Underwriters Laboratories (UL)
Dear Colleagues:

In 2008, a small group of industry representatives reached out to Michigan State University. They spoke about the global problem of brand protection and product counterfeiting. They noted that brand owners had little strategic guidance in their efforts to combat product counterfeiting, resulting in responses that were largely uncoordinated. Frustrated by so few answers to their many questions about how best to address this crime, they challenged us to serve as a leader and academic resource for industry and law enforcement. They felt the University, drawing upon its vast intellectual resources, could uniquely integrate the sciences to create knowledge and share lessons about these global risks, further enhancing its land-grant mission. We agreed. We saw an incredible opportunity to rally our talents to provide value and decision-support resources to those in the field protecting brands on a day-to-day basis. A few short months later, we launched a program that quickly grew into the Center for Anti-Counterfeiting and Product Protection (A-CAPP). The Center now serves as a global hub for the development and dissemination of evidence-based anti-counterfeiting and brand protection strategies, while also offering a host of educational programs.

So how did our effort grow so quickly from a simple idea to a formal, interdisciplinary Center? By capitalizing on our unique academic strengths and staying true to the original reason we began our efforts. As an educational and scientific institution, we’ve relied on our independence and evidence-based approach to provide brand owners unbiased and relevant resources to answer their critical questions, sometimes to those they didn’t even know they had. We learn about the issues keeping brand protection professionals up at night through long-term, substantive partnerships we create with them. Through these partnerships we also share many of the lessons we learn, one of which is that we will never seize, arrest, or litigate our way out of these problems. Effective strategies require coordination and collaboration among industry, law enforcement, academia, and other stakeholders.

This new journal, *The Brand Protection Professional*, represents a huge leap forward for the field of brand and product protection, and contributes directly to our Center’s brand-owner-focused mission. It offers information, lessons, and opportunities regarding the issues with which brand protection practitioners struggle every day. It also exemplifies the kinds of innovative and valuable resources that can be created when industry and academia (and, indeed, law enforcement and others) work together toward a common goal. We’re proud to collaborate with Underwriters Laboratories, an impressive leader with a long and rich history of protecting people and products, to produce and bring you this Journal. Together, along with our seasoned editorial board comprising both practitioners and academics, we will ensure the quality and relevance of its substance.

I hope that you will find the Journal a useful resource, and one that you regularly consult. To facilitate these goals, I also hope that you will share with us your assessment of and ideas for the Journal. Only with your input can we be sure we’re addressing your needs and interests.

Please enjoy this inaugural issue.

Jeremy M. Wilson, Ph.D.
Executive Editor, *The Brand Protection Professional*
Director, A-CAPP Center
Professor, School of Criminal Justice
Michigan State University
JUNE
Brexit

The U.K. vote for “Brexit” from the European Union could have significant repercussions on IP enforcement, protections, regulations and legislation going forward. One area of certain confusion, among many other current rules and rights laws, will be Customs Regulations. For example, the relatively new EU Customs Regulation (608/2013) instituted January 1, 2014, provides for progressive harmonized border measures concerning the destruction of infringing goods, mitigating postal and courier traffic of counterfeit goods (that have increased 300% since 2009), and enhancing rights holders’ options to enforce IP rights in customs enforcement procedures. Given the Brexit decision, will the new U.K. be forced to abandon these EU Regulations? Additional concerns are how the movement of goods in transit through the U.K. will be regulated and what measures businesses should take to minimize their potential impacts. MORE

JULY
National Anti-Counterfeiting Consumer Education Awareness Month

The U.S. Senate passed a resolution on July 15th to designate July as the official month for national anti-counterfeiting education and awareness campaigns in celebration of the 70th anniversary of the Lanham Act. This news was welcomed and celebrated by the IP community. The designation presents brands with an opportunity to launch their own consumer education campaigns in conjunction with the official month for anti-counterfeiting awareness. MORE

AUGUST
Olympics

The Rio Olympics took place August 5-21, 2016, and provided an opportunity for brands to promote themselves to a global audience while at the same time giving counterfeiters plenty of targets to monetize, ranging from promotional apparel and souvenirs to toys and replicas. An unusual practice arose in Rio that may shift some brands’ thoughts on providing lower market-tier products as a strategy to combat counterfeiting. MORE
SEPTEMBER
IPEC

The Office of the U.S. Intellectual Property Enforcement Coordinator is expected to release its “2016 Joint Strategic Plan on Intellectual Property Enforcement,” which will provide direction for its activities over the ensuing three years. This will be the third Joint Strategic Plan to be issued and presumably it will also report on the progress made since the issuance of the 2013 Joint Strategic Plan and the establishment of the Office of the U.S. Intellectual Property Enforcement Coordinator in 2010. Danny Marti currently serves as the U.S. Intellectual Property Enforcement Coordinator within the Executive Office of the President. Several companies and non-profits have submitted their concerns to IPEC, which primarily focus on improving enforcement of International Trade Commission Exclusion Orders. The IPEC’s Fiscal Year 2015 report (following link) describes advances made concerning the 26 action items called for in the Administration’s 2013 Joint Strategic Plan. MORE

OCTOBER
Sports Season

With football season in full swing, hockey season just beginning and baseball’s World Series taking place this month watch for more raid and seizure activities in physical flea markets. Possible opportunities for collaborative efforts may arise with sports licensees and law enforcement should your brands be appearing in these markets. MORE

NOVEMBER
U.S. Presidential Election

Before Tuesday November 8th take time to check back in and see if there have been any further position statements by Democratic nominee Hillary Clinton and Republican nominee Donald Trump on intellectual property issues. The impact of the next President’s decisions toward IP will significantly affect industry and the U.S. economy, which are growing more dependent on innovation and the protection of IP rights in an ever-increasing globalized economy. The story link here presents an early analysis of positions when there was a wide field of candidates, but provides some interesting foundation to assess the two nominees’ current positions on IP. MORE
USPTO’S INTELLECTUAL PROPERTY ATTACHÉ PROGRAM: HOW IT CAN HELP

Conrad Wong
Attorney-Advisor, China and Enforcement Teams, Office of Policy and International Affairs, U.S. Patent and Trademark Office

Dom Keating
Director, Intellectual Property Attaché Program, U.S. Patent and Trademark Office

Importance of Protecting Intellectual Property

Intellectual property (IP) comprises an increasing, and increasingly important, portion of the U.S. economy. The Economic Statistics Administration and the U.S. Patent and Trademark Office (USPTO) estimate that IP-intensive industries accounted for 27.7 percent of total employment in 2010—and that the weekly-wage premium for jobs in these industries increased from 22 percent in 1990 to 42 percent in 2010. (ESA, USPTO 2012)

IP-intensive industries are typically global—and need global vigilance and protection. To provide these, the USPTO assigns U.S. diplomats with IP expertise to embassies and consulates abroad to serve as Intellectual Property attachés.

Where it All Began

The origins of the USPTO’s Intellectual Property-Attaché Program may be traced to 1992. During the Uruguay Round negotiations then that established the World Trade Organization (WTO), the Japan Patent Office posted an IP attaché to Geneva, leveraging his technical expertise in negotiating the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). In 1993, the USPTO followed suit by the posting an attaché to the U.S. Mission to the World Trade Organization (WTO) in Geneva. Almost 10 years later, because of the importance of IP matters in China, the USPTO posted an IP attaché to the U.S. embassy in Beijing.

Based on the success of these postings, the USPTO expanded the program in 2006 to include attaché positions in major trade areas and IP “hot-spots” around the world, including Brazil, Russia, India, Thailand, and Egypt, and their geographic regions. Since then, the IP-Attaché Program has continued to expand its reach, with IP attaché offices now active in the respective cities of Bangkok, Beijing, Brussels, Geneva, Guangzhou, Kuwait City, Lima, Mexico City, Moscow, New Delhi, Rio de Janeiro, and Shanghai.
A Little Help from Friends

The IP-Attaché Program is funded and directed by the USPTO. In conducting this program, USPTO works closely with the Office of the U.S. Trade Representative (USTR), the U.S. Department of State, and the Department of Commerce’s U.S. and Foreign Commercial Service. As USPTO does not have statutory authority to directly assign officers to embassies, it enters into agreements with other agencies to do so. For example, one of the attachés in Geneva is detailed to the State Department to serve at the U.S. Mission to the U.N. Organizations. The other attaché in Geneva is detailed to the USTR to serve at the U.S. Mission to the WTO. The remaining attachés have been assigned to the U.S. and Foreign Commercial Service under limited appointments. All attachés must commit to an initial two-year term, extendable in one-year increments to a maximum of five years.

Marching Orders

The attaché’s role is to advocate U.S. Government IP policy positions for the benefit of U.S. stakeholders. This includes

- Directly advocating with host governments, seeking changes in policies, laws, and regulations relating to intellectual property.
- Helping to educate host-government officials on IP matters. This includes providing training to judges, prosecutors, patent and trademark examiners, Customs officials, police officers, and policy makers. This training provides a better understanding of the U.S. Government perspective on IP matters, and enhances the effectiveness of IP protection in that country or region.
- Building grass roots support for U.S. policy positions by conducting public-awareness programs on intellectual property. These programs are directed toward professors, local politicians, business people, and students.
- Directly supporting U.S. stakeholders, such as rights holders, often helping them to navigate the legal environment in a host country, and sometimes assisting with a specific IP-related problem.
Calling Home

The attachés constantly interact with USPTO headquarters in Alexandria, Virginia. This interaction is coordinated by the Director of the IP Attaché Program and draws upon the USPTO’s resources and expertise. The USPTO has teams of specialized patent, trademark, copyright, and enforcement attorneys who provide support and guidance to the attachés. The attaché also works closely with other U.S. agencies in the region. See the Learning and Resources tab on the USPTO website.

Attachés at Work

As noted, the IP attachés have several roles. One example of indirect advocacy through education and public awareness programs occurred in Guangzhou, China, when the attaché organized and delivered presentations on the importance of IP in advancing a nation’s economy. Speakers from the provincial and local courts, the provincial IP office, Chinese academics, Chinese IP practitioners, and Chinese and foreign rights holders all shared their views on the critical role that IP plays in national development and economic evolution. The program also featured a mock U.S. IP trial that included presentations by two federal jurists, one a trial judge, the other an appellate judge.

Offering counsel to U.S. stakeholders on the local IP climate is another important role of the IP attachés. An example of an IP attaché helping U.S. stakeholders occurred in Brazil when a major U.S. fashion label that produces shoes for export to the United States was seeking to open retail stores in Brazil and to promote its brand to Brazilian consumers but had unresolved concerns about local sales of counterfeit products. The IP attaché in Rio de Janeiro met with the company’s import/export director to provide advice and guidance on IP enforcement under Brazilian law. The attaché’s guidance resolved the manufacturer’s concerns, facilitating the successful launch of its retail stores in Brazil.

Advocacy on behalf of U.S. stakeholders is also an important IP attaché role. Another example of directly supporting U.S. stakeholders occurred when some U.S. businesses encountered difficulties working with Chinese contractors to manufacture goods. A U.S. apparel maker was working with a factory in the Pearl River Delta region of southern China when the facility abruptly shut down and the owners disappeared. This U.S. rights holder found itself entangled in the bankruptcy proceedings: Its tooling, dies, and proprietary intellectual property were locked inside the now-abandoned factory. The firm contacted the Guangzhou IP attaché and requested assistance from the U.S. Consulate General. Working together with State Department Economic Officers and the Consulate’s local Chinese staff, the IP attaché explained to the leaders of the municipality where the insolvent firm was located how the U.S. firm was also a victim, and that it could not complete its contractual obligations to customers, or protect its IP unless it could remove its tooling, dies, and proprietary intellectual property from the premises. After lengthy discussions, the municipal leaders agreed to allow the rights holder to retrieve its proprietary items.
Wrap-up

Since the IP-Attaché Program’s inception, the attachés have provided significant benefits to U.S. rights holders. They also continue to be highly valued by other U.S. Government agencies in their cooperative role. Their expertise is a key component of their success, allowing them to address everything from broad policy issues to specific legal problems of U.S. rights-holders.

Rights holders needing the assistance of an IP attaché can find appropriate contact information here.

Dom Keating is the Director of the Intellectual Property Attaché Program at the U.S. Patent and Trademark Office. He provides legal and policy direction to U.S. Intellectual Property Attachés based in Brazil, Russia, India, China, Switzerland, Thailand, Kuwait, Belgium and Mexico. From 2010 to 2011, he was a Patent Attorney in USPTO’s Office of Policy and External Affairs and led a team of twelve attorneys to address IP issues in South Asia. He also headed a Task Force to reform USPTO’s Intellectual Property Attaché Program. From 2006 to 2010, he served as the First Secretary for IP in the U.S. Embassy in New Delhi, where he promoted high standards of intellectual property protection and enforcement in India and other South Asian countries. He was awarded a Silver Medal by the U.S. Secretary of Commerce for his work.

Conrad Wong is an Attorney-Advisor with the China and Enforcement Teams of the Office of Policy and International Affairs at the headquarters of the U.S. Patent and Trademark Office. He handles IP enforcement issues concerning China and Taiwan, as well as countries forming the Association of Southeast Asian Nations and Asia-Pacific Economic Cooperation economies. From 2007 to 2012, he was the Intellectual Property Rights Officer with the United States Consulate General in Guangzhou, China, with responsibility for American intellectual-property issues in southern China and supervising the PTO branch there. See recent statement of Mr. Wong before the U.S. Senate Judiciary Committee.
HOW TO TALK TO YOUR CFO/COO: an interview with Zohar Ziv

Leah Evert-Burks,
Managing Editor and Industry Fellow
Center for Anti-Counterfeiting and Product Protection

Brand-protection professionals understand the worth of their work, but must demonstrate it to the bottom line. We asked Zohar Ziv, the former COO for Deckers Outdoor Corporation, how brand protection professionals should talk to their CFO/COO.

Thank you for sitting down with me today to discuss this important issue. First and foremost, what does a CFO/COO need to understand about brand protection?

One of the CFO’s responsibilities is to provide the resources for the company to grow and to protect those resources. So I think it begins with an explanation on why we’re doing it. Why do we care? What does it entail? And, clearly, how much is it going to cost and what is the ROI?

What information would you need to understand the risks presented by counterfeit products?

One, harder to quantify, is brand image. You probably have to use separate terms, the counterfeit and the obvious fake. When consumers know that they buy a fake item, that is one thing, but when they don’t know, that is what we are more concerned about. Then it’s damaging to the reputation of the company. And what are the lost revenues? In China at the Silk Market, you can buy a pair of UGG or Louis Vuitton bag for $20, and you know it’s a fake. Nobody cheated you. You will never hold Deckers or Louis Vuitton accountable for the quality of the product. But if it’s a counterfeit you bought from the internet and thought was real, there is a potential loss of sale to the company. Is there a way to quantify those sales? Can we say we lost $10 million in revenues, but if we had spent $100,000 we might have received those revenues?
You don’t see the fakes you might buy on the street as true competitors?

Right, because I think one that’s paying $20 is buying because he/she can’t afford a $150 item. That would be an interesting marketing study: If you hadn’t bought that fake [counterfeit], would you have bought it full price?

How often do you want to hear from your Brand Protection Department?

You need to have an ongoing monitoring and reporting system and then I always said, “My door is open.” Customarily I had scheduled monthly meetings and reports [but] if you are dealing with a raid with Customs or in a factory or if you are negotiating a deal and need a decision right away, let’s not wait for our monthly meeting. Brand Protection also issued a Quarterly Report on what we have achieved this quarter, what we planned on doing, what is our plan for the remainder of the year.

What information do you need to convey to shareholders or partners?

You have three different groups to communicate with. First, the consumers, the end users who buy our shoes are probably the most important group. Second, our customers - for Deckers that’s retailers Nordstrom, REI, and so forth. Third are shareholders who are concerned about the overall protection of the company, assets and the impact of counterfeiting. The shareholders are happy if the consumers are happy.
For every group, you need a different communication strategy. You need to educate and inform consumers. As when we talk about UGG: was it real sheepskin? Was it twin-faced? How will you prevent yourself from buying a to do if they find a counterfeit. To our customers, we have to show our commitment to brand protection, because that’s impacting them as well.

**Do you think that brand protection is understood by board members?**

You may have board members who never have been in a brand or footwear. So just like we educate them about supply chain of shoemaking, you do the same with brand protection. There are always some questions on why are we doing it?

**How do you think return on investment should be measured in brand protection?**

No metric is going to be 100% accurate. We shouldn’t think, “Here is the perfect formula,” and follow it. If you tried to make it too precise, you would lose some of my trust. Many times it’s more of the trend and the magnitude versus the precise number. The more factual data you have, the more meaningful it is. Remember we’re linear, so you can have metrics such as the number of units, number of countries, and measure those. Don’t try to say, “Today we saved one million dollars.” That’s not the real issue. It’s the sheer size and demand for the brand. Don’t just present numbers. If you say “We caught 50,000 in pairs,” what does it mean? Can we say where were they caught? Where were they going to? What have we seen in the past? Let the CFO/COO see the implication. Here are 50,000 pairs sold at $100, this is the $5,000,000 in sales that could have been. We’re not saying we would have saved $5,000,000, but just showing the magnitude of things.

**So more of the back story and narrative?**

Yes. And when you start a brand-protection program, sit down with the CFO and explain why you are doing it. It’s like cyber security: every company today has it in their budget. Establish that expense in the budget and then you can say we will spend X dollars. It’s the people, the program, and the monitoring, so just build it into your budget.
Do you favor a proactive or reactive program?

I would break it into two. The fixed one would be proactive, the one you keep all the time, like monitoring the websites, the in-house staff, or putting QR codes on the products for consumers. This is the baseline. Then in the reactive dial it up or down based on need. Like if tomorrow you see a big pick-up of activities in Indonesia, you’ve got to be more reactive to that area. Brand protection is more of an art than a science.

Thank you again for your time and for providing such valuable guidance.

Zohar Ziv has worked in the area of corporate finance for over 25 years in a variety of industries including oil and gas, heavy equipment manufacturing, medical supplies, hair products and the last 9 years as CFO and then COO for footwear company Deckers Outdoor Corporation (dba Deckers Brands)
HOW TO BE A GOOD VICTIM

Bruce Foucart
Director
National Intellectual Property Rights Coordination Center
Homeland and Securities Investigations
U.S. Immigration and Customs Enforcement

The National Intellectual Property Rights Coordination Center (IPR Center) sees collaboration as a key component to enforcing intellectual property (IP) rights. Led by U.S. Immigration and Customs Enforcement’s Homeland Security Investigations (ICE-HSI), and supported by 23 partner agencies, consisting of 19 U.S. agencies as well as INTERPOL, EUROPOL, and law enforcement from Mexico and Canada, the IPR Center seeks to ensure national security by protecting the public’s health and safety as well as the U.S. economy and the “war fighter” from individuals attempting to sell counterfeit goods.

The IPR Center accomplishes its mission through a multilayered approach. This includes investigations to identify and dismantle criminal organizations; interdiction through targeting and inspections to keep illegal goods out of the U.S. supply chain; and outreach and training with domestic and international law enforcement to strengthen capabilities worldwide.

Collaboration among the IPR Center and its partners, including ICE-HSI, U.S. Customs and Border Protection, Federal Bureau of Investigation, Food and Drug Administration and rights holders contributed to more than 28,000 seizures worth an estimated $1.35 billion made in fiscal year 2015 (October 2014-September 2015). Still, there is room for enhanced collaboration that would allow U.S. law enforcement to react to cases referred from industry more quickly and efficiently.

U.S. law-enforcement agencies are dealing with limited resources while being tasked with increased responsibilities. The preliminary work brand-protection personnel conduct to prepare lead information is absolutely invaluable, but there is no standard detailing what data should be included in these referral packets.

In order to more effectively assist law enforcement, the IPR Center recommends providing a one-page report with appropriate documents that summarizes the concern. Supporting documentation should include:

- Health and safety statements, loss of estimated revenue, relevant public safety issues, a timeline of events starting from the first encounter, and the identification of the subject and counterfeit products.

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1 The task-force structure enables the IPR Center to effectively leverage the resources, skills and authorities of each partner agency and provide a comprehensive response to traditional customs fraud and the trafficking of various types of contraband.
• Copies of all documents and electronic communication with the subject, reports of investigations, emails, Cease and-Desist letters, prior CBP Fine, Penalties and Forfeiture notices, and civil court documentation.

• Open-source research conducted, including the identification of social media network presence and brick and mortar locations.

• Any test-purchase information and pictures, including test-purchase payment and shipping intelligence.

• Lab or authentication reports for confirmation of counterfeit, and victim or safety impact statements.

The IPR Center recently made it easier to provide this information through our website, IPRCenter.gov, through the “Report IP Theft” button. Rights holders can display this widget on their websites to allow exploited consumers to report counterfeiting directly to the IPR Center. Information provided through this referral process is reviewed by IPR Center personnel at the National Cyber-Forensics & Training Alliance in Pittsburgh. The information is shared with industry and law enforcement, and a referral may be developed in order to launch an investigation. With the help of industry representatives in the pharmaceutical sector, sporting associations, and the automotive sector, who all have adopted the button, the IPR Center has received thousands of leads, some of which have resulted in investigations and prosecution.

The U.S. government is not going to seize its way out of the counterfeiting problem. Only through collaboration with federal and international law enforcement, state and local police authorities and representatives from industry conducting consumer awareness campaigns, sharing intelligence and exchanging best practices can we start to tackle IP theft. Industry is on the front lines of IP enforcement. By working together with the IPR Center, firms can help crack down on individuals threatening the health and safety of consumers, negatively impacting the economy, and engaging in other forms of criminality.
Who do you collaborate most within your organization on brand protection issues?

“While we are a global organization, we handle anti-counterfeiting world-wide from our Connecticut office where we carefully consider each issue as it comes to us, and tackle the issues by region. When dealing with an online infringement issue, Conair’s Digital Anti-Counterfeiting Coordinator is our first line of defense to analyze the marketplace or platform. For a brick and mortar counterfeit issue, a Customs issue, or something outside the US, the Senior Brand Enforcement Manager will consult with our Vice President of International Sales, Vice President of Marketing, local marketing people (by country) and/or our local distributors.

Conair is represented in each country by exclusive distributors who, although not technically within the organization, are our eyes and ears in the marketplace, and we consider them to be key elements in our successful enforcement program.”

LISA DEERE
Senior Brand Enforcement Manager
Conair Corporation
“We are frequently finding new counterfeits of our products and this causes me to work with our packaging engineers. Additionally we also work with them when we receive photos from Customs as two or more pairs of eyes looking at a picture is best. We also work with the Legal department a great deal for trademark registrations in various countries.”

JAMES J. DUGGAN
Vice President Risk Management
Chief Security Officer
Coty, Inc.

“We collaborate and partner with the various business groups within our organization. Each of these groups operate within different markets and face challenges that are unique to their business model. Our BP team owns a diverse yet specialized set of technical skills, and is agile and able to adapt quickly to the ever-changing market conditions. As a result, our team has the innate capacity to deliver excellence in this space and we are uniquely-positioned to help solve many of the challenges our partners face.”

DAVID VARGAS
Data Scientist and Brand Protection Manager
Qualcomm
CANADA'S NEW TRADEMARK LEGISLATION
The Combating Counterfeit Products Act
What Practitioners Should Know

Lorne Lipkus
Partner, Kestenberg, Siegal Lipkus LLP
Toronto, Canada

On January 1, 2015, Canada commenced
the steps necessary to implement new
border enforcement provisions designed
to stop the entry of counterfeit-
trademark and copyright-infringing
goods through the Combating
Counterfeit Products Act royal assented
on December 9, 2014, through the
issuance of a new form requesting
assistance (SEE FORM). Although the
Combating Counterfeit Products Act
does not provide for authority for Canada
Border Services Agency (CBSA) to seize
these products, the legislation has given
“Canadian Customs” officers the ability to
detain them. It also facilitates the pursuit
of civil remedies sought by those
intellectual property rights holders who
have effectively “recorded” their
registered trademarks or registered/
unregistered copyrights under the new
legislation.

Although the legislation doesn’t allow for
an expedited process through ex officio
actions, which has been effective in other
countries, these new amendments
provide remedies in situations where
none previously existed.

Brand owners can now take additional
steps to prevent both the import and
export of counterfeit and copyright-
infringing goods.

These are several positive aspects to the
new legislation, including it

• Provides authority for brand owners to
  file a Request for Assistance (RFA) to
  “seek assistance” from Customs, for
detention of counterfeit goods.

• Allows brand owners to file on the RFA
  form a list of known authorized
  importers and known or suspected
  importers of counterfeit products
  (helping Customs target violators), and
to update these lists as needed.

• Permits brand owners to file on the
  RFA form information on
differentiating between authentic and
  counterfeit products (many of the
  brands have also filed “cheat sheets” or
  product identification manuals).

• Offers brand owners three (3) days
  after being informed of the existence
  of suspected counterfeit goods to
decide whether they wish to take steps
  required to protect their interest (this
  will normally involve proceeding with a
  settlement negotiation/agreement with
  the importer or commencing litigation
  in an appropriate Canadian Court
  within the time limits set out in the
  legislation – usually 10 days).

• Requires no financial commitment on
  the part of the brand owners until they
  decide that they wish to take the steps
  required to protect their interests.
  Customs can share information with
  the brand owners. This can take the
  form of providing samples and/or
  information to brand owners.
Brand owners can file their registered Canadian trademarks and copyrights with Customs as a no-cost first step toward protecting their business against the importation of counterfeit goods bearing the brands registered Canadian trademarks and registered or unregistered copyrights.

It is, however, important to understand what the new legislation does not do. Specifically, it does not

- Give CBSA ex officio power to seize and destroy counterfeit goods.
- Provide an administrative or simplified procedure for rights enforcement as available in the United States and many European countries.
- Authorize seizing or detaining in-transit shipments.
- Provide for seizure or detention of gray-market goods.
- Require CBSA contact brand owners regarding the importation of suspected counterfeit goods unless the owners have filed an RFA.

With this new legislation brands could be better off than before if they are trying to protect their trademarks and copyrights. Even if brand owners believe that the legislation should have been more robust and covered more areas, it still represents an improvement for brand protection. In fact, although many individuals and organizations involved in anti-counterfeiting, including the author, testified before government committees, made submissions in writing and verbally to the government and otherwise recorded their strong desire for more robust legislation, the government has provided a framework that will allow brand owners to more cost-effectively deal with the importation of counterfeit and pirated items.

If, as they say, the “proof is in the pudding” the fact that the first two test cases were a resounding success could be seen as a harbinger for good things to come. In the first, according to CBSA communication, over 75,000 pill bottles were detained. These had no child-proof safety measures yet had a counterfeit CSA mark. CSA served a cease and desist letter within the time required and the importer immediately began negotiating a resolution. In the settlement the importer agreed to pay the cost of storage and destruction and to conduct a recall of previously imported identical product. They also provided important supplier information for further enforcement. In the second case, CBSA advised the brand and counsel of over 7,473 counterfeit Calvin Klein T-shirts. Calvin Klein instituted legal action within the mandated 10 day time period. Very soon after the importer agreed to pay the cost of storage and destruction, as well as legal fees and provided supplier information. Unfortunately the CBSA was unable to contact any of the other brands in this shipment because Calvin Klein was the only brand that filed an RFA and this detention resulted in Calvin Klein’s largest seizure in this current decade. Both cases were resolved quickly and at minimal cost to the brands. On the other hand, CBSA representatives have advised some brand representatives that in the first 16 months since the legislation was put into effect there have been only approximately 11 detentions for brands that filed RFAs.

The more brands that file RFAs, provide information to CBSA about suspected importations of illegal products bearing their trademarks or copyrights, and impress upon the government the need to train Customs officers to effectively identify and detain counterfeit items, the greater the likelihood that what Canada has put on paper will translate into success.
MARKETING BRAND PROTECTION
INSIDE AND OUTSIDE YOUR ORGANIZATION

Roland Pamm
A-CAPP Center Industry Fellow
Global Brand Protection Consultant (formerly with DuPont)

The Oxford Dictionary defines Marketing as “the action or business of promoting and selling products or services, including market research and advertising.” For the sake of our discussion, the product is a brand protection plan or program and the service is protecting the brand from all forms of abuse including misuse, infringement, genericizing, and product counterfeiting. The following are specific attributes to consider when marketing brand protection inside and outside your organization.

It begins with gaining credibility. Inside your organization this means demonstrating the need for engaging in brand protection activities by qualifying and quantifying the impact on your organization’s brand equity, its financial results including revenue (sales volume and price) and profitability, and most importantly, its brand and your company reputation along with the subsequent trust of your clients. It also means demonstrating the potential benefit from successful enforcement of your Intellectual Property rights, and justifying it by noting that it’s inherently better to take some action against brand abuse by initiating a brand protection program than it is to keep your head in the sand without addressing it. These problems won’t go away and will only increase and take firmer hold if ignored.

If brand protection is successfully marketed, endorsement by the company C-suite and subsequent cascading down throughout the organization is an excellent start for launching a program. This can then be reinforced with continual awareness-raising actions including promotional campaigns and educational opportunities, with the objective of justifying and gaining dedicated internal resources as champions in the most critically affected areas. Key is positioning brand protection as a mission of opportunity, rather than a burden or imposition, for partnering with and aligning key functions within the organization such as Marketing, Sales, Supply Chain & Logistics, Legal and Security, and for enhancing an organization’s and its products’ competitiveness in the global marketplace. Brand protection can then be managed as a continuous improvement program, gauging it to

“Key is positioning brand protection as a mission of opportunity, rather than a burden or imposition...”
specific and maturing best practices determined for each product or business. Alternatively, it can target compliance in meeting or exceeding established industry standards and regulations. The ultimate goal is an organizational cultural shift that includes brand protection and allows it to be designed into ongoing business strategy and planning processes.

Marketing brand protection outside your organization has many similarities to doing so inside your organization. Again, it’s all about building credibility by partnering with those who can enable and assist, and those who can “champion” the effort by providing consistent and reliable intelligence. The enablers include industry associations, benchmarking collaborators, and educational forums, with whom sharing ideas and perhaps even taking joint action can benefit your stature in the industry and with clients and even gain the respect of your competitors. These industry ties will then influence and further strengthen established relationships with channel partners and distributors through word-of-mouth and other means of communication.

Similarly, the more educated your channel partners and distributors can become through mutual sharing of information and continuous communication on brand protection concerns and incidents, the more trustworthy “champions” and “informants” they will become and the more marketable your brand protection program becomes. Of course, maintaining solid partners at critical points in the supply/value chain implies providing them with the proper dosage and type of information on your products to keep them trustworthy and helpful, so they can contribute to your brand protection program at an optimized level without compromising it by revealing confidential intelligence or tipping off suspect parties. For example, differing levels of product authentication will be shared with only select channel partners depending on their importance and roles in the supply chain. Hence, successful marketing to these groups on brand protection becomes a critical means of demonstrating confidence in the relationship and creating beneficial alliances for both parties.
American Apparel and Footwear Association Brand Protection Council developed and circulated this inaugural survey. AAFA’s Brand Protection Council is on the vanguard of legislation, regulatory policies and best practices, designed specifically to support the needs of the apparel and footwear community. The Brand Protection Council is driven by the belief that effective brand protection is one of the most fundamental competencies that industry needs to succeed in the marketplace today. For more information on AAFA’s Brand Protection Council, please contact Steve Lamar.

**When conducting raids, do you also evaluate corporate social responsibility (CSR) conditions in raided factories?**

- **NO**
  - 80%

- **YES**
  - 20%

Look for a collaboration-building discussion on ties between CSR concerns of your company and brand protection in an upcoming edition.

Our next poll to be included in the Second Issue of *The BPP* will include questions relating to risks and challenges in manufacturing countries beyond China.
International Intellectual Property Crime Investigators College (IIPCIC)

IIPCIC is a joint initiative between INTERPOL and Underwriters Laboratories (UL) that currently provides IP crime prevention training to nearly 12,000 law enforcement personnel from over 156 countries worldwide.

Why IIPCIC?

- Access to a network of nearly 12,000 enrolled law enforcement professionals
- IIPCIC can design customized and leading edge brand protection training materials
- Facilitate cooperation between public and private sectors in the fight against IP crime
- Through INTERPOL IIPCIC leverages the expertise of its program and global network
- Through UL IIPCIC has access to experts knowledgeable in virtually every industry
In Defense of “Whack-a-Mole” - a conversation

Something people always bemoan is the "whack-a-mole" nature of Brand Protection. However, is there an eloquent defense of whack-a-mole, in particular in the online space?

I agree wholeheartedly. I’ve seen changes in behavior on many of my targets after concerted efforts. One thing about whack-a-mole, is that moles do have nerve endings. These are real people, not machines. Hit them enough times, make it impossible for them to eat, they will go somewhere else.

Speaking of where the moles proliferate, what are your best Craigslist hunting tips?

Of course. It is frustrating and expensive to everyone involved. Online platforms have to remove infringing material, freeze or suspend accounts and deal with subpoenas and Digital Millennium Copyright Act (“DMCA”) notices. Infringers have to create new accounts and new listings and forfeit seized funds. If you report every infringing listing, platforms will eventually go out of their way to get your infringers off their site quickly and for good. The squeaky wheel is a true story.
Andrew Love  
Brand Protection/Investigations  
Specialized Bicycles

Mike Hill  
Former Rosetta Stone investigator  
Currently a private consultant

Yes, RSS feeds, either into an RSS reader, or an RSS folder of your inbox, are invaluable. I use these for tracking theft from bike shops too. Quite useful.

I like to use RSS (Really Simple Syndication) feeds for monitoring combined with complex undercover accounts and social engineering. The more social networks the UC (undercover) accounts touch, the realer they become. I once played Mafia Wars on Facebook with a Rosetta Stone infringer for three months before I could get enough information out of them for an investigation.

What are your best pointers for creating a fake ID? I remember you once saying you made at least one a week.
I’ve had luck using Wikipedia for the character’s geographic background information. I’ve also found adding additional details to the character’s social media accounts to fit the infringer’s ideal mark helps too. If the infringer is selling video games, make the character appear to be an avid gamer by joining or liking game related groups or topics. We actually had an intern reverse engineer a dating site profile so one of their characters was a 95% match with a target’s dating profile. Then all we had to do was take bets on how long it would be before the target contacted the

Agreed. I will add that in addition to volume, we have several categories of threats. For someone reselling cycling apparel, yeah, it’s an economic damage question. However, for the counterfeit cycling-helmet sellers, we go after those moles with everything we have got. Even a handful of fake helmets could kill someone.

After one particularly big financial seizure versus a fake-apparel manufacturer, I received an email in Chinese, basically telling me to go eat rice 365 days a year. When playing whack-a-mole, you rarely hear the mole say, “Ouch!”

No other way to go. In my experience law enforcement will move mountains to stop criminals from trafficking products that threaten their communities. We once had a case where LE bagged an infringer for a single misdemeanor counterfeit charge and then gave him a few dozen felonies for the counterfeit Viagra blister packs they found at his residence.

Speaking of happy cases, do you have a particular favorite?

Do you make trap buys?

That... is...
Awesome...OK, so how do you decide who is a worthwhile target that your fake ID’s engage with?
What kind of demands do you make in letters? I’ve got several different templates depending on what kind of seller I am going after.

I usually demand an email response in 48 hours. If they ignore an email, then I send a snail-mail letter. Ignoring that gives me more ammunition for further action with law enforcement.

When do you decide to bring in law enforcement?

“Make it easy or make it big” should be a mantra that should be on every brand protection professional’s wall when it comes to packaging up cases.

Yes. I have made test purchases for civil-litigation cases. I’ve found that law enforcement prefers to make their own test purchases to determine if a suspect is selling counterfeit products though.

Quit it. Retain records. You or an attorney representing you must contact us within 5 business days to discuss resolution.

Yeah, it’s like Christmas for them when they get email records with a subpoena and find a few Cease-and-Desist notices. Especially when the notices are buried between a hundred product-listing confirmation emails for the products in the notice.

Whenever I can gift-wrap the case for them or I find a 150k in damages. Most LE bodies have limited resources so make it easy or make it big but don’t waste their time.

Ha. It should, that and a bunch of mug shots surrounding it.
U.S. Trade Facilitation and Trade Enforcement Act of 2015

Peter Friedmann
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Abigail Struxness
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FBB Federal Relations/Lindsay Hart LLP

In February of this year, U.S. Congress passed the long-awaited Trade Facilitation and Trade Enforcement Act, effectively the first Customs reauthorization bill since U.S. Customs and Border Protection (CBP) was incorporated into the Department of Homeland Security in 2003.

Entering into force on March 10, 2016, the Act was applauded by U.S. rights-holders as a much-needed vehicle to formalize programs and reprioritize CBP operations. Intellectual Property Rights are considered one of the seven top trade concerns addressed in the Act.

The Act contains provisions to help U.S. businesses combat counterfeits and intellectual property (IP) rights violations—including new enforcement tactics and heightened engagement with the private sector. This is timely considering that the Organisation for Economic Co-operation and Development found that the global imports of counterfeit goods reached $461 billion in 2013 (among total imports of roughly $17.9 trillion). In FY 2015 (October 2014-September 2015), U.S. Ports of Entry produced more than 28,000 seizures of fake products, with an estimated MSRP of $1.35 billion.

Following is an overview of the key sections of the Trade Facilitation and Trade Enforcement Act impacting brand protection professionals.

**CBP Pre-Seizure Information Exchange:** If CBP agents suspect imported merchandise infringes on copyright or trademark laws and believe that examination or testing of the product would confirm this, they are required to provide rights holders with unredacted photographs or samples for testing.

**Important:** This program is only available to those who have registered their trademarks and copyrights with CBP already. It is critical that rights holders register with CBP's e-Recordation system. The database is available to all CBP offices throughout the United States for reference.

**Authorization of National Intellectual Property Rights (IPR) Coordination Center:** The Center is reauthorized to continue its investigative work and to cooperate with 23 other U.S. government agencies on IPR protection and seizure of counterfeit goods.
Establishment of Chief Innovation and Intellectual Property Rights Negotiator: Responsible for representing U.S. IP rights interests when negotiating trade agreements with other countries, an advocate at this level within the Office of the U.S. Trade Representative will be critical for U.S. brands to remain competitive in future trade agreements.

Increased Intellectual Property Enforcement Personnel at the Ports: The law requires that "sufficient" personnel are made available at the Ports and at the Intellectual Property Rights Coordination Center to ensure that counterfeits are intercepted. If brands feel that staffing of CBP officers with IP expertise is not at adequate levels, they should notify CBP and their members of Congress.

New Intellectual Property Rights Enforcement Technology: CBP will work with the private sector to determine new technologies (both software and hardware) to combat IP rights violations. CBP will then accept private-sector donations and training on use of this equipment. Look for an announcement with additional details on how to get involved in September of this year.

Outreach to Travelers on Intellectual Property Rights Violations: CBP will launch a campaign to inform persons entering and exiting the United States of the risk that fraudulent merchandise poses. New Customs declaration forms will warn travelers of the civil and criminal penalties they might face if found with goods violating IP rights. The campaign hopes to crack down on the travelers who are aware of IP rights violations in the goods they choose to purchase abroad.

Potential New Risk Factor—Increased De Minimis Values: Reflecting the explosion of e-commerce, the Act increases the de minimis value of shipments entering the United States without declaring at Customs from $200 to $800 (one person may import one shipment per day). The increase in these small-scale, individual shipments also increases the risk of IPR violations slipping across the border. Commissioner Kerlikowske acknowledged at a recent Senate hearing the challenges of detecting these shipments of fake goods.

Bottom Line: The Trade Facilitation and Trade Enforcement Act is a much-needed, long anticipated authorization of critical programs to protect U.S. businesses and their intellectual property rights. Over the next year, CBP will solidify the programs above, many of which include robust private-sector involvement. Much is still left to be done to protect brands from counterfeits, including the onslaught of small-scale direct-to-consumer shipments facilitated by e-commerce over the internet.
HOW GLOBAL FIRMS **ORGANIZE FOR BRAND PROTECTION**

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Brand-integrity management has become more important to global firms for at least two reasons. First, executives are aware of the value of brands and other intangible assets. Second, regulators are requiring firms to monitor and disclose risks, including those related to counterfeit products.

Yet few studies have systematically examined how brand-owning firms attempt to assess and mitigate the risk of product counterfeiting. To better identify practices of leading firms, researchers at the Michigan State University Center for Anti-Counterfeiting and Product Protection interviewed representatives of ten brand-protection teams about organization, measurement, practices, success, and other areas of brand protection. All ten teams are among the top 600 firms in total revenues as ranked by *Fortune*, and all serve a broad variety of industries.

The brand-protection teams range in size from 9 to 250 members. The median size of these teams is 20, with no team reporting more than 25 full-time members. Most brand-protection personnel work on the issue only part-time (while working on other issues if full-time workers) or on a contract basis.

Most brand-protection teams are positioned at least partially within their firm’s legal function, but many are also in other functions as well, such as security.

Most firms report multiple means to measure the prevalence of counterfeits among company products. These include covert product purchases, internet monitoring, and complaint reviews. Firms also report multiple methods to measure the negative effects of counterfeits of their products. These include measuring effects on brand image, equity, reputation, or impact on revenue.

Teams report several ways to justify the use of firm resources on brand protection. The most common include successful raids, seizures, takedowns, third-party investigations, or value of product being protected.
Firms prioritize counterfeiting and brand-abuse activities by frequency and severity of the issue, impact to product users, or effects on the bottom line. Core products receive greatest priority, followed by service products, then licensed products. Firms prioritize responses to individual incidents similarly. Impact on users is particularly important for firms providing pharmaceuticals or medical devices.

Teams report a variety of brand-protection tactics. All said they use seizures, targeted investigative actions, and trademark registration. All also monitor physical and virtual (i.e., Internet) markets. Teams tend to rely more on external than internal tactics. Yet the use of multiple tactics suggests these firms prefer a multifaceted, or layered, approach to combating product counterfeits.

Eight of the ten firms claim their efforts are successful. Management understanding of the problem appears to be one key indicator of perceived program success. Half of the successful firms said their management had a “thorough” understanding of the problem and half said it “somewhat” understood the problem. The two teams not claiming success said their management only “somewhat” understood the problem.

Other key indicators of success are whether teams are “aggressive” and “proactive” in addressing the problem (see figure). All four teams that report being both “aggressive” and “proactive” claim to be successful in their brand-protection efforts, with one of the four claiming to be “very” successful. By contrast, the only team saying it is “unsuccessful” in its brand-protection efforts reports being “passive” and “reactive” in addressing product counterfeiting.
Teams are confronting many emerging issues. Many respondents note Internet-related concerns, particularly as a facilitator of product counterfeiting, as well as the growth of social media and its potential in product counterfeiting. Awareness remains a top issue for firms, as does protecting the supply chain all the way through to the end user.

These findings point to further areas for exploration. Chief among these would be defining how brand-protection professionals define “aggressive” and “proactive” and the relative effectiveness of specific strategies. Identifying possibly fruitful ways for leading firms to improve their brand-protection efforts may also be helpful. Only one of the ten firms interviewed, for example, consider counterfeiters as “unseen competitors.” Firms often share information, even with recognized legitimate competitors, in addressing the product-counterfeiting problem. Counterfeiters often work in concert to advance their work, compelling firms and researchers to do so as well. ■

The **Influences** of Economic Structure and Culture in **China**

**Deborah Greaves**
*Former General Counsel, True Religion Brand Jeans, Current Partner with Brutzkus Gubner Rozansky Seror Weber LLP*

Many intellectual property (IP) enforcement professionals become frustrated or even angry over the difficulty of enforcing trademarks in China. Progress appears to be slow, despite China’s recent revisions to its trademark laws and the creation of special courts for IP disputes. With its resources and controls, many expect China to do more to reduce the amount of counterfeit products it produces and ships. However, doing so under present circumstances is difficult for both economic and cultural reasons.

**Another Day, Another Dollar**

In October 2010, many brand owners were pleased when the Chinese Government announced a nationwide Special Campaign on Cracking Down on Intellectual Property Infringements and the Production and Sale of Counterfeit and Shoddy Commodities (the “Campaign”). In addition to responding to increasing complaints from brand owners and foreign governments about the proliferation of counterfeit goods produced in China, the Campaign was also an obligatory response of China as a signatory to the TRIPs Agreement (Agreement on Trade-related Aspects of Intellectual Property Rights).

During the approximately ninemonth Campaign, many brand owners reported increased cooperation from Chinese officials in their enforcement efforts, resulting in higher than usual seizure numbers. The Chinese government has continued to publicly state its commitment to IP enforcement. The subsequent impact on counterfeit statistics, however, has not been measurable.

In particular, U.S. Department of Homeland Security (DHS) statistics do not show progress. In 2010, DHS found that goods originating in China or Hong Kong comprised 80% of all seizures at U.S. ports; by 2015, this proportion had increased to 87%. Annual seizures of counterfeit goods from Hong Kong and China at U.S. ports have exceeded U.S. $1 billion in recent years — a value exceeding the GDP of more than a dozen nations. ([SEE SOURCE](#)) Moreover, this number reflects only Customs and Border Protection seizures and does not include counterfeit products that successfully enter the United States.
The counterfeit industry in China is so robust that it comprises an independent economic market (IEM) operating outside of “official” channels.

The vitality of the IEM is clearly apparent at wholesale markets, where seemingly every branded product for sale is counterfeit. Sales of illicit product are so rampant that the practice appears to be institutionalized. That such blatant illegal activity thrives in a country is evidence of the IEM and an obvious source of endless frustration for brand owners. Counterfeiting enterprises support employment at the wholesale markets, which are fed by factories with their own employee base. Raw materials are sourced from local vendors, creating even more jobs. The counterfeit-market infrastructure includes warehouse and freight operations as well as other ancillary services. This infrastructure enjoys de facto exemption from labor and other economic regulations, as well as taxation.

Dismantling the IEM could damage the Chinese economy. Enforcing IP laws in China and thereby disrupting counterfeiting enterprises would create significant unemployment, causing strife and social unrest, and place a great burden on the government in assisting the newly unemployed.

**Changing the Culture**

An old adage states that imitation is the highest form of flattery. Chinese culture lauds the making of close-to-perfect replicas. This culture contributes to the vitality of the IEM. Such excellence in the pursuit of copying, however, is offset by the lack of Chinese innovation. The measurable absence of innovation may help brand owners understand why there are so many challenges with China enforcement. Until one creates and nurtures one’s own innovation, there is no emotional attachment or sense of pride in ownership.
Chinese officials understand that indigenous innovation is critical to its economic development. Indeed, this is evident in China’s “National Medium and Long Term Plan for the Development of Science and Technology (2006-2020)” (the MLP), described as a “grand blueprint of science and technology development’ to bring about ‘the great renaissance of the Chinese nation.’” The MLP acknowledges that China is ‘not an economic power, primarily because of [its] weak innovative capacity.’ (McGregor, 2010)

Similarly, the Ministry of Finance and Commerce (“MOFCOM”), in discussing the driving force behind the anti-counterfeiting Campaign, noted:

[...] the 12th 5-Year Program will focus on scientific development and accelerating the transformation of the economic development pattern. Scientific and technological progress and innovation will be regarded as an important tool for accelerating the transformation of economic development pattern. In order to better adapt to new situations and tasks and further strengthen IPR protection, the State Council has decided to carry out this Special campaign. (King & Wood, 2010)

Is it possible that suppression of free speech, creativity, and expression in China over several decades has negatively impacted the ability for indigenous innovation? Notwithstanding, the Chinese government realizes the power of intellectual property for innovation. Achieving and maintaining a position as a world power partially depends on developing domestic technology that can be sold elsewhere or that will reduce dependence on technology of other countries.

Viewed this way, the anti-counterfeiting Campaign may have been an effort to make China a nation of thinkers and innovators rather than one of copiers. The Campaign was a first step to recondition the Chinese mindset and to institute the notion of negative ramifications to counterfeiting.

Full Circle

Encouragement of freethinking and innovation in China is liberating for creative minds. The development of Chinese domestic intellectual property will, all hope, instill a greater respect for indigenous creations as well as for foreign innovations. Though at conflict, the MLP of 2006 defines “indigenous innovation as ‘enhancing original innovation through co-innovation and re-innovation based on the assimilation of imported technologies.’” Some brand owners consider this to be a blueprint for technology theft. Herein the dichotomy lies; encouraging innovation yet defining it as an allowable IP violation.

Understanding the culture and socioeconomic influences that contribute to and support counterfeiting may help brand owners to be diligent and patient in their enforcement efforts and in understanding the current state of affairs. ■
EVENTS

BRAND PROTECTION IN CHINA EXECUTIVE EDUCATION SEMINAR
October 6, 2016
Lansing, MI
A-CAPP Center Industry Fellow, Ron Davis, conducts this in-person seminar that will provide attendees with a background on conducting business in China and how to proactively take steps to protect their brands through the Chinese legal system and networks and organizations related to brand protection. MORE

THE ANTI-COUNTERFEITING GROUP 2016 CONFERENCE
October 12–13, 2016
London, UK
Aimed at professionals and agencies involved in Brand Protection and Intellectual Property (IP), will provide delegates with an opportunity to hear what Government have in store for tackling IP, improving intelligence sharing, fighting on-line IP crime and IP strategy. MORE

INTERNATIONAL ANTI-COUNTERFEITING COALITION
October 19–21, 2016
Scottsdale, AZ
IACC’s Fall Conferences combine the industry’s most up-to-date information and best practices with its top leaders in the frontlines in law, security, government and business. Conference attendees come from a variety of locations to network and share their views on the latest IP trends and solutions. MORE

KNOCK IT OFF! BRANDS & THE COUNTERFEITING QUANDARY WORKSHOP
November 30, 2016
San Francisco, CA
Join AAFA for its workshop on anti-counterfeiting, knock-offs, and intellectual property rights (IPR) for the apparel and footwear industries hosted by Levi Strauss & Co. MORE
WORLD TRADEMARK REVIEW BRAND PROTECTION GREATER CHINA CONFERENCE
December 7, 2016
Shanghai, China
A highly focused one-day programme delivering practical, actionable takeaways for professionals engaged in protection and enforcement activities across Greater China. Delegates will share best practices with peers and discuss the latest strategies to combat infringement and protect brand reputation and revenues. Attendees will also have the opportunity to interact with, and gain unique insights from, representatives from Customs and key government agencies. MORE

RESOURCES

RECENT PUBLICATIONS

Anti-Counterfeiting Group Manifesto 2016
The Manifesto delivers a tool that outlines the calls for action from the government ACG consider necessary to establish a more effective response to intellectual property (IP) crime. DOWNLOAD

Brand Owner Approaches to Assessing the Risk of Product Counterfeiting
An article in Journal of Brand Management that identifies practices and challenges for measuring the extent of product counterfeiting through interviews with brand owners in various industries. Subscription required to access READ

Counterfeit Parts in the U.S. Department of Defense Supply Chain
An A-CAPP Center Backgrounder that highlights criminal cases involving counterfeits in the DOD supply chain to illustrate the nature of the risk as it relates to types of counterfeit parts and how they entered the supply chain and then were identified, and the adjudication of individuals involved in the counterfeiting schemes. READ

Eight sectorial studies on the impact of counterfeiting and piracy. READ

Measuring Product Counterfeiting: Insights From Current Research and Practice
An A-CAPP Center Backgrounder that compiles common practices for measuring counterfeiting, their strengths and drawbacks, and draws upon brand protection professionals for their insights on the measurement problem. READ
RECENT PUBLICATIONS

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An article in International Criminal Justice Review that examines the current approaches to measuring product counterfeiting, complementing those with a review of methods used to examine other crimes. It concludes by discussing the applicability of both commonly used and novel research methodologies, as they might apply to the study of product counterfeiting. Subscription required to access READ.

Organizing for Brand Protection and Responding to Product Counterfeit Risk: An Analysis of Global Firms
An article in Journal of Brand Management that identifies several common themes in brand protection efforts, lessons for firms and issues for further exploration through interviews of large global firms. Subscription required to access READ.

Organization for Economic Cooperation and Development (OECD) and European Union Intellectual Property Office (EUIPO): Trade in Counterfeit and Pirated Goods Mapping the Economic Impact
This study was conducted jointly by the OECD and the EUIPO, to measure and analyze the scale of counterfeiting and pirated trade in order to provide policymakers with robust empirical evidence about this threat. READ.

The Union des Fabricants (UniFab) Counterfeiting and Terrorism Report 2016
This report aims to provide an insight into the links between terrorism and counterfeiting, as well as demonstrating that this illegal activity is a favourite method for financing terrorist actions. READ.

U.S. Chamber of Commerce: Global Intellectual Property Center
This report provides an overview of the state of trade-related physical counterfeiting today, as well as its global reach into virtually every available market and sector. It examines the current status of measuring counterfeiting, including existing challenges and gaps as well as key trends and changes to the global counterfeiting landscape. It also presents the methodology and results of a current estimate of trade-related physical counterfeiting. READ.

Virtual Communities as Guardians Against Product Counterfeiting in the Athletic Footwear Industry
An A-CAPP Center Backgrounder that summarizes recent research in exploring the potential of an independent virtual brand community (IVBC) in guarding consumers against counterfeits. READ.

To submit content to The Bulletin, please email the Managing Editor.
EDUCATION

Investigating Product Counterfeiting
WEBINAR-recorded
Participation in this recorded webinar will provide a basic foundation and framework for a comprehensive look at the investigation process from detection through investigation, to interviewing and report writing. MORE

Risk Assessment Strategy for Counterfeit Products
WEBINAR-recorded
Participation in this recorded webinar will illustrate for why risk assessments are useful for brand protection programs and how to take a proactive approach to them. The webinar utilized interactive learning methods, including group chat, case studies and group exercises. MORE

Anti-Counterfeit and Product Protection Criminology
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EXECUTIVE EDUCATION SEMINAR
October 6, 2016-Lansing, MI
A-CAPP Center Industry Fellow, Ron Davis, conducts this in-person seminar that will provide attendees with a background on conducting business in China and how to proactively take steps to protect their brands through the Chinese legal system and networks and organizations related to brand protection. MORE

The International Intellectual Property (IP) Crime Investigators College
The International Intellectual Property (IP) Crime Investigators College (IIPCIC) is a multilingual, online training platform that delivers IP training to 12,000+ law enforcement officers and private sector brand protection professionals from over 156 countries. IIPCIC works with private sector brand protection teams to design custom eLearning courses that will educate global law enforcement about their specific IP challenges. For more information, or if you are interested in commissioning a module specific to your industry or company, please send an email to info@iipcic.org or visit our website http://iipcic.org/

INTERPOL works in cooperation with Underwriters Laboratories, Inc. to deliver this important training portal to the public and private sectors.