

Kevin McPherson “ON SHORT STORIES FROM STURGIS”



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Leah Evert-Burks: In *Brand Protection Stories* we talk to those in the brand protection community about particular cases in their careers. Through some *stranger than fiction* real life scenarios we learn about the practice of brand protection and the challenges faced by brand-owners worldwide.

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Leah Evert-Burks: Yeah, you got a reputation.

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Leah Evert-Burks: Kevin McPherson is the Sr. Director of Brand Protection, Corporate Counsel for Otter Products, LLC. In this role, he is responsible for its Global Anti-Counterfeiting Program, focusing on the protection of OTTERBOX and LIFEPROOF branded family of products, its Authorized Reseller Program, and its Minimum Advertised Price Policy - as well as handling corporate agreements for the United States, Canada, Latin America and the Asia regions. Prior to joining Otter Products, Kevin was employed as Brand Protection Manager - United States and Latin America, for New Era Cap Co., and prior to that, Senior Trademark Enforcement Coordinator - United States and Latin America, for Harley-Davidson Motor Company. Kevin holds a Juris Doctor from the University of Denver – Sturm College of Law, an M.B.A from Cardinal Stritch University, and graduated *magna cum laude* from University of Wisconsin – Milwaukee with a Bachelor of Arts degree in Communication.

Leah Evert-Burks: Welcome Kevin.

Kevin McPherson: Hey? Thanks, Leah! Glad to be here.

Leah Evert-Burks: Even non-motorcycle enthusiasts know enough to equate Sturgis South Dakota with motorcycles. The town houses, the Sturgis Motorcycle Museum and Hall of Fame, and it's flooded once a year for about the last 80 years with enthusiasts riding their beloved bikes from across the United States to attend the Sturgis Motorcycle Rally. Of the motorcycle brands the Harley Davidson Brand, almost obsession-loved, is admired for its legacy and quality, and has built a dedicated fan base since its inception in 1903. Due to its popularity, it's not surprising that Harley Davidson products are counterfeited, and at the annual Sturgis gathering vendors hawking counterfeit merchandise require that the brand patrol, seize and yes, arrest, counterfeiters selling their products, or even product lines that they don't produce, but that bear the Harley Davidson trademarks. So Kevin you have been in brand protection for quite a while working with a number of brands, but you really cut your teeth in brand protection with Harley Davidson.

Kevin McPherson: Yep that's that's right. I don't know I'm sure we'll get into it. But yeah, I started at Harley Davidson in 2003 as a Trademark Enforcement Coordinator, and I kind of just happened upon that job due where I was seated at the company. I was an intern there for 4 years during undergrad and I was in the Communications Department, but sat on this committee called the External Communications Council, and basically for any media, book, television series that wanted the product placement would come to this, it's an external communications council for a decision, and typically by the time I made it to what we called the ECC, it was pretty much known it was gonna be a "No". But we went to the formal process anyway, and being the low person on the totem pole, as intern it was up to me to communicate that we're gonna you know, assist them with a product placement, and tell them no. So we kind of called it the "No" Department.

Leah Evert-Burks: Yeah, I've worked in many legal departments, and unfortunately many times were known as the Department of No. But that's a necessity.

Kevin McPherson: Yeah, and I mean and some of these requests that we would get, and I'm not gonna name names. But some of these bikerish movies were really bad just, just on the surface and reading the script like, there's no way we're gonna you know, donate 20 motorcycles for you guys to trash with a biker gang. It's the most of them are really cliché not like what we did with The Terminator would be the first big one. It was Terminator II where Arnold had the Fat Boy motorcycle that kind of created this huge rage that was, that was awesome. Yeah, we're gonna participate in that movie. But some of these other ones, B movies like not so much so.

Leah Evert-Burks: Yeah, have to decline.

Kevin McPherson: Yeah, had to decline. And so at the time the manager of the Trademark Enforcement Department sat on that committee, and just happened when I graduated with an undergrad she had an opening, and she's like hey, you're used to saying, no. You want to be on the team? And I was like, yeah, really excited. I was like great. I just graduated got a cool job at Harley, and I didn't really think I was going to be a trademark enforcement or brand protection that long. Actually, when you got my master's in business. And thought as we go into the business world and do maybe like sales operations, or something like that, and 18 years later, I'm still at it.

Leah Evert-Burks: Yeah. And how long total were you with Harley Davidson?

Kevin McPherson: I was there for a little over 7 years as a full-time employee and then, you know, four years as an intern. So about 11 years total.

Leah Evert-Burks: Then you said, you got your master's degree, and you and I have just talked about the fact that you then went back to school and got your law degree.

Kevin McPherson: Yeah glutton for punishment. So I went back to law school, and I should say I went back to school for law, in 2014 while working full-time, and then going to night school to, you know, at Denver University and commuting back and forth to live from Fort Collins to Denver. It was a lot of 4 years and looking back on it I still don't know how I did it, but got that one done.

Leah Evert-Burks: Yeah, well, congratulations as I've indicated, I don't think I would have the discipline to go back to school, but it sure certainly shows your commitment to the profession to the legal profession, but also to brand protection. So let's talk a little bit about Sturgis, South Dakota. It, it is a generally a small town, as I understand it's about 7,000 residents that explodes in late summer, when the rally comes to town. So when you worked for Harley Davidson, how many years did you attend the rally for counterfeit enforcement purposes?

Kevin McPherson: Sure. So I started doing what we call rally enforcement, and we really went to all the motorcycle rallies in the U.S. Daytona Bike Week is the beginning of rally season I'd say, and that kicks up in March. It's actually happening right now, and it goes for 2 weeks, and then you go to this Myrtle Beach Bike Week, and then the Love Ride in California, and then Sturgis kind of wraps it up. And so I've, been going to those various motorcycle rallies, and especially Sturgis, since about 2004 to 2009.

Leah Evert-Burks: Okay, and to think about the town. So 7,000 is its typical population. But, as I understand it, it can explode to an hundreds of thousands of people during that ten-day event.

Kevin McPherson: Absolutely. Yeah, I think that over the 10 days it's well over it's like the 200,000 at least, because people come for a couple days and leave but there's always a consistent amount. So they added, the total number of attendees throughout the 10-day period, and it's, you know, 200,000 plus. And when they say Sturgis - it's it's overflowed to every single town in South Dakota so

you have Spearfish, Deadwood, Custer, you name it, and there's bikers everywhere. And when you try to get into Sturgis, it is so small, there's one road to get in, one main road to get in on Main Street, and if you don't go there early enough, you're basically just sitting in line waiting to get in, but with law enforcement that's not a problem. They just hit the the lights we cruise in. One of the perks of working with law enforcement, but otherwise if you're like a normal biker, yeah, you got to get there early and leave late.

Leah Evert-Burks: Yeah understandably. So in this type of event, how did you approach planning for enforcement activities at an event like Sturgis?

Kevin McPherson: So early on the Internet wasn't as as you know back in the early 2 thousands wasn't that popular so there wasn't a lot of advertisements. So I'd actually get biker magazines ahead of time and look for where vendors are gonna set up, and all the major vendors spots, and then we kind of create a three-day plan on which locations where I go throughout the Sturgis greater area, and which vendor sites where we're going to go to. And so we just kind of map it out that way and try to work with local investigators, which is hit or miss because the typically the locals know the locals and if it's a local selling counterfeit, they don't want to deal with it so. Then you're here stuck trying to go and work with the counterfeit on your own, which typically, when you're doing field enforcement you want at least 2 or more people with you just to watch and make sure you're going to be safe. And no one is going to, you know, jump out at you or anything. And it's just typically easier to have 2 people as well one to do a C&D letter and when you get that voluntary surrender to do the to the count, and make sure that you get the count right and bag it up, and all that stuff. So you know, at least 2 or 3 people, I would say.

Leah Evert-Burks: Okay.

Kevin McPherson: And then with law enforcement that's a different story entirely, because, you know, you have a lot more resources typically, and they start off with me, the brand protection owner doing the talking if they don't cooperate then it's like, oh, I'll turn it over to officer so and so, and you can go to jail or cooperate with us. Your choice.

Leah Evert-Burks: Right, but you indicated there's being a small community there may be some hesitancy of law enforcement and other officials to get involved in that type of enforcement.

Kevin McPherson: Yeah, and it's really difficult in a small place like Sturgis, because all law enforcement is dedicated to traffic and just making sure the general public is safe. They really don't have the resources to loan out like in other cities like in Daytona we had assistance from the Volusia County Sheriff's office, they would give us as many deputies as we want it as they're like. Oh, it's Harley yeah here you go and we've ran around in cruisers and hit all the vendor areas. But it's Sturgis we didn't really get that support until about 2005 when Homeland Security actually reached out to me, and they're like -

Hey? We know that you guys have been enforcing, you got problems of Sturgis and we're like yes, and they're like we can help. And so for that one rally I got about 12 Homeland Security agents, and that that was those wild.

Leah Evert-Burks: Yeah, I bet that was a bit intimidating for the folks there. But it's interesting that they reached out to you, Sturgis being such a big event they probably understood that there would be some, possibly some issues with local law enforcement and that there'd be a lot of violations going on. So so you mentioned also, Daytona but that is, as I understand it, you had a little bit more cooperation with local sheriff.

Kevin McPherson: Absolutely.

Leah Evert-Burks: What was the average size of the seizures that you accomplished at the rallies?

Kevin McPherson: It would vary, but towards towards the end of before I left, I would on average, get about 10 to 15,000 units of products of counterfeit goods. They varied depending on what it was. What it was mostly saw toward the end was a lot of kind of a jewelry and it was small rings and bracelets, so it may be easily packable in boxes. So we get like thousands of those and and switch blades, switch blades with the Harley Davidson and bar and shield on it. So that's those I don't know why but those were popular one year. I saw them in every single rally, and we'd get, you know, thousands of those.

Leah Evert-Burks: Yeah So so that was surprising. Were there other items that you saw the Harley Davidson trademark adhered to that surprised you?

Kevin McPherson: Yeah, one of the weirdest ones I saw to rally was someone was selling marbles of all things with our logo on it. And yeah again, you know thousands of them because they're just marbles in a bag. And obviously we don't even make those so that was interesting.

Leah Evert-Burks: Yeah, and we we've talked about this in other *Brand Protection Stories*. But something for the audience to think about when a brand is producing products they're abiding by a number of regulations including restricted substances depending on what type of product you're producing. So something is, it sounds innocuous. Some jewelry, may exceed in levels of lead for instance. Toys may have choking hazards or have lead paint or other hazardous materials. If if the brand is not directing or manufacturing those products. So sometimes when people hear about well, you know they just, they slapped the Harley Davidson emblem on to, you know something that seemed harmless. It actually may not be harmless.

Kevin McPherson: Spot, spot on, and that jewelry that I was seizing was actually made out of lead, and they're really cheeky because they're selling it by by the ounce and so they would look at the day's prices for silver because they're claiming it as silver and charge consumers like thousands of dollars for this sheer counterfeit lead garbage. Yeah, it was bad news.

Leah Evert-Burks: Interesting.

Leah Evert-Burks: The discipline of brand protection is derived out of trademark law- since counterfeiting is a violation of trademark rights – its important to remember that these are laws set up regionally throughout the world to protect the consumer. Yes, trademarks are assets of companies, but they tell the consumer the source of the goods and provide the assurance of origin. But, brand protection isn't only the responsibility of the legal profession, it's multi-disciplinary by nature, *and* necessity. People find themselves in this field from such diverse career paths as security, supply chain, law enforcement, marketing, IT, finance and yes legal, as well as many more.

Leah Evert-Burks: So were there some kind of preconceived notions that you may have had going into enforcement at a motorcycle rally? Were there things that surprised you, certain sellers or the way that people responded to enforcement requests?

Kevin McPherson: Yeah going into it is pretty intimidating. Being fresh out of college in my 20s going out into this, you know, motorcycle world where everyone looks like a badass biker. Whether they are not, could be just a weekend persona, weekend warrior, but who knows? There are some real hardcore bikers that I'm not going to mess with. But yeah, like one of the first ones I went to in Sturgis, this guy was selling counterfeit jewelry, and he looked like, you know, the typical biker, you see in a movie. I mean he was huge. I'm relatively short, so vertically challenged. But this guy was, like, you know, 6 foot 200 something pounds, beard, everything, tattooed up, and I walked up to him and handed my business card and told him I was with Harley Davidson Motor Company the products your selling are counterfeit. We really hope you can cooperate with us yadda, yadda. And I was expecting for him to tear my head off, and he was the nicest guy I think I've met. His name was Bear coincidentally. Bear was his name, so hi I'm Bear I'm so sorry I didn't know they were counterfeit I'll cooperate entirely. He signed the cease and desist letter and voluntarily surrendered all the goods to me and helped me bag it up and just a genuinely nice guy and I was like, alright that's pretty cool but you know they understood that it was our property, our intellectual property, and it was damaging. And you know, damaging and to consumers. So yeah that would be my surprise. But that's not always the case, too, you run into the real ones as well.

Leah Evert-Burks: Right right.

Kevin McPherson: You just never know. Like also in Sturgis this guy was selling motorcycle t-shirts, but his sign said Harley Davidson T-shirts. So it was consumer confusion, it's false advertising, consumer confusion where he's advertising Harley Davidson T-shirts, none of the shirts were Harley Davidson at all. They're just generic biker t-shirts, and when I talked to him he went off on me and got within inches of my face, and I thought I was going to get my ass kicked to be quite frank and it turned out

that this was a local psycho, and in the year's past he was shooting at the helicopters near Sturgis because they were getting too close to his property and it was annoying him.

Leah Evert-Burks: Oh dear.

Kevin McPherson: Yeah, and I was like you know a little background would have been helpful on that one, and I don't know if the listeners know or watch but there's a show called Deadwood on HBO and he was a spitting image of the image of Al Swearngen and talked just like Al as well. So every little word was F, F, F I'm gonna kill you and I was like, Okay, so needless to say we didn't get a victory on that one. I just walked away and followed up with local counsel and I don't, I think he took this took a sign down the next year. But yeah, that was that was a tense moment.

Leah Evert-Burks: Yeah, I can imagine so. And it was interesting what you said about the about Bear the biker dude. Was he affiliated with any particular biker club? Or?

Kevin McPherson: No, he was just a local vendor, but that being said I did have an issue with a local biker club in Sturgis, the Hells Angels. One year were selling t-shirts at their, I forget what they call them? Is that they're den? Whatever Hells Angels, I guess it's a club, their clubhouse and so they were putting Hell's Angels within the bar and shield, and the bar shield is Harley Davidson's primarily logo. So I walked up to him, and I was totally crapping my pants.

It's like this is the Hells Angels. I'm like if I don't go up and take care of this someone's gonna report it. It it's gonna get back and, they're like, Oh, what's Kevin doing out there? He's not doing his job. I mean we have, during Sturgis we send the most employees to help. So we have motorcycle demos. We have motor clothes stuff. So we have like thousands of employs there so my someone's gonna see this. And so I walked up to the guy and I was like hey, I'm from Harley Davidson you know this is our logo, bar and shield its our intellectual property. I didn't even ask him at this point I didn't even want to serve the cease and desist I just gave my card, and I was like, hey, can you just put the stuff away and get rid of it and don't sell it and he was like, Yeah, I totally get it. He's like actually we have our own intellectual property that we enforce as well, and we have our attorneys go around, and I just thought, well, that's crazy that someone's like gonna rip off the Hells Angels and wear that and not even belonging to the club.

Leah Evert-Burks: So yeah, that's a little risky.

Kevin McPherson: Little risky, I'm like I don't think I'd be running out with a HA patch on me or a jacket saying I'm affiliated because you might get shot by them or someone else. I mean, there was, you know, multiple gang breakouts, at Sturgis just while I was there. So I try to stay clear of that but it was just shocking to me that he was like, Okay, this again respectful of Harley Davidson. Put the stuff away, yeah sure I'll just destroy it. I'm not gonna sell it and we won't do it again. I was like, thank God.

Leah Evert-Burks: Yeah, understood, intellectual property. That's interesting.

Leah Evert-Burks: Listeners might be surprised to hear that an organization such as the Hells Angels owns intellectual property. If we're talking trademarks specifically, that portfolio is in the hundreds of registered trademarks in various classes of goods and services, worldwide. But, in many respects the motivations for IP are the same as more "traditional" brands, to control and protect their brand and ensure consumers of authenticity.

Kevin McPherson: That's another point, too, and typically a lot of people at work in the rallies at Harley they like to go out at, night and day party and go to all the bars and stuff. When I'm there I'm ruining people's lives basically. So I stayed at my hotel every night because I'm like you never know. One person could be very kind and cordial to you during the day. A couple of beers later, hey, you cost me money, and there could be an altercation. So those events. Yeah. and I stay out of Sturgis. I typically stay the Rapid City at one of the bigger hotels that just was all occupied by Harley employees, and I just like go back to my room. Eat in my room.

Leah Evert-Burks: You do have to think about personal safety when you're serving cease and desist letters especially...

Kevin McPherson: When you're sticking around yeah sticking around for a couple days or a week. It's one thing to just come in and go out but yeah.

Leah Evert-Burks: Yeah so so any other impressions that you may have had, you know preconceived notions that somebody looked like they'd be cooperative, and they weren't?

Kevin McPherson: Yeah. So we have a group of sellers that we called, deemed the Church Ladies and these were, you know, church ladies from the local church in Sturgis, or close by and again they were selling t-shirts with their church name inside the Harley Davidson logo and I walked up to them, thinking, Okay, we're gonna get it, you know this is like stealing it's a bible verse it was in the Bible whatever, and went up to them and they would just go off and drop F- bombs and tell us that they're doing it for the Lord, and they can do what they want, and it was like well, you know it says that you shouldn't steal and this is intellectual property. Then oh, that's set them off, and I eventually we got them to cooperate. But every time we saw them you know I was working with my partner, we'd have to like draw short straws to see who's gonna come to the Church Ladies. I'll go to with the Hells Angel or Bear you take the Church Ladies because I they're they're too much.

Leah Evert-Burks: That's great. That's great. So let's go for a minute to Daytona. I know that you saw vendors in both places and in other locations. But were there people in Daytona that you saw returning to Sturgis after you had served cease and desists on them?

Kevin McPherson: Yeah, I kind of called it the Carny Circuit, because everybody traveled around to the same venues to sell their wares or goods. And so I got this guy in Daytona again. He had a huge

table set up full of counterfeit jewelry, and I walked up and introduced myself in my usual spiel, and he was really nice he's like, Oh, yeah, dang I didn't know go ahead I'll cooperate taking all this take it take it, and like we walked away with like thousands and thousands of pieces I'm like that's a damn good haul it's like right-on you know, and so walked away, and whatever, and then I went to the next rally was at Myrtle Beach, and going to the boardwalk at Myrtle Beach, bikeway bike week and again, I see him with doubled the size of his tables. Now he has his big foldout tables and there's like 4 of them, and they're just covered and I walk up like you've got to be kidding me. I was like I just got you in Daytona and was like, oh, dang! You got a good memory. I was like, it was just like last month man like I'm not gonna forget you. And again he's like, take it all we got to have more that time, and it was like a big haul away to go back to the truck and put the you know put the stuff away as we couldn't walk around with it and we got boxes and boxes stuff, and I was like all right so that was a good haul. I'm sure it's not going to do it again. Next month to Sturgis, and this time at Sturgis I had law enforcement, help I had Homeland Security. And so we broke up into 2 teams and we're going to look for big targets. I didn't want to mess, you know use their resources for small guys. They have like 10 or less and they're not gonna bother with it some walking by, and the storefront which rent out store store space inside to these vendors and I look over and I see my dude and all the counterfeit jewelry again. So I'm like all right there's our target this guy has to go to jail. I'm like, I'm done with him so we did an undercover buy I enlisted the help of some of my co-workers at Harley, he might remember me like I was a total stoner but I'm like who knows he might recognize me and put a stuff away and hide. So we got some marked bills that we made the buy immediately with. We got a subpoena from the judge and went and flipped his booth. And not only, we figured out which cars were his as well, and we got subpoenas for those as well. So we flip this booth we go in with Homeland Security, they're the full gear with guns, you know SWAT gear, armored vests and that stuff and I come in afterwards and he's all cuffed and he's crying. He's like, Oh, I want to work with Harley. I'm like dude that time has passed this is your third strike. And then it turned out that when we searched as vehicles, we had a big pickup truck with like a Tonneau cover that covered the back the the bed of the pickup truck and that entire pickup bed, of the pickup truck was filled with counterfeit goods and boxes with receipts from Mexico. So he was international trafficking. He was going down to like Tijuana, or whatever buying counterfeit goods, loading up and driving them across the border. So we got him for like international trafficking as well. So that was a good a good haul.

Leah Evert-Burks: Wow.

Leah Evert-Burks: Counterfeiting can be lucrative but in many jurisdictions prosecution results only in low penalties, therefore it attracts a wide spectrum of criminals from out-of-garage sellers to sophisticated networks funding terrorism. And what *is* counterfeited? *Just about everything.*

Kevin McPherson: And then we had a second guy who was a repeat offender. I also saw him at Myrtle Beach. First time I busted him in Myrtle Beach he was selling counterfeit patches. They had our trademarks on them that people could sew them to their vests and stuff, and so he eventually cooperated and voluntarily served with all those patches. This time at Sturgis he upped operation, and he was selling counterfeit Harley Davidson handbags and we saw him displayed outside, and again we did the same thing. I didn't want him to recognize me, so I got an employee to go and do the buy. We did the marked money, got the subpoena, and we went and raided his his place. We found out that he owned a semi-tractor trailer, and so we opened up the trailer he had a production, table set up, of finished an unfinished goods. So he was doing manufacturing at the rally. And yeah, it was crazy, and the investigators did more digging, and it turned out that he took out a second mortgage for the semi-tractor trailer to drive around the country and sell goods at motorcycle rallies or flea markets or whatever, and they're like well it's paid for. We want it - like we're gonna seize this trailer. So we're sitting there and it took all day none of the agents had a CDL license to drive it but they wanted it that day so they called somebody up. One of the agents that had a CDL license. Flew in a helicopter, I think it was from Nebraska to Sturgis, dropped them off. We cleared downtown Sturgis Main Street during like peak bike week and pulled this trailer out. It was just in like shock and awe, and then from then on everyone was running around like Harley Davidson is no F-ing joke, man, they're not messing around.

Leah Evert-Burks: Yeah, you got a reputation.

Kevin McPherson: Yeah we got their attention quick, and then it was kind of clean or a while after that. But yeah, that that was an exciting 3 days.

Leah Evert-Burks: Yeah, yeah. So talk a little bit about when Homeland Security came in. You mentioned that they assisted with the the trap buys and marking the currency, and and, you know, bringing in their force, you know, much different than probably local investigators or law enforcement. But you know, certainly was benefit of having the feds there. But what was that like?

Kevin McPherson: Yeah, I mean, it was definitely more expedient than the local. I always say it was already a Federal level question because trademark counterfeiting is a Federal crime, and in the Lanham Act is Federal. So we went to the you know, to the Federal judge to get the subpoena, and, as you know, always at that further level at doing anything legal is much quicker than at the State level. So that's how we're able to get a subpoena with like hours versus days or weeks. By the time it's you know it would have been over so like they're gonna have an immediate need now. We need a subpoena. Got it within like 2 hours, and then went through that. But honestly once the Feds took over, it was kind of out of my, out of my hands, like right. I just turned the case of them and I did help them go through and count inventory, and we were up to like 3 o'clock in the mornings was so much counterfeit jewelry, and they

only had 12 people so I enlisted again some coworkers. I was like, hey, you want to go to a hotel count jewelry all night. Like no. Tag and bag. Yeah, we did it for evidence but other than that like I said it was kind of you weren't in control at that point. It was like, okay, I'm, the I'm, the brand owner, but they're they're running their Federal case, now.

Leah Evert-Burks: Yeah. Once they come in they take over.

Kevin McPherson: Yeah there's no going back, once they put the cuffs on it's over and that's like the guy, you know with the handcuffs, its over. It's like the guy, I'm want to work with Harley I'm like honestly I can't help you anymore.

Leah Evert-Burks: Right right.

Kevin McPherson: Should have cooperated 2 rallies ago.

Leah Evert-Burks: Yeah. And as I mentioned at the at the beginning, you know, Harley Davidson is a well-loved brand. So did you come across people that possibly didn't understand IP, and were just big fans, and they wanted to adhere the Harley-Davidson trademark on whatever they were making and thought that they were paying tribute, and not really understanding that they were in fact committing a Federal, Federal crime.

Kevin McPherson: Yeah, that was probably the issue with I mean a lot of people didn't know it, obviously. And there's some people did, but most of the time these were enthusiasts as well.

They were buying our motorcycles but one of them was really interesting. It didn't happen to Sturgis it happened in Daytona and I'll never forget this one. I won't want to say her name but I'll just call her Charlotte. So we went up to this booth and we saw this person that was customizing Harley Davison shirts like I'm like Okay, that's a problem and she was sewing her own name into the into the shirt. So, cutting our name out, causing consumer confusion

It was like gypsy something, we started looking at the t-shirt so like these t-shirts are counterfeit. So I'm like we got a myriad of issues going out here you know you're transporting goods just to you know, creating your own brand. And selling counterfeit like let's just stick with the easy one. Your selling counterfeit shirts. So we start talking to her and I'm there with Volusia County sheriff's officers. We have, like 10 officers, me and 2 other coworkers. She starts flipping out, running up and down the vendor area, yelling, Harley Davidson is ruining my dream, Harley Davidson is ruining my dream and she's drawing all these people, this crowd over and they're like what's going on? I'm like look, I'm with Harley Davidson she's selling counterfeits and I'm trying to get her stop. They're like okay I didn't know. This attorney came over he's like I'm an attorney, I'm like, do you represent her? He's like no I'm like then get out of here like, you know. But everyone's trying to butt in we eventually get her to come down like, Alright. How are we ruining your dream, and she's like well, I'm, selling these T-shirts to buy

a motorcycle. A Harley Davidson motorcycle. Here she is like stealing from us to like buy a product from us like, that's not way to do it?

Leah Evert-Burks: Yeah irony.

Kevin McPherson: Oh, it took, and what would usually take about 30 min to an hour per vendor it took us like 3 hours on her just because she was, you know, she was so out of control and crying and running around had to calm her down multiple times and finally got her to agree and to voluntarily surrender the product. But that was a tough one.

Leah Evert-Burks: Yeah, that sounds like it. So so back to Sturgis, did you ever find actual motorcycle parts that were being counterfeited at these rallies?

Kevin McPherson: Yeah, not such critical parts like brake pads, or oil filters, or stuff like that. But a lot of the cosmetic stuff like the the air cleaner is exposed on the Harley motorcycles is kind of like the crown jewel of the motorcycle, and specifically it has a decorative cover. So a lot of people will swap it out stop out the covers because it's just one nut. So we saw a lot of decorative counterfeit Harley Davidson parts, and luckily for us we didn't run into the issue of like, you know, other manufacturers for his critical components. But we did see that a lot where it's through they put like Harley Davidson, Live to Ride, Ride to Live maybe with an eagle, or some kind of design that we didn't we didn't make yeah, and then of course you know it's usually poor quality most of our stuff is going to be chromed out or blacked out depending on what the customer wants and or what's in style. So these are fairly a poorly dec chrome that would peel off and flake. And then, of course, when that happens, if it fails they're not going to go back to vendor they're going to call us up and say what's wrong with your product, because, since it has Harley Davidson on it, why don't you warrant it. Your stuff is junk, paid \$300 for this, you know air clearer cover, you know. Yadda, Yadda, Yadda it goes on and on.

Leah Evert-Burks: Right, right, so something you were just talking about the person that you did. I think you called her Charlotte, that you did enforcement on. You know, thinking about enforcement activities that brand protection professionals get involved in in these types of environments there can be a mob mentality that builds so so a lot more risk going in and for brands to enforce at these types of events.

Kevin McPherson: Yeah, absolutely and that's why, when we do it we try to wait, you know, if they're selling a lot of counterfeits, we try to wait till everybody's out of the booth and pull the vendor/owner aside to have that conversation, because the last thing you want to do is go in, and then, the mob turn against you, and you're spending your time dealing with them, and not the actual issue of the owner selling of counterfeit of goods and they're trying to explain, hey, we're not the bad guy here. They're actually ripping you off as a customer you know, and have to go through all those conversations. So

typically we'll hang out to the side of the booth and wait till it's like pretty quiet, and then go and they're like, hey, you got a second. So they would say, we're with Harley Davidson and you know kind of go to our spiel, and also let them know you know that it's illegal to do for one, and that it damages our reputation and our business, and it damages consumers as well. Kind of you know, do a little education. And then we usually when I was doing it, we had like a "leave behind" with just a list of all of our trademarks and Logos saying, this is our just don't sell you know if you didn't buy from us, don't sell it, and here's our logo.

Leah Evert-Burks: Yeah, I mean it is an opportunity to educate and I think that that always should go hand-in-hand enforcement and education, because there are those people that don't quite understand IP rights, and why it's a crime. So I that's that's interesting to hear that you would provide a leave-behind.

Kevin McPherson: So yeah, yeah and you get, you always get that defense that? Oh, I changed it by 30%. I read if you changed it by 30 it was always 30% I'm like I don't know where you get that it was like the standards confusingly similar for trademark infringement that doesn't that's not even what we have here. It's a direct knock-off, its counterfeit.

Leah Evert-Burks: Oh, I've I've heard that for years. People would like to have some kind of formula to determine the safe zone. Yeah, that's not how it works. Its consumer confusion, is the measure. Interesting well, wow well, I, really interesting to hear about Sturgis and Daytona and Myrtle Beach. You can really kind of picture what those, what those rallies and those gatherings are like. Thinking about that experience from your Harley Davidson days. If you could select one word that would capture that experience, what would that one word be?

Kevin McPherson: You know. Let me, let me noodle on that for a couple of seconds here.

Leah Evert-Burks: It's always hard to take it down to one.

Kevin McPherson: I know this one I have like many, like many 3. I guess if I just had to say one word I think it would be wild.

Leah Evert-Burks: Yeah, I think that fits with Harley Davidson. Right?

Kevin McPherson: Yeah, I mean just the whole atmosphere walking around there's seminude people everywhere. There's coleslaw wrestling going on with naked ladies and you're like right there in the middle of it and you know trying to be professional and it's basically you know it's it's Spring Break, for you know, for Boomers. That's what's going on. But it's getting younger, as well but yeah it's just basically Spring Break for adults. And you're you're in the midst of it, and it's hot and hot and you know sweaty and yeah it's wild.

Leah Evert-Burks: Yes, what an experience, great. Well, thank you Kevin. Thank you for joining us in our for *Brand Protection Stories*, and thank you for doing the hard work.

Kevin McPherson: Absolutely thanks for Leah. This is a lot of fun. Hope to do it again.

Leah Evert-Burks: As Kevin's stories tell us, counterfeiters come in all shapes, sizes, and motivations - and some may be very unexpected. With a brand like Harley Davidson, one that has such a loyal following, enthusiasts may confuse admiration with infringement. Accordingly, I loved hearing that Kevin left behind information on IP rights with offenders so that they could understand what trademark counterfeiting is and that it actually threatens their beloved brand. Education is absolutely key, which is one of the reasons A-CAPP spends resources and dedicated efforts on education and outreach.

Leah Evert-Burks: If you're interested in sponsoring episodes of Brand Protection Stories, please contact A-CAPP Assistant Director Kari Kammel at kkammel@msu.edu.

Leah Evert-Burks: In the next episode, we follow a trail into the hidden threads of the deep web, with career investigator Chris Salgado to uncover a hacker of streaming services. Streaming services are now the staple for home entertainment and as such, vital revenue for studios and their creators. Listen, and hear about the one fatal mistake the hacker made that enabled Chris to find him no matter how deep he operated.

Leah Evert-Burks: Thanks for joining us today for this edition of *Brand Protection Stories*, produced by the Center for Anti-Counterfeiting and Product Protection (or A-CAPP) @ Michigan State University in East Lansing, MI. Please visit us @ a-capp.msu.edu. A-CAPP is a non-profit organization founded in 2009. It is the first and only academic body focusing upon the complex global issues of anti-counterfeiting and product protection of all products, across all industries, in all markets. In addition to this series, we offer certificate courses in brand protection, applied education and academic courses, executive education, student internships, live , ground-breaking research, and publish the quarterly digital industry journal, *The Brand Protection Professional*.

Leah Evert-Burks: This is Leah Evert-Burks with A-CAPP. Until our next session, keep protecting your brands, and the world's consumers. Keep it real.