

Denise Mosteller and Jeremiah Pastrick

“ON COUNTERFEIT PROTECTIVE EYEWEAR”



Leah Evert-Burks: This is Leah Evert-Burks with the Center for Anti-Counterfeiting and Product Protection @ Michigan State University and *this is Brand Protection Stories* - stories about the practice of brand protection by those who live it.

Leah Evert-Burks: We are speaking with members of the brand protection community about notable cases in their careers. Stories that are stranger than fiction, but in fact real life scenarios where we learn about the practice of brand protection and the challenges faced by brand-owners, law enforcement, government authorities, and consumers among other members of the world community.

Denise Mosteller: And this one went a step further because of the safety issue. I mean, Revision had received mass emails and letters from soldiers that these glasses had literally saved their vision. Saved their lives. So, it was, it was, a much easier persuasion, you know, or to get them interested because of it. But there are other factors in it as well.

Leah Evert-Burks: Denise Mosteller, a Partner at Howell & Associates, has over 25 years of investigation, brand management, and intellectual property experience. Denise started her career as a licensed private investigator, and over the years, took every opportunity to learn about intellectual property protection, and ways to combat counterfeiting that often-included thinking outside the box.

Throughout the course of her career, Denise has participated in countless criminal and civil investigations and enforcement actions, involving everything from the individual online seller to global Chinese manufacturers. She's done her fair share of dumpster diving, getting people to talk even though they shouldn't, purchasing products she never thought she'd buy and testifying as an expert witness. These cases have given her the opportunity to work with both state and federal law enforcement agencies to facilitate the arrest of numerous counterfeiters. Her clients have included brands in industries such as medical devices, health and beauty, food, alcohol, tobacco, academic institutions, firearms, footwear, and eyewear.

In her current role, Denise has established policies and procedures to vet and scrutinize resellers and distributors at all levels of the supply chain. She is also responsible for policy enforcement – identifying, investigating, and resolving appearances of gray market goods as well as unauthorized/counterfeit products on all major eCommerce marketplaces, with a particular focus on Amazon enforcement and remediation. Having experience from all facets of brand protection - software, service provider, consultant and from a brand's perspective, she has the unique ability to see how all the pieces work together to find the best strategy and solution for her clients.

As a result of her extensive experience, Denise has had the opportunity to speak at many anti-counterfeiting and brand protection conferences across the U.S. and Canada and enjoys giving investigation tips to help brands find those online sellers.

Denise holds a Bachelor of Science in Criminal Justice, an Area Certificate in Public Affairs, and a Minor in Psychology from Indiana University.

Leah Evert-Burks: Jeremiah Pastrick has spent almost 20 years in both private practice and in-house legal settings. He began his career focused on global intellectual property development and protection. His clients spanned a broad range of industries including automotive, heavy machinery, food/beverage/alcohol, medical devices, sporting goods, firearms and fashion. His work focused on developing and executing creative anti-counterfeiting programs, online brand enforcement, litigation, licensing and IP portfolio development and management throughout North America, Latin America, Europe and Southeast Asia.

The legal and creative skillset that Jeremiah developed in private practice led to a role as General Counsel and Vice President of Corporate Development for a privately held healthcare organization headquartered in Indianapolis, IN. In that role Jeremiah managed all day-to-day legal aspects of the business and served on the business's executive team through a time of ownership transition and significant operational overhaul. Beyond his legal duties for the business, Jeremiah's responsibilities as Vice President of Corporate Development included partnership development and execution, guiding a corporate rebrand and leading the business's sales and marketing strategy. Additionally, during his time, Jeremiah served as the "Integrator" for the business as it adopted and implemented the Entrepreneurial Operating System or EOS.

Currently, Jeremiah provides strategic counsel to entrepreneurs from pre-launch business formation through start-up, scale-up and compounding growth phases of their businesses, serving as a *General Counsel for hire* law firm practice.

Jeremiah received a Bachelor of Science in Public Management from Indiana University and his JD from Indiana University Robert H. McKinney School of Law.

Leah Evert-Burks: I'm very excited today to host two experts in brand protection, who will convey the story of a *very* public takedown of a counterfeiter – one who chose to counterfeit protective gear. Gear that protects those who protect us. So, an important purpose to their work, and one that we all appreciate and applaud. So, welcome Denise and Jeremiah to *Brand Protection Stories*.

Denise Mosteller: Thanks for having us.

Jeremiah A Pastrick: Yeah, thanks.

Leah Evert-Burks: Great. So, the listeners have heard your impressive bios and backgrounds. So, let's dive right in. The story we're going to talk about today is how a counterfeiter *from* China, got

arrested *in* the US, on an Indiana State Felony Warrant; and from that I will just turn it over to Denise to talk about the IP Enforcement Actions.

Denise Mosteller: So, I think, to start off as maybe this, you know, the setup of kind of who they were, who Jeremiah and I are, how we got involved in this.

So, we're talking about Revision Military, and they are a company that makes protective eyewear, and it gets sold to soldiers as well as civilians, law enforcement at every level. It protects your soldiers; it protects their eyes. It's something that they're given, you know, when they enlist. So, it's an important product, but it also gets sold to the public.

So, I mean, I'll let Jeremiah go more into about who they are, but you know we met him at a, at SHOT Show (Shooting, Hunting and Outdoor Trade Show) actually. They, it's kind of how we got to know who they are, and what their issues were; it kind of brought us all together. I mean, I came into it as an investigator. Doing years of investigations on both civil and criminal cases and was brought into this with Jeremiah to do the investigation side of it. So that we could decide, you know? Where we could go. What kind of action can be taken; and that's kind of where it starts. They have a problem, they come to us, and we help them figure out where to go next. So, I'll let Jeremiah dive a little bit more into that part of it, and the company.

Leah Evert-Burks: Great. Jeremiah?

Jeremiah A. Pastrick: Yeah. Yeah. Sure. So, like you said, their products are extremely high quality, you know, a very specialized product. Like a lot of businesses that might find themselves in situations of counterfeiting it's, you know? High price point; and from the outside looking in, it might seem less complex than it really is. And so, I think that in and of itself sort of creates an environment that invites counterfeiting. If you're envisioning something, it probably looks like ski goggles or like a sunglasses. Or some sort of like shop glasses that you might wear, you know, working in your garage or basement; or something like that. But there's a lot more going on under the surface with these types of products that does command a high price point.

Like Denise said, I'm pretty sure they're part of like a standard issue kit that any soldier gets, you know? Whatever they get: helmet, backpack, gun, Revision goggles. And so, you know, they found themselves in a situation where I guess, a lot of brands find themselves. They have a really high-end product. They were really high in a price point that's connected to that product, and you know the product. The real McCoy is worth it. But you know, there's lots of people out there in the world that would like to pay 10 or 15% of what the price of the real good is. And so that is a typical story, I guess, of how people find themselves into having counterfeiting problems.

So that, like Denise said, we encounter them at a trade show. And you know? I guess to sort of get to know one another a little bit and understand the problems that they were facing. And maybe, how they've gotten to the point where they were looking for something beyond, you know, the anti-counterfeiting efforts that they've been doing thus far which, you know, this is kind of an area of Denise's specialty. But that looked, I think, a lot like marketplace type management. You know, they have, like a large funnel of sellers and vendors out there that they were identifying and sort of going through the process of

shutdowns and generating some success there, quite a bit of it actually. But needless to say, there's always the outliers that are able to be—

Leah Evert-Burks: Right.

Jeremiah Pastrick: Corralled and addressed to go through a standard enforcement type of a process.

Leah Evert-Burks: Yeah. And just to comment on what you were just saying, Jeremiah, you know, a lot of goods are counterfeited. Obviously, the counterfeiters are just trying to look like the goods.

Jeremiah Pastrick: Yep.

Leah Evert-Burks: So if it's a design like goggles, or you know, I come from footwear. If it looks similar to the footwear style. That's all they've put into it; they haven't put into the R and D (Research and Development). The materials, high price materials. The testing that goes into the products. I know with these goggles, there were a pretty strict manufacturing process, including clean rooms, multiple QA Testing — I also previously came from the medical device industry and am very familiar with what products have to go through to, before they're released to the market. So, these counterfeiters were just knocking off the look of the goods; slapping on the trademark. None of the protections that were in the product existed. Is that right?

Brandon Drain: Counterfeiting is a violation of trademark rights, one of the intellectual property rights granted to innovators and companies along with patents, copyrights and trade secrets. Trademarks tell the world who a brand is, building on the trust, quality and reputation of its name; for consumers, it designates the origin of the product bearing the trademark in word form and/or logo - in other words where the product came from, and who produced it.

Denise Mosteller: You brought up the clean rooms and the process. I mean, during this whole thing that's one of the things that not only did Jeremiah had the opportunity to do — and kind of getting ahead of myself — but even law enforcement did. We went to their facilities. We saw how they manufactured these products. I mean I was impressed, because there were pieces of their process that could have been done by a machine, and they were having people do it.

So, people were handling these things. Taking a look at them, one at a time. Packaging them like it would — I mean, I was very impressed with that part of it. And. And even, you know? The testing side of it. I mean, they had to go through a lot of testing. So, because they were qualified to do their own testing.

And so, the government comes in and audits them. They spend millions of dollars to do it because they have to make sure it holds up. It holds up in the conditions that they expect it to, and we can go even into the testing more when we talk about it; because the counterfeits were tested as well. And when you saw them not hold up to it, it's kind of scary when you think about who uses these products

Leah Evert-Burks: That's terrifying. Absolutely terrifying. So, the Revision first noticed that counterfeits were being sold. Was it online, on one of the platforms, or how did it come to their attention?

Denise Mosteller: So, they've been seeing it. They'd definitely been seeing it on sites like DHgate and Alibaba. And they used the, what the marketplaces offer for you to take down counterfeits – and you know their people there; Monica was the person we worked with. She worked really hard and diligently to really take that list; and I don't know how big it started, but it was pretty big, and she worked and worked and worked to get it down to about... I want to say it was seven.

There were seven left that were the biggest issues that they had. And they had done everything else available to them. I mean, they used the marketplaces and their tools that they provided. But they got to a point where, 'We have these last 7. They are some of the biggest offenders. What are we going to do?' So, I mean the work that they did even before they came to us is huge, and it's super important.

Leah Evert-Burks: Mhmm. You had a very active client!

Denise Mosteller: Yes.

Brandon Drain: The marketplaces where counterfeits are sold have expanded through the years as consumer buying habits have changed. Once sold on folding tables at flea markets, now the sale of counterfeits online is the biggest threat, and the most difficult to police and enforce against. Along with websites and selling platforms, counterfeits are now sold through social media and make appearances in the metaverse. Counterfeiters go where the consumer goes...Still many of the enforcement actions against these criminals takes place in the physical world, and as we learn in *Brand Protection Stories* are never short on drama.

Leah Evert-Burks: So, So, Denise, you're the investigator Jeremiah, you're the outside counsel attorney. Denise tell me from an investigator standpoint. What do you do? And what do you see as best practices to pull all of this together and get the information you need to proceed?

Denise Mosteller: So, in this case, it started a little bit different, because we had 7 problem— or seven counterfeiters – that were causing them the biggest issue. And so, you know in this case, we didn't have to do all the work that Monica had done at Revision. We were given this list, and one of the first— the preliminary stuff you do is you look into the companies. Who are they? Who owns them? How big are they? It was important for us to find out: Did any of them attend US Trade Shows? Because, I mean, when they're already coming to the United States, it makes doing this type of action much, much easier. So, you know, in the beginning, it was kind of more of the basics. Who are they? How big are they? Where are they located? Who's in charge? And will they come to trade shows in the US?

Leah Evert-Burks: Okay, and coming to trade shows gives you the ability, the jurisdiction and the ability to proceed against them.

We've had a number of *Brand Protection Stories* that talked about that: getting the criminals to a jurisdiction where action could be taken. So, Jeremiah, you were the attorney; so if you could talk about your role in this case.

Jeremiah A. Pastrick: Yeah, sure. So, obviously, we're talking about a criminal case as opposed to any sort of a civil enforcement action. So, you know my role looked like, in some respects, an advocate for the client. My role looked like a sort of a, a scrutinizer of the evidence, so to speak. And you know, that's the way in which Denise and I always typically work together.

There's, I guess, at the outset a bit of a hypothesis around what we think is going to happen, and what evidence we're going to be able to uncover, and then how we can align the evidence that we believe is going to be there with the crimes that we believe are being committed.

And then Denise and I really work hand-in-glove. Maybe that's a little different than sort of a ... you know? An investigator works on the case, and then an attorney takes over a case, and it's more linear you know. Denise and I are really sort of partners in the process all throughout and are more parallel and are working together.

So, you know, we're talking about what's going on here? What is the – what is the investigation revealing? Where are their weaknesses that still appear to be in the case? And we're ultimately working ourselves up to, you know. I said the word advocacy, but we're working ourselves up to a position where we feel we're comfortable and confident to bring this case to a prosecutor.

And there's a lot of lead-up work that goes into that before we actually request that meeting and make that presentation. And so, Denise and I are ... She gets mad at me sometimes (starts laughing) when we do this because she works really hard and, and uncovering the information that we think is going to carry today. And in some respects, I'm trying to stand in the shoes of the prosecutor as well, and say, *I'm not so sure about this, or your evidence there just isn't really strong-*

Denise Mosteller: (Interjecting) Or it's not enough.

Jeremiah A. Pastrick: *Like you've got it, but you don't,* and fortunately we like each other and get along. (Starts laughing again).

Denise Mosteller: (Also Laughing) It usually starts, or it usually starts with, *Okay, this is what I need to know. Go figure it out.* So that's usually one of the first actions between the two of us is:

(Imitating Jeremiah) Here's what we have. Here's the goal we're trying to get to. Denise, what are you going to do to figure it out?

So, you go, and you try things, and you attempt to get the information. And sometimes it takes multiple times and sometimes – as Jeremiah said – it's us coming back together, and you think, 'Oh, I got it,' and he's like, *No. We still need X, Y, and Z.* And so, you're going back to the drawing board to do it. And so,

it – I mean there’s definitely this relationship that happens and you have to trust and respect each other because you’re often being told, *it’s not enough, go back and think of something else.*

Leah Evert-Burks: And I think too, you know, Jeremiah in his role, too, has to look at what laws are available and what they require. So I imagine, Denise, you pull together a *variety* of information from different sources, and so forth, and then kind of present it all. Jeremiah looks at it and says, *we can use this. We can use this. I need more here. Throw that in the trash can, that’s not going to work for this statute.*

So before, before we get into the area of law. I just wanted to talk about, you guys were talking about cooperation of the client, which is obviously extremely important. So, you need cooperation of the client, the in-house folks, law enforcement, and the laws. It’s kind of, I think Jeremiah when we had talked previously, you called it a three-legged stool. To be able to have a foundation, to proceed with these types of prosecutions.

Jeremiah A. Pastrick: Yeah, I’m glad you brought that up because I was thinking that as well. So, you know, we’re kind of talking here I guess chronologically and the preliminary part of this case.

And so, you know one leg of that stool, so to speak, is Denise and I– and the working together relationship that we have, and how we contribute to the overall strategy and execution.

Then the other leg of this stool that’s essential right from the outset– and that exists here in this time and space that we’re talking about in the case– is the client, and; on the Revision side they had sort of complementary roles. They had an in-house counsel there, who, you know, handled all the legal issues for the business, including IP Enforcement, and he was a really valuable resource on some of these, you know, regulatory issues and testing issues and quality control issues as well.

And then you know his counterpart in-house there was, I think, she was technically a paralegal, but that is, you know–

Denise Mosteller: She did so much more–

Jeremiah A. Pastrick: A narrow description of the role that she took on within the business, and the role that she took on within this work as well. I mean, she was the owner of so much information and knowledge. And you know, really when it came to the needs of the case from the client side, from the Revision side, she was really an essential person to support us in the preliminary work, to support us and law enforcement. And you know, the sort of the second phase of the work that had to happen. And so... it couldn’t happen without those two. You know I guess I’d say it couldn’t happen without Denise and I as well. And you know, as we sort of move on the timeline of this case, we’ll also talk about the third leg of the stool and the law enforcement role in the case, and they also had sort of mirroring roles with the prosecutor sitting in that attorney seat, and you know a couple of detectives who sat in the sort of investigator and evidence collection seats. And so, all three of those components of the, the people part of the equation were essential and work worked quite well in this particular case. So yeah, the client participation is essential. The commitment from the client is essential. I think we’ll talk about that a little

later as well. The way that all of those people work together and complement each other with their skill sets and they're, you know, willing to work is all part of the magic, I guess.

Leah Evert-Burks: Yeah, it is magic. So, speaking of that Denise, you being kind of in the weeds in the investigation. Obviously, the way investigations go there are leads that don't pan out, again as we've talked about, there are things that you may gather that won't work in a criminal prosecution. Can you walk us through some of the investigation? Kind of give us an idea of where you went. Where you stopped. Where you changed direction.

Denise Mosteller: So, for this one in particular, as we said in the beginning, we started with about 7 companies that were counterfeiting. They were some of the biggest issues they couldn't get them to go away. So, we did a preliminary investigation on 'em to figure out, kind of, who they were, the size and scope of their company, and did they come to a trade show.

Leah Evert-Burks: Right.

Denise Mosteller: And it was important to us that they came to a trade show because we, we wanted them in the US. So that was how we kind— how we weeded down from the seven to who was, you know — who were we going to pursue first? Because in any type of action, a brand doesn't have the money to take a criminal case necessarily against every single infringer. It's too expensive. It takes too much time; and, honestly, you want to make sure that this route that you're talking about going, works.

So they were, I mean the goal was, to choose one that was coming to the US and give this scenario a try, to see if it would work. So one of the great things about this in the relationship with the client is they were ... they were more than okay with us *not* going after the biggest target.

So often you look at a list of counterfeiters, this list of you know, infringing companies, and your goal is to hit the biggest one. Well, it doesn't always work that way, and in this case, it didn't because they were not coming to the US, and the client understood that, and was okay with that. Because they kind of went into it a little bit differently, which was extremely helpful, and we'll talk about it more, but their goal was to make an example; so that counterfeiters, and people who wanted to rip off their brand, knew that they took it seriously. That it wasn't worth their time.

And you know, in the past, and with different stuff we saw this same attitude come into play when we would do flea markets, or you would do neighborhoods full of counterfeiters, and all we had to do was go in once or twice for a certain brand, and even five years later you could go and say, 'Hey, do you have such and such brand?' And they would say, *Oh, no! They come after you. It's not worth it.* So, the fact that the client understood, and was perfectly fine with not getting the biggest fish, and their goal was to make an example out of it was great; because sometimes you have to talk them through of why the biggest fish isn't necessarily the right fish right now.

Jeremiah A. Pastrick: Yeah I think that's right, and I think that mentality around making yourself a bit prickly as a brand was something that they believed in. And by that, I mean, they wanted to have a reputation as being committed to the enforcement of their intellectual property, and that can cascade out

in the marketplace. You know, counterfeiting is a crime of opportunity. People know who's going to enforce their brand and who's not. What you can get away with and what you won't.

I mean, Leah you mentioned footwear as one brand being particularly notorious for being aggressive with IP Enforcement; and if one's not, the counterfeiting is going to gravitate toward a brand that's less active. And so they saw this not just as an opportunity to address a specific case and put a stop to a specific counterfeiter, but to you know, establish and strengthen their reputation as a brand not to be messed with, I guess if you wanna say it that way.

Leah Evert-Burks: Right. Right.

Jeremiah A. Pastrick: They wanted *that* to align with their goals. Not just case-specific goals but align with their goals around the story they wanted to tell about their brand enforcement.

Leah Evert-Burks: Yeah, but it was, it was great that they made that assessment that you were just saying, Denise, to say, you know, maybe the big one is not going to have the most effect. Because many times it's a very emotional thing for brands to see counterfeits in the market, especially a product like you know, ballistic protective eyewear; you can't help but get emotional about that.

So, to put that emotion aside and say, okay strategically, who can we go off after? Who do we have the best evidence against? Who's gonna be in the U.S.? As you indicated. And who can we make an example of? Because you're absolutely right Jeremiah it becomes known in the counterfeiting world, who's enforcing, and who's not, and who's doing it in a big way, and who is just doing it haphazardly. And they will look for those opportunities and quickly move to a different brand. They are opportunists.

So, I wanted to talk Jeremiah about what laws you use to prosecute this case, or to push it to prosecution. As our Lis – many of our listeners know there are various statutes in different states. There's Federal law, obviously, but in the separate states there are statutes that address counterfeiting right on point in some states, other ones haven't really updated their statutes to reflect this threat. Can you talk about in, Indiana; I think it's interesting – the approach that you took to get this case prosecuted.

Jeremiah A. Pastrick: Yeah. Sure. I won't get too wonky on this stuff, but Indiana does have a couple of great state statutes on the books that are very helpful in IP enforcement; and the most significant one that, you know, underpinned this case as well as some of the others that we worked on is Indiana's Forgery Statute. There's a counterfeiting statute and a forgery statute; they're all kind of bundled up together in one, you know, Area of Indiana Code. A couple of things that make the forgery approach interesting and helpful is, you know, first and foremost you'll hit a threshold level of value that turns the forgery case into a felony case; and that's helpful in a number of areas, including getting a state-to-state warrant executed.

So, if you've got somebody that's coming into a trade show in Colorado, and you wanna get them arrested on the Indiana warrant – I don't know if there's a policy against like misdemeanor warrants being executed across state lines, but if you've got a felony warrant, it's a lot easier to get an arrest made. There's more attention going to that case. So, Indiana's Forgery Statute has a level that allows for the

crime to become a forgery over a certain dollar threshold. And unfortunately, a counterfeiting statute does not have that felony component to it, at least it didn't when we did this case.

And the other sort of, I guess, theoretical component to the forgery statute that I think is interesting, if you're thinking about forgery, you know, probably the most common thought there is, is like writing a bad check for someone. I forget the language of the statute exactly, but it says something like using a written instrument to, you know, extract value from another; or something like that. And so, you think, okay, I take a check from somebody, I write it out to Denise for \$1,000, and I sign it; and you know I've just been forged a check and stolen \$1,000 from her. Great. Well, the way that works in the counterfeiting context is, you know, the brand identifiers, the trademarks, are for the corporation the same as a signature; it's a symbol of identification. The value that's being extracted isn't necessarily the \$1,000 that I steal out of your bank account and write a bad check, but it is the value of the brand, you know, and the profits that I can reap from that by putting the trademark on the product.

So, you know there's a little bit of a full, like a, leap there too, you know, analogize a counterfeit good with a forged check, but the statutes on the books; and you know, as this case will demonstrate, law enforcement's more than willing to take a case based on that theory. It was helpful for us in this case that we had actually done one previously that all the way up to the Indiana Supreme Court had ratified this notion that, yes. You are correct in your reading of the counterfeiting forgery statute. It is. It does mean what you think it means.

Leah Evert-Burks: Okay.

Jeremiah A. Pastrick: Making a counterfeit good and signing a bad check are one and the same; and I think that the dollar amount is around \$1,000. Maybe that's why it's on my mind. and if you steal more than \$1,000 in value from somebody it moves from misdemeanor to felony.

Leah Evert-Burks: The A-CAPP Center is participating in prosecutor training in December of 2022. In this training, prosecutors will learn about utilizing existing statutes that will allow and facilitate prosecution of counterfeiting crimes. If you are a prosecutor and interested in this training please contact A-CAPP Director Kari Kammel. We will also be publishing more information on our website following this training.

Jeremiah A. Pastrick: So, that was the legal theory behind the case, and you know, you were talking about the investigative work and the preliminary work, you know all this background work, and this legal theory as well, which ultimately works its way into the advocacy part of the case is working itself toward, you know, the ultimate piece of work product here in Phase One, I guess, is, what do you want to call it, dossier or something? I mean for us, it was literally just a big binder of work product, and it was all of the investigative work that Denise had done, all of the information about the brand and the intellectual property, the testing the client had contributed, and then this component of the work, too. Our legal theory around why the evidence was presented fit the mold of the crime and from the brand: Why this was important.

You know, they had to do a lot of heavy lifting in terms of helping outline what the brand identifiers were, and what the intellectual property was, and what was being stolen. And it's just your signature, it's easy

and obvious; and we did have to do some educating as well to the prosecutors and the detectives working the case to stitch this together. The word product from phase one was really leading toward that moment in the life of the case. The presentation of the prosecutor and that time of advocacy that then sets in motion Phase Two where law enforcement gets involved.

Leah Evert-Burks: Okay, right.

Denise Mosteller: Oh, sorry. One thing that we haven't touched on that I really think that we should, because I know at least when we were doing cases like this, people would say, *Well why don't you just go after them in China?* Why were we bringing them to the U.S.? And I think that's an important piece to talk about. And also, why did we decide to go to State Level versus the Federal Level? And, I mean, part of that Jeremiah has touched on. But the other part of it is, I mean, there were many cases, criminal cases, that we took federally, and it often took longer. So, that was part of it. You had more issues; it wasn't as simple as doing it at a State Level. But you know, the reason that we did it in the U.S. instead of China is back then a lot of people were not seeing the results they wanted to in China.

They would, the counterfeiters, would get a slap on the hand and have to pay a fine. And with this case, and in other cases, they put that in the cost of their goods. Like, they were well aware that they were going to get a slap on the hand. Have to pay this fine. Not a big deal.

You know also having these conversations with brands have – let's not go after them in China, let's do it in the U.S. – was a lot of the education that had to be done as well, because not everybody did that.

Leah Evert-Burks: That's a really good point. A really good point.

Jeremiah A. Pastrick: You said a couple of things there that I'll comment on. China, alright I mean, I don't have anything to add to that part of the conversation; it's difficult to enforce IP over there, pretty much everybody knows it. You said a couple of things though. You said, why don't we bring them to the U.S.? To that I would actually say, you know part of the preliminary review of the cases wasn't that we were bringing them to the U.S., it was that they come to the U.S. as part and parcel of the way that they operate their business. And so, they were availing themselves to the laws in the jurisdiction of the United States by conducting their business in that way. Okay, and a second part of that topic that you mentioned is, you know, sort of the State versus the Federal Enforcement. You know Federal Enforcement cases are difficult to get the attention of U.S. Attorneys and the law enforcement they're dealing with is the FBI and those guys are busy, and they'll do some cases from time to time, but you know, State Level Prosecutors have tremendous power and authority to enforce the laws of their state very much so.

The prosecutor that actually took an interest in this case, you know, he's a really smart guy, and really got it, and he was a very rule of law guy and was committed to enforcing the laws of the State of Indiana. He was also in the county that was border to Ohio, and so this sort of cross-border crime was something that he dealt with often. The notion of it was part of his everyday life and enforcing the laws of the State. By that, I mean you know, sometimes I analogize these cases to non-IP cases, and I did that in the advocacy with him.

If you sell heroin in Cincinnati and then also sell heroin into Indiana, you've definitely committed a crime in Indiana. And this prosecutor had no bones about the notion; that if you sell drugs into his jurisdiction, he's going to arrest you, and he's gonna prosecute and from the jurisdictional standpoint, from a theoretical standpoint, you know, you could say heroin's worse than counterfeit goods. Well, I'm not making that judgment here I'm just saying the legal framework that allows a prosecutor in Indiana to arrest and prosecute someone who sells drugs into his jurisdiction is the exact same legal framework that you can wrap a counterfeiting case around. Send the goods into my jurisdiction, you've committed a crime.

Leah Evert-Burks: But I think your advocacy work for law enforcement is really getting to them to the point of why they should care. As you were just saying, you know, they're dealing with a lot of crimes. Obviously, narcotics trafficking is pretty serious, but as we've noted in the field of counterfeiting a lot of times, counterfeits are the currency that funds *those* operations. So, I think you guys were successful in getting the prosecutors and law enforcement to care and to understand the connections with the bigger picture of the crimes.

Denise Mosteller: Well, and they also had I mean, like Jeremiah mentioned, it's very important. Yes, these sellers were coming to the U.S., but *Revision* also had stores in this county that sold their goods as well. So that was a part of it as well. They had customers that were buying legitimate products in this county, and that's all part of this investigation that you do. It's not just on the counterfeiting side. It is ... Are there stores that are selling these products? Does it matter to the county? And this one went a step further because of the safety issue. I mean, *Revision* had received mass emails and letters from soldiers that these glasses had literally saved their vision. Saved their lives. So, it was, it was, a much easier persuasion, you know, or to get them interested because of it. But there are other factors in it as well.

Leah Evert-Burks: Sure. Sure. So, let's which gears a little bit and go to the takedown. So, we're talking Indiana right now, but the trade show happened in Colorado. I think it was the Snow Show or Outdoor Retailer, or one of those big ones in Denver. And you knew that the counterfeiter was going to be there, at the trade show. So, Denise, can you take us through that?

Denise Mosteller: Sure, so I mean even before we get to the trade show there's a lot that goes on as Jeremiah brought up that we have this prosecutor investigation dossier, and it has, I mean, it's split up in pieces of all the background information on the sellers. Typically, by the time it goes to the prosecutor, you know all of their personal information, their passport numbers, I mean everything that you can find about him. You know their Chinese name, their American name, and how they hold themselves out in the company. How do they refer to themselves? Do they call themselves the owner? The President? You have the product buys. You have the chains of custody with the product buys. You have the conversations, because part of that we had to prove was the 'knowingly and intentionally' part. It couldn't just be that they were selling it, they had to know they were ripping somebody off, and it had to be intentional.

So, even before the takedown, just because there's a lot of work that goes in before that, and getting the detectives and the prosecutor to say, you guys gave us enough information, and usually at that time you've given them so much information, and the nicer bow you put on this package, the easier it is for

them to take it. Because at this point now as the investigator, I just have to introduce them. They're my business partner. This is my brother that I work with. You know so now, they're able to also obtain information on their own because often they need their own purchases, but they don't have to develop the relationship. They don't have to spend the time getting in, you know, we've done all of that. So and you know, the detectives are also doing it based on what the prosecutor is telling them that they need, and they're all working together. Jeremiah, the General Counsel from Revision, the prosecutor, and then you have the other leg of it, which is Monica, myself, the investigators, and the paralegal. It is a lot that goes into it but, like I said, the nicer you give it to them, the easier it is for them to go from learning about the case to the arrest. That you can get your time substantially shorter by doing all of the background work.

Jeremiah A. Pastrick: Yeah, you really nailed it. Yes, you know, the take down is sort of a culmination of that second phase of the case. But you know, phase one can take some time. And again, this goes back to the commitment of the client. Denise and I were doing a lot of work, and they were paying us for it, and you know we were doing purchases, and we were traveling to visit the client, and we were understanding all of the information about the testing and the anti-ballistics capabilities. We were testing the counterfeit goods. We were putting all of this into our presentation materials. It was—yeah, it takes time to really be able to walk into that office confidently, and in some respects, this goes back to the Denise and I dynamic.

You do have to say, Okay, we've got it, like today's the day that we say phase one is done, and we think from the investigative standpoint, we've done everything we can do. We have self-scrutinized to the highest level possible. We feel confident about our case, feel confident about the law. We feel confident about our advocacy. Our clients are on board. So, then we go and make that pitch, and then it can't feel like you're taking a step back because even if the prosecutor says I care about this; I'm interested in this. I will take this case on, this is important. He's still gonna want to do his own work and he's going to—like Denise said. Then the detectives get involved, and Denise has built this relationship through undercover work with the counterfeiter, and then now she can introduce John — and it just so happens to be John is a State Police Detective. And then more purchases are made, and now the prosecutor wants to come to the client facility as well and understand the testing process because he knows he's gonna have to stand up in court—

Leah Evert-Burks: and explain it. Yeah.

Jeremiah A. Pastrick: And explain it to a jury and so, you know we've prepped it all, but then that is the second part of the process of him taking the case. And I think another important point that Denise and I talked about in preparing this is, you know, another thing that the client was really good about — Revisions was really good about this — is when you take that step, ask the prosecutor to take the case, you are relinquishing some control in that context, that is different than a civil case. You know you can sue somebody, and always have in the back of your mind, well if this goes belly up, I can dismiss it, or I can settle it, and there's an off-ramp, I guess technically, or theoretically, there could get off-ramp if you've asked for this case to be prosecuted and change your mind. But that would be very ill advised. (Starts Laughing) That's the nicest way I can say it. So, once that second phase begins, you know, again Revision was outstanding, and their commitment to seeing it through. I mean day one all the way to the end, they were into it.

Leah Evert Burks: Yeah. It's a long journey

Jeremiah Pastrick: It can be.

Leah Evert-Burks: So to have committed to that journey is extremely important, too.

Denise Mosteller: (Jumping in) –But there was two things like, Revision looked at us and actually it was his words, as the honest broker. We were the honest broker for him, and we were also fortunate enough in this case that the prosecutor, and then the detectives were invested, because they wanted to go there and see how things work. They wanted to go there and see it firsthand, and even prosecutors that will take cases they don't always want to be that involved and they were, they were committed to this case. So, I mean. All the pieces came together very, very nicely by the time we got to Snow Show.

Leah Evert-Burks: Mhmm and that trade show, as we've talked about counterfeiters go to trade shows, to obviously elicit sales; but they also go to see what's hot, what's the next thing to knock off but the trade show also provided the opportunity that you guys and the brand was looking for to make this a, you know, a notoriety. To really make a point to the counterfeiting world that we will take you down, and we will do it publicly.

Denise Mosteller: Right. Right.

Jeremiah A. Pastrick: I think that's right.

Leah Evert-Burks: So how did you coordinate that? You know, again Indiana, with the Colorado trade show. How did you coordinate that?

Jeremiah A. Pastrick: I'll talk about the legal side for a second and then you can – Denise was actually like, there.

Denise Mosteller: As in the booth.

Jeremiah A. Pastrick: Yes, exactly. As in the booth. So yes, I will let you talk about that too. So, with the legal nuts and bolts perspective, once we turn the case over, the prosecutor and the detectives had made their own purchases as well, that they sort of sent through their own evidentiary process, and then they issue an arrest warrant. They issue charges and they issue an arrest warrant against, again, the people that Denise's work had revealed were you know, ultimately responsible for the crimes – not just a low-level salesperson that you made a hand-to-hand buy from, but sort of the top of the pyramid.

And so, the arrest warrant gets issued, and then that gets transferred to Colorado again; the value of the felony warrant. And then, you know, both the prosecutor and the detectives from Indiana went to Colorado, and then Colorado Law Enforcement are actually the officers that execute the warrant. And so, we knew the counterfeiter that we were after here had a booth at this trade show, and so we were

coordinating with Colorado Law Enforcement as well to make sure that they're actually gonna come that day and execute that warrant at that time, you know, that it is not going to be like: *Oh, we'll get him next week.* And we're like, 'No. No. No. You don't understand this isn't a next week thing. He's here today, gone tomorrow.'

So, there's some advocacy there, and then the other thing you mentioned about the trade show is when this happens, and you've done it a number of times, and the publicity of it. The prickliness of the brand. The PR around it is, I mean this—This word spreads like wildfire. *Did you hear the guy in Booth D7 just got taken away in handcuffs by 20 dudes?* It's a dramatic moment and it resonates. So, that was the lead-up and yeah so, we get to the Snow Show, and I just stood there (Starts Laughing) and Denise took it from there. She's braver than I am.

Leah Evert-Burks: Yeah. So, Denise, give us your booth perspective of the take down.

Denise Mosteller: So, we get to the Snow Show, and of course, we all meet, cause you, you know, have the Indiana, detective's, prosecutor, Revision is there, and as Jeremiah said, we're working with the Colorado Police Department, and so we have to coordinate when we know that they can be there to do the arrest and then we have to plan a meeting with the guy. Because part of what we do at the trade show is: a) we want to confirm he is who he says he is. For us, I believe, the guy held himself out — I don't remember if it was the president or owner — but he held himself out as a person that was in charge and could make the decisions. We wanted it to be the same guy we'd been talking to. So, we set up this meeting, and one of the detectives and I go to the booth to meet him, and we introduce ourselves. We ask him for a card because we wanted the card to say who he was. And a lot of it at that point was just confirming he was who he said he was, because we'd already had all the other information. And I don't remember what our — we had a phrase that when we said it, and got up and walked away, then Colorado Police would know to come in and arrest the guy.

So, we got what we needed. We had what we needed to say, and as soon as we got up and started to walk away, the cops came in and arrested him. And at the same time pictures are being taken as well, because remember Revision went into this, knowing that they were going to also do it as a PR. Their goal was to make sure everybody knew that if you decided to counterfeit their stuff, they didn't care if you were at the Snow Show selling snow goggles, they were not gonna — they weren't gonna put up with it.

And so, the guy, you know, got arrested and escorted out, and I don't know if his booth got closed down. This was the only one at it, and pictures were taken, and I think in — Jeremiah correct me if I'm wrong — but I want to say there was an article in less than 24 or 48 hours. And, like, Jeremiah says all of a sudden, you walk the show, and you hear people saying, *Oh, my gosh! Did you? Did you? Did you see what just happened? Does anybody know?* And there. I mean not in this one, but in other cases, I'll be like, 'Yeah, I heard he was counterfeiting stuff.' Like — because they don't always know who you are, so you just are playing along with it.

But yeah, and I think it was only like day two of the show — it was the beginning of the show. Now, he can't make any more sales. There's nobody to man his booth and you really caught him off guard.

Leah Evert-Burks: Yeah, and you've created that conversation at the trade show that, you know, if anybody is counterfeiting other brands you better look out. So, it benefited not only Revision, but any other brand that may be subject to counterfeiting.

Denise Mosteller: Right and people – It's not like they had *just* talked about it that day, I mean, they talked about it during the whole show. I mean, we've done it at other shows, bigger shows too, and it's not like it was done and everybody stopped talking about it that day. No, that stuff travels.

Leah Evert-Burks: I'm sure it does; and then you had footage from it. So yeah, yeah. Wow!

Denise Mosteller: So yes, I was in the booth, Jeremiah got to sit in the background and watch it happen.

Jeremiah A. Pastrick: (Laughing) Yeah, that's right.

Leah Evert-Burks: Well, that's exciting; and I'm sure it was exciting for Revision to see that happen, and that takedown, and see actual repercussions from the criminals, and also to the people – the consumers of those goggles, you know: law enforcement, military, the ones you talked about that wrote to the company saying those goggles that eyewear had saved their life, in either battle or gunfire or explosives, which is what they're intending to do.

So yeah, I'm just – you painted me a really good picture of that takedown. I'm just envisioning it. I, in my capacities, I've been to a number of trade shows for, you know, purposes of seeing who was knocking off, and who was offering to knock off our products. So, there's a lot of activity, and there is a lot of ability to make a big splash in something like this, especially on the floor of the trade show.

Denise Mosteller: Trade shows are valuable.

They are a valuable tool in many different ways. I mean, so we've canvassed trade shows to check out kind-of, what people are selling, what's being knocked off, and even as a brand if you're not doing that, you should be having somebody do it for you and bringing back that information, because it is amazing what people will tell you at a trade show. And if you're just somebody who walks through and doesn't stop and talk, you may not see the things from when I stop and talk to somebody, and I say, 'Oh, is this all you're selling at your table?' And the next thing I know they lift the tablecloth, they pull out a different book, and they show me different things. So, I mean there's the value there also if you've been at a trade show.

I've been where I have watched people take pictures and I'm not saying pictures, normal pictures that we would all take. They are zooming in on specific features of products, and the reason they're doing that is because they're going to rip you off, and I mean I – because I have no tolerance for it, even if it wasn't a brand I was working for – I would go to the booth and say, 'you want to ask that guy to leave your booth right now. He is taking pictures.' But it just gives you a lot of insight.

What are people saying about your products? What – I mean and, and like I said – people that you don't think are counterfeiting your stuff. You start talking to them, and they might actually be doing it. They're just smart enough not to put it down on the table.

Leah Evert-Burks: Right. Right, and they are, as we said at the onset, they are opportunists. So, if you're shutting them down and making it difficult for them to gather the information to knock off your goods, they'll just move to the next brand. So, really good instruction and information on that. So, as we're winding up here, I do want to pose a, it's a difficult question that I always end the podcast with. But for each of you. If you could select one word to describe this case, what would that one word be? And I don't know if you guys drew straws as to who was going to go first–

Denise Mosteller: We had never talked what our word, about who was going to go first–

Jeremiah A. Pastrick: Yeah, I kind of forgot that this was coming.

Denise Mosteller: Okay, okay. I'll go first, but if we say the same word we never talked about this before. So, for me, the word was *satisfying*; because you take a lot of time to put all of these pieces together and to see it come, you know, to the end – the finale – it's almost like orchestrating a, you know, a production. It's not a production, but like that's you have all of these moving pieces and at the end. It all comes together exactly how you would hope so. The client is happy. Law enforcement is happy. There's just ... and to know that you were a part of that, and often you are coming up with ideas that you've never tried before, and you're hoping they work. It's very *satisfying*. So, for me the word is *satisfying*.

Jeremiah A. Pastrick: We've definitely been working together too long because I wrote down two words here. One of them is *satisfying*. The other one I wrote down, maybe this sounds crazy, is *fun*.

Denise Mosteller: Fun was my other word!

Jeremiah A. Pastrick: It was a really *fun* case, I mean, it's a serious matter and you know the product is serious. Counterfeiting is serious. Somebody went to jail. That's all-serious stuff, but it was really enjoyable to work together, you know, Denise and I have worked together for a long time and enjoy working together and Revision was the best way that a client could be and we're now dear friends with the people from Revision that we worked on this case with. The prosecutor and the detectives who worked in the case were awesome, and you know it was *satisfying*, and it was a lot of *fun*. We traveled all over the country for it, and we achieved our goals with it, and enjoyed working with one another during the process. And yeah, it was. It was really *fun*. It was great. Alright, I loved it.

Denise Mosteller: I would do it again.

Jeremiah A. Pastrick: Yeah, yeah!

Leah Evert-Burks: And again, and again, and again! Yeah, you know, I think *fun* and *satisfying* – I was thinking *validating*, you know, all the hard work and everything you put into it, and pulling together the different – the prosecutors, law enforcement, you know, different jurisdictions. I imagine that it feels like your work has been *validated*.

Jeremiah A. Pastrick: Yeah.

Denise Mosteller: Mhmm.

Jeremiah A. Pastrick: Yeah, I think early in this podcast I said hypothesis, and that is part of the process, and when you, you know, come to the end of it and you know your hypothesis is *validated*. It's *fun* and *satisfying*.

Denise Mosteller: It's a good story for later in life.

Leah Evert-Burks: It is. It is, and that's why we do this podcast because these stories are so interesting, but they also provide such good information and advice for our community. So, thanks again, Denise and Jeremiah and thank you for doing the hard work

Denise Mosteller: Well, thanks for having us. This was a lot of *fun*.

Jeremiah A. Pastrick: Yes, and *satisfying*.

Brandon Drain: Successful brand protection takes a village and as such is multi-disciplinary by nature, *and* necessity. That is one of the reasons the A-CAPP Center works across disciplines and opens its student internships to a variety of majors including packaging, engineering, law, criminal justice, psychology, and International Relations.

Leah Evert-Burks: I enjoyed my time with this dynamic duo who aptly explained the hard work required to pull a counterfeiting case together. Some of those challenges include dealing with multiple jurisdictions, including getting targets where you need them, in order to arrest them, taking the laws available to prosecute the offenses and making them work – all these actions require the enlistment of all the legs necessary to support the three-legged stool of cooperation.

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

Leah Evert-Burks: We will be taking a pause in *Brand Protection Stories*, which coincides with the upcoming holiday season, but also in order for our staff to dedicate our resources to prepare for the *first* in-person summit since 2019. The A-CAPP Brand Protection Summit will to be held in March of 2023 on the beautiful campus of Michigan State University. Keep an eye out for registration details coming soon. We look forward to seeing your faces, in real life, and reconnecting! When we start back-up with

Brand Protection Stories, we will be continuing to bring you the incredible stories from our BP community that are truly, *stranger than fiction*.

Brandon Drain: 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 premier academic body focusing upon the complex global issues of anti-counterfeiting and product protection of all products, across all industries, in all markets responsible for training the next generation of brand protection professionals. In addition to this series, we offer self-paced online certificate courses in brand protection, applied education and academic courses, executive education, student internships, live summits and virtual events, and publish the quarterly digital industry journal, *The Brand Protection Professional* - now in its 6th year of publication. ”

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.