

INTA STATEMENT TO THE SENATE JUDICIARY COMMITTEE

*for the Hearing on
Counterfeits and Their Impact on Consumer Health and Safety*

April 27, 2016

Introduction

The International Trademark Association (INTA) welcomes the opportunity to submit a statement for the record of the Senate Judiciary Committee hearing on “Counterfeits and Their Impact on Consumer Health and Safety” on April 27, 2016.

INTA is a membership association of more than 6,800 trademark owners and professionals from more than 190 countries. INTA members collectively contribute almost US \$12 trillion to global GDP annually. The Association's member organizations represent some 30,000 trademark professionals and include brand owners from major corporations as well as small- and medium-sized enterprises, law firms and nonprofits. INTA undertakes advocacy work throughout the world to advance trademarks and related rights, and offers educational programs and informational and legal resources of global interest. A key objective of INTA's work is to protect consumers and to promote fair and effective commerce.

The Growth and Harm of Counterfeits

As an important part of its mission, INTA is dedicated to improving trademark enforcement and anticounterfeiting efforts worldwide. The Association congratulates the U.S. government's enforcement agencies for leading the fight against counterfeits and other IP infringements. Yet, the problem continues to grow exponentially and more needs to be done.

In 2008, the Organization for Economic Co-operation and Development (OECD) launched a report valuing the magnitude and the impact on counterfeiting and piracy globally at \$250 billion annually. On April 18, 2016, the OECD published an updated version of that report which highlighted that trade in counterfeit goods has increased by more than 80% in five years to more than US \$461 billion in 2013. Additionally, the report determined that counterfeit products now represent more than 2.5% of the global trade, and that the top country whose companies had their intellectual property rights infringed in the seizures conducted between 2011 and 2013 was the United States. Total counterfeits detained at U.S. borders have been valued at over \$1.2 billion in 2014. To be sure, billions more counterfeits are moving through U.S. borders undetected. The sale of counterfeits and other trademark infringements on the Internet has greatly exacerbated the problem. This issue affects the U.S. economy by costing over 2.5 million jobs per year and draining tax revenue. In New York City alone, the estimated shortfall in revenue is over \$1 million dollars per year.

Counterfeiting also harms public safety. Dangerous counterfeits span all industries and all types of goods including electronics, medicines, food, and toys, which often results in serious

health and safety issues for consumers. In May 2012, the Senate Committee of Armed Services produced a report on counterfeit electronics in the supply chain of the Department of Defense, which reported that the total number of suspect counterfeit products in a two-year investigation exceeded over one million parts. That same year the U.S. Department of Transportation's National Highway Traffic Safety Administration issued a consumer safety advisory to alert vehicle owners and repair professionals to the dangers of counterfeit air bags. Incredibly, counterfeit medicines account for some 10% of the U.S. pharmaceutical sales. Even a simple and inexpensive personal item such as ChapStick is one of the most popular products to be counterfeited thus proving that it is not just expensive items that are at risk. Many consumers are not aware of the harms of counterfeiting which adds to the insidious and nefarious nature of this threat.

Public and Private Sector Collaboration to Combat Counterfeits

INTA believes that the private sector must work closely with the public sector to make sure that trademark law is properly enforced to ensure that consumers are protected. Through the work of INTA's Anticounterfeiting Committee, the Association is working on several initiatives with U.S. government agencies to combat counterfeiting. Here are a few examples.

The first is the National IP Coordination Center. We applaud the enactment of the Facilitation and Trade Enforcement Act of 2015 (H.R. 644/S. 1269), which made permanent the efforts of the IP Coordination Center for governmental coordination of investigations and training activities for government officials focused on intellectual property enforcement. INTA will be working with U.S. Customs and Border Protection (CBP) and the National IP Coordination Center as the bill's requirements are implemented and regulations are promulgated. Additionally, INTA will be reviewing the Customs reports on investigations and other activities, which are scheduled to be sent to Congress by June 30. Most recently, INTA was privileged to have the IPR Center Director, Bruce Foucart, be the keynote speaker at the Association's Brand and Sports Conference on March 15 & 16, 2016.

INTA also supports the work of the IPR Policy and Programs Division of the Office of International Trade of CBP. INTA is the only trademark association participating in the Advisory Committee on Commercial Operations of CBP, which develops projects to help improve CBP's work to protect IPR enforcement. The Association meets regularly with Michael Walsh, Director of the IPR Policy and Programs Division, and other CBP representatives to discuss matters of concern for American trademark owners and offer INTA's support of CBP's work. As a result of one of these meetings, INTA is currently planning on launching a new and exciting project in May 2016: a pilot program of a webcast series titled "Customs Connection." One of the most effective ways of educating customs officials about registered intellectual property is through product identification training sessions conducted by brand owners. The Association is creating video trainings featuring our brand owners members which can be transmitted to multiple ports and provide future viewings for rotating Port personnel. This initiative will be launched with three webcasts focused on the industries of personal care, pharmaceuticals and fashion with further plans to launch other industries later this year. Customs Connection will provide CBP officials in ports all over the country with information that they need to protect our borders from counterfeits. This program will complement the live, in person training that INTA regularly conducts for customs officials around the world.

INTA is also collaborating with the White House Office of the U.S. Intellectual Property Enforcement Coordinator (IPEC), led by Danny Marti, in several ways:

- On October 15, 2015, INTA submitted comments to the IPEC for its third Joint Strategic Plan, covering the three-year period from 2016 through 2019.
- The Association is also supporting a report on the link between poor labor practices and counterfeiting which IPEC is working on jointly with the U.S. Department of Labor. To contribute to this report, INTA is collecting information and accounts of poor labor practices found at factories and warehouses where investigations of counterfeit goods have occurred. The report is to be internationally focused on poor labor practices outside of the U.S. and will be a valuable tool to show the harms of counterfeiting to government officials from around the world.
- INTA participated and sponsored the first ever, interactive forum on enforcing intellectual property rights in Latin America titled, “Promoting IPR Enforcement Policy in Latin America: The Role of the Intellectual Property Office” in Tequila, Mexico on April 17 to 19, 2016, This seminar, hosted by the IPEC and the Mexican Institute of Industrial Property, involved participants from twelve IPOs throughout the Americas, including the U.S. Patent and Trademark Office. It provided IPO attendees with the opportunity to analyze the current status of IPR enforcement in the region and then explore the role of the Latin American IPOs in promoting the enforcement of IPR policy on the national level. INTA and IPEC have agreed to another event in another country in the region focused on enforcement and to expanding the workshop to the ASEAN region in the coming months.

These policy efforts with IPEC will help raise the counterfeiting issue with U.S. trade partners around the world.

INTA and the International Chamber of Commerce Business Action to Stop Counterfeiting and Piracy (BASCAP) have partnered to create a series of one-day workshops around the world to bring together key stakeholders to find solutions to the growing problem of counterfeiting. The workshop aims to amplify the views of the private sector to governments, public and the media, and to raise awareness and understanding of counterfeiting activities on a local, regional and international level. The goal of the series of workshop will bring together key stakeholders in different regions like Africa, Latin America and Europe to explore opportunities for rights holders, intermediaries, and governments to work together on solutions. This year’s sessions will focus on several of the key types of intermediary categories (Shippers, Landlords, Payment Providers, and Internet Platforms), with speakers discussing the challenges and opportunities to cooperate on innovative responses. The 2016 series launched in Singapore in March with more to come in Cape Town, Beijing, Brussels, and Buenos Aires.

Resources in the Fight against Counterfeiting at the State Level

INTA has several anticounterfeiting tools that may be helpful to combat counterfeiting at a state level. In 2005, INTA’s Anticounterfeiting Committee developed a model anticounterfeiting bill to be utilized in the amendment or enactment of new legislation

throughout the states. The Committee is currently analyzing the laws of several states to find any improvements that may be made. Recognizing that state enforcement officials are also dedicated to anticounterfeiting efforts, the Anticounterfeiting Committee has also published a 2016 report which provides contact information for resources relating to anticounterfeiting and trademark registration to help users quickly identify each state's registration and enforcement procedures.

Consumer Education

Finally, consumer education on the adverse impact of counterfeiting on the economy and public health is crucial to curbing the demand for counterfeit goods. A strong government-supported education program or campaign at a national level would make a meaningful impact on the attitude of both consumers who are consciously purchasing fake products as well as those who do so unknowingly but without adequate knowledge of the risks. Recognizing this need, INTA has created the Unreal Campaign, a consumer awareness program that aims to educate teenagers about the dangers of counterfeiting and importance of trademarks. Launched in the U.S. in 2012, the Unreal Campaign has already reached thousands of teens who will be the next generation of American consumers. This campaign is helpful in showing the real price of counterfeiting and debunking the notion that counterfeits are just a good deal on a similar product. By educating consumers which in turn will lower the demand for counterfeits, the goal is to decrease the supply of counterfeits.

Conclusion

INTA is pleased to have had the opportunity to submit this statement on the significant issue of counterfeiting. INTA would be pleased to answer any questions that the Senate Judiciary Committee may have and is available to discuss our anticounterfeiting work in more detail. Please contact either of the following INTA representatives:

Maysa Razavi

Manager, Anticounterfeiting
mrazavi@inta.org; +1-212-642-1779

Deborah S. Cohn

Senior Director, Government Relations
dcohn@inta.org; +1-202-261-6570

For more information on INTA's anticounterfeiting efforts, please visit the INTA website at www.inta.org/anticounterfeiting