Anti-counterfeiting: the problems, the players and the missing piece of the puzzle

International Trademark Association
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A Global Guide
INTA Calendar of Events

Plan your calendar with these INTA events and stay up to date on issues that affect your trademarks—domestically, regionally, and globally.

2017 Events

September 17–19 Trademark Administrators and Practitioners (TMAP) Meeting New Orleans, LA, USA
October 2–3 The Changing Landscape in Latin America Cartagena, Colombia
October 4 INTA Free Trade Zones Workshop Cartagena, Colombia
November 7–10 Leadership Meeting Washington, DC, USA
November 29 INTA Free Trade Zones Workshop Berlin, Germany
November 30–December 1 Brand Authenticity: How Sustainability, Responsibility and Integrity Impact your Bottom Line Berlin, Germany

Learn more about INTA events, including international roundtables, networking receptions, e-Learning, academic competitions, and more, at www.inta.org/programs

Dates and topics subject to change. Contact meetings@inta.org for the latest information.
Counterfeiting – how the problem has grown

Counterfeits are often seen as a problem exclusively for brand owners. Counterfeiters have complex networks that cannot be stopped by the trademark owner alone. However, anti-counterfeiting work includes many players – rights holders, customs officials, law enforcement, legislators, IP offices, intermediaries and consumers. In order to effectively enforce against counterfeiting, the International Trademark Association (INTA) navigates this puzzling issue by connecting the different players together, one piece at a time, to get the big picture.

In order to develop a plan to tackle the puzzle, one must understand the problem. Last year, the Organisation for Economic Cooperation and Development (OECD) and the EU Intellectual Property Office (EUIPO) released their report “Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact”. The report analyses nearly half a million customs seizures around the world from 2011 to 2013 to produce the most rigorous estimate to date of the scale of counterfeit trade. The report analyses nearly half a million customs seizures around the world from 2011 to 2013 to produce the most rigorous estimate to date of the scale of counterfeit trade. The results show that international trade in such products represented up to 2.5% of world trade, or as much as $461 billion. A previous study in 2008 estimated that counterfeit and pirated goods accounted for up to 1.9% of world imports, or up to $200 billion. The Frontier Economics report “Economic impacts of counterfeiting and piracy”, which was commissioned by INTA and Business Action to Stop Counterfeiting and Piracy (BASCAP), found that the total international trade estimated for counterfeiting and piracy is forecast to reach $991 billion. In other words, the total trade for counterfeiting and piracy will increase fivefold in a 15-year period.

Similar increases in counterfeit activity have been reported in major markets. US seizure statistics for fiscal year 2015 report that the number of IP rights seizures in the United States increased by nearly 25% to 28,865, up from 23,140 in fiscal year 2014. The total estimated manufacturers’ suggested retail price of the seized goods, had they been genuine, increased by 10% to $1,352,495,341. The 2015 report on EU customs enforcement and IP rights stated that EU Customs seized over 40 million articles suspected of violating IP rights in 2015 – 5 million more than in 2014 (35 million).

These numbers reveal that counterfeiting remains a growing problem for brand owners. Trademark owners are devoting more time...
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and expense to enforcing their marks, but counterfeiters are becoming increasingly elusive and sophisticated. Rights holders must work with many other players to tackle this problem; otherwise, their anti-counterfeiting programme will fall to pieces. INTA supports brands in protecting themselves from counterfeiting on all fronts.

Players in anti-counterfeiting and how INTA is supporting them

Customs is considered to be a large part of the solution and the first line of defence against counterfeiters. The OECD/EUIPO report reveals that the value of counterfeit and pirated products imported into the European Union was €85 billion in 2013. However, in that same year, the European Commission reported that EU Customs seized goods valued at €768 million. Just looking at the numbers, it seems that Customs is seizing less than 1% of counterfeits entering the European Union.

Customs officials do their best with limited resources to stop counterfeiting. They have the difficult task of targeting counterfeits that are entering European countries while also trying to keep their citizens safe from drugs, weapons and other illicit products entering their stream of commerce. With the proliferation of counterfeiting on the Internet, most of these goods are sent via express courier in small packages directly to the consumer. Goods are being transshipped with fraudulent packing slips to hide their source. Counterfeits are also being purchased, sold and manufactured within national borders. In order to enforce on all these fronts, Customs, police, prosecutors and courts all need to work together to successfully investigate and convict counterfeiters.

To make the customs piece fit into the puzzle, the private sector must provide information to enforcement officials, so that they have the know-how to determine what is real and what is counterfeit. INTA has highlighted the need for this exchange of information in its policy work for years and has promoted the notion of recordation systems worldwide. INTA recently launched two new programmes to complement this objective.

In July 2015 INTA developed a webcast series, “Customs Connection”, where customs officials can access training videos (each running an average of 75 minutes) produced and recorded by some of the most recognised brand owners worldwide. These webcasts supply customs officials with helpful tips for detection and direct contact information for the brands involved. As there is a need to collaborate with the private sector to combat the counterfeit trade, INTA offers customs officials the opportunity to access the Customs Connection webcasts for free.

Further, in 2016 INTA launched a new customs training programme at the leadership meeting in Hollywood, Florida at the request of several members. The training programme allows brand owners to present to smaller, interactive groups of customs officials by industry. INTA will be following up this programme with more events focused on
several US cities and at its 2017 Annual Meeting in Barcelona.

Another way that the private sector can support government authorities is by providing intelligence. Brand protection professionals conduct their own investigations and have a more global picture of how to target counterfeits. For instance, they have information on shippers that are known for carrying counterfeit goods. Sharing this information with every port would allow customs officials to better target shipments that are more likely to be carrying counterfeit goods. INTA provides a mechanism to collect this information from its vast membership for government officials.

Aside from Customs, the government pieces of the puzzle should be interconnected to fight counterfeiting by working together in an organised manner. Unlike counterfeiters, government authorities are bound by national laws. Countries are also similarly bound by international laws and agreements. In 2013 inter-agency collaboration in the United States led by the National IP Rights Coordination Centre led to 693 arrests, 411 indictments and 465 convictions. These numbers are commendable. Further, INTERPOL Operation Jupiter 7, lasting two weeks in August 2015, was the coordinated effort of 11 Latin American countries and led to the arrest and investigation of 805 people. The success of INTERPOL’s operation lay in the coordination between agencies across countries. Such anti-counterfeiting programmes prove that it is critical that governments continue to find and create mechanisms that facilitate the exchange of information between countries, integrate enforcement actions and build a cohesive international framework which evolves to meet new challenges in the battle against counterfeiters.

INTA is dedicated to helping governments to share best practices for better inter-agency collaboration. One way that it is achieving this goal is through the promotion of a federal IP rights coordination body in every country. The goal of the proposed office would be to establish a central coordination unit to fight counterfeiting, piracy and other IP crimes. The office would act as a single unit of coordination between the different industries affected by these crimes and the government officials who work to stop them. The office would also coordinate between the different government offices domestically and internationally. Existing federal IP rights coordination bodies include:
- the National IP Rights Coordination Centre (United States);
- the National Leading Group on the Fight Against IP Rights Infringement Law and Regulation (China);
- the Expert Unit on the Investigation of Crimes against Copyright and Industrial Property (Mexico); and
- the IP Crime Coordinated Coalition (Europe).

Another INTA initiative to promote this sort of collaboration internationally was the first-ever interactive forum on enforcing IP rights in Latin America. The workshop, “Promoting IP Rights Enforcement Policy in Latin America: The Role of the Intellectual Property Office”, was held in April 2016 in Tequila, Mexico. This unique seminar, hosted by the Mexican Institute of Industrial Property and the White House Office of the US IP Enforcement Coordinator, featured participants from the IP offices of 12 countries. The high-level event provided attendees with an update on the status of IP rights enforcement in the region and encouraged a vibrant discussion on best practices and concerns on several enforcement topics, including border measures, free trade zones and the digital environment. The workshop also explored the role of Latin American IP offices in promoting IP rights enforcement and policy at the national level in order to produce a set of recommendations for participants on implementing these strategies in their respective jurisdictions. The annual event will be open to additional IP offices in the region that were unable to participate this first year. INTA agreed to create a repository of information that will allow IP offices to share and exchange information at a national and regional level. The next event will take place this year in Chile.

Finally, the private sector must collaborate
to strengthen the collective approach to counterfeiting in order to complete the private sector part of the puzzle. At the INTA leadership meeting in Hollywood, Florida, a session was held for brand owners to exchange information behind closed doors. These closed-door programmes will continue at INTA annual and leadership meetings moving forward. In order to tackle online counterfeiting, INTA holds policy dialogues with all stakeholders (officials, intermediaries and brand owners), with events in the past year in Beijing, Buenos Aires, Delhi, Moscow and Singapore.

INTA has also increased the number of educational events focused on anti-counterfeiting. Last year, INTA partnered with BASCAP to create a series of one-day workshops around the world to bring together key stakeholders to find solutions on the topic of “Intermediaries and Rights Holders – Working Together to Stop Counterfeiting and Piracy”. Five events in Singapore, Cape Town, Beijing, Brussels and Buenos Aires (the latter on which INTA partnered with the Inter-American Association of Intellectual Property) focused on the roles of shippers, landlords, online platforms and payment providers in the fight against counterfeiting. In 2017 INTA will hold a series of one-day workshops on “Free-Trade Zones: Commerce v Counterfeits” in Hong Kong, New York, Dubai, Cartagena and Berlin. Finally, INTA will hold a dedicated two-day anti-counterfeiting conference in Hong Kong, entitled “Staying Ahead of the Curve”, at which leading experts will discuss tactics and strategies to combat the ongoing challenge of counterfeits.

To bring together both private and public stakeholders at the 2017 Annual Meeting in Barcelona, INTA will hold a one-and-a-half day event focused on anti-counterfeiting. The first day will include a closed-door meeting of government officials to discuss anti-counterfeiting best practices and opportunities for collaboration. Concurrently, another closed-door meeting of brand owners will discuss issues that arise when building and maintaining a brand protection programme. The second day of the programme will include more educational panels with speakers from brands, government and associations, with the aim of sharing best practices among all stakeholders. INTA will be collaborating with European associations on the programme, including those from France, Italy, Spain and the United Kingdom.

Importance of involving consumers in stopping counterfeiting
This inter-governmental action supported by private sector intelligence is important, but another piece of the puzzle is missing: consumers.

Counterfeiting is a criminal act because of the harm that it causes to the public. Counterfeits include many goods, from foods that can make people sick to toys and electronics that can malfunction and...
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endanger lives. However, many consumers are uninformed of these dangers and demand for counterfeits is surging as shoppers look for the best deals without understanding the consequences.

This sort of ignorance is why INTA created its Unreal Campaign. Launched in 2012, the Unreal Campaign educates teenagers aged 14 to 18 about the importance of trademarks and intellectual property and the dangers of counterfeit products. The campaign has reached more than 4,500 students directly through initiatives in Africa, Asia, Europe, Latin America and North America. The campaign is aimed at this age group via social media and student engagement activities at schools and conferences for adolescents. In 2016 alone, INTA held 34 Unreal events in 18 countries worldwide. Unreal also partners with many government bodies and several other associations with similar awareness initiatives.

There is also an approach that gives consumers a more proactive role in the fight against counterfeiting. The US IP Rights Centre has a button posted on its website and other partner websites (including INTA’s) that allows victims and third parties to report IP crimes. In many instances, these reports lead to investigations that in turn lead to arrests and convictions. The Canadian Anti-fraud Centre (CAFC) (run by the Royal Canadian Mounted Police) developed Project Chargeback, a collaboration between the CAFC, credit card companies and banks that work together to reimburse victims of online fraudsters and then close counterfeit retailers’ accounts, making it impossible for them to conduct their activities online. In one year, the CAFC received over 16,000 complaints of cyber-related fraud, with an estimated $29 million in losses. Another proactive example is Crimestoppers, the anonymous, independent UK charity which provides a vital link between the victims of crime and enforcement officers through its anonymous hotline and new online and offline communication channels. Crimestoppers works with the UK IP Office Intelligence Hub and received 2,224 reports in the past year.

These programmes allow some of the 7.125 billion people in the world to join the fight against the large global counterfeiting network, which continues to grow. This last piece of the puzzle allows the anti-counterfeiting community to tackle the issue from as many angles as possible.

Collaboration is key

INTA is dedicated to bringing as many pieces of the anti-counterfeiting puzzle together in order to stop this ever-growing crime. It is fortunate to be working with two dedicated groups of members: 270 members of the Anti-counterfeiting Committee and the 70 members of the Unreal Campaign Committee. These two groups allow INTA to be active worldwide and help it to grow rapidly in this space. As the largest IP association worldwide, INTA can work with global government partners, other associations and consumers to look at the whole counterfeiting picture and determine the best way to address this overwhelming and escalating problem.

INTA is always looking to expand its network. For any questions or opportunities, please reach out to INTA Anti-counterfeiting Manager Maysa Razavi (mrazavi@inta.org), Anti-counterfeiting Coordinator Tiffany Pho (tpho@inta.org) or Unreal Campaign Coordinator Laura Heery (lheery@inta.org).