

INTA SUBMISSION TO THE DEVELOPMENT OF A NATIONAL CONSUMER AWARENESS CAMPAIGN ON COMBATING THE TRAFFICKING IN COUNTERFEIT AND PIRATED PRODUCTS

for the United States Patent and Trademark Office

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Introduction

The International Trademark Association (INTA) welcomes the opportunity to respond to the federal register request of the United States Department of Commerce, United States Patent and Trademark Office, for comments to the Development of a National Consumer Awareness Campaign on Combating the Trafficking in Counterfeit and Pirated Products.

INTA is a membership association of more than 6,848 organizations from more than 185 countries. INTA members collectively contribute almost \$12 trillion to global GDP annually. The Association's member organizations represent more than 34,000 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 offers educational programs and informational and legal resources of global interest. The organization is dedicated to the support and advancement of trademarks and related intellectual property (IP) in order to protect consumers and to promote fair and effective commerce.

I. INTA's Role in Improving Trademark Enforcement and Anticounterfeiting Efforts Worldwide

As an important part of its mission, INTA is dedicated to improving trademark enforcement and anticounterfeiting efforts worldwide. The Association supports the efforts of the United States government and congratulates the U.S. enforcement agencies for leading the fight against counterfeits and other IP infringements. However, the problem is growing and more could be done, particularly with respect to educating the public as to the nefarious effects of counterfeit products.

a) The Financial Repercussions of Counterfeit Products

In 2009, the value of counterfeited and pirated goods moving through international trade alone equaled \$250 million annually. Today, total counterfeits detained at the U.S. borders have been valued at over \$1.5 billion in 2019. It is clear that the amount of counterfeits is rapidly growing.

In February 2017, INTA along with ICC-BASCAP released a new report from Frontier Economics entitled “The Economic Impacts of Counterfeiting and Piracy”, which seeks to quantify the global value of counterfeiting and piracy and related economic and social costs. The study found that in 2013, the estimated value of international and domestic trade in counterfeit and pirated goods was a staggering \$710-917 billion. The wider economic and social costs was calculated at \$717- 898 billion - this includes fiscal losses, costs of crime, and displacement of legitimate economic activity.

In 2022, the total estimated value of counterfeit and pirated goods including digital piracy is projected to reach an astounding \$1.90 - \$2.81 trillion. The number of jobs lost due to counterfeiting and piracy is expected to reach upwards of 5.4 million jobs in 2022. Billions more counterfeits are moving through our borders undetected. The sale of counterfeits and other trademark infringements on the Internet have exacerbated the problem. This issue spans all industries and all types of goods including electronics, medicines, food, and toys, which can be the cause of serious health and safety issues to consumers. 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.

b) INTA’s Role in Educating Young Consumers on the Nefarious Effect of Counterfeit Products

In 2012, INTA unveiled the *Unreal Campaign* to educate young consumers to help them make smart purchasing decisions today and in the future. The Unreal Campaign is a consumer awareness initiative to educate those aged 14 to 23 about the importance of trademarks and brands and the dangers of purchasing counterfeit products. INTA volunteers reach them through illustrative, relatable presentations, largely at schools, youth-oriented events, or virtual platforms, and through social media engagement.

In working to curb the proliferation of counterfeit products worldwide, INTA emphasizes that brand owners seek to protect trademark rights and their consumers – pointing to the links between fake goods and health and safety risks, organized crime, job losses, and damage to local communities and their economies.

The campaign has made an impact worldwide. Since its inception in 2012, the Unreal Campaign has taken this message worldwide to more than 55,000 students, in more than 125 cities, in 40 different jurisdictions. In 2020, the Unreal Campaign was taken virtually, and with the help of its Committee members and volunteers, was able to host 34 virtual engagement events to continue educating over 10,500 young consumers during this time.

Throughout the years, the Unreal Campaign has worked with different organizations that share its objectives of promoting the value of trademarks and brands and educating about the dangers of counterfeit products. Some of the most notable collaborations include the Campaign’s work with the National Trade Foundation for Education (COMEDUC) in Chile to bring the program to more than 3,000 students in 19

different cities in the country, as well as the recently launched Unreal Campaign Patch Program, supported by Amazon, with the Girl Scouts of Greater Los Angeles (GSGLA).

In doing so, INTA relies upon Unreal Campaign sponsors to bolster its efforts to spread the word about the value of trademarks and the dangers of counterfeit products, while bettering society. As a result of such sponsors, INTA is able to amplify its social media efforts, showcase genuine and fake products at youth conferences to drive home messaging, and introduce other initiatives to engage young consumers. So far, the campaign has gotten the support of significant stakeholders such as Amazon, Novartis, Alibaba, Ebay, Google, Dell, Inc. and many others.

c) INTA's Work with the White House and Government Agencies

INTA is fortunate to have already engaged with the Department of Commerce, Department of Homeland Security and the White House to assist in the effort in the battle against counterfeiting and the struggle to improve trademark enforcement. INTA applauds these agencies for addressing the proliferation of counterfeiting on the Internet. INTA supports the efforts of the United States Government and offers its membership to collaborate with the private sector to achieve its goals. The Association believes that the development of this report is a major step and thanks the Department of Commerce for its considerations of these recommendations.

II. INTA Recommendations for a National Consumer Awareness Campaign

a) Introduction

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 national and state levels would make a meaningful impact on the attitude of both consumers who are consciously purchasing fake products but without adequate knowledge of the risks, as well as those who do so unknowingly. A program or campaign at national and state levels would help consolidate the messaging and content around anti-counterfeiting and broaden outreach in a way that existing stakeholders are not in the best position to do. Accordingly, INTA strongly supports such efforts by the USPTO, including prior efforts by other governmental agencies, such as the public awareness initiative launched by the National Crime Prevention Council and DOJ. INTA also has participated in the National Trademark Exposition hosted by the U.S. Patent and Trademark Office.

b) Recommendations

Involvement of Stakeholders in Educational Curricula. Involving industry or supporting industry efforts in the implementation of the education program is essential, particularly since trademark owners, who understandably may be cautious about having the spotlight shone on their counterfeit problems, can pool information and examples for these public education initiatives. Initiatives should also include approaches to educating

consumers online, on social media and in areas where they are most exposed to counterfeiting sales. This can include gathering statistics, conducting interviews with a select number of trademark owners to determine real life examples of how counterfeit products impact a brand, and donation of physical items as examples of seized counterfeit products.

Development of Engaging Content. Beyond exposing the dangers of counterfeiting, a strong national awareness program to educate the public about the value of intellectual property rights, its connection to people’s everyday lives, economy and jobs, and why IP needs to be protected online and offline is needed now more than ever. For example, the USPTO has already developed robust content for kids and teens that could be developed into basic, easy to understand, materials for adults.

A well-rounded national campaign for awareness program should include messaging that educates consumers about both the positives of intellectual property and the negatives of counterfeiting. Messaging around the benefits of intellectual property protection should discuss its role in protecting and encouraging innovation. Additionally, content around the negatives of counterfeiting should discuss the immediately obvious concerns such as safety, but also the less obvious harm and long-term "hidden" costs of buying counterfeits. Finding ways to make the issue relevant to the public by choosing content that touches on our day to day lives and highlighting the information that consumers may not realize or may mistakenly take for granted will help educate a broader audience.

Integration of Governmental Findings in Educational Curricula. The study released by the U.S. Department of Commerce and the Economic Statistics Administration entitled “Intellectual Property and the U.S. Economy: Industries in Focus,” was an excellent and necessary step to building public awareness of the value of IP. INTA recommends that government agencies utilize the findings of the study by incorporating them into public awareness initiatives and linking them to the effects of IP infringement. More studies showing the harms of counterfeiting should be developed. INTA would be happy to support these efforts.

On May 16, INTA launched its first attitudinal study, Gen Z Insights: Brands and Counterfeit Products, consisting of a comprehensive global report and 10 country-specific reports, including results from the U.S. The multi-country research study investigates the behavior of Gen Zers (18- to 23-year-olds) when it comes to their relationship with brands and attitudes toward counterfeit products. The study uniquely explores the moral factors that drive Gen Z’s decisions to purchase real or counterfeit goods, and offers brand owners a roadmap to communicating with this cohort—the largest group of consumers worldwide by 2020. 93 percent of Gen Zers surveyed said they had a strong respect for the value of people’s ideas and creations. This ideal extends into the brand space, with 74 percent of respondents noting that they believe it is important to buy genuine products. But when it comes to putting these ideals into practice, the study revealed a different perspective. Within the past year (November 2017–November 2018), 79 percent of Gen Zers said they had purchased fake products. Among product sectors the most commonly purchased counterfeits were apparel, shoes, and accessories.

Engaging Stakeholders by Seeking Volunteers. As mentioned above, involving industry stakeholders is critical in ensuring that a campaign is robust and meaningful. INTA supports the involvement of volunteers, such as members of INTA, to become advocates and generate campaign contents with links to social media posts about anti-counterfeiting.

Content can be developed and/or sourced from existing materials and produced in partnership with existing programs, organizations and stakeholders to efficiently utilize resources and materials that may already be available while broadening audience reach and ensure messaging is consistent. By partnering with volunteers, even more industries can ensure they have an opportunity to participate.

For example, the USPTO celebrates inventors and inventions throughout the year in connection with a variety of and during a certain month of the year. Similar content can be produced for intellectual property that is more likely to be perceived as relevant to aspects of a consumer's day to day life (e.g., related to food, clothing, and entertainment). More specific examples of each category include celebrating the strawberry plant patent, or toy design patent or trademarked name, sports team/league, and specific event or competition trademarks.

INTA has participated in the USPTO Expo which is a great start, but we would encourage the same types of events outside of Alexandria in major American cities and schools.

Development of Catchy Slogan to be Used Consistently. Successful advertising campaigns typically have a catchy slogan that resonates with the public. For example, “Got Milk?” and “Just Say No” are campaigns in which short and punchy phrases that included ads to target both adults and children. Combined with powerful images and messaging, a slogan can also be used as a hashtag on social media to connect members of the anti-counterfeiting community and provide updates on anti-counterfeiting efforts.

Development of Advertising Campaign for Television. Similar to past public service announcement campaigns covering issues such as drunk driving, forest fires, and voter turnout, a television advertising campaign provides a great audiovisual format to explore the negative impacts of buying counterfeits. Any exploration of the impacts of counterfeits should address both direct and indirect issues, immediate safety concerns as well as long-term consequences. For example, an ad campaign can highlight the fact that counterfeiting frequently has a negative impact on the very social issues that consumers and corporate social responsibility programs champion.

Typically, the discussion around large-scale anticounterfeiting efforts has focused (and rightfully so), on more immediate or obvious dangers such as health and safety hazards. The television ad campaign format is particularly suitable for underscoring the “hidden” and long-term costs of buying counterfeits. For example, money from counterfeiting operations often funds criminal activities and even terrorist groups. Even where the

consumer may perhaps have the perception that the brand owner is a company that can afford to lose a bit of money to counterfeiting, highlighting that type of hidden cost would provide consumers a reason to think twice about counterfeits.

Social Media Campaign. The impact of social media is undeniable. A recent campaign that has been well-publicized on social media, in addition to the above-mentioned forms of media, is Get Out the Vote, which focused on increasing voter turnout. Partnering with well-known public figures and celebrities can amplify messaging and content and exponentially increase public awareness. There are a number of celebrities who have been vocal about protecting their intellectual property rights in some form, whether it's about unauthorized downloads of a movie or album, or a fight for the master's rights to a song. More likely than not, there will be some who are potentially willing to participate in a national anticounterfeiting awareness campaign. Video clips and other content can be developed from portions of the advertising campaign.

Conclusion

INTA is pleased to have the opportunity to comment on the development of the Report on the State of Counterfeit and Pirated Goods Trafficking and Recommendations. INTA would be pleased to answer any questions that the Department of Commerce may have and is available to discuss our recommendations in more detail. Please contact either of the following INTA representatives:

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