

In this overview we outline the historical reasons why China produces so many counterfeit products. What and where they are produced, as well as the recent trends and developments in Intellectual Property Rights (IPR) and its enforcement.

At a recent World Customs Organisation (WCO) IPR steering committee meeting, it was estimated that 80% of all counterfeit products sold in Europe and the USA originated in China.

There are numerous reasons given as to why this is the case. However, the factors of recent meteoric economic growth, the switch from communism to a free market economy and a weak IPR enforcement structure have all played their parts. Add to this a large, inexpensive supply of labour coupled with an industrial base with considerable spare capacity to produce “branded” items for export and you have a formula that will actually encourage the production of counterfeit products.

Virtually all branded consumer products are currently being counterfeited in China. Such products include pharmaceuticals, cigarettes, spirits, auto/aero parts, software, CD's, DVD's, videos, toys, apparel and footwear.

There is also a tendency for cities or regions to specialise in the production of certain products. Xiamen is known as a major centre of cigarette production. Ningbo produces razors and cosmetics and Guangzhou is best known as a region producing CD's, DVD's and software.



In terms of its logistical capabilities China's port system is excellent, and scores of container ships leave daily to all destinations. Typically, counterfeit goods transit through several ports where often their Bills of Lading are “re-cut” to disguise the nature and origins of goods. There has recently been detected a number of containers of counterfeit cigarettes disguised as ‘garden furniture’ or ‘terra cotta pots’. Counterfeiters often utilise free ports where there is little or no customs control.

Examples of such ports are Kotka in Finland, Jebel Ali in Dubai or Mersin in Turkey.



Recent trends and developments have identified Chinese “brokers” who operate openly in cities like Moscow, Ciudad de L'este in Paraguay and Mexico City taking orders for all types of counterfeit goods from China for local markets.

Edinburgh International believe that the most effective way countering such activities lies in the Brand Owner establishing a proactive enforcement strategy that concentrates and focuses on the producers of such goods as well as the major distributors and wholesalers.

Efforts should be made by companies to engage in what modern enforcement agencies term “upstream disruption”. This involves companies committing resources to identify at source where the problems are emanating. This normally involves investigators identifying the locations of counterfeit producers, posing as buyers, obtaining evidence and initiating seizure action. There are a number of different avenues that a brand owner can pursue in respect of IPR enforcement in China and these will be discussed later.

A typical programme focusing on China and South East Asia would include:

- Counterfeiting investigations
- Grey market / diversion investigations
- Factory / licensee audits
- Domain name investigations
- Human Rights Audits
- Market and trade show monitoring
- Internet Surveillance

Examples of Brands failing to protect their IPR are legion in China. It should be remembered that such inaction costs more than lost sales. It affects brand integrity (Levi's jeans),

reputational risk (Pfizer and Viagra) and balance sheet issues (BAT acknowledged to shareholders that the presence of counterfeit products had a negative effect on its share price).

Since the mid 1990's Western governments and in particular the US had lobbied the Chinese government to take action against their indigenous infringers. Given that China joined the WTO last year, it is critical that a forceful, aggressive IP enforcement strategy be implemented.

The remedies available to the brand owner in China in respect of IPR issues centre on 4 distinct types of action.

1) Civil Action:

This is rarely used in anti-counterfeiting measures, as it can be protracted and expensive

2) Administrative

In the main this utilises the government agencies of the Administration of Industry and Commerce (AIC) and the Technical Services Bureau (TSB). Both have wide ranging powers, which include seizure and destruction of infringing goods and the issuing of fines and compensation for the brand owners. Raids can be instigated quickly and are relatively inexpensive. Another positive includes the fact that they are experienced and practiced in these actions.

3) Criminal

There is a section on trademark infringements in China's Criminal Code. However its interpretation on a number of key issues and definitions is open to question. It should be noted that Police forces vary markedly between provinces and Cities and are sometimes less than enthusiastic in pursuit of their objectives.

4) Customs

Just as in the US and Europe brand owners can register their marks with the Customs Authority who are empowered to detain and investigate goods believed to be counterfeit at import or export. When goods are detained the rights holders are expected to provide

Customs with post detention assistance in support of the action and are required in some circumstances to deposit bonds.



On a number of seizures that we have undertaken on behalf of our clients in China we have utilised the services of various agencies (including the Army,) in order to affect seizures, detention and destruction of infringing property. This is especially true in cases where containers of infringing goods have been seized immediately prior to export.

We have great doubts that China will reduce its counterfeiting activities in the foreseeable future, especially as its membership of the WTO assists it in its effort to export.

It is imperative that brand owners should implement an enforcement strategy that focuses on Chinese production and distributions methods. It should be viewed that any such programmes should not be seen as an occasional service. It should also not be seen as a cost to the business but as an integral part of product investment. It is a key responsibility of the board of every company with a recognised brand.

The IP Division at Edinburgh International has worked on developing anti-counterfeiting strategies for a number of Multi-National Brand Owners in China and with a truly global presence we believe we can add value real any brand suffering from systematic attack from counterfeiters.

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