OFFICE OF THE UNITED STATES INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR

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Intellectual Property Spotlight



Contents

Introduction	1
China	2
Securing Our Supply Chain	2
Coordination with State and Local Law Enforcement	4
Transparency	5
Enforcing Our Rights Internationally	5

Introduction

In January, President Obama met with the President of China, Hu Jintao, and raised intellectual property enforcement. President Obama and President Hu issued a joint statement, agreeing that China will strengthen its efforts to protect intellectual property rights, including not linking its innovation polices to the provision of government procurement preferences and audits to ensure that government agencies at all levels use legitimate software.

On January 7, the U.S. Chief Information Officer, the Administrator for Federal Procurement Policy, and I issued a joint statement setting out the Administration's policy to be "technology neutral" in procurement, and that all technology must be properly licensed. On January 28, the Vice President held a meeting on intellectual property enforcement with U.S. Attorney General Eric Holder, U.S. Commerce Secretary Gary Locke, Office of Management and Budget Director Jack Lew, U.S. Immigration and Customs Enforcement (ICE) Director John Morton, U.S. Department of State Ambassador Philip Verveer, Senior Advisor to the President Valerie Jarrett, and myself and the Chief Executive Officers of Autodesk, Concord Records, Eli Lilly and Co., Fox Filmed Entertainment, MasterCard, and Verizon, and the heads of the AFL-CIO Department of Professional Employees and Public Knowledge. On February 7, the Administration issued our inaugural annual report to Congress on the Administration's efforts to implement the Joint Strategic Plan, describing the concrete steps that we have taken since we released the Strategy to fight infringement. On February 8, the President issued an Executive Order establishing two interagency intellectual property enforcement committees that I chair: the first is a cabinet-level advisory committee and the second is made up of senior Senate-confirmed individuals.

We expect more significant events on the horizon including, on March 1, a hearing before the House Judiciary Committee, Subcommittee on Intellectual Property, Competition, and the Internet, and the release of a strategy about how we will combat counterfeit drugs.

Victoria A. Espinel
U.S. Intellectual Property Enforcement Coordinator

China

China Commits to Take Important Steps as Part of December JCCT Meeting: In December, at the U.S./China Joint Commission on Commerce and Trade (JCCT) meeting, the U.S. Trade Representative won commitments from China, including that China would: (1) increase the purchase and use of legal software, take steps to address piracy of electronic journals, and crack down on landlords who rent space to counterfeiters; (2) commit to eliminate discriminatory "indigenous innovation" criteria used to select industrial equipment for preferential treatment, ensuring access to China's market for American business; and (3) ensure there is no discrimination in government procurement decisions based on where the intellectual property component of the products was developed, as well as no discrimination against innovative products made by foreign suppliers operating in China.

Securing Our Supply Chain

Health & Safety

Sale of Counterfeit Drugs Over the Internet that Posed Serious Health Risk: On Jan. 24 and 27, two defendants pleaded guilty to trafficking in counterfeit and/or unapproved weight-loss drugs. One of the defendants—a Chinese national—manufactured a counterfeit version of the weight-loss drug "Alli," and both defendants used the Internet to distribute that product and other, unapproved weight-loss drugs, all of which were imported from China. The Food and Drug Administration (FDA) issued warnings that the products "posed a very serious health risk" because the drugs contained undeclared ingredients, including Sibutramine, a controlled substance which can cause high-blood pressure, seizure, heart attack, or stroke. A number of consumers reported feeling ill from the counterfeit Alli, including one person who suffered a mild stroke. The case was investigated by ICE Homeland Security Investigations (HSI), the FDA Office of Criminal Investigations (OCI), and the U.S. Postal Inspection Service (USPIS). The case was prosecuted by the U.S. Attorney's Office for the District of Colorado.

Guilty Plea for Operating Illegal Internet Pharmacy: On Jan. 21, a citizen of Belgium pleaded guilty to operating an illegal Internet pharmacy that sold $1.4 million worth of counterfeit and misbranded drugs (along with controlled substances). The defendant used multiple websites to sell more than 40 prescription drugs. He operated a customer call center in the Philippines, received payments from customers using a credit card processor in the Netherlands, and paid employees using Western Union in the Philippines, Costa Rica, and the U.S. The defendant was arrested in Costa Rica and extradited to the U.S. under an agreement with that country. As part of his plea, the defendant agreed to pay a judgment of $1.4 million. A co-defendant, who is a citizen of Canada, remains a fugitive. The case was investigated by the FDA OCI and prosecuted by the U.S. Attorney's Office for the District of Kansas, with assistance from the Department of Justice's (DOJ's) Office of Consumer Litigation. **Assistant Attorney General Tony West** said: "Prosecuting IP crimes that pose a risk to public health and safety is a top priority. This prosecution—which involved a complex, international Internet operation—highlights how the Justice Department, in coordination with our sister agencies, is able to effectively tackle today's cutting-edge law enforcement challenges." **Holland, Special Agent in Charge, FDA OCI** said: "Americans must have confidence that drugs introduced into and distributed throughout the United States are genuine." He emphasized that "[t]he FDA will aggressively pursue all foreign and domestic perpetrators of illegal drug distribution schemes."

Counterfeit Cialis & Viagra: On Dec. 16, a defendant was arrested on charges of trafficking in, and conspiracy to traffic in, counterfeit drugs, specifically, more than 1,300 pills with the counterfeit trademarks of Eli Lilly and Co. (Cialis) and Pfizer, Inc. (Viagra). The case was investigated by ICE HSI and the Charlotte-Mecklenburg Police Department and is being prosecuted by the U.S. Attorney's Office for the Western District of North Carolina. The **U.S. Attorney for the Western District of North Carolina, Anne Tompkins,** said: "Counterfeit drug products are manufactured and distributed with no quality control whatsoever and are dispensed without any medical

Quotes about the Prosecution

Counterfeit Weight-Loss Drug Case

Deputy Attorney General James Cole, Chair of the Justice Department's Task Force on Intellectual Property, said: "These cases send a clear message that [DOJ] will not tolerate criminals who seek to make a quick profit by risking the health and safety of consumers. These crimes not only undermine our economic security, but pose real and serious dangers to American consumers who are entitled to expect and receive safe and legitimate goods. We will continue to make IP crimes that risk the health and safety of our nation's citizens a top priority as we aggressively pursue all intellectual property crime."

Said **ICE Director Morton:** "Since these pharmaceutical counterfeiters frequently operate overseas, it's especially critical that our federal law enforcement agencies work together to identify, investigate and prosecute these criminals. This case demonstrates how our agents pooled their experience, expertise, and law enforcement authorities to shut down this criminal enterprise, and help protect the public."

The **U.S. Attorney for the District of Colorado, John Walsh,** added: "In this era of worldwide internet communication, threats to the health and safety of the American people arise in far-flung corners of the world. As the success in this case shows, combating these global health threats requires the close coordination of U.S. government regulatory and law enforcement agencies."

Patrick J. Holland, Special Agent in Charge, FDA OCI said: "As this case so clearly demonstrates, unscrupulous drug distributors may attempt to hide behind international borders and the anonymity offered by the internet to deceive and defraud American consumers. The products they distribute can pose a significant health threat, and therefore, will remain an urgent priority of our investigative and enforcement efforts."

or pharmaceutical supervision." She emphasized that, as such, "[c]ounterfeit prescription drug products pose a serious health risk to American consumers. The U.S. Attorney's Office for the Western District of North Carolina . . . will vigorously prosecute those who illegally manufacturer, import or distribute counterfeit prescription drugs." **Rajiv Gulati, Senior Director, Lilly Anti-Counterfeiting Operations** added, "Lilly is committed to patient safety and to helping combat pharmaceutical counterfeiting. We greatly appreciate the U.S. government and law enforcement's work to investigate and prosecute counterfeit operations—thereby protecting patients."

Theft and Attempted Theft of Innovation

Theft of Tire-Making Technology: On Dec. 9, a jury convicted two engineers that worked for Wyko Tire Technology of stealing trade secrets from Goodyear. In 2007, Wyko secured a contract to supply tire building equipment to a Chinese tire manufacturer, but was having difficulty making the equipment. The defendants used Wyko's access to a Goodyear plant in Topeka, Kansas to take cell phone photos of Goodyear's equipment, thereby allowing Wyko to make the equipment for the Chinese manufacturer. The case was investigated by the Federal Bureau of Investigation (FBI) and prosecuted by the U.S. Attorney's Office for the Eastern District of Tennessee and DOJ's Computer Crime and Intellectual Property Section (CCIPS).

Theft of Airplane Technology: On Dec. 13, a federal judge sentenced a defendant to serve 36 months in prison for stealing trade secrets of Turbine Engine Components Technologies Corporation (TECT). TECT manufactured and sold engine blades for use in military aircraft engines, among other products. The government and the defendant agreed that he caused TECT up to $14 million worth of harm from his theft of TECT's trade secrets. The case was investigated by the FBI and ICE HSI and prosecuted by the U.S. Attorney's Office for the Middle District of Georgia. Said the **U.S. Attorney for the Middle District of Georgia, Michael Moore:** "This type of industrial espionage is a serious matter, especially when it involves the production of parts for our military aircraft."

Preventing Transfer of High-Frequency Trading Code to a Competitor: On Dec. 10, a jury convicted a former computer programmer at Goldman Sachs, in part, with theft of trade secrets. The defendant developed computer programs for Goldman Sachs' high-frequency trading system. He accepted a job with a competitor and, on his last day, transferred substantial parts of the code to himself. The FBI arrested the defendant on his way to meet with the new company with the trade secrets. The case was investigated by the FBI and prosecuted by the U.S. Attorney's Office for the Southern District of New York. The **U.S. Attorney for the Southern District of New York, Preet Bharara** emphasized that the guilty verdict demonstrates that "we will use the full force of the federal law to prosecute those who steal valuable and proprietary information from their employers, whether those firms are on Wall Street or Main Street." He added that "[w]e will continue working with our law enforcement partners to investigate and prosecute corrupt professionals who exploit their access to employer's secrets."

Quotes about the Prosecution

Theft of Tire-Making Technology

Said **Assistant Attorney General Lanny Breuer:** "Unable to create an effective design on their own, these engineers stole trade secrets from a competitor in order to fulfill a contract. We will not allow the hard work and resources businesses put into product development to be compromised by individuals who unlawfully obtain protected trade secrets."

"This case sends a message that investigating the theft of trade secrets is a priority for the FBI," said **FBI Assistant Director Gordon Snow.** "We will not stand idly by and watch as one company gains an unfair business advantage by stealing the proprietary information and know-how of another company."

Online Piracy

Trafficking in Millions of Dollars of Pirated Software Using the Internet: On Jan. 13, a defendant was charged with using the Internet to sell pirated commercial software of Microsoft, Adobe, Apple, and others. The defendant is alleged to have sold pirated software worth millions of dollars. He is a fugitive and is believed to be in Pakistan. The case was investigated by ICE HSI, the FBI, and the USPIS, and is being prosecuted by the U.S. Attorney's Office for the District of Maryland. Said the **ICE HSI Special Agent in Charge, Baltimore, William Winter:** "Investigating those who produce, sell and distribute counterfeit products, including computer software, is an important role of ICE HSI." He added that "[c]ounterfeiters cost legitimate businesses billions in lost revenue."

30-Month Sentence for Selling Pirated Video Games Using the Internet: On Dec. 29, a federal judge sentenced a defendant to serve 30 months in prison for selling pirated video games using the Internet and for committing aggravated identity theft. The defendant sold more than 35,000 copies of pirated video games of more than 60 different companies. The defendant agreed to forfeit the tools and proceeds of his crime, including $367,669 in cash, his home, and his car. The case was investigated by the FBI and the USPIS and prosecuted by the U.S. Attorney's Office for the Southern District of Ohio.

Counterfeit Goods

60-Month Sentence for Attempting to Smuggle Counterfeit Goods into U.S.: On Jan. 6, a federal judge sentenced a defendant to serve 60 months in prison for conspiracy to traffic in counterfeit goods, as well as to bribe U.S. Customs and Border Protection (CBP) officials to smuggle those counterfeit goods into the U.S. The defendant paid more than $700,000 to an undercover law enforcement agent in an attempt to ensure that 15 shipping containers of counterfeit goods were not seized or detained by CBP. The case was investigated by ICE HSI, with the assistance of CBP, and prosecuted by the U.S. Attorney's Office for the District of New Jersey. **Peter Edge, Special Agent in Charge, ICE HSI, Newark, New Jersey**, said that this "sentence should serve as a warning to those engaged in product counterfeiting. Products that are produced and sold illegally do harm to trademark holders, may be smuggled into the country and distributed by organized crime groups and then sold to the detriment of local businesses and communities who derive no financial gain from the illegal sales."

Three Defendants Plead Guilty to Smuggling Counterfeit Goods into the U.S.: In late November and early December, three defendants, including a Chinese citizen, pleaded guilty to trafficking in counterfeit goods. The defendants conspired to smuggle counterfeit Coach bags made in China (and elsewhere) through the Port of Baltimore for sale throughout the U.S. As part of their pleas, the defendants admitted to trafficking in counterfeit goods worth between $400,000 and $1 million. The case was investigated by ICE HSI and prosecuted by the U.S. Attorney's Office for the District of Maryland. Said **ICE Director Morton**. "Counterfeits represent a triple threat by delivering shoddy, and sometimes dangerous, goods into commerce, by funding organized criminal activities and by denying Americans good-paying jobs. Both ICE's Homeland Security Investigations and the IPR Center are committed to an aggressive approach towards enforcing the nation's intellectual property rights laws."

Operation Season's Cheatings: From Dec. 1-8, the IPR Center launched Operation Season's Cheatings to combat the Internet sale of counterfeit hard goods. The Operation combined the expertise of CBP, ICE HSI and the USPIS to target, interdict, and investigate the importation of counterfeit merchandise into the U.S. by suspects using the China Post Express Mail Service. Preliminary results indicated approximately 350 seizures of counterfeit DVDs, handbags, cell phones, electronics, pharmaceuticals, cosmetics, apparel and jewelry, with 281 packages detained for further examination.

Coordination with State and Local Law Enforcement

Operation Fire Sale: Last September, ICE HSI seized $16 million worth of counterfeit goods in major cities across the U.S. as part of Operation Fire Sale, a coordinated effort organized by the IPR Center. In early December, ICE HSI continued that Operation, seizing $350,000 worth of counterfeit goods in Las Vegas and $250,000 worth of counterfeit goods in New Orleans. The Nevada Department of Investigations assisted in the Las Vegas effort and CBP and the Louisiana State Police assisted in the New Orleans effort.

ICE HSI and Abilene Police Seize More than $100,000 of Counterfeit Goods: On Dec. 9, ICE HSI and the Abilene Police Department seized counterfeit clothing being sold at three local businesses, which were worth more than $100,000. Said the **ICE HSI Special Agent in Charge in Dallas, John Chakwin:** "These counterfeits cause legitimate U.S. industries to lose billions in revenue annually which deny Americans good-paying jobs."

DOJ Intellectual Property Forum for State and Local Law Enforcement: On Dec. 8, DOJ's Bureau of Justice Assistance held its annual national conference for state and local law enforcement and, for the first time, included a half-day intellectual property forum to emphasize the importance of state and local law enforcement being more active in pursuing intellectual property crimes.

DOJ, NAAG, and NW3C Intellectual Property Trainings: On Dec. 8 (Miami, FL) and Jan. 20 (Austin, TX), DOJ, the National Association of Attorneys General, and the National White Collar Crime Center, with ICE HSI participation, trained state and local law enforcement on intellectual property enforcement. The next training is set for March 1 in Tacoma, Washington.

IACC and ICE Intellectual Property Training: On Dec. 16, in coordination with the International Anti-Counterfeiting Coalition, ICE HSI provided training in Tampa for state and local law enforcement personnel located in west and central Florida.

Quotes about the Prosecution



Operation Fire Sale

ICE HSI Special Agent in Charge for Las Vegas, Claude Arnold said: "The next time you're tempted to save a few bucks by buying a product you know is counterfeit, remember—you're a party to economic sabotage. Counterfeiting undermines the U.S. economy, robs Americans of jobs, stifles American innovation, and promotes other types of crime. They only ones who benefit from schemes like this are the counterfeiters themselves, and they are getting rich at America's expense."

Transparency

Public Awareness

- **State Department International Outreach:** In December and January, the U.S. Department of State conducted more than 25 international outreach programs emphasizing intellectual property enforcement, including programs in Canada, China, and Russia.
- **Intellectual Property Seminar:** On Dec. 7, the U.S. Attorney's Office for the Western District of North Carolina hosted a regional seminar, designed, in part, to help potential victims of intellectual property crimes to know how to report them.

Enforcing Our Rights Internationally

Supporting U.S. Businesses in Overseas Markets

- **U.S./EU Portal to Help SMEs:** On Dec. 17, the Department of Commerce's International Trade Administration and the European Commission's Directorate General for Industry and Entrepreneurship announced the launch of a jointly developed TransAtlantic Intellectual Property Rights Resource Portal. The Portal expands the resources available to U.S. small and medium-size enterprises (SMEs) by including materials and tools developed by the European Union (EU). The Portal is intended to help SMEs to protect their intellectual property in markets around the world, serving as a resource of information and containing points of contact. For example, businesses can access a "country toolkit" to receive an overview of the scope of intellectual property laws in a country and the extent of enforcement. They can also locate a local lawyer in that country and learn how to report intellectual property theft there. The Portal is accessible through www.stopfakes.gov.

Working with Law Enforcement Officials Overseas

- **Intellectual Property Organized Crime Trainings:** In December, DOJ organized or participated in two conferences focusing on intellectual property crimes by organized criminal groups in Africa.
- **Intellectual Property Border Enforcement Workshop:** From Jan. 11-14, CBP, ICE, and USPTO conducted an intellectual property workshop for border enforcement officials from 15 countries, including Canada, Hong Kong, and India. The workshop focused on risk analysis, rightholder outreach, and criminal investigations.



If you feel that you have been the victim of an intellectual property crime, you can report the crime by clicking on the button to the left, calling the IPR Center at 1-866-IPR-2060, or contacting a field office of the FBI. To help you determine what to do when reporting an intellectual property crime, see DOJ's "Reporting Intellectual Property Crime: A Guide for Victims of Counterfeiting, Copyright Infringement, and Theft of Trade Secrets." DOJ also has created forms/checklists that identify the information you will need to provide when referring copyright infringement and trademark offenses and theft of trade secrets.

If you would like to subscribe to the newsletter in the future, email IntellectualProperty@omb.eop.gov. If you would like more information about the Office of the IPEC, including a copy of the 2010 Joint Strategic Plan on Intellectual Property Enforcement, please visit our website.