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Counterfeit (Copycat) Goods Under International Law

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Background

The branding of property with identification marks has been a common practice since the days of Egyptian civilization followed by the Greeks and the Romans.[1] Proprietary marks protected ownership of livestock, tools, slaves, and other marked property.[2] As commerce increased through the ages, the identification markings were born out of a need for source identification by remote consumers placing repeat orders for goods they considered to be satisfactory.[3] Modern society has continued to identify certain markings with certain products, and has come to rely on such markings as to product quality.

Although counterfeiting is not a new phenomenon, there has been an enormous increase in such activities since World War II.[4] As technology advances, the easier it seems for products to be counterfeited. Products that have been known to be counterfeited are designer clothes, designer accessories, medicines, automobile parts, perfumes, fertilizers, etc.; unfortunately, there are few products that are safe from counterfeiters. Some product counterfeits, however, pose great danger to the consumer because they have the potential to cause bodily harms.[5] An example of such danger is some of the medicines that have been composed of stolen chemicals under false famous labels in shadowy laboratories.[6]

Today, intellectual property is protected in various forms such as trademarks, patents, and copyright. Trademarks are words, names, or symbols that identify goods. Copyrights protect the expression of original creative works such as books, music, dances, etc. Patents protect inventions and it prevents others from making, using, or selling the invention in a national territory.[7] For simplicity, the three are included under the umbrella of intellectual property.

Just as there are different kinds of intellectual properties, there are different kinds of *copycat* goods. One such category is *pirated goods* which covers the whole field of copying products, inventions, publication, recordings, and

[1] C. Hayes, *Industrial Counterfeiting* 1, 2 (Scott Foresman Professional Books, 1991)

[2] *Id.* At 602.

[3]. C.P. Sanborn, *Introduction to the Products Counterfeiting Survey*, 8 Loy, L.A. Int'l & Comp. L.J. 593, 600 (1986).

[4] R. Conlon, *Commercial Product Counterfeiting: An Overview*, 1 *A Practical Approach to Patents, Trademarks, and Copyrights* 273, 275-276 (1980).

[5] *Id.* at 277.

[6] *Id.*

[7] Hayes, *supra* note 1, at 32.

other items with the intention to deceive. Another category is called *knockoff* which is a close copy of a proprietary branded product that has a different name, usually close to the original. There is what is called *passing off* which is the creation of a mark, label, or design that is close to the original but is not an outright counterfeit. *Counterfeit* and *fake* describe the imitation of names, product designs, packaging, etc., with the intention to deceive buyers into accepting the items as originals. Finally, there is also a category named *reproduction* or *replica* that describes copies that are not exact, differing from the original in materials or details.[8]

Overview of intellectual property law and international law

There are numerous international documents that seek to protect intellectual property. The main international law instruments are the Paris Convention, the Berne Convention, and GATT TRIPs. There are other international or regional instruments that attempt to protect intellectual property such as NAFTA, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, and the Universal Copyright Convention (UCC). A number of bilateral and smaller multinational agreements also exist. Some other multinational agreements may be in various stages of negotiation or approval (short of entering into force).

The Paris Convention

The International Convention for the Protection of Industrial Property, also known as the Paris Convention or Union, was originally signed in Paris on March 20, 1883.[9] The Paris Convention was drafted to protect patents, trademarks, industrial designs, trade names, and utility models[10] The basic purpose of the Paris Convention is to ensure that each member country grants effective protection to the citizens of all other members against unfair competition in industrial and commercial matters, particularly in trademarks and patents.[11] The Paris Convention is in a sense neither a multinational nor a supranational treaty.[12] Rather, the Union operates under the concept of national treatment.[13] *National treatment is* defined as: a member nation must not distinguish between

[8] *Id.*

[9] Revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on Nov. 6, 1925; at London on June 3, 1934; at Lisbon on October 31, 1958; and at Stockholm, July 14, 1967; 21 UST 1583; 24 UST 2140; U.N.T.S, No. 11851.

[10] Art. 1 states: (1) The countries to which the present Convention applies constitute themselves into a Union for the protection of industrial property. (2) The protection of industrial property is concerned with patents, utility models, industrial designs, trademarks, service marks, trade names, and indications of source or appellation of origin, and repression of unfair competition.

[11] E.J. Kania, International Trademark and Copyright Protection, 8 Loy, L.A, Int'll. & Comp. L.J. 721, 723 (1986).

[12] Under a multinational treaty a signatory's national laws control. However, these national laws are passed pursuant to the language and provisions of the treaty itself. Consequently, until the treaty provisions are made a part of the signatory's body of law the treaty really has no force or effect. Conversely, a supranational treaty replaces national laws altogether...[*id.* At 724].

[13] Art. 2 states: (1) Nationals of each of the countries of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant to nationals, without prejudice to the rights specially provided by the present Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the conditions and formalities imposed upon nationals....

domestic and foreign parties in its administration, adjudication, and regulation of intellectual property.[14] Therefore, protection under the Paris Convention is only as good as individual national laws.[15] Moreover, the Paris Convention has been administered by the World Intellectual Property Organization (WIPO) since 1967, which is a specialized agency of the UN that oversees a total of eleven agreements concerning industrial property.[16]

The Paris Convention has three articles that specifically target commercial counterfeiting. The first of these articles is 6*bis* which allows for the refusal, cancellation or prohibition of the registration of confusing trademarks, especially of any mark that is an imitation of a mark well known in that nation.[17] In order to invoke article 6*bis, the* owner must show that the trademark is well known in that country, the challenged mark must be used on similar or identical goods, and the trademark owner challenging the new mark must be from a member country.[18] The second applicable article is number 9 which allows for the seizure of imported goods bearing unlawful trademarks entitled to protection in that member country.[19] The third article is 10*bis* which provides for protection against unfair competition by prohibiting acts or allegations which create confusion with, or discredit a competitor, and any allegations liable to mislead the public about the nature, characteristics, or quantity of the goods.[20]

[14] GATT TRIPs, art. 3, n.2.

[15] Kania, *supra* note 12, at 724

[16] D.E. Prebluda, *Countering International Trade in Counterfeit Goods*, 7 Brook. J. Int'l. L. 339, 344 (1986).

[17] Art. 6 *bis* reads as follows: (1) The countries of the Union undertake, either administratively if their legislation so permits, or at the request or an interested party, to refuse or to cancel the registration and to prohibit the use of a trademark which constitutes a reproduction, imitation or translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of the present Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith....

[18] *Id.*

[19] Art. 9 reads as follows: (1) All goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or name has a right to legal protection. (2) Seizure shall likewise be effected in the country where the unlawful application occurred or in the country into which the goods have been imported.... (5) If the law of a country does not permit seizure on importation such seizure shall be replaced by prohibition of importation or seizure within such country. (6) If the law of a country permits neither seizure on importation nor prohibition of importation nor seizure within the country, then, until such time as the law is modified accordingly, these measures shall be replaced by the actions and remedies available in such cases to nationals under the law of such country.

[20] Art. 10bis states: (1) The countries of the union are bound to assure to persons entitled to the benefits of the Union effective protection against unfair competition. (2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. (3) The following in particular shall be prohibited: 1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities of a competitor; 2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities of a competitor; 3. indications or allegation the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of the goods.

Although the Paris Convention lists remedies, it offers no enforcement mechanisms beyond members' national laws. Thus, there is no comprehensive enforcement mechanisms of the Paris Convention, hence the different results in enforcement.

The Berne Convention

On September 9, 1886, the Berne Convention for the Protection of Literary and Artistic Works was originally signed in Berne, Switzerland.[21] The Berne Convention was signed by many of the same signatories to the Paris Convention, but not all. Furthermore, just like its predecessor, the Berne Convention provided for the national treatment for the protection of intellectual property by establishing the minimum level terms for protection.[22] Moreover, the Berne Convention enhances the rights of the author by expanding the types of works protected.[23] The main difference between the conventions, however, is that the Paris Convention covers "patents for inventions, trade or commercial marks, and the commercial name"[24] and the Berne Convention covers copyright.[25] Finally, the Berne Convention is administered by WIPO as is the Paris Convention.[26]

> The Berne Convention is premised on the principles that the artist should receive maximum protection, that members adopt minimum standards to protect the artist's interests, and that members grant equal protection to foreign and national artist alike.[27]

[21] Revised at Berlin on Nov. 13, 1908; completed at Berne on Mar. 20, 1914; revised at Rome on June 2, 1928; at Brussels on June 26, 1948; at Stockholm on July 14, 1967; and Paris on July 24, 1971.

[22] Art. 5(1) reads as follows: " Authors shall enjoy, in respect of works for which they are protected under this convention, in countries of the Union other that the country of origin, the rights of which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this convention." Art. 5(2) reads as follows: "...Consequently, apart form the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed."

[23] The Paris Convention protects industrial property; however, the Berne Convention protects:

> ...'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets, and other writings; lectures, addresses, sermons, and other works of the same nature; Dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting architecture, sculpture, engraving and lithography, photographic works to which are assimilated works expressed by a process analogous to photography, works of applied art; illustrations, maps, plans, sketches, and three-dimensional works relative to geography, topography, architecture or science [art. 2(1)].

[24] Paris Convention, art. 2.

[25] Supra note 24.

[26] Id. Art. 24

[27] E.J. Kania, International Trademark and Copyright Protection, 8 Loy, L.A. Int'l. & Comp. L.J. 721, 734 (1986).

The Berne Convention provides copyright protection to any artists who first or simultaneously[28] publish[29] their work in a member country.[30] As part of the protection it provides, the Convention prohibits the imposition of formalities (such as registration fees and depositing copies into national libraries) to act as a bar to copyright protection. Finally, the Berne Convention recognizes the artists' moral rights, and considers copyright an extension of the artists' personality, thus as a basic human right.[31]

Moral rights include the right to:

- Be known as the author of the work;
- Prevent others from being named as the author of the work;
- Prevent others from falsely attributing to one the authorship of work that one has not in fact written;
- Prevent others from making deforming changes in one's work;
- Withdraw a published work from distribution if it no longer represents the views of the author; and
- Prevent others from using the work or the author's name in such a way as to reflect on the author's professional standing.[32]

Finally, the Berne Convention provides in article 16 the right to seize infringing materials of a legitimate copyrighted work. However, because of the national treatment basis, such seizures are done according to national law, not the Berne Convention.[33] Thus, like the Paris Convention, the Berne Convention lists remedies, but it lacks an enforcement mechanism beyond the members' national laws.

[28] Art. 3(4) of the Berne Convention defines *simultaneously* as: "[a] work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication."

[29] Art 3(3) of the Berne Convention defines *publication as*: The expression 'published works' means works published with the consent of their authors, whatever, may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work....

[30] *Id.*

31 Art. 6*bis* of the Berne Convention titled Content of the Moral Right states: (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

[32] H.G. Henn, *Copyright Law a Practioner's Guide* 176 (Practicing Law Institute, 1988).

[33] Berne Convention, art. 16 states: (1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection. (2) The provisions of the preceding paragraph shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected. (3) The seizure shall take place in accordance with the legislation of each country.

The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods

The Madrid Agreement was originally signed on April 14, 1891, in Madrid, Spain, and it was in Stockholm on July 14, 1967.[34] The Agreement calls for the seizure of all goods bearing a deceptive indication on importation by member countries.[35] If seizure is not allowed by national law, then the Agreement calls for the prohibition of importation of such goods.[36] If national laws do not provide for the seizure or prohibition of the goods, then action must be taken as per the options available under national laws.[37] Article *3bis* of the Agreement also calls for the prohibition of any commercial communication capable of deceiving the public.[38] Like its predecessors, the Agreement is based on national treatment.[39] Thus, the prohibitions and seizures are as good as the members' national laws are.

The Universal Copyright Convention

On September 6, 1952, the Universal Copyright Convention (UCC) was signed by the United States and South American nations in Geneva, Switzerland.[40] The UCC was negotiated under the sponsorship of UNESCO (United Nations Educational Scientific and Cultural Organization), and it is considered a multilateral treaty. The UCC has more stringent language than the Paris and Berne Conventions. Article 10 of the UCC requires as follows:

> It is understood, however that at the time an instrument of ratification, acceptance, or accession is deposited on behalf of any state, such state *must be in a position under its domestic law to give effect to the terms of this Convention.*[41]

Consequently, the nations that sign onto the UCC must comply at a minimum with the Convention's standards before joining; or, upon joining, the nations must pass national legislation in compliance with the UCC.[42] The purpose of such language is to have national laws that are similar which will protect intellectual property under the UCC's national treatment standard. Thus, the members' national laws determines the available remedies for counterfeits and how to prevent the importation of such.

[34] Revised at Washington on June 2, 1911, at The Hague cm November 6, 1925, at London on June 2, 1934, and at Lisbon on October 31, 1958. Additional Acto of Stockholm of July 14, 1967.

[35] Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, art. 1(1).

[36] *Id.* art. 1(3)

[37] *Id.* art. 1(4)

[38] *Id.* art. 3*bis*: The countries to which this agreement applies also undertake to prohibit the use, in connection with the sale or display or offering for sale of any good, of all indications in the nature of publicity capable of deceiving the public as to the source of the goods, and appearing on signs, advertisements, invoices, wine lists, business letters or papers, or any other commercial communication.

[39] Id. art. 2.

[40] Came into effect on September 16, 1955; revised at Paris on July 24, 1971; came into effecto n July 10, 1974; 6 UST 2731; 25 UST 1241.

[41] Universal Copyright Convention Art. 10(2).

[42] *Id.*

GATT TRIPs

The General Agreement on Tariff and Trade (GATT) Uruguay Round was concluded on April 15, 1994, in Marrakesh, Morocco, where the members signed it. The Agreement entered into effect on July 1, 1995, and it is administered by the World Trade Organization (WTO).[43] GATT members represent 124 countries, which account for 97% of world trade.[44]

Although there have been international agreements rendering different protection levels of intellectual properties, the perspectives between the developed and the developing nations have also been different. Generally, developed nations view intellectual properties as a private right that needs to be protected as does any other tangible property. The developing countries, however, see intellectual property as a public good that should be used to promote economic development.[45] After many years of conflict between the developed and developing nations due to pirating of protected materials, the signatories to the GATT began addressing the issue.

On September 20, 1986, the Ministers to the GATT adopted initial common declarations which included the Trade-Related Aspects of Intellectual Property Rights or TRIPs,[46] in preparation for the Uruguay Round. As eventually negotiated, TRIPs sets out standards for the protection of copyrights, patents, trademarks, industrial designs, trade secrets, integrated circuits and geographical indications for wine and Spirits.[47] Subsequently, the International Anti-Counterfeiting Coalition was formed in 1987 during the Tokyo Round.[48] The Coalition was to study the problem and give proposals. Although some signatories went as far as negotiating and drafting a counterfeiting code, the issues remained unsolved by the end of the Tokyo Round,[49] and they resurfaced during the Uruguay Round. With regard to the international protection of intellectual property rights, the goal was a multilateral agreement on minimum levels of protection for intellectual property rights.[50] Thus, through years of negotiations, TRIPs was created.

[43] M.A. Harper, *International Protection of Intellectual Property Rights in the 1990s: Will Trade Barriers and Pirating Practices in the Audiovisual Industry Continue?* 25 Cal. W. Int'l. L.J. 153, 172-173 (1994).

[44] *Id.*

[45] T.P. Stewart, ed., The GATT Uruguay Round, a Negotiating History Vol. II (1986-1992) Commentary, at 2255 (Kluwer Law and Taxation Publishers, 1993).

[46] *Id.* at 2264.

[47] G.L. Graff & J.A. Goldberg, *Computer Works Gain New GATT Protection*, The National Law Journal C9(March 6, 1995).

[48] *Id.* at 2259.

[49] Stewart, supra note 20, at 2260.

[50] *Id.* at 2265.

Being a part of GATT, TRIPs follows the national treatment and most-favored treatments found as a basis for the rest of the Agreement.[51] Article 51 of TRIPs provides for the right holder of the intellectual property to file an application with the appropriate authorities, either administrative or judicial, to prevent the release of counterfeit goods into the market from customs or to prevent their exportation.[52]

Unlike the Paris and Berne Conventions, TRIPs provides for dispute prevention and settlement within the GATT structure. The system upon which the members agreed at the Uruguay Round is new, and it includes the establishment of the WTO, which follows the Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding or DSU). The new process for dispute settlement under the WTO has been revamped so that from beginning to end, the dispute process should not take more than 20 months, less if the panel decision is not appealed.[53] "In brief, the Uruguay Round reforms expedite the decision-making process, institute a new appeals procedure for panel rulings, and implements new procedures to promote compliance with WTO decisions.[54]

When a dispute arises under TRIPs, it is brought to the Dispute Settlement Body (DSB) to adjudicate complaints.[55] The DSB establishes panels to handle the complaints and render decisions according to TRIPs.[56] If a member does

[51] Final Texts of the GATT Uruguay Round Agreements Including the Agreements Establishing The World Trade Organization, April 15, 1994, Marrakesh, Morocco, at 322.

> Article 3 of TRIPs provides for national treatment:
>
> Each member shall accord to the nationals of other members treatment no less favorably that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided, respectively, the Paris Convention (1967)....
>
> Article 5 of TRIPs calls for most-favored national treatment reads:
>
> With regard to the protection of intellectual property, any advantage, favor, privilege or immunity granted by a member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other members....

[52] *Id.* at 342. TRIPs Article 51 reads as follows: ...Members shall, in conformity with the provisions set out below, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories....

[53] J.J. Schott, The Uruguay Roound, An Assessment 126 (Washington, D.C., Institute for International Economics, 1994).

[54] *Id.* at 126.

[55] Graff & Goldberg, *supra* note 53, at C10.

[56] Understanding on Rules and Procedures Governing the Settlement of Disputes, Annex 2, art. 2 states: ...Accordingly, the DSB shall have the authority to establish panels, adopt panel, and appellate body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements....

not implement the panel's recommendations within an established time frame, the complaining party can seek authorization of retaliation, such as increases in tariffs.[57] Furthermore, under the concept of national treatment, the aggrieved party may seek recourse under that nation's intellectual property laws, if the breaching party is a member country to the agreement.[58]

NAFTA

The North American Free Trade Agreement (NAFTA), effective between the United States, Canada and Mexico, is also based on the Berne and Paris Conventions. In the spirit of its predecessors, NAFTA grants national treatment as well.[59] "The intellectual property provisions of the NAFTA were designed with the...TRIPs agreement in mind."[60] The main differences between NAFTA and TRIPs are in the time periods during which the right holders are protected; under NAFTA such periods are longer.[61] Otherwise, NAFTA provides the same kind of protection as TRIPs does. Particularly, NAFTA also has language regarding minimal border relief. Article 1718 reads as follows:

> Each party shall, in conformity with this Article, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or pirated copyright goods may take place, to lodge an application in writing with the competent authorities, whether administrative or judicial for the suspension by the customs administration of the release of such goods into free circulation....[62]

Another major difference between. NAFTA and TRIPs is that, as described above, TRIPs provides a structure within the agreement to attempt to resolve disputes; under NAFTA, the concept of national treatment strongly applies. Therefore, any disputes that arise are resolved under national law as changed to comply with NAFTA.

International Law Issues

The main issue seems to be a lack of enforcement of the agreements. Such lack of enforcement appears to lead the nations to enter into consecutive different agreements which seem to continuous y raise the question of how the agreements are to be enforced if the nations will not subject themselves to international jurisdiction.

[57] Id. art 22(2) states: If the Member concerned fails to bring the measure found to inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings with the reasonable period of time determined...any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the member concerned of concession or other obligations under the covered agreements [Stewart, *supra* note 29, at 2794].

[58] *Id.*

[59] Art. 1703 reads as follows: (1) Each party shall accord to nationals of another Party treatment no less favorable than that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights....

[60] Schott, *supra* note 56, at 122.

[61] *Id.*

[62] NAFTA Test (CCH, 1994).

The World Intellectual Property Organization (WIPO) was established in 1967 as a specialized agency of the United Nations (UN) to administer international treaties on intellectual property, to provide assistance to signatories in promulgating intellectual property laws, and to seek harmonization of national laws.[63] Thus, the Paris and Berne Conventions are administered by WIPO.[64] Under both Conventions, the signatories have the right to have their disputes resolved by the International Court of Justice, but the same Conventions give the signatories the authority to reject the jurisdiction of the Court.[65] Consequently, not all disputes are brought to the Court for resolution.

When a dispute arises under either Convention, regardless if the case is in front of the Court, WIPO forms an informal group of experts to allow for the opportunity to "explore in a systematic, scholarly and consultative way to address the ongoing problems...."[66] Although WIPO administers the Conventions, because they both embrace national treatment[67] by following minimum rights, there is lack of enforcement. Such lack of enforcement is due to the lack of choice of law rules to be applied.

There are as many different national laws as there are signatories; and, without harmonization of the scope of the protection granted, it is difficult to enforce the agreements. Thus, the harmony that GATT TRIPs provides under its new dispute resolution structure is a welcome change even if it embraces the national treatment concept.

The developed nations generally view intellectual property as a private right that needs to be protected as any other tangible property. The developing countries, generally see intellectual property as a public good that should be used to promote economic development.[68] Weak enforcement of international law and/or national law protecting intellectual property in developing countries represents a governmental policy of subsidizing domestic industries engaging in counterfeiting.[69] Counterfeiting has become a substantial part of the national economies of developing countries. Therefore, developing nations resist any push for stronger enforcement of intellectual property laws. "[T]the GATT rules are the first international institutional mechanism capable of enhancing the 'marriage of convenience' between trade and investment on the one hand and counterfeiting prevention on the other."[70]

[63] Stewart, *supra* note 46, at 2247.

[64] *Id.*

[65] *Id.* at 2248

[66] *Id.*

[67] TRIPs defines national treatment as a member nation must not distinguish between domestic and foreign parties in its administration adjudication or regulation of intellectual property rights [note 2, art. 3].

[68] Stewart, *supra* note 46, at 2255.

[69] E. Buscaglia & J.-L. Guerroro-Cusumano, *Quantitative Analysis of Counterfeiting Activities in Developing Countries in Pre-Gatt Period*, 35 Jurimetrics J. 221, 223 (Winter 1995).

[70] *Id.* at 231