

Testimony of

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"COUNTERFEITING AND THEFT OF TANGIBLE INTELLECTUAL PROPERTY: CHALLENGES AND SOLUTIONS"

Written Testimony of

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Committee on the Judiciary

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Mr. Chairman and Members of the Committee, good morning. I am Timothy Trainer, President of the International AntiCounterfeiting Coalition (IACC). On behalf of the IACC, I thank the Committee for the privilege and opportunity to address the very important issue of product counterfeiting and piracy.

The IACC is the largest organization dealing exclusively with issues involving intellectual property (IP) counterfeiting and piracy. The organization has approximately 140 members representing a cross-section of industries, including the automotive, electrical, entertainment, software, apparel, luxury goods, tobacco, personal care, pharmaceutical and office product sectors. The total annual revenues of IACC members exceed US\$650 billion.

Today, the global proliferation of product counterfeiting and piracy threatens consumers, governments and companies. Product counterfeiting and piracy is a revenue generating tool of organized crime and threatens national economic security. In addition to the growing organized crime element, counterfeiters act with reckless disregard for consumers. This generation of product counterfeiters does not recognize national borders and counterfeits all types of products.

## RECOMMENDATIONS

At the outset, the IACC respectfully requests that this Committee and Congress consider implementing the following package of recommendations to combat the scourge of counterfeiting and piracy that exists:

- ? Raise the stakes for the individuals involved--the federal criminal statute against trafficking in counterfeit goods should be strengthened;
- ? Encourage federal law enforcement agencies to cooperatively pursue investigations of counterfeiting to root out and prosecute manufacturers, distributors and others involved in the trafficking of counterfeit goods;
- ? Increase the level of vigilance at the border regardless of the products involved--counterfeiting and piracy impact

national economic security;

? Impose higher intellectual property enforcement standards on trading partners who seek trade preferences to access the world's greatest market;

? Support Interpol's effort to improve cross-border coordination to combat the international trafficking in counterfeit goods; and

? Examine the extent to which organized crime is involved in the international trade of counterfeit and pirated products.

## GLOBAL COUNTERFEITING

On February 12, 2004, the IACC identified 27 countries in its Special 301 report that was submitted to the U.S. Trade Representative for inadequate and ineffective protection of intellectual property assets. Only time and resources prevented the IACC from submitting a report that identified more countries. While most consumers and government officials who are not intimately involved in intellectual property theft and crime may be very familiar with the flea market and street vendor products such as shirts, handbags, sunglasses and other similar items, the expansion of counterfeit activity into products posing public health and safety risks is proliferating. Examples of these products include:

? Pharmaceuticals;

? Auto parts;

? Toys;

? Batteries;

? Extension cords;

? Cosmetics;

? Beverages;

? Body lotions;

? Home electrical appliances;

? Tools;

? Vision wear; and

? Bearings.

This is not an exhaustive list, but underscores the products that are now counterfeited here and around the world and the global nature of this problem.

An IACC member auto company's raid of a Chinese auto parts factory uncovered 7,000 sets of counterfeit brake pads intended for export to Egypt. This single raid represents potential losses of nearly \$330,000. Another auto industry member reported raids resulting in the seizure of thousands of counterfeit windshields and several thousand suspension control arms, valued at nearly \$4 million dollars. A third auto industry member estimates that 50%-60% of counterfeit parts bearing its trademarks found in the world are made in China.

The auto industry is also confronted by a massive parts counterfeiting problem in India. IACC member auto companies report counterfeit parts make up 20% to 30% of the Indian market. The auto industry as a whole is suffering parts counterfeiting that is reported to be over 35% of the market and valued at roughly \$434 million dollars in that country.

While not as mechanically sophisticated as automobiles, the Uganda Manufacturer's Association complains of counterfeit bicycle parts posing risks for citizens of that country.

Another IACC member, whose certification mark is relied upon as a mark of safety, reported that our federal border enforcement authorities seized 91 shipments of counterfeits bearing its mark in fiscal year 2003. These seizures included a seizure of US\$1.5 million in air compressors that had counterfeit ground fault circuit interrupters, \$700,000 of counterfeit extension cords, power strips and hair trimmers that, in turn, led to an additional \$7 million seizure of counterfeit extension cords and power strips. In addition to the Customs seizures, another \$1 million seizure of Chinese made counterfeit portable and hand tools was made by police in southern California.

In Australia, an investigation of two Australian nationals led to the discovery of a massive counterfeit operation of Chinese-made counterfeit batteries and razors. Three containers heading to different ports - Dubai, Oman and Los Angeles - were seized having counterfeit goods valued at \$1.5 million. Australian authorities also seized two shipments (50,000 bottles) of counterfeit shampoo from China bearing the trademark of a famous brand.

Counterfeit vodka in the United Kingdom caused hospitalization when the vodka was tested and found to have dangerous levels of methanol. As a result of the detection, authorities issued a description of the bottle and labels that were applied to the bottle to assist potential consumers in identifying the counterfeits. In December 2003, another counterfeit vodka problem arose when a woman went into a coma after consuming counterfeit Kirov brand vodka. It was the second time in 2003 that supplies of counterfeit vodka with high levels of methanol had been found.

Counterfeit batteries have also posed a threat to consumers. A boy playing with a toy that had a counterfeit battery suffered facial injuries from an exploding battery and a man suffered injuries to a hand when his remote control exploded from the use of a counterfeit battery, both incidents in Malaysia. Canadian authorities seized 60,000 counterfeit "Duracell" batteries before the holiday season and warned consumers because of potential hazards if used in toys. Nokia found that counterfeit batteries used in connection with their cell phones were exploding as reports of such incidents were widespread--from Vietnam to the Netherlands.

Russia's chief trade inspector and department head at the Economic Department and Trade Ministry noted that for certain categories of consumer items, 30-50% of the Russian market consists of imitations. These product lines include alcohol, juices, butter, vegetable oil, canned foods, tea, coffee, cosmetics, clothing and footwear. Other sources similarly indicate that up to 50% of the perfume and cosmetics markets are fakes.

## DOMESTIC INCIDENTS

As mentioned above, the auto industry is experiencing significant counterfeit auto parts. Substandard and counterfeit heavy-duty truck replacement parts are also getting into the U.S. aftermarket in significant numbers and the problem is likely to get worse according to the industry.

In the power tool industry, a trend that was noticed in Europe is now appearing in the United States. Counterfeit power tools are making their way into the United States and pose risks due to substandard parts and their failure to stand up to the type of use that genuine tested products can withstand. The counterfeit tools are also appearing on the internet for sale. The Power Tool Institute has raised the caution flag on these products.

The United States has enjoyed a safe pharmaceutical distribution system. In recent years, however, the United States has also seen several counterfeit pharmaceutical cases arise, including the Lipitor cases of a year ago. Although the level of counterfeit pharmaceuticals in the U.S. remains far below that of some developing and very poor countries, the cases that have arisen have prompted the Food and Drug Administration to assess the level of risk that is involved for the introduction of counterfeits into the U.S.

U.S. law enforcement authorities are being tested by those who trade in counterfeits. U.S. authorities broke up a ring in Texas that is believed to have imported over 100 million counterfeit cigarettes, mislabeling shipping documents by indicating that they were importing toys or plastic parts.

Recent reports also indicate that product counterfeiting has invaded the pesticide industry. An Alabama man pleaded guilty to a 28-count indictment for selling counterfeit pesticides to several municipalities. The municipalities purchased the pesticides to combat mosquitoes and the West Nile virus. Counterfeit products also pose risks to our environment and pets. Recently, the Environmental Protection Agency (EPA) issued an alert regarding counterfeit pest control products for pets. The EPA indicated that there has been an increase in the influx of counterfeit goods because of product in counterfeit packaging bearing all indications of legitimacy.

In one case that has involved civil and criminal judicial proceedings, the focus was on the theft of trade secrets and sale of counterfeit fiber optics products and LED lighting.

In the past few years, the IACC has seen an increased level of concern by many industries about the rise in counterfeits. This has prompted several industry associations to reach out to us in order to improve awareness and knowledge about counterfeiting in various industries, including those that manufacture and distribute electrical products, small appliances and personal care products.

Given that we are all aware of the counterfeit goods sold in flea markets and on the streets of major cities, the added knowledge that counterfeiters have moved into auto parts, medicines, home appliances and electrical goods should give us pause to start thinking of the counterfeiting problem as a frontal attack on consumer safety and economic stability.

## CHALLENGES/SOLUTIONS

Because no industry sector is immune from attack by counterfeiters and no country is exempt from this type of criminal activity, both corporate and governmental law enforcement resources must be committed to combating IP crime. The volume of goods being seized is a clear indication of large scale manufacturing and a sophisticated distribution and sales network. Thus, the challenge of a global counterfeiting problem is one that must be fought with the cooperation of our trading partners and relevant intergovernmental organizations such as INTERPOL and the World Customs Organization.

IP crime is occurring globally and, thus, poses risks to consumers worldwide and, as a result, U.S. IP owners must invest resources to combat this problem in many countries around the world given that their IP assets are subject to protection and attack in many countries.

Initially, U.S. domestic laws against trafficking in counterfeit goods must be strengthened in order to permit the destruction of counterfeit goods and the authority to take the tools, i.e., the equipment used to make counterfeits, out of the hands of those involved and ensure that they are not available, which may mean destruction. Moreover, courts must see ALL counterfeiting, regardless of the type of products involved, as potentially a criminal act that also involves a network and be willing to impose penalties that will deter future counterfeiting. In addition, strong domestic laws will permit U.S. negotiators to try and obtain stronger anti-counterfeiting and anti-piracy provisions in bilateral and international agreements with trading partners, which is needed in the face of the overwhelming tide of counterfeits that U.S. IP owners must combat.

In addition to domestic laws and those agreements in which the U.S. is a Party, the U.S. Government should monitor trade agreements between our trading partners that do not include the U.S. as a Party. In view of the efforts of the U.S. Government to strengthen IP enforcement for U.S. industry, these efforts may be undermined when our trading partners conclude agreements that may facilitate the flow of goods to third countries, decreasing or eliminating inspections upon entry or exit of goods and make the flow of counterfeit and pirate goods easier between third countries where U.S. industry is present and trying to protect their IP assets. Our companies have obtained trademark and patent rights in many countries, but if trading partners fail to incorporate strong IP enforcement provisions with ALL of their trading partners, we run the risk of seeing the protection of U.S. IP assets weakened abroad.

The U.S. Government should also be vigilant regarding free trade zones as these zones are being used to facilitate the trade in counterfeit and pirated products. We request that the U.S. undertake a special effort to ensure that trading partners apply their IP enforcement provisions within free trade zones. We need to underscore the fact that free trade zones are to facilitate legitimate trade, not an area where Governments look the other way when illegal activity is occurring and, in some cases, flourishing.

The current onslaught of global counterfeiting has another "health" aspect to it. This is the health of industry. The current level of global counterfeiting diverts corporate resources away from the business of research and development that leads to new and better products for consumers. Today's level of counterfeiting has reached the point that it now requires government intervention to confront the organized crime elements that are involved around the world. Industry is neither equipped to deal with organized crime nor is it a function for industry to pursue. Because of a reluctance to combat product counterfeiting in the past, we now see it as a real and dangerous threat to consumers and industry.

## CONCLUSION

While we have concentrated on counterfeiting that involves goods that have a direct public health and safety aspect, we cannot overlook the fact that treating any type of counterfeiting, whether of handbags, shirts, or watches, as a victimless crime will only attract criminal elements to this type of easy money activity. The present situation begs the question: Where does the money go? We have yet to know exactly where the money goes, but do we dare to take the risk that some of the funds land in the hands or accounts of individuals or groups that will do the unthinkable. A multi-pronged effort is needed to take more aggressive enforcement actions, implement a broad strategic plan to target sources, educate consumers and train government officials and business leaders in ways to make IP enforcement more effective.