PHARMACEUTICALS AND INTELLECTUAL PROPERTY TRAINING SEMINAR

12 – 14 March 2012
Pretoria, South Africa

INTELLECTUAL PROPERTY INNOVATION COUNTERFEIT GOODS

by
Amanda Lotheringen
CIPC Organisation
INTELLECTUAL PROPERTY INNOVATION
COUNTERFEIT GOODS

• CIPC
• COMPANIES ACT NO 71 2008
• COUNTERFEIT GOODS ACT NO 37 of 1997
OVERVIEW OF ENFORCEMENT OF IPR AND AN INSIGHT INTO THE TRUE NATURE OF THE PROBLEM

EFFECTIVE ENFORCEMENT (FOR WHAT) THE COUNTERFEIT GOODS ACT,
(ACT NO 37 OF 1997)
VISION

- We will support our inventors, artists and indigenous communities through offering a basket of services which will start with creating awareness around the opportunities that exist for protection of products that are the outcome of their innovation and creativity
STRATEGIC DIRECTION

• The Ten Year Innovation Plan highlights the need for the development and exploitation of South African innovations - ‘converting ideas into economic growth’ – and the potential of certain sectors in promoting a knowledge economy, such as green technologies, agriculture, pharmaceuticals and business processing.

• The Plan further mentions the potential of indigenous knowledge and its exploitation as a way to benefit communities, especially in respect of medicines and indigenous cultural expressions.
GOALS

To promote innovation, creativity and indigenous cultural expression and knowledge by encouraging and facilitating the registration, development and protection of intellectual property rights.

To monitor the unauthorised use of private and public intellectual property rights and compliance with accreditation criteria for accredited intermediaries and to co-ordinate appropriate enforcement actions.
Department within in CIPC is responsible for the enforcement of IPR, promoting compliance and implementation of all IP legislation

The main functions are:
- to do inspections in terms of the GCA and other relevant IP legislation
- liaise and interact with Government Law Enforcement Agencies, National and International Bodies and Industry Associations that plays a role in effective enforcement
- to further ensure effective enforcement and compliance with the legislation and overall a better understanding of the importance of IPR
- The CIPC further provides support, infrastructure and enforcement remedies
WHY DO WE WANT TO PROTECT IP?

CREATION INNOVATION = UNIVERSAL RESOURCES

Einstein said imagination is more important than knowledge

• IP is based on power of imagination. Using an existing knowledge base and seeing beyond the next frontier

• Source of personal cultural and economic advancement
The massive infiltration of counterfeit and pirated products, or *IP theft*,
-creates an enormous drain on the global economy
-crowding out billions in legitimate economic activity and facilitating an "underground economy" that deprives governments of revenues for vital public services,
-forces higher burdens on tax payers,
-dislocates hundreds of thousands of legitimate jobs and
-exposes consumers to dangerous and ineffective products
AMERICAN PRESIDENT LINKS ANTI-COUNTERFEITING TO ECONOMIC RECOVERY

• In a series of initiatives in recent weeks, the U.S. administration has made it clear that strong anti-counterfeiting measures are a key part of U.S. and global economic recovery.

• It is a critical new message about the key importance of anti-counterfeiting technologies and programs.

• “President Obama used the all-important State of the Union speech to state that innovation can be a real cure for what ails our sluggish economy.

• Jump-starting the innovation engine — and protecting it from profiteering counterfeiters — can drive stronger economic growth and better safety.”
2011 in Review: Patents Misused to Stifle Innovation

There are also studies that are looking at the major trends influencing digital rights in 2011 and discussing where the fight for a free expression, innovation, fair use, and privacy is won.
Protectionism Only Serves to Stifle Innovation??

First there was the Digital Economy Act, then there was SOPA and its counterpart PIPA, and now there's the Anti-Counterfeiting Trade Agreement, or ACTA.

The EU Trade Commissioner (who writes for the New Statesman today arguing against protectionist measures) was seeking a mandate from European Members States to negotiate an agreement "to protect European intellectual property around the world".
Government efforts to stabilize the economy and stimulate economic growth, trade and employment must include the critical and pervasive role that intellectual property (IP) protection plays in driving innovation, development and jobs.
Broader economy-wide effects (cont)

For certain types of infringing goods, the health and safety of consumers may be put at significant risk.

With respect to governments, counterfeiting and piracy have effects on tax revenues, government expenditures, and, when corruption takes place, the effectiveness of public institutions.

While consumer health and safety is being undermined on one front, jobs in our most creative and innovative industries are being attacked on the other.

The counterfeiting and piracy perpetuated by rogue sites stifles innovation by undercutting the investments in making the newest cancer drug, or latest “it” movie, or most innovative home technology.
Counterfeiting at the Olympics

• The equation is simple: no brand protection, no sponsorship. No sponsorship, no Games.

• Counterfeiting is an industry, one of few that can expect to grow in these straightened times. In the last twenty years, the International Anti-Counterfeiting Coalition estimates it has expanded by 10,000%, fuelled in large part by internet sales.
WHAT IS IPC?

• Intellectual Property Crime (IPC) refers to counterfeited goods (using trademarks without authority) and pirated goods (copies), manufactured and sold without the consent of the (rightful owner) IPR holder.
THE IMPACT OF IPC

HARMFUL and DANGEROUS to consumers and it can even cause death or serious bodily harm:

– medicines
– motor spare parts
– toys
– washing power
– matches
• The exploitation of the IP system is an important and powerful tool for wealth creation and poverty reduction
• Modern legislation and effective administrative infrastructures for the acquisition of IPR are important steps towards IP protection (CIPC)
• The acquisition of IPR is of little economic value if these rights cannot be enforced effectively
• The credibility of the IP system depends to a considerable extent on the enforceability of IPR
• Well-functioning IP enforcement mechanisms are the best means to limit the number of violations of IPR and to assure that right holders and society as a whole can reap the benefits from the INTELLECTUAL PROPERTY system
“How big is the problem of counterfeit goods. Let me answer that question in three words -out of control... There is no end in sight. My business continues to grow”

Kris Buckner, President of Investigative Consultants before US Senate
• The CIPC inspectors do not normally act on their own initiative and thus a complaint affidavit from the intellectual property holder or their agent is required before action is taken.

• The CIPC has received 1047 complaints about dealing in counterfeit products since the first depots were declared in 2000.

• The inspectors have responded to these complaints and have seized and removed in most cases the offending goods to counterfeit goods depots to enable rights holders to take appropriate further actions.
SHIFT IN FOCUS OF FAKE S

The trade in counterfeit products is a growing problem across the world

- Counterfeiters no longer target luxury goods with developed brands but have also moved into other sectors
- Internationally its impact is mainly in sectors such as pharmaceuticals and toys and it poses an additional threat to public health and safety
Products confiscated by the CIPC

- Include t-shirts, track suits, sunglasses and shoes. Television sets, lamps, DVD players and Hi Fi’s, clothing items, software programs, printer toners, CD’s, DVD, bearings and other motor spare parts, cell phones, watches, and so the list will go on and on ... ...

Frightening

- Food products that have been confiscated and declared fake, and even medicines
Subtle colour difference on carton
VERY POPULAR PRODUCT IN SOUTH AFRICA FOR HEADACHES AND “BABELAAS” –”HANG-OVERS”
Packing and Box Folding in progress
Mixing that was in progress
Counterfeit Drugs-Multi-drug resistant TB and malaria

1. Cheap drugs become ineffective
2. Loss of cheap drugs will require new drugs
3. Increased morbidity and mortality
Raj Curry Powder
Medium 50 g
Pictures on left were taken at the same traffic light just outside Westgate shopping centre Date: 12/07/2009

Picture above was taken on Ondekkers At the traffic light by McDonalds Date: 12/07/2010
Fake food products are of inferior quality and can be toxic

Inspectors of the CIPC seized approximately 20 tons of rice and baked beans and had also seized 40 tons of maize, destined to be packaged into well-known branding. The maize had to be destroyed as it was not acceptable for human consumption.
CRIMINAL SANCTIONS AND SUCCESSES

• Vikesh Singh of Port Elizabeth, was found guilty of dealing in products of Microsoft
• 5 years suspended with a fine and a cost order of R100 000 in favour of Microsoft

• The sentence sent a clear message from law enforcement authorities that counterfeiting will not be tolerated and speaks out about the seriousness with which South African courts are beginning to view counterfeiting
1 JUNE TO 3 JULY 2011 (One month)

• TOTAL NUMBER OF ACTIONS: 147
• TOTAL NUMBER OF ARRESTS: 66
• QUANTITY FILMS SEIZED: 79 810

• Street Value DVD   R 3 990 500
• Potential sales/retail/cinema legit business
• R11 971 500   nearly R12 mil
• It is true that consumers support the trade and the reasons are contained in our study Consumers and the Use of Counterfeit Product.

• Price is certainly one reason and

• people think that it is a victimless crime.

We have to change the perception of consumers and it is a difficult and long process.

Most of the products emanates from China as most legitimate products also do.
• Be it the escalating costs of buying originals,
• the developments in technology making piracy increasingly possible or
• a growing demand by consumers seeking cheaper options
• Counterfeiting requires serious clamping down on by authorities and
• Cooperation on all levels and especially across borders is of the utmost importance to ensure success in the fight against fakes
• The trade in fake products results in huge losses annually to the Government, consumers and industries.

• Eventually this might cause industries to collapse and legitimate business to fall into the hands of criminals.
The responsibility to balance the protection of legitimate businesses with the responsibility towards consumers will always be that of Government and the tool that we use is the THE COUNTERFEIT GOODS ACT.
CONCURRENT FUNCTION

- **The CIPC** is the custodian and responsible for the administration of the Act.
- Implementation is done together with CIPC Inspectors appointed through the CGA and the Customs division of the South African Revenue Service (SARS) and the South African Police Service (SAPS).
- Fostered a close working relationship with the City of Johannesburg and other Metros very proud to see that it is paying off in that they have "formalised" the informal traders and assisting through municipal bi laws in protecting of IP rights.
Concluding remarks

According to the International Chamber of Commerce, counterfeiting is said to account for between 5% and 7% of world trade (some estimate as high as 10%), worth an estimated $6000bn per year.
Counterfeiting polarises opinion within society and the judiciary are no exception. Some continue to believe it to be a relatively trivial criminal offence. Perhaps once it was. But in 2012, counterfeiting like corruption, destroys fair competition and livelihoods, deprives the Treasury of revenue, stifles innovation and leads to unemployment. Walker J described it as “…a serious contemporary problem having adverse economic effects on genuine trade.”
Objectives

1. Counterfeit and pirated goods moving through international trade.
The value of counterfeit and pirated goods moving through international trade, drawing on new customs seizure data indicating that the incidence of counterfeiting and piracy has increased and what products are hardest hit.

2. Value of domestically produced and consumed counterfeit and pirated products. We develop a methodology, to generate an estimate of the value of domestic manufacture and consumption of counterfeit and pirate products – thereby capturing an estimated value of fake products that do not cross borders.
3. Volume of pirated digital products being distributed via the Internet.
We describe, evaluate and contextualize industry reports and academic studies on the value of digital piracy of recorded music, movies and software. We then use these studies to produce an estimate of the total value of digital piracy that has been calculated using consistent assumptions and methodology across these industries.

4. Broader economy-wide effects.
We need to provide a study about the broader economy-wide effects of counterfeiting and piracy.
Concluding remarks cont

1. Amendments are required to iron out some of the areas that is not conducive (would form part of this process)

2. Specific workshop with relevant role players to look at those and implementation strategies

3. Build on the IGEC forum to enhance co-operation and communication
• Amanda Lotheringen
• CIPC
• 012 394 1512

• Thank you