PANDEMIC SERVES AS BOOSTER TO COUNTERFEIT TRADE – INSIGHTS FROM AN IPR INVESTIGATOR

By Lee Bumgarner, IPR Private Investigator

Lee Bumgarner is an experienced investigator. He specialized in IPR services including a broad range of corporate consulting services. In the last 40 years, he gained experience throughout Asia in intelligence collection and analyses, due diligence, special investigations, litigation support, asset searches, security audits and Crisis and Risk Management. The last 12 years, Lee focused mainly on the Philippines and Malaysia.

While the underlying drivers of counterfeit goods trade have not changed in the past years, the pandemic has shaken up the market. The flourishing e-commerce, the extensive use of social media platforms, and the Covid-19 pandemic have all led to the counterfeiting issue becoming a critical concern. Lee Bumgarner gives us some insight into his work in the Philippines as an IPR Investigator.

The Covid-19 pandemic held the entire world in its firm grip for the last three years. Slowly, quarantines are lifted, employees return to the office after working at home for an extended period, and even travel has an upturn. Nevertheless, we can still see the immense impact of the virus on industries. Especially manufacturing production struggled with the supply chain disruption, the drop in demand, and the overall recession, and for some countries it will take years to go back to their pre-pandemic production and income levels. These major logistic disruptions created a ripple effect and industries had to make adaptations to meet the increasing demand. A shift to e-commerce took place to respond to the new global demand but unfortunately, this gave organized crime groups the chance to infiltrate supply chains.

Big companies such as Amazon and E-bay rely on third-party vendors to increase their trade, and such websites have facilitated counterfeit trade due to minimal authentication of the vendors. Counterfeit goods can be sold via live-streaming, social media platforms, and more, misleading buyers with discounts or low-price products. During the pandemic, enforcement actions were sporadic, and investigators now have to combine the online trade with their on-the-ground investigations. We have asked Lee Bumgarner to give us some insight into his work in the Philippines against counterfeiters.
What are the consequences of the COVID-19 pandemic on the counterfeit market in the Philippines?

One of the effects of the pandemic has been the accelerated shift to how quickly the online shopping business has grown, especially for counterfeit (CF) products. In 2021, the Philippines eCommerce market sales reached $17 billion, and this is estimated to reach $24 billion by 2025, with a 17% growth. With Filipinos working and studying from home, we are observing the need for more local courier companies due to the eCommerce shift. New pick-up and delivery companies surface almost monthly and CF suspects have taken well advantage of the situation.

Sources in recent warehouse raids have advised us that with CF footwear the workers are packaging more than 2000 packages a day for courier pick up.

The internal employment for these CF goods’ warehouses is averaging twenty to forty staff members dedicated to photographing the items, uploading the goods, assembly line type packing stations, and finally an established local courier network with typically more than two local couriers. Our direct observation of these warehousing target facilities have shown the conversion of a large portion of the warehouse area into space to process online business operations. In some cases, this has led to the requirement to increase warehouse sizes or utilize additional smaller nearby warehouses to allow for online servicing floor space to cope with the sales demand surge.

On which eCommerce platforms are counterfeit products mostly being sold?

The top Philippine eCommerce platforms are Shopee, Lazada, Zalora, and BeautyMNL. Most counterfeit sporting goods items are normally sold via Shopee and Lazada and from our own research and intelligence collection we clearly see the increase trends within the CF market for these main online platforms. Additionally, there is an increase in sales on social media platforms such as Facebook, Instagram or TikTok. During live-streams counterfeiters promote their products and mislead customers into buying their CF goods.

How did you and your team adapt to this shift?

Well, we did multiple things. First of all, we established a local daily monitoring and research system for the eCommerce platforms. The goal is to develop them into critical sources of intelligence and information identifying potential physical raid targets, specifically in the Philippines and Malaysia. Online daily research has now become the norm conducted for various client brands as one of the primary starting points for collecting pertinent intelligence.

The second stage of the case buildup will utilize more traditional investigative and intelligence collection techniques to fully develop targets for actual enforcement actions, but monitoring through the online platforms remains critical right up to the time of the raid. The shift is more important since some of the storage warehouses are not as focused on the local retailers as there is less foot traffic going in and out of the typical CF reselling areas.
Before the pandemic, raids were used to disrupt counterfeit trades. How has this method changed?

We still use raids to disrupt the CF trade, but like most we had to make a few adaptations. During the pandemic, law enforcement encountered a few challenges. Courts were closed, search warrants were therefore not given and costs in general had to be lessened. Before the pandemic, we would usually target traditional retail shopping and now there has been a focus shift on online sales. Nevertheless, long-term targeting of storage and manufacturing sites is still beneficial for brand owners.

Warehouse sites will likely serve multiple retail outlets and all major online platforms. Thus during raids, the target premises and suspects will feel the impact, and it will spread across the retail outlets and online sales. Our experience has shown that seizing the CF items from the suspects is a large detriment to them financially, which hurts them the most and lessens the brand risks for the brand owners.

Raiding a retail outlet might result in seizing minimum quantities, but the disruption factor is a crucial component of curbing the sales of CF products. Our experience over the past five years has shown that the main counterfeit suspects view the most raided brands as high risk to have in inventory. To avoid the risk of losing funds and business, the suspect will most likely look at less risky brands. And after multiple raids, certain brands are now less visible and available in the marketplace. It is a continual chase with some eventual positive results.

Why are the Philippines or Malaysia attractive to counterfeiters?

The Philippines and other third world countries are attractive to counterfeiters to establish niche segments of their businesses. For example, the goal is to become involved by providing the CF brand logos to apply to apparel items. Unfortunately, CF logos or other raw materials are sold through online platforms servicing a wide range of the CF community. Locally, the CF apparel items are assembled and then sold. When conducting a raid of a production site, the amount of finished products may be relatively small volumes as many operate on a just-in-time inventory/supply chain process, but I believe that we should not only focus on finished CF items. Seizures of CF raw materials which are arriving from China and utilized for the final assembly can be critical to the interruption of the manufacturing process and the end user sales. As already mentioned before, the financial impact may also be significant when raiding a distribution warehouse and/or a manufacturing site that has impact downstream to all who obtained CF stocks from that target.

Where do most counterfeit products come from?

Experience has shown for years that China is the primary source of the finished CF footwear. Therefore, we are always researching the best means and methods for gathering the intelligence useful to slow down the CF goods into the marketplace. We have to remain flexible and ready to adapt and change with the new processes that the CF suspects are employing. This is the key to being moderately successful with curbing the amount of CF goods being sold to end users.
What can brands and specialist dealers do to defend themselves against counterfeits and adapt to these new counterfeitors’ operational modes?
Online sales, just as with the retail outlets, should be utilized as intelligence gathering opportunities to trace and locate the main warehousing networks, which will also provide the CF online sales packing centers and the associated retailers as viable take-down targets along with the warehousing. Combining actions from test buys, online research, surveillance, and source networks are now the more cost-effective means and methods for identifying viable warehousing raid targets.

If brand owners are interested in further developing their current online research, then provide this information before the site takedown (not all online sites would be viable to conduct additional research) to the various local investigators. This will allow for a more locally initial research review to determine if it could lead to a viable target for a physical raid on a storage, distribution and packing warehouse.

What is your advice to take down counterfeits cheaply?
Brand owners should continue their online take downs as much possible as this is a less expensive method to continue the constant chase of the suspects. Disruption is key.

And brand owners can conduct less expensive enforcement operations by raiding a larger number of retailers at once (no warehousing) in the key CF retailing areas. The project should include several brands owners as participants in one overall large project. This will lessen the costs per raid target per brand owner. As long as brand owners can accept that the number of CF items seized will be small, but the disruption factor and sending the right message that specific brands are serious and high risk to sell. These types of enforcement operations can be conducted with the cost spread out across several brand owners and achieve good marketplace interruption goals with minimum costs for each brand.

Did you know?
JOIN THE WFSGI COALITION TO FIGHT AGAINST COUNTERFEITING ON THE GROUND
As counterfeiters rarely target one brand, anti-counterfeiting feels like an area in which affected industries could join forces. Since 2019, the WFSGI has built an on-the-ground coalition open to WFSGI members and/or any other associated industries such as the fashion sector, facing similar challenges with the intention to organize joint raids in order:
- to share costs of enforcements
- to put suspects completely out of business by seizing bigger volume
- and send a strong signal to the authorities that the industries were acting together.

So far, joint raids have been successfully conducted in Southeast Asia, with the support of trusted investigators recommended by asics and Under Armour, targeting multiple shopping malls, several warehouses, and involving many fashion and sport brands.

Interested in getting more information and/or in joining us?
Legal Committee
2022 Activity Report

Mandate
The Legal Committee facilitates and enhances the interaction, information exchange and co-operation between the WFSGI members on the latest international legal developments within the Sporting Goods Industry. This neutral platform offers the advantage of enabling to development of concrete and tangible solutions to address emerging legal challenges.

Summary
Even during this in many respects very challenging year of 2022, the activities of the LC could be broadened and sharpened in their scope and the LC membership increased. After the long Covid 19-related break, a full day physical LC meeting was held in Munich in the context of the ISPO trade show on November 30, 2022.

In general, it is noteworthy to mention that the word ‘digital’ was THE buzz word, which determined or at least significantly influenced most of the activities the LC had been dealing with in 2022.

On June 15, 2022, a virtual web meeting took place with inhouse legal professionals and experts representing the traditional sporting goods industry. A short update was provided on the status of the ongoing LC projects, further the pros and cons for new possible projects were intensively discussed and vibrant current topics such as the increasing number of copyright claims of third parties of an alleged infringement of music and image rights by sports brands, or the new challenges created by the substantially changed global geopolitical environment were discussed.

Update on key activities
WFSGI Digitization of Product Information WG
The working group received an equally a high degree of positive attention at WFSGI member level. Several virtual web conferences were held in 2022. During the most recent one (October 18, 2022) discussions continued as to whether and to which extent the WFSGI should be represented at the International Organization for Standardization (ISO)’s level. One of the co-chairs of the WG, Decathlon, shared valuable up-to-date information about its lobbying activities and new initiatives at EU regulatory level, which might be possibly door openers for allowing digital labelling in certain specific fields such as textile and PPE. As a very concrete work product, the WG is in the final stage of finalizing a position paper to be followed by an executive summary. Such statements are intended to be used for lobbying activities with the support of national and regional sporting goods associations. Based upon requests from various WFSGI members it is explored whether either under the umbrella of the existing working group or more likely by forming an additional one, the areas of meta-verse,