

Tips to Avoid and Combat Counterfeiting and Piracy

China may well have a bad name for copying products and ignoring Intellectual Property rights but is it fair or realistic to blame this solely on China and how can you protect yourself.

Sourcing copies of competitors products is easily perpetrated by companies from the West who find Chinese factories a willing collaborator. Manufacturers in the West would naturally be very wary of such blatant abuse of IP rights and the risk of legal action, Chinese factories on the other hand may be unaware of the infringement.

I believe that the real situation is a very mixed one, often Chinese companies do not have the means to sell copied products directly in the West and rely on Western buyers to request the products and to distribute them. Copying of well known brands is more obvious to recognise since famous branded products will not be made legally available from “back street” vendors in China. Self motivated Chinese producers eagerly fulfill this role and offer these often very substandard products to foreign buyers.

In Europe legal remedies can be sought to protect patents for innovative design, copyright, registered and unregistered designs, registered trade marks and protection from passing off. Whilst similar laws exist in China the process of law is far more challenging.

Most IP rights have a limited life (eg 20 years for patents, 25 years for registered community designs etc) but if in that time you find someone is infringing (using you IP without permission) you can enforce the right by applying to a Court for an infringement action. If successful, you

can obtain an “injunction” against the infringer which means they will have to stop. You may also get compensation – this could be in the form of damages according to any detriment that has been caused to your business or it may be possible to have profits made by the infringer paid over to you.

These claims are inevitably very complicated and it is always advisable to take legal advice. Even though there may be initial costs for you it may well mean a more successful outcome.

Also the Enforcement Directive of the EU requires all Member States to apply effective, dissuasive and proportionate remedies and penalties against those engaged in counterfeiting and piracy. In 2007, EU Customs seized more than 79 million counterfeit and pirated goods and handled more anti-counterfeiting cases than ever before. A total of more than 43,000 cases were dealt with in 2007, up nearly 17% from 2006. These figures reflect the fact that seizures involving smaller quantities of counterfeit and pirated goods have increased.

The European Commission Customs and Taxation Union plays a major role in prevention at EU borders. There are reporting forms to alert customs authorities. The aim is to provide a mechanism to notify the relevant customs administrations swiftly, in a clear structured way about specific information or general trends concerning suspected counterfeit goods.

About the Author

David Edis-Bates, a chartered communications engineer has spent more than 30 years in export related activities around the world, lived in Taiwan for 4 years in the 70's and in China for the past 4 years. Currently CEO Edis Trading (HK) Limited <http://www.edistrading.hk>

[More.... Tips and Articles from Edis Trading](#)