A Joint Knowledge Building Seminar on Counterfeiting of Cosmetics, Perfumes and Luxury Goods

OHIM, Europol and Eurojust

Held at Office of Harmonization in the Internal Market (OHIM), Alicante
3rd, 4th and 5th June 2015
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Executive Summary

A Joint Knowledge Building Seminar on Counterfeiting of Cosmetics, Perfumes and Luxury Goods was held at Office of Harmonization in the Internal Market (OHIM) in Alicante on 3rd, 4th and 5th June 2015. The seminar was jointly organised by OHIM, through the European Observatory on Infringements of Intellectual Property Rights, Europol and Eurojust, and formed the sixth in a series of enforcement events which focus on industry sectors. Past knowledge building conferences have centred on infringements of intellectual property (IP) on the internet, counterfeit of household products and automotive parts, counterfeit pesticides, and fake pharmaceutical products.

Experienced officers from national Customs and police, public prosecutors, the Observatory, Europol, Eurojust, OLAF, WCO, WIPO, the US Department of Homeland Security (ICE), and associations representing private stakeholders including INTA and ANDEMA participated in the three day event.

The aim of the seminar was to bring together participants in order to discuss the increasingly complex issues which surround intellectual property crime; to focus on the methods of manufacture, distribution and sale used by organised criminal networks (OCG) – in particular, within the cosmetics and luxury goods supply chain; to share case studies and best practice; and to identify tools and models to enable effective enforcement collaboration in the future. The seminar provided opportunities for networking and the establishment of relationships between authorities and industry, and highlighted new areas of cooperation in the fight against counterfeiting. Four workshops divided into two focal points - cosmetics and perfumes, and luxury goods – enabled participants to concentrate on individual sectors and to suggest and distil practical steps forward.

Sales of counterfeit cosmetics, perfumes and other personal care items throughout the EU deprive legitimate businesses of income, governments of tax revenue, legitimate workers of their jobs – and the products, by nature, pose significant and widespread risks to the health and safety of all ages of consumers. In March, the Observatory published "The Economic Cost of IPR Infringement in the Cosmetics and Personal Care Sector: Report of a Pilot Study" which aims to illustrate the economic impact of counterfeiting in the cosmetics sector. The study estimates that in this sector, an average of 7.8% of direct sales are lost annually due to counterfeiting, alongside EUR 4.7 billion in revenue and over 50,000 jobs. "A Joint Framework Initiative to Reduce Infringements in Europe – Focus on the Cosmetics Sector" conducted by OHIM, UK IPO and ACPO aims to map the mechanics of infringement by identifying enablers and intermediaries in the legal supply chain (including ISPs, domain registries, accountants, insurers and storage facility owners) which are targeted by criminals, and the models used. It is planned that the initial report which will focus on the cosmetics industry – whose supply chain is well regulated – will identify action points for enforcement, and areas of potential public and private cooperation. These topics were discussed in detail during the workshops, alongside suggestions regarding facilitators which could be approached.
Keynote speeches by OHIM, Europol and Eurojust emphasised the need to establish and apply multiagency and multidisciplinary cooperation at strategic, formal and bilateral levels, owing to the transnational nature of IP crime, the many jurisdictions involved in the flow of money, and the volatile nature of criminal networks subsequent to detection. US Immigration and Customs Enforcement (ICE) reiterated the fact that IP infringement is now the preferred method and predicate offence to generate illicit money by criminal networks across the globe. High financial returns and low legal sanctions attract collaborative involvement by organised crime groups from Asia and Europe. The money generated is used to fund other organised crime including drug trafficking, human trafficking, child exploitation, tax fraud, cybercrime and identity theft.

The Chair of the IP Crime Group UK underlined the tangible risks which counterfeit goods pose to the public on a global scale, and the success of applying the “follow the money” approach in order to destabilise organised criminal networks through the confiscation of illicit money and assets.

In line with Europol and OHIM’s “2015 Situation Report on Counterfeiting in the European Union”, presentations from enforcement and the private sector emphasised the divergence from traditional Asian manufacture of counterfeit products, to domestic production within the EU in order to lower the risk of detection by border control and to lower transport costs. The Guardia di Finanza explained the homogenous relationships between European and Chinese criminal networks which maximise traditional logistics, routes and expertise used in drug trafficking and money laundering within Europe. Hidden manufacturing sites, the use of illegal labour, fake licensing agreements and warranty papers are integral to IP crime.

Case studies revealed the evolving criminal modus operandi which favours mixing fake products with bona fide goods; using “front companies” and self-storage units; and shipping split loads of component parts, assembly manuals, labels and packaging material from Chinese to European ports, in order to avoid detection.

The evolving threat posed by the exploitation of lesser controls within Free Trade Zones (FTZ), particularly with proximity to the EU, was discussed during the workshops. It was shown that unfinished commodities are transported into FTZ where they are packaged, labelled and distributed as genuine products throughout Europe.

General feedback from the workshops expressed the need for improved collaboration with right holders, who are, at present, reluctant to share commercial data or to be associated with incidences of counterfeiting. It was suggested that a pan-sectoral approach would be the best way forward in order to promote unified engagement. Additionally, public tolerance of counterfeit products and a general lack of specialisation and knowledge concerning the gravity of IP crime amongst the police, prosecutors and the judiciary were highlighted as key issues to address with urgency. Presentations from national authorities revealed that counterfeiting is viewed as a victimless crime by the public, and it is often not prioritised at a political level.

Effective civil and criminal remedies were discussed as roundtable topics during the seminar and it was noted that there is no single solution to the problem of IP crime; instead, a holistic approach using a range of enforcement best practices, resources, technical tools, intelligence, and effective intellectual property rights (IPR) and financial legislation should be applied. All participants agreed that the cooperation and synergies between OCGs and on which they depend in order to manufacture, market, sell and transport fake products with the European Union must be mirrored by equally collaborative, comprehensive and effective efforts by EU and global enforcement organisations, with support from the private sector and the public.
Opening Messages

The Director of the Observatory on Infringements of Intellectual Property Rights welcomed all participants to the seminar, held in cooperation with Europol and Eurojust, and which formed the sixth in a series of knowledge building enforcement events to focus on specific industry sectors. He welcomed representatives from across the Member States, colleagues from OLAF, WIPO, WCO, US Department of Homeland Security (DHS), and associations representing private stakeholders.

The seminar focused on the cosmetics and personal care industry, which is the basis of a recent study by the Observatory in order to quantify infringement suffered by this sector.

The Director underlined the negative economic impact of counterfeiting on European industry and employment. The OHIM-Europol “2015 Situation Report on Counterfeiting in the European Union” reveals the increasing trend in domestic production within Europe in addition to the traditional production and transportation of fake products from China, the Far East, Turkey and India into the EU.

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3 - “The Economic Cost of IPR Infringement in the Cosmetics and Personal Care Sector”

Europol highlighted the importance of cooperation across Member State law enforcement agencies (LEAs) and judicial bodies in order to tackle intellectual property (IP) crime by all competent and synergetic authorities. They stressed the necessity to forge closer cooperation between enforcement and the private sector in order to effectively combat organised criminal activity. The European Council has prioritised the production and distribution of counterfeit goods violating health, safety and food regulations, and substandard goods under its 2014–2017 Operational Action Plans. The agreement signed between Europol and OHIM has further strengthened collaboration between the two agencies and will allow Europol more capacity in operations, with a focus on IP and internet crime.

Eurojust welcomed the establishment of multidisciplinary cooperation between all authorities at strategic, formal and bilateral levels in order to tackle complex and cross-jurisdictional IPR infringement cases.

In a keynote speech, the Chair of the IP Crime Group UK expressed his support for the seminar as a relevant platform with which to bring IP crime and the response of enforcement into focus, and to create a common dialogue concerning a matter which is common to all countries. He highlighted the importance of building an enforcement network with different strengths and competencies and a network of contacts with whom to share best practice and intelligence.

He asserted that criminals will morph their business as quickly as enforcement understands and detects them – and it is for this reason that all agencies must work together on a bilateral and formal level in future. IP crime has a global reach, with direct links to other forms of criminal activity, including human trafficking, cybercrime, identity fraud and money laundering. The funds produced from counterfeiting activities are used to reinvest in associated criminal activity and are also used to fund terrorist activity. The dangers posed to the public by counterfeit products and the criminal networks which produce, transport and sell them are a main focus of the UK National Crime Agency (NCA). The implementation of the “follow the money” approach and application of the Proceeds of Crime Act (POCA) which allows for the seizure of assets and funds generated through illegal activities has proven a successful tool against IP crime in the UK.

The Deputy Assistant Director of the US IPR Center thanked OHIM, Europol and Eurojust for organising the seminar in order to amalgamate international efforts against IP crime. The IPR Center was established because no single agency could or can tackle the problem individually. The organisation shares best practices and its central goal is to provide a main centre of coordination against IP crime. The IPR Center sits under the competence of Homeland Security which investigates trade fraud and operates with 46 countries in cooperation with 22 other agencies. IP crime will remain a key priority in the US because it threatens public safety and funds international organised crime. It is currently the main and preferred method of generating funds by organised criminal networks across the globe; it involves actors in many different jurisdictions and its profits are dispersed globally. In general, sanctions against IP crime are low and yet the financial returns are high: this makes IP crime an attractive activity for organised criminal networks (OCGs). In addition, IP crime is difficult to detect owing to the clandestine methods of production, the methods of transport used, and the anonymity of internet sales.
The proactive approach of the IPR Center has resulted in an 85% increase in arrests, 167% increase in convictions and 42% increase in agent hours dedicated to IP tackling crime. The Deputy Assistant Director called participants to endeavour to strengthen relationships with other agencies and to advance in the methods of fighting criminal networks by increasing collaboration with the private sector. Organised crime groups are sophisticated, well-connected and well-funded networks. The threat they pose to citizens is constantly evolving and it is vital to educate consumers on the potential health risks of counterfeit personal care goods.
SESSION ONE
The Cosmetics Challenge

OHIM Study on the Quantification of Infringements related to the Cosmetics Sector

An update on the sectorial study of the perfumes and toilet preparations sector was given. This study attempts to quantify the amount of damage caused by counterfeiting to the sector and to the wider European economy.

The study focuses on the reduced sales of legitimate businesses, reduced tax revenue and social security contributions and lower employment levels.

Annual European sales in the perfumes and toilet preparations sector amount to EUR 60 billion. Using data from 20 Member States over a period of five years, a model is built which can also be applied to the eight remaining Member States. Based on this, it is estimated that the direct total counterfeiting effect in Europe on this sector is 7.8% of consumption, that is, EUR 4.7 billion of lost sales, and 51,561 lost jobs. Including the knock-on effects on other sectors, the total direct and indirect effects of counterfeiting of cosmetics is estimated at EUR 9.5 billion in lost sales, 78,959 lost jobs and EUR 1.7 billion loss of total government revenue.
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**A Joint Framework Initiative to Reduce Infringements in Europe – A focus on the Cosmetics Sector – OHIM, UK IPO and ACPO**

The OHIM, UK IPO and ACPO (Association of Chief Police Officers) explained their draft report which aims to illustrate and explore the mechanics of infringement, weaknesses in the legal supply chain which are targeted by criminals, and the models used by organised crime groups.

Within the legal supply chain, the cosmetics and personal care sector is well-regulated, and uses licenced manufacturers within and outside the EU, certified and approved distribution channels and in general, heavily regulated, contracted and trusted shippers within and outside the EU. It is almost impossible to infiltrate the legal supply chain at transportation level. Medium and wholesale dealers purchase bulk consignments of products and pass the goods into the legal supply chain. It is easier to infiltrate at the level of medium wholesalers and dealers.

Within the illegal supply chain, there is a tendency towards domestic production within the EU, which reduces the risk of detection and transport costs. Online sales result in the possibility of direct sales between illegal manufacturers and the consumer. Enablers include internet service providers (ISPs), domain registries, shipping companies, storage facilities including self-storage premises, accountants and insurers.

It is anticipated that the study will be able map the key intermediaries, facilitators and enablers used by IP infringers in the illegal supply chain compared to those used in the legal supply chain; to identify effective practices used to disrupt the actions of IP infringers; to strengthen knowledge building and other support activities for law enforcement, and to offer education for all sections of the supply chain. It is also planned to produce educational materials, identify potential public-private cooperation to establish and improve exchange of information, to support operational activities, and to identify possible actions to make the project and its approach sustainable and effective in the future. The aim of the study is to identify and distil the weak points in supply chains including overspill production and stages in the transportation sector, in order to define areas which are manipulated by OCGs within Europe.
Feedback from the floor concerning the illegal supply chain included Sweden’s observation that during a national case, the Swedish Supreme Court ruled that the infringer had previously worked within the industry he subsequently targeted, had technical knowledge in that sector, and the crime had been committed with intent to make commercial economic profit.

**Case Study on Fake Body Care Items – Belgian Economic Inspection IP Crime Team**

The Directorate General of Economic Inspection (DGEI) is a small organisation with different priorities to the police and Customs. It has support of the Service for Intellectual Property, consolidated expertise in counterfeit, and has competence to act ex officio.

The DGEI works alongside the Ministry for Economic Affairs, Ministry for Justice, Office of the Public Prosecutors, Federal Agency for Food Safety, Federal Agency for Medicines, Customs and Federal Police. The department carries out investigations into online crime and investigations in local markets, based on surveillance. It has the competence to apply fines - and if the goods are not relinquished, the case will progress to court. However, a main disadvantage of investigations is the lack of liaison with rights holders regarding developments in the investigation.

A case study was presented which underlined the cross-border nature of IP infringements and the methods used including trading through bankrupt companies and the use of logistics chains stretching across multiple Member States.

DGEI collaborates with OLAF and Europol when the intelligence gathered concerns other Member States.

**A Joint Operation against Counterfeit Shampoo – OLAF and Spanish Customs**

The European Anti-Fraud Office (OLAF) was created in 1999 to dismantle international fraud networks, amongst other things, involved in the traffic of counterfeit and pirated goods at external borders of the EU. OLAF is empowered to carry out administrative investigations in Europe in accordance with Regulation 515/97, concerning Customs actions against goods suspected of infringing IPR. Their competencies include onsite checks, investigative missions in third countries (OLAF has signed over 100 bilateral agreements with third countries including China), and support to law enforcement and judicial authorities in joint investigative actions.
The case study presented illustrated the modus operandi of a criminal organisation based in the south of Spain; in past years, it had previously imported counterfeit goods from UAE, but more recently imported goods from China. The components and labels were transported separately, with invoices from the UK, work orders from the United Arab Emirates (UAE) and payments to Cyprus. The products were destined for Eastern Europe.

Comments from the floor highlighted the increasing trend for bona fide goods and fake goods to be mixed before point of sale, rendering them difficult to track and trace. WIPO confirmed that the mixing of real and fake products also thwarts conviction at court level. Sweden added that this method had been used by counterfeiters in the SFK case.

WCO and Europol emphasised the increasing problem of criminal groups importing raw materials including machinery parts, mainly from Asia, which are assembled within the EU with the help of manuals, in order to avoid Customs control.

OLAF is in communication with the Chinese authorities and facilitates the secure exchange of information and the transfer of investigation files between Chinese Customs and EU Customs through OLAF’s MAB mail system.
The presentation underlined the fact that counterfeiting has become a part of modern life including fake and substandard clothing, luxury foodstuffs, cigars and vintage wines. Notably, the established logistics routes used to transport and sell fakes are already in place; the activities which exist between counterfeiting and organised crime networks including drug trafficking, distribution of fake passports, guns, and tax evasion are integral.

The importance of collaboration with right holders was emphasised, especially with regard to brand owners and internet platforms who could work together in order to tackle the problem. It was stressed that organised crime groups are increasingly buying access to technical skills of the hacking community and there is a heightened convergence in criminal activity involving drugs and counterfeit.
However, the potential success of public-private cooperation was underlined, especially with regard to tackling internet IP crime and in strengthening the legal supply chain against infiltration. Additionally, right holders possess authentication technology in order to track and trace products, thus avoiding the need to use a product expert in order to verify products on an individual basis.

Notably, the need to address the demand for counterfeits through public awareness campaigns is pressing – it was noted that the majority of those who buy fakes are unaware of counterfeiting’s shadow industry which harnesses child labour and facilitates human trafficking.

**Anti-Counterfeiting Challenges and Strategies – PUIG**

PUIG is a third generation perfume company, which is over 100 years old and employs 4200 people. It has an annual turnover of EUR 1500 million and owns various famous brands, licences and celebrity fragrances. Certain goods, including handbags, are sold only in owned and franchised stores, and unique tracking codes are used to control distribution, but PUIG products are affected by high levels of counterfeiting.

The company’s legal department carries out seizure actions and pre-litigation actions including issuing warning letters (which have proved successful), civil litigation, e-monitoring and enforcement against registrations. Notably, there have been high volumes of seizures of perfumes in the Port of Hamburg in Germany, and in Spain and the UK. In terms of online counterfeits, the department’s aim is to discourage trade by reducing the visibility of adverts, and the number of websites advertising and selling fakes.
The presentation highlighted the increasing trend of mixed consignments consisting of fakes and bona fide products, and in separate shipments of components including pumps and outer packaging in order to avoid detection and seizure.

**Operation Agracejo/Loft – Counterfeit Champagne – UK Government Agency Intelligence Network (GAIN)**

GAIN is a group of around 200 public and private sector agencies including the UK IPO. GAIN’s primary role is to act as a channel for the effective sharing of intelligence, within legislative boundaries, across a large network of partners including all police forces in England and Wales. It also includes many enforcement agencies including the National Trading Standards Board and Gaming Licencing Authority. GAIN adopts a multi-agency approach and provides a mechanism for different national, regional and local agencies to work together in a more formal relationship; exchanging information within legislative constraints, jointly participating in enforcement action, training and sharing resources designed to reduce the threat and harm to communities associated to serious and organised crime.

The case study presented highlighted the success of private and public sector collaboration, and multiagency collaboration; intelligence concerning counterfeit champagne came originally from the private sector and the resulting raid was carried out by GAIN as a consequence of communication from Italian and Spanish police, and with support from Europol and the UK IPO. A supplier based in south London was put under surveillance. Europol was able to feed intelligence to GAIN because the fake champagne bottles had also been found in Spain and Italy. Italian police had identified a logistics company used to transport the products into the UK, managed by an Italian organised crime group and with links to terrorism and drug trafficking.

The Proceeds of Crime Act (POCA) was used to seize the cash found, and the destruction of fake goods including machinery was ordered. Importantly, information on importation routes across Europe used by the OCG was collated by police.
Round Table Discussion

The internet is widely used by criminals as the main distribution system for marketing and selling counterfeit products. Dr Mostert, member of the Observatory’s Advisory Board underlined the efficacy of blocking orders and seizing domain names. Reference was made to the anti-cybersquatting legislation in the US which allows a rapid shut down of sites which house illegal content or activity. Notice and take down procedures via the civil route are quite effective but there is no current framework or uniform global approach within which enforcement is able to act.

The UK IPO supported the idea of a framework and stated that a high proportion of seized counterfeit products are ordered via the internet and transported in shipments. They suggested a sustained approach of removing national domains, within a programme of removal which could be rolled out across Europe. The Observatory asked the floor whether it could be feasible to develop systems – followed voluntarily or via enforcement – which would allow the identification and removal of infringing national sites (for example, .uk) used by online consumers.

The Chair of the IP Crime Group UK referred to the study presented by the Observatory and suggested that another main focal area of the supply chain should be shipments of counterfeit goods and unassembled counterfeit parts, and all the enablers which sit in this area of logistics.

The Observatory underlined that, of the total recorded 296,349 EU border seizures between 2011 and 2013 reported by DG TAXUD – 111,463 concerned luxury brands. China’s impact in the luxury goods sector is potentially greater than previously estimated – 76% of cases during the same period involved items directly shipped from China. China is also believed to ship via Hong Kong, UAE and Turkey. During the same period, 80% of Turkey’s export seizures were luxury brand goods, and almost all of Bulgaria’s seizures are goods exported from Turkey. The UK is a consistent target and seizures during this period amounted to EUR 185,062,859, with labels and products shipped separately in order to avoid detection and conviction.
SESSION THREE
Case experiences – Exchange of Views/ Identification of Main Hindrances

**Workshops**

Participants were divided into four simultaneous morning workshops; two of which focused on cosmetics/perfumes and two of which focused on luxury goods. The bullet points gathered from the discussions are presented in an annex to this document.
SESSION FOUR
EU Agencies and International Associations of Right Holders – Tools and Assistance

Presentation of the Observatory’s Anti-Counterfeiting Intelligence Support Tool (ACIST) and Enforcement Database (EDB)

Following a proposal by the Commission, backed by the European Parliament and the Council, the Observatory was fully entrusted to OHIM on 5th June 2012, with focus on all IP rights. One of the Observatory’s tasks is the creation and implementation of tools to fight IP infringement.

The Enforcement Database bridges rights holders’ and enforcers’ communication needs. The online tool was developed and funded by the OHIM through the Cooperation Fund and was transferred to the EU Observatory in June 2013. It is a secure, web-based platform for right holders, Customs and police which is built upon TMview and Designview. It was designed to help enforcement to distinguish between fake and real products. Additionally, right holders are able to generate a pre-filled AFA (Application for Action) in their preferred language, and select which authorities can view their details. Right holders can be informed about suspicious cases by authorities and right holders are able to create alerts for enforcement authorities in all 23 languages of the EU. Furthermore, enforcers can easily search the validity of an IP right: information is available in each national language and there are contact details of the relevant person in each Member State.
The EDB is integrated into the secure DG TAXUD network (CCN). Based on feedback from users, new functionalities and improvements will be implemented, including compatibility with mobiles and tablets. In July 2015, the EDB will be integrated with COPIS, with IPM (WCO) and with Europol’s system by September 2015.

Developed by the OHIM, ACIST was designed with the strategic aim to combat counterfeiting across 28 Member States by collating and analysing harmonised data. This benefits enforcement authorities, policy makers via the production of independent data - and right holders, as a strategic business development tool.

Data on seizures can be uploaded via single and multiple uploads and is subsequently validated before publication. ACIST generates reports which present the evolution of seizures in time; comparison of seizures between Member States; proportion of the different categories of goods, and how the IPR in question was infringed.

The tool was first released in 2013 and enjoys quarterly upgrades. In future, the tool might be opened to third countries. There is a disparity amongst the Member States in the collation and format of seizure data which has caused some delays. Reports have been produced via the data collected in order to better understand how resources could be deployed at national level.

**Presentation on Europol’s Operations and Platform for Experts (EPE)**

Europol gave a presentation about its structure, services and aims. The organisation explained that it came to existence as the European law enforcement agency in 2010, “to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime”. Europol facilitates over 18,000 cross-border investigations each year and works closely with EU agencies and other non-EU States, and via engagement with the private sector. The organisation carries out strategic work and criminal analysis using databases and cross-checks by their 100 analysts; Europol also provides swift operational support in terms of providing mobile offices, and financial and forensic support.

The Operations Department includes experts in money laundering and financial analysis, and offers help in tracing assets through a network of asset recovery. The IP crime team – Focal Point Copy – sits within the Economic Crime and European Counterfeiting Group, and was established in 2008. The team of six, (including two analysts) focuses on commodity counterfeiting and piracy.

The EU SOCTA Report 2013 identifies common threats to the EU and prioritises the illicit trade of substandard goods, and fake goods which violate health and safety regulations, including dangerous pharmaceutical goods.
The EU Policy Cycle centres on SOCTA, strategic plans and operational actions – and with evaluation which feeds into subsequent SOCTA reports. The operational actions involve close cooperation with synergetic international, EU and national agencies including Interpol, CEPOL, OLAF, Carabinieri and Guardia di Finanza, in addition to private sector collaboration. EMPACT priorities (2014 to 2017) will result in more resources being given to the fight against counterfeit, substandard and illegally manufactured pharmaceutical goods and pesticides produced by organised crime groups.

Major Europol initiatives have recently focused on the seizure of dangerous foodstuffs and pesticides, and internet crime. The presentation underlined successes based on the commitment and close working relationships with partner agencies including OHIM, US Immigration and Customs Enforcement (ICE), and with Intellectual Property offices including the UK IPO Intelligence Hub.

The Europol Platform for Experts (EPE) is a secure online platform for law enforcement officers and invited persons working in IP crime on a daily basis.

The platform is organised in different sections dedicated to different crime areas and is open to specific communities of authorised users. It offers an exchange of non-operational information in order to support investigative work; members are able to upload information on IP training events and have access to a shared contacts database.

Europol has launched a call for proposals with EUR 7 million funding from the EU Internal Security Strategy for initiatives regarding several crime areas including counterfeiting.

**Presentation on Eurojust’s Support to Member States Operations**

Eurojust was established as a European agency in 2002 as a permanent body of judicial cooperation with the aim to deal more efficiently with serious cross-border crime which involves two or more Member States. Eurojust is composed of one national member from each Member State, usually from the prosecution service, with knowledge of mutual assistance. The twenty eight national members are supported by around 300 administrative staff. The main areas of work cover human trafficking, terrorism, drug trafficking, illegal immigrant smuggling, and counterfeit.

Eurojust’s aim is to improve and quicken the coordination between competent national authorities and facilitate contacts between the Member States, resolve conflict of jurisdiction and offer tangible solutions. Their competence reaches to admissibility of evidence, how evidence can be used successfully in cross-border cases, and access to information regarding judgments carried out in another State.
Coordination meetings of the national authorities are an integral part of the function of Eurojust. This has resulted in simultaneous operations across Member States and the issuance of European Arrest Warrants. The Eurojust College or a member of the college is able to request the authorities of a Member State to investigate and prosecute specific acts, coordinate an investigation and accept that one Member State may be in a better position to prosecute specialised acts. Eurojust also sets up Joint Investigation Teams (JITs) and drafts JIT agreements. The JITs facilitate investigations without the need for mutual assistance requests. Eurojust also offers funding for JITs involving travel and interpretation costs.

Eurojust manages seminars and meetings on specific topics including drug trafficking, human trafficking and VAT fraud. Additionally, Eurojust analysis of national judgments on specific topics can be used by members within court cases.

Private sector associations presented on the increasing trend in counterfeiting of luxury and personal care goods, and its impact on their members and the wider European economy and workforce.

They illustrated the work they carry out to support member networks - including training events on sector-specific issues, the sharing of best practice, and awareness campaigns concerning the dangers of buying counterfeit products. Some of their work centres on campaigns with the younger generation to educate them about the disadvantages of pirated goods and content, with support from brand owners.

The associations underlined the progress which can be made through collaborative initiatives between synergetic industry sectors.
SESSION FIVE
Public Private
Cooperation and
Perspectives from
Abroad

Operation “Blue Balsam” –
Europol

The presentation underlined the increasing links between the production of counterfeit items by serious and organised, multijurisdictional networks, and the scope of production of body care products which pose a threat to public health and safety within the EU. In this case, intelligence from the right holder - who had started a private investigation - traced the source to Eastern European factories and identified distribution routes inside and outside the European Union. Subsequently, they contacted Europol, which is able to receive information directly from the right holder. This intelligence enabled Europol to facilitate rapid meetings and a subsequent investigation which focused on the transport company used to distribute the illicit goods.

The case underlined the methods harnessed by organised criminal networks, including the use of legitimate factories and storage facilities scattered across Poland, in order to act as a cover for illicit production and distribution. Additionally, the fake products were mixed with bona fide goods before distribution. Video surveillance revealed that the...
vehicles were regularly changed, as were the transport routes. The illicit workers were secretly housed within a hotel owned by the head of the criminal network. In short, the logistics and knowledge of the criminals involved had been derived from other serious organised criminal activities. The case also revealed that criminal groups which were previously involved in higher risk activities including cigarette and drug smuggling are moving into the lower risk area of counterfeit production and sale – and using domestic production sites.

The involvement of Europol enabled a comprehensive joint action between Europol and Polish police officers, alongside the rights holder. The success of the public-private partnership was underlined owing to a detailed financial evaluation of losses made by the right holder which allowed an estimation of the assets which were ultimately seized by enforcement officers. The presentation provided information to participants from other Member States who have encountered similar cases of personal care product counterfeit, which have the potential to be linked to the same or synergetic criminal gangs.

Operation "Clean" – Czech Customs and Procter and Gamble

Procter Gamble gave an overview of their company, whose annual turnover is USD 85 billion. Their products cover global health and wellbeing products, household care and grooming goods.

The presentation highlighted the fact that consumers do not buy counterfeit goods including baby care products, shampoo and razors, intentionally. Counterfeit personal care products pose serious health and safety issues by their very nature and production, owing to a lack of quality standards; they also undermine consumer confidence in brand names. Traditionally, counterfeits were made in China but increasingly, many fake Procter and Gamble products are made within the European Union, in underground factories.

The dedicated brand protection team works across Europe, US and Africa. The brand protection team’s major strategy focuses on attacking and frustrating the supply chain, on influencing and enabling third parties, suppliers, intermediaries and government, and ensuring that is it difficult for consumers to find fakes online. Other intermediaries including waste management companies, packaging and printing companies, whose activities, the company stresses, should be focused on.

The presentation underlined the role that the private sector is able to play in facilitating cooperation with European law enforcement agencies (LEAs), which is a mutually beneficial relationship. Sharing internal knowledge with, delivering training on, and the provision of forensic intelligence concerning Procter and Gamble products to Customs and LEAs is vital. The education of law enforcement and enhancement of product expertise held by LEAs results in enabling seizures and the closure of production sites of counterfeits. The case studies highlighted the modus operandi of criminal networks, which imported raw material (liquid
detergent) from outside the EU, using rented and quickly dismantled packaging facilities inside central Europe; the final products were transported for sale to northern Europe. The licences and paperwork associated with the products and facilities were fake. Procter and Gamble enabled further investigation by Czech Customs which revealed that increasingly, counterfeit products are made within factories selling own brands and subsequently transported by foreign distributors. Additionally, several cases were linked back to the same organised crime group, using the same production and distribution methods. In one case, the damages were in excess of EUR 4 million.

Operations led by the Guardia di Finanza in the Fight against Counterfeiting of Luxury Goods – Guardia di Finanza

Every day, the Guardia di Finanza removes over EUR 3 million of counterfeit goods and manages more than 1300 operations per month. Their aim is to confiscate counterfeit goods before they reach the market within the EU, and to trace back through the entire sales chain including storage areas and network distribution. Intelligence on each aspect of the logistics chain leads back to the main actors.

The presentation underlined the high profitability of counterfeiting in the face of lower financial investment and with lower risk than other lucrative criminal activity. Counterfeiting plays a dual role for OCGs; it is a significant source of funding for other crimes and also serves as a way to launder money made through associated criminal activity. There has been a gradual transition away from the payment of protection money in the Naples area, to high scale production and distribution of counterfeit goods. The international logistics structures used for other forms of historical trafficking are already in place. Fake products can be inserted into regular sales channels so consumers buy unknowingly, and mall owners are often pressurised by Mafia clans to receive high quality fakes.

The Italian Anti-Mafia Directorate underlined the links between the Chinese Triads and Camorra and noted that the Naples based organised crime group control every section of the counterfeiting supply chain. The groups use falsified shipping documents and send large movements of capital towards China via different entities linked to each other in order to facilitate payment and transport into the European Union - where the products are distributed via land borders. OCGs use front companies and split loads, false and incorrect
paperwork, and regularly change the routes used in order to avoid detection and mass seizure. However, many fake products are now made, assembled and sold within Italy and in Eastern Europe within hidden factories and secret shops, and with links to African and Far Eastern organised crime groups. Depending on the sector and quality of the goods, they are sold via the internet and also at street level.

The presentation underlined the methods used by criminals in order to avoid detection. Many of the workers labour under bad conditions in order to produce counterfeits of a high quality. Importantly, the loss of machinery and skilled workers has the potential to cripple an OCG organisation which produces counterfeit. Guardia di Finanza uses a combination of surveillance, interception of communications, inspections at Customs and via Tax Police Units, searches and seizure via undercover operations, and the support of Europol and OLAF in order to target OCGs proactively.

It was noted that money is transferred outside banks and via countries where there is no anti-money laundering legislation or where no regular bank transfer network exists, in order to hide the illegal flow of money and the actors involved.

Operation Quarz – a Case in the “Mercado de A Pedra” in Vigo, Spain – Spanish National Police and LVMH

The Cuerpo Nacional de Policía has competence in IP crimes, industrial property crimes and organised crime. The case study centred on Vigo’s Pedra market which operates under control of the municipal government. The many shops and warehouses within the market stock and sell high volumes of smuggled tobacco and counterfeit clothing goods.

Police worked closely alongside local trade associations, prosecutors and the private sector in order to plan and compile a strategic plan which focused on money laundering, smuggling and IP crime. Judicial proceedings did not lead to satisfactory results and there was little support from the local judiciary who did not appreciate the gravity of counterfeiting, on what appeared to be a local scale. Further investigations alongside Portuguese police officers led to wiretapping and surveillance which traced the flow of money outside Spain and resulted in the seizure of a large number of bank accounts and assets.

LVMH complemented the presentation by explaining that, for years, they had filed lawsuits against the actors involved, had deposited the infringing goods in a warehouse, and paid the necessary storage costs. The illegal activity had continued for over 10 years, with legal proceedings which failed to provide final judgments. The case showed the tangible results of private-public cooperation, and the need to educate the judiciary concerning the far reaching effects of the sale of counterfeit goods.
The presentation underlined the importance of establishing institutional, police and judicial cooperation in order to facilitate effective and rapid proceedings. Additionally, the role of consumer responsibility was highlighted; counterfeiting now touches the everyday lives of citizens. The challenge to enhance public awareness about the wider implications of counterfeiting was highlighted and the question was posed, how to overcome this highly discussed issue: in many areas, counterfeiting is tolerated and not viewed as a crime.

The Evolution of Online IP Theft Investigations - US IPR Center

Homeland Security Investigations (HSI) is a leading agency in the investigation of criminal IP violations involving the production, smuggling, and distribution of counterfeited and pirated products, and money laundering. Their goal is to disrupt the manufacturing, distribution and financing of criminal organisations. The internet enables manufacturers to sell infringing products across the world and offenders are hidden behind websites which appear to be legitimate. In recent years, the supply of infringing goods has shifted from the lower profit secondary market (within which consumers know they are buying counterfeit), to the primary market, within which consumers are deceived into believing that they are buying bona fide goods.

The IPR Center established and managed “Operation in our Sites” with focus on infringing pharmaceutical goods, movies and music, electronics and games, and health and safety products. The operation was a long process and involved website seizures via confiscation orders under criminal statutes which provided for in rem forfeiture. Two of the main aims were to dismantle the organisations and to seize the money and assets (including servers and hosting websites) generated through the illegal activity - and to educate the public regarding criminal schemes and threats. The networked criminal groups own tens of thousands of affiliated and layered websites and enjoy large advertising and subscription revenues. The floor noted that once infringing sites are blocked or seized, criminals are able to adapt very easily. Notably, the IPR Center reported that the criminals involved used only a few payment gateways within the many sites – on which they subsequently focused.

Eurojust commented on the low sentences ordered within Europe, in general. The IPR Center reported that this is also the case in the US, but – owing to the changes in legislation following counterfeited products which have infiltrated the defence supply chain - sentencing guidelines are now related to estimated
financial loss value. It was noted, however, that after the rejection of SOPA\(^7\) and PIPA, legislation concerning internet crime has not kept up with the technological developments on the internet which are manipulated by OCGs.

The IPR Center concluded their presentation and the event by reiterating the need for bilateral dialogue between the agencies and the need to work alongside each other in order to match the organised efforts of transnational criminal networks.

All participants were thanked for their involvement and for the sharing of case studies, best practices and their cooperation on behalf of OHIM, Europol and Eurojust.

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\(^7\) SOPA (Stop Online Piracy Act) and PIPA (Protect Intellectual Property Act) – both bills were rejected by the US Senate.
ANNEX

A Joint Knowledge Building Seminar on Counterfeiting of Cosmetics, Perfumes and Luxury Goods

OHIM, Europol and Eurojust
Workshops questions and outcomes

Workshops 1 and 2 – Cosmetics/Perfumes

1. Are the supply chain models broadly accurate? If not, how should they look?

2. What intervention points in the supply chain can we identify and what type of intervention would work best at each point (training/enforcement/cooperative measures etc.)?

3. What facilitators can we identify (shippers, landlords/self-storage etc.) that could be approached?

4. Are there any examples of existing supply chain strategies to enhance enforcement/knowledge building/cooperation?

- There are over 300 Free Trade Zones across the world, which create a unique opportunity for counterfeitors to amend and introduce forged documents and labels.

- The new Regulation which will be decided in July by the European Parliament will result in the obligation by shippers to communicate movement to OLAF which touches the EU; this information, given in a standard format, can be given to Customs.

- It was suggested that, after transparent dialogue, shipping lines would offer support following a legal letter sent to the client concerning the contents of the ship. This method removes liability from the shipping company. It was reported that shipping companies have expressed interest in working alongside Customs in this manner.

- The Police stated that the real problem is identifying counterfeit goods.

- There was discussion surrounding use of microchips on all products within the EU but discussions regarding how this would be regulated, and the possibility for infiltration by OCG. Reluctance on behalf of right holders was noted.

- Overwhelming agreement regarding public education and the need to raise awareness. Who pays for it? Right holders do not want their product linked with counterfeit – important to link to all sectors, not simply one sector.

- Issue of self-storage (SS) units in UK run as shops and hidden bases holding large quantities of counterfeit and dangerous goods. Could compliance with SS site owners – voluntary code of practice including certified security guards be rolled out across Europe? In the UK, the code provides intelligence and the SS owners are keen to work alongside enforcement in terms of self-regulation.

- How to strengthen legitimate supply chains – which would free up enforcement resources to concentrate on illegal supply chains? Discussion regarding supply chains – produced in China but assembled within Europe. Use of legal intermediaries – broadly follow same patterns – room for project development? These particular supply chains could be used to compare against those in the draft report by the Observatory.
• Focus on financial support of illegal supply chains - identify the movement of money – would reveal how networks operate at a higher level.

• Discussion around the impact of websites and adverts on websites – activity suggested regarding cooperation with the advertising industry – in particular, the money flow.

• Rights holders often have a high level of gathered intelligence regarding the counterfeiting of their products.

• Discussions on effective measures - penalties, cooperation and raising awareness – fine and seizure.

• Concerns were raised about fake products entering the legal supply chain, with regard to negative brand perception.

• Many consumers do not deliberately choose to buy counterfeits personal hygiene products. A distinction was made between two types of consumers: people who knowingly buy fake products and people who do not realise they are buying counterfeited items. Counterfeiting is reactive to consumers’ demands.

• Participants stressed the need to raise awareness among mid-level intermediaries, especially retailers and wholesalers who are unaware that they are buying counterfeited products. The same applies to transportation companies.

• Tracking and traceability within the supply chain were highlighted as key factors; participants confirmed the importance for each section to check the previous one in the supply chain, in order to ensure and guarantee the legitimacy of the product.

• The private sector representative indicated that sales personnel and distributors are constantly trained on the basics of brand protection, raising their awareness about counterfeited products.

• The US Government carried out acquisition training for procurement professionals in order to raise their awareness about counterfeited products. The training material is posted on the US Immigration and Customs Enforcement webpage for the general public, and is used as a tool to fight counterfeits.

• Participants suggested the establishment of a reporting method, such as a central telephone number, which Customs, retailers and customers can call if they have a suspicion or a question regarding a counterfeited product.

• Participants also suggested addressing the private sector to encourage companies to present detailed information to Customs, and to continually update information. It was suggested to involve the private sector more in general, and to encourage companies to make more use of specific tools offered to them by the Commission - such as specific forms that can be used to inform customs on updates regarding companies or audit processes.

• Participants suggested the inclusion of online advertisement agencies in the proposed study. It was suggested to contact advertising companies to ask for information regarding who benefits financially from the advertisements.

• Mid-level intermediaries were considered as very important in the chain, particularly logistics providers, shippers, warehouse providers, waste management companies and printing facilities. Participants agreed
that these companies do not always know if they are dealing with counterfeit products, and engaging with them would be useful. Awareness building, education and providing tools for communication were identified as necessary steps.

The system of internationally harmonised authorised economic operators was also discussed, in order to create a balance between facilitating trade and ensuring control. It is considered as a quality certification, granted after an audit process, shared between all the main participants in the supply chain and allowing them to have a reduced level of custom control. The concept, as it was explained, ensures higher responsibility for goods.

**Workshops 3 and 4 – Luxury Goods**

1. What are considered by enforcers as effective measures to counteract counterfeiting (practical case studies, examples of successful operations, particularly cross-border or cross-agency, to be shared with the audience)?

2. Is the current legislation up to date and is it really enforced at national level (national experience and constraints to be presented and shared)?

3. Is there any example of public-private partnerships that can be considered as effective to counteract counterfeiting (existing or new initiatives)?

4. What are the main practical obstacles (funding, exchange of information, lack of harmonised laws, etc.) faced by enforcers and what could be done to face such obstacles?

- London Trading Standards Authorities (LoTSA), supported by UK IPO identified that self-storage units were being increasingly connected to the supply chain of counterfeit goods. The increased prominence of such storage facilities and ease of rental makes them a prime resource for illegal traders and an area which required attention from Trading Standards.

- The resulting UK voluntary system of self-regulation by self-storage facility owners was held as an example of best practice with the potential to be rolled out across Europe. Historically, there was reluctance to cooperate but in later stages of the project, unit owners showed great interest in communicating with authorities and gathering advice. This resulted in increased awareness on behalf of business owners regarding laws in relation to counterfeit goods. The operation and its results were highlighted as an area with potential for mapping by OHIM and it was suggested that the matter could be discussed during the next Working Group meetings in September.

- There is a notable move by Asian counterfeiters towards manufacturing inside the EU - the domestic situation will become as challenging as trying to control external borders.

- In addition to the intermediaries which have been identified previously in supply chain models, (shipping companies, self-storage facility and warehouse owners, and transportation companies), participants suggested adding banks and electronic payment services, as intermediaries – they are exploited by criminal networks in order to cover up who is carrying out sales on behalf of third parties.

- Financing and management of criminal networks’ supply chains was focused on. An example from Procter and Gamble suggested that the goods were assembled and distributed domestically, within the EU. The logistics companies appear to operate at a high level.
• Sharing of intelligence is an issue. Bilateral cooperation does exist but there are no current mandatory obligations to share intelligence across agencies and borders.

• The need to share best practice – an effective menu of measures including the “follow the money” approach, seizure of assets, destruction of infringing goods, deterrent penalties and sanctions.

• Importance of raising awareness amongst the judiciary regarding the gravity of IP crime and the links OCG and associated criminal activity.

• Judicial proceedings are considered negatively in terms of publicity for right holders. Judicial procedures are expensive. Destruction is sometimes a more effective option.

• It is vital to improve cross-border cooperation between authorities in addition to that between Customs and police at a national level; in short, to improve communication at all levels and competencies. There is the need to share best practices regarding prosecutions and on topics such as money laundering. Need to move away from working in isolation, within each organisation.

• There should be a focus on raising awareness at national and European level amongst the public in order to reduce the demand for counterfeit goods.

• The need for an improved dialogue with the Chinese government and Far Eastern authorities was discussed.

• IPR is not prioritised in many States across the EU at political level, and not amongst the police and judiciary.

• National legislation is not always effective; there are different interpretations of legislation and the sanctions cannot always be enforced in cross-jurisdictional cases.

• It was suggested that criminal proceedings could be simplified – destruction of the goods should occur at the expense of the perpetrator.

• Public-private partnerships were highlighted. Risk analysis could be carried out following intelligence from right holders, and a case could be filed following the complaint of a right holder.

• Necessity for right holders of legitimate businesses to strengthen their supply chain – for example, to set up protocol with their contractors and partners, logistics providers, printers and waste management service providers and to ensure regular reviews.

• The quality of counterfeit goods is improving and in many cases, it is difficult to distinguish fakes from bona fide products. Cases require analytical expertise to proceed to court. There is also the financial commitment of right holders’ enforcement teams.

• Practical obstacles include the lack of harmonised law, lack of resources, and lack of information from right holders.

• It is important to harness press support and for the Media to understand the dangers posed to Public Health regarding counterfeit personal care items. Media coverage of IP crime is low.

• Issue regarding online tools for enforcement officers – it was reported that there is a vast amount of information on databases at EU level, many databases which require integration.
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