

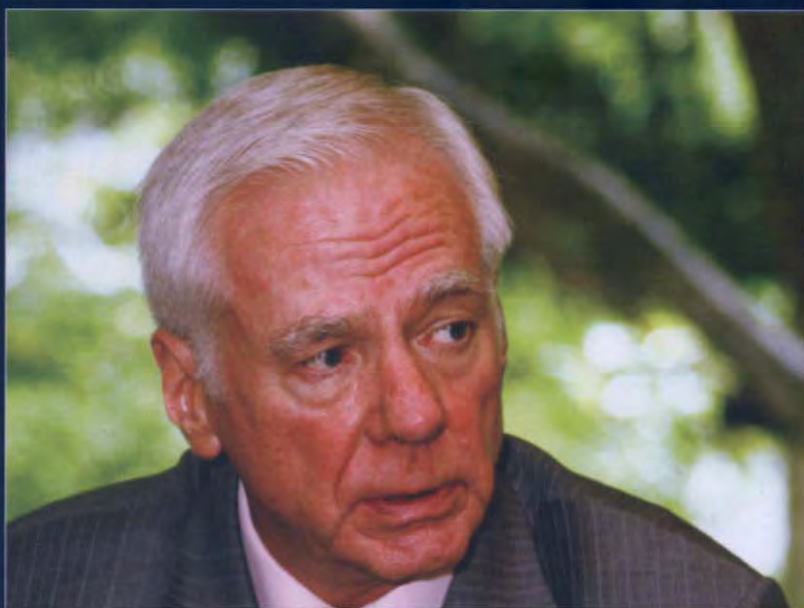
The Brief

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Is it business as usual in Thailand?



Thailand Means Business



2008



Intellectual Property Enforcement

The Human Cost of Counterfeiting

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Intellectual property rights owners are regularly and increasingly feeling the pressure and economic pain of the loss of revenue due to competition from black market counterfeit goods invading the global market. Further, our global society suffers the physical and emotional pain of countless people and children who are slaves to either the criminal black marketers or the victims of their faulty products. The problem is both economic and social.

Suppressing Demand: Counterfeiting is not a victimless crime

Most people who purchase fake Prada bags and knock-off Louis Vuitton luggage probably don't associate their new wares with child labor or slaves chained to sewing machines, but that's exactly what consumers are supporting when they buy these items.

Aside from economic problems such as lost sales, profits and tax revenues, the emotionally compelling element of counterfeiting is the systematic exploitation of labor. There are slaves and children, 11, 12, 13 year old kids, working in these sweatshop conditions. They are not treated as human beings. They are cogs in a machine to be used up, worn out and thrown away.

Consumer demand for cheap knock-offs is one root of the problem, a very difficult root to cut out entirely. In developing countries, the argument is often made that it is difficult to criticize a poor person who buys a fake handbag or polo shirt when he/she is targeted with sophisticated advertisements to the effect that one's social status is dependent on the brand of accessory or clothing one wears. When self-esteem is linked to branding, it seems harsh to judge the person who cannot afford a \$400 watch when he/she buys a \$35 copy just to feel good. However, if that same person were more aware of the macro-economic effect of his/her purchase of that fake watch or handbag, there might be second thoughts. If the consumer were made aware that the dollars spent on the knock-off actually supported organized crime, child and/or slave labor, and possibly even terrorism, that consumer might consider that there is more to counterfeiting than simply ripping off rich companies like Nike or Gucci. In this sense, like the demand problem we struggle with in the US war on drugs, public awareness and education of the consequences of purchasing activity reveals itself as the only viable strategy to reduce demand for fakes.

While the losses caused by counterfeiting in monetary terms alone are daunting enough, the threat is not merely an economic crime. Counterfeiting presents as a social problem as well, because the organizations behind counterfeiting operations pay no taxes, obey no laws, support organized crime, contribute to official corruption, often employ child and illegal immigrant (and in some cases, slave) labor and generally have no social conscience (or fear of liability) when it comes to the dangers posed to consumers by the low quality, even dangerous, fake goods they inject into global trade. Counterfeiting is not an isolated activity - it is usually heavily associated with organized crime as well as drug trafficking, prostitution and sexual slavery.

Many uneducated young people and children are lured into slavery under false pretenses, told they'll be working in construction or as nannies or maids in someone's home, only to find themselves enslaved by black market manufacturers. According to statistics in studies such as Dr Moises Naim's *Illicit* and Kevin Bales' *Disposable People: New Slavery in the Global Economy*, tens of millions of people worldwide are trapped in bondage

- a modern day slave trade which is on a scale much larger than anything seen four centuries ago when 12 million African slaves were trafficked to the New World. This, according to former US Secretary of State General Colin Powell, is "incomprehensible" in the 21st Century.

One question often asked by critics of globalization is this: What's the difference between these kingpins of organized crime engaged in counterfeiting and ordinary companies that make authentic clothes sold at places like Wal-Mart and Target, not to mention everything else imported from China? Aren't both groups exploiting poor labor? My experience, based on living in a village near Krasang, Buriram, one of the poorest areas of Thailand, is that the difference is like night and day. Primarily, the corporations can be and often are held accountable for any abuses. They abide by ILO fair labor standards, provide benefits, scholarships, micro-finance and real training in addition to a living wage. When and if labor abuses are brought to light, companies face plummeting share prices and boycotts.

Moreover socially responsible companies are keen to develop, rather than simply exploit, the people and resources of the third world. Nike, for example, has since 2000 operated the Nike Village Development Project in Thailand as part of the Thailand Business Initiative for Rural Development to extend micro-credit to small businesses and provide job options far more appealing than the atrocious alternatives of commercial sex for young females and a life in the underground economy for males.

Thinking globally and acting locally, a simple bumper sticker phrase, works wonders, as seen by the recent Nobel Peace prize awarded to Mohammed Yunus for efforts along similar lines in Bangladesh.

Trafficking in Fakes in the Era of Globalisation

Trafficking in illicit goods includes, but is not limited to counterfeit goods. Many criminal organizations consciously manage risk by diversifying their portfolios of illegal activities, spreading investments and resources across a range of high risk activities, such as the narcotics and arms trades, to lower risk enterprises such as human trafficking, and trade in counterfeit and pirate goods. China is overwhelmingly accepted as the leading manufacturing source for many of the counterfeit goods encountered on the market. Less conspicuous, but with a relatively disproportionate importance, is the role of Thailand, which also has historically been identified as a leading source of fakes around the world, along with other hubs in Eastern Europe, the Middle East, Sub-Saharan Africa and Latin America.

In some cases, the threat posed by counterfeiting manifests itself in horrific public health hazards (pharmaceuticals, foodstuffs, spirits, cosmetics, automotive parts and other components where consumer safety is at risk due to substandard counterfeits). In other cases, threats to national security have been investigated, given suspicions that the proceeds of the trade in counterfeit goods funds organized crime and even terrorism.

The role of many countries in the global counterfeiting trade is evolving. Despite the popular image of carnival-like street markets and vendor stalls throughout urban centers from Bangkok to New York, from Rio de Janeiro to Amsterdam, and other tourist areas overflowing with cheap knockoffs ranging from shirts to sneakers to watches to sunglasses to handbags, the real problem is much more sophisticated than

the so-called victimless crime historically tolerated by the average person, who would view sales of counterfeit goods as more of a "mom and pop" activity.

Many countries have become specialist producers in several highly developed industries which are supported by domestic economic policy and foreign direct investment, such as for example, in pharmaceuticals, (India), electronics (Taiwan), the automotive sector (Thailand) and optical discs (Malaysia). Other countries have a particular knack for logistics and have become regional hubs for the trans-shipment and export of fakes.

The challenges confronting law enforcement and IPR owners in detecting and interdicting shipments of counterfeit goods in the era of globalization are daunting. The sheer volume of international trade historically made it physically impossible for law enforcement officials to inspect, let alone seize, any significant percentage of the overall volume of trade in fakes. Moreover, priorities and resources are focused more on what is justifiably seen as the more important problems at the border: security, weapons trafficking, illegal immigration, narcotics smuggling, etc. Technology, particularly the internet, has facilitated trade in fakes by quickly and inexpensively matching willing sellers and buyers, who take calculated risks (and who take care to minimize the risks) of detection of the transactions by law enforcement.

No one company can go it alone when it comes to meaningful enforcement against counterfeiting. Nor can any one government acting alone make any significant progress in suppressing the trade in fakes, although law, policy and the political will to enforce the law does go a long

way. However, recent experience suggests that models based on industry cooperation, sharing of costs and intelligence, public-private sector partnerships, and international collaboration between law enforcement agencies, together with more and better use of technology and networking can have a dramatic impact on the global problem. These models are derived essentially from the need to fight fire with fire. The organized criminal syndicates involved in counterfeiting employ the same tactics to make easy profits from the trade in fakes.

Fighting Fire with Fire

The syndicates and traffickers certainly cooperate and network. They appeal to the public sector for protection of their activities through corrupt bribery payments. They employ the latest high tech gadgetry to facilitate trade. Languages, borders, laws, regulations, technology, logistics—none of these factors are seen by traffickers as show-stoppers. Instead, the traffickers view such obstacles as opportunities, a means to add value, for by circumventing such obstacles quickly, the syndicates may gain a competitive advantage and charge higher prices for the goods in the flow of trade. Moreover, the traffickers do not copy only one brand, they generally copy all of the dominant “hot” brands in each industry sector. It is not unusual to find a counterfeiting operation trading in fake Levi Strauss, Calvin Klein, Dickies, Wrangler and/or Ecko branded jeans all at the same time, or trading in mixed batches of fake Viagra®, Cialis® and Levitra®, the three leading branded erectile dysfunction drugs. It would seem unthinkable for natural competitors such as Pfizer, Eli Lilly and Glaxo Smithkline (GSK) to ever cooperate on matters of commercial importance, and in many jurisdictions, anti-collusion or competition laws create tension, hindering any effort for

Images of child labor in Thailand from Ed Kelly of Tilleke & Gibbins



01

01
Pakistani boys found making counterfeit Stanley® tools in atrocious sweatshop conditions in Karachi.



02
Bangladeshi girl in a battery recycling and counterfeiting operation in Dhaka, working to break up used batteries to reuse parts and battery acid in fakes.

02

03
Young Cambodian children trafficked by Thai Chinese gangs into Thailand to work 20 hour shifts on the street corners of Bangkok to beg from foreign tourists and sell cheap fake items. Any money collected is stripped from them by the gang boss. If minimum collections are not reached, the children are beaten.



03

04
Typical Thai sweatshop with young teens from poor rural villages forced into slave labor conditions, living in “dormitories” ten to a room. In this case, the counterfeiting gang was involved in mass production of Levis® jeans, handling everything from the manufacturing and stitching to the industrial bleaching of the jeans.



04

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9 year old Thai slave hand-stitching Puma® shoes, 20 hours a day, 7 days a week, 365 days a year, with an allowance of 200 Baht (\$5.00) a month. Another life wasted, a disposable human being, worn out, used up and thrown away.



05

competitors to cooperate to solve an industry-wide problem. But to truly fight fire with fire, industry cooperation is needed. This type of cooperation allows for better use of shared resources, technology, networks, intelligence and support of law enforcement.

Consumers have an important role to play because they have the ability to vote with their dollars to support socially conscious and responsible companies. Consumers should become educated shoppers and know how to recognize fakes through the "Three Ps":

- **Package:** Look at the quality of the product and its packaging. Watch for things like poor stitching, incorrectly spelled brand names or logos, etc.
- **Price:** If the price is too good to be true, it probably is.
- **Place:** Brand name products are sold in stores or through the official company Web site, not on the streets or open air markets.

"The choice ultimately is the consumer's, but they need to have all the facts before they make the decision to support criminals who make fakes using child labor," International AntiCounterfeiting Coalition (IACC) President Nils Montan said.

Rights owners, law enforcement, governments, consumers: all have a role to play in suppressing this insidious attack on our economy and way of life. The perpetrators

and collaborators count on the apathy of bystanders and victims to view their crimes as harmless activity. Their very ability to continue the pernicious trade depends in large part on the silent complicity of the individual consumer who buys the knockoff. Armed with awareness of the consequences of such purchasing on an aggregate scale, social conscience and consumer protest reaches a critical mass. Examples of social movements that have generated real change abound: apartheid, labor movements, universal suffrage, civil rights, debt relief, Live Aid, and even smaller scale niche reform areas like PETA, dolphin safe tuna and the ASPCA. None of these reforms would have been possible if socially conscious persons had not rallied to English philosopher Edmund Burke's famous call, "the only thing necessary for the triumph of evil is for good men to do nothing."



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Thai youngster found in a sweatshop disguised as a school in Chaochengsao Thailand, producing adidas® football jerseys.

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Crippled Cambodian girls, aged 8, trafficked into Bangkok by Thai-Chinese gangs to play on tourist sympathy by begging for money. Land-mine victims with missing limbs are particularly sought after for the sympathy factor. In some cases, girls this age and younger are also exploited by foreign pimps who force them into sexual slavery. The same gangs require youngsters to solicit tourists in outdoor bars in commercial sex districts (so-called "night entertainment zones") to buy fake watches, wallets and calculators at all hours of the night. Cambodians are trafficked into Thailand because Thai police cracked down on the use of Thai-born children as workers. The plight of the Cambodian children is largely ignored.