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US cracks down on it theft by overseas manufacturers

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Marking an unprecedented milestone in the fight against unfair competition, a state attorney-general in the United States has taken legal action against a Thai manufacturer that produced and exported products while using stolen IT to unfairly lower its operating costs and undercut competition.

In October 2012, the Massachusetts Attorney General exercised her authority to enforce the state's unfair competition law by requiring a Thai seafood processor to use licensed IT in its business operations. She announced a landmark settlement with the company.

However, this first-of-its-kind enforcement should serve as no surprise, and is really just a culmination of the continued momentum of US legislative efforts over the past year to preserve domestic jobs and software innovation by ensuring a level global playing field. Recognising that fair competition fosters respect for the rule of law and intellectual property rights, innovation, and job growth, certain members of the US government have led efforts to restore competitiveness in business by cracking down on IT theft by companies in emerging markets, particularly in the manufacturing sector.

In communications between state attorneys general and the Federal Trade Commission (FTC), officials agreed that stolen IT was destabilising the pricing market, distorting competition, and posing a serious disadvantage to American firms paying for legal IT. Given that global software theft amounts to US$63.4 billion, as estimated by the Business Software Alliance, it was clear that legal recourse needed to be revised and enforced.

Therefore, in 2011, the states of Washington and Louisiana passed unfair competition laws, which require manufacturers whose products are sold in their states to ensure that they use legal IT (both hardware and software) in their business operations, or risk liability and lost sales opportunities. Manufacturers using stolen IT may be subject to liability if their products are sold, in these states, in competition with products that were made without the use of stolen IT _ regardless of where the manufacturing took place or the IT theft occurred.

Subsequently, in November 2011, attorneys-general from 36 US states and three US territories signed a letter to the FTC and head of the Unfair Competition Bureau, announcing their commitment to use their powers to increase enforcement against manufacturers that use stolen IT and asking the FTC to help address the issue.

In April 2012, 16 members of the US Senate Small Business Committee issued a letter to the FTC, urging it to promote manufacturing competitiveness around the world and work with state attorneys-general to fight the problem of IT theft.

In May 2012, the state of Missouri passed a resolution calling on the FTC and state attorney general to address unfair competition, and in June the state of New York adopted a similar measure. In August, 19 members of the US House Small Business Committee followed suit with their own letter to the FTC, asking it to work with the states and federal agencies to "identify the best solutions to fight illegal IT theft".

In January 2013, the state attorney-general of California filed new lawsuits against two manufacturers, based in China and India, for violating the state's Unfair Competition Law and for gaining an advantage over American companies by using illegal software in the production of items imported and sold in California. The lawsuits allege that foreign manufacturers who have not paid software licensing fees or other IT costs have a significant advantage over American manufacturers who are already complying with unfair competition and anti-piracy laws.

The lawsuits also state that these companies obtain an unfair advantage because they can use the money saved from using illegal software to hire more employees and grow their business.

Clearly, this series of events demonstrates growing momentum toward even wider coverage and enforcement of unfair competition laws. For manufacturers with global supply chains and a share of exports going into the US, the argument could not be stronger that using legal IT is the safest way to protect their businesses and assets, and to build a competitive advantage.

While some manufacturers outside the US may perceive these latest developments as an additional cost of doing business, forward-thinking companies will see the opportunities this trend creates. Thai manufacturers that can adhere to the regulations, create a trustworthy reputation in the US market, and show a strong commitment to supply-chain management and innovation will place themselves in an enviable position compared to non-compliant competitors elsewhere, such as the recently accused companies in China and India.

By ensuring the legality of their software and hardware, Thai manufacturers can help to grow Thailand's national competitiveness, spur job creation, and protect innovation, while giving themselves an edge in the US market.

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