VIETNAM

Fight against counterfeit goods stepped up
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Vietnamese authorities have stepped up their efforts to enforce IP rights in recent years, particularly in 2016, and especially in the area of combating counterfeit goods.

According to the government's official statistics, all agencies are increasing their activities in IP protection. The Ministry of Science and Technology (MOST) Inspectorate, which typically handles the most complex cases in anti-counterfeiting and IP infringement, handled only about 70 cases in 2012, but last year handled nearly 300. Four years ago, the police only handled about 65 cases, but last year handled about 225. The Market Surveillance Department (MSD) under the Ministry of Industry and Trade (MOIT), which is still the core enforcement agency in anti-counterfeiting, tackled 2,282 cases of anti-counterfeiting and IP infringements in 2015. This number leapt to 4,874 cases in 2016. Customs also appears to have visibly strengthened their inspections and border control against counterfeits.

The sanctioning decisions are also becoming tougher. In addition to a move toward higher fines, such as several cases in which the maximum level of nearly $24,000 of fines was imposed, 2016 saw the authorities impose harsher sanctions, including a trend toward suspending the business licences of infringers for up to three months. This sanction was issued at least 25 times in 2016. Notably, there seems to be a trend away from slap-on-the-wrist types of fines that were common several years ago, with most fines now being two to three times higher, in the range of $500 to $1,000.

In recent years, rights holders have voiced concerns that Vietnam only applies criminal penalties in cases relating to potentially life-threatening goods such as fake liquor and fake pharmaceuticals. How-ever, in 2016 the police took action against a wider range of counterfeit goods, including clothing, batteries, cosmetics and auto parts. One notable case that shows increased vigilance against counterfeit goods is a recent case in Ho Chi Minh City involving cosmetics that was handled by the police. In this case, the police intervened with a woman known to be trading in counterfeits and seized more than 3,500 items of fake lipstick, cream and lotion. The woman was charged with dealing in counterfeit goods, smuggling, and failure to register a business, and was fined a total of $11,000. The infringing items were ordered to be destroyed.

While the increase in anti-counterfeiting cases could, on one hand, be due to an increase in counterfeit goods, it also clearly reflects the government's decisiveness to address the problem. By early 2016, the enforcement authorities had received direction from the government to escalate and strengthen their anti-counterfeiting activities on a national scale.

Notably, the government has directed the Ministry of Finance, MOIT, MOST and Ministry of Public Security to jointly recheck and improve the relevant regulations in order to strengthen collaboration among the enforcement agencies in combating counterfeit goods and IP infringements. Getting all the enforcement agencies on the same page is a first but necessary step in being able to attack counterfeit goods and IP infringements at the root. Although the cooperation remains limited in some respects, it is the most visible effort of the enforcement authorities in anti-counterfeiting activities thus far.

As a result, there are prospects that anti-counterfeiting efforts will continue to increase in 2017. For example, the MOIT has recently requested the MSD to not only conduct inspections and raids against counterfeit goods across a wide range of consumer products, but also to focus on less visible counterfeit fertilizers and pesticides in the agriculture sector, given that the spread of counterfeit and low-standard goods in this sector was significantly noted in 2016. One other important future development to keep an eye on is potential improvements to the system of requesting preliminary injunctions for IP cases.

Cases of counterfeiting, IP infringement and low-standard goods handled by MSD