Combatting Counterfeits in Alcohol/Beverage Industry

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Case
An EU alcohol brand encountered CFT challenges in China

Impact
E-Commerce law
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(A bottle of wine consists of an external container and an internal liquid. An external container includes a bottle and a cap, collectively known as dry goods.)
Why?

- Flowcharts of counterfeiting spirit
- Data analysis in four years
- Why more dry goods counterfeits: economic reason?
- What if we do not stop counterfeit bottles or cap now?
- Why civil litigation?
Flowchart of the counterfeiting business

- Retailer
- Bar
- CFT Complete Bottle Distributor
- CFT Complete Bottle Manufacturer
- CFT Dry Goods Agents on E-Commerce Platforms
  - CFT Spirits Manufacturer
  - CFT Cap Manufacturer
  - CFT Printing Manufacturer
  - CFT Bottle Manufacturer

The CFT Dry Goods Business
Expected business impact: The size of the whole CFT business will shrink as a result of the cut-off of dry goods supply chain.
Counterfeit bottles

Bigger profits margin

Smaller profits margin

Same legal risks

Same legal risks

Any other reasons? We need to find out.

Recycled bottles

Average price of recycled bottle: RMB 10/bottle

Average price of counterfeit bottle: RMB 2/bottle
Relations of CFT business participants

1. More counterfeit bottle/cap manufacturers
2. Lower market price of counterfeit bottle/cap
3. Stimulated counterfeiting spirit market
4. Lower cost in manufacturing counterfeit spirit
5. More chance to generate CFT profit margin
Objectives

- Sending a strong message to the CFT industry to curb the rampancy
- Putting a complete stop against the most aggressive dry goods manufacturers
- Thorough understanding of the glass bottle/cap industry in the dry goods counterfeits’ hot spots
**MAIN PURPOSE**

To cut off the supply chain of counterfeit production and thereby bring the counterfeit rate down

**MEASURES & EXPECTED EFFECTS**

- **Criminal**
  - Send a message that client will take every possible action to ensure that infringer gets punished
  - Cut off main supply chains of counterfeiting business

- **Civil**

- **Enforcement**

- **Investigation**
  - Get feedback of previous actions
  - Dig deeper into the network and get updates on the eco-system

- **Online**
  - Cut off main channel of supply information flow
  - Create cyber green field and improve brand impression

- **Training**
  - Raise authorities' awareness on dry goods
  - Generate more seizures from the authorities' side initiatively
Step 1: Enforcement options

- Criminal prosecution
  - Strong deterrent effect
  - High threshold and not transparent
  - No substantial monetary penalty

- Administrative enforcement
  - Swift
  - Local protectionism is a barrier
  - Minimum penalty
  - The deterrent effect is limited

- Civil litigation
  - High transparency
  - Cause monetary and reputational damages to the infringer
➢ The penalty set in the PD is too light and the local AIC did not set specific date to destruct the bottles.

➢ Three defendants were all granted probation in the criminal judgment. is too light and the local AIC did not set specific date to destruct the bottles.

➢ The PSB dropped the criminal procedure.
Step 2: So many targets, but which target is our “lucky boy”?

1. Infringing activity is clear and straightforward. Either the target was raided before, or we can manage to arrange notarized purchase or another administrative enforcement against them.

2. Infringing history and scale: repeated infringer, or production volume of counterfeits is comparatively big.

3. Assets: have reasonable assets to enforce, including car, real estate, reasonable deposit in bank. IP assets will also be considered.

4. Position in the local industry: if they are a leading company, our action against it will exert a bigger influence on the local industry.

5. Other considerations: such as the consistent business name and address, etc.
Civil litigation – key steps

Evidence collection
such as previous enforcement records, notarized purchase, etc

Assets information collection
to ensure the targets have assets to be enforced
1. Investigation shows that nearly all dry goods businesses apply production-on-order-only pattern.

2. Investigation shows that nearly all dry goods businesses only accept orders from "acquaintance".

3. Online monitor and investigation shows that a common pattern of the O2O dry goods business is that several companies (factories) in the same area hire a same sales agent who posts listings for all factories.

4. Criminal case files reveal that dry goods business transaction is often originated from online contact (such as joining a QQ group).
Online Investigation

Ascertain online searching range (1688 & Alibaba)

Use A Company product key words to search

Arrange webpage notary for all identified infringing targets

Conducted respectively by three teams in order to ensure the investigation findings are not biased.

The dry goods market is not for ordinary consumers, so B2B platforms shall be preferred search range.

Filter criteria
- manufacturer / big scale trading company
- in key locations
- whose name appeared in PSB’s other campaigns as a related party

Does target meet criteria for onsite investigation?

Initial contacts such as phone call and online check

Onsite visit

CFT stock found or suspicious of so?

Yes

Involves authority to follow the lead

No

Submit infringing links to E-commerce platforms

Is submission supported by platforms?

Supplement complaint letter to platforms to escalate

Is escalation supported by platforms?

Arrange warning letter to the target directly

Yes

No

Monitor the target regularly for new links

If new links identified?

Yes

No

Close the process, put target on watch list

Yes

No
Date: 22/11/2019

Effect of the Dry Goods project as revealed by investigation:

- They only accept orders from regular customers.
- Lots of CFT dry goods factories have been relocated to "safer zone" to avoid checks.
- Due to growing risk in producing pure CFT, unit price raised.
- Many CFT dry goods manufacturers don't dare produce A Company dry goods, knowing the leading B company is being acted against.
- Lower profit in CFT dry goods business.
- CFT dry goods manufacturers decentralized, raising CFT cost.
- A growing burden for new CFT dry goods supplier and customers.
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Impact of the new E-Commerce law

The new E-Commerce Law has brought a positive impact on intellectual property protection. The most related Articles are as follows:

**Article 10** E-commerce business operators shall complete market entity registration formalities pursuant to the law, except for individuals selling self-produced agricultural products and home-made handicraft products, and individuals using their own skills to engage in convenient labour activities and sporadic small transactions for which licensing is not required by law, as well as e-commerce business operators who are not required to register pursuant to the laws and administrative regulations.

**Article 15** E-commerce business operators shall display, prominently and continuously on their homepage, their business licence information, administrative licensing information relating to their business operation, and information that they are not required to complete market entity registration pursuant to the provisions of Article 10 of this Law, or hyperlinks of the aforesaid information. Where there is any change to the information stipulated in the preceding paragraph, the e-commerce business operators shall promptly update and announce the information.
Article 15 of the new E-Commerce Law will make it easier for right holders to target infringing manufacturers.

Because Article 15 requires e-commerce operators to publish business license information and administrative licensing information related to their business, which greatly alleviates the difficulty to locate the defendant's information that right-holders may encounter in the process of locating the target.
### Impact of the new E-Commerce law

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| 经营类型：经销代理/代购 | 营业执照注册号：
| **公司简介** |
| CN品牌，经营VANS范斯、NIKE耐克、ASICS亚瑟士、CONVERSE匡威等品牌鞋、服装、背包等，专柜渠道货源，正品有保障 |
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| 若卖家未履行上述承诺，淘宝使用保证金进行先行赔付。 |
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Tmall

天猫网店经营者相关资质信息
根据相关法律法规要求，经营者相关资质信息公示如下:

企业注册号：
企业名称：
类型：
住所：
法定代表人：
成立时间：2012-06-28
注册资本：210万欧元
营业期限：2012-06-28至2042-06-27
经营范围：男装、女装、童装、婴儿装、内衣、服饰、泳衣、家用饰品、针织品、服装面料及辅料、太阳镜、香水香料、护肤产品、化妆品及相关用品、皮革制品、手表、人造首饰、鞋类、眼镜、儿童车、针织制品、厨房用具、卫生洁具、五金交电、文化用品、钟表、箱包、日用百货、床上用品、工艺品（文物除外）、文具用品、布艺产品、洗涤用品、精油、芳香类制品、室内除臭剂、灯具、花卉、干花、纸制品、陶瓷制品、金属制品（铜材除外）、竹木制品、橡胶制品、玻璃制品、卫生用品、玩具、婴儿用品及上述产品零配件的批发、网上零售、进出口、佣金代理（拍卖的除外），提供相关的配套业务、售后服务和咨询服务。（不涉及国营贸易管理商品，涉及配额、许可证管理商品的，按国家有关规定办理申请）。【依法须经批准的项目，经相关部门批准后方可开展经营活动】
登记机关：上海市工商局
核准时间：2012-06-28

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JD

[Image of JD official flagship store]

[Image of JD website page with text in Chinese]

[Text in Chinese]

[Image of Lusheng Law Firm logo]

[Image of Rouse logo]
Thank you!

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