4. Trends, Issues and Challenges of IPR Infringement in Physical Marketplaces

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www.ipkey.eu
Trends

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Evolution of selling counterfeit

• Physical Marketplace

• Online Marketplace
Counterfeit in Barcelona 2019
Counterfeit in Barcelona 2019
Counterfeit in Benidorm (Spain) 2019
Evolution of selling medicines
Counterfeit

- Sender:
  - China
  - Hong Kong
  - Turkey
- Covering technics
  - NONE
Fake medicines

- **Sender:** Mostly Asia
  - China
  - Hong Kong
- **Covering technics**
Impact of fake

According to a 2018 World Health Organization report:

- 150,000 children die from fake antimalarials
- 150,000 children die from fake antibiotics

At least 300,000 children die every year from counterfeit treatments.

Organized crime and terrorist groups make many of these pills in dirty labs.

Children are treated with fake drugs containing insufficient, wrong, or no medicine.
Type of seizures Counterfeit EU 2017

Top categories by number of detained articles:

- Foodstuffs: 24%
- Toys: 11%
- Cigarettes: 9%
- Clothing: 7%
Top countries of provenance of seizures counterfeit 2017

- 73.04% China
- 10.29% Hong Kong, China
- 4.31% All other countries
- 4.26% Turkey
- 2.62% Vietnam
- 2.08% Syria
- 1.98% India
- 1.42% Egypt
The key trade routes for fake pharmaceuticals

$16.2bn
the global trade value of fake pharmaceuticals

The probability for producing fakes is based on the average GTIRC scores for the analysed economy. For more details on the GTIRC index see the OECD/EUIPO report.
The key trade routes for fake clothing and fabrics

$27.7bn
the global trade value of fake clothing and fabrics

The probability for producing fakes is based on the average GTRIC scores for the analysed economy. For more details on the GTRIC index see the OECD/EUIPO report.
Institutional framework

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European Union

28 member states
Police vs Customs

**Police**
- Focus on criminals
- MS territory
- All crimes, mainly national legislation
- Legal Mutual assistance

**Customs**
- Checking goods
- EU Border control
- EU regulations
- Mutual assistance for customs matter
Competent units against “online smuggling”

- Investigation & cybercrime Units
- Control Unit
- Intelligence & Risk analysis units
EU IPR & Law enforcement Agencies

- Taxud
- Europol
- OLAF
- EUIPO
Transport of Counterfeit

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Transport

Too much capacity?
Smuggling

- The **criminal offense** bringing an item into (or out) a country/EU
  - without declaring it to customs officials
  - Without paying the correct associated duties or taxes
  - or bringing in (or out) a prohibited item into the country/EU
Relation Customs – Internet - Goods

• All goods bought outside Europe pass Customs
• GOODS COMING FROM 3rd COUNTRIES
• You have to pay taxes:
  • VAT if the value > €22
  • Import duty if the value > 150€
  • Always excises (tobacco, alcohol, …)
• Customs check if goods are legal, so customs stop:
  • Counterfeit and IPR infringements
  • Medicines
  • Narcotics and psychotropic substances
  • Arms and ammunition
  • Cultural heritage
  • CITES – Convention on International
    Trade in Endangered Species
Evolutions as result of E-commerce

In the PORTS…
1 container with counterfeited products
= 1 infraction = BIG quantity of goods

In the AIRPORTS…
1 parcel ordered on the internet with counterfeited goods
= 1 infraction = SMALL quantity of goods

E-commerce
Evolution in the domain of counterfeit

In EU: Stagnation of number of seizures
BUT reduction of the total amount of seized goods

Number of cases

Number of seizures

In, IP Key South-east Asia is implemented by the European...
Seizures - Mean of transport

Number of cases

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<th>Mode</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
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Number of articles

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<tr>
<td>Sea</td>
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</table>
Difference Post & Courier/Express

- **Post (UPU)**
- Belgian post
- China post
- Swedish post

- **Courier**
- DHL
- TNT
- UPS
- Fedex
- DPD
- DB Schenker
- …
Difference Post & Courier

**Post**
- Cheap
- Slow
- Under rules of Universal Postal Union
- Mail
  - Max 2kg
  - L+W+H=max 90cm
  - CN22 or CN23 for high value
- Big Parcels
  - >2kg
  - EMS (express mail service)

**Courier**
- Express service - FAST
- Expensive
Difference Post & Courier

**Post**
- Small items collected in bags
- No pre-arrival information (anonymous)
- Only information about the bag

**Courier**
- Separated parcels
- Structured
- Pre-arrival information
  - Not always correct
Differce Post & Courier - Transport

Post

Courier
European hubs of the couriers
Post

https://www.youtube.com/watch?v=WX16-52bHvg&list=PLiPHefzA2IWJdyJNbrWe7d3x7gZlyJ4Mv&index=4
Legal Framework Post

UPU

- Universal Postal Union
- Since 1874, Agency United Nations
- Standards for post
- Postal documents CN 22, CN 23, CN34, CP 83
- CN 22 and CN 23 are customs declarations
- Post secret?
  - If you doubt if there goods in → X-ray or dogs.
European national post hubs
Conclusion

• BE, UK, DE and FR customs are responsible for almost all small consignments of the couriers
• Every national hub of post is responsible for the small consignment from other countries.
• Once released, they can freely circulate throughout Europe.
• Fraudsters search the weakest link in the chain
Treasure Hunting
Operation POSTBOX II (2019)

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JCO POSTBOX II (28/2 – 29/3/2019)

• Organisation & Coordination
  – C@IC (Customs Against Internet Crime) of the CCWP → leaded by BE
  – OLAF 22 MS + OLAF + EUROPOL
• **JCO between cybercrime related Customs divisions → 3 PHASES**
  
  I. Risk analysis / intelligence (28/2 - 8/3)
  II. Border control (11/3 - 22/3)
  III. Cyberpatrol (25/3 - 29/3)

• **SCOPE:** Combat illegal smuggling of goods bought on the internet
  - Priority 1: **Counterfeit**
  - Priority II: **Cites**
  - Secondary: **Narcotics**
Phases of Postbox II

Pre-operational:
- Intelligence
- Risk profiles

Operational I:
- Controls
- Seizures

Operational II:
- Cyberpatrol
- Identification of sellers
Phase I: Intelligence & Risk analysis

- Monitoring internet:
  - Products offered on online marketplaces
  - New trends – popular brands
  - Social media analysis

- Analysis old seizures

→ 30 European risk profiles
→ In VOCU reports linked profiles

83 National profiles shared via VOCU in AFIS

<table>
<thead>
<tr>
<th>JCO POSTBOX II – Risk profile</th>
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<tbody>
<tr>
<td><strong>GENERAL</strong></td>
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<td>Risk analysis level</td>
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<td>National risk profile (NRP)</td>
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<td>Goods category</td>
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<td>Risk category</td>
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<table>
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<tr>
<th><strong>INDICATORS</strong></th>
<th><strong>DECLARED</strong></th>
<th><strong>FOUND / HIGH RISK / TREND</strong></th>
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<tbody>
<tr>
<td>Description of the goods</td>
<td>Fish (or smoked fish), fish scales, smoked food, samples etc.</td>
<td>Seahorses</td>
</tr>
</tbody>
</table>
phase II: Control

• 2320 reports in VOCU
  – Detailed reports with photos & modus operandi
  – First time > 1000 seizures in VOCU AFIS

• 2 Field visits

• Best seizures selected for cyberpatrol
  – Multiple similar seizures in different MS.
  – Info about the website
  – Logos (XTC pills, merchandising, …)
  – 50 CASES prepared
# Reported seizures

<table>
<thead>
<tr>
<th>Participant</th>
<th>Seizures</th>
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<tr>
<td>NOF AT</td>
<td>55</td>
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<tr>
<td>NOF BE</td>
<td>22</td>
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<tr>
<td>NOF BG</td>
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<tr>
<td>NOF SK</td>
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Reports per Country and Participant
Case 5: Car Parts

- Shipper/sender: CUI HAOMAI, CN
- Seizures: 1 Greece
- Website: Alibaba
- Reselling Greece: https://oil-stores.car.gr/parts/