



Observations regarding the EU  
Memorandum of understanding on the  
sale of counterfeit goods on the internet  
**“欧盟打击互联网售假谅解备忘录” 评述**

IP Key China  
IP Key 中国

Joeri Mombers | December 8 2020

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# Agenda 目录

- Introduction to Signify 昕诺飞简介
- Signify and IP 昕诺飞与知识产权
- Engaging with others to fight IP misuse 联合多方打击知识产权滥用行为
- Signify and the MoU on the sale of counterfeit goods on the internet 昕诺飞与“打击互联网售假谅解备忘录”
- The MoU stimulates the discussion 谅解备忘录鼓励各方讨论
- The MoU takes stock of the size of the problem 谅解备忘录估量问题规模
- Observations 评述
- Fighting counterfeits beyond the MoU 谅解备忘录之外的打假

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# Introduction to Signify 昕诺飞简介

- Founding entity of Royal Philips in 1891 - Separated from Royal Philips in 2016 – Present in +70 countries  
1891年起为荷兰皇家飞利浦创始部门之一，2016年从飞利浦分离，目前业务遍及70多个国家/地区
- Changed company name from ‘Philips Lighting’ into ‘Signify’ in 2018 – Continue to use the PHILIPS brand  
2018年由“飞利浦照明”更名为“昕诺飞”——继续使用飞利浦品牌
- Today, Signify is 如今，昕诺飞
  - among the leading companies in lighting 照明领域的领导者
  - supplying lighting solutions to professionals and consumers 为专业客户及消费者提供照明解决方案
  - enabling the lighting industry for the Internet of Things 让照明行业步入物联网时代
  - producing energy efficient lighting products, systems and services that enable customers to enjoy a superior quality of light 提供高能效照明产品、系统与服务，让消费者享受高质量照明
  - valuing innovation, passion for sustainability and desire to transforming people’s lives by unlock the extraordinary potential of light 释放灯光的超凡潜力，注重创新，致力于可持续发展、改变生活
  - carbon neutral since September 2020
  - 2020年9月起实践碳中和目标

# Signify and IP 昕诺飞与知识产权

- Innovation is in Signify's DNA
- 创新是昕诺飞的DNA
- Signify was the first to develop a 60W replacement LED light bulb
- 昕诺飞是首个开发出60W替换LED灯泡的制造商
- Signify is pioneering 昕诺飞是如下领域的先行者
  - LiFi - fast broadband internet connectivity through light
  - LiFi—通过灯具实现高速宽带互联网连接
  - intelligent public and residential lighting
  - 智能公共与住宅照明
  - horticultural lighting to develop city/vertical farming
  - 发展城市/垂直农场所需的园艺照明系统
  - 3D printed solutions that enable circularity of products
  - 实现产品循环使用的3D打印解决方案
  - disinfection solutions through efficient UV-C lighting
  - 基于高效 UV-C 照明的消毒解决方案
- Signify's IP department is
- 昕诺飞知识产权部门
  - headquartered in Eindhoven (the Netherlands)
  - 总部位于埃因霍芬（荷兰）
  - spread over multiple locations across the globe
  - 分布于全球多个地点
  - part of Signify's R&D division
  - 隶属昕诺飞研发事业部
  - the one-stop-shop for all of Signify's IP matters
  - 处理昕诺飞所有知识产权事务的一站式机构
  - managing the EnabLED patent licensing program
  - 管理EnabLED专利许可计划
- Trademarks, design and Domain name matters (Soft IP) are handled in a holistic approach
- 以整体模式处理商标、外观设计、域名事务（软性知识产权）
- Counseling, creation, prosecution, enforcement, licensing and other matters of Soft IP are all handled by the same team
- 软性知识产权的咨询、创造、申请、执行、许可和其他事务均由同一个团队处理

4.8%

of sales invested in R&D

研发投入在销售额中的占比

100+

partnerships with universities

合作高校

No. 1

lighting company for the IoT

物联网照明公司

17,750

patents

专利



# Engaging with others 联合多方

- In terms of brand protection, the holistic approach means that online and offline issues are managed by the same experts
- 在品牌保护方面，整体模式指的是线上和线下问题都由同一个专家团队处理
- Brand protection requires an integrated global approach
- 品牌保护要求采用融合式全球方法
- Signify is a member of 昕诺飞已加入下列组织
  - EU Observatory – member of the International Expert Group 欧盟观察机构——国际专家组的成员
  - EU Observatory – member of the following Working Groups 欧盟观察机构——下列工作组的成员
    - Enforcement 执法
    - IP Enforcement Portal 知识产权执法门户
    - IP in the Digital World 数字世界中的知识产权
  - WCO – Rights Holders Consultative Group (Chair)
  - 世界海关组织——权利人协商小组（主席）
  - AIM – Anti-Counterfeiting Committee (Chair)
  - 欧洲品牌协会——打假委员会（主席）
- In parallel Signify engages in discussions with
- 同时，昕诺飞还与下列各方讨论
  - peers in other multinational companies 其他跨国公司内的同等部门
  - platforms directly - Signify is a member of the Alibaba Anti-Counterfeiting Alliance 平台——阿里巴巴打假联盟成员
  - various authorities and agencies such as 各种机关部门
    - MSA
    - PSB
    - TAXUD 税收与关税同盟总局
    - DG Grow 欧盟发展部委员会
    - DG Trade 欧盟贸易总署
    - OLAF 欧洲反欺诈办公室
    - Europol 欧洲刑警组织
    - Interpol 国际刑警组织
    - WCO 世界海关组织
    - Homeland Security US 美国国土安全部
- Signify has customs records in place with competent authorities in multiple countries
- 昕诺飞在多个国家/地区的主管机关有海关记录

# Signify and the MoU

## 昕诺飞与谅解备忘录

- Signify joined the MoU on March 1<sup>st</sup> 2019
- 昕诺飞于2019年3月1日签署谅解备忘录
- More issues of trademark misuse (keyword dropping and illicit referencing) and design infringement than counterfeits (stricto sensu)
- 商标滥用（关键词抓取和非法引用）与外观设计侵权的问题更甚于（严格意义上的）假冒问题
- The MoU is laboratory that 谅解备忘录相当于一座实验室
  - stimulates dialogue 鼓励对话
  - takes stock of the size of the problem 估量问题规模
- The MoU is facilitated by DG Grow in close cooperation with the EU Observatory enabling a connection to EU leadership team
- 谅解备忘录由欧委会发展总司与欧盟观察组织密切合作促成，从而与欧盟领导团队建立联系
- MoU allows for a certain level of flexibility and speed that one can obtain from ‘soft law’
- 谅解备忘录赋予能通过“软性法”获得的灵活度与速度
- MoU insights are useful to draft legislation
- 根据谅解备忘录得到的洞见有助于立法起草工作

### • Rights Owners 权利人

- Adidas 阿迪达斯
- Apple 苹果
- Duracell 金霸王
- Hermès 爱马仕
- Lexmark 科盟
- Luxottica Group Spa 陆逊梯卡
- Moncler Spa 盟可睐
- Nike Inc. 耐克
- Philip Morris International 菲利浦·莫里斯
- Philipp Plein 菲利浦·普莱因
- Philips 飞利浦
- Procter & Gamble 宝洁
- Signify 昕诺飞
- Zanellato

### • Internet Platforms 网络平台

- Alibaba Group Inc. 阿里巴巴集团
- Amazon Services Europe Sarl. 亚马逊欧洲
- eBay
- Facebook Marketplace
- Grupa Allegro sp. z o.o
- OLX
- Priceminister Rakuten 法国乐天

### • Associations 协会

- Anti-Counterfeiting Group (ACG) 反假冒协会
- AIM European Brands Association 欧盟品牌协会
- Business Action to Stop Counterfeiting and Piracy (BASCAP) 阻止假冒与盗版商业行动
- Federation of the European Sporting Goods Industry (FESI) 欧洲体育用品行业联合会
- International Video Federation (IVF) 国际视频联合会
- Motion Picture Association (MPA) 美国电影协会
- Toy Industries of Europe (TIE) 欧洲玩具行业协会

# The MoU stimulates the discussion 谅解备忘录鼓励讨论

- By bringing together the various stakeholders, the MoU stimulates mutual understanding by facilitating
- 谅解备忘录将各个利益攸关方聚集起来，推动如下工作，促进互相谅解
  - alignment among peers 同行之间保持一致
  - discussion with platforms 与平台讨论
  - raising awareness regarding the complexity of fighting illicit offerings on the internet 关于打击非法网络销售活动，提升对其复杂性的认识
- Relation with platforms often is complex
- 与平台的关系往往很复杂
  - rightsholders sell through platforms 权利人通过平台销售
  - competitors sell through platforms 竞争对手通过平台销售
  - resellers sell through platforms 转售方通过平台销售
  - some platforms also offer auxiliary services 某些平台还提供辅助服务
- Consumers can be easily deceived online, forcing stakeholders to discuss issues regarding design, copyright and trademark misuse
- 消费者容易在网上受骗，倒逼利益攸关方就设计、著作权和商标滥用问题进行讨论
- MoU stakeholders care about the consumer/end-user
- 谅解备忘录利益攸关方关注消费者/最终用户



# The MoU takes stock of the size of the problem

## 谅解备忘录估量问题的规模

- Data collection (8<sup>th</sup> exercise is ongoing at this moment)
- 数据收集（目前正在进行第8轮工作）
- During one month
- 以一个月为期限
- Twice a year (May and November)
- 一年两次（五月、十一月）
- Mimicking the consumer that is looking for the branded product
- 模拟寻找品牌产品的消费者
- Based on a consistent set of keywords (per brand and per platform)
- 以统一的关键词组作为数据基础（按品牌和平台分类）
- An agreed set of KPIs allows to measure the progress/evolution
- 利用商定的KPI，评价进度/变化
  - KPI 1. number of search results that link to an offer of alleged counterfeit goods appearing on the first 100 unique listings per platform per country
  - KPI 1. 每个国家/地区、每个平台前100个唯一产品页面中出现的与涉嫌假冒商品关联的搜索结果数
  - KPI 2. number of listings removed by a platform as a result of proactive and preventive measures in place
  - KPI 2. 因采取主动预防措施而被平台删除的产品页面数
  - KPI 3. number of permanent and temporary seller restrictions imposed by a platforms linked to alleged infringements of MoU signatory Rights Owners' IPR
  - KPI 3. 平台对涉嫌侵犯谅解备忘录签署方权利人知识产权的商家施加永久及临时限制措施的数量

An agreed template spreadsheet exists to enable consolidation of the data

商定标准表单格式，便于数据整合

EU Observatory manages consolidation of data

欧盟观察组织进行数据整合管理

Data collection exercises provide for a narrow snapshot – the full size of the problem may not appear clearly

数据收集工作可呈现问题概貌——问题的全貌可能无法清晰体现

The underlying dialogue remains hugely important

深层对话依旧极为重要



# Observations regarding the MoU 谅解备忘录评述

- The MoU generally helps to improve cooperation and efficiency among stakeholders
- 谅解备忘录通常有助于改善利益攸关方之间的合作及效率
- The MoU is a 'soft tool', though its impact may be noticeable, it is rather limited
- 谅解备忘录是一种“软性工具”，其效果尽管明显，但是比较有限
- From the KPIs it is clear that the problem is growing
- 从各KPI反馈的情况可清楚得知，问题规模正在扩大
- The stakeholder dialogue is an important enabler to develop mutual trust and ensure exchange of intelligence
- 利益攸关方对话是建立互相信任、保证情报共享的重要推动力
- Best practices can be raised and discussed
- 可提出并讨论最佳做法
- Rights holders believe that platforms can take a more proactive role in identifying and addressing repeated infringers
- 权利人认为平台在识别、应对反复侵权人方面能发挥更主动的作用
- A standardized notice and take down system across platforms would be welcomed
- 各方欢迎跨平台的标准化通知与删除制度
- We will need to go beyond counterfeits (stricto sensu) and, in the interest of the end-user, also discuss design infringement and trademark misuse
- 我们不能局限于（严格意义上的）假冒产品；从最终用户的利益出发，应进一步讨论设计侵权及商标滥用问题

# Fighting counterfeits beyond the MoU 谅解备忘录之外的打假

- Counterfeits need to be addressed at the source
- 需在源头解决假冒问题
- The internet allows counterfeiters to operate their global business in even larger anonymity
- 互联网让造假/售假者能在很大程度上以匿名方式经营全球业务
- Online and offline are connected and need to be tackled accordingly
- 线上线下互联互通，需要相应地加以应对
- Online sales will continue to grow (Alibaba Group acquired Lazada, Singles Day turnover grew by 40%)
- 网络销售额将继续增加（阿里巴巴集团收购了来赞达，双十一销售额增长40%）
- Customs detentions seem to suggest that most counterfeits are imported by small consignments. With 6.8% of imports into the EU and 3.3 % of world trade believed (\*) to be counterfeited, this assumption is incorrect – a more balanced approach is desired/needed
- 海关截获数据似乎表明，多数假冒商品以小批量物流方式进口。据信，欧洲进口额的6.8%、世界贸易额的3.3% (\*) 为假冒商品，基于海关数据的假设似乎存在偏差——希望/需要采取更为均衡的方式
- To enable enforcement authorities to target consignments more accurately, we need to ‘connect the dots’
- 为了让执法部门更准确地锁定假冒商品，我们需要理清头绪
  - Combine various data sources 结合各种数据来源
    - rights holders’ intelligence is largely limited to genuine goods 权利人的“情报”基本局限于正品
    - intermediaries manage very rich data sets, covering intelligence that is invisible to others 中间环节掌握丰富的数据集，涵盖他人不可见的数据
    - notice and take down data is certainly worth considering 通知与删除数据当然值得考虑
  - Use machine learning to generate automated risk alerts for enforcement authorities 使用机器学习为执法部门生成自动风险提示
- Lately we have seen some encouraging signs where platforms start sharing data with authorities
- 最近我们发现平台开始向执法部门共享数据，这是令人鼓舞的信号

(\*) [Trends in Trade in Counterfeit and Pirated Goods](#) - EUIPO and OECD (2019)

(\*) 假冒与盗版商品贸易趋势-欧盟知识产权局、经合组织 (2019)

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