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Introduction 简介

- The Internet now a major player in helping to facilitate the counterfeit trade
 - 互联网是推动假冒产品贸易的主要“利器”
 - In Europe online retail consumers spend twice as much as in-store shoppers
 - 在欧洲，网络消费额是线下消费额的两倍
 - Clear change in consumer behaviours due to COVID19 pandemic
 - 新冠疫情造成消费者行为明显改变
 - Consumers usually make +50% of purchases online, increased dramatically in Europe's biggest e-commerce markets.
 - 欧洲最大电商平台的网购量剧增，消费者的网购量通常占其总体购物量的50%以上
 - 60% of consumers will continue to buy as much online
 - 60%的消费者在未来会保持其网购量
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The Change 变化

- Physical trafficking getting harder, criminals recognised the shift unlikely to stop
- 线下售假难度加大，犯罪分子亦认识到这一趋势不可逆转
- Counterfeiters are resourceful and find the internet irresistible.
- 造假/售假者诡计多端，且发现网络空间极具诱惑
- Greater access to suppliers, transporters, businesses buyers and consumers across the world
- 更易于接触全世界的供应商、运输商、企业采购者和普通消费者
- Offers anonymity behind 藏匿于以下屏障之后：
 - sophisticated looking sales sites, 貌似精美的销售网站,
 - fake trademarks, brands and emblems 虚假商标、品牌、徽标
 - bogus safety and certification and labels 伪造安全证书及标签

Is the EU MOU on sale of counterfeit goods via the internet effective? 欧盟打击互联网售假谅解备忘录是否有效?

- MOU valuable instrument which continues to improve exchanges information and more effective cooperation between signatories.
 - 谅解备忘录作为重要手段，能够持续加强签署方之间的信息交换和有效合作
 - Provides greater transparency and flexibility - key advantages.
 - 提高透明性及灵活性——此为关键优势
 - Data collection which feed into KPI's also helped to guide and measure our joint performances.
 - 通过收集数据、计算KPI，有助于指导、评价各方共同取得的成绩
 - Evident in identifying new trends and building greater awareness and responses to counterfeiting during COVID 19 pandemic.
 - 新冠疫情期间，谅解备忘录效果明显，有助识别假冒活动新趋势、加强打假意识与应对措施
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Overall Impact 整体影响

- Signatories have a clearer understanding of our joint needs and capacities.
- 签署方对各方共同需求及能力有更清楚的认识
- What we focus on and what we are able to achieve.
- 明确关注领域、可实现的目标
- Built greater understanding to help find new and more collaborative approaches to combat counterfeiting in a swiftly changing online environment.
- 在快速变化的网络环境中，能够促进互相谅解，帮助寻找更具协作性的新型打假方式

How can an MOU help China and EU?

谅解备忘录模式如何助力中国与欧盟?

- It is the type of agreement we should try to draw up as commerce, business and consumers are all affected.
- 双方应努力达成此类约定，因其可对商业、企业和消费者产生全面影响
- MOUs less formal than contracts and treaties, which are binding and can result in international repercussions if they are broken.
- 备忘录的正式程度不及合同与协定，后两种模式具有约束力，如果违反可造成国际不良影响
- MOU's include less details and complexities
- 备忘录的细节度及复杂度较低
- Mutual agreement on needs and wants are recorded.
- 记录双方对彼此需求达成的共识
- Informal process allows signatories to sidestep the scrutiny and red tape that can plague contracts and treaties.
- 非正式过程可使签署方规避合同及协定的各类繁琐审查和文书流程
- MOUs still hold power as they specify jointly accepted expectations and common objectives.
- 备忘录明确了各方可接受的共同期望及目标，因此依然具有效力

Things to note 注意事项

- MOU - legal term, but they are not normally legally binding.
 - 谅解备忘录是法律用语，但通常不具备法律约束力
 - Put in place because neither party wants to deal with the effects of a mandatory agreement.
 - 之所以采用这种模式，是因为各方不愿应对强制协议的相关影响
 - No need to "lawyer up" and prepare for hard-core contract talks.
 - 无需聘请律师团队，为“硬核”谈判作准备
 - “Soft law”, provides a more engaging way for countries and agencies to cooperate.
 - 作为“软性法”，各国、各机构能够籍此以更具参与性的方式开展合作
 - MOU allows parties to build understanding and more settled relationships due to more informal information exchanges.
 - 借助谅解备忘录，各方通过加强非正式信息交换，可促进互相理解、建立更稳定的关系
 - Helps speed up agreements on resolutions that need to be put in place quickly.
 - 有助于加快进程，针对需要快速落实的决议达成约定
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Bear in mind! 谨记!

- MOUs can still have major implications for international and domestic law
- 谅解备忘录依然对境内外法律具有重要影响
- Thorough paper trails need to be agreed and kept.
- 需约定并保留完整的书面记录
- A simple, well-written, MOU will reflect diplomatic understanding and add a creative and analytical rationale.
- 简明扼要的备忘录可反映外交谅解，提供具有创造性及分析性的依据
- Provides a mutual expression of intent and joint benefits.
- 提供双方意图及共同利益的表达途径
- A framework that both parties could work with to reach shared goals and
- 双方合作达成共同目标及.....的框架
- An established working relationship.
- 体现已得到建立的工作关系

ACG View ACG观点

- ACG is in favour of MOUs - it's a simple and direct option.
- 反假冒协会（ACG）支持使用谅解备忘录这一简单、直接的机制
- Less complex and more flexible in swiftly changing environment.
- 在快速变化的环境中，可减少复杂度、更加灵活度
- Allows parties to avoid routes and practices that would slow down implementation and cooperation.
- 各方可避免可能导致执行及合作推迟的例行程序与做法
- Helps parties to get things done more quickly than through more formal channels.
- 相较更正式的渠道，备忘录模式可促使各方更快实现目标

Summing Up 总结

- **Planning is essential** – we will need to set out:
 - **做好规划是关键** ——我们需要说明：
 - ❑ what we want or need from each other and make sure it is written in simple common language
 - ❑ 对彼此的需求（并确保以简单的共同语言形成书面记录）
 - ❑ What we would both offer and willing to negotiate on
 - ❑ 双方将会彼此给予、相互协商的内容
 - ❑ That the MOU contains both parties' common objectives and performance measures.
 - ❑ 谅解备忘录需包含双方的共同目标与绩效指标
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Phil Lewis
Director General 总干事
Phil.lewis@a-cg.com