



Observations regarding the EU Memorandum of understanding on the sale of counterfeit goods on the internet

IP Key IP Key South-East Asia

Joeri Mombers | May 25 2021

Agenda

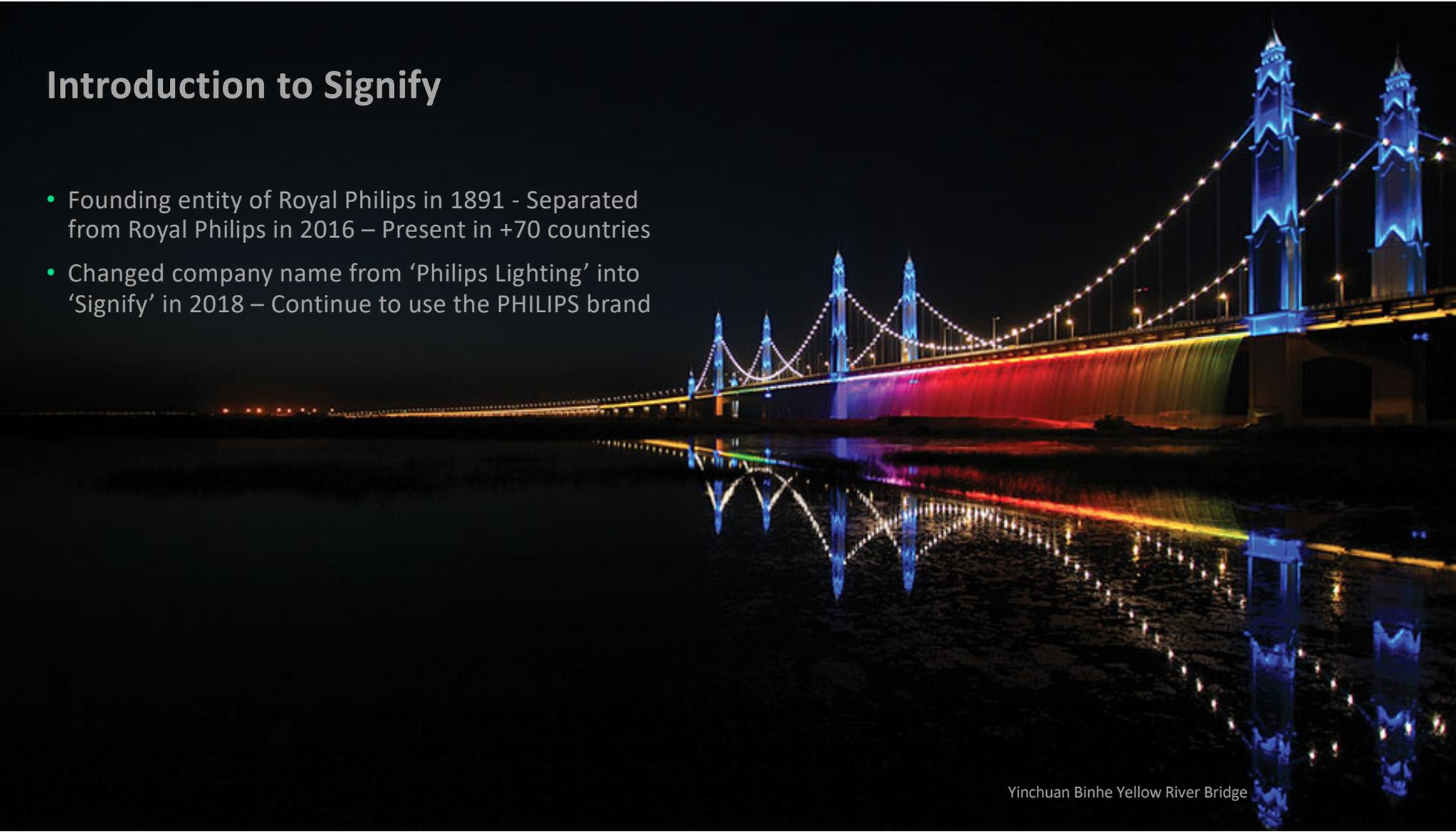
- Introduction to Signify
- Signify and IP
- Engaging with others to fight IP misuse
- Signify and the MoU on the sale of counterfeit goods on the internet
- The MoU stimulates the discussion
- The MoU takes stock of the size of the problem
- Observations
- Fighting counterfeits beyond the MoU

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Introduction to Signify

- Founding entity of Royal Philips in 1891 - Separated from Royal Philips in 2016 – Present in +70 countries
- Changed company name from 'Philips Lighting' into 'Signify' in 2018 – Continue to use the PHILIPS brand

Yinchuan Binhe Yellow River Bridge



Introduction to Signify

- Today, Signify is
 - among the leading companies in lighting
 - supplying lighting solutions to professionals and consumers
 - enabling the lighting industry for the Internet of Things
 - producing energy efficient lighting products, systems and services that enable customers to enjoy a superior quality of light
 - valuing innovation, passion for sustainability and desire to transforming people's lives by unlock the extraordinary potential of light
 - carbon neutral since September 2020



Signify and IP

- Innovation is in Signify's DNA
- Signify was the first to develop a 60W replacement LED light bulb
- Signify is pioneering
 - LiFi - fast broadband internet connectivity through light
 - intelligent public and residential lighting
 - horticultural lighting to develop city/vertical farming
 - 3D printed solutions that enable circularity of products
 - disinfection solutions through efficient UV-C lighting

4.8%

of sales invested in R&D

100+

partnerships with
universities

No. 1

lighting company for
the IoT

17,750

patents



Signify and IP

- Signify's IP department is
 - headquartered in Eindhoven (the Netherlands)
 - spread over multiple locations across the globe
 - part of Signify's R&D division
 - the one-stop-shop for all of Signify's IP matters
 - managing the EnabLED patent licensing program
- Trademarks, design and Domain name matters (Soft IP) are handled in a holistic approach
- Counseling, creation, prosecution, enforcement, licensing and other matters of Soft IP are all handled by the same team

Engaging with others

- In terms of brand protection, the holistic approach means that online and offline issues are managed by the same experts
- Brand protection requires an integrated global approach
- Signify is a member of
 - EU Observatory – member of the International Expert Group
 - EU Observatory – member of the following Working Groups
 - Enforcement
 - IP Enforcement Portal
 - IP in the Digital World
 - WCO – Rights Holders Consultative Group (Chair)
 - AIM – Anti-Counterfeiting Committee (Chair)

Engaging with others

- In parallel Signify engages in discussions with
 - peers in other multinational companies
 - platforms directly - Signify is a member of the Alibaba Anti-Counterfeiting Alliance
 - various authorities and agencies such as
 - MSA
 - PSB
 - TAXUD
 - DG Grow
 - DG Trade
 - OLAF
 - Europol
 - Interpol
 - WCO
 - Homeland Security US
- Signify has customs records in place with competent authorities in multiple countries

Signify and the MoU

- Signify joined the MoU on March 1st 2019
- More issues of trademark misuse (keyword dropping and illicit referencing) and design infringement than counterfeits (stricto sensu)

• Rights Owners

- Adidas
- Apple
- Duracell
- Hermès
- Lexmark
- Luxottica Group Spa
- Moncler Spa
- Nike Inc.
- Philip Morris International
- Philipp Plein
- Philips
- Procter & Gamble
- Signify
- Zanellato

• Internet Platforms

- Alibaba Group Inc.
- Amazon Services Europe Sarl.
- Bol.com
- eBay
- Facebook Marketplace
- Grupa Allegro sp. z o.o
- OLX
- Priceminister Rakuten

• Associations

- Anti-Counterfeiting Group (ACG)
- AIM European Brands Association
- Business Action to Stop Counterfeiting and Piracy (BASCAP)
- Federation of the European Sporting Goods Industry (FESI)
- International Video Federation (IVF)
- Motion Picture Association (MPA)
- Toy Industries of Europe (TIE)

Signify and the MoU

- The MoU is laboratory that
 - stimulates dialogue
 - takes stock of the size of the problem
- The MoU is facilitated by DG Grow in close cooperation with the EU Observatory enabling a connection to EU leadership team
- MoU allows for a certain level of flexibility and speed that one can obtain from 'soft law'
- MoU insights are useful to draft legislation

The MoU stimulates the discussion

- By bringing together the various stakeholders, the MoU stimulates mutual understanding by facilitating
 - alignment among peers
 - discussion with platforms
 - raising awareness regarding the complexity of fighting illicit offerings on the internet
- Relation with platforms often is complex
 - rightsholders sell through platforms
 - competitors sell through platforms
 - resellers sell through platforms
 - some platforms also offer auxiliary services

The MoU stimulates the discussion

- Consumers can be easily deceived online, forcing stakeholders to discuss issues regarding design, copyright and trademark misuse
- MoU stakeholders care about the consumer/end-user



The MoU takes stock of the size of the problem

- Data collection (10th exercise is ongoing at this moment)
- During one month
- Twice a year (May and November)
- Mimicking the consumer that is looking for the branded product
- Based on a consistent set of keywords (per brand and per platform)

An agreed template spreadsheet exists to enable consolidation of the data

EU Observatory manages consolidation of data

The MoU takes stock of the size of the problem

- An agreed set of KPIs allows to measure the progress/evolution
 - 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 2. number of listings removed by a platform as a result of proactive and preventive measures in place
 - KPI 3. number of permanent and temporary seller restrictions imposed by a platforms linked to alleged infringements of MoU signatory Rights Owners' IPR

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

The underlying dialogue remains hugely important

Observations regarding the MoU

- The MoU generally helps to improve cooperation and efficiency among stakeholders
- The MoU is a 'soft tool', though its impact may be noticeable, it is rather limited
- From the KPIs it is clear that the problem is growing
- The stakeholder dialogue is an important enabler to develop mutual trust and ensure exchange of intelligence

Observations regarding the MoU

- Best practices can be raised and discussed
- Rights holders believe that platforms can take a more proactive role in identifying and addressing repeated infringers
- A standardized notice and take down system across platforms would be welcomed
- We will need to go beyond counterfeits (stricto sensu) and, in the interest of the end-user, also discuss design infringement and trademark misuse

Fighting counterfeits beyond the MoU

- Counterfeits need to be addressed at the source
- The internet allows counterfeiters to operate their global business in even larger anonymity
- Online and offline are connected and need to be tackled accordingly
- Online sales will continue to grow (Alibaba Group acquired Lazada, Singles Day turnover grew by 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. Large consignments (containers) remain hugely important → a more balanced approach is desired/needed

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

Fighting counterfeits beyond the MoU

- To enable enforcement authorities to target consignments more accurately, we need to 'connect the dots'
 - Combine various data sources
 - rights holders' intelligence is largely limited to genuine goods
 - intermediaries manage very rich data sets, covering intelligence that is invisible to others
 - notice and take down data is certainly worth considering
 - Use machine learning to generate automated risk alerts for enforcement authorities
- Lately we have seen some encouraging signs where platforms start sharing data with authorities

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