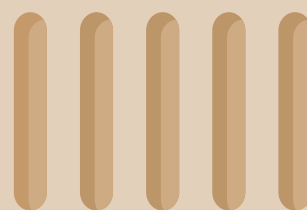


Fighting counterfeits online



"IT IS ONLY NATURAL THAT LEGISLATION CONCERNED WITH THE WORLD WIDE WEB TENDS INEVITABLY TO LAG BEHIND THE RAPID DEVELOPMENT OF INTERNET TECHNOLOGY."

Online counterfeiting in China is a constant worry for many brand owners, but the government there seems to be stepping up its attempts to combat the problem. **Zhang Xu** of **HFG** Law & Intellectual Property explains more.

The rise of the internet has created an immensely prosperous cyber world, but online sales of counterfeits are troubling companies all over the globe. A survey by the China-based Quality Brands Protection Committee (QBPC) of all its member companies showed that international right owners are confronted with the following problems related to online infringement:

- Counterfeit and infringing sales on e-commerce platforms, apparently concentrated on business-to-business and business-to-consumer portals in China;
- Prioritising listings of websites selling fake and infringing products via search engine optimisation strategy;
- Sales of counterfeit and infringing goods on social media; and
- Independent shopping sites, especially those aimed at overseas markets.

The sale of counterfeits remains almost every QBPC member company's concern. Given that e-commerce has become synonymous with China's economy, e-commerce giants enjoy preferential treatment from the government. Together with prevailing industry rules such as 'technology-neutral' and 'safe harbour' this means that e-commerce marketplaces shoulder less liability for combating counterfeits and infringing products available on their platforms.

According to an academic study by Peking University, in proceedings arising from infringing and counterfeit goods being sold on third party platforms, a mere 7% of them were sentenced to bear joint liability, whereas the remaining 93% were acquitted by courts.

Laws and regulations relating to counterfeit sales on internet platforms are presently the Tort Law, Regulations on Protection for the Right of Network Dissemination of Information, and Interim Administrative Measures on Online Commodity Trading and Services.

Although these have provided a framework for resolving infringement disputes, in the opinion of brand owners the determination of e-commerce providers' liability is comparatively poor in the face of suspect products on sale in China.

Welcome change

The release of interim provisions by China's Ministry of Commerce (MOFCOM) seemingly

provides for a positive change for proprietors. In December 2014, the MOFCOM promulgated a draft of the Administrative Protocol Rules on Online Retailing Conducted via Third-Party Platform Transaction (网络零售第三方平台交易规则管理办法), known as the draft transaction protocol rules.

The regulation specifies that third party platforms have an obligation to file necessary information in the course of a transaction. The protocols related to intellectual property rights are the following:

- Protocol (III) on IP protection, which refers to the protocol for protection of IP and prevention of counterfeit and sub-standard goods;
- Protocol (VI) on information disclosure, which details that third party platforms shall require that cyber retailers operate using their real name, and shall examine and verify their business qualification by law; and
- Protocol (VII) on control and prevention of illegal information, which means third party retail platforms shall control and prevent platform-posted web advertisements or information about goods and services in violation of national laws and regulations. Moreover, it provides that the platform has obligations to publicise and file reports with the MOFCOM. In cases of non-compliance, commerce authorities shall ask the offender to rectify its fault in due course. This provision contains no punitive measures such as monetary penalties. In addition, the Commerce Law is now under legislative process. An initial draft will be submitted to state legislature for comments and consideration by late March 2015.

It is only natural that legislation concerned with the World Wide Web tends inevitably to lag behind the rapid development of internet technology. In such a context, practices of each stakeholder are of real importance. Following intensive research, which targeted right owners and e-commerce platform operators, into counterfeiting and infringement on online marketplaces throughout 2014, the MOFCOM, the State Administration of Industry and Commerce and the General Administration of Quality Supervision, Inspection and Quarantine have largely confirmed that e-commerce will be a focus of future IP protection.

With a view to strengthening government regulation, competent authorities may dispatch personnel to, or establish liaison offices at, major e-commerce players. IP proprietors can begin to consider fighting the sale of counterfeits and infringing activities in coordinated efforts in the offline and online spheres.

Likewise, e-commerce giants seem to be releasing themselves from armed defence against infringement, while trying a more insightful interpretation of their roles in anti-counterfeiting and anti-infringement from the perspective of social responsibility. Alibaba Group chairman Jack Ma commented in a public forum that the greatest contribution e-commerce has made to society is possibly that it will help to solve counterfeiting and infringement in the next two decades.

According to Ma, it may take 20 years to find a solution to the problem of counterfeit sales. This may be too long, however. We must become aware that it will be a painstaking course, particularly in the context of China.

However, people need not take a pessimistic view. The growth of the internet provides us with technological approaches to the problem and we can formulate more effective solutions. ■



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