

November 26, 2013 8:01 pm

China's counterfeits in the spotlight

By Ned Levin

In a cramped high-rise office in Hong Kong's ritziest shopping district, private investigator Ted Kavowras sits in front of a display of prosthetic disguises as he shares tales of China's fake factories.

Mr Kavowras is a former New York City policeman who investigates counterfeiting on behalf of foreign companies. He leads a team of expatriates who pose as buyers, visiting factories suspected of infringing on his clients' intellectual property.

Armed with both artificial beards and front companies to conceal his identity, Kavowras has uncovered some unusual items in his investigations, including a knock-off of a patented mock penis that can be filled with fake urine to fool drug tests.

China is well-known as a major counterfeiting hub. According to the World Customs Organisation, 75 per cent of counterfeit goods seized worldwide in 2008 to 2010 came from China.

Customs data from the US for 2012 shows that 84 per cent of confiscated fakes were from China and Hong Kong.

Mr Kavowras and other investigators and lawyers say China's legal system – particularly its civil courts – has made major strides in enforcing trademark rights. However, online sales networks, ever-adapting counterfeiters and a lack of criminal prosecutions continue to pose problems.

Production of fake goods, centred in the southern province of Guangdong, is as big as ever. Counterfeit production happens in proximity to legitimate local industries – sometimes even in the same factory, which allows the fake manufacturer to feed off the same supply chains.

“Every year you have better enforcement of laws, but you get more and more professional counterfeiters,” says Doug Clark, a Hong Kong lawyer specialising in intellectual property issues.

As enforcement rises, forgers have become wary of outsiders. Some no longer keep their products on site and refuse to do business with people they do not know personally, says Mr Clark. They will not give out free samples to potential buyers, requiring investigators pretending to be business partners to make expensive purchases to acquire evidence.

Mr Kavowras says he has enjoyed success over the past five years by hiring public notaries to accompany him on factory visits. Playing the part of an extrovert businessman, he poses with factory employees for photographs in front of stolen moulds and fake merchandise. If documented by at least two public notaries, the photographs, as well as goods that change hands, become admissible as evidence in Chinese courts and a boon to civil and even criminal litigation.

In response, some factories refuse to meet more than two people to discuss deals, meaning that an investigator and two notaries cannot get in the same room with a counterfeiter, says Mr Clark.

The shift of sales online further complicates enforcement. Counterfeiters send small shipments via courier to single domestic and foreign buyers, eliminating middlemen and traceable shipping containers.

While no surveys exist on the scale of the current online infringement problem, Chinese internet company [Alibaba](#) said it took down 87m ‘allegedly IP-infringing’ product listings from its online marketplace Taobao last year.

“In the old days, we would bust a warehouse full of fakes in Los Angeles or Dallas or Miami or New York,” recalls Rob Holmes, a Dallas-based investigator of online infringement. “Now, because of how good the logistics are out of China they ship one [item] at a time.”

This atomisation of counterfeit shipments makes infringers much harder to find. As a corollary, it has also made anti-counterfeiting work somewhat safer, at least for lawyers in the US.

“Back in the old days, Canal Street, Chinatown, it was like the Wild West,” recalls Brian Brokate, a New York attorney. “You went down there to do a seizure, mobs would form. There was always a concern that somebody was going to pull a gun.

“I remember somebody setting off a low-level explosive,” he continued. “There was a lawyer down there: he was actually stabbed.”

Perhaps the most entrenched problem in fighting counterfeiting in China is the country’s reliance on administrative enforcement and prohibitive thresholds for criminal liability, experts say.

Unless police can prove sales or inventory above a certain amount – Rmb50,000 for producers and Rmb150,000 for traders, according to a report issued by the International AntiCounterfeiting Coalition – infringers are subject only to fines, not imprisonment.

Since just proving that a counterfeiter has passed a criminal threshold can eat up precious investigative resources, such requirements sometimes cause police to look the other way. Without imprisonment as a deterrent, even fined counterfeiters are likely to set up shop again. In the absence of increased criminal enforcement, the industry is likely to remain entrenched, says Mr Clark.

According to Mr Holmes, the Texas investigator, it is also important to note where a lot of the demand is coming from – developed nations like the US.

“China isn’t going to make anything we don’t ask for,” he says. Mr Holmes describes neighbourhood parties in the Dallas suburbs at which soccer mums sell counterfeit handbags bought online. “I talk about what I call the desperate housewives. They are the new face of modern crime.”

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