Border Control in China

Presented by Lei (Ray) Zhao
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Self-introduction

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1. China’s exposure to counterfeit trade import/export

- According to China Customs, China’s foreign trade volume stood at CNY 24.33 trillion (about 3.5 trillion US dollars) in 2016 and it stands at CNY 17.93 trillion from January to August in 2017, 17.1% increase.

- Approximately 70% of Chinese exports consisting of manufactured goods, the amount of counterfeit trade import/export is still large either from China to other countries or from other countries to China.

- However enforcement keeps being strengthened, in 2016 custom enforcement measures were taken more than 19.5 K times, total case number of seized products 17.4 K and total seized suspected infringing products more than 42 M pieces.
2. Measures available to trademark owners

- Regulation on the Customs Protection of Intellectual Property Rights (CPIP 2010 Revision) and Implementing Measures of CPIP (2009)

- Customs enforcement of IPRs refers to the measures taken by the Customs against the import and export of IPR-infringed goods, also referred to as the Border Measures regarding the IPRs in TRIPS
2. Measures available to trademark owners

- Protection of Ex Officio (active protection, majority)
  1. Custom recordal of IPRs
  2. Infringement found by customs
  3. Against products infringing recorded IPRs
  4. Stop shipment and notify owners of recorded IPRs
  5. Investigation and possible penalty

- Protection upon request (passive protection)
  1. Requested by owners of recorded and non-recorded IPRs
  2. Infringement found by owners of IPRs
  3. Stop shipment but no investigation initiated by customs
  4. Owners need to bring lawsuits before courts
2. Measures available to trademark owners

2016 Enforcement statistics

Total case number of seized products: 17,443
Total seized suspected infringing products: 38,557,809

- Ex Officio
- Upon request
3. Basis for actions

❖ Trademark (majority)
❖ Copyright
❖ Patent
❖ Olympic symbols
❖ World Expo symbols
3. Basis for actions

In 2016, total number of suspected trademark infringement 41.46 M, 98.56 %
3. Basis for actions

In 2016, total case number of seized export products 16.8 K, 96.20% and total seized suspected export infringing products more than 42 M pieces, 98.95%, export is majority.
4. Procedure for Customs Registration

❖ Also known as IPR Recordal (online application only)


❖ Foreign information should be submitted with Chinese translations

❖ Foreign owners of IPRs shall file application through their Chinese subsidiaries or their agencies
4. Procedure for Customs Registration

Application form requires:

1. Name and Address in Chinese and English, nationality, contact info
2. Name, class, goods, picture, term of registered trademark; name, creation date, class, picture, of copyright; name, type, application date of patent; assignment, change, renewal information of trademark, copyright and patent if any
3. Information of license, name of licensee, term, goods
4. Name of goods, place of production, customs for import and export, price and major features
5. Known manufacturers, distributors, place of import/export, major feature and price of infringing products.
4. Procedure for Customs Registration

CUSTOMS RECORDAL requires

1. ID or incorporation certificate of applicants
2. Registration Certificate for the IPR
3. Photos of the designated goods and their packaging;
4. The name of the known infringers, if any;
5. Information about licensed use of the right, photocopy of licensing contract (if any) , or information including the name list, contents and term concerning the licensing in case of no contract
6. Known evidence of infringing products

※ The certificates and proof documents of identity should be color scanned.
4. Procedure for Customs Registration
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5. Timeframe and cost for the filing procedure

1. Come into effect in 1-2 months after filing
2. Protection period: 10 years after approval, or shorter than 10 years if the remaining validity period of the trademark is earlier
3. Renewal: on the basis of effective IPR, available to renew within 6 months before the expiration of recordal
4. Cost: CNY 800 per registration

※ Any change/withdraw of the registration should be applied to the GACC within 30 days after it happens to the IPR.
6. Effectiveness of Customs

Warranty – storage fees will be deducted
The owner of IPR could pay the warranty by case or by year. The warranty yearly paid is a more convenient choice if the infringing goods appear frequently.

Cost:
· Protection on Request: Equivalent with the value of the seizure goods
· Protection Ex Officio: The warranty per case should be no more than CNY 100,000.

The yearly paid warranty should be equal with the fees last year (including the storage fees, and other fees relating to it)

※ Yearly paid warranty cannot be applied to patent, copyright, Olympic symbols and World Exposition symbols.

Procedures for GACC after seizure:
· Protection on Request: 20 days to wait the court’s order of suspension, if not, release
· Protection Ex Officio: 30 days for investigation, estimating the infringement and decide the next moves—confiscate/destruction
7. Strategy for good border control

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8. Examples of interesting legal topics decided by courts and interesting topics

As much as GACC needs

Border control is not responsibility for some specific country. It needs cooperation across countries to provide maximum protection to IPR and the owners.

Case from top 10 important cases in IPR protection by GACC:

[In March and April 2016, together with CBP and ICE from U.S., GACC initiated special enforcement on IPR issues. In the enforcement, GACC has seized more than 2,000,000 infringed goods, relating to the trademarks “NBA”, “OAKLEY”, “NFL”, “ADIDAS”, “REEBOK”, which are worth millions. After finding the infringed goods, the GACC and ICE jointly crack the criminal cases, many of which were conspiring cases conducted by citizens from China and U.S. In the end, the suspects were arrested to wait for the legal sanctions.]
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Reveal as much as GACC needs

Customs training
9. Examples of interesting legal topics

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Q & A
Thank You!