

Going Along on an IPR Raid

They may not be high drama, but enforcement actions are an essential part of the ongoing campaign to combat the presence of counterfeit goods in the market.

BY TIM CULPAN

A collection of briefcase-carrying lawyers standing around on a street corner in the springtime sun is certainly not what Hollywood would present for the opening of a cops and robbers movie. In the real world, however, busting crooks and hauling away pirated goods is not as sexy as it sounds.

Taiwan's fight against illegal products doesn't always catch headlines because it's done slowly and methodically, with much less flash and bang than a Mel Gibson movie. But if fake designer goods are Taiwan's drug of choice, the country would seem to have a severe addiction. With Taiwan consumers unwilling to follow the Nancy Reagan admonition and "just say no," the fight must follow the same lines as the U.S. war on drugs. Cut off supply.

And so it is that these lawyers find themselves hanging out on a street corner one balmy afternoon just days before Chinese New Year. The target is three stores at the Oufenpu Market near the Songshan Railway Station, plus a warehouse in the vicinity. Inside: thousands of items of fake Abercrombie & Fitch apparel.

A few blocks away, during the wait for the police to carry out the raid, investigator Joe Pappenfuss talked about how he "stumbled across" the haul. He'd been surveying the scene for another client when the large cache of A&F goods caught the eye of his team. By his estimation, close to 50,000 items of fake goods were stocked in the stores and warehouse waiting for the Chinese New Year rush. He then alerted A&F, which passed the case to the law firm of Wenger & Vieli, which represents it in Taiwan.

Counterfeit CDs and DVDs, and sometimes pirated drugs, are generally easy to recognize. Not so with fake designer clothes, since the genuineness of the appearance is a major part of the appeal for prospective purchasers. So good were these knock-offs in Songshan that to the untrained eye they seemed indistinguishable from the real thing. Before a raid could be conducted, the lawyers and investigators needed to verify that the items were indeed fake. To do so, they sent in some undercover shoppers to buy a few samples, after which digital photos were sent to company reps for checking. In this case, incorrect color matching was among the clues that gave the pirates away.

Finding and identifying the fake goods is only half the job. The next step 'enforcement' for years was a major stumbling block due to an attitude among police and prosecutors that counterfeiting is not a serious crime 'as well as a shortage of resources applied to battling product piracy.

But Pappenfuss, whose company 'Taiwan Consultants International' provides investigation and security services, says the problems of attitude and resources have undergone a sea change in recent years. The 20-year resident of Taiwan especially notes the turnaround in how the police view piracy. "Even two years ago, it was a tough sell' to gain police cooperation in a counterfeiting case, he says. "But in these past two years, the Taiwan police have changed a lot. Now they're really good.'

Greater police cooperation

Pressure from the United States has been a major contributor to the turnaround. Taiwan's addition to the U.S. Trade Representatives' Special 301 Priority 'Hall of Shame' jolted the government into action from the top down. Year after year, the U.S. government ' along with industry lobby groups such as AmCham ' hammered home the need to boost awareness of and respect for intellectual property rights. The most prominent and prevalent sector of piracy was optical media, with CD and DVD piracy spiraling out of control. But trademark and copyright infringement on everything from batteries to handbags has been a bugbear for both local and foreign companies. The U.S. message that IPR equals innovation, and that protecting it is crucial to economic development, has finally struck a chord. Enter the police.

A joint optical-media taskforce consisting of police officers and representatives of the Economics Ministry's Intellectual Property Office was formed two years ago to tackle piracy and educate law-enforcement officers about the many and complicated issues that IPR infringement and protection involves. That taskforce appears to have been largely successful: the International Federation of the Phonographic Industry (IFPI) reports that CD piracy in Taiwan has fallen by around 20% in two years.

Clothing piracy is a more complicated beast to tame, given the difficulties in tracking and confirming it. To simply 'know' that something is fake is not enough; it must be provable in a court of law. Once the investigators and lawyers are satisfied with the evidence, they generally act on behalf of the client to present a 'Letter of Complaint' to the police along with the evidence and the trademark registration documents.

Infringement of trademark is considered a 'public crime' under Taiwan law, meaning that the police do not need to receive a victim's complaint before they can act. Either way, once armed with enough evidence, police will approach the prosecutors' office, which then will apply to the courts for a search warrant.

On that pre-New Year's day, the warrant having been obtained, the lawyers wait for the police to move in and secure the area. Then store by store, the plainclothes police walk in, flash their badges, and present the warrant. No guns, no handcuffs, no angry shouts of 'freeze' or throwing defendants face down on the floor. The whole process is placid, almost dull. It may not be dramatic, but the results are hard-hitting just the same.

In one of the Songshan stores, the young shop assistant appears totally stunned by what is going on, as the police entry is followed by a team of lawyers armed with cameras. Their weapons in the months to follow will be the mountains of evidence accumulated before, during, and after the raid. "This is one of the biggest [inventories] we've seen,' says lawyer John Eastwood, pointing to the bags of clothing stacked end on end. IPR is big business for law firms in Taiwan, and raids like this show why that's the case.

From merchandise to evidence

Over the next few hours the team of lawyers works methodically to bag and catalogue each item of seized apparel. Sweatpants, jackets, shoes, and caps are counted and bundled into large plastic bags before being carted off. One of the three stores stands empty as if a plague of locusts has just stolen the annual crop. The lucrative racks of fake A&F garments have now become evidence.

So calm and peaceful is the raid, from start to finish, that shopper after shopper wanders in oblivious to what's happening

around them. One inquires about the price of a pair of sweatpants; another asks if a certain sweatshirt comes in a different size. They are hurriedly shooed away by a uniformed cop who helpfully advises them that the shop is closed and perhaps they can come back another day.

With the market stalls secured, the police move on to the nearby warehouse where thousands of additional items are being stocked. It takes a while before they can gain access. Instead of battering rams or kicking down doors, eventually a locksmith is called in to break open the lock. Once inside, the raiders find dozens of more bags neatly stacked, more crucial evidence to be presented in court. Having counted the whole cache, Eastwood estimates that more than 5,000 items were seized ' less than the tens of thousands believed to have initially existed, but enough to put the street value in the millions of Taiwan dollars.

The value of the seizure is apparently enough to hurt the gangsters running the operation. So professional is the outfit that the clothing even has genuine-looking price labels denominated in U.S. dollars, while a catalogue seized in the raid outlines designs for the fake goods. Talking of the dangers of coming up against hoodlums, Eastwood recalls one raid that resulted in incensed gangsters taking to a law office with baseball bats. With the raid over and the goods impounded as evidence, the next step will take place in a courtroom ' and it is the judicial process that has now become the main obstacle to cracking down successfully on counterfeiters.

"The area that needs to be spotlighted is the poor performance of prosecutors in the courts,' says Papenfuss. Some prosecutors, he notes, are not up to speed on IP law and are unable to argue their case effectively at trial. In addition, many judges in Taiwan still do not seem to view piracy as a serious crime, and penalties tend to be low. For selling goods that infringe on a trademark, for example, the law allows for a sentence of up to one year in prison and an NT\$50,000 (about US\$1,500) fine. But in practice, courts here frequently dismiss cases like this outright or mete out slap-on-the-wrist sentences of a few months in prison, says Papenfuss. Since in Taiwan any prison term under six months can be reduced to a negligible fine, the bottom line is that punishments for IP cases hardly constitutes a proper deterrent ' a fact that infringers clearly understand, he says.

Why then do companies go to the trouble and cost of conducting raids and pursuing the infringers? One reason, of course, is that the situation could be even worse if would-be criminals felt they were facing no risk whatsoever. Beyond that, says Eastwood, "you're taking products off the street, which means that the infringers are denied the opportunity to make profits off them.' Harass them enough and even if they don't see the light and give up counterfeiting altogether, they may decide to switch to other brands that carry less risk.

A genuine solution, however, will come only when penalties are severe enough that vendors are no longer willing to sell fake goods in their shops, depriving the pirates of outlets for their production.