

COUNTERFEITS, FAKES, & INTELLECTUAL PROPERTY RIGHTS

BACKGROUND

The onset of the globalization has created enormous new market opportunities for U.S. marine manufacturers, but with these opportunities come numerous challenges. An increasingly difficult challenge for American manufacturers is the problem of illegal counterfeiting. Counterfeit goods or fakes account for up to 7 percent of world trade and cost manufacturers more than \$300 billion a year. In 2003, China was the number one source for counterfeit goods intercepted at U.S. borders and worldwide. This trade in illegal goods cost U.S. companies at least one billion dollars in legitimate business that year. The U.S. recreational marine industry is not immune to the threat of counterfeiting and American manufacturers must take urgent action to protect their products, their reputations, their bottom lines, and their consumers.

With U.S. exports to China up approximately 20 percent since 2001, U.S. firms must aggressively protect their company's intellectual property. Since joining the WTO, China has strengthened its legal framework and amended its laws and regulations regarding intellectual property rights (IPR). But despite stronger statutory protection, China continues to suffer counterfeiters due to a serious lack of adequate enforcement.

China has a 'first-to-file' system that requires no evidence of prior use or ownership, leaving registration of popular foreign marks open to third parties. This means that a manufacturer may find that they cannot enforce their trademark rights against a counterfeiter in China if the counterfeiter registered the trademark before the legitimate manufacturer. This 'first-to-file' system coupled with China's history of weak IPR enforcement makes it imperative that U.S. marine manufacturers take steps to protect themselves. In addition to being a business issue, counterfeiting is a safety issue. Because the marine environment is more rigorous and less predictable than others, product quality is a top priority. Counterfeit goods universally rely on inferior materials, inferior craftsmanship, and insufficient testing for quality assurance. Unsafe and unreliable marine products represent a serious danger to the consumer.

WHAT MARINE MANUFACTURERS CAN DO TO PROTECT THEIR INTELLECTUAL PROPERTY

- Register your patents, copyrights and trademarks in the U.S. and in markets where you do business.
- Record your trademarks, trade names and copyrights with the U.S. Customs and Border Protection.
- Register your trademarks and key intellectual property (IP) in countries known for rampant IP infringement, particularly China. Do this even if you are not currently doing business there. Because China is a 'first-to-register' state for trademarks, failure to register enables potential counterfeiters to register your valuable trademark before you do.
- Carefully consider IP issues before entering into a new international market or starting a new international joint venture.
- Never allow a licensee to register your trademark.
- Know your suppliers.

WHAT TO DO IF YOUR PRODUCT HAS BEEN ILLEGALLY COUNTERFEITED

- Immediately alert U.S. Customs about the counterfeit item in order for them to seize incoming products. You may need to hire an investigator to track and identify shipments for seizure.
- Use the resources offered by U.S. Department of Commerce (all information supplied by manufacturers to Commerce is strictly confidential).
- Alert the U.S. Coast Guard if it is a product that could affect the proper and safe functioning of recreational marine products and boats.
- Alert NMMA so that we may document the infringement and help argue your case with federal authorities. NMMA will protect your confidentiality if desired.

NMMA POSITION

Given a level playing field, U.S. marine manufacturers can compete with any nation in the world, and China represents a profitable market for U.S. businesses seeking to export their products abroad. At the same time, the recreational boating industry must take steps to protect itself from intellectual property rights infringements, and the U.S. government must do more to encourage China and all nations to enforce their anti-counterfeiting laws and adhere to their international trade obligations. To that end, NMMA supports new efforts by the Bush Administration to

exert diplomatic and economic pressure on China and other nations to fully comply with their IPR obligations under the World Trade Organization (WTO). NMMA also supports the Administration's efforts to assist American manufacturers through its new **Strategy Targeting Organized Piracy (STOP)**, the most comprehensive initiative ever advanced to eliminate the criminal networks that traffic in counterfeits and fakes. NMMA has engaged the **U.S. Coast Guard** in the issue and we are currently working with the agency to develop a web site where marine manufacturers may report fake products. NMMA is also seeking bipartisan legislative solutions during the 109th Congress, particularly in urging passage of **H.R. 32, the Stop Counterfeiting in Manufactured Goods Act**, introduced on Jan. 4, 2005 by Rep. Joe Knollenberg (R-Mich). This bill closes an important loophole in U.S. law and provides for the seizure of counterfeit goods and the equipment used to make them, which will effectively put counterfeiters out of business. You may write a letter to your elected officials urging them to support the Knollenberg bill using NMMA's Boating Online Advocacy Tool (B.O.A.T.). Simply visit: <http://www.nmma.org/grassroots/>.

ACTION NEEDED

Use the resources below to take the necessary steps to protect your intellectual property and help us continue to build momentum for H.R. 32 and other initiatives that will crack down on illegal counterfeiting and level the playing field for U.S. marine manufacturers. Should you become a victim of counterfeiting, be sure to alert NMMA so that we may document the case and provide assistance.

RESOURCES

- Call 1-866-999-HALT for your one-stop shop in protecting your rights. This new hotline gives businesses the information they need to leverage the resources of the United States government to lock down and enforce their trademarks, patents and copyrights overseas - both in individual countries and in multiple countries through international treaties. Also see www.stopfakes.gov.
- Protecting Your Intellectual Property Rights (IPR) in China, U.S. Department of Commerce Resource: <http://www.mac.doc.gov/China/Docs/BusinessGuides/IntellectualPropertyRights.htm>
- Fight Entry of Counterfeit Goods by Recording Your Trademark Rights with US Customs and Border Protection: http://www.customs.gov/ImageCache/cgov/content/import/commercial_5enforcement/trademarkrecordationtemplate_2edoc/v1/trademarkrecordationtemplate.doc
- Intellectual Property Rights Toolkit, The American Embassy in China: <http://www.usembassy-china.org.cn/ipr/>
- To Report a Trade Barrier, Contact the Trade Compliance Center: <http://www.tcc.mac.doc.gov/cgi-bin/doi.cgi?204:72:887556019:34>
- For a Comprehensive and Clear Summary of Chinese Patent Law: <http://www.usembassy-china.org.cn/ipr/ovview.html>
- Contact China: A Resource for Doing Business in People's Republic of China, U.S. Commercial Service in Beijing: http://www.buyusa.gov/china/en/bsp.html?bsp_cat:80120000
- For a List of Law Offices in the Beijing Consular District: <http://www.usembassy-china.org.cn/us-citizen/lwyrlist.html>
- For a List of Law Offices in the Shanghai Consulate District: <http://www.usembassy-china.org.cn/shanghai/acs/linkfiles/lawfirms.htm>