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COUNTERFEITING AND INFRINGEMENT OF TRADEMARK LAWS BY CHINA: AN INTERNATIONAL PERSPECTIVE

AUTHORED BY - SHIVANGI TANEJA

College - Amity University, Noida

Abstract

This paper critically examines the widespread issue of counterfeiting and trademark infringement originating from the People's Republic of China, which poses a significant threat to the protection of Intellectual Property Rights (IPRs) on a global scale. China's rapid industrial growth, coupled with favourable manufacturing conditions and weak enforcement of IP laws, has facilitated the proliferation of counterfeit goods in international markets. The study explores the underlying factors contributing to this trend, including systemic regulatory gaps, socio-cultural attitudes toward imitation, and the complexities of China's supply chains.

The paper further analyses the economic and reputational damages faced by legitimate businesses, the health and safety risks to consumers, and the broader implications of unfair market competition. In response, a range of domestic and international strategies have been implemented, including bilateral and multilateral agreements, enhanced border enforcement mechanisms, and initiatives led by global institutions such as the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). Emphasis is also placed on the importance of consumer education in reducing demand for counterfeit products.

By understanding the multifaceted nature and global consequences of counterfeiting from China, the paper aims to propose more effective legal, policy, and enforcement measures to strengthen intellectual property protections and uphold fair trade practices worldwide.

Keywords:

Counterfeiting, Trademark Infringement, Intellectual Property Rights (IPRs), China, WTO, WIPO, IP Law Enforcement, Consumer Awareness, International Trade, Unfair Competition

Introduction

China's rapid economic growth has made it a global manufacturing powerhouse. However, this growth has been accompanied by a significant challenge: the widespread counterfeiting and infringement of trademark laws. China is by some measure a producer of counterfeit and pirated goods (it is estimated that China accounts for over 80 percent of the world's counterfeits),¹ producing large quantities of goods such as knock-off designer-brand clothing and accessories, shoes, and apparel, pirated films and books, and fake consumer electronics, aircraft, and car parts for both the local and export market. China also is a large-scale infringer of patents, with both industrial giants and technology-related industry appearing to blatantly ignore the patent rights of foreign companies. This issue has far-reaching implications for intellectual property rights (IPRs) on an international level.² This paper primarily focus on the extent of counterfeiting and trademark infringement by China, its impact on IPRs globally, and the strategies employed by governments and international organizations to address this problem.

The Scale of Counterfeiting and Trademark Infringement in China

China is widely recognized as the world's largest source of counterfeit goods. A myriad of products, ranging from luxury goods to essential commodities, are counterfeited and sold both domestically and internationally. The scale of this problem is staggering, with estimates suggesting that counterfeiting accounts for a significant portion of China's exports.

China's role in counterfeit trade cannot be overstated. Counterfeit goods from China are estimated to make up approximately 12.5 % of China's total exports and over 1.5 % of its GDP³. Recent estimates by the Organization for Economic Cooperation and Development (OECD) and European Union Intellectual Property Office (EUIPO) reveal that nearly 90% of all seized counterfeit goods originate from China.⁴ For context, the total trade of counterfeit and illicit goods amount to as much as 3.3% of global trade, and 6.8% of EU imports from outside countries.⁵

¹ Daniel C. K. Chow, "Why China does not take Commercial Piracy Seriously", Ohio Northern University

² <https://journals.openedition.org>

³ <https://rouse.com/insights/news/2021/cross-border-trade-in-counterfeit-goods>

⁴ OECD, & European Union Intellectual Property Office. (2019). *Trade in Counterfeit and Pirated Goods: Value, Scope and Trends*.

⁵ OECD. (2019, March 18). *Trade in fake goods is now 3.3% of world trade and rising*.

Several factors contribute to the prevalence of counterfeiting in China. Firstly, the country's vast manufacturing capacity and low labour costs make it an attractive location for counterfeiters. Secondly, lack of stringent enforcement mechanisms and a culture that may not prioritize IPRs can further facilitate counterfeiting activities. Thirdly, the complex supply chains in China make it difficult to track and intercept counterfeit goods.

Underlying Factors Contributing to the Problem

China's legal framework for the protection of Intellectual Property Rights (IPRs) is, for the most part, aligned with its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, the implementation and enforcement of these laws remain critically deficient. The issue is pervasive, affecting all categories of IPRs, including patents, trademarks, copyrights, and trade secrets. Notably, the challenge extends beyond clandestine counterfeiting operations; even legitimate enterprises frequently engage in IP violations without facing meaningful consequences. A troubling practice involves the recruitment of competitors' senior personnel or technically skilled employees as a deliberate strategy to misappropriate trade secrets and proprietary technologies. Furthermore, Chinese companies are frequently accused by foreign entities of deliberate and systematic patent infringement, exacerbating concerns regarding the overall integrity and enforceability of IP protections within the country. It is also well known that most government computers have pirated software installed; even the controversial and ill-fated "Green Dam Youth Escort Internet" filtering software, which the government required installed in all computers sold in China for a short time, included approximately 3,000 lines of code from US-based CYBER sitter and is now subject to a copyright infringement lawsuit in the US.⁶

Analysing Key Stakeholders in China: Government Officials, Bureaucracy, and the Public

The enforcement of intellectual property rights in China highlights a division that many individuals fail to understand. Though Western states often describe the country in a negative view, highlighting an authoritarian regime supplied by a population homogenous in thought, views of intellectual property rights throughout the country highlight the division in thought between three key political bodies: high-ranking members of the Chinese Communist Party, local party officials located throughout the country, and the people. Each of these groups

⁶ Danny Friedmann, "Update on CYBER sitter, LLC v. The People's Republic of China et al.", 2011

experiences different driving factors, and as such, the enforcement and interpretation of intellectual property right laws varies between each group. The purpose of this section is to explore how each group of people views intellectual property, highlighting some of the contributing factors to China's failing enforcement measures.

The Communist Party of China (CPC) faces a unique policy dilemma that sets it apart from most other nations in the realm of economic governance. While the advancement and enforcement of intellectual property rights (IPRs) are widely recognized as critical to fostering innovation and sustaining long-term economic growth, China's current economic structure presents a paradox. The People's Republic of China has become one of the world's largest sources of counterfeit goods, with the manufacturing and export of such products constituting a significant component of the national economy. Consequently, the CPC must navigate a delicate balance between promoting IPR protection to secure future economic development and preserving short-term economic gains derived from industries that may rely, at least in part, on intellectual property violations. In this context, strengthening IPR enforcement often appears to come at the cost of immediate economic performance, posing a strategic challenge for policymakers.

In 2008, Chinese State Councilor Dai Bingguo stated that the three primary concerns of the People's Republic of China are maintaining regime stability, maintaining territorial sovereignty, and continued economic growth.⁷ China needs to maintain a high GDP growth rate, generally between 6% and 6.5%, in order to ensure employment for its population.⁸ By utilizing a balance of state-owned enterprises (SOEs) and market mechanisms to target this range each quarter, the government can plan its economy, keeping people employed and ensuring regime approval. When this number falters, fears arise that a slowed economy will decrease citizen approval for the government, creating the potential for instability.⁹ As a result, economic growth is key to the Communist Party.

Though intellectual property right laws protect and promote innovation, they also halt the counterfeit manufacturing industry. If China exports counterfeit goods valued at approximately

⁷ Dai, B. (2009, August 7). *The Core Interests of the People's Republic of China*.

⁸ Smith, E. (2020, February 4). *China's yearly growth rate could fall below 2%, economist warns*. CNBC.

⁹ Christensen, T. J. (2015). *Shaping the Choices of a Rising Power: The China Challenge*. W.W. Norton & Company.

\$400 billion,¹⁰ and China has a total export value of \$2.4 trillion,¹¹ one can see that illicit goods contribute significantly to the country's trade economy. The Communist Party, when determining intellectual property rights law, has to balance the potential for long-term growth promoted by intellectual property rights with the reality of short-term losses that strict enforcement would instigate.¹² This creates an apparent contradiction when working with foreign entities that want stricter laws, such as the United States. Although the United States continues to exert pressure on China to strengthen the enforcement of intellectual property rights (IPRs), the Chinese government remains cautious about implementing reforms that could adversely impact its domestic economy particularly when such measures appear to serve the interests of external actors. Nonetheless, it is important to recognize that this does not imply a complete absence of action on China's part. The Chinese government has, in fact, undertaken a range of initiatives aimed at improving IPR enforcement, reflecting an awareness of the long-term benefits of stronger intellectual property protections for domestic innovation and international credibility.

Pioneered in 2014, the National People's Congress identified a growing need for judiciary bodies focused specifically on intellectual property rights cases. A mountain of claims highlighted how local and regional judicial systems had little training in intellectual property, and therefore, would often disregard such cases.¹³ As a result, the government created specialized intellectual property courts in Shanghai, Guangzhou and Beijing.¹⁴ This system gained national attention for its incredible work and has since grown to over 20 specialized courts and tribunals, including even an appellate IP court.¹⁵ The judges of these courts are generally considered to be some of the best in China, with at least a decade of experience in intellectual property right law. This has played a significant role in the annual number of court cases relating to violations of intellectual property in China.

While the Chinese government operates under centralized ideological and policy frameworks that guide national development, the interpretation and implementation of these policies at the local level often diverge from their original intent. Intellectual property rights (IPR) law serves

¹⁰ OECD. (2019, March 18). *Trade in fake goods is now 3.3% of world trade and rising*.

¹¹ *OEC – China (CHN) Exports, Imports, and Trade Partners*. (n.d.). Retrieved May 1, 2020

¹² Longo, J. (2020, April 13). *Interview with Zhang Zhenqing, Author of Intellectual Property Rights in China*

¹³ *A-CAPP Roundtable Series with Jay Burgett, Global Trademark Attorney for Mars Wrigley*. (2019, July 26)

¹⁴ *China's Intellectual Property Courts: A Procedural Overview*. (2019, September 20). China Law Blog.

¹⁵ Tao, K. (2019). China's Commitment to Strengthening IP Judicial Protection and Creating a Bright Future for IP Rights. *WIPO Magazine*.

as a clear example of this discrepancy. Whereas the central government must weigh the broader implications of IPR enforcement in balancing long-term innovation with short-term economic stability, provincial and municipal authorities are primarily driven by performance metrics that emphasize immediate economic output. In a highly competitive environment where local officials are incentivized to surpass both regional counterparts and their own historical benchmarks, IPR enforcement may be deprioritized in favour of rapid industrial and commercial gains. Before discussing intellectual property rights, one must understand how the Chinese government and its levels of political meritocracy work. The Communist Party of China does not follow a democratic fashion that the United States is accustomed to. Instead, it utilizes a hierarchical electoral system, where local officials are directly elected. Then, as they achieve success and better their community, they are given the opportunity to rise into higher positions with more responsibility. This process of political meritocracy combines personal aspirations with benevolent altruism to motivate officials to success. At the same time, however, it creates ample opportunity for corruption and faked economic data.

Historically, China is not unaccustomed to faked economic data. From 1959 to 1961, China underwent the Great Leap Forward, in which the country's grain output fell dramatically as the country aimed to mass industrialize. Under the impression that collectivization would increase productivity, the central government set unreasonable grain production goals for each locality, arguing that an increase in efficiency would allow for a shift to industry. Knowing that their political futures relied on meeting certain targets, local officials distorted and exaggerated their statistics of grain production, over-reporting their numbers to appear successful.¹⁶ As a result, the country plunged into a famine that killed tens of millions of people. Since then, critics have continued to accuse China of falsifying numbers relating to everything from economic data to COVID-19 deaths, all with varying degrees of accuracy.

At present, the Chinese officials still feel pressurized to perform well. Not only do their political futures rely on this through a system of political meritocracy, but their personal finances do as well. The civil service pay for Chinese officials is largely determined by the success of the province they are managing. As localities perform better, the officials are essentially awarded through a system of state profit-sharing.¹⁷ Together, these two factors create an environment

¹⁶ Li, W., & Yang, D. T. (2005). The Great Leap Forward: Anatomy of a Central Planning Disaster. *Journal of Political Economy*, 113(4), 840–877. JSTOR

¹⁷ You, Y., & Zhang, G. (2016). The Political Economy of Civil Service Pay in China: A Panel Data Analysis. *Chinese Political Science Review*, 1(2), 248–267

hospitable for continued counterfeiting practices. If a province's wealth is strongly connected to its manufacturing industry, and that industry partakes heavily in counterfeit goods, then there is a direct disincentive to enforce intellectual property right laws. Not only would it affect their regional indicators for success, such as employment or GDP per capita, but it could have a direct affect on their personal salaries. However, many foreign companies have found success in rewarding Chinese local officials for arresting counterfeiters.¹⁸ By attaching some level of social significance and public recognition to anti-counterfeiting measures, they outweigh the motivations for allowing violations of intellectual property to continue.

Intellectual property laws serve two purposes, protecting creativity and innovation while also promoting it. Though the enforcement aspect of intellectual property protections runs against the personal motivations of local officials, the promotion of innovation is highly beneficial to a region's success. Local officials would benefit from promoting intellectual property through registrations and applications rather than enforcement. This is largely evidenced by the fact that China process the most applications for intellectual property in the world,¹⁹ yet does not even rank in the top ten for most innovative countries.²⁰ They only need to register numbers, so that they can outperform and outcompete other regions. Local officials push for quantity over quality in order to boost their numbers, protecting their image while preserving their state economies.²¹

Overall, local officials face a very different decision-making process from their national counterparts. While both value the economic and creative development of the regions they're responsible for, each group faces different motivations and external pressures. As such, it is important to identify these relationships and driving forces when responding to the issue of intellectual property rights in China. Policy exists, yet the enforcement measures have yet to take a real effect.

The Chinese population plays a pivotal role in shaping the landscape of intellectual property rights (IPR) infringement, both as participants in and enablers of a system where counterfeiting is normalized, economically viable, and in many cases, socially tolerated. The counterfeiting

¹⁸ Chang, A. (2019). *How A Small Indiana Company Fought Back Against Chinese Counterfeiters*.

¹⁹ McCarthy, N. (2019, July). *The World's Most Innovative Countries In 2019 [Infographic]*. Forbes.

²⁰ ²⁰ (2019, July). *China moves up in global innovation ranking*. China Daily.

²¹ Zhang, Z. (2019). *Intellectual Property Rights in China*. University of Pennsylvania Press.

enterprise has been viewed as more profitable than the drug trade,²² and even more enticing, it is a low-risk crime to perform. Not only can the products be challenging to identify, but the enforcement is low. Should an individual be caught and tried, the punitive damages are often dwarfed by the profits earned from the crime. These profits can be realized anywhere in the world, though, as they are not tied down by a specific location. Yet, nearly all counterfeit manufacturing happens in China. The purpose of this section is to discuss some of the cultural characteristics of China that make it hospitable for violations of intellectual property rights. Further, it is to highlight how culture, ideology, and state history can affect the implicit perceptions of intellectual property rights, not necessarily providing a scapegoat for why counterfeiters counterfeit, but illustrating the higher degree of tolerance that Chinese society has for it.

While the primary driver of counterfeiting remains monetary gain due to its high profitability and relatively low legal risk, it is further reinforced by a range of cultural, economic, and systemic factors that collectively hinder effective IPR enforcement. Among the most significant is the strong domestic demand for affordable goods. For many Chinese consumers, particularly those in lower-income segments, cost takes precedence over authenticity. Counterfeit products offer cheaper alternatives to branded items, creating a thriving internal market that sustains the production and distribution of fake goods even in the absence of foreign demand.

This demand is deeply intertwined with public perception and cultural attitudes toward intellectual property. In China, where the legal recognition of IPR is relatively recent, imitation is not universally regarded as unethical or illegal. Instead, it is often perceived as a form of flattery or innovation. In fact, entrepreneurship through imitation is widely accepted, especially among small-scale producers and traders, many of whom see replication as a practical business strategy rather than an infringement of rights.

Traditional Chinese philosophical influences, particularly **Confucianism and Taoism**, further shape these views. These ideologies emphasize community welfare, knowledge sharing, and building upon prior work values that inherently conflict with the Western notion of exclusive ownership of ideas. Collectivist cultures generally value the needs of a group over the needs of

²² *The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime*. (n.d.). United Nations Office on Drugs and Crime. Retrieved May 2, 2020.

an individual, and in the realm of intellectual property, that is most often reflected by the perception of a creative work's purpose.²³ Intellectual property rights are an inherently individualized concept, highlighting the need for an individual's ownership of an idea over the possibility that the group could build upon, improve and altogether benefit from, the work. The informal or grey economy in China also plays a substantial role in facilitating counterfeiting. Millions of people rely on this sector for income, including through manufacturing, packaging, and distributing counterfeit goods. Many small vendors and online sellers operate with limited awareness of IPR laws, and may not even recognize that the products they sell are infringing upon intellectual property rights. This lack of legal understanding is compounded by China's booming digital economy. E-commerce platforms such as Taobao, Pinduoduo, and WeChat are widely used across all demographics and provide counterfeit sellers with direct access to a vast consumer base. Despite growing regulatory efforts, the sheer volume and decentralization of transactions make enforcement difficult, allowing counterfeit products to circulate widely with minimal risk.

Furthermore, certain regions in China have become counterfeit manufacturing hubs, such as Yiwu and Guangzhou, where local economies depend heavily on the production of fake goods. For many communities, this industry provides employment and sustains livelihoods, creating strong resistance to stricter enforcement measures. As such, intellectual property violations are not simply legal issues they are deeply embedded in local economic structures. Enforcement efforts in these regions face opposition not just from criminal networks, but from ordinary citizens who view such activities as legitimate work.

Finally, limited public awareness of IPR laws continues to pose a significant challenge. Public education campaigns are relatively recent and not uniformly effective, particularly in rural or underdeveloped areas where legal literacy remains low. This contributes to a broader cultural disconnect, in which the legitimacy of IPR is neither fully understood nor widely accepted. Historical narratives also play a role in shaping contemporary attitudes. Many Chinese citizens view Western demands for stricter enforcement as hypocritical, recalling that nations such as the United States, Japan, and South Korea engaged in similar IP violations during their own industrial development. The lingering impact of the "Century of Humiliation" further fuels nationalist sentiment and skepticism toward Western-led global standards.

²³ Tian, Z., & Buitrago, G. (2017). Will a Collectivistic Culture protect your Intellectual Property? Effect of Individualism on Intellectual Property Protection. *International Business Research*, 10(11), 111.

As Dr. Gregory Mandel, Dean of the Tsinghua University of Law in Beijing, once highlighted, the role of public perception towards intellectual property rights affects how it is enforced and understood. Misperceptions around it limit its legitimacy and function, meaning that if there is to be a functionally successful system of intellectual property rights, it needs to include the education of the public.²⁴

China's "first to file" policy for Trademarks and Patents

China follows a strict first to file trademark system, which means that the first person or company to register a trademark owns the right to it, regardless of who used it first. Whereas, in countries like the United States of America, the scenario is quite different wherein, trademark rights are based on actual use.

Under China's Trademark Law, trademark rights are granted to the party who files the application first and there is no need to show prior use. The first applicant to file the trademark with the China National Intellectual Property Administration (CNIPA) gains exclusive rights. It applies even if the trademark is already famous internationally. As a result, China has historically faced challenges related to trademark squatting, where entities register well known foreign trademarks without authorization to capitalize on the brand's reputation.

One prominent case that illustrates these challenges is the legal battle between the American streetwear label Supreme New York and its counterfeit counterpart Supreme Italia. At the core of this dispute lies China's first-to-file trademark registration system, a policy that inadvertently encourages trademark squatting **and** bad-faith registrations.

Supreme New York (operated by Chapter 4 Corp.) rose to international acclaim with its bold red and white logo and limited edition streetwear. Despite its global fame, the brand was unable to secure trademark rights in China initially. Capitalizing on this gap, **International Brand Firm (IBF)**, a company based in the UK and Italy, registered "**Supreme Italia**" trademarks in China and began retail operations under this name including opening a store in Shanghai.²⁵

Despite being recognized internationally as a counterfeit, Supreme Italia legally operated under

²⁴ Mandel, G. N. (2019, January 7). *The Role of Public Perception in the Rule of Law*. The Tsinghua China Law Review 10th Anniversary Symposium: China's Role Under the Globalization of the Rule of Law, Beijing, China.

²⁵ The Drum. (2019). *Counterfeit brand Supreme Italia loses registered trademarks in China*.

China's IP framework until June 2019, when the China Trademark Office (CTMO) revoked two of its registrations due to bad-faith filing.²⁶

In January 2020, Chinese authorities finally recognized Supreme New York's rights to the name and logo, effectively shutting down Supreme Italia's presence in the country.

Supreme Italia exploited the first-to-file loophole to present itself as a legitimate brand in the Chinese market. It not only operated stores but also won temporary legal victories over the real Supreme. Had the Chinese authorities not intervened, Supreme Italia's presence could have misled consumers, diluted brand value, and created lasting confusion about brand origin and authenticity.

International Efforts to Address Counterfeiting and Violation of Intellectual Property Rights

Governments and international organizations have taken steps to address the issue of counterfeiting and trademark infringement by China. Some of the key strategies include:

- **Bilateral and Multilateral Agreements:** Countries have negotiated bilateral and multilateral agreements to strengthen cooperation in combating counterfeiting. These agreements often include provisions for information sharing, law enforcement collaboration, and dispute resolution.
- **International Organizations:** Organizations such as the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), and the International Anti-Counterfeiting Coalition (IACC) play a crucial role in promoting IPR protection and combating counterfeiting.
- **Customs Enforcement:** Customs authorities worldwide have implemented measures to intercept counterfeit goods at the border. These measures include increased inspections, training of customs officials, and the use of advanced technologies.
- **Consumer Awareness:** Raising consumer awareness about the dangers of counterfeit products is essential. Educating consumers can help reduce demand for counterfeit goods and put pressure on manufacturers and retailers to adopt more ethical practices.

²⁶ ECOVIS. (2020). *Brand Protection: The US Fashion Brand Supreme Wins Trademark Rights in China*.

Conclusion

Counterfeiting and trademark infringement originating from China continue to pose a significant challenge to the international intellectual property regime. Despite having made notable strides in reforming its legal infrastructure and establishing specialized intellectual property courts, China still struggles with inconsistent enforcement, local protectionism, and deep-rooted cultural perceptions that diminish the perceived importance of intellectual property rights. This systemic issue is perpetuated by the alignment of short-term economic incentives, decentralized governance structures, and a public that often prioritizes affordability and economic opportunity over brand authenticity or legal compliance.

The problem is further compounded by the scale and sophistication of counterfeit manufacturing operations, which are often integrated into legitimate supply chains and supported by expansive informal economies. As such, addressing counterfeiting and IP infringement requires a multi-dimensional strategy that goes beyond legal reform and border controls.

To effectively eliminate counterfeiting in China, a comprehensive, multi-pronged strategy must be implemented. First, strengthening the enforcement of existing IP laws through regular audits by the China National Intellectual Property Administration (CNIPA) and local regulatory bodies can be highly effective. These audits should target high-risk sectors, including manufacturing hubs, e-commerce platforms, and retail chains, ensuring compliance with IP regulations and penalizing violators through fines, blacklisting, or license suspension. Additionally, establishing close coordination between IP authorities and customs departments is essential. Creating integrated databases and digital tracking systems can enable customs officials to verify product authenticity in real-time. Training programs and collaborative task forces between CNIPA and the General Administration of Customs should be developed to identify and intercept counterfeit goods at borders, both incoming and outgoing.

Furthermore, enhancing public education and awareness campaigns on the legal and ethical implications of IP infringement—especially in rural and industrial regions—will foster greater societal respect for intellectual property. In parallel, incentivizing innovation through government subsidies, R&D support, and legal protections for small businesses and inventors can help reduce dependence on counterfeit-based entrepreneurship. E-commerce platforms

must also be held accountable by mandating stricter IP compliance protocols, including real-time takedown mechanisms, seller verification, and automated product screening systems. Lastly, strengthening international cooperation through bilateral treaties, information-sharing agreements, and joint enforcement operations with trading partners will bolster global efforts against transnational counterfeiting networks.

By integrating systematic audits, customs collaboration, digital enforcement tools, public education, and international alignment, China can significantly reduce its counterfeiting footprint and align itself with global intellectual property standards.

