

КАЧЕСТВО И СЕРТИФИКАЦИЯ НА ПРОДУКТИТЕ
QUALITY AND CERTIFICATION OF PRODUCTS

Сборник с доклади
Conference proceedings

КАЧЕСТВО И СЕРТИФИКАЦИЯ НА ПРОДУКТИТЕ

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- ◆ Сертификация на продуктите и услугите.
- ◆ Онлайн търговия – състояние, развитие, проблеми.
- ◆ Защита на потребителите – правни, организационни аспекти, добри практики.
- ◆ Взаимовръзка бизнес–образование.

Discussion topics and thematic directions of the conference

- ◆ Quality of goods - formation, consumer properties, management, identification and counterfeiting.
- ◆ Certification of products and services.
- ◆ Online commerce - status, development, problems.
- ◆ Consumer protection - legal, organizational aspects, good practices.
- ◆ Business-education interconnection.

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SOLVING THE PROBLEM OF COUNTERFEIT PRODUCTS IN UKRAINE

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Abstract: The article is devoted to generalized information about counterfeit products, their varieties, the size of its distribution, its impacting to the economic, social and environmental consequences for any country and consumer. The article presents the world trends, strategies, measures and actions of fight against counterfeit products, ways to prevent its appearance in the market and use by consumers, measures aimed at protecting intellectual property rights. Effective solutions, ways and legal measures of fight against counterfeit products for small and medium-sized businesses are proposed. The results of the study can be used by small and medium-sized enterprises to solve the problem of counterfeit products in Ukraine.

Keywords: *counterfeit, counterfeit products, product tampering, protection of rights, intellectual property*

РЕШЕНИЕ ПРОБЛЕМЫ КОНТРАФАКТНОЙ ПРОДУКЦИИ В УКРАИНЕ

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Резюме: В публикации представлена обобщенная информация о контрафактной продукции, ее разновидностях, масштабах ее распространения, ее влиянии на экономические, социальные и экологические последствия для страны и потребителей. Приведены мировые тенденции, стратегии, меры и действия борьбы с контрафактной продукцией, пути предупреждения ее появления на рынке и использования потребителями, меры направленные на сферу защиты прав интеллектуальной собственности. Предложены эффективные решения, пути и правовые меры борьбы с контрафактной продукцией для предприятий малого и среднего бизнеса. Результаты исследования могут быть использованы предприятиями малого и среднего бизнеса для решения проблемы контрафактной продукции в Украине.

Ключевые слова: *контрафакт, контрафактная продукция, подделка продукции, защита прав, интеллектуальная собственность.*

Introduction

Counterfeit goods are goods containing intellectual property rights (trademarks, industrial designs, literary works, phonograms, etc.) and they are manufactured, distributed and/or moved across the customs border in violation of intellectual property rights. In this case, counterfeit products should not be identified with smuggling because products moved away from customs control [1].

There are the following types of counterfeit:

a) the use of designations identical or similar to the trade mark as for all types of goods is the most common;

b) fake appearance of goods is widely used. That is, illegal use of design decisions. At concerns goods that are mainly sold through their design: fabrics, wallpapers, ceramic tiles, interior items, luxury goods, clothing, etc;

c) the use of audiovisual products, books and computer programs is of particular importance. The term «piracy» is used for this type of counterfeit;

d) illegal use of technical solutions patented as inventions are the widespread. This is due to the modern invention relates to highly developed

technologies that are difficult to reproduce [2].

The things to remember are several myths associated with counterfeiting. First, counterfeit goods are often considered only as low quality goods. Mostly it is true, but not always. Clothes made with the use of a stolen design can be made of much higher quality fabrics, while remaining counterfeit.

Second, counterfeit products are considered to be counterfeit everywhere. It is not so. The objects of industrial property have strictly territorial sphere of protection. Therefore, the sale of goods marked with a particular designation in a country where the designation has not received any protection will not be considered a violation of the law. Moreover, if the rights of such designation are registered in another country by another person, the original production may become counterfeit productions in that country.

Third, counterfeit products can always be distinguished from the original if somebody has sufficient experience. But it is not true for all types of goods. For example, a pirated program is usually no different from the original one. If any publishing house issued a large circulation of the look and it was in contrary to the agreement with the author, then part of these publishing products showed sell with concealment from the author's control and such a additional circulation is counterfeit products. It is the case where the meaning of the word «counterfeit» is wider then its literal tradition in English as «fake».

Another problem is in the counterfeit is only distributed illegally and the official purchase of the goods eliminates their counterfeit. In fact the legislation of the most countries proceeds from the principle of transferring property rights of a thing and it does not mean that its transpering of intellectual property rights is automatic. If it is not about the exhaustion of rights, the right of prior use and other individual cases, the legally purchased thing can remain counterfeit with the consequences [2]. Trademark protection provides careful and focused work for identifying possible channels of counterfeit delivery, identifying the number of persons who may be related to them and numerous counterfeit measures directing for fight against counterfeit products [3].

Globally, the counterfeiting is difficult to eradicate that's why until economic preconditions exist. Locally in any country or region, counterfeiting can be successful. If the counterfeit is not stopped in time, the material losses from it will be more than the cost of the unrealized original product. It is very difficult to calculate losses material. For example, it is material losses to company or brand reputation, etc. [2].

Object, subject and aim of research

The object of the research was selected counterfeit products. The subject of the research is varieties of counterfeit products, the world experience of the fight against the counter in counterfeit products. Analytical, systematization, generalization methods were applied during the research.

The aim of the research is to analyze, systematization, generalization and justification ways, solutions and measures directed at solving the problem of counterfeit products in Ukraine.

Presentation of the main material of the research

The production and distribution of counterfeit goods are global multi-billion dollar problem has economic, social and environmental consequences as for countries so for consumers. According to data of the EU Intellectual Property Office (EUIPO) and the Organization of Economic Cooperation and Development (OECD), the annual volume of counterfeit trade is \$ 461 billion, (about 2,5% of total world trade). It is a very profitable business and it exists because criminals are based consistently high demand of cheap goods at low costs for their manufacture and distribution. They are not afraid of severe punishment for this kind of crime. Factually, the counterfeiting is one of the main obstacles to the development of domestic production, it is a violation of intellectual property rights, which slows down the introduction of innovative industries and economic development of the state. As for agrochemical industry non-compliance threatens large scale man-made disasters. Counterfeiting of medicines, toys, spare parts of vehicles, fertilizers and other goods can seriously damage the health hazard and consumer safety. Consumers have to understand when they purchase a counterfeit, they support crime and endanger their lives and health.

According to the EU Intellectual Property Office (EUIPO) and the Organization of Economic Co-operation and Development (OECD), the counterfeit trading and the pirated products counts about EUR 460 billion annually all over the world. It is a huge scale. As for to the EU, imports amounts about EUR 120 billion of the counterfeit goods, which is approximately 7% of total EU imports. The Asian Anti-Counterfeiting and Anti-Counterfeiting Coalition (ACACAP, Singapore) strategy for as fight and ban counterfeiting products includes the following stages: identification of risks for a particular brand; search for partners (as well as counterfeit manufacturers) locally; the fight, which includes a complex

of measures related with confiscation seizure of counterfeit items, and the closure kind of stores. The activities of the National Association for the Protection of Trademarks (ANDEMA, Spain) are aimed at conducting training events for law enforcement officials, customs authorities, as well as for their education work. Unfortunately, the current legislative sanctions do not stop offenders, because fines are much lower than income in Ukraine [4].

Internet commerce is a big problem. Today, every \$ 12 in the USA are spent online. In 3-4 years according to various forecasts Americans will spend every \$ 8 on the Internet. Despite the cooperation of law enforcement official, customs authorities, right holders, the number of counterfeits in the world is increasing every year. Therefore, the existing mechanisms as for fight and ban counterfeit products are ineffective. It is worth finding new ways and mechanisms. Really now it is too difficult to find stores that are overloaded with counterfeit products, and the trade exists on the Internet.

The world trends fight against counterfeiting and piracy; the role of transnational organized crime for manufacture and distribution of counterfeit goods; suspension and counteraction to import of counterfeit and pirated goods at customs; interaction between the state and right holders in the fight against counterfeit products; raising consumer awareness and social responsibility; studying the amount of counterfeiting and piracy; the foundation of the system of penalties and fines it is not a complete list of issues discussed during the Second International Forum in Fighting with Counterfeiting and Piracy.

Therefore, the problem of trade of counterfeit goods exists not only in Ukraine, but it is all over the world. In recent years Ukraine has made some progress in preventing of the illegal use of pirated and counterfeit goods. We need a balance and a compromise between increasing responsibility among our consumers. They must understand using counterfeit and pirated goods is the same violation and illegal using thing and properties, which belong to other people [5]. However, in Ukraine there is a serious problem in the field of protection of intellectual property rights, it prevents the emergence of new products and the beginning of cooperation with many companies from other countries. One of the serious and important problem is to identify and eliminate existing channels of counterfeit delivery, and to identify all persons who related to intellectual property rights, it is quite difficult [3].

The Deep and Comprehensive Free Trade Area with Ukraine, as part of the Association Agreement, has an intellectual property chapter aimed at

bringing Ukrainian legislation to the with EU requirements. Its execution is controlled in the Annual Ukraine-EU Dialogue of Intellectual Property Rights. The implementation of intellectual property rights at all levels – in customs, police, court – is an important issue nowadays. On the occasion of the EU-Ukraine Dialogue of Intellectual Property Rights the public discussion was held: «I buy real!» The EU Delegation of Ukraine, with Ministry of Economic Development, the Ukrainian Anti-Counterfeiting and Piracy Alliance (UACP) and the European Business Association, call on citizens to know and remember of the risks related to the purchase of counterfeit goods [5].

The important is becoming valid as for the Law of Ukraine No. 202-IX «About Amendments to the Customs Code of Ukraine as for Protection of Intellectual Property Rights in the moving of goods across the Customs Border of Ukraine», which legislated a number of terms related to the protection of intellectual property rights. They are «counterfeit goods», «pirated goods», «goods are suspected of infringement intellectual property rights». At the same time the measures for protection of intellectual property rights do not apply to the original goods, i.e. goods were manufactured with the consent of the right holder or goods made in certain number by a person who authorized by the right holder, especially if their number exceeds the stipulated one. According to the law, the measures related to the suspension of customs clearance of goods suspected of infringing intellectual property rights are being extended, including at the initiative of the customs authority [6].

Conclusions

Effective fight with counterfeiting products consist in following tasks:

- a) lawful obtain the documents about intellectual property rights (i.e. certificates, patents);
- b) entering the object of intellectual property right into the Customs register of objects of intellectual property right of Ukraine;
- c) monitoring of infringements of intellectual property rights (including on the Internet especially as for objects and related to rights;
- d) implementation of various methods of protection of intellectual property rights in case of violation detection: in a claim procedure; in court; administratively (in the Antimonopoly Committee of Ukraine, the State Fiscal Service of Ukraine, law enforcement agencies) [1].

There are dozens of counterfeiting agencies in the Western Europe and the USA that specialize in the legal assistance in Ukraine. This sphere

is practically undeveloped. In spite of this, the accumulated experience allows us to offer solutions, the implementation of which is quite effective small and medium. These measures include such main features.

a) monitoring of infringements of intellectual property rights throughout the territory Ukraine;

b) fixing intellectual property rights violations, including on the Internet;

c) implementation of preventive measures on the basis of relevant court decisions;

d) organization of test purchases together with the bodies of the Ministry of Internal Affairs of Ukraine;

e) supporting of criminal proceedings at Art. 176, 177, 229 of the Criminal Code of Ukraine;

f) conducting commercial and civil proceedings as for the infringement of intellectual property rights;

g) support of proceedings as for unfair competition in the bodies of the Antimonopoly Committee of Ukraine;

h) inclusion of intellectual property objects in the Customs Register of the State Fiscal Service of Ukraine [2].

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