Developing Effective Anti-counterfeiting and Anti-piracy Strategies

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In order to deal effectively with the problem of counterfeiting and piracy, ad hoc solutions will not work. Rather, a comprehensive strategy for a coordinated approach involving all stakeholders (eg, brand owners, digital marketplaces, law enforcement and 'the government) is required. Developing a well-thought-out strategy at the beginning of a campaign is crucial; if the objectives are clearly spelled out from the start, the enforcement is organised and has clear direction.

Pareto principle

To combat counterfeiting, in India civil enforcement is preferred over the criminal route. A civil action is transparent, whereas in a criminal action the rights holder must work with the police, which consider IP rights infringement to be a soft violation. There are also issues of corruption and information leaks, which deter brand owners from choosing a criminal action. A civil action has the advantage of injunctions and damages (both compensatory and punitive) - these remedies are absent from the criminal route. Although civil actions for IP infringement are preferred, if a strong signal needs to be sent to a particular market a criminal action can be used. Brand owners should follow the Pareto principle - 80% civil and 20% criminal actions.

Strategy for court actions

At the outset of an anti-counterfeiting campaign, the brand owner should strengthen the brand and, in turn, the campaign by targeting smaller parties and quickly settling matters with them in order to establish a line of court precedent. Smaller parties are unlikely to challenge the validity of the IP right involved and often typical counterfeiting cases are uncontested. Therefore, this strategy minimises risk before escalating the campaign to target the major infringers. *Read the full article in India: Managing the IP Lifecycle 2017/2018*. Authored by Dhruv Anand and Shamim Shahin Nooreyezdan.

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