



CHINA SINDA INTELLECTUAL PROPERTY

INTERNET INFRINGEMENT

By Mr. Daniel Jiang

As is well known, the internet is a big place, and today ecommerce platforms for doing business online have become ubiquitous. In China, internet infringement primarily occurs in two places: 1) ecommerce platforms; and 2) search engine results. From the IPR owner's perspective, combating infringing products online has become more complex. Some infringers have done away with simply listing products and names online, and have instead turned to a much more sophisticated game of cat and mouse. Sometimes, a "legitimate" site will mix legitimate products with counterfeit products, while other sites are starting to do away with texting and imaging altogether, using voice messaging functions to contact the end user directly. This way, it will be very difficult for any Chinese internet platform to filter out the infringing sites based on imaging or text alone. Sometimes those sites only leave contact information, then use WeChat, QQ, or WeChat moments for the sales of infringing products. Such methods are becoming very difficult to monitor and obtain actionable intelligence (i.e. evidence) from to execute site takedowns. Having said that, the majority of the infringement site still operated under the old product listing, and pictures.

There are a few ways one can identify when a possible infringement occurs on the internet. First is the number account, internet website address (ie. www.1274643.cn) or sales port (using number as Taobao seller), meaning that the owner is there only for a short period;

second, unbelievably low price for the products (this is very self-explanatory); third are the keywords, for example some sites use "LV" standing for "LV" products; and fourth, is the duration of those sites in operation, whereby the shorter the duration the more likely it is to be an infringement site. This is not a definitive list of factors to identify which site is selling infringing products, but comprises as good a starting point as any. And generally speaking, further investigation will yield good results.

As recent data on ecommerce platforms shows, in 2014, the sales figures for ecommerce is 12.8 trillion RMB of which 10.1 trillion was sold via Internet platforms. In 2015, this figure raised to 16.2 trillion and 12.9 trillion respectively, marking a 27.2% increase. Even Jack Ma, the founder of Alibaba, has admitted after the Nov. 11 sales bonanza that there are in fact infringing products sold on its ecommerce platform. However he claimed that he has no enforcement authority. The validity of his second statement is debatable. But, due to both the external pressure as well as the internal need, most search engines and ecommerce platforms have their own counter infringement mechanisms in place to combat this threat to the IPR.

There are a number of ways for IPR owners to contend this threat themselves: through civil litigation, criminal proceedings (report the infringement finding to the police), as well as administrative actions such as reporting

infringements to the Administration of Industry and Commerce (AIC), or the Telecommunications Bureau. For the second option, it is notable that in China all websites must be registered. That is to say, for a registered website, one can find the owner of those sites and proceed to investigate accordingly thus locate the perpetrator of the possible infringement.

For all of the methods mentioned above, from our experience the most cost-effective way to combat the infringement still is: 1) a warning letter and 2) utilize ecommerce anti-infringement mechanisms. Further, we believe that there are two types of infringing end users: members of the general public who looks for a bargain, and the “hardcore” purchasers. Normally a warning letter or report to the ecommerce platform is sufficient to shut down two-bit criminals infringers with a minimal cost incurred to the IPR owner. For those criminals infringers, they thrive on the hope of doing enough business before the site has been shut down, and they generally do not put up any fight once it is reported. Once those sites are eliminated, it will prevent the general public unknowingly purchasing the infringing products or services. However, for the “hardcore” purchasers, are the one knowingly purchases the infringing product, therefore, elimination of those less sophisticated infringing site will do little to stop the trade. And it is our believe, at present circumstance, it is just not cost-effective pursuing those “hardcore” s.

As our experience clearly points out to us, any effort for one stop shopping for stop infringement will only produce a limited deterrence effect, as those infringers criminals will continue to open up new sites or listings before we are able to shut them all down. However, it is our view that fighting internet infringement should be a continuous operation (continuous monitoring of the internet; continuous takedown of infringing sits) in order to yield effective results.

Please be aware that for those methods to be effective, it is most important for the IPR owner to have their rights in China, as most platforms still only recognize Chinese IPRs. Second, as mentioned, they should do it continuously. It is important for the IPR owners to understand that categorically stopping all infringements on the internet will be impossible, and that in the current circumstances, the best we could achieve with the resources available is continuously shutting down infringing activities as they occur.

It is obvious that some larger enterprises with more resources could engage in other methods, however for small and medium sized enterprises, this is the most cost-effective way to shut down infringing activities. ■



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