

Testimony of

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Testimony of Underwriters Laboratories Inc. ® Senate Committee on the Judiciary
Hearing On: Protecting Consumers by Protecting Intellectual Property June 17, 2008
Statement of Brian Monks Underwriters Laboratories Inc. Vice President, Anti-Counterfeiting Operations

Introduction

Chairman Leahy, Ranking Member Specter, and distinguished members of the Senate Judiciary Committee, thank you for this opportunity for Underwriters Laboratories Inc.® to appear before you today to provide our perspective on the dangers of IP infringement and the risks associated with counterfeit goods in the US marketplace. Counterfeiting is a serious threat to our economy and to the safety of US consumers. A variety of counterfeit products enter the stream of commerce everyday, many posing potentially serious fire and electrical hazards that endanger the American public. Based on UL's safety testing expertise and our experience with many of these dangerous products, the following testimony will offer our insights as to how additional resources and enforcement tools can help authorities more effectively fight IP crime.

Underwriters Laboratories & Anti-Counterfeiting Efforts

Founded in 1894, UL is an independent, not-for-profit standards development and product safety testing and certification organization. For 114 years, UL's mission has been the protection of human life and property from product risks and hazards. UL tests products in over 19,000 categories for compliance with standardized safety requirements. Once a product is determined to be in compliance with all applicable safety requirements, the manufacturer is authorized to apply the UL Mark. In 2007, an estimated 21 billion products entered the global marketplace carrying the UL Mark.

UL has built our reputation on the integrity of the UL Mark and what it represents to consumers. But the UL Mark, a registered Certification Mark, is being counterfeited - leaving consumers with a false sense of security about the safety of the products they purchase.

Recognizing that consumers, retailers, regulators, manufacturers and distributors look to the UL Mark to determine if products comply with relevant safety standards or regulatory requirements, UL established a team of professionals dedicated to protecting UL's intellectual property. Since 1995, UL's anti-counterfeiting team has worked with law enforcement agencies and has provided training to enforcement officials around the world on the identification of legitimate UL Certification Marks, as well as common elements shared by products bearing counterfeit Certification Marks.

IP Theft and Product Safety

There can be no doubt about the correlation between counterfeiting and product safety. In 2007 alone, UL issued warnings about fire extinguishers, smoke alarms, electrical cords, decorative light strands, lighting fixtures, grounding rods, power adapters, and surge protectors bearing counterfeit UL Certification Marks. Many of these are life safety products purchased specifically for the protection of life and property. With Certification Mark counterfeiting reaching into the fire protection and electrical sector, particularly in low-cost, high-volume goods, the risk of fire, shock, and other hazards become a serious life and safety threat to American consumers.

The Electrical Safety Foundation estimates that 64.2% of counterfeit electrical goods were purchased at legitimate shops and retailers - higher than any other product type. This is troubling evidence that counterfeiters continue to penetrate the distribution chain with poor quality, noncompliant and hazardous products that endanger life and property. The core of product counterfeiting is profit margin; the cheaper the materials and components, the greater the potential profit. Counterfeiters have no regard for the safety and well being of the American consumer.

Common household extension cords are often targeted by certification mark counterfeiters. They can typically be purchased for under a dollar at discount stores across the country. To properly conduct current, electrical cords require copper wire of a certain thickness. Counterfeiters, to increase their profits, use extra plastic and so little copper that when electrical current is applied these products overheat, melt and can catch fire.

During 2007, the Newark seaport seized heavy-duty extension cords bearing fake safety certification trademarks, valued at \$565,203. As is often the case, when UL tested samples the products bearing the counterfeit UL Mark, they failed to meet standardized requirements and created an unacceptable safety risk to the public. UL's goal is to continue working with enforcement agencies to prevent these products from ever reaching the hands of consumers.

Even more disturbing is the recent appearance of counterfeit Certification Marks on fire safety devices such as smoke detectors, heat detectors, sprinkler heads and fire extinguishers. Aggressive, pro-active measures need to be taken to prevent the entrance of these products into the marketplace. They need to be stopped before a fatal failure becomes another statistic.

Need for Collaboration

Enforcement authorities, victims of counterfeiting and piracy, and lawmakers are working together to combat these criminal activities. For over a decade, UL has worked closely with the Department of Justice, US Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE), as well as state and local authorities, to push the identification and seizure of products bearing counterfeit UL Marks and to encourage prosecution of offenders to the fullest extent of the law. CBP seizures of products bearing counterfeit UL Certification Marks number in the thousands and have prevented millions of potentially hazardous products from reaching the US marketplace.

In 2005, the US Attorney's Office of the Southern District of Texas announced a sentence of 63 months in federal prison for a defendant found guilty of trafficking in counterfeit merchandise. This result can be attributed to the excellent work of CBP, ICE and the DOJ working in collaboration. UL, along with other rights holders, provided our support and cooperation.

In 2006, the US Attorney's Office of the Southern District of Florida announced that two defendants found guilty of trafficking in products bearing counterfeit marks were each sentenced to more than seven years in federal prison. The goods involved included batteries, extension cords, wallets, handbags, suitcases and many other items. Rights holders worked in partnership to provide the necessary information to assist in a successful prosecution. Again, government agencies collaborated and sent a strong message that counterfeiters that compromise the safety of American citizens will be pursued and punished.

UL's Anti-Counterfeiting Program, with support from the DOJ and other government and law enforcement agencies, has achieved some success combating the serious and growing threat of product counterfeiting. However, additional resources for such groups are necessary in order to continue this positive track record. With national security concerns such as terrorism stretching our import safety authorities' time and resources, it is important for the United States to maintain its commitment to safeguarding the public from hazardous counterfeit products.

The Plan Forward

Additional staffing and resources for DOJ and FBI, with dedicated personnel allocated to combating IP crimes, would go a long way towards meeting this commitment. Without stringent and effective consequences for counterfeiting products and certification marks, which pose direct threats to public safety, criminals will continue to choose the monetary rewards of cheating, ignoring the potential risks.

Staffing resources will also go a long way - dedicated FBI agents for existing or new Computer Hacking and Intellectual Property (CHIP) units, additional Assistant US Attorneys dedicated to the prosecution of IP cases, and staffing available for the formation of Ad Hoc task forces that can be mobilized quickly to address short-term situations and threats - towards combating these dangers.

We also encourage continued collaboration between government and the private sector, as this has proven successful in helping those who share an interest in IP protections drive towards a solution. Industry forums, hosted

by DOJ, have brought together the government and industry to share experiences and solutions. These forums can serve as a model for new collaboration initiatives. Additionally, by authorizing increased resources to support cross-agency communication, this committee would strengthen the government's ability to prosecute organized fraud attempts, enforce existing IP laws, and educate consumers about the importance of intellectual property rights.

Conclusion

Protecting intellectual property protects lives. We strongly believe that this committee's full support of the measures we have highlighted for advancing IP protections will help protect the American consumer from the very real dangers that counterfeit products and certification marks pose. Through intergovernmental cooperation and improved enforcement resources and channels, we can secure not only our nation's economic interest and innovation, but can more importantly protect people and property in the very place they are meant to feel safe - their own homes.