

Testimony of Shelley Duggan
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United States Senate Judiciary Committee
Hearing on
“Counterfeits and Their Impact on Consumer Health and Safety”

Wednesday, April 27, 2016

Introduction

Chairman Grassley, Ranking Member Leahy and Members of the Committee, thank you for inviting me to testify this morning on this important topic of counterfeits and their impact on consumer health and safety.

My name is Shelley Duggan and I am the Director and Associate General Counsel, Global Brand Protection Program Leader, for The Procter & Gamble Company. P&G is a global company with a portfolio of quality consumer brands such as Tide laundry detergent, Gillette blades and razors, Head & Shoulders and Pantene shampoo, Crest toothpaste and Oral B toothbrushes. P&G has approximately 110,000 employees around the world and a presence in 34 states, including our headquarters state of Ohio, Iowa, Vermont, Utah, California, Georgia, Louisiana, Missouri, North Carolina, Delaware, Arizona and Minnesota.

I have worked as an intellectual property attorney and brand protection specialist for over 21 years. As P&G's Global Brand Protection Leader, I am responsible for designing and implementing the Company's strategy, policy and direction, to fight counterfeits across the entire product portfolio which spans about 65 brands centered on 10 core product categories, sold in over 180 countries.

I lead a global, multi-functional team of 30 professionals, including lawyers, forensic specialists, research and developers and investigators, dedicated to fighting counterfeits and ensuring that wherever possible, consumers and retailers are protected from counterfeiters and counterfeit products.

While I am here to represent a consumer goods company, no industry, market, product category or geography is immune from the effects of counterfeits so thank you for holding a hearing on this important topic.

Counterfeiting is Consumer Fraud

Protecting consumers against counterfeits is consistent with P&G's purpose to touch and improve the lives of consumers around the world. Our products are used by billions of consumers as a part of their daily routines and lives. Consumers wash their hair with our shampoo, brush their teeth with our toothpaste, and use our razors to shave.

As such, P&G takes counterfeiting very seriously.

Counterfeiting of consumer products is consumer fraud, plain and simple. Consumers who unknowingly purchase counterfeit products often pay the same price as they would for legitimate goods, but receive inferior (potentially unsafe) products that do not deliver on performance they expect and receive from legitimate P&G products. Cheaper and more widely available manufacturing technologies mean counterfeit packaging has improved making consumer detection even more difficult. Yet the product inside is still exceptionally poor. This consumer fraud undermines consumers' trust in our brands and our Company. In addition to losing sales to counterfeiters, P&G may also lose loyal consumers.

We manufacture our products pursuant to good manufacturing practices and in compliance with applicable laws and regulations. Contrast this with counterfeiters who manufacture without any regard for consumer health and safety or product integrity. Counterfeit products are always substandard and can be harmful to consumers' health and safety. P&G's investigations regularly discover unsanitary and dangerous counterfeit manufacturing operations.

A rise in consumer complaints is one indication that P&G consumers may have purchased a counterfeit product. Consumers' health and safety is put in jeopardy because the content of the counterfeit products is unknown and untraceable. If a safety issue arises, there is no reliable way of tracing the counterfeit product's origins. If there is an issue with a legitimate P&G product, the Company has processes and detailed records that can be used to quickly identify the issue and respond accordingly.

Counterfeiting is IP Theft and a Growing Problem

Innovation has been core to P&G for more than 175 years and is key to the Company's future growth. The Company invests heavily in creating and manufacturing products that delight our consumers. Annually, P&G spends about 2.0 billion USD on R&D enabling us to create new products, upgrade existing products and improve our manufacturing processes. P&G spends billions of dollars building brands through innovative marketing campaigns that convey our products' benefits and superior product performance. P&G relies on intellectual property to protect these investments and the consumer trust the Company has earned over its long history.

Counterfeiters' theft of P&G intellectual property encroaches upon P&G's market share, suppresses profitability, hinders business growth and hurts the equity of our brands. Counterfeiters' theft frustrates the Company's capability to innovate and slows down the pace of upgrade. Financial resources allocated to fighting counterfeits could be used more productively against the Company's core capability as a manufacturer of consumer goods.

Counterfeiters challenge every company's ability to recover R&D and brand building investments and, if counterfeiters are not effectively contained, ultimately make innovation financially unsustainable.

Unfortunately, the problem is growing. Organization for Economic Cooperation and Development (OECD) recently reported that in 2013, counterfeit and pirated products represented 2.5% of world trade or as much as 461 billion USD. This is up from 2008 when the OECD estimated counterfeit and pirated goods accounted for up to 1.9% of world imports or 200 billion USD.

For national governments, counterfeits deprive them of billions of dollars in tax revenues that would be generated by the production and sale of legitimate products. This much needed revenue could be spent on schools, hospitals, parks and other social programs provided by governments.

P&G's Best in Class Brand Protection Program

P&G has had a robust brand protection program for many years. Like many companies, the program's early years focused on seizures. Federal and local law enforcement agencies in the United States and around the world have been successful in preventing millions of counterfeit consumer products from entering the stream of commerce. P&G would like to thank the Intellectual Property Rights Center (IPR Center), Customs & Border Protection (CBP), Homeland Security Investigations (HSI) and the Department of Justice (DOJ) for prioritizing IP crime in the United States and bringing these criminals to justice. Law enforcement must continue to seize counterfeits at the borders and P&G will continue to support their efforts.

But with the exponential and rapid growth of eCommerce and the Internet, it became clear the Company needed a multi-pronged approach to remain as agile as possible to fight the counterfeiters' new business model.

Frustrate Counterfeiters' Supply Chain

P&G first seeks to attack and frustrate the counterfeiters' supply chain. When counterfeit goods are seized at the border, the importer suffers the financial loss—not the counterfeiter. Since there was no financial threat to deter the counterfeiter, P&G proactively began attacking the counterfeiters' profit stream—refocusing attention on finding and shutting down manufacturing facilities on a systematic and regular basis. In the last 9 months, P&G has worked closely with law enforcement agencies around the world to identify and shutdown over 50 large facilities manufacturing counterfeits, 12 of which had the capability of generating tens of millions of dollars in illicit sales.

In circumstances where the manufacturing facility is unknown, the objective becomes to frustrate other elements of the counterfeiters' supply chain. For example, P&G via our trade associations works with banks to cut off funding sources, with intermediaries to hinder the ability to advertise counterfeit products by removing advertisements and online offers, and conducts market sweeps where counterfeit products are literally removed from store shelves.

Influence and Enable Third Parties

P&G cannot win the fight against counterfeiters alone so we seek to influence and enable third parties.

– Work with Governments

Collaborative relationships between P&G, law enforcement and government agencies around the world demonstrate the public-private partnership that is a crucial element to an effective IPR enforcement regime. Anti-counterfeiting efforts undertaken by law enforcement agencies overlap and intersect with those undertaken by individual rights holders like P&G.

Counterfeiters are criminals and P&G fully supports law enforcement efforts to identify, prosecute and bring them to justice. In the United States, P&G cooperates with CBP and HSI on approximately 70-80 cases per year, from port seizures to undercover investigations with global sourcing.

P&G regularly assists law enforcement and customs officials with their IPR enforcement programs by offering expertise and cooperation to identify, investigate and seize counterfeit products at the manufacturing sites or within the supply chain.

Here are two examples from the US:

Beginning in 2008, P&G found counterfeit razors in major retailers in the US and Canada. P&G investigated the source and presented its initial findings to HSI. HSI conducted its own investigation and seized \$500,000 of counterfeit razor blades. In 2013, the defendant was subsequently convicted of conspiring to traffic in counterfeits, fined and sentenced to 30 months in jail.

P&G also fights against counterfeit coupons. In 2012, P&G noticed a significant uptick in fraudulent coupon redemptions. Investigators from P&G's brand protection team identified a website, savyshoppersite.com, selling significant quantities of counterfeit coupons and shared its findings with the Phoenix, Arizona police department. The Phoenix PD and the local FBI

commercial crimes unit conducted their own investigation after which the FBI issued warrants and seized over 40 million USD in counterfeit coupons. Agents also seized 22 weapons, 24 vehicles and cash. These coupons represented millions of dollars in fraudulent coupon redemptions for P&G alone. The defendants were convicted of conspiring to traffic in counterfeit goods, fined and the ringleader was sentenced to 24 months in jail. At the time, this was the largest coupon raid in US history.

In addition, P&G conducts training sessions for thousands of law enforcement and customs officers around the world on how to distinguish genuine P&G products from counterfeits. Also P&G has an advisory role on CBP's Commercial Operations Advisory Committee (COAC) IPR Subcommittee Working Group, where P&G provides the voice of the consumer packaged goods industry on IP enforcement issues that rights holders face with CBP around the world.

– **Work with Distributors and Retailers**

P&G's retailers can be our eyes and ears in the trade so P&G collaborates with them to develop best practices on how to buy genuine P&G products. P&G works with distributors to transition stores that had previously sold counterfeits to stores that sell only genuine products.

– **Work with Intermediaries**

Intermediaries are entities such as carriers, shipping companies, websites, platforms, portals and payment processors, that connect manufacturers and consumers and are essential for legitimate business. The inherent complexity and inter-connectedness of intermediary channels make them attractive to counterfeiters who infiltrate their processes to facilitate their illicit activity. P&G works collaboratively with intermediaries, directly and through our trade associations, to develop and implement best practices to prevent counterfeiters from using their services.

– **Work with Trade Associations**

Trade associations play a vital role in the fight against counterfeiters. They develop and distribute voluntary best practices, convene multi-stakeholder meetings around the world, and help educate governments about the threat of counterfeits and how to effectively address the problem. P&G supports many effective trade associations around the world but would like to highlight two programs— one from The International AntiCounterfeiting Association (IACC) and one from the Business Action to Stop Counterfeiting and Piracy – an initiative of the International Chamber of Commerce (BASCAP).

IACC developed RogueBlock in 2012 as innovative, cross-industry partnership between rights holders, like P&G, credit card companies and payment processors. RogueBlock allows rights holders to report online sellers of counterfeit goods directly to participating credit card and payment processors. The credit card company can then take prompt action. This program makes it more difficult for counterfeiters to profit from their illicit activity.

Consumers knowingly buy counterfeits for a variety of reasons—from price to a belief it is a victimless crime. BASCAP's "Fakes Cost More, I Buy Real" is global awareness campaign that helps consumers understand the health and safety risks associated with counterfeit goods and identifies steps they can take to stop purchasing them. The campaign is available in 26 languages and is currently used in Belgium, France, Germany, Italy, Kenya and Turkey, with plans to expand to more geographies. P&G supports the underlying principle that consumers must be educated on the proliferation of counterfeits (they impact every product category) so they can make educated purchases.

P&G also appreciates the work from the US Chamber's Global Intellectual Property Center (GIPC) to quantify and fight the counterfeit problem and encourage cross-industry collaboration.

Make Products More Difficult to Copy, Counterfeits Easier to Detect

P&G invests heavily in making our products more difficult to copy, making them less attractive to counterfeiters. Unique production qualities enable P&G to train customs officers on how to identify counterfeit product at the ports and providing risk analysis data to increase the likelihood of counterfeits being caught. P&G has developed and deployed innovative in-field testing kits customs officials around the world use to quickly and accurately distinguish the genuine from the counterfeit.

Evolution of Counterfeiters' Business Model

Counterfeiting is a global and ever-changing industry. P&G sees the following evolution of the counterfeiters' business models.

Direct Sales to Consumers

Most P&G counterfeits are produced in China and then exported to other markets. However, counterfeiters are modifying their business models to take advantage of the rise of eCommerce and the Internet and lower costs to ship directly to consumers. These small shipments are growing. CBP seizures (both in terms of number and value) have increased in express delivery and mail shipments and the ocean category has decreased. Smaller packages of counterfeits are more difficult and less likely to detect.

In-Country Assembly

P&G is seeing fewer shipping containers of finished counterfeit product and a rapid rise of in-country assembly. Counterfeiters import bulk counterfeit components and packaging materials into a region then assemble in the destination countries. We work with local and federal law enforcement agencies to shut down these operations, which produce substandard (and often unsafe) products and are dangerous facilities.

What Is Working and What More Can Be Done?

The scope and dynamic nature of the counterfeit problem merits the attention of all stakeholders, including industry and governments at the highest levels.

By Governments

P&G applauds the US government efforts to fight counterfeits and its efforts to strengthen IPR enforcement around the world. The US has a very robust IPR regime and agencies at every branch of government take an active role in the fight against fakes. The US has a legal framework with robust civil, customs criminal and internet enforcement rules, that together weave an effective and multi-pronged approach to fight counterfeits.

P&G has had positive experiences with the IP Attaches' that are a part of the USPTO's Overseas IPR Attaché program. We appreciate these efforts by the US government to assist American companies abroad and encourage the Program's continuation.

P&G has also greatly benefitted from the US governments work to coordinate its anti-counterfeit efforts. Counterfeiting is a multi-faceted issue that requires domestic and global coordination amongst diverse agencies and jurisdictions to effectively combat. P&G believes the IPR Center and Intellectual Property Enforcement Coordinator (IPEC) are good models of cooperation and

collaboration and believe each should receive the funding and staffing resources necessary to achieve their important objectives.

P&G has worked closely with the IPR Center on a number of critical counterfeit investigations. The IPR Center provides an efficient, single point of contact for rights holders seeking assistance when their valued IP is under attack.

We also applaud the work of the IPEC and its strong advocacy of advancing the protection and enforcement of IP rights within the Administration. The IPEC has had an open-door policy and has welcomed input from rights holders with regard to what is working well and where there could be improvements. We are supportive of the IPEC's efforts to provide a data-driven approach to policymaking.

P&G was pleased to see the Trade Facilitation & Trade Enforcement Act (TF&TE) recently pass. We testified in support of TF&TE in 2013 citing the disclosure and information-sharing between CBP and rights holders (such as unredacted images and samples) as a positive development.

While we appreciate successful efforts to date, more could be done.

It would be helpful if governments empowered customs authorities to take enforcement action against suspected counterfeit goods whenever the goods are under customs supervision—including in transit. Transshipment of counterfeit goods continues to grow in importance as counterfeiters adopt more complex distribution schemes in an attempt to evade detection and seizure of their illicit goods. The United States remains an outlier with regard to in-transit enforcement, in that it provides clear statutory authority to seize goods passing through the country, even where those goods are ultimately destined for another market. US officials should promote this policy with other countries when given the opportunity.

We believe it would also help if the US would cooperate with global intergovernmental organizations to improve capacity building and technical assistance to other foreign governments to support the implementation and enforcement of IPR.

P&G strongly supports the Trans-Pacific Partnership (TPP) and the intellectual property rights protections and enforcement for manufacturing companies like P&G. These IPR protections provide even more tools to fight counterfeiters and complement P&G's future business growth in all eleven of the TPP member countries.

By Industry

Industry should continue to develop voluntary standards, share best practices and, with the appropriate legal parameters in place, share information with each other.

Companies must implement robust brand protection programs or enlist their trade associations or governments to assist them. For example, the USPTO, the IPR Center and the Department of Justice, provide instructions and how-to guides on protecting a company's intellectual property and fighting counterfeits-- all at no cost to businesses. In addition, rights holders must be willing work collaboratively with law enforcement as time is of the essence when it comes to seizures and shutting down counterfeit operations. Companies should also develop forensic expertise to quickly and accurately distinguish the genuine from the counterfeit products.

By All Stakeholders

Raising awareness and consumer education are essential in decreasing the demand for counterfeits. As discussed earlier in this testimony, effective education helps consumers understand the health and safety risks associated with counterfeits and identifies steps they can take to stop purchasing them. All stakeholders need to make the development and distribution of outreach and effective consumer awareness a priority.

Conclusion

Chairman Grassley, Senator Leahy, thank you again for the invitation to testify this morning. P&G values our partnership with you and this Committee on this important topic. We also value our partnerships with our trade associations and government agencies here and around the world that are dedicated to fighting counterfeits and keeping consumers safe.