



U.S. Immigration and Customs Enforcement

STATEMENT

OF

BRUCE FOUCART
DIRECTOR

NATIONAL INTELLECTUAL PROPERTY RIGHTS
COORDINATION CENTER

HOMELAND SECURITY INVESTIGATIONS
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

REGARDING A HEARING ON

“COUNTERFEITS AND THEIR IMPACT ON CONSUMER HEALTH AND SAFETY”

BEFORE THE

U.S. SENATE
COMMITTEE ON THE JUDICIARY

Wednesday, April 27, 2016
226 Dirksen Senate Office Building

Introduction

Chairman Grassley, Ranking Member Leahy, and distinguished members of the Committee:

On behalf of the Department of Homeland Security (DHS), thank you for the opportunity to testify before you today to discuss the efforts of U.S. Immigration and Customs Enforcement (ICE) to combat the illegal importation and sale of counterfeit products, and the threats to public safety and national security that counterfeit products may pose.

As you know, ICE is the largest investigative component within DHS with an extensive portfolio of enforcement authorities. ICE Homeland Security Investigations (HSI) is responsible for a wide range of domestic and international criminal investigations arising from the illegal movement of people and goods into, within, and out of the United States, often in coordination with other federal agencies.

ICE has a legacy of enforcement against intellectual property (IP) crime that spans from our past as U.S. Customs Service investigators to our present role as Homeland Security investigators. ICE is the lead agency in the investigation of IP violations involving the illegal importation and exportation of counterfeit merchandise and pirated works, as well as associated money laundering violations. In coordination with U.S. Customs and Border Protection (CBP), we target and investigate counterfeit merchandise and pirated works, and we seize such illicit goods associated with these investigations, including those that infringe on trademarks, trade names, and copyrights. Investigating counterfeit products falls within ICE's broad IP mandate.

ICE recognizes that no single U.S. law enforcement agency alone can succeed in the fight against IP crime. Rather, it is essential that all relevant federal agencies work together and with IP industry partners to confront this challenge. Law enforcement, public education, demand reduction, and global collaboration are all critical to successfully combat these crimes. To focus government efforts and enhance efficiency, the former U.S. Customs Service's Office of Investigations (now known as ICE HSI) and the Federal Bureau of Investigation (FBI) established in 1999 the multi-agency National Intellectual Property Rights Coordination Center (IPR Center), which combats violations of intellectual property rights with a focus on trademark and copyright infringement. Recently, the IPR Center was expressly codified in statute by Section 305 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. No. 114-125), which was signed into law by President Obama on February 24, 2016. In Section 305, Congress also cemented the IPR Center's role as the lead office within the U.S. Government for coordinating with other federal agencies on IP infringement investigations, law enforcement training, and private sector and public outreach.

Pursuant to the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP Act) (Pub. L. No. 110-403), ICE and CBP are members of the interagency intellectual property enforcement advisory committee established by Section 301 of the PRO-IP Act (15 U.S.C. § 8111). Chaired by the White House Office of the U.S. Intellectual Property Enforcement Coordinator (IPEC), the committee is responsible for developing the PRO-IP Act's three-year "Joint Strategic Plan against counterfeiting and infringement" (Section 303; 15 U.S.C. § 8113). In addition to its role in developing and implementing the Joint Strategic Plan, the IPR Center collaborates regularly with the IPEC and other federal agencies on IP policy issues. The IPR Center also shares the investigative outcomes and trend information that we obtain with

interagency partners and the IPEC to further inform the Administration's IP policy development process, the U.S. Trade Representative's Special 301 Report, and the Administration's legislative recommendations.

The IPR Center's mission is to address the theft of innovation that threatens U.S. economic stability and national security, undermines the competitiveness of U.S. industry in world markets, and places the public's health and safety at risk. The IPR Center brings together many of the key domestic and foreign investigative agencies to efficiently and effectively leverage resources, and promotes the skills and authorities to provide a comprehensive response to IP crime.

The IPR Center operates on a task force model and is comprised of 23 relevant federal and international partners. While ICE HSI holds the director position, the IPR Center includes U.S. Government team members from: ICE HSI, CBP, the Food and Drug Administration (FDA) Office of Criminal Investigations (OCI), the FBI, the U.S. Postal Inspection Service (USPIS), the U.S. Department of Commerce's International Trade Administration and U.S. Patent and Trademark Office, the Defense Criminal Investigative Service (DCIS), the U.S. Consumer Product Safety Commission (CPSC), the National Aeronautics and Space Administration (NASA), the Naval Criminal Investigative Service (NCIS), the Army Criminal Investigative Command Major Procurement Fraud Unit, the U.S. Air Force Office of Special Investigations, the Nuclear Regulatory Commission, the U.S. Department of State's Office of International Intellectual Property Enforcement, the Defense Logistics Agency (DLA), the U.S. Postal Service Office of the Inspector General and the Inspector General's Office from the General Services Administration, and the Federal Maritime Commission. In addition, Department of Justice

(DOJ) trial attorneys from the Computer Crime and Intellectual Property Section (CCIPS) regularly provide input for ongoing enforcement operations and policy.

In 2010, the Government of Mexico and INTERPOL joined the IPR Center as our first international partners. Since then, the Royal Canadian Mounted Police and Europol have joined as well.

Protecting National Security, Health, and Safety

The illegal importation, distribution, and sale of counterfeit products pose a significant and growing threat to public health and safety. Counterfeiters do not care if their products contain the correct materials. They do not care if their products are made in sanitary conditions. They do not care if their products physically harm consumers. They do not care if their products result in economic damage to legitimate companies. Rather, they care about their product looking good enough to be purchased. They care about their bottom line.

The IPR Center has a wealth of experience and subject matter expertise to combat these counterfeiters and we support our field agents in their significant efforts to enforce IP rights. Working collaboratively with our law enforcement partners, the IPR Center has developed numerous initiatives and interdiction efforts to combat the infiltration of counterfeits that pose a risk to the health and safety of the American public, or could potentially harm the economy of this country. Specifically, the IPR Center focuses efforts on health and beauty products, automotive, aerospace, and heavy industry products, as well as goods entering the U.S. Department of Defense (DOD) and U.S. Government supply chains. Today, I would like to discuss our efforts to protect the public's health and safety from counterfeit consumer products.

Using interdiction, enforcement, and outreach, the IPR Center promotes a comprehensive layered approach that focuses on the production, import, and distribution of counterfeit goods. Partnerships are essential; the IPR Center works closely across agency boundaries with law enforcement colleagues at the local, state, and federal levels and across international boundaries to form a united front against criminal enterprises and international organizations that threaten public safety and security.

Operation Chain Reaction

Operation Chain Reaction is an IPR Center initiative that combines the efforts of 16 federal law enforcement partner agencies to target counterfeit items entering the DOD and other U.S. Government agencies supply chains. Operation Chain Reaction (OCR) partner agencies coordinate their efforts to more productively protect the U.S. Government supply chain from substandard counterfeit parts that could impact the reliability of weapons systems, delay DOD missions, imperil the safety of servicemen and women, and waste taxpayer money.

For example, in a case investigated by ICE, DCIS, and NCIS, a Massachusetts man pleaded guilty in 2014 to importing thousands of counterfeit integrated circuits (ICs) from China to Hong Kong and then reselling them to U.S. customers, including contractors supplying them to the U.S. Navy for use in nuclear submarines. The subject told his customers, many of whom specified in their orders that they would only accept new ICs that were not from China, that the ICs were brand new and manufactured elsewhere, including in Europe. However, the subject instead wired nearly \$2 million to his suppliers' bank accounts in China and Hong Kong to order ICs. Testing by the Navy and one of their contractors revealed that many of the ICs had been resurfaced to change the date code and to affix counterfeit marks to hide the fact that they were

actually older, used parts. On October 6, 2015, the defendant was sentenced to 37 months imprisonment. This was the second conviction ever under the new enhanced penalties for trafficking in counterfeit military goods enacted in 2011.

In another case, the former Chief Executive Officer (CEO) of Powerline, Inc., a battery distributor, was found guilty of five counts of wire fraud and one count of conspiracy to defraud the United States by selling more than \$2.6 million in cheap, counterfeit batteries to the DOD. In a joint case by ICE and DCIS, with assistance from DLA and the Defense Contract Audit Agency, investigators discovered that Powerline sold the DOD more than 80,000 batteries and battery assemblies that the U.S. Navy used for emergency back-up power on aircraft carriers, minesweepers, and ballistic submarines. Powerline, Inc. affixed counterfeit labels falsely identifying the batteries as originating from approved manufacturers and used chemicals to remove “Made in China” markings from the batteries. The CEO fled the United States, but was arrested on December 6, 2013, after he spent more than two years near St. Martin. On October 15, 2014, he was sentenced to 87 months incarceration and ordered to pay \$2,787,193 in restitution. In Fiscal Years (FY) 2014 and 2015, OCR cases have resulted in 15 criminal arrests, 28 indictments, 23 convictions, and seizures with a Manufacturer’s Suggested Retail Price (MSRP) of \$13,768,355 in counterfeit parts, currency, and vehicles.

Operation Plastic Beauty

Operation Plastic Beauty was initiated in FY 2014 by the IPR Center to combat the illegal importation, sale, and distribution of counterfeit healthcare and beauty products, such as shampoo, toothpaste, makeup, and lip balm. Through Plastic Beauty, the IPR Center combines the expertise of ICE, FDA-OCI, and CBP, and coordinates with industry.

As a result of operations conducted by CBP, multiple shipments of counterfeit name-brand cosmetics were discovered. ICE opened an investigation and linked the cosmetics to a woman in Florida. A review of seizure records uncovered that she had been trafficking in counterfeit cosmetics for several years, and bank records related to her business indicated that over one million dollars had been deposited as proceeds. ICE, with assistance from the Postal Inspection Service, conducted an enforcement operation and seized approximately \$16,905 and over 1,500 counterfeit brand name cosmetic products that had an estimated resale value of \$31,715. The defendant pled guilty to trafficking in counterfeit goods and, on July 20, 2015, was sentenced to 18 months imprisonment and ordered to pay \$961,744.75 in restitution.

In FY 2015, Plastic Beauty resulted in 18 arrests, 19 indictments, 19 convictions, and the seizure of goods valued at over \$7 million.

Operation Engine Newity

Operation Engine Newity addresses safety threats posed by counterfeit automotive, aerospace, rail, and heavy industry components. These counterfeit parts are not only an evident health and safety risk to Americans, but they also impact the economic health of these industries. Investigations and interdictions have uncovered counterfeit airbags, steering, braking, and seatbelt components, bearings, and diagnostic equipment.

To combat counterfeit automotive parts, Operation Engine Newity member agencies work closely with the private sector, including the Automotive Anti-Counterfeiting Council. This is a collaborative voluntary industry group comprised of BMW, Fiat Chrysler Automobiles, Ford, General Motors, Honda, Hyundai, Kia Motors, Mercedes-Benz, Nissan, Subaru, Toyota, and Volkswagen. Automakers have shared lead information with the IPR Center that is now

being worked in the field, and are actively cooperating with the agents investigating this information. Additionally, they have shared knowledge regarding upcoming trends in counterfeit automotive parts, which is being used to target potential shipments and redirect government resources to top priorities focusing on health and safety concerns.

In September 2014, an ICE Public Service Announcement (PSA) was released to alert the public of the dangers of counterfeit automotive parts. The PSA, which was coordinated through CBP, the FBI, and the National Highway Traffic Safety Administration, is displayed by automotive industry partners in dealership service departments. In one ICE-led case, two brothers sold counterfeit airbags in an online marketplace. The brothers, both Canadian citizens, were importing the airbags from China into Canada. They would drive the counterfeit airbags into the United States to mail them to customers from a U.S. address. As part of its investigation, ICE identified the entities in China providing the counterfeit airbags. Working through the United States - China Joint Liaison Group (JLG) on Law Enforcement Cooperation, ICE HSI Beijing provided information on the Chinese sources to the Chinese Ministry of Public Security (MPS), which led to the arrests of the individuals who made the airbags in China. In September and October 2014, the brothers were sentenced to six and four months incarceration, respectively.

In FY 2014 and 2015, Operation Engine Newity resulted in 31 arrests, 32 indictments, 16 convictions, and the seizure of goods worth approximately \$18.4 million.

Operation Joint Venture

To help educate consumers on emerging dangers of counterfeit products and facilitate productive partnerships with the public and private sectors, the IPR Center launched Operation

Joint Venture. This effort is designed to increase support, communication, and cooperation for our ongoing IPR enforcement initiatives and our critical public health and safety efforts.

Operation Joint Venture is the IPR Center's method to provide industry with valuable information about our efforts to combat the importation of hazardous and counterfeit products, and it gives industry a point of contact they can use to provide us with leads and tips regarding efforts to compromise intellectual property rights. Also, we have developed a website (www.iprcenter.gov) where the public can obtain information on the efforts of all IPR Center partner agencies to combat IP crime and we have placed a button on the website where consumers and industry can report allegations of counterfeit or pirated products.

Other Interagency Efforts

ICE shares its border security and trade mission responsibilities with its sister agency, CBP. ICE and CBP work closely to target counterfeit and other illicit goods crossing the borders, including through the co-location of personnel at Trade Enforcement Coordination Centers (TECC) in Los Angeles, New York/Newark, Detroit, New Orleans, Houston, and Chicago Ports of Entry (POE). The TECCs enhance communication and combine resources to identify and combat trade fraud and IP crime. The TECCs proactively identify, interdict, and investigate inbound cargo that may enter U.S. commerce in violation of U.S. customs and trade laws. TECCs ensure joint CBP and ICE oversight and prioritization of the enforcement and interdiction process in the local area, and involve ICE early in the enforcement process. ICE and CBP are establishing additional TECCs in El Paso, Texas; Buffalo, New York; and San Juan, Puerto Rico.

The IPR Center also has agents who sit full-time at the National Cyber-Forensics & Training Alliance (NCFTA) in Pittsburgh, Pennsylvania. The NCFTA is a non-profit

organization, which brings together experienced personnel from academia, law enforcement, and industry. By merging a wide range of expertise in one location, the NCFTA provides a neutral forum for information sharing regarding emerging and ongoing threats. In FY 2015, our NCFTA agents, working with IPR Center analysts, processed 17,990 viable new leads.

Trade Facilitation and Trade Enforcement Act of 2015

The TFTEA is the most comprehensive customs legislation in over two decades. Many of its provisions directly impact ICE's trade fraud, intellectual property, and the forced labor enforcement missions. Specifically, the TFTEA enhances the ability of the Government to combat IP violations. The IPR Center and ICE HSI are currently implementing the Act's requirements, working closely with its partners in the federal government, including CBP, DHS, and the IPEC. The IPR Center welcomes this new focus and is rapidly ramping up its efforts to enforce IP laws.

Key Provisions Impacting ICE's IP Enforcement Efforts

Sections 305 and 306 codify the establishment of the IPR Center within ICE. TFTEA outlines the IPR Center's duties to include: coordinating investigations of IP violations; conducting and coordinating domestic and international law enforcement training on IP investigations; coordinating with CBP activities to prevent the importation or exportation of IP infringing merchandise; supporting international interdiction of prohibitive IP merchandise destined for the United States; collecting and integrating domestic and international information on IP infringement; disseminating information on IP infringement to other federal agencies; developing and implementing, in coordination with CBP, a risk-based alert system to improve

targeting; coordinating with U.S. Attorneys to develop expertise in IP investigation and prosecution; and conducting private sector outreach and information sharing.

Implementation

ICE and the IPR Center are proactively working to implement the provisions of this law and have formed a team that will oversee the implementation. Implementation will require close cooperation with CBP and DHS Office of Policy, and initial steps have been made to coordinate efforts among our offices. The IPR Center will continue to co-host the two-week advanced training, Intellectual Property and Trade Enforcement Investigations Course, with CBP, which has been recently revised and updated. This training is provided to ICE HSI and CBP personnel to gain a better understanding of trade fraud and IP investigations and current priorities. The training also includes presentations from the DOJ and the private sector.

Challenges Ahead

Our biggest challenge is that criminals are willing to counterfeit and market any product that will sell, regardless of whether it could result in serious and significant injury to consumers or the public. Through the course of its investigations, ICE has uncovered counterfeit lithium batteries that are not properly vented, counterfeit airbags that have too much propellant, counterfeit jewelry that contains lead, counterfeit pharmaceuticals that contain potentially toxic substances, and counterfeit health and beauty products that are made under unsanitary conditions.

ICE anticipates that cyber-commerce and for-profit streaming will continue to be challenges, along with the following upcoming technologies: 3D printing; additive

manufacturing; and the dark web and virtual currency. ICE feels that IP criminals will continue to use these technologies, and others we have not seen, in furtherance of their criminal activity. One other challenge that lies ahead is the use of e-commerce platforms with a business direct to consumer business model that utilizes the express mail environment. There are numerous weaknesses in this model that counterfeiters can exploit.

IP cases demand attention from criminal investigators and regulatory agencies. We take our responsibility to protect American consumers and industry very seriously, and ICE's priorities in IP crime enforcement remain to protect the public's health and safety, the military supply chain, and the American economy. The IPR Center successfully brings together members of industry, state and local partners, federal government and international counterparts to train, exchange best practices and ultimately remove counterfeit and pirated products from the marketplace and put the criminals behind them in jail.

Conclusion

Thank you again for the opportunity to appear before you today to discuss the work of ICE and the IPR Center in protecting U.S. consumers from the international illicit trade of dangerous counterfeit, unapproved, and/or adulterated products. I look forward to working closely with Congress on this issue of critical importance as it directly threatens worldwide health and safety.

I would be pleased to answer any questions.