

Testimony of

Vanessa Price

Intellectual Property Specialist
Burton Snowboards
March 23, 2004

"Counterfeiting and Theft of Tangible Intellectual Property: Challenges and Solutions"
Senate Judiciary Committee
March 23, 2004

Vanessa Price
Intellectual Property Specialist
Burton Snowboards

My name is Vanessa Price, and I am the Intellectual Property Specialist for the Burton Corporation. It is a pleasure to take part in this hearing on Counterfeiting and Theft of Intellectual Property. Despite vigorous measures to protect our intellectual property through trademark and patent registrations, Burton has seen significant counterfeiting recently. We expect that counterfeiting will increase dramatically as our brand continues to grow. As a smaller company, Burton is deeply concerned about the rise in theft of our intellectual property since we do not have the resources it takes to combat or offset the effects of large-scale counterfeiting.

The Burton name is synonymous with snowboarding. Founded in 1977, the Burton Corporation is a Vermont-based company that employs 350 people in Vermont and 160 people at offices in Japan and Austria. The boardsports industry credits Burton Snowboards with the founding and popularization of snowboarding as a legitimate sport. Additionally, Burton has fueled the growth of snowboarding worldwide through continuous work with, and support of, its Global Team riders and development of successful programs such as Learn-To-Ride (LTR), The Chill Foundation (a not for profit foundation dedicated to providing snowboarding opportunities to underprivileged children), and the US Open Snowboarding Championships.

After twenty-six years in business, Burton remains the industry leader with over 1500 dealers in North America alone. Snowboarding is growing rapidly worldwide. SnowSports Industries of America (the skiing and snowboarding trade group) estimates that participation in Snowboarding has increased 300% since 1998. Burton has seized this opportunity to grow its brand. In recent years, Burton has expanded to include Gravis Footwear, Analog casual apparel, Anon Optics, and R.E.D. Protective Gear. However, this growth and popularity is not without a significant downside. Our industry has gone through considerable consolidation in recent years. Most of the snowboard manufacturers are seasoned competitors. Believe it or not, snowboarding has matured. Competition is keen and profits are shrinking, even as the sport grows in popularity.

Unfair competition from counterfeiters significantly compounds the problems of seasonality and severe sensitivity to economic downturns that our industry already faces. Virtually none of the companies that manufacture ski or snowboarding equipment are large enough to have the resources or tools necessary to fight counterfeiting, leaving a growing portion of what should be domestic revenue going to foreign thieves. We could not even guesstimate the amount of tax revenue that the U.S. Treasury loses to these unrealized gains.

As the Burton brand grows, we face significant challenges to our intellectual property rights. Burton has taken all available and appropriate steps to register our trademarks both in the U.S. and internationally. Currently, we maintain more than 60 trademark registrations in the United States alone. We have taken the additional steps of registering our trademarks with the Customs officials in the U.S., Chile, Argentina, Brazil, Hong Kong, PR China, Taiwan, Japan, and South Korea. Unfortunately, filing with Customs offers very scant protection, especially in recent months, where Customs officers are concerned more and more with national security. Burton also holds patents worldwide relating to

our snowboard technology, including snowboard boots, bindings, snowdecks, and snowboards. However, despite these measures, we see growing evidence that our brand is suffering from counterfeiting and illegitimate sales.

Burton has noticed growing problems with small-scale counterfeiting in the U.S. Typically, this involves the manufacture and sale of fake Burton, Gravis, and Analog stickers, accessories, and clothing on Internet auction sites, specifically eBay. Unauthorized Burton branded goods can be found on eBay almost continuously. Fortunately, eBay affords intellectual property owners the right to request the removal of counterfeit items from auction. While eBay will provide a seller's personal contact information, a small corporation such as Burton Snowboards does not have the resources to pursue every instance of counterfeiting on eBay. Small-scale counterfeiting may not appear to be a significant problem. However, Burton manufactures limited editions of specific stickers and products. These items stand to lose their consumer appeal when they routinely show up in large quantities on eBay.

Burton employees have seen a very significant increase in intellectual property theft in Asia. While it is extremely difficult to determine the scale of theft and factory leaks with our current resources, Burton representatives traveling to Asia frequently see unauthorized Burton and Gravis items for sale in shops and markets. Several recent examples include:

- ? Macau: Several employees traveling noticed legitimate Burton items for sale in a shop. From the location of the shop and the construction of the items, they suspected a leak from a local factory;
- ? Hong Kong:
 - o Our Director of Men's Apparel reports seeing counterfeit Gravis footwear and bags at several stores and markets in Hong Kong;
 - o Another employee reports seeing unauthorized Burton products sold in Stanley Market, as far back as 2002;
- ? Taiwan: On a visit to a factory, several Burton fleeces were found in the showroom. These fleeces were determined to be counterfeit based on their construction and the fact that Burton had never used that factory;
- ? Thailand:
 - o We maintain no distribution in Thailand;
 - o While visiting Thailand with his family, Jake Burton Carpenter, our CEO, found vendors selling counterfeit Gravis items in a local night market;
 - o Counterfeit Gravis bags from Thailand have also surfaced on eBay;
 - o Counterfeit Gravis bags have been found by employees at night markets in Thailand.

Burton is in the process of expanding from a one-season business by diversifying into the apparel business and expanding sales of t-shirts, fleeces, sweatshirts, and accessories. As this aspect of our business grows in the U.S., Japan, and Europe, we expect to see a significant rise in counterfeiting, especially in Asia. Other companies within the boardsports industry have experienced widespread counterfeiting in Asia with the growth of their brands. Although we protect our brand through trademark registrations in many different countries, we simply do not have additional resources to fight counterfeiting on a large-scale.

Even if resources were available, we know the tools to be largely ineffective. Beyond trademark registration and filing with Customs officials, there are very few options. Suits in foreign countries alleging unfair competition are expensive, time consuming, and ineffective. They certainly are not a deterrent to the thieves. Moreover, insurance policies do not cover a company such as Burton against losses due to IP theft.

While counterfeiting of our Hardgoods (snowboards, boots, and bindings) has not been substantial to date, we anticipate a growing problem with counterfeiting and factory leaks as we expand our business operations. Burton invests heavily in research and development on our Hardgoods to ensure production and sale of top-quality products. Additionally, Burton takes all available measures to produce equipment according to high safety standards; and we stand behind the quality of our product. Counterfeiters care little for the quality of the products they sell under our good name. In turn, counterfeit products that fail to adhere to our high safety standards put the public at risk, and inevitably damage our industry and our brand. They also undermine the investments we make in the development and implementation of new safety features.

Clearly IP theft is a significant and costly problem and there are too few tools available to combat it. The tools that are available are expensive and ineffective. The persons who profit most from counterfeiting are rarely caught or

punished. The most serious threat they face is a confiscation of their fake goods. What are sorely needed are effective laws and vigorous enforcement mechanisms. Additionally, the United States should provide technical and monetary assistance to developing nations to improve their anti-counterfeiting efforts.