

By Hook or By Crook

If you think pirates are fellows with eye patches plying the oceans, then think again. Medical product companies, such as producers of pharmaceutical or surgical products entering in new markets, are facing some solid buccaneering, which is costing their companies time and money.

Domain name pirates are very active in Asia and have changed their strategy. They do not just bluntly register known trademarks (domain grabbers). Today, you might receive emails as follows: "We are X Ltd which is the domain name register centre in China. We formally received an application of the company Y applying for the following Chinese Domain Names: [your trademark]. These days we are dealing with it, so we hope to get the affirmation from your company. Please contact us as soon as possible." Thereby, the pirate gives you the choice either to register your domain against a fee (which is higher than registering it by yourself) or to get your domain blocked by the third company. In these cases, you should try to immediately register yourself and answer properly in order not to lose your rights in a later domain name dispute.

Another source of nuisance in this field are your own distributors or agents. They often try to strengthen their bargaining position by the registration of domain names referring to the manufacturer. In order to avoid trouble, you should (i) insert in your distribution agreements interdiction clauses and (ii) carefully and periodically watch the registration of your trademarks and brands in your markets.

To catch a thief

Counterfeiting and piracy is one of the fastest growing economic crime and presents medical industry companies with a unique set of problems. What was once a cottage industry has now become a highly sophisticated network of organised crime that has the capacity to threaten the very fabric of national economies, endanger safety and frequently kills. It devalues corporate reputations, hinders investment, funds terrorism, and costs hundreds of thousands of people their livelihood every year. The Counterfeiting Intelligence Bureau (CIB; <http://www.icc-ccs.org/icc/cib>) of the International Chamber of Commerce (ICC) helps to protect industry from the damage caused by counterfeiting. Over the years, the CIB has designed, instigated and managed a number of initiatives that seek out counterfeiters, protect people and products, and help to ensure brand security, in particular the Counterfeit Pharmaceutical Initiative. CIB has developed a Case Study Database and the BASCAP Weekly Digest to increase awareness of the problem of counterfeiting and piracy.

There can be little doubt that the enforcement of intellectual property rights is one of the most critical aspects of the war against counterfeiting and piracy. It is also arguably one of the most difficult. Over the past decade the laws of many countries have changed significantly to address the modern counterfeiting crime wave and provide new and improved weapons for intellectual property rights holders including civil, criminal and customs procedures that afford redress to rights owners.

But back to the eye patches for a moment: even traditional maritime pirates represent a danger on globalized markets. 297 attacks worldwide were reported to the Piracy Reporting Centre for the year 2012. Mostly the attackers were armed with guns or knives and the use and threat of violence against crew members remains unacceptably high. The ICC Commercial Crime Services (CCS; www.icc-ccs.org) is the anti-crime arm of the International Chamber of Commerce.

How can you protect yourself against pirates?

- Your IP and know-how should be legally and technically well protected and registered before entering a new market. Do not forget to register domain names.
- You need quick access to legal assistance in foreign markets. Your in-house lawyers or your local home-based law firm needs a well established and proven network in order to trigger immediate action if required.
- Your local agent or distributor should not only know the market and the local regulations with regard to your pharma or medical technology product. A professional distributor should be able and obliged to take an active role in the legal field, to assist you in implementing IP protection measures and in legal IP cases.
- Make sure that the risk of pirate attacks is not on your side or covered by insurance. Use IP protection, choice of law and arbitration clauses in your contracts.

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