



Statement of the U.S. Chamber of Commerce

**ON: "FINDING AND FIGHTING FAKES: REVIEWING THE STRATEGY
TARGETING ORGANIZED PIRACY"**

**TO: SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT
MANAGEMENT, THE FEDERAL WORKFORCE AND THE
DISTRICT OF COLUMBIA**

BY: BRAD HUTHER

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The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

**WRITTEN STATEMENT OF BRAD HUTHER,
DIRECTOR, COUNTERFEITING AND PIRACY INITIATIVE
U.S. CHAMBER OF COMMERCE**

**BEFORE THE
UNITED STATES SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT
MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA
HEARING ON
“FINDING AND FIGHTING FAKES: REVIEWING THE STRATEGY TARGETING
ORGANIZED PIRACY”**

JUNE 14, 2005

Good morning Chairman Voinovich and members of the subcommittee. My name is Brad Huther and I am the Director of the Anti-Counterfeiting and Piracy Initiative at the U.S. Chamber of Commerce. The Chamber is the world's largest business federation, representing more than 3 million businesses of every size and in every sector of the economy. Thank you Mr. Chairman, for holding this hearing.

We applaud the recent increased government-wide attention to the growing threat of counterfeiting and piracy. The business community also recognizes the need to organize itself and contribute to the government's efforts to protect intellectual property and our supply chains by leveraging the power of our collective resources. We will do our utmost to create a safer marketplace for consumers, protect the jobs of America's workers, and expand our competitiveness globally.

Last year the Bush Administration’s newly launched STOP! initiative promised “...to smash the criminal networks that traffic in fakes, stop trade in pirated and counterfeit goods at America’s borders, block bogus goods around the world, and help small businesses secure and enforce their rights in overseas markets.”¹ Fulfilling these promises will take considerable time, but the U.S. Chamber of Commerce believes the STOP! agencies are on the right track. Cabinet level officials, such as Secretary of Commerce Carlos Gutierrez, have dealt forcefully and candidly with China’s highest-ranking policy officials about the need to protect and enforce intellectual property rights. Other officials have expressed their interagency commitments to STOP! prior to holding meetings with their counterparts in East Asia and Europe. The Chamber is impressed by the comprehensiveness of the United States Patent and Trademark Office’s STOP! action plan after receiving a recent in-depth briefing by Jon Dudas, the Under Secretary for Intellectual Property and Director of USPTO. We are also pleased that the Department of Justice has recently recruited a highly competent point-person from its Los Angeles field office to implement its 23 point action plan to combat intellectual property crime. Finally, we were gratified that the Department of State has elevated the importance of its intellectual property activities by creating a new, higher-level organization structure several months ago.

¹ “STOP! Trade in Fakes” brochure, U.S. Department of Commerce, 2004.

Similar leadership developments critical to the success of STOP! also have been achieved in the Department of Homeland Security and the Office of the United States Trade Representative.

The bottom-line is this: the Chamber is confident the Administration has, thus far, demonstrated its effectiveness in coordinating the federal government's efforts to combat intellectual property theft at home and abroad. If these policy officials and their technical experts are given adequate resources to carry out the STOP! initiative, the Chamber believes there exists a sound, aggressive and far-reaching interagency strategy to achieve many of the Administration's promises in the future.

We also recognize that the business community must contribute its expertise and resources to assist our government in the achievement of this newly-emerging national priority. In his testimony before the Senate Committee on the Judiciary in March 2004, Tom Donohue, our President and CEO, emphasized the disproportionate adverse effects of counterfeiting and piracy on small and emerging businesses. Small stores that unknowingly have fake products on their shelves or unknowingly distribute phony goods are at risk of losing consumer confidence. Small businesses can be financially devastated when their innovations are copied or reproduced illegally.

Accordingly, in our view the STOP! initiative provides important new measures to help small businesses protect their rights and interests. They range from providing an information hotline on ways to leverage the government's resources in the

enforcement of their intellectual property rights, to developing in partnership with industry a “No Trade in Fakes” program to free supply chains from counterfeit or pirated goods, to educating small businesses and their workers on the risks of global piracy. The Chamber applauds these efforts and believes they are excellent components of the STOP! initiative.

The Chamber has developed a strategic action plan with tangible steps to stop counterfeiting and piracy. Our strategy has three major components:

- First, to educate lawmakers, the media, businesses, innovators and consumers about the health, safety and economic dangers that counterfeits and pirates are imposing on us;
- Second, to enforce the legitimate rights of small companies, manufacturers and retailers to protect the goodwill of their product line and to have safe, reliable distribution channels in the United States;
- Third, to engage on a global basis countries that are not honoring their international trade obligations, cracking down on counterfeiters and pirates of intellectual property, and strengthening their borders and shipping controls.

Our strategy will be implemented through more than fifty action items, phased in over the next two years. We intend to ensure that our work complements the STOP! initiative and we would be glad to inform the Subcommittee periodically on

our progress. I am pleased to report today that the Chamber has already made significant progress on some of its objectives. We began our education strategy with surveys and focus group meetings with Congressional staff and small business owners to monitor the level of their understanding of intellectual property issues. Last month we released this informational booklet titled, “What are Counterfeiting and Piracy Costing the American Economy?” The booklet presents the facts behind the impact of counterfeiting and piracy in a way that is easy to read and understand. We have begun distributing it to businesses, government officials, the media and others throughout the country.

The Chamber has also been active on the international front against counterfeiting and piracy, as part of our global management strategy. For example, last month Tom Donohue led a delegation to China. He met with high ranking business leaders, and the protection of intellectual property rights was the top issue. The Chamber’s delegation presented Chinese leaders with our action plan in the expectation that they will take concrete steps against counterfeiters and pirates, and they announced the creation of an index which will be continuously updated to measure the effectiveness of China’s enforcement efforts. We have designed and are now implementing strategies to get other countries, such as Brazil, India, Russia and Korea, to strengthen their legal systems, prosecute counterfeiters and pirates, and to comply with their international treaty obligations.

The Chamber and the National Association of Manufacturers have organized a coalition of more than 70 businesses and associations that is also committed to working with the Congress and the Administration. The Coalition Against Counterfeiting and Piracy (CACP) held its first meeting in November 2004 and has been collaborating ever since with STOP! agencies in the pursuit of our common objectives. For example, one of our five task forces has been working with the International Trade Administration and the Department of Homeland Security to create a set of business practices and guidelines to ensure that global supply chains are free of counterfeit or pirated goods. Another task force is developing a model framework on intellectual property rights for use by USTR in future negotiations of Free Trade Agreements. A number of key deliverables should be completed between September and the first quarter of calendar year 2006. Once again CACP would be glad to keep the Subcommittee informed of its progress in support of the STOP! initiative.

The 109th Congress provides a fourth opportunity to develop additional, long-term legislative solutions to combat counterfeiting and strengthen U.S. patent laws, and provide effective oversight of the Administration's long-term strategic plan for STOP! The Chamber recommends the following additional steps be taken:

1. The United States Senate should close existing loopholes in the criminal trademark law that allow counterfeiters to avoid prosecution, maintain control

of assets for criminal enterprises, and unjustly profit from their illegal activities. In their October 2004 report titled, Report of the Department of Justice's Task Force on Intellectual Property, the Department of Justice stated that "in order to prevent the distribution of counterfeit products, the government should take reasonable steps to prevent their production. When law enforcement officials find materials and equipment that are used to create counterfeit products, the materials and equipment should be seized. Legal loopholes should not allow trafficking in counterfeit labels simply because they have not yet been attached to counterfeit goods." H.R. 32, the Stop Counterfeiting in Manufactured Goods Act, would close these existing loopholes.

Specifically, H.R. 32 would amend the U.S. Code, 18 U.S.C. 2320, by prohibiting the trafficking in counterfeit labels, patches, stickers, hangtags or medallions that are unattached to goods. In addition, the bill would make mandatory the seizure and destruction of counterfeit goods, as well as the forfeiture of illicit proceeds derived from counterfeiting. This legislation would grant trademark owners remedies similar to those already provided to copyright and trade secret owners.

On the International front, immediate passage of this legislation is necessary to more effectively combat counterfeiting abroad. With a number of free trade

agreements currently being negotiated, it is imperative that the current deficiencies in domestic law are not codified in these international agreements. We should seize the opportunity represented by new trade agreements to obtain stronger enforcement obligations from our trading partners against counterfeiting. I would urge the United States Senate to quickly take up and pass these important legislative provisions.

2. Enact the U.S.-Dominican Republic-Central America Free Trade Agreement.

DR-CAFTA would knock down trade barriers to American exports to the region. This FTA would be the largest trade agreement in a decade – two-way trade is currently \$32 billion. The agreement includes member countries Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic and would eliminate 80% of their tariffs immediately, with the remaining tariffs phased out over 10 years. The Chamber strongly supports enactment of DR-CAFTA, major provisions of which would strengthen the protection of intellectual property rights and block the entry of counterfeit and pirate products from countries such as China and Russia, two of the worst violators.

3. Ensure that the provisions of the Governmental Performance and Results Act, especially those relating to establishing performance indicators and the means

for validating actual versus planned achievement of them, are rigorously applied in the on-going implementation of an integrated, interagency STOP! strategic plan and provide regular oversight of the Administration's and business community's progress.

Thank you, Chairman Voinivich, for focusing on the economic and safety threats of counterfeiting and piracy. I appreciate the opportunity to provide testimony and will respond, to the best of my ability, to any questions you might have.