

IPR Center Report

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Partners in Action

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The IPR Center stands as a focal point in the U.S. government's fight against counterfeiting and the flow of counterfeit goods into the commerce of the U.S. The center employs a true task force model to optimize the roles and enforcement efforts of member agencies, while enhancing government-industry partnerships to support ongoing IPR enforcement initiatives.

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Orient Pacific



Top-selling pharmaceutical product counterfeits offered by Chinese businessman Kevin Xu.

By Edward Tarver and Robert Sherman,
U.S. Immigration and Customs Enforcement

The investigation began in March 2007 in the most unlikely of places: a coffee shop at Bangkok's Suvarnabhumi Airport. Kevin Xu, a Chinese businessman from Beijing, was offering to supply American businessmen with counterfeits of some of the top-selling pharmaceutical products in the world. The list included drugs used to treat cancer, heart disease, avian flu and Alzheimer's disease.

Xu explained that he could manufacture the pills at his plant in China, then conceal them in drums and transship them through various ports to disguise their origin, just as he was doing for customers in Europe. What Xu did not know was that the "businessmen" were actually undercover ICE special agents from the Office of the Special Agent in Charge (SAC), Houston.

By the conclusion of the meeting, those agents realized Xu would be one of the most significant targets they had ever negotiated with. He was the first criminal they encountered who sought to distribute such a wide variety of counterfeit pharmaceuticals. It was imperative to move swiftly to gather evidence needed to arrest him.

The investigation took on added urgency when counterfeit drugs like the ones Xu supplied to the undercover agents were found to have entered the legitimate wholesale supply chain in the United Kingdom, resulting in record product recalls of Zyprexa, Plavix and Casodex. In July 2007, Xu came to Houston for another meeting and was arrested by ICE and FDA/OCI agents. Xu was indicted on charges of conspiracy, distribution of counterfeit goods and introduction of misbranded pharmaceuticals, and he chose to go to trial.

At a week-long trial in Houston, witnesses included investigators with the United Kingdom's Medicines and Healthcare products Regulatory Agency (MHRA) as well as major pharmaceutical companies. During the trial, Assistant U.S. Attorney Sam Louis said that Xu was "one of the most significant traffickers in counterfeit pharmaceuticals ever prosecuted." Louis told the jury Xu owned a factory that produced high-quality counterfeits of mainstream branded pharmaceuticals, and sought to make money by getting those products into the hands of unsuspecting consumers in the United States.

Xu was convicted and sentenced to 78 months in federal prison. He also was ordered [continued on page 4](#)

Super Bowl Enforcement Operation Nets More than \$2 Million in Counterfeit Merchandise

By Frederick Chow,
U.S. Immigration and Customs Enforcement

An intellectual property rights (IPR) enforcement operation at Super Bowl XLIII in Tampa, Fla., led to arrests and seizures of counterfeit merchandise. ICE agents from the Special Agent in Charge Office for Tampa joined the Tampa Police Department, Hillsborough County Sheriff's Office and National Football League (NFL) to work together in the two-week operation leading up to the big event.

As a result of this collaborative effort, officials seized more than 21,000 pieces of counterfeit merchandise with a retail value of more than \$2 million.

As with past Super Bowl initiatives conducted jointly with ICE, the NFL obtained a state civil court order authorizing the seizure and forfeiture of unauthorized and/or counterfeit NFL merchandise. More than 100 violators were served with the order, resulting in the seizure of approximately 16,000 pieces of counterfeit NFL merchandise including jerseys, t-shirts, sweatshirts, cell phone holders, caps and banners worth more than \$360,000.

Another focus of this IPR operation was the targeting of counterfeit vendors of Super Bowl tickets. The IPR teams also seized 37 counterfeit tickets, resulting in nine arrests.

The investigation of a Tampa-based vendor selling counterfeit NFL merchandise at a local flea market determined the vendor was also selling other counterfeit goods in an adjacent booth. A state search warrant was obtained on the second booth, resulting in the discovery and seizure of more than \$1.6 million worth of trademarked merchandise, including sneakers, handbags, clothing, jewelry, watches, wallets and sunglasses. The vendor was arrested on a state felony charge of distribution of goods with a counterfeit trademark, and faces up to five years in prison and a \$5,000 fine.

Another vendor of counterfeit NFL t-shirts was encountered in the vicinity of Raymond James Stadium, the location of this year's Super Bowl. This vendor had previously been identified as a counterfeit NFL merchandise vendor. This case was presented and accepted for federal prosecution by



ICE agents seize counterfeit NFL merchandise.

the U.S. Attorney's Office for the Middle District of Florida.

This collaborative partnership between ICE SAC/Tampa, state and local enforcement agencies, and the NFL resulted in a successful effort to combat IPR violators.

Combatting Game Piracy in Mexico

By Jenifer O'Reilly, *Electronic Software Association*

In 2004, the Entertainment Software Association (ESA) established an anti-piracy program in Mexico to increase enforcement activity against game piracy. Working with local counsel and representatives of its member companies, the program

has focused on importers, producers and vendors of pirated games.

Over the past four years, ESA has instigated law enforcement raids that have seized hundreds of thousands of counterfeit game software at notorious pirate markets in Guadalajara and Mexico City, such

as Tepito, Pericoapa and Plaza Meave. The presence of pirated entertainment software makes it extremely difficult for legitimate game retailers to earn a profit.

"Mexico is an important market for ESA members due to the enormous popularity of continued on page 3

By Jennifer Boger and
Andrea Cornwell,
U.S. Department of Commerce

The Office of Intellectual Property Rights (OIPR) is located in the Trade Agreements and Compliance area of International Trade Administration's Market Access and Compliance unit. OIPR's work is divided among two broad areas: developing and coordinating the department's activities on intellectual property rights (IPR) trade policy, and assisting companies in protecting and enforcing their IPR overseas. OIPR responds to inquiries, and develops trade programs and tools to help U.S. businesses and citizens protect and enforce their IPR in foreign markets.

Trade Policy: Analysis, Negotiations, Agreement Implementation and Compliance, Cooperative Dialogues—

OIPR supports the development of IPR working groups in multilateral and bilateral trade dialogue in order to encourage our trading partners to recognize the link between IPR and innovation, improve their IPR regimes, and develop programs and solutions to the global problem of counterfeiting and piracy. OIPR works with regional and industry offices within the Department of Commerce, other U.S. government

agencies and U.S. industry. OIPR also monitors foreign governments' implementation of, and compliance with, international trade agreements, and participates in/leads regional/bilateral cooperative dialogues pertaining to IPR.

Helping Small and Medium-Sized Enterprises (SMEs) Overcome IPR Protection and Enforcement Concerns—

OIPR has undertaken numerous activities to assist SMEs in protecting IPR, both in the United States and abroad. OIPR works with regional and industry offices within the Department of Commerce, commercial service staff in embassies abroad, in our more than 100 domestic U.S. Export Assistant Centers, and in other U.S. government agencies to disseminate information and tools for SMEs, and address specific IPR concerns adversely affecting U.S. businesses:

- **www.StopFakes.gov and STOP! Hotline:** OIPR helps companies overcome problems protecting and enforcing their IPR overseas by responding to inquiries through the Strategy Targeting Organized Piracy (STOP) hotline and working with companies that contact OIPR directly.
- **Country IPR Toolkits:** Country toolkits have been posted on

embassy Web sites and on **www.StopFakes.gov** that contain detailed information on protecting IPR in Brazil, Brunei, China, Egypt, European Union, India, Italy, Malaysia, Mexico, Paraguay, Peru, Russia, Taiwan, Thailand and Vietnam.

- **International IPR Advisory Program:**

OIPR established a program with the American Bar Association through which American SMEs can request a free, one-hour consultation with a volunteer attorney knowledgeable about IPR issues and a particular country to learn how to protect and enforce their IPR, such as trademarks, patents or copyrights in that country. Expertise is available for Brazil, China, Egypt, India, Russia and Thailand.

- **Online IPR Training Module:** OIPR worked with the U.S. Patent and Trademark Office, Small Business Administration and Foreign Commercial Service to develop an online training program for SMEs to learn how to evaluate, protect and enforce their IPR. The program is available free online at **www.StopFakes.gov**. OIPR is currently having the module translated into Spanish and French to broaden domestic and foreign outreach.

Combatting Game Piracy in Mexico, continued from page 2

entertainment software," said Ric Hirsch, senior vice president of intellectual property enforcement at ESA.

"Unfortunately, Mexico also has an alarmingly high rate of piracy that by some estimates exceeds 85 percent," he said. "We are very grateful for the efforts of law enforcement in attack-

ing the sources of pirate video games circulating in Mexico's markets."

ESA serves the business and public affairs needs of U.S. companies publishing interactive games for video game consoles, handheld devices, personal computers and the Internet. ESA services include a global anti-piracy program, business and consumer research, federal and state

government relations, and First Amendment and intellectual property protection efforts.

For more information, visit **www.theESA.com**.

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French Customs Fights Counterfeiting

By François Richard,
French Customs Attaché

The French Customs Administration is working to curb the threat that counterfeiting poses to the economy, employment and consumer health and safety. More checks in tourist areas, combined with public awareness campaigns on the damage caused by counterfeiting, are included among the goals set by French Customs.



A law passed in October 2007 increased French Customs' power to investigate counterfeiting, and widened the definition of counterfeiting to include infringement of registered designs. In France, buyers are now subject to heavier penalties with prison sentences up to five years and fines reaching the equivalent of approximately \$638,000. It also strengthened cooperation with rights holders.

The French economy loses some 6 billion euros a year to counterfeiting (approximately \$7.65 billion). Half of French businesses report that they are victims of this crime. In recent years, the Internet has powered this illegal activity forward from small-scale production into a real industry, generating huge profits. Counterfeiting attacks cheat consumers, and compromise public health and safety.

In 2007, French Customs charged 15,357 offenses (up 18.7 percent on the previous year and excluding counterfeit cigarettes), in the course of which 4.6 million items (up 15 percent) were intercepted. The market value of these items was 412 million euros (approximately \$523.9 million, an increase of 52 percent compared with 2006).



French Customs agents seize counterfeit items.

The number of seizures rose in almost all sectors of the market. The counterfeiters' preferred areas are still clothing and clothing accessories (1.1 million textile products seized in 2007), toys and games, and jewelry. The pharmaceuticals sector has seen a year-on-year rise of more than 30 percent, with 781,761 items seized (representing 17 percent of all goods confiscated in 2007). There was an increase in seizures of counterfeit motor vehicle parts in 2007; 8,950 counterfeit items were found by customs. Lastly, more than 14,000 counterfeit items were seized during the Rugby World Cup, including 11,668 checks specially introduced for this major sporting event.

Cracking down on counterfeits is a priority for the French General Customs and Excise Directorate, which is determined to stop counterfeiting. As part of this action, it has stepped up its controls to combat "counterfeiting tourism," particularly active in the summer season. Customs officials control products during clearance procedures, including merchandise

sent through post express carriers and major seasonal marketplaces.

Finally, French Customs is developing an active cooperation with its cyber crime unit and foreign partners such as the National IPR Center.

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to pay roughly \$1.4 million dollars in restitution to the pharmaceutical companies whose products he counterfeited.

This investigation succeeded as a result of extensive cooperation between ICE SAC Houston; the ICE attachés in Bangkok, Beijing and London; the IPR Center; FDA/OCI; and MHRA. ICE and its partners were able to apprehend Xu and dismantle his criminal network before he was able to penetrate the U.S. supply chain.