

Small businesses are prey for piracy

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By Dave Anderton

China may be known for sending cheap exports to U.S. big-box retailers, but the country also ranks as the No. 1 exporter of counterfeit and pirated goods to the world, according to government officials.

From razors and medicines to cigarettes and golf clubs, piracy in China of copyrighted material costs U.S. companies \$2.5 billion to \$3.8 billion per year.

Such losses have prompted the U.S. Patent and Trademark Office to launch a national campaign, starting in Salt Lake City, to urge businesses to protect their intellectual property.

On Monday, Jon Dudas, U.S. undersecretary of commerce for intellectual property, told Utah small-business owners that they face a higher risk of piracy and counterfeiting because small businesses often lack the knowledge and personnel to fight such practices.

"There's actually a higher profit margin in counterfeit goods than there is in drugs," Dudas said. "Counterfeit goods are increasingly becoming the method for funding organized crime, and to some degree, terrorism as well."

According to a recent report by the Office of the U.S. Trade Representative, overall piracy rates in China have not significantly declined since the country's entrance to the World Trade Organization.

In fact, Chinese counterfeits entering the U.S. market and seized by the United States in 2004 increased 47 percent to \$134 million, up from \$94 million the previous year. The seizures accounted for 67 percent of all intellectual property right seizures by U.S. Customs in 2004.

Adding to the problem is a mixed response by China's authorities to pursue criminal prosecutions.

"While the number of criminal trademark prosecutions appears to be increasing, we have reports of very few, if any, criminal copyright prosecutions," the report said. "When criminal prosecutions are pursued, a lack of transparency makes it difficult to ascertain whether they resulted in convictions and, if so, what penalties were imposed."

Lloyd Sadler, a patent attorney with Snell & Wilmer's Salt Lake office, said he has a number of clients that routinely pursue patent protection in China.

"I have clients that are constantly concerned about whether their products are going to be knocked off in China," Sadler said. "They also are concerned about vendors or manufacturers that might be taking their inventions."

In order to bring a patent infringement suit, Sadler said, companies must have a patent in the country where an infringing act is occurring.

"If you care about a foreign market, you need to get patent protection in each country that you see as a significant market," Sadler said. "If you don't have that you generally cannot stop someone from taking your idea or invention and commercializing it in that country."

Chinese patents are expensive, Sadler said, costing at least \$20,000, and they can take years to secure. Once obtained, it is unclear whether the patents are always going to be enforceable.

Dudas said recent crackdowns on patent infringement include the Department of Homeland Security's seizure of 100 containers of counterfeit goods valued at \$400 million from China that were smuggled into the United States.

Dudas said he has seen intellectual property thieves in China copy an entire U.S. company's product line, Web site and packaging. The product is then exported from China to other countries where the U.S. business does not operate.

"That market is stolen from the small business before they even have a chance to operate," Dudas said. "It can devastate a small business."

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