



March 24, 2010

Via Electronic Mail

intellectualproperty@omb.eop.gov

Ms. Victoria Espinel
United States Intellectual Property Enforcement Coordinator
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

**Re: Request of the Intellectual Property Enforcement Coordinator for
Public Comments Regarding the Joint Strategic Plan. 75 Fed. Reg. 8137-
8139 (February 23, 2010)**

Dear Ms. Espinel:

The International AntiCounterfeiting Coalition, Inc. ("IACC") submits the following in response to Part II of your request for comments concerning the Joint Strategic Plan ("JSP"), soliciting recommendations for accomplishing the objectives of the JSP, or to otherwise improve the US Government's enforcement efforts.

Founded in 1979, the IACC is the world's oldest and largest organization representing exclusively the interests of companies concerned with trademark counterfeiting and copyright piracy. Our members consist of over 200 corporations, trade associations, and professional firms and represent total annual revenues of approximately \$750 billion. Our brand and copyright owner members represent a broad cross-section of

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industries, and include many of the world's best known companies in the apparel, automotive, consumer goods, entertainment, pharmaceutical, and other product sectors. The IACC is committed to working with government and industry partners in the United States and elsewhere, to strengthen IP protection by encouraging improvements in the law and the allocation of greater political priority and resources, as well as by raising awareness regarding the enormous—and growing—harm caused by IP violations.

The IACC strongly supported the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (“The PRO-IP Act”), and specifically, its provisions creating the position of the IPEC and the development of the Joint Strategic Plan. We appreciate this opportunity to provide input on this important project, and we look forward to working with you and your colleagues in the Administration to ensure that the United States continues to set the global gold standard for IP protection and enforcement. We are available at any time for clarification of any issues raised in the attached submission.

Respectfully submitted,

A handwritten signature in black ink that reads "Bob Barchiesi". The signature is written in a cursive, slightly slanted style.

Robert Barchiesi
President



**Submission of the
International AntiCounterfeiting Coalition
to the
Intellectual Property Enforcement Coordinator
Regarding the Joint Strategic Plan**

March 24, 2010

The International AntiCounterfeiting Coalition, Inc. (“IACC”) submits the following recommendations to the Intellectual Property Enforcement Coordinator (IPEC) pursuant to a request for written submissions from the public providing specific recommendations for accomplishing the goals of the Joint Strategic Plan and for significantly improving the US Government’s IP enforcement efforts.

Proposed Changes in Policies, Practices, and Legislation

At present, the single greatest policy priority for the IACC and its members concerns the availability of information regarding shipments of goods detained by US Customs and Border Protection (“CBP”) which are suspected of being counterfeit, or otherwise violating the rights of intellectual property owners in trademarks registered in the United States and recorded with CBP.

As the manufacturing capabilities of counterfeiters have increased in recent years, with the more widespread availability of tools which facilitate the replication of products and packaging, Customs’ ability to detect counterfeit goods has grown exponentially more difficult. Rights-holders have adopted a variety of technologies, both overt and covert, which are commonly used to aid in identifying illicit product or verifying the legitimacy of goods. The volume, and variety, of goods entering the domestic stream of commerce at US ports obviously makes it unfeasible for Customs personnel to receive the extensive training or level of familiarity necessary to verify the legitimacy of every trademark that comes before them. Traditionally, private sector rights-holders have been consulted by CBP, and have offered assistance in making such verifications. Regrettably, CBP has adopted a policy – citing the Trade Secrets Act – which has significantly reduced the ability of CBP to ask for, or for rights-holders to provide, such assistance.

By way of example, many legitimate manufacturers and rights-holders have adopted verification procedures which involve the marking of product containers and packaging with unique serial identification markings at the time of manufacture. Current CBP policy precludes the disclosure of such markings to a rights-holder either through the provision of samples or photographic evidence. In practice, CBP has provided redacted photographs or digital images of the goods; or when physical samples have been provided, Customs personnel

have physically removing or obliterated the markings prior to providing the sample to the rights-holder. Unfortunately, absent those identifying codes, in many cases, the trademark owner has been unable to make a positive determination regarding the products' authenticity. The implication of the Trade Secrets Act (and the potential for criminal prosecution for violations of that statute), has, according to reports from IACC member companies, resulted in Customs' reluctance to share information which might allow rights-holders to provide the type of assistance necessary to verify whether a suspected shipment is, in fact, counterfeit. The clear result of this policy is an increased likelihood that greater volumes of counterfeit product will enter through the borders, posing greater threats to consumers, and greater economic harm to legitimate businesses.

Information is arguably the most powerful weapon available to law enforcement and rights-holders in addressing the problem of counterfeiting. IACC members continue to report however that current policies in place are hindering their ability to identify individuals involved in the trafficking of counterfeit goods. Rights-holders noted that they frequently encounter cases of fraud when conducting follow-up investigations, subsequent to their receipt of Customs Seizure Notices from the Office of Fines, Penalties, and Forfeiture. In some cases, the individual named as the importer of record has been the victim of identity theft (and is in no way connected to the importation); while in other cases, a fictitious name has been provided by the importer to a customs broker, and in turn, to CBP.

Customs and Border Protection has the authority to regulate customs brokers, and to conduct audits of customs brokers' records. Even a relatively minor step such as a due diligence requirement similar to that set forth in other areas of federal law (e.g., the Bank Secrecy Act, 31 USC 5318), or a requirement that customs brokers require an importer to provide two valid forms of government identification (and copies of corporate papers, in the case of a business), would help to deter such fraud. The ability to accurately identify and locate importers could also be useful in the enforcement of fines assessed against importers for violations (whether related to the importation of counterfeit products or other provisions of the Customs laws).

The PRO-IP Act was grounded in the idea that improving IP enforcement required improving the communication and coordination among all of those tasked with the job. That idea applies equally within the government, in the private sector, and between the two. To that

end, the IACC supports a comprehensive review of these and other Executive Branch policies to ensure that open communication and cooperation between rights-holders and government personnel tasked with enforcement is not unduly burdened.

Engagement of State and Local Law Enforcement

In recent years, the IACC has focused significant efforts on the engagement of state and local law enforcement in the fight against counterfeiting, perhaps most notably in the development of law enforcement task forces at the city-level in New York and Los Angeles, as well as the recently announced statewide task force in Mississippi – the first of its kind in the United States. We've also worked closely with a number of like-minded groups, including the Recording Industry Association of America, the International Trademark Association, and the US Chamber of Commerce, in developing, and advocating for the adoption of model legislation at the state level to ensure that law enforcement and prosecutors have available the same sorts of tools available at the federal level.

Anti-counterfeiting enforcement at the state and local level is essential for a number of reasons; perhaps the most obvious being the scarcity of resources to enforce and prosecute intellectual property crimes. Some estimates of the economic impact of counterfeiting in the United States have ranged over \$200 Billion, while infringing goods seized at the border in FY 2009 totaled slightly more than \$260 Million. By any measure, it's clear that a staggering volume of counterfeit goods are reaching the American consumer market, posing a significant threat both to the economy, and to consumer health and safety, and creating a daunting task for federal law enforcement and prosecutors.

State and local law enforcement can play a vital role in supporting the fight against intellectual property theft though. In the case of trademark counterfeiting, governing statutes at the state level are generally similar to the federal statutes, in some cases mirroring federal provisions verbatim. The IACC and its members have found law enforcement in states throughout the country to be enthusiastic about the issue, though often less familiar with the intricacies of IP cases than their federal counterparts. We believe that greater coordination between federal and state authorities could provide a powerful force-multiplying effect. While there is some variance between federal laws concerning trademark counterfeiting, and

those found in the states, the experience and expertise of federal law enforcement and the US Attorneys' Offices – for example, in conducting investigations, and building and trying cases – would be invaluable to building the capacity of state and local enforcement. Fully funding the grant programs for state and local programs established under the PRO-IP Act is, likewise, viewed as an essential component to building the IP enforcement capacity of state and local law enforcement.

The IACC and its members have been active participants in programs conducted at the USPTO's Global Intellectual Property Academy to train and educate law enforcement, prosecutors, and judges from abroad; a comparable model, aimed at developing greater understanding and expertise among domestic legal and law enforcement professionals could perhaps serve a similar end.

Reporting by Executive Branch Agencies

Some IACC members have noted difficulties in obtaining statistics concerning the scope and effectiveness of the US Government's efforts with regard to intellectual property enforcement – a frustration that was frequently voiced in regard to the National Intellectual Property Law Enforcement Coordination Council (NIPLECC) and the STOP Initiative in the previous administration. This issue could be addressed in large part by the creation of a central web-repository where relevant materials from each of the Executive Branch agencies (including seizure statistics, press releases concerning enforcement actions and prosecutions, the numerous country-specific toolkits developed by interagency teams, and points of contact) were easily accessible to the public, and which was updated at least as frequently as such information appears on the agencies' own websites.

The StopFakes.gov website served a similar function previously, though often contained far less information regarding Executive Branch activities related to IP than did the individual agencies' sites. That site also appears to be largely defunct, with the most recent entry on the site's main page being a story concerning a September 2009 meeting of the US-EU IPR Working Group. A re-launching of that site, or the creation of a new website to serve this function, would be welcomed.

IACC members have provided the following input regarding the reporting of enforcement-related statistics by specific agencies.

- Department of Homeland Security – US Customs & Border Protection / Immigration and Customs Enforcement

IACC members commented positively on CBP's and ICE's regular, and well-publicized publication of seizure statistics, and their inclusion of historical data, and comparative figures to demonstrate changes relative to the total volume of imports. However, members also expressed disappointment that in recent years, the DHS agencies have shifted from reporting the total number of items seized, to the total number of seizures and the domestic value of the seized goods. We would encourage CBP and ICE to include in their reporting the total number of items seized, and a breakdown of how such seizures took place (i.e., whether the case involved a container shipment, mail shipment, or personal importation in an individual's luggage), as well as a breakdown of seizures by ports-of-entry.

- Department of Justice – Federal Bureau of Investigation / US Attorneys

IACC members' comments with regard to statistics reported by the Department of Justice (to include the Federal Bureau of Investigation, the Criminal Division, and the US Attorneys' Offices mirrored those made in connection with the DHS agencies; noting the desire for more detailed reporting of statistics. For example, in its first annual report to Congress pursuant to the provisions of the PRO-IP Act, the Department of Justice includes a chart illustrating: the total number of investigative matters received by AUSAs, number of defendants charged, number of cases charged, number of defendants sentenced, and the range of sentences. Further information, regarding the value of fines imposed, restitution ordered, and asset forfeitures (particularly those forfeitures of proceeds authorized under the PRO-IP Act) would be instructive.

Improving Public Awareness

The problem of counterfeiting in the United States is one of both supply – large volumes of cheap, illicit goods are manufactured abroad for export to the United States—and demand – American consumers buy large volumes of those counterfeit goods. Consumers generally do so with no regard for the economic or human costs inherent in that decision. In 2008, the IACC partnered with Mayor Bloomberg’s Office in New York City, to promote consumer awareness regarding the harms associated with counterfeiting, in the hope of driving down consumer demand for counterfeits. This public awareness campaign has been a true public-private partnership, and the initial success has been followed by the campaign’s expansion to additional cities in the US and abroad. The underlying rationale is that while traditional enforcement actions, at the border and within, focus on the supply problem, we should also devote energy to addressing the other side of the equation.

The IACC is certainly not alone in its efforts; numerous other rights-holder interests including the Recording Industry Association of America, the Motion Picture Association of America, the Partnership for Safe Medicines, the US Chamber’s Coalition Against Counterfeiting and Piracy, and countless others – including various agencies within the Executive Branch – have undertaken their own consumer awareness campaigns. While some of the messaging in these campaigns has been industry- or agency-specific, there is significant risk for waste in this area resulting from the duplication of efforts. The IPEC should take a leadership role in facilitating industry and inter-agency coordination to ensure an efficient application of resources.

International Engagement, Capacity Building, and Training Programs

IACC priorities concerning international engagement were discussed at length in the Coalition’s recent Special 301 submission to the US Trade Representative. The additional comments included herein both summarize and supplement those key issues.

- Expansion of the IPR Attaché Program

IACC members have been generally pleased with the performance and placement of attaches as part of the USPTO’s Overseas IPR Attaché program, and encourage the program’s expansion. Based on member companies’ input, the placement of an attaché would be greatly

welcomed in Turkey, where members continue to report concerns in the domestic market, and also due to its status as a hub between Europe, Asia, the Middle East and Africa. Rights-holders would likewise support a second attaché in Latin America – to be based in Argentina, Chile, Costa Rica, or Paraguay.

- China

As has been the case for many years, China remains the single-greatest international priority for intellectual property owners. IACC member companies are generally pleased with the approach and ongoing efforts of the Executive Branch with regard to engaging the Chinese government. While numerous challenges remain – including fundamental obstacles to enforcement, wide-spread manufacture of counterfeits for export, and the proposed indigenous innovation policies – the multi-layered approach to engaging policy-makers in the Central Government, Provincial authorities, and the various agencies tasked with IP enforcement is viewed positively. Some members have expressed interest in similarly increasing engagement with legitimate Chinese businesses which undoubtedly share some of the same issues and concerns with regard to protecting the intellectual property rights. Advice on how to best do so, and assistance in such an undertaking from the US Government – perhaps an event (or series of events) at the Embassy or other suitable forum – would be welcomed.

The IACC was pleased to learn of the expected deployment of an additional IP attaché to Beijing; members have commented positively on the efforts of Ms. Kremers and Mr. Wong in Beijing and Guangzhou, respectively.

- Canada

For several years, the IACC has advocated for the enactment of legislation in Canada to provide Customs officials there with ex officio authority to target and seize counterfeit and pirated goods, in keeping with the recommendations of two reports tabled in the Parliament in 2007. Absent such authority, counterfeit goods will continue to stream into the United States across the northern border.

We support increasing the level of engagement – particularly between US and Canadian

Customs personnel – to facilitate the sharing of intelligence regarding suspected shipments of counterfeits.

The IACC appreciates this opportunity to share its thoughts and concerns as the IPEC works towards developing a cohesive and coordinated Executive Branch strategy for addressing the growing problems of counterfeiting and piracy. We look forward to continuing this work, both with the IPEC and the various agencies tasked with implementing that strategy and enforcing the rights of intellectual property owners. We invite further consultations, as deemed necessary, to elaborate on and to clarify any of the comments contained herein.