How To Take Down Chinese Copycats on Their Home Turf
Not Everything Is What It Seems

“Mistake the reflection of a bow in the cup for a snake.”

カップ中の弓呪影
(bēi gōng shé yǐng)
How Knock Offs Happen

- Creation of Similar Products as Famous Brands
- New Product Discovery = Imitation Product Creation
- Contract Manufacturer and/or Factory is in Cahoots
Who Can You Turn To?

eCommerce sites have generally been exempt from legal liability for products sold by other merchants using their online platforms.


A US Government Accountability Office recently found that 20 of 47 items purchased from third-party sellers on popular consumer websites were counterfeit.
Chinese sellers see Amazon as a tool to be ... “Creating a crisis for American Amazon dollars.”

Amazon has opened “cross-border e-commerce parks,” to assist Asian seller who want to get into the US market.

Amazon's Philosophy is “If a Chinese factory is able to give a better price than a seller in America, Amazon is happy with that”

There were approximately 10 billion attempted counterfeit listings blocked on Amazon in 2020.  

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1 The volume of the problem is astonishing: Amazon’s battle against fakes may be too little too late”. FastCompany May 2021.
Understanding Intellectual Property

A little secret: Brand is Everything, Everything Is Brand
The Strategy

Maximize Protection / Minimize Price

1. Analyze What IP You Have
2. Secure Intellectual Property Rights In The United States
Analyze What IP You Have

- Registered Trademarks
- Unregistered Trademarks
- Trade Dress
- Unique Product Packaging

- Copyrights
- Licenses to Third Parties
- Licenses from Third Parties
- In-House Work Manuals

- Databases
- Recipes
- Designs or Patents Owned by the Business
## Securing IP Rights in the United States

<table>
<thead>
<tr>
<th>Type of IP</th>
<th>Registration</th>
<th>Duration</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copyright</td>
<td>U.S. Copyright Office</td>
<td>Life of Author +70 years</td>
<td>$800 total</td>
</tr>
<tr>
<td>Trademark</td>
<td>USPTO</td>
<td>Forever</td>
<td>$1500 per</td>
</tr>
<tr>
<td>Trade Dress</td>
<td>USPTO</td>
<td>Forever</td>
<td>$1500 per</td>
</tr>
<tr>
<td>Trade Secret</td>
<td>Not Required (unless kept secret)</td>
<td>Forever</td>
<td>$2000</td>
</tr>
<tr>
<td>Utility Patents</td>
<td>Up to $10k (requires an attorney)</td>
<td>20 years</td>
<td>$3000-$10,000</td>
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<tr>
<td>Design Patents</td>
<td>Same as Utility (not as expensive)</td>
<td>15 years</td>
<td>$1100 Per</td>
</tr>
</tbody>
</table>

Average Budget for EmergeCounsel Clients is $1,500-$3,000
EmergeCounsel's IP Strategy Plan

Focuses on planning and executing strategic economical IP protection for our clients. We combine skillful legal analysis, industry-leading software, and time tested processes.
# Mr Potato Head's IP Strategy Plan

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>MARK</th>
<th>APP. NO.</th>
<th>FILING DATE</th>
<th>IC</th>
<th>DESCRIPTION</th>
<th>FIRST USE INFO</th>
<th>REG. NO.</th>
<th>REG. DATE</th>
<th>STATUS</th>
<th>ONLINE RECORD</th>
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Why Spend the Money to Protect in China

- 80% of goods sold on Amazon, Walmart etc. are made in China
- 40% of goods sold on AliBaba/AliExpress in 2019 were counterfeited knockoffs.
- China is a first to file country for trademark, copyright and patent. If someone files before you, the GAC (customs) can seize your goods at the border for violating their copyright and trademark.

- Alibaba, AliExpress, Jingdong, Taobao – Will not take down the counterfeit without a valid Chinese registration.
- Potentially anyone will create knockoffs: the manufacturer, anyone who sees the product anywhere including on Amazon in the U.S.
Securing IP Rights in the China

1. Same Strategy As United States Filing.

2. Your American Attorney Has Worked Up The IP And Knows What It Is, What Category To Place It, What A Good Description Is And Even What Rights Have Been Claimed In China

3. Work With Chinese Counsel To Secure The Same Rights In China. Average Chinese Strategy is approximately $2,000
Policing IP in China

Is Going to be Very Hard to do Unless You Have Implemented

The Strategy

- Track Down The Infringer
- Initiate Takedowns
- Stop Counterfeit Goods At The Border
- Involve The American Counsel
- Ability To Sue
- Incur The Least Amount Of Legal Fees
In Summary

1. Knock Offs Can Happen To You
2. Understand IP
3. Protect Yourself
4. Low Cost & Effective Solutions
Before starting EmergeCounsel, Steven Weigler gained brand protection experience as corporate counsel for AT&T Corp. and through the building of an ed tech startup.

Steve represents entrepreneurial enterprises around the world to protect their brand and businesses. Steven has prosecuted hundreds of trademarks and helps clients address issues of IP infringement in US Courts and at the Trademark Trial and Appeal Board.

Steven lives in Colorado where he likes to kickbox, ski and listen to live music.
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