

# How To Take Down Chinese Copycats on Their Home Turf



**Presented by Steven Weigler**



# Not Everything Is What It Seems

"Mistake the reflection of a bow  
in the cup for a snake."

杯弓蛇影

(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?

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

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Under current lax interpretations of the law, eCommerce platforms face virtually no liability for their counterfeit trafficking.” Peter Navarro, US Trade Representative, January 2020.

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A US Government Accountability Office recently found that 20 of 47 items purchased from third-party sellers on popular consumer websites were counterfeit.



# Amazon?

There were approximately 10 billion attempted counterfeit listings blocked on Amazon in 2020. <sup>1</sup>

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Chinese sellers see Amazon as a tool to be ...  
“Creating a crisis for American Amazon dollars.” <sup>2</sup>

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Amazon has opened “cross-border e-commerce parks,” to assist Asian seller who want to get into the US market. <sup>2</sup>

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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” <sup>2</sup>

<sup>1</sup> The volume of the problem is astonishing: Amazon's battle against fakes may be too little too late” FastCompany May 2021).

<sup>2</sup> <https://www.nytimes.com/2020/02/11/style/amazon-trademark-copyright.html>



# Understanding Intellectual Property

A little secret:

Brand is Everything, Everything Is Brand



Utility Patent



Design Patent



Trademark



Copyright



Trade Secret / Cross  
Border NDA



# The Strategy

Maximize Protection / Minimize Price

1. Analyze What  
IP You Have

2. Secure Intellectual  
Property Rights In  
The United States

3. Secure Intellectual Property  
Rights In The Source  
Country (Probably China)



# Analyze What IP You Have

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- 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

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

Average Budget for  
EmergeCounsel Clients  
is \$1,500-\$3,000

# EmergenceCounsel's IP Strategy Plan

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## Step 1



UNDERSTAND  
BUSINESS  
AND EDUCATE

## Step 2



DETERMINE  
IP GOALS AND  
BUDGET

## Step 3



DEEP DIVE

## Step 4



IP ANALYSIS  
AND STRATEGY

## Step 5



CLIENT REVIEW AND  
IMPLEMENTATION

## Step 6



TRACK AND UPDATE

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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

[illegible]





**PLAYSKOOL**  
Friends

**13**

pieces • pièces  
piezas • peças

**Mr. Potato Head**

Mr. Potato Head • M. Patate  
Sr. Cara de Papa

AGE • EDAD • IDADE  
**2+**

27657/27656 Asst.





# Why Spend the Money to Protect in China

1

- 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

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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

# About Your Presenter



## STEVE WEIGLER

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.

# Contact Us

## For a Free Consult About Your Brand!



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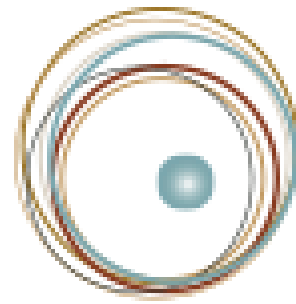


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