



Brand Alliance Insights

November 2008

Hello AGMA Members and Associates:

Welcome to Brand Alliance Insights! This issue we capture highlights from AGMA's recent conference hosted by QLogic in Aliso Viejo, CA. You'll receive expert insight in the area of law enforcement, tips to successfully prosecute cases in China, labeling and much more valuable information to help keep your brand safe from gray marketing and counterfeiters.

China!

The kick-off presentation by guests Loo Shih Yann and He Jing of Baker & McKenzie certainly captured the attention of all attendees with their frankness about the "stakes being high" to conduct business in China. Yann and Jing gave the audience insight into the art of enforcement in China. Their key message was: Be prepared to think outside the box if you want to prosecute or defend an intellectual property case in China. They recommended developing skills in mastering legal and cultural tools in China and, more importantly, understanding the Chinese legal psyche and why decisions are not always based on the black letter law but rather more on national interest and policy. Chinese judges can be stubborn and dogmatic, but they will appreciate counsel who can show them the direct and easy way to solve a problem. Court rules and procedures may not be strictly (and are often not) followed. The current Chinese legal landscape will have lots of pitfalls for the unwary, but will also provide many opportunities for creative, out of the box thinking. Final comments from the speakers centered on not underestimating the Chinese and their creative approach to brand protection cases. Be prepared!

Loo Shih Yann shih.yann.loo@bakernet.com

He Jing Jing.He@BakerNet.com

Shootout - California Style

Four respected competitors presented their value brand protection products and services to the group. Representatives from the Brady Corporation, DuPont, Nanoventions and Sony provided their unique labeling solutions and products, any of which could aid OEMs in protecting their products from counterfeiting.

Brady Corporation - Dennis Polinski: Dennis_Polinski@bradycorp.com

DuPont - Jim Kucia: jim.kucia@usa.dupont.com and R.J. Dlugopolski:
Robert.j.dlugopolski@usa.dupont.com

Nanoventions - Richard "Rick" Steenblik: rsteenblik@nanoventions.com

Sony - Kevin Dalton: Kevin.dalton@sonydadc.com

Know the Difference

A member company representative who is an in-house expert on Data Forensics (DF) and Business Intelligence (BI) walked AGMA members through the myths and the realities associated with each. DF = trace the transaction and BI = tracking the trends. There are many misconceptions associated with implementing a Data Forensics and Tracking Team to combat warranty and gray market fraud, and identify counterfeit. Many believe these efforts would require massive IT support, may be too complicated, costly, and time consuming. The presenter also demonstrated that with some ingenuity and a mix of off-the-shelf and open source software, the use of DF and BI by your organization can increase productivity, increase the bottom line (\$\$\$), protect your brand integrity, and preserve customer satisfaction. The presenter noted that it is also critical to have executive level support across the organization, create an elite team of experts, emphasize confidentiality across the board, and market your teams' successes.

Working with the FBI

The FBI works in consort with other national law enforcement agencies, including Port Authorities, U.S. Immigration and Customs Enforcement and Defense Criminal Investigative Service as well as with many overseas partners, especially in China. The presenter, Jensen Penalosa, provided identifiers for successful prosecutions when working with the FBI. Penalosa encouraged AGMA members to identify the loss, determine its value, have a defined chain of custody, be prepared, and realize the value of partnering with the FBI and other agencies.

Best Practices, Learning the Hard Way

Roger J. Klein, VP & GM, QLogic Corporation, hit a home run with AGMA members when he candidly stated there is "no silver bullet fix" but rather a multi-faceted plan should be developed to combat gray market and counterfeit product issues. Upon discovery of a potential problem, QLogic realized it needed a good plan and didn't have the luxury of time. After searching for direction, they were introduced to AGMA, which provided the tools they needed. QLogic's plan was to: (a) join AGMA to associate themselves with others facing similar challenges, (b) engage a worldwide law firm specializing in the problem, (b) identify prevention techniques, (c) implement discouragement tactics, (d) pursue offenders vigorously, and (d) punish when appropriate. Additionally, Klein shared that when they removed the fear about public exposure and communicated the problem and effects associated with gray market and counterfeit products, QLogic enhanced customer perception because QLogic took charge of the problem. Their program now consists of: (a) identify the source, (b) shut down where possible, (c) implement tighter IP constraints, (d) set up preventative measures with new products, (e) implement authentication techniques, and (f) work with law enforcement agencies.

Roger Klein: Roger.Klein@Qlogic.com

Public Policy Update

At the meeting, Bob Kruger reported that on October 13, President Bush signed the "PRO-IP Act." This Act contains provisions aimed at strengthening IP enforcement. It amends copyright and trademark laws in several respects (e.g., allowing for harmless errors in registration, enhancing provisional remedies and damages, barring exportation of infringing goods, harmonizing forfeiture provisions and more severely punishing offenses that result in serious bodily harm or death). It also creates a new federal IP enforcement coordinator, authorizes local law enforcement grants,

establishes new units with the FBI and the Justice Department and authorizes the deployment of new IP law enforcement coordinators to foreign countries. Kruger also provided an update on the status of the negotiations between the U.S. and key trading partners over the Anti-Counterfeiting Trade Agreement (ACTA).

Kruger teleconferenced in two representatives from the Bureau of Industry & Security (BIS), who previewed BIS's preliminary findings from its survey of manufacturers, distributors and brokers on counterfeit electronics in the government supply chain. The BIS representatives answered numerous questions from the audience. Their presentation covered such topics as the pervasiveness of the problem, the types of counterfeit products that are uncovered, how counterfeits are detected and where they come from, why counterfeits enter the supply chain, the efficacy of testing for counterfeits, steps taken after discovery of counterfeits and recommended best practices. The response to the presentation was very positive, and participants expressed interest in more information and updates. Please feel free to review the slides from BIS's presentation:

<http://www.dmsmsproceedings.utcdayton.com/proceedings/2008/presentations/P1497.pdf>

Bob Kruger: bobkruger@verizon.net

Brad Botwin, Director Industrial Studies of BIS: bbotwin@bis.doc.gov

Teresa Telesco, Industrial Analyst of BIS: ttelesco@bis.doc.gov

Protecting Partners' Investments from Gray Market Erosion

Scott Olsen from Sun Microsystems provided a powerful message - create a single global consequences guide to combat gray market violations. Establish continuity with definitions, i.e. valuations, volume, compliance, consequences, etc. Most importantly, Olsen noted, is to keep it simple. Create a simple guide to score the violation and determine the recommended consequences based on data collected during course of the investigation.

Scott Olsen: scott.olsen@sun.com

Announcements

AGMA President Ram Manchi announced two new appointments to the AGMA Board: Jim Vanlandingham from Hitachi GST will serve as AGMA's new Secretary and QLogic's Chris LaChapelle was appointed as a Director.

AGMA's first conference in 2009 will be hosted by Cisco on January 21-22 in San Jose, CA.

If you would like additional information on any of the presentations above or membership details, please contact Joanne Cooke, Executive Director at (510) 400-8747 or by email, jcooke@agmaglobal.org. We look forward to seeing everyone at the next AGMA conference in San Jose, CA, January 21-22, 2009.