

BOOK REVIEW

Trademark Counterfeiting, Product Piracy, and the Billion Dollar Threat to the U.S. Economy

PAUL R. PARADISE
QUORUM BOOKS 1999
\$65/269 PAGES

Reviewed by William Nix

In every field, there is probably an archival saint who chronicles the origins and evolution of the profession. In the area of anti-counterfeiting and gray goods, Paul R. Paradise plays Boswell to a series of institutional and individual Dr. Johnsons. *Trademark Counterfeiting, Product Piracy, and the Billion Dollar Threat to the U.S. Economy* tells the stories of the war for product legitimacy around the world and of those who fight it without major fanfare or visibility.

Paradise spent the last decade interviewing members of various industry groups and governments that have taken on the battle against counterfeiting and pirating of products and services. Too often, Paradise reports, this kind of intervention occurs only after the problem has mushroomed to major proportions—notably in the entertainment, automobile, airplane, pharmaceutical, and apparel industries, where pirating and counterfeiting are endemic.

The book is logically structured into 11 distinct sections that present the global impact from the perspective of U.S. industry. The first sections cover basics like the scope of intellectual property rights and new, cost-saving technologies that assist in authentication and tracking of products. Paradise also outlines how the world stage for the issues was set initially by the U.S. Trade Representative's Office (USTR) and Congress. This structure was later adopted by the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), regional groups such as the European Union (EU), and the intellectual property provisions of the North American Free Trade Agreement (NAFTA).

In addition to the industry-by-industry sagas that Paradise details, what makes this book helpful to both the experienced and novice practitioner is that it covers the gamut of related issues, outlining the impact of everything from flea markets and street peddlers to sophisticated, well-funded counterfeiting factories and warehouse distribution centers. (One interesting section presents a case history from the Peoples' Republic of China.)

The author instructs readers about problems even seemingly unrelated industries face in the pirate marketplaces, as well as steps that have successfully contained counterfeiters "within tolerable limits," country by country, region by region. The reader travels through a complex, interdisciplinary, multinational chain of efforts that involves common law, civil law, and other juridical systems. Paradise interweaves investigations, civil/criminal prosecution, lobbying, trade initiatives, and bilateral confrontations between intellectual property proprietors and users and the lawless "entrepreneurs."

Paradise tells the stories of the original U.S. pioneers in anti-counterfeiting efforts: the founders of the International Counterfeiting Coalition (IACC); the Recording Industry Association (RIAA) and its international arm (IFPD); and the Motion Picture Association of America (MPAA). He also brings that history current, detailing crimes of cyberpiracy on the Internet that threaten the Software Publishers Association (SPA) and Business Software Alliance (BSA) members, as well as their "hardware" counterparts. Also discussed are International Intellectual Property Alliance (IIPA) efforts to combine these interested associations into one cohesive lobbying and position group that represents otherwise diverse and competitive groups of commercial interests.

What may be a common thread for all of these industries is the fact that, at bottom, they all rely on investigators to detect counterfeiting and then build cases for law enforcement. From a human-interest point of view, the story of David Woods, who founded Associated Investigative Services (AIS) in the early 1980s, would interest any reader. Details of how Woods, operating under cover, ferrets out information from a counterfeit Polo shirt factory located in a decrepit and otherwise abandoned building in New York City reveal Woods' practical and ingenious approach. He arrives at the locked door, knocks, and hands out free knock-off watches to the unsuspecting operators to gain entry. He then surreptitiously inventories the numerous embroidery machines, employees, and other items that will later be cited in the complaint, summons, and *ex parte* seizure order in federal court.

Stories of other IP-rights owners focus more heavily on criminal rather than civil actions, or on customs issues, or on the merits of trans-border interceptions instead of "going to source" to cure the problem. What is clear is that all industries maintain rigorous efforts in order to assemble the facts needed to pursue infringement.

The author's approach also makes clear that laws and resources dedicated to this issue always lag behind the scope of the problem—although this per-

haps can be said of almost every major area of law enforcement. The book has a number of helpful charts and tables that set forth percentage figures for piracy—by country, region, and type—and their monetary impact on the respective industries. The music industry cites \$5 billion in losses to pirates each year, for example. Debatable is whether these are truly “losses” (displaced sales) or whether these rough estimates reflect a “parallel economy”—not necessarily sales that legitimate rights holders would have realized had the counterfeiting not occurred. When compared with losses of other industries, however, the figures do serve to demonstrate that these illicit activities certainly have a major impact on owners, investigators, counsel, courts, legislatures, and others.

Paradise's tales of counterfeit pharmaceutical goods and automobile and aircraft parts show that human lives are also lost and damaged by counterfeiters' avarice. Cross-border manufacture, importation, and distribution of pirated drugs cost the economy \$400 billion per year and affect both industrialized regions such as the U.S. and EU and developing countries with fewer controls and often greater susceptibility to scams. The World Health Organization

(WHO) and the Food and Drug Administration (FDA) are aware of the problems, but they have taken only limited proactive steps to combat them.

As Paradise illustrates, issues of “adequate and effective” patent protection and developed-versus-developing nation politics also intrude to impede resolution of the issues. The irony is that the “life-threatening” aspects of pharmaceutical piracy are targeted less than the “revenue-threatening” ones, at least in the copyright and trademark-based industries reviewed in the book. These chapters clarify the need for governments to prioritize this sector of the battle.

This work is an important resource. Counterfeit goods and services today result in the loss of billions of dollars annually for legitimate businesses. As the pharmaceutical and airlines sections of the book illustrate, these goods and services also present serious health hazards and can cause injuries and deaths. This book and its suggested bibliography contribute to solving some of these problems by outlining and assessing in detail the impacts and solutions to date. ■

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