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From car parts, to electronics, to pharmaceuticals and fashion, counterfeit goods can readily be found on sale in Cambodia. Just how readily has rarely, if ever, been accurately determined. Enforcement actions are uncommon, official statistics on seizures are difficult to come by, and there have been no published surveys on the scope of intellectual property infringement.

This survey, of several retail fashion outlets in Phnom Penh, attempts to at least partially address this lack of data. Completed in the summer of 2010, it systematically records the distribution of marks for several categories of goods.

The results indicate that infringement of fashion brands is rife. Indeed, more than half of retail outlets surveyed sold at least one counterfeited article. Knock-offs of many of the world's most well-known marks - Nike, Louis Vuitton, Lacoste - are openly on sale at rock-bottom prices at markets and malls. At the high-end boutiques surveyed, superior quality counterfeits, often indistinguishable to the untrained-eye, are available at a premium price.

Cambodia's 2004 accession to the World Trade Organization prompted the adoption of a number of IP laws. While it will be many years before Cambodia comes into full WTO compliance, the legal and institutional framework to combat counterfeits is largely in place. The question now is one of institutional capacity and enforcement.



Survey Methodology

Over the course of several weeks in June and July 2010, BNG Legal staff undertook a systematic survey of counterfeited goods at several locations in Phnom Penh, Cambodia. The survey focused exclusively on four categories of goods: adult apparel, children apparel, bags & accessories, and shoes.

The locations were chosen as representative of the types of outlets where counterfeits can be found in Cambodia. The first location is a large, partially-covered market, with individual stalls of approximately 5 m² in size. It is a major tourist destination, but also serves local customers.

The second location is a modern, multi-level shopping mall. It serves a more affluent and younger market than the first location, but with a similar selection of products.

Finally, the survey included two high-end boutiques, catering to the capital's wealthy elite. Numerous similar locations can be found throughout Cambodia, containing a similar mix of goods and brands.

For practical reasons, no attempt was made to distinguish counterfeits from genuine products.

Top-10 Counterfeits

- Louis Vuitton
- Prada
- Gucci
- Armani
- Chanel
- Burberry
- Dolce & Gabbana
- Versace
- Diesel
- Lee Jeans

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"For all but a few stalls, effective enforcement actions that remove counterfeits from shelves would not ruin their businesses."

Thus, it is likely that for certain marks, the survey results are skewed to overestimate the degree of counterfeiting. However, based on experience and qualitative evidence, the surveyors are confident that the overwhelming majority of branded-goods on sale at these locations are indeed counterfeits.

Further, the surveyors only recorded marks easily visible to the customer. Thus, no attempt was made to record marks contained solely on labels or inconspicuously on the goods themselves. It is thus a survey of *visible* marks.

For each mall and market stall, the surveyors recorded the type of goods sold and all the marks plainly visible. The results report an aggregate count of the number of stalls selling each mark. For the two boutiques, the surveyors scored each mark on a scale of 1 to 5, based on the number of goods on sale. Further information on methodology and complete results are available upon request.

Survey Results

Market & Mall

The study reveals that at the mall and market, counterfeits across all product categories are pervasive. Indeed, of the 870 mall and market stalls surveyed, a majority (52%) sold at least one counterfeit. Of these stalls, there were on average 4.4 marks on sale.

Top international brands dominated the rankings. Louis Vuitton, Lacoste, and Nike were the most

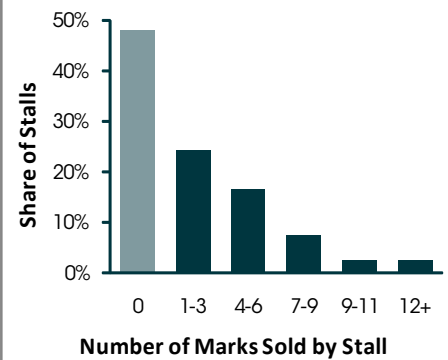
commonly counterfeited marks in each category. In total, the survey recorded 187 different marks on sale.

While these figures may appear high to some, they also indicate that many stalls (48%) are

Summary Statistics (Market & Mall)

Number of Stalls Surveyed	870
Stalls Containing Counterfeits	52%
Total Number of Marks	187
Average Number of Marks (of stalls with at least one counterfeit)	4.4
Most Marks in One Stall	21

Marks per Stall (Market & Mall)



Number of Stalls Selling Top Marks (Market & Mall)

Adult Apparel		Kids Apparel		Bags & Accessories		Shoes	
Lacoste	59	Ben Ten	15	Louis Vuitton	117	Nike	44
Abercrombie	57	Disney	10	Chanel	74	Adidas	42
Adidas	51	Adidas	8	Gucci	59	Louis Vuitton	31
Calvin Klein	46	Nike	7	Polo	42	Puma	28
Polo	43	Hello Kitty	6	Prada	35	Converse	27
Louis Vuitton	34	Spiderman	3	Dolce & Gabbana	34	Gucci	27
Nike	34	Barbie	2	Samsonite	27	Clarks	24
Guess	33	Bebe	2	The North Face	25	Dior	22
Levi's	29	Calvin Klein	2	Versace	25	Lacoste	21
Dolce & Gabbana	26	Tommy Hilfiger	2	Armani	21	Dolce & Gabbana	19
Gucci	23	Cartoon Network	1	Calvin Klein	18	Bebe	14
Burberry	21	Dior	1	Levi's	18	Boston	12
Tommy Hilfiger	21	Polo	1	Adidas	16	Chanel	8
Armani	19	Hummer	1	Burberry	15	Kappa	8
Columbia	18	Lacoste	1	Guess	15	Elite	7
83 Others		3 Others		63 Others		64 Others	

Most Common Brands in Boutiques, Ranked List

Adult Apparel	Bags & Accessories	Shoes
Lee Jeans	Louis Vuitton	Gucci
Levi's	Prada	Nike
DKNY	Chanel	Louis Vuitton
Armani	Dolce & Gabbana	Prada
Diesel	Versace	Adidas
Ferre Studio	Gucci	Dolce & Gabbana
Paul Smith	Armani	Diesel
Burberry	Burberry	Dior
Dolce & Gabbana	Fendi	Hermes
Koyo Jeans	Dior	Armani
21 Others	18 Others	No Others

economically sustainable without visibly selling *any* counterfeited goods. Furthermore, counterfeit sellers stocked on average less than five different marks. Given the wide array of products on sale, this suggests that they also sold many other, non-counterfeit items. In short, while counterfeits are widely found, they *do* compete with non-branded and legitimate products.

Thus, for all but a few stalls, effective enforcement actions that remove counterfeits from their shelves would not ruin their businesses. While it would undoubtedly hurt their revenue in the short term, one could expect many to be able to compete profitably and sustainably with a different product mix.

Boutiques

The survey indicates that at the two boutique stores surveyed, counterfeits of large international brands are similarly pervasive. While the tables show a slightly different mix of marks than at the market, a larger sample size would likely show a narrowing of the difference. For instance, Ferre Studio and Koyo Jeans were found in large numbers at only one of the boutiques, but not at the other, nor in all probability at other outlets around the country.

As these boutiques cater to a higher-end clientele, the goods on sale are on average much more expensive than at the market or mall. For instance, a classic Louis Vuitton handbag would retail for at least US\$20 at the market, and at least US\$100 at the boutique. Further, the boutique sales staff reportedly offer to arrange the purchase and delivery of authentic handbags from genuine outlets in Hong Kong or Singapore.

Trademark Law in Cambodia

Trademarks and related IPRs are protected under the Law on Marks, Trade Names and Acts of Unfair Competition of 2002. The Law lists the steps for registering a trademark and the scope of protection. An applicant who has already registered a mark in another member country of the Paris Convention will have priority in registering the mark in Cambodia.

The application process begins with the filing of an application form, fifteen specimens of the mark, and if filed by an agent, an original notarized power of attorney. Unless the application is rejected and requires an appeal, it usually takes about six months from filing to issuance of the final certificate.

Registrations are valid for ten years, renewable for successive ten-year terms. In the year following the fifth anniversary of the initial registration date, and each renewal registration date, the mark owner must submit an Affidavit of Use or Non-Use, and pay an official fee.

The Law also provides procedures for opposing, invalidating, and cancelling the marks of third parties. This can be crucial to prevent others from registering marks that are confusingly similar to one's own.

The counterfeit goods discovered in the course of this survey may also be subject to other forms of IP protection - namely copyrights, industrial designs, and patents. Laws have been passed governing each of these regimes (see Sidebar).

Of all the areas of IP, trademark law is the most developed in Cambodia. Though progress in enforcement remains to be seen, registration procedures are well established and routinely practiced.

CAMBODIAN IP LAWS:

Law on Marks, Trade Names, and Acts of Unfair Competition (2002), procedural sub-decree (2006)

Law on Patents, Utility Model Certificates, and Industrial Designs (2003) , procedural sub-decree (2006)

Law on Copyright and Related Rights (2003)

Law on Plant Variety Protection (2008)

Prakas on Geographical Indication Registration (2009)

IP LAWS REMAINING TO BE PASSED:

Law on Trade Secret and Undisclosed Information

Law on Geographical Indications

Law on Compulsory Licensing for Public Health

Law on Integrated Circuits and Layout Design

IP TREATY MEMBERSHIP

Paris Convention for the Protection of Industrial Property (1883)

WIPO Convention (1967)

Agreement on Trade-Related Aspects of Intellectual Property Rights (1994)

Convention on Biological Diversity (1992)

ABOUT US

BNG Legal is a leading Cambodian law firm providing comprehensive legal services to foreign and local clients.

Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed in Cambodia.

Conducting daily business in Cambodia, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

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Anti-Counterfeiting Measures

A trademark owner can pursue infringers in three different ways: i) sue for money damages and/or specific relief in civil court, ii) request the customs authorities to suspend clearance of imported infringing goods, and iii) seek criminal prosecution and/or fines.

Civil Remedies

Only the mark owner, or a licensee under certain conditions, may seek civil remedies for trademark infringement. A civil court has the power to grant an injunction, award monetary damages, and other relief as provided in the general law.

The Trademark Law does not specify any method of calculating damages. The court also has the power to order provisional measures, otherwise known as a preliminary injunction or temporary restraining order, to prevent infringement, imminent infringement, or preserve evidence. In considering such a request, the court should evaluate the likelihood of irreparable harm and the strength of the infringement case.

Further, in order to protect the defendant and prevent abuse, the court has discretion to require a security or other assurance from the plaintiff. A plaintiff could be also liable for damages to the defendant if the provisional measure is overturned or loses the case on the merits. Bringing an infringement suit in civil court can be a time-consuming and expensive process given systemic problems in the Cambodian judiciary, but offers the reward of money damages.

Border Measures

Second, a trademark owner can request the customs authorities, or a civil court, to suspend customs clearance and destroy counterfeit goods. As Cambodia's manufacturing base is relatively narrow, most infringing goods are imported from abroad.

Only clear-cut cases of infringement are amenable to this procedure, as the standard for "counterfeit goods"¹ is significantly higher than that used for civil cases.

The process begins with the submission of a statement showing a prima facie case that the

¹ "Counterfeit trademark goods" means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.

goods are counterfeit, a description of the goods, proof of trademark registration, information on the applicant and payment of an official fee. The authorities can require the applicant to provide a security or other assurance.

Within ten working days of this submission, the authorities must notify the applicant whether the application has been granted, rejected, or reserved for further consideration. If the application is granted, the customs authority will suspend clearance of the goods for a defined period, extendable for not more than ten working days.

The applicant then has ten working days to initiate a civil infringement case, or else the goods will be released from customs. If the authorities deem the applicant's case to be wrongful, they have the power to order payment of compensatory damages to the importer.

Finally, the customs authorities, with court approval, can order the destruction of counterfeit goods. While customs clearance doesn't offer the trademark owner monetary damages, it can be far quicker than instituting a civil infringement case.

Criminal Sanctions

Finally, a trademark owner can request criminal prosecution of the infringers. The penalty for standard infringement (not counterfeiting) is five to ten million Riels (~US\$1,250 to US\$2,500), or one month to one year imprisonment, or both. The penalty for counterfeiting is one to twenty million Riels (~US\$250 to US\$5,000), or one to five years imprisonment, or both.

Repeat offenders are subject to up to double these penalties. Where the defendant is a juristic person (such as a company), the managing director, manager or representative can be criminally prosecuted, unless they can prove they neither knew of, nor consented to the infringement.

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