

From: [REDACTED]
To: [FN-OMB-IntellectualProperty](#)
Subject: Comments and Recommendations for IP Enforcement Strategy
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March 24, 2010

Victoria A. Espinel
United States Intellectual Property Enforcement Coordinator
Office of Management and Budget
Executive Office of the President
Washington, DC

(FR Doc. 2010-3359)

Dear Ms. Espinel:

I am writing on behalf of the International Authentication Association (IAA) for which I am the General Secretary / Americas. The IAA is a practice based, non-profit organization made up of 17 member companies who are users or suppliers of authentication/tracking technologies used in the fight against global counterfeiting. Today, IAA member technologies protect the currency of the United States and over 100 other countries around the world, the majority of the world's credit cards as well as numerous passports, national ID cards & drivers' licenses. IAA members are either users or providers of authentication products and services to companies in product categories including pharmaceuticals, computer software, electronics, luxury goods, automotive parts, and apparel.

IAA Member Companies Include:

- 3M Company
- Authentix
- BP Labels
- Hologram Industries
- Honeywell
- Ingenia
- JDSU
- Johnson & Johnson Health Care Systems
- Label Systems Authentication
- NanoGuardian
- Payne Security
- Richemont
- Schreiner ProSecure
- Securikett
- SICPA
- Tesa Scribos GmbH
- TUV Rheinland Group

IAA members have closely followed the efforts of the US Federal Government to develop an intellectual property enforcement strategy and have reviewed the request from the office of the Intellectual Property Enforcement Coordinator (IPEC) for comments and recommendations for an improved enforcement strategy for Intellectual Property Rights (IPR).

Part II

Part II states an objective in the Joint Strategic Plan of reducing the supply of infringing goods, domestically and internationally. One of the challenges to an IP enforcement strategy is where to place enforcement resources. Most cargo coming into ports is safe and does not contain counterfeit goods. How can potential infringing cargo be prioritized for screening?

Some governments in countries with high levels of counterfeiting are reviewing using import markers as a means of determining where they should direct inspections and investigations. Typically the focus of these programs has been on pharmaceuticals. At-risk products coming into the country are required to have this marker or device on the package. Markers, labels, or devices have a number of security features to prevent them from being counterfeited. Distribution of markers, labels, or devices is controlled by the receiving government which tracks issue and use.

This type of program is similar to the use of tax stamps used for tracking and collecting excise tax on alcoholic beverages and tobacco products. In markets where tax stamps have been implemented, counterfeiting has dropped substantially on stamped products. In 1994, Hungary introduced tax stamps, but the stamps were not very sophisticated and were easy to counterfeit. Between 1995 and 1997, the Hungarian Banknote Company adopted a more sophisticated tax stamp incorporating security printing, holograms, and serialization. As a result counterfeiting decreased dramatically. The source of this information is from a presentation given by the Hungarian Banknote Company at the Tax Stamp Forum in Budapest, Hungary, February 23rd and 24th, 2009.

Another example is the Meditag label used in Malaysia. All registered pharmaceutical (and traditional medicine) products distributed in the country, whether locally produced or imported, must carry a Meditag, applied by the producing or importing organization. Meditag is a serially-numbered self-adhesive, tamper-evident holographic label, which is issued to licensed and registered manufacturers and importers; each organization is issued a sequentially numbered (and recorded) batch of Meditag labels, which are specific to that organization's products. Since the Ministry of Health introduced Meditag in 2005 instances of un-registered medicines (which are often counterfeits) on the market has fallen by up to one-third. The source of this information is a paper given by the Ministry of Health at the Global Forum on Pharmaceutical Anti-Counterfeiting held in Washington, DC, in June 2008.

Similar devices could be used on products arriving in the U.S. Cartons or containers from manufacturers, facilities and shippers meeting prescribed guidelines from U.S. Customs and Border Protection (CBP) could receive markers or stamps assigned codes at time of use. These devices or closures would need tamper evident properties as well as other standard anti-counterfeiting features. According to the prescribed guidelines to be established, the devices would be received by certified users and used to close boxes or shipping containers. This would provide a way for CBP to further distinguish cargo as coming from trusted sources. Marked and trusted cargo would be screened more quickly. Unmarked cargo would be subjected to a more rigorous screening process. Such a program would require design of a stamp or device, procedures for use, periodic design updates, and training and communication.

Currently CBP administers the Customs-Trade Partnership Against Terrorism (C-TPAT) program. Although the purpose of C-TPAT is to partner with the trade community for the purpose of securing the U.S. and international supply chains from possible intrusion by terrorist organizations, C-TPAT participation could be supplemented and expanded to include brand owner manufacturing sites and the use of import markers in the validation their supply chain security procedures.

The IAA would welcome the opportunity to engage in a discussion with the IPEC as to the development of a top level technology or approach which would incorporate many of the described features discussed below into an import marker, stamp or label. The use of a top level technology should not discourage individual companies from further securing their products but should only be used as means to improve the efficiency of screening of cargo that potentially contains products that infringe upon IPR.

The IAA also wishes to comment on points 7 and 8 in the Supplemental Comments Topics section.

In point 7 referring to existing technologies:

Technologies which can be used on the packaging of a product should include the following authentication layers

- a. An Overt, eye-verifiable counterfeit-resistant technology, which may include technologies including, but not limited to, holograms and their variations, color-shifting inks similar to those currently utilized in US currency and other optical technologies which may become available in the future.

- a. A Semi-covert technology which can be visually verified with the aid of a hand held reader, magnifying glass, or lighting device, such as UV (ultra-violet), IR (infra-red), or microscopic printed information.

- i. Invisible covert technology which will require a dedicated, specialized reader or test instrument for verification.

Technologies associated with the product itself in addition to the previous layers.

- a. Consideration of the potential inclusion of authenticating tagging or marking technologies which can be directly incorporated into the product, if such technologies are feasible for the specific product based on considerations of cost or manufacturing.

- a. Proprietary manufacturer analytical characterization and methodology to assist in the differentiation of authentic product from counterfeit.

Given the broad range of products that are protected it is very difficult to standardize technologies or their use across industries.

In order to gain the best results from the use of authentication technologies, it is recognized that the users of such technologies must be educated in their use, and access provided to resources, which can assist these users in determining genuine products from counterfeits. It is also recognized that such educational resources must be provided in a manner, which discloses only overt or semi-overt features so as not to reveal all layers of security to potential counterfeiters.

Training for the recognition of genuine products is typically organized by the brand owner companies with various enforcement groups. It may be appropriate to develop regional training through the National IPR Coordination Center.

In Point 8 on increasing standardization:

In the development of standards for authentication devices, the IPEC should focus on standardizing the elements of needed performance in respect to authentication and resistance to counterfeiting, rather than the selection of specific technologies. The adoption of specific technology options should be at the discretion of individual manufacturers of products, provided the technologies meet the performance standards ultimately published.

The IAA is participating in the development for standards for procedures and processes for authentication through participation on ISO Technical Committee 247 and ISO Project Committee 246. The former covers *Fraud Counter-Measures and Controls*, and it was set up in 2009, with its first meeting in September that year. Accordingly it is at an early stage of its work. ISO PC 246, contrarily, will shortly publish a draft standard on *Performance Requirements for Authentication Solutions used in Anti-Counterfeiting Strategy for Material Goods*. If this committee's work proceeds in accordance with ISO guidelines, this standard will be formally adopted by ISO within the next two years. Accordingly, rather than the US go-it-alone and re-invent the wheel, it would be appropriate for the nation to base its standards for authentication solutions on this ISO standard, and others which emerge from TC 247 in due course.

In the meantime, requirements for security assurance in the production and distribution of product security tools are covered by the ANSI/NASPO *Security Assurance Standard*, and this could be adopted for the production of such products within the US.

While we support the development of standards for procedures and processes for authentication, we do not favor the mandating or recommendation of specific technologies or types of technology, because this would make it easier for the counterfeiters by providing a common target for them to aim at. It is also unlikely that there is one technology that will best suit all products and distribution patterns. There are many credible and effective options for authenticating products in use today and to limit this range would also be anti-competitive.

IAA members support the efforts of the IPEC and feel strongly that these efforts will significantly improve the enforcement of intellectual property rights. We believe that the effective use of authentication technologies will improve the ability of law enforcement to more quickly and efficiently recognize genuine vs. counterfeit products.

We appreciate your consideration of these comments. If you have questions or desire to speak with either myself or IAA members regarding this matter please feel free to contact me at either 704-847-4562 or at [REDACTED].

Regards,

Randall Burgess
General Secretary / Americas
International Authentication Association