



March 24, 2010

Public Document

Via Electronic Mail to intellectualproperty@omb.eop.gov

Victoria Espinel
Intellectual Property Enforcement Coordinator
Office of Management and Budget
600 17th Street, N.W.
Washington, DC 20036

Dear Ms. Espinel:

Underwriters Laboratories Inc. (UL) appreciates the opportunity to submit comments in conjunction with the Intellectual Property Enforcement Coordinator's (IPEC) request for information and data on the dangers of counterfeit products and participation in enhancing an effective intellectual property enforcement strategy. We are pleased to see this administration's continue a legacy of dedication to intellectual property rights enforcement, and its commitment to uphold these rights around the world.

As an independent, 116-year-old not-for-profit product safety testing and certification organization, UL evaluates tens of thousands of products, components, materials, and systems for compliance to specific requirements, and enables manufacturers and the public at large to benefit from safety-standards compliant products. With over an estimated 20 billion products in the global market carrying the UL-in-a-circle certification mark ("the UL Mark") in 102 countries around the world, effective protection of intellectual property is of paramount importance in upholding the integrity of the UL Mark.

UL maintains a zero tolerance policy with respect to counterfeit goods, and does not consent to the import, export, or manipulation of seized merchandise carrying an unauthorized UL Mark. For more than 15 years, UL has taken an aggressive stance against counterfeiting through a comprehensive program that involves law enforcement agencies from around the world. UL works closely with US Customs and Border Protection (CBP), US Immigration and Customs Enforcement (ICE), the Royal Canadian Mounted Police (RCMP), INTERPOL, and other law enforcement agencies around the world. The mission of UL's anti-counterfeiting program is to protect and enhance the integrity of the UL Mark. By fulfilling this mission, UL can help to protect the safety of consumers around the world while providing additional value to the legitimate, responsible manufacturers that have invested the time and resources to meet UL's safety standards.

Though the unauthorized use of UL Marks on some electrical products represents only a small fraction of all UL Marks applied annually, even one unauthorized UL Mark is unacceptable given the safety concerns associated with the certification of electrical products. As a result of UL's cooperation with law enforcement officials, since 1995, there have been thousands of seizures of counterfeit products at entry ports from coast to coast, preventing millions of products bearing unauthorized UL Marks from reaching consumers. In addition, UL has mandated the use of difficult-to-counterfeit holographic labels for product categories targeted by counterfeiters.



Mounting Cost to the US Economy and Global Health and Safety

As a leader in product safety testing and certification, as well as an intellectual property rights holder, UL is well aware of the detrimental effect counterfeiting has on a company's resources and reputation and to its corporate safety goals. As a company, UL spends in excess of \$2 million (USD) on anti-counterfeiting operations to protect the market against products bearing unauthorized UL Marks. While these funds could otherwise be redirected to other parts of UL's public safety mission, UL recognizes that the negative consequences counterfeit products have on the US and global market warrant the ongoing investment in anti-counterfeiting efforts.

Because product certification services provided by UL are only one aspect of the supply chain for most manufacturing and distribution processes, end manufacturers and retailers are in the best position to provide detailed data on revenue and job loss in respects to the counterfeiting of their products. However, UL can attest to the dangers of counterfeit products to the end consumer and the market at large. Consumers looking for cost-effective products can be duped into buying counterfeit goods which may expose them to serious life and health safety risks. Fire, shock, and life safety hazards are a common side effect of the sub-par craftsmanship of counterfeit electrical products. As an added safety measure, UL continually monitors and purchases product samples in the market through our Market Surveillance division. If UL finds a particular product to pose a fire, shock, or life safety hazard to consumers, UL will issue a public notice. In 2009, UL issued 38 public notices that involved products bearing an unauthorized UL Mark. Moreover, products bearing unauthorized UL Marks seized by CBP or from raids and forfeitures either have been found non-compliant with relevant safety standards and requirements for the US market or are constructed of materials that cannot be authenticated. Consumers are also faced with injury and property damage costs when these counterfeit products malfunction or create hazards.

Counterfeit products are also growing in scope and product category. While most of the counterfeit electrical products UL has encountered to date have mainly been high-volume, low-cost products such as decorative light strings, power strips, and extension cords, counterfeiters have branched out into more complicated and high-end products due to their high profit margin. With the added complexity of these counterfeit products, it is fair to assume there is additional risk associated with these products as well. These increasingly-sophisticated products are being seized at ports by the US CBP at an growing rate. Recently, UL found unauthorized UL Marks on healthcare appliances, which are directly detrimental to the \$91.3 billion (USD) medical device market in the United States.¹ The Organization on Economic Cooperation and Development (OECD) and the World Health Organization (WHO) estimate that some 6-8 percent of medical devices are counterfeit, or approximately \$5.5 - \$7.3 billion (USD) in the US market. Similarly, counterfeit information technology equipment (mainly power supplies and batteries), audio video equipment, and appliances also have been seized at various ports. These products are cutting into the revenue of upstanding manufacturers in each of these respective industries.² As these counterfeiting organizations grow more and more sophisticated, they will begin to manufacture more high-end goods to take advantage of higher margins. The risks associated with these increasingly complex medical devices, IT and AV equipment will grow, creating more of a burden on legitimate manufacturers, retailers, and consumers.

¹ Released in January 31, 2010 Espicom Healthcare Intelligence Report

² According to a Business Monitor International Report released on January 26, 2010, the IT market in the US was worth an estimated \$487.7 billion (USD) in 2009. MarketResearch.com estimates the Audio Video Equipment market and the Appliances market in the United States to be \$38.7 billion and \$4.4 billion (USD) respectively in 2009.

Recommendations

Public-Private Partnerships

UL proudly supports and commends the efforts of the numerous US government agencies that work to protect the US market from counterfeit goods. Specifically, UL greatly appreciates the cooperative efforts of all the CBP Officers and Import Specialists working at the ports of entry across the nation. UL also works closely with the National Intellectual Property Rights Coordination Center (IPR Center) in Crystal City, Virginia. UL feels very fortunate to enjoy strong collaborative relationships with both CBP and ICE; their ongoing support of UL's anti-counterfeiting initiatives has helped to protect millions of consumers worldwide. UL works on a daily basis with the various departments and agencies housed at the IPR Center, including the US CBP and ICE, the Department of Commerce (DOC), the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), as well as the US Patent and Trademark Organization (USPTO) seize counterfeit products, educate stakeholders, and train Customs and other enforcement officials. UL was pleased to be a part of "Operation Guardian," a combined effort between specific areas of ICE, CBP, the FDA, the Department of Justice Computer Crime and Intellectual Property Section, the FBI, the US Department of Agriculture, the US Postal Inspection Service, and the Consumer Product Safety Commission (CPSC), which resulted in the seizure of counterfeit commodities such as pharmaceuticals, circuit breakers, extension cords, surge protectors, steel components, honey, shrimp, condoms, and toys. The combined value of the seizures under this operation exceeded \$6 million (USD). UL is poised to participate in future operations and seizures in the future, and are always ready and willing to lend our expertise and support to these important activities.

In addition to lending our expertise to these operations, UL also spends a great deal of time training Customs and other law enforcement officials both in the United States and around the world. The effectiveness of these programs, coupled with the cooperative work with US agencies and other colleagues against anti-counterfeiting, are evidence that public-private partnerships are extremely important to successful anti-counterfeiting activity in the US and abroad. Of increasing importance, UL believes that these public-private partnerships are extremely effective in proliferating best practices in anti-counterfeiting operations to Customs, other enforcement agencies and policymakers of major trade partners to the United States. UL can also provide training support through our UL University arm. UL University is UL's internal and external technical training and education vehicle which provides a combination of online training, books, safety videos, live Web-delivered programs, facilitated workshops, and other training solutions customized to fit the training and education needs of multiple stakeholders and regions. UL University has already worked with US agencies on a number of training projects for IP enforcement officials around the world. **UL continues to advocate cooperative public-private activity, and we welcome any opportunity to assist in cultivating these programs going forward.**

Conclusion of a Comprehensive Anti-Counterfeiting Trade Agreement (ACTA)

UL is encouraged by the administration's efforts to conclude an ambitious and comprehensive Anti-Counterfeiting Trade Agreement (ACTA). To ensure success, the agreement must be ambitious and comprehensive, building upon existing international rules and norms, specifically the World Trade Organization (WTO) TRIPS agreement. Additionally, ACTA should complement the IP provisions of current and pending free trade agreements, such as those with Oman and Korea, while including an effective and credible mechanism to monitor and provide incentives to encourage parties' compliance with obligations. On the other hand, ACTA must also include robust provisions to confront IP theft and incorporate effective and credible enforcement mechanisms. UL firmly believes that the timely conclusion of an agreement will help protect American jobs and stimulate the economy, while working to strengthen the US National Export Initiative and acknowledge the importance of intellectual property to businesses of all sizes, including small and medium enterprises. **UL encourages the administration to**

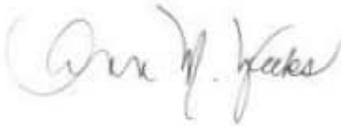
continue to increase transparency to prevent delays and to keep Congress fully apprised of the ACTA negotiations.

Conclusion

Intellectual property infringement, in the context of the production and sale of counterfeit goods, is detrimental to the economy in terms of revenue and jobs lost, but more importantly, they have a negative impact on public safety. UL will continue to support the anti-counterfeiting and intellectual property rights enforcement initiatives of the US government, and other government agencies around the world. Continued cooperation and communication between the public and private sector will be essential to making further progress on the counterfeiting issue. UL looks forward to providing its resources in this necessary endeavor, and we look forward to a strong and effective relationship in the future.

UL appreciates your consideration of our concerns and recommendations. Please contact Khoi Do, Global Government Affairs Specialist for UL at 202-530-6163 or Khoi.Do@us.ul.com, with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann M. Weeks".

Ann M. Weeks
Vice President, Global Government Affairs

cc: Chris Gangemi, General Counsel, UL
Brian Monks, Vice President, Anti-counterfeiting Operations, UL