

Anti-Counterfeiting Public Policy Update – an in-house perspective from Europe & beyond

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International Trademark Association
Representing Trademark Owners Since 1878



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INTERNATIONAL TRADEMARK ASSOCIATION

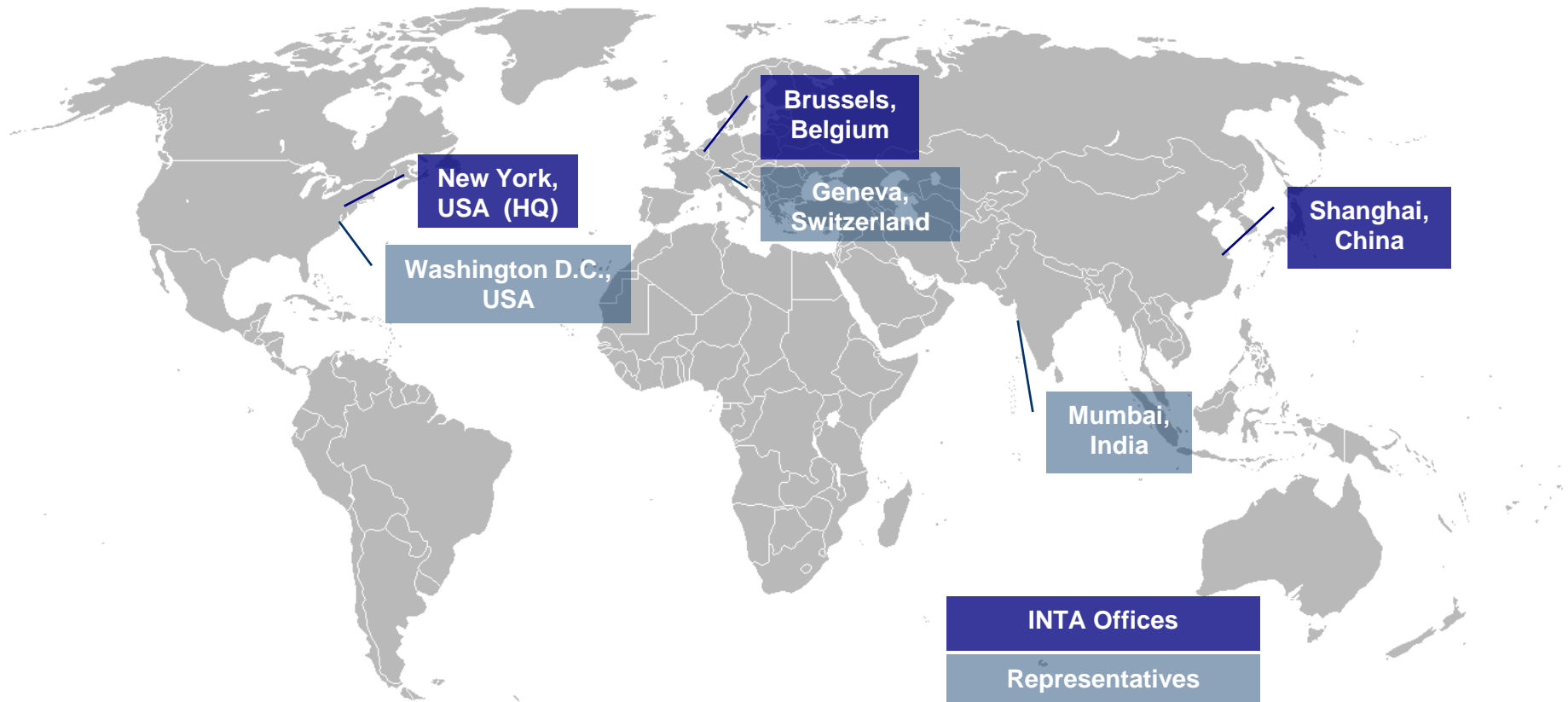
International Trademark Association

- Founded in 1878
- Represents the trademark community, helps shape public policy and supports and advances trademark rights and protection worldwide
- Currently representing over 5,900 trademark owners, service providers and academics (students and professors of IP law) from more than 190 countries
- 40% of INTA's membership is US-based and 60% in Europe and the rest of the world
- HQ is in New York
- INTA Representatives Offices in Shanghai and Brussels
- Representatives in Mumbai, Geneva and Washington D.C.



INTERNATIONAL TRADEMARK ASSOCIATION

INTA Offices



INTERNATIONAL TRADEMARK ASSOCIATION

Unilever - An Introduction

- 75th Anniversary in 2005
- Meeting the everyday needs of people everywhere
- Brands such as Magnum, Dove, Lipton and Lux are chosen by 150 million people every day
- Our largest markets are Europe and North America



Unilever - An Overview

A Selection of some of our Main Brands

• Foods

- BERTOLLI, CALVE, HELLMANNS, KNORR, BECEL/FLORA, LIPTON, SLIMFAST, MAGNUM, SOLERO, BEN & JERRYS



• Home & Personal Care

- AXE/LYNX, DOVE, LUX, POND'S, REXONA/SURE, SUNSILK, CLEAR, LIFEBOUY, VASELINE, FAIR & LOVELY, OMO, SIGNAL, CLOSE-UP



**Are we heading in the right direction for an efficient
and well balanced IPR enforcement framework?**



New Global Gold Standard - ACTA

- Origins
 - Idea of a new treaty originally proposed by Japan at 2nd Global Congress in Lyon in 2005 following discussions at WEF in Davos and the G8 in Gleneagles that year
- New Plurilateral agreement announced by US-EU in 2007
- INTA & ICC/BASCAP lead the Joint Business Response Group
- Seven Negotiating Rounds so far
 - Geneva June 2008
 - Washington DC July 2008
 - Tokyo October 2008
 - Paris December 2008
 - Rabat July 2009
 - Seoul December 2009
 - Guadalajara January 2010



New Global Gold Standard - ACTA

- Goal
 - To combat the trade in counterfeit & pirated goods by improving global standards & framework of IP enforcement in these areas
- Components
 - International Cooperation
 - Enforcement Practices
 - Legal Framework
- Designed to be *Complimentary* to TRIPS



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New Global Gold Standard - ACTA

- 37 Negotiating Countries
 - Australia
 - Canada
 - Japan
 - South Korea
 - Mexico
 - Morocco
 - New Zealand
 - Singapore
 - Switzerland
 - United States
 - 27 EU Member States
- Early additional observers - Jordan and UAE



New Global Gold Standard - ACTA

- **Provisions/Chapters**
- International cooperation
 - Capacity building & technical assistance in improving enforcement
 - Intelligence sharing between enforcement agencies trans-nationally
- Enforcement Practices
 - Formal or informal PPPs and advisory groups
 - Fostering specialised IP expertise in law enforcement structures
 - Public awareness raising
- Legal framework
 - Border measures
 - Civil enforcement
 - Criminal enforcement
 - Digital piracy
 - Internet distribution & information technology



Regional EU Initiatives in the Right Direction

- EU Observatory
 - Launched in April 2009
 - Five working areas adopted & agreed Sept 2009
 - Collection, analysis & reporting of data
 - Best practice – public authorities
 - Best practice – private sector
 - Public Awareness raising
 - PPPs at national and EU levels
 - Governance
 - Administered by lead DG MARKT (Unit D3)
 - In partnership with other DGs esp. TRADE & TAXUD



Regional EU Initiatives in the Right Direction

- **Enforcement Directive 2004/48 (DG MARKT)**
 - Proper implementation of the Enforcement Directive is important to a harmonised approach to combating counterfeiting
- **Criminal Sanctions (DG JLS)**
 - Harmonisation of criminal sanctions across the EU is key to deterring counterfeiters
 - New life since ratification of Lisbon Treaty & revival of ACTA negotiations



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Regional EU Initiatives in the Right Direction

- Customs Regulation 1383/2003 (DG TAXUD)
 - Increased coordination amongst national customs is important
 - *But* silent on trans-shipment/goods in transit
 - Critical issue to disrupt supply and prevent counterfeits from being sold within and outside of EU borders.
 - Awaited ECJ decision on Nokia –v- HMRC could prompt a judicial review and overturn jurisprudence of Diesel and Class decisions



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Free Trade Zones & Trans-shipment

- Currently 629 FTZs in 77 Countries, now over 3000 in 135 countries.....& growing fast!
- Not subject to jurisdiction of territorial state with regard to, *inter-alia*, movement & control of goods
- Customs controls on entry and exit but no criminal exemption
- Attractive for goods in transit, especially in sensitive land-locked countries
- Impact of the Class, Diesel and forthcoming Nokia decisions of the ECJ?
- Counterfeiters abuse the exemption to alter or hide at least the following:
 - **Origin & Property of the goods**
 - Quantity & Quality of the goods
 - Purpose of utilisation of the goods
 - Destination of the goods
- WCO: Kyoto Convention on the simplification and harmonisation of Customs Procedures - Application of national laws and regional regulations applied to goods passing through FTZs – so why the problem?
- INTA Board Resolution November 2006

Linking up the DGs in the EU

- Other Crucial players
 - DG TRADE (ACTA Negotiations & other bilaterals)
 - DG SANCO (Consumer & Health)
 - DG ENTR (SME involvement)
 - DG INFOSOC (Digital Piracy)
 - DG RELEX (External Relations – new – VPs Office)
 - DG COMP (Anti-trust)



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Conclusions

- The continuing and coordinated efforts at the legislative and non-legislative fronts are all steps in the right direction.
- More needs to be done - the current initiatives need to be planned and implemented strategically in a coordinated way.
- Harmonization of criminal sanctions is crucial.
- Increased customs coordination at national levels and controls in FTZs are important
- ACTA needs to be set as *the* “gold” standard
- Consumer awareness raising is vital to stem demand



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Thank you

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