

Trade Symposium 2011: Intellectual Property Rights

April 13-14, 2011

Therese Randazzo, Director, IPR Policy & Programs Division
Office of International Trade, CBP

Sebastian Wright, Chief, IPR Policy Branch,
Office of International Trade, CBP

Clark Silcox, Counsel, National Electrical Manufacturers Association

Gilbert Lee Sandler, Esquire, Sandler, Travis & Rosenberg, P.A.

Christopher Robertson, Deputy Director, National IPR Coordination Center



Homeland
Security



CBP Implementation of the IPEC's Joint Strategic Plan and CPB's Priorities for IPR Enforcement

April 13-14, 2011

Sebastian Wright, Chief, IPR Policy Branch,
Office of International Trade, CBP



Homeland
Security

JSP Background:

Prioritizing Resources and Organization for Intellectual Property (Pro-IP) Act of 2008

Intellectual Property Enforcement Coordinator (IPEC)

Joint Strategic Plan (JSP)



JSP Themes:

Lead by example

Increase transparency

Ensure efficiency and coordination

Enforce our rights internationally

Secure our supply chain

Collect the right kind of data



Increasing Transparency

Increased Information Sharing with Rightholders

Tracking and Reporting of Enforcement Activities

Sharing of Exclusion Order Enforcement Data

**Enhanced Communications to Strengthen Section 337
Enforcement**



Securing Our Supply Chain

- **Increased Enforcement Efforts to Guard Against the Proliferation of Counterfeit Pharmaceuticals and Medical Devices**
- **Penalty Relief for Voluntary Disclosure**
- **Penalize Exporters of Infringing Goods**
- **Streamline Bonding Requirements for Circumvention Devices**



Ensuring Efficiency and Coordination

- **Coordination of National Law Enforcement Efforts to Avoid Duplication and Waste**
- **Coordination of Federal, State and Local Law Enforcement**
- **Establishment of a Counterfeit Pharmaceutical Interagency Committee**



Enforcing Our Rights Internationally

Promote Enforcement of U.S. IPR through Trade Policy Tools

Strengthen IP Enforcement through International Organizations



Building a Data-Driven Government

U.S. Government Resources Spent on Intellectual Property Enforcement

Comprehensive Review of Existing Intellectual Property Laws to Determine Needed Legislative Changes



Leading by Example

- **Establishment of a U.S. Government-Wide Working Group to Prevent U.S. Government Purchase of Counterfeit Products**



CBP's Priorities for IPR Enforcement

- **Enhanced Targeting**
- **Partnership Programs**
- **Penalties**
- **International Collaboration and Capacity Building**
- **Pharmaceutical Center for Excellence and Expertise (CEE)**



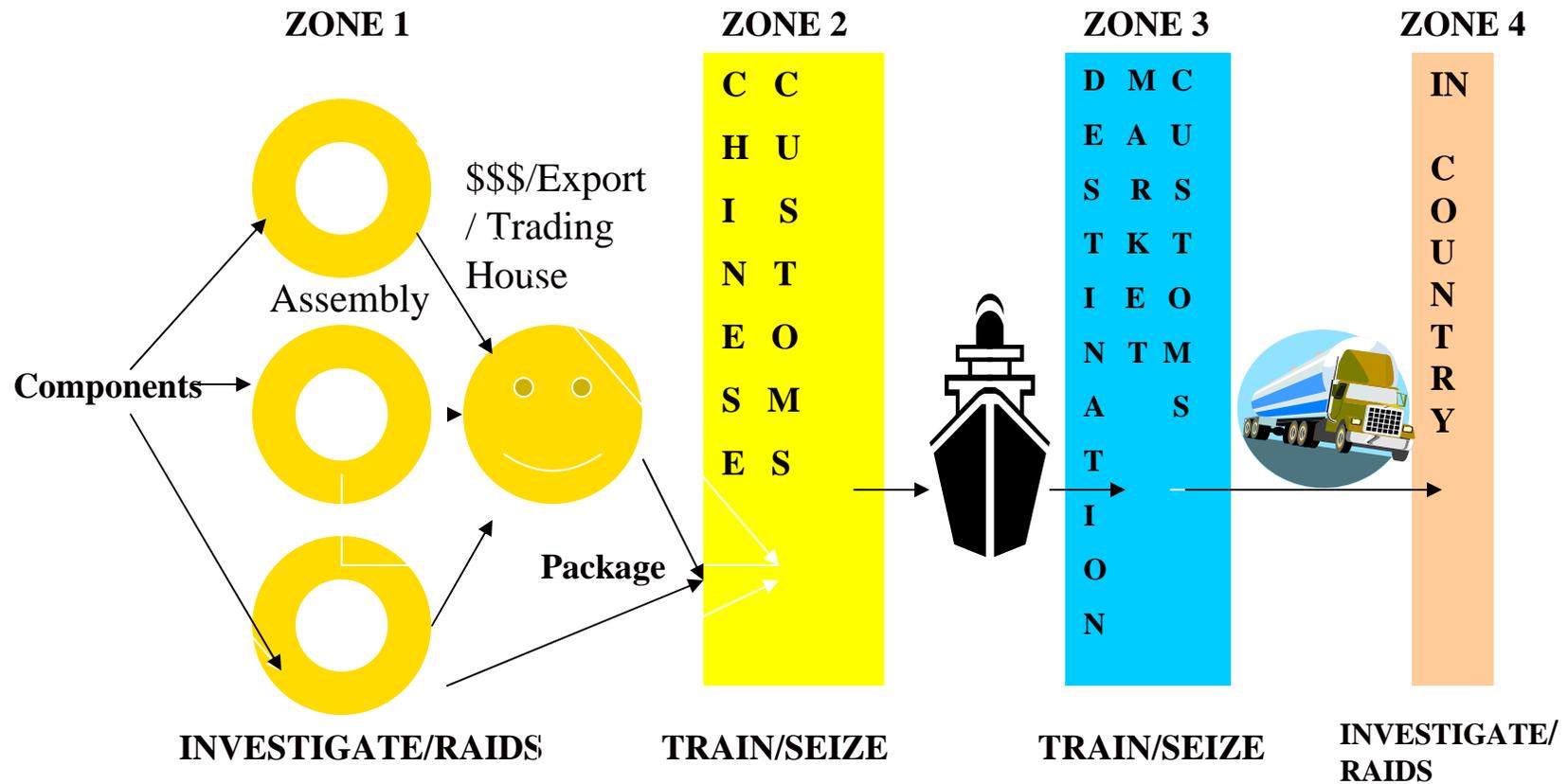
IPR Enforcement: A Public Private Partnership

Clark Silcox, General Counsel, National Electrical Manufacturers Association (NEMA)

April 13, 2011



Combating Trafficking in Counterfeit Goods: One Model



Why Do We Care?

Multiple Reasons (not always mutually exclusive)

Health and Safety: Protection of Consumers/Workers; IPR
Owners Invest Heavily in Conformity to Standards (Voluntary
and Mandatory); Counterfeiters Do Not

Consumer Protection Against Deception: Product
quality/warranty issues

Protect Return on Investment in Brand

Employment

Government revenues



Some examples from electrical sector

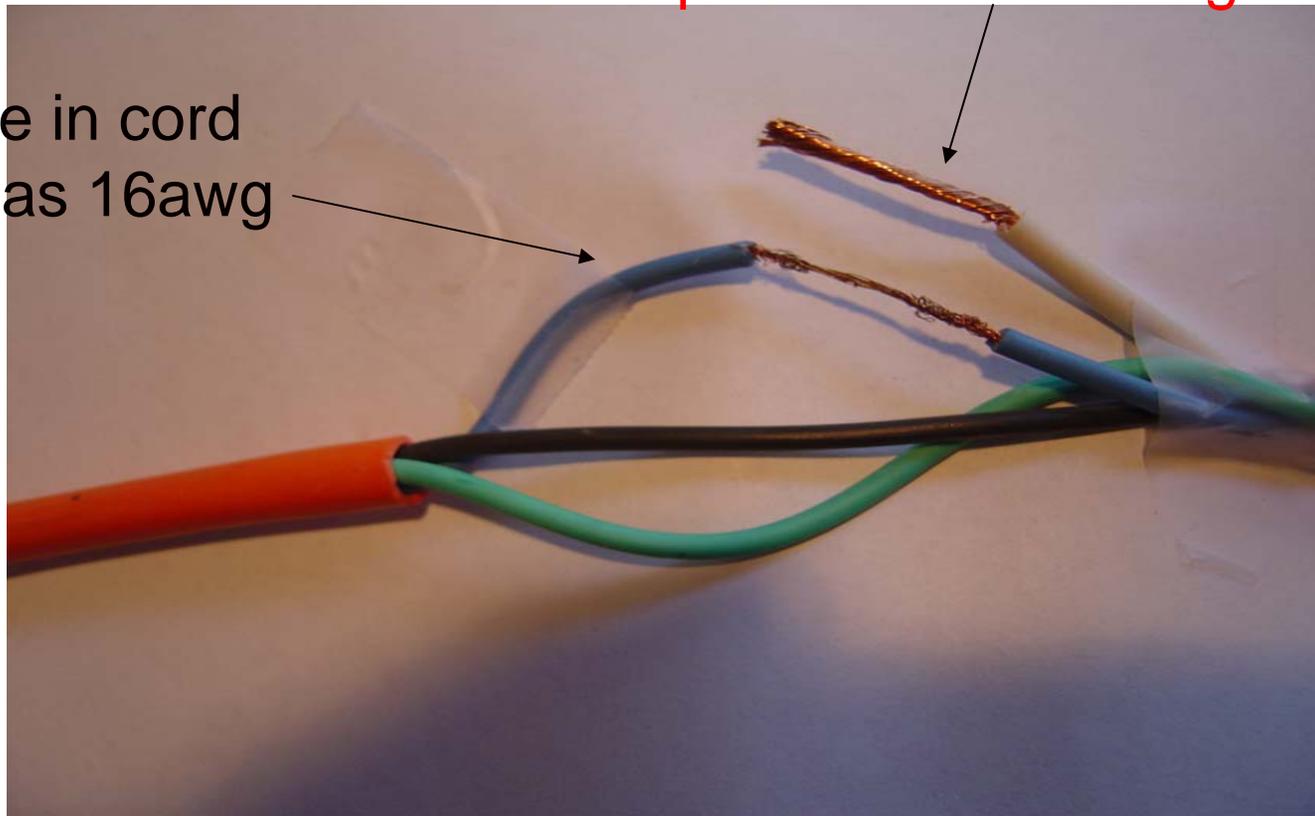
What Motivates Us



Undersize copper found in 16 awg labeled cord.

White sample from true 16awg cord

Blue wire in cord
marked as 16awg



Substandard Counterfeit Circuit Breakers Will Not Protect

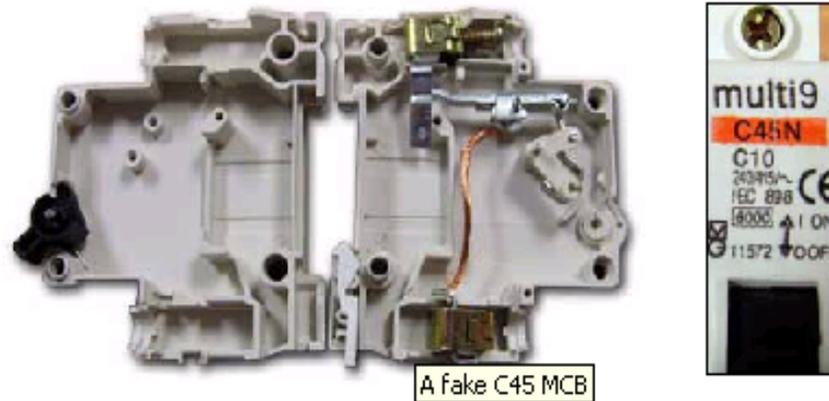
- Product looks similar on outside, but inside the criminals have cheated on safety standards to cut costs.
- Arc flash = 35,000°F
- Severe injury or death



Counterfeit “circuit breaker” that was no more than a fancy switch

What to look for:

Since the copy has very few internal components it is much lighter (a genuine product is between 103 and 110 grams) than the genuine MCB also the fake is made of plastic which is brittle and light cream in colour not light grey. A large **multi9** logo is at the top of the product. There is large CE marking on the front face which the genuine product did not have since it was discontinued in the UK before CE marking was a requirement.



What actions are we taking



FAKE GAMEBOY CHARGER KILLS LAD, 7, ON HOLIDAY

A BOY of seven was killed by a fake Gameboy charger he bought for £9 on holiday in Thailand.

Tragic Connor O'Keeffe was found electrocuted on the floor of his room.

He was clutching the lead from the dodgy charger. Thai police

By JAMES CLENCH

said Connor died because he was wet from swimming when he touched it. But tests revealed "serious defects" in the charger, an inquest heard yesterday.

Two wires in the circuit were just 1mm apart instead of the regulation 4.6mm. It made the lead to the games machine "live".

Connor, of Walworth, South East London, bought the gadget while in Phuket with his family after he forgot to take his own.

His mother Kathleen, 45, wept as she told the inquest in Southwark how Connor's aunt found him lifeless in his room.

She said: "He was holding the wires. She pulled them off and got a shock as well." Coroner

John Sampson said the charger looked authentic, which "masked its inherent danger". And he said evidence showed Connor dried and changed after swimming.

Verdict: Accidental death.

Nintendo said they had taken 110 actions against counterfeiters and seized 160,000 products in Thailand. j.clench@the-sun.co.uk

Connor . . found on floor



**ROPES COURSE ADVISORY
STRAND VISE**

May 27, 2007

To Whom It May Concern:

Recently a Qualified Ropes Challenge Course Professional attempted to purchase StrandVise® devices from a well known challenge course equipment supplier. They were informed by the supplier that MacLean Power Systems had ordered them not to sell these devices for use on ropes courses anymore. This in conjunction with mandated requirements associated with the on-going ANSI Industry Standard resulted in the PRCA immediately contacting MacLean Power Equipment to determine the problem.

MacLean Power Systems had recently been named in a personal injury/product liability suit involving the use of a counterfeit StrandVise® on a ropes course. Discovering that their products are still in use, the MacLean - Fogg Company was highly disturbed as they feel that at the time of their November 27, 2000 Application Advisory they had adequately and clearly indicated that their product was not designed nor intended for ropes challenge course usage in any application with or without back up.

Special Concern

- Relabeling/ altering labels of genuine product to mischaracterize a product differently than what it is or different than for the market for which it was intended.
- This is counterfeiting:
 - “Up-Amping” --- similar to “Up-Dosing” in the Pharmaceutical Sector
 - Making an IEC Product appear to be a NEMA (North America Product)
 - Putting UL labels on product that the manufacturer did not apply
 - Removing of product codes and date codes --- that are critical to supply chain safety and product quality management.



Public Private Partnership

- What motivates private sector should also motivate public sector
 - Protection of Consumers and Workers
 - Incentivizing manufacture and design of quality, safe products represented by brand
 - Job protection
 - Combating crime and protecting government revenues
- Border protection a last line of defense (Zone 3)
- Product ID Training Just a Beginning
- IPR Owners May Be The Only Party Who Can Confirm Product Is Genuine or Fake and Must Be Responsive to Customs Inquiry.



How IPR Owners Help

- Product ID Training/Information Sharing
- Packaging changes, however . . .
- Photos of packaging and product can sometimes lead to determination that product is genuine or counterfeit
- Sometimes physical product inspection is required
 - Come to port to inspect;
 - Analysis at lab
- Bond
- 24-48 Hour Turnaround



Sometimes Border Protection Gets Lucky and Does Not Have to Call



A Photo May or May Not Provide Enough To Confirm



Genuine

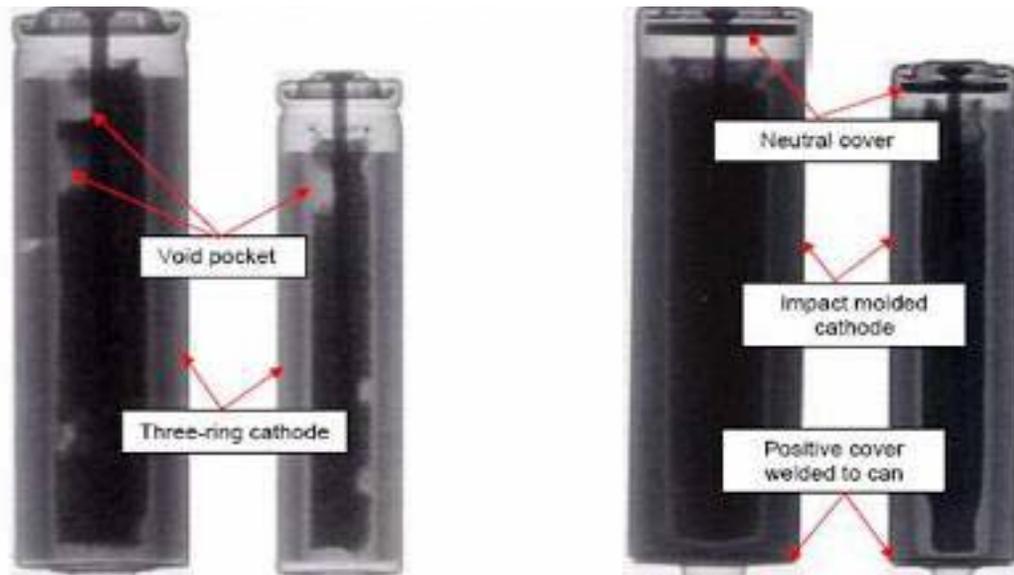
Counterfeit

Counterfeit

Genuine

Counterfeit

X-ray to detect design differences not observable on surface



Intellectual Property Rights

Facilitation Programs to Match New Enforcement Mandates

Gilbert Lee Sandler, Esq.
Founding Partner
Sandler, Travis & Rosenberg, P.A.
April 13, 2011



CBP New Facilitation Programs to Match New Enforcement Mandates

- Customs Compliance → Accounts, Focus Assessments, Prior Disclosure, ISA
- Anti-Drug Smuggling → Carrier and Super Carrier
- Anti-Terrorism → C-TPAT
- Anti-Counterfeiting → ???



OGA New Facilitation Programs to Match New Enforcement Mandates

- Food Safety → ???
- Product Safety → ???
- Environmental Standards → ???
- Endangered Species → ???



Move From The Politically Incorrect

Our 20th Century Legacy

WHITE MARKET

GRAY MARKET

BLACK MARKET

A 21st Century Vision



IPR Selectivity: Price



CRIMESTOPPERS TEXTBOOK

TOO GOOD TO BE TRUE:
A DESIGNER SWEATER, SELLING FOR \$60 IN A STORE, OFFERED FOR \$5 AT A SIDEWALK STAND IS PROBABLY COUNTERFEIT.



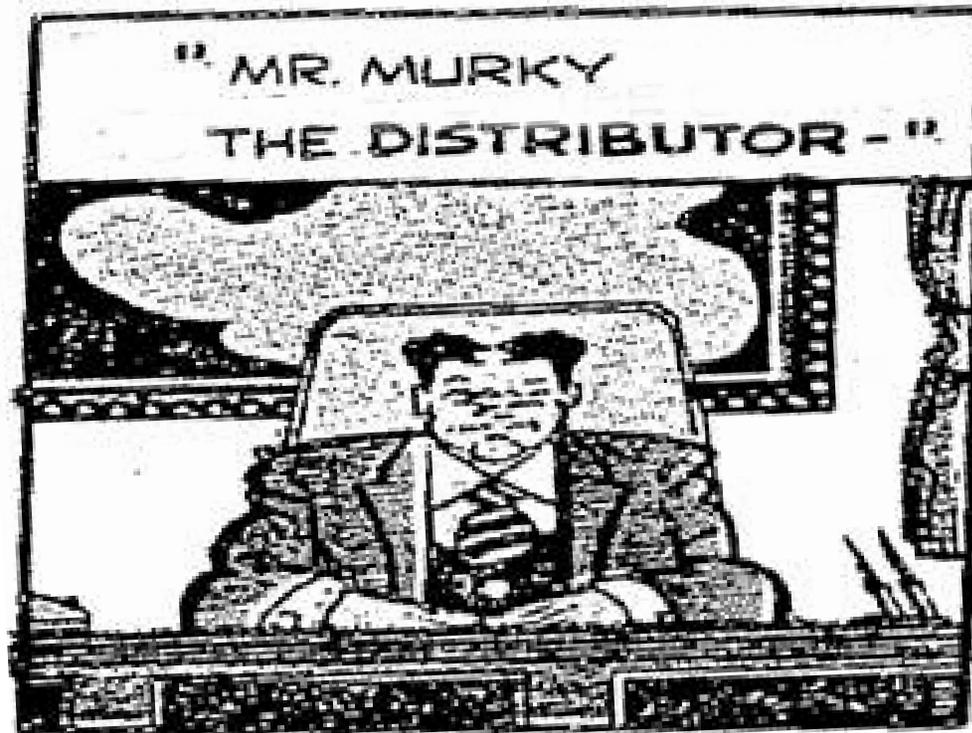
AUTHORITY: INTERNATIONAL ANTICOUNTERFEITING COALITION

The illustration shows a man in a suit standing on a sidewalk, looking at a sweater being offered to him by a street vendor. The vendor is holding the sweater up on a tray. The man in the suit has a thoughtful expression, with his hand to his chin.

EVERYTHING YOU SEE HERE IS COUNTERFEIT - DESIGNER FASHIONS, WATCHES, LUGGAGE, VIDEO GAMES, COMPUTERS - AND MORE.

The illustration depicts a street vendor's stall filled with various items, including designer fashions, watches, luggage, video games, and computers. A man in a suit is standing next to the stall, gesturing towards the goods. A speech bubble from the man in the suit contains the text: 'EVERYTHING YOU SEE HERE IS COUNTERFEIT - DESIGNER FASHIONS, WATCHES, LUGGAGE, VIDEO GAMES, COMPUTERS - AND MORE.'

IPR Selectivity: Distributor/Importer



Mr. Murky

Parallel Market/ Gray Market: A Few Retailers

CVS
pharmacy

Longs Drugs

K
kmart

WAL★MART

STAPLES

B&H
PHOTO - VIDEO - PRO AUDIO

47st.photo
Industry leaders since 1965

COSTCO
WHOLESALE

- CVS Pharmacy
- Longs Drugs
- K-Mart
- Wal*Mart
- Staples
- B&H Photo
- 47 Street Photo
- Costco

CBP Borderline Decisions

Right to Manufacture, Produce, Copy, Record

- Counterfeit or Confusingly Similar Trademark
- Clearly or Possibly Piratical Copyright

Right to Distribute

- Gray Market Restricted or Unrestricted
- Lever Rule Protection



Importer Exposures

- Detention – Seizure – Forfeiture + [Penalty + Liquidated Damages]
- Disclosure of Commercial Information to Rights Holders
- Sample Bond Limits
- Thirty (30) Days to Contest



IPEC Regulatory Change Recommendations

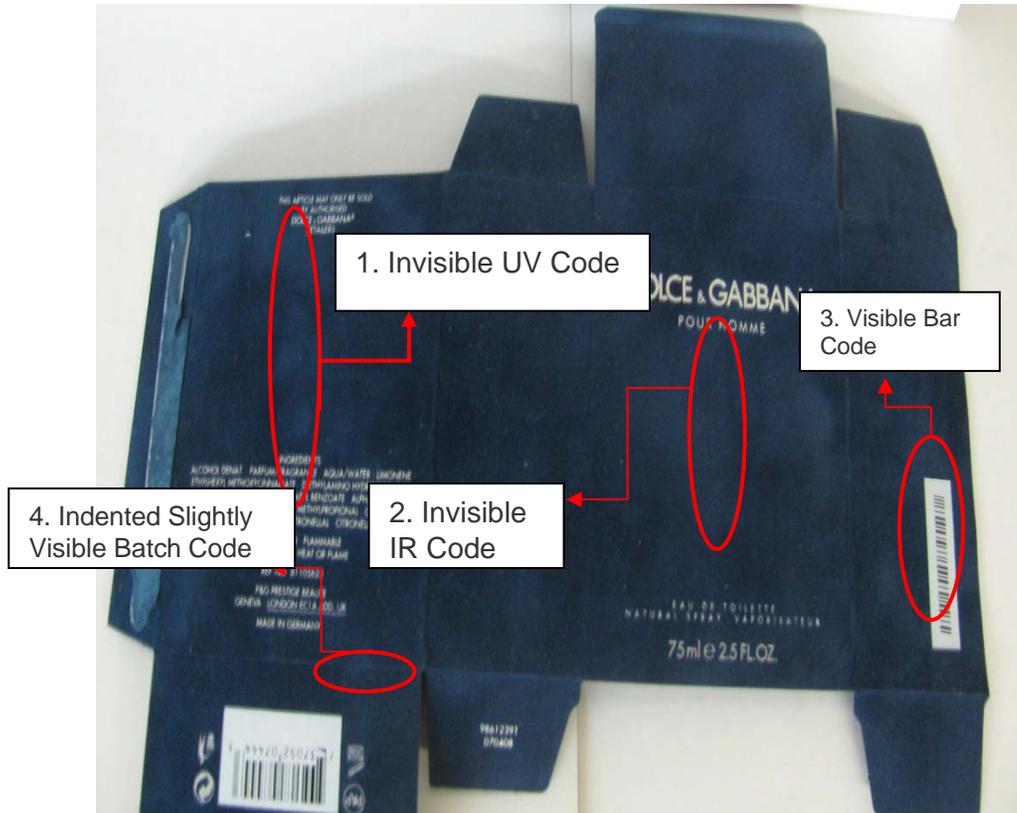
- **Samples and Information to Rightholders Before Seizure**

Authorize DHS and CBP to share information and samples with rightholders regarding products and devices offered for importation in order to help DHS determine whether the products are infringing or the devices are circumvention devices.

- **ITC Exclusions and Seizures**

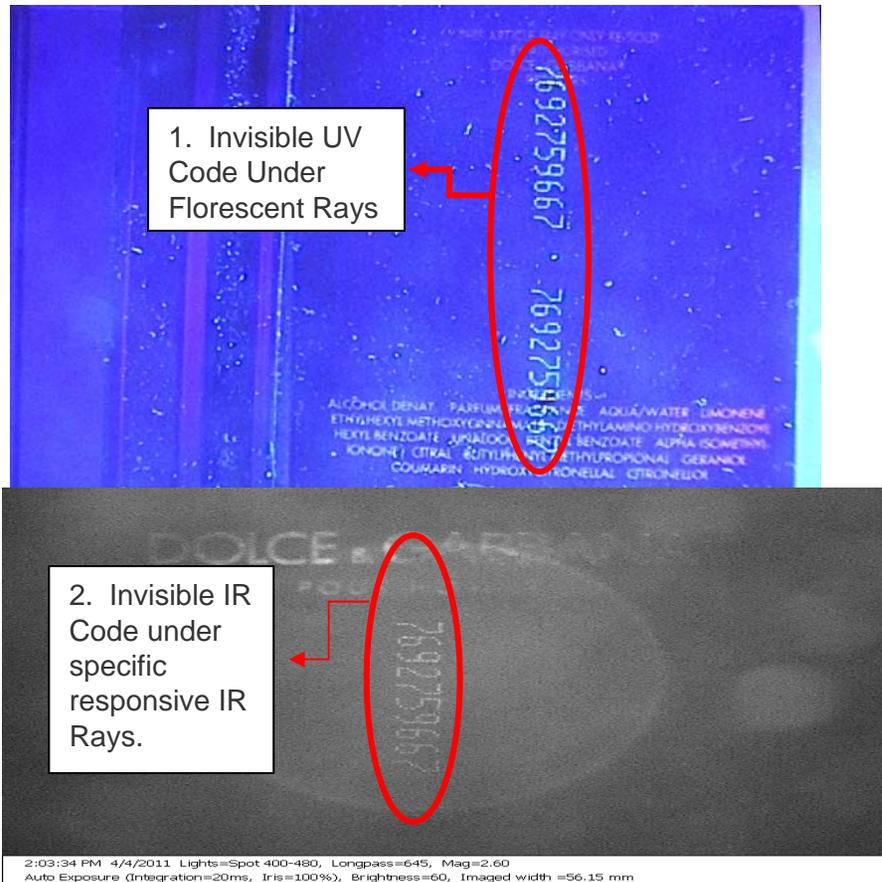
Authorize DHS to notify rightholders that infringing goods have been excluded or seized pursuant to a US ITC order.

The Unredacted Sample: Visible & Invisible Codes



1. Invisible Ultraviolet Code (*removable*)
2. Invisible Infrared Code (*removeable*)
3. ~~le~~Visible Bar Code (*removeable*)
4. Visible Batch Code on Box (*to be left intact*)

The Unredacted Sample: Visible & Invisible Codes (Cont.)

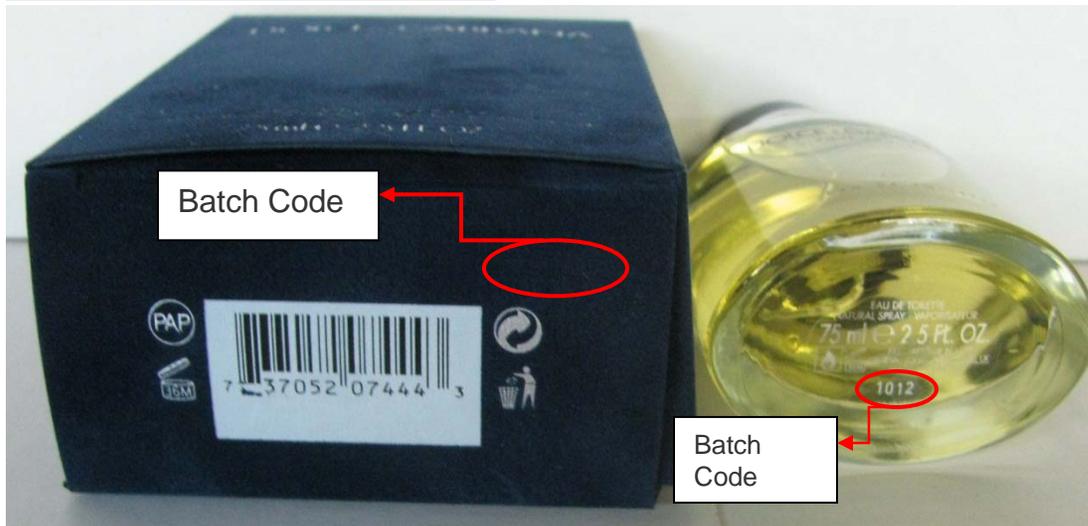


1. Invisible Ultraviolet Code illuminated (*removable*)
2. Invisible Infrared Code illuminated (*removable*)

The Unredacted Sample: Visible & Invisible Codes (Cont.)



Close up of batch codes
(to be left intact)



IPEC Regulatory Change Recommendations (cont.)

- **Circumvention Devices**

Authorize DHS to share information about, and samples of, circumvention devices with rightholders post seizure.

- **Track and Trace Systems**

Adopt a track and trace system for pharmaceuticals and related products.



IPEC Legislative Change Recommendations

- **Prior Disclosure for the Innocent**

Permit relief for someone who unknowingly and unintentionally acquires infringing products and voluntarily discloses them to CBP before becoming aware of any CBP enforcement action (or a law enforcement investigation).

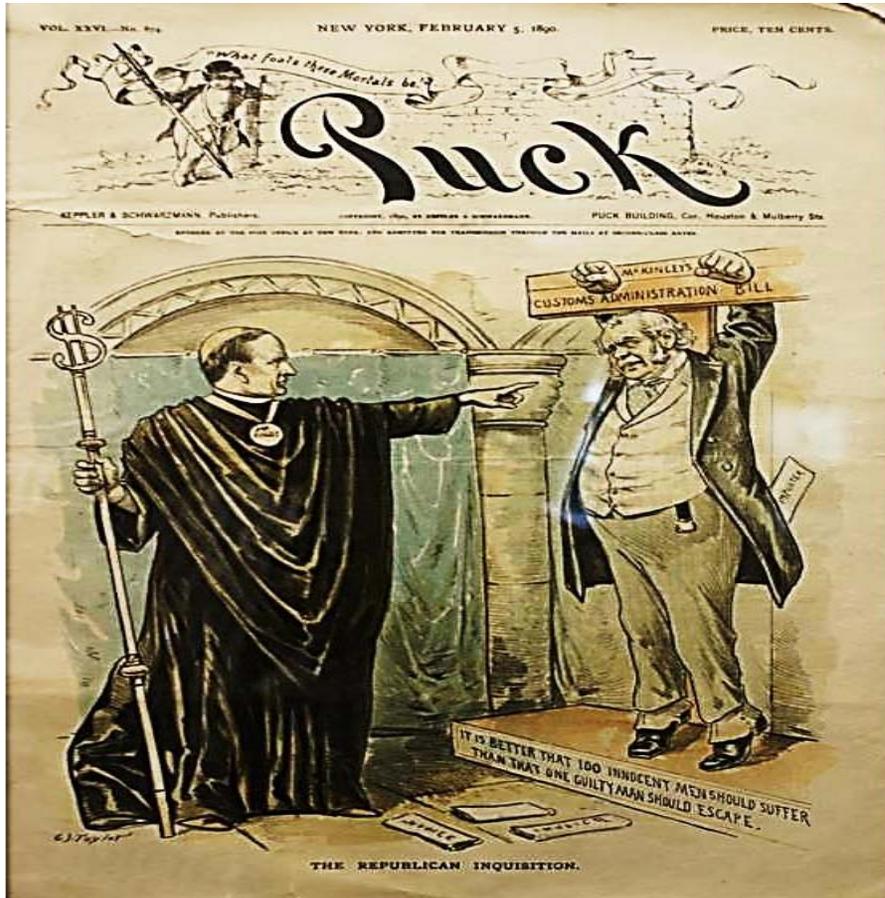
- **Export Seizures**

Give CBP authority to issue penalties for infringing exports.

- **IPR Audit Penalties**

Strengthen CBP's authority to issue penalties for infringing imports discovered during audits of company records.

Border Enforcement Philosophy: Back to 1890 ???



“It Is Better That
100 Innocent Men Should Suffer
Than That
One Guilty Man Should Escape”

2011 Trade Symposium – IPR Session

CBP-ICE IPR Interaction & Intersection

April 14, 2011

Christopher Robertson, Deputy Director (CBP)
National IPR Coordination Center



Homeland
Security



2011 Trade Symposium – IPR Session

CBP-ICE IPR Interaction & Intersection

■ CBP and ICE Collaboration:

- Strategy
- Policy
- Training
- Operations



**Homeland
Security**



2011 Trade Symposium – IPR Session

CBP-ICE IPR Interaction & Intersection

- CBP and ICE Operational Collaboration:
 - National Intellectual Property Rights Coordination Center
 - Commercial Enforcement Analysis Response (CEAR) Process
 - National – Coordinates Uniform Inter-Agency Responses
 - Local – CBP-ICE Joint Operations Development
 - National Trade Issue Working Groups



2011 Trade Symposium – IPR Session

CBP-ICE IPR Interaction & Intersection

- CBP and ICE Operational Collaboration – Joint Operations:
 - National – Examples:
 - Operation Global Hoax
 - Operation Season's Cheatings
 - Local
 - CBP District Field Operations (DFO)
 - ICE Special Agent-In-Charge (SAC)
 - Example: 2011 National Football League Superbowl



**Homeland
Security**



2011 Trade Symposium – IPR Session

CBP-ICE IPR Interaction & Intersection

- CBP and ICE Operational Collaboration – CBP Activities:
 - Data Analysis / Risk-Assessment / Targeting
 - Examination / IPR Infringement Determination
 - Shipment Referral to ICE
 - Detention / Seizure
 - Fines, Penalties and Forfeiture (FPF) Process
 - Post-Entry Verification (IPR Audit)
 - Criminal, Investigative Referrals to ICE



**Homeland
Security**



2011 Trade Symposium – IPR Session

CBP-ICE IPR Interaction & Intersection

- CBP and ICE Operational Collaboration – ICE Activities:
 - Targeting Referrals to CBP
 - Intelligence Research
 - ICE Attaché Overseas Engagement
 - Criminal Investigations



**Homeland
Security**



2011 Trade Symposium – IPR Session

CBP-ICE IPR Interaction & Intersection

- CBP and ICE Collaboration – Challenges & Opportunities:
 - Communication - Information Sharing – All Levels:
 - Situational Awareness
 - Feedback
 - Personnel Consistency
 - Training



**Homeland
Security**





Homeland Security