

Memorandum: “Normative aspects” of dealing with demand for counterfeit goods and strategies to reduce the demand.

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To The Commissioner, City of London Police
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Subject "Normative aspects" of dealing with demand for counterfeit goods and strategies to reduce the demand

Executive Summary

- 1.1 Police Intellectual Property Crime Unit (PIPCU) wants to reduce consumer demand for counterfeit goods online. This memorandum contains suggestions for public education campaigns to achieve this aim (Appendix 1). The suggestions are informed by the normative aspects of the demand for counterfeit goods as identified in the findings of the European Union Intellectual Property Office's (EUIPO) 2016 Youth Scorecard¹ and 2017 IP Perspective Study.²
- 1.2 Efforts to curtail the market in counterfeit goods to date have largely focussed on producers and sellers of counterfeit goods.³ There is a lacuna in enforcement, campaigns and legislation aimed at stopping *consumer demand* for goods and services which infringe IPRs online. A short review of the historical development of IPRs highlights the changing legal and social norms of IPRs in an online environment and why it is important to maintain IPRs.
- 1.3 Various campaigns aiming to change the social norms of buying counterfeit goods are examined in this memorandum. They are analysed against the normative aspects of consumer demand. The findings are used to inform suggestions for potential PIPCU public awareness campaigns. The suggestions include developing a public awareness campaign to be disseminated in various mediums, and the creation of white and black lists documenting websites selling authentic and counterfeit goods. The underlying

¹ EUIPO, *Intellectual Property and Youth, Scoreboard 2016* (EUIPO, 2016) <https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IP_youth_scoreboard_study/IP_youth_scoreboard_study_en.pdf> accessed 14 August 2018 (Youth Scorecard).

² European Union Intellectual Property Office, *European Citizens and Intellectual Property: Perception, Awareness, and Behaviour* (EUIPO, 2017) <https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/2017/european_public_opinion_study_web.pdf> accessed 14 August 2018 (IP Perception Study).

³ Referred to as 'follow the money' to catch 'the big fish' (the commercial scale IPRs infringers) rather than individuals: European Commission, 'Press release: Intellectual Property: Protecting Europe's know-how and innovation leadership' (EC, 29 November 2017) <http://europa.eu/rapid/press-release_IP-17-4942_en.htm> accessed 5 July 2018.

assumption is that increasing public awareness of the issues surrounding counterfeit goods will reduce the demand for counterfeit goods online.⁴

Introduction

- 2.1 In 2018 the EUIPO found the EU ‘is currently losing EUR 60 billion each year as a result of counterfeiting. For each EU citizen, this amounts to a cost of EUR 116 per year, and a loss of 434,000 jobs.’⁵ Increasing global connectivity and the rise of e-commerce presents a challenge to IPRs.⁶ Trade marks in particular are threatened by the sale of counterfeit goods online.⁷ (The term ‘counterfeit’ is often used more broadly than its technical meaning of trade mark infringement.⁸) Counterfeiting results in job loss, health and safety issues for consumers, finances organised crime and terrorist groups and can involve child labour.⁹ Further, websites that sell counterfeit goods can imbed malware into the computer of the person accessing the site without their knowledge, including for the purpose of mining Bitcoin.¹⁰
- 2.2 Amongst law enforcement, legislators and trade mark owners, the harm caused by counterfeit goods is taken as read.¹¹ This is not the case for consumers. Attitudes of consumers include ambivalence about whether the goods they are buying are genuine or counterfeit, scepticism about the dangers and harms associated with counterfeit

⁴ G Trenton Hooper and Janna M Wittenberg, 'Counterfeiting and the Myth of the Victimless Crime' (2011) 4 *Landslide* 41-47, 42 Hypotheses that adding to the dialogue about anti-counterfeiting efforts the need for consumer protection and victimisation would ‘boost’ efforts to address counterfeiting; Pamela S Norum and Angela Cuno, ‘Analysis of the demand for counterfeit goods’ (2011) *JFMM*, 15(1), 27-40, 38.

⁵ EUIPO, *Synthesis Report on IPR infringement 2018* (EUIPO, June 2018)

<<https://euipo.europa.eu/ohimportal/en/web/observatory/synthesis-report>> accessed 18 June 2018 (Synthesis Report); Charles Kim, ‘EU Losing 60 Billion Euro Annually Due to Counterfeiting, EUIPO Reports’ (INTA, 6 June 2018) <<https://www.inta.org/INTABlog/Lists/Posts/Post.aspx?ID=490>> accessed 18 June 2018.

⁶ Hannes Rosler, ‘Anti-counterfeiting in online auctions from the perspective of consumers’ interests’ (2006) *ICC* 37(7), 771-778, 771; Kateryna Frolova-Fox and Joseph Jones, ‘Getting the look for less? The blocking cost: Cartier International v BSKyB (Court of Appeal)’ (2017) *EIPR* 39(1) 58-65, 58.

⁷ *Ibid* 788.

⁸ Cosimo Magazzino and Mantovani Michela, 'Counterfeiting in Italian regions: an empirical analysis based on new data' (2014) *JFC* 21(4), 400-410, 401.

⁹ Khadijah Mohamed and Ratnaria Wahid, 'Fighting counterfeiting: Importance of enforcement of intellectual property rights' (2014) *JICLT* 9(4): 249-257, 251; Hooper and Wittenberg (n 4) 44; Michel Kessler, 'The internationalisation of intellectual property rights' (1994) *Int'l Bus LJ* 7, 805-826, 806.

¹⁰ Jacobs W, ‘Police Intellectual Property Crime Unit’ (City of London Police, 4 June 2018).

¹¹ See, for example, European Commission, ‘Memorandum of Understanding on the sale of counterfeit goods via the Internet of 21 June 2016’ (EC, 2016)

<<http://ec.europa.eu/DocsRoom/documents/18023/attachments/1/translations>> accessed 29 August 2018 (‘Memorandum of Understanding’): ‘The sale of counterfeit goods over the internet is damaging and harmful to all legitimate stakeholders including internet platforms, intellectual property rights owners and, most importantly, consumers.’

goods and a ‘why not’ attitude to the purchase of counterfeit goods.¹² These attitudes are evident by the demand for counterfeit goods online. Recent studies in the EU have found that the age group 15-24 are tolerant of counterfeit goods and ‘12% of young people intentionally bought a counterfeit product online in the last 12 months.’¹³ This is because consumers, unlike law enforcement, legislators and trade mark owners, have normalised the consumption of counterfeit goods. This is symptomatic of a broader problem that IPRs are not respected in the digital environment.

2.3 That IPRs are not respected in the digital environment is evidenced by the scale of counterfeit goods available online.¹⁴ The digital era has increased the availability of counterfeit goods compared to the pre-digital era.¹⁵ This has resulted in a change of social norms that reflect a decreased respect for IPRs. There are many reasons for the degradation of IPRs as a social norm. One reason is the convenience and ease of finding goods/services which infringe IPRs online. For example the file sharing website Napster. At its creation it disregarded copyright and provided music online for free download.¹⁶ These services, along with ‘free’ search engines such as Google, mean consumers have come to expect goods and services online to be available for free.¹⁷ Another example is online marketplaces, such as eBay and Taobao. It is relatively easy to create accounts on these marketplaces. Due to the nature of the internet, there is a degree of anonymity involved in the sale process and lack of physical inspection of goods sold online. This lends itself to sale of goods infringing IPRs.¹⁸ It has been recognised that the ‘rise of the online marketplace has made

¹² Youth Scorecard (n 1) 96.

¹³ Ibid 17.

¹⁴ Synthesis Report (n 5) 15.

¹⁵ Ibid 18; Commission, ‘A balanced IP enforcement system responding to today's societal challenges’ COM (2017) 707 final, 29 November 2017.

¹⁶ *A&M Records Inc v Napster* 114F. Supp. 2d 896 (ND Cal 2000); Andrew Murray, *Information Technology Law: The Law and Society* (3rd edn, OUP, 2016).

¹⁷ EUIPO, *Study on Voluntary Collaboration Practices in Addressing Online Infringements of Trade Mark Rights, Design Rights, Copyright and Rights Related to Copyright* (EUIPO, 2016)
<[https://euiipo.europa.eu/tunnel-](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Research%20and%20udies/study_voluntary_collaboration_practices_en.pdf)

[web/secure/webdav/guest/document_library/observatory/documents/Research%20and%20udies/study_voluntary_collaboration_practices_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Research%20and%20udies/study_voluntary_collaboration_practices_en.pdf)> accessed 29 June 2018 (Study on Voluntary Collaboration Practices).

¹⁸ Commission (n 15); INTA, ‘Addressing the Sale of Counterfeits on the Internet’ (INTA, September 2009)
<[http://www.inta.org/Advocacy/Documents/INTA%20Best%20Practices%20for%20Addressing%20the%20Sale](http://www.inta.org/Advocacy/Documents/INTA%20Best%20Practices%20for%20Addressing%20the%20Sale%20of%20Counterfeits%20on%20the%20Internet.pdf)

combating the sale of infringing products all the more challenging, as e-commerce sites often serve as convenient platforms for knock-off vendors.¹⁹

2.4 A second reason for the lack of respect of IPRs in the digital environment is the international nature of e-commerce, territorial nature of IPRs and the lack of consistent global IPRs. Even where countries are parties to the same multinational agreements, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), there can be vast differences in their national laws. In the case of TRIPS this is due to the ‘minimum rights’ nature of the agreement.²⁰ Such differences make addressing counterfeit goods difficult.²¹ Another difficulty arises from the lack of national enforcement of IPRs. The industrialised countries that pushed for the protection of IPRs in TRIPS have not seen the type of enforcement of IPRs envisaged at the time of drafting.²²

2.5 A final reason for the lack of respect for IPRs online is the historical culture of the internet, that it was beyond regulation, has persisted in respect of IPRs.²³ Internet activists have resisted attempts to regulate online IPRs internationally on the basis that it impedes freedom of speech.²⁴ The lack of enforcement targeted at consumers for infringement of IPRs over the internet has led consumers to believe they can infringe IPRs online without consequence.²⁵ The resulting disrespect of IPRs online has lead policy makers to try to adapt IPRs for the online environment.²⁶ The most recent attempt in the EU is a proposal for a new form of copyright for press publishers.²⁷

¹⁹ Kerrijane John, 'Combating Counterfeits: Using US Law to Analyse the Potential Application of China's Amended Trademark Law to Online Marketplaces' (2017) 35 *Cardozo Arts & Ent LJ* 415-447, 445.

²⁰ Annette Kur, 'International norm-making in the field of intellectual property: a shift towards maximum rules?' (2009) *WIPOJ* 1(1), 27-34, 28.

²¹ Anne-Catherine Chiariny, 'International counterfeiting and the “related actions” concept' (2018) *EIPR* 40(6) 399-406, 399.

²² Kur (n 20) 28.

²³ John Barlow, 'A Declaration of the Independence of Cyberspace' (*Electronic Frontier Foundation*, 8 February 1996) <<https://www.eff.org/cyberspace-independence>> accessed 29 August 2018; Eric Raymond, *The Cathedral and the Bazaar* (O'Reilly Media, 1999); Jack Goldsmith and Tim Wu, *Who Controls the Internet? Illusions of a Borderless World* (OUP, 2008).

²⁴ Benjamin Farrand, 'Lobbying and Lawmaking in the European Union: The Development of Copyright Law and the Rejection of the Anti-Counterfeiting Trade Agreement' (2015) *Oxford J Legal Stud* 35(3) 487-514: the failure of Anti-Counterfeiting Trade Agreement (ACTA) was attributed in part to 'internet activist organisations that perceived ACTA to be anti-democratic and potentially hindering to freedom of expression.'

²⁵ Paul Sugden, 'The power of one! The failure of criminal copyright laws (piracy) to blend into the greater cultural consciousness' (2014) *EIPR* 363-375, 371.

²⁶ For example, Council Directive (EC) 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [2001] *OJ L* 167/10; Council Directive 2000/31/EC of 8

- 2.6 It is a recognised fact that anti-counterfeiting measures need to be multi-faceted to combat counterfeit goods.²⁸ There are various legislative instruments to stop counterfeit goods from being imported through customs,²⁹ to pursue manufacturers of counterfeit goods and, where that is not possible, to impose secondary liability on ISPs.³⁰ However there is a lack of focus on reducing *consumer* demand for counterfeit goods. It is important to have strategies in place to reduce consumer demand for counterfeit goods online. The lack of enforcement against individual consumers for infringing IPRs online has led consumers to believe it is acceptable to infringe IPRs online and there will be no repercussions. This is reflected by the fact that consumers do not rate the risk of punishment as the number one deterrent that would stop them from purchasing counterfeit goods.³¹ The basic supply and demand equation means that if there is no longer consumer demand for counterfeit goods, the supply of counterfeit goods will be reduced due to lack of sales.³² The negative impacts associated with counterfeit goods will be reduced as crime organisations move to other ways of raising funds.
- 2.7 The Youth Scorecard shows young people in the EU are already wary about buying counterfeit goods online. Most do not buy counterfeit goods online at all, except accidentally.³³ To take advantage of this wariness, the aim of this work is to identify effective education campaigns to reduce the *demand* for counterfeit goods *online* so that demand is non-existent. Stopping consumers making non-online sales of counterfeit goods is a separate issue,³⁴ not addressed by this memorandum. However,

June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market [2000] OJ L 178/1.

²⁷ *Newspaper Licensing Agency & ors v Water Holdings BV* [2011] EWCA Civ 890 (Judgment of the Court of Appeal, 27 July 2011); Judgment of the European Court of Justice and EU proposal for a press publishers' related right; Commission, 'Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market' COM (2016) 593 final; European Parliament, 'Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive' (*European Parliament*, September 2017) <[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU\(2017\)596810_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU(2017)596810_EN.pdf)> accessed 28 August 2018.

²⁸ Qingxiu Bu, 'Extraterritorial jurisdiction vis-à-vis sovereignty in tackling transnational counterfeits: between a rock and a hard place?' (2018) *EIPR* 40(6) 381-398, 381; Sugden (n 25) 375.

²⁹ James Bikoff and others, 'Fake it 'til we make it: regulating dangerous counterfeit goods' (2015) *JIPLP* 10(4) 246-254, 248: 'Most European states enforce their prohibitions against dangerous goods through customs inspections (for imports) or in domestic laboratories, under domestic law (for goods produced internally).'

³⁰ *Cartier International AG and others v British Telecommunications Plc and another* [2018] UKSC 28.

³¹ Youth Scoreboard (n 1) 19; Liguó Zhang and Niklas Brunn, 'Legal Transplantation of Intellectual Property Rights in China: Resistance, Adaptation and Reconciliation' (2017) *ICC* 48(1) 4-41, 30.

³² Norum and Cuno (n 4) 28.

³³ Youth Scorecard (n 1) 47, 92.

³⁴ *Ibid* 49.

it is likely that educational campaigns aimed at informing people of damages of purchasing counterfeit goods online will reduce the number of purchases of counterfeit goods made in person.

Fundamentals of Intellectual Property Law

- 3.1 Where it has become the social norm for IPRs online to be disrespected it is informative to revisit the rationale for protecting IPRs. This discussion can shed light on why IPRs are still important in an online environment and why there is a need to realign the social and legal norms in respect of IPRs. The rationale for IPRs should be communicated to consumers as part of changing their attitudes towards buying counterfeit goods online. This is particularly important given the EUIPO findings that ‘IP remains a largely abstract concept for citizens’³⁵ and young people generally are unable to define the term ‘intellectual property’.³⁶ They feel badly informed on the subject and ‘...many said they have never seen any communication on the subject.’³⁷
- 3.2 The historical development of the various components of modern intellectual property law varied due to different rationale for protecting each of the rights.³⁸ There is a distinction between copyright and industrial property rights (trade marks, patents and design rights)³⁹ which stems from a distinction between creativity versus utility. Copyright was protected due to the rationale that a person should be rewarded for the products of their thinking.⁴⁰ Patents were protected for this reason too, but primarily to encourage innovation. As a reward for making an innovation public, the inventor was awarded a monopoly over that innovation for a specific time period.⁴¹ (The protection of IPRs has always been balanced against the need for fair competition.⁴²) Trade marks were introduced primarily for the purpose of designating the origin of the goods. Trade marks originated from guilds (marking goods to ensure quality

³⁵ IP Perception Study (n 2) 7.

³⁶ Youth Scorecard (n 1) 53-54.

³⁷ Ibid.

³⁸ Brad Sherman and others, *The Making of Modern Intellectual Property Law: The British Experience, 1760-1911* (Cambridge University Press, 1999).

³⁹ A distinction reinforced by the international treaties Paris Convention for the Protection of Industrial Property of 20 March 1883 and Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886; Sherman (n 38) 161.

⁴⁰ Lionel Bentley and Brad Sherman, *Intellectual Property Law* (4th edn, OUP, 2014) 5.

⁴¹ Ibid.

⁴² In the UK this is evidenced by the application of Articles 101 and 102 of the Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/1 in matters concerning IPRs.

standards were met).⁴³ Trade marks have since acquired secondary functions including advertising, communication, investment and quality.⁴⁴

- 3.3 Counterfeit goods impact the functions of trade marks. They reduce the distinctiveness of a trade mark, the ability to recall the origin of the good and damage the secondary functions. For example, when counterfeit goods are of poor quality or known to be commonly counterfeited, consumers begin to associate the original goods with the poorer quality counterfeit versions.⁴⁵
- 3.4 Britain first introduced a trade mark register in 1875.⁴⁶ One of the benefits of a trade mark register in Britain was the ability to reduce confusion over ownership of trade marks. Trade mark owners and the public could check the register before registering a mark or using a sign. The development of trade mark law in Britain was driven by developments in European countries and the need to protect British goods exported abroad from counterfeits proclaiming to be of British origin.⁴⁷ An example provided by Rosler was the prevalence of Prussian and American fake ‘Manchester’ textiles and ‘Sheffield’ cutlery.⁴⁸
- 3.5 Britain has maintained a trade mark register since its inception.⁴⁹ However, there remains a need to prevent counterfeiting of goods abroad particularly when those goods are sold online back to people in the United Kingdom (UK). This is in part due to global e-commerce and the difficulty enforcing IPRs abroad.⁵⁰ The internet and the many options for e-commerce (including online market places such as eBay and Alibaba and social media sites such as Instagram, We Chat and Facebook) have led to a proliferation of counterfeit goods.⁵¹ If IPRs were respected online then the social norms would be aligned with the legal norms and, [n]ormatively, individuals will

⁴³ Bentley and Sherman (n 40).

⁴⁴ *L’Oreal SA v Bellure NV* C-487/07 [2009] ETMR 55, 58. The decision to extend the functions of a trade mark protected by Article 5(1)(a) Directive (EU) 2015/2436 of 16 December 2015 to approximate the laws of the Member States relating to trade marks [2015] OJ L336/1 (Trade Marks Directive) was initially controversial particularly in light of the CJEU decision in *Adam Opel v Autec* Case C-48/05 [2007] ECR I-01017: Annette Kur, ‘Trade marks function, don’t they? CJEU jurisprudence and unfair competition practices’ (2014) IIC 45(4), 434-454, 434.

⁴⁵ Roncaglia, PL ‘Counterfeit goods and the fashion industry’ (King’s College London, 26 March 2018).

⁴⁶ Hannes Rosler, ‘The rationale for European trade mark protection’ (2007) EIPR 29(3), 100-107, 101.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Currently administered under the Trade Marks Act 1994.

⁵⁰ Kur (n 20) 27-34.

⁵¹ Rosler (n 6) 788.

voluntarily assume an obligation to follow the law irrespective of whether they risk punishment for breaking the law, because it accords with their internalised norms of justice and obligations.⁵²

- 3.6 The lack of consumer respect for IPRs online derives from their lack of appreciation of the value of IPRs and a lack of clear and consistent international IPRs. There is currently a perception amongst more than half of the EU people surveyed that IPRs are curbing innovation.⁵³ People who deliberately buy counterfeit goods and pirate copyright materials were more likely than those who do not to have this perception.⁵⁴ Even though the historical rationale for trade marks is not to encourage innovation,⁵⁵ this is a worrying perception. It illuminates a culture of disrespect for IPRs in an online environment.
- 3.7 Protection of Intellectual Property is a fundamental EU right.⁵⁶ However, global agreements to directly tackle counterfeit goods have largely been unsuccessful.⁵⁷ Global agreement has been reached in respect of counterfeit pharmaceuticals.⁵⁸ The EU also has specific directives for other counterfeit goods including for counterfeit toys.⁵⁹ Rapid changes in moral norms, such as those arising from the advent of the internet, require equivalent changes in legal norms. In this case legislation was outstripped by the pace of the internet and its subsequent introduction requires time to change moral norms to respecting those legal norms.⁶⁰ An example of this phenomenon is the transplantation of western intellectual property laws into China when it wanted to join the World Trade Organisation.⁶¹ Despite current attempts to

⁵² Youth Scoreboard (n 1) 26; Sugden (n 25) 365.

⁵³ IP Perception Study (n 2) 9.

⁵⁴ Ibid.

⁵⁵ Frank Schechter, 'The Rational Basis of Trademark Protection' (1927) Harvard Law Review 40(6) 813-833.

⁵⁶ Charter of Fundamental Rights of the European Union [2012] OJ C326/02, Article 17(2).

⁵⁷ For example ACTA which was not ratified and to which China was never a party: Michael Blakeney, *Intellectual Property Enforcement: A Commentary on the Anti-Counterfeiting Trade Agreement (ACTA)* (Edward Elgar Publishing, Inc., 2012); Duncan Matthews and Petra Zikovska, 'The Rise and Fall of the Anti-Counterfeiting Trade Agreement (ACTA): Lessons for the European Union' (2013) ICC 446(6), 626-655.

⁵⁸ Council of Europe, European Directorate for the Quality of Medicines and HealthCare (EDQM), 'The MEDICRIME Convention', (Council of Europe, 2018) <<https://www.edqm.eu/en/medicrime-convention-0>> accessed 29 August 2018.

⁵⁹ Council Directive 2009/48 on the safety of toys, OJ L 170/1.

⁶⁰ IP Perception Study (n 2) 8: '...more than half [of the Europeans surveyed] feel that IP principles are not adapted to the internet'.

⁶¹ Zhang and Brunn (n 31) 9.

address the issue of counterfeiting, China, and Asia more broadly, remain one of the largest producers of counterfeit goods.⁶²

- 3.8 A soft law approach, creating voluntary best practices for dealing with counterfeit goods, has arisen through organisations such as WIPO and INTA as well as regional approaches such as by the EU.⁶³ For example the Memorandum of Understanding is a non-binding agreement.⁶⁴ Norm setting of IPRs via international guidelines has occurred numerous times before including in the context of protection of famous and well known marks.⁶⁵
- 3.9 There is also a realignment of social and legal norms occurring due to new business models for music and movies⁶⁶ and technical solutions for tracking the authenticity of goods.⁶⁷ Copyright infringement actions can, in some ways, guide the actions taken to address the demand for counterfeits (as has been done with website blocking.)⁶⁸
- 3.10 In identifying ways to change the moral norms back to respecting legal norms of IPRs, it is important to look at what is driving consumer consumption of counterfeit goods. This will allow regional enforcement, such as by PIPCU, to create informed campaigns which raise the social norms and reduce consumer demand for counterfeit goods. Key factors for successful education campaigns are that the campaign has an

⁶² Rosler (n 6) 774; EUIPO, *2015 Situation Report on Counterfeiting in the European Union* (EUIPO, 2015) <https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/publications/2015+Situation+Report+on+Counterfeiting+in+the+EU.pdf> accessed 29 June 2018.

⁶³ For example, INTA has released 'Best Practices for Addressing the Sale of Counterfeits on the Internet' and Model State Anti-Counterfeiting Bill: INTA (n 18); Study on Voluntary Collaboration Practices (n 17).

⁶⁴ Memorandum of Understanding (n 11).

⁶⁵ World Intellectual Property Organisation, 'WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks', (1999) 833(E) <<http://www.wipo.int/edocs/pubdocs/en/marks/833/pub833.pdf>>.

⁶⁶ Such as online music streaming services available through Spotify and iTunes.

⁶⁷ For example silicon trackers in beef and applications using block chain to record the progress of authentic goods from producer to consumer: Necia Wilden, 'Cracking down on fake steak with invisible, trackable beef barcodes' (*Financial Review*, 10 August 2018) <https://www.afr.com/lifestyle/food-and-wine/cracking-down-on-fake-steak-with-invisible-trackable-barcodes-20180810-h13t3n?utm_source=LinkedIn&utm_medium=social&utm_campaign=nc&eid=social:lnkdn-14omn0059-optim-nnn.nonpaid-27/06/2014-social_traffic-all-organicpost-nnn-afr-o&campaign_code=nocode&promote_channel=social_linkedin> accessed 12 August 2018; BBC World Service, Business Daily, 'Fighting Fraud in the Food Chain' (*BBC*, 11 July 2018) <<https://www.bbc.co.uk/programmes/w3cswh06>> accessed 30 August 2018.

⁶⁸ *Cartier v BT* (n 30) was the first case where trade mark infringement resulted in an order for ISPs to block infringing websites. Previously such orders were used in copyright infringement cases.

element of human interest - how it affects you⁶⁹ - as well clear intentions as to the targeted audience, message and media for dissemination.⁷⁰

- 3.11 Examples of where public awareness campaigns have assisted in realigning social norms with legal norms arise from speeding and smoking. The ban of such activities (in certain areas, for example obeying speed limits and not smoking in public spaces) required people to change their social norms to match the legal norms. In Australia these campaigns included graphic television advertisements with confronting images.⁷¹ For example a graphic campaign by the Queensland Government aimed to reduce speeding and used television advertisements which showed car crashes happen and the victims covered in blood on the road after the crash.⁷² The catch phrase was 'every k [kilometre] over is a killer'.⁷³ Smoking campaigns have included graphic advertisements that show the negative health impacts of smoking.⁷⁴ In Australia there were also public campaigns on television which included a catchy song 'nobody smokes here anymore' with people disappearing from public areas.⁷⁵
- 3.12 Other examples of successful public education campaigns which changed the attitudes of the general population are those relating to skin cancer and sun protection. In both the UK and Australia skin cancer campaigns have successfully educated the public about sun safety through campaigns such as Cancer UK's 'R UV UGLY' campaign and Australia's 'Slip, Slop, Slap'. The Australian campaign is long running and has

⁶⁹ Youth Scoreboard (n 1) 21.

⁷⁰ Tara Craig, 'Raising awareness: award-winning healthcare campaigns' (*PMLive*, 3 February 2014) <http://www.pmlive.com/pharma_news/raising_awareness_award-winning_healthcare_campaigns_539881> accessed 30 August 2018.

⁷¹ See, for example, Topdesign mag, '30 Examples of Awareness Campaigns' (*Topdesign Mag*, 2015) <<http://www.topdesignmag.com/30-examples-of-awareness-campaigns/>> accessed 19 July 2018.

⁷² Opstop 'Every K Over is a Killer' (*YouTube*, 22 May 2006) <<https://www.youtube.com/watch?v=WiVefbS--QY>> accessed 1 September 2018; Stuart Newstead and others, 'Evaluation of the Queensland Road Safety Initiatives Package' (*Monash University*, December 2004) <https://www.monash.edu/_data/assets/pdf_file/0006/216528/muarc272.pdf> accessed 1 September 2018.

⁷³ *Ibid.*

⁷⁴ Sam James, 'Public Health England launches £1m smoking cessation campaign' (*PR Week*, 29 December 2017) <<https://www.prweek.com/article/1453340/public-health-england-launches-1m-smoking-cessation-campaign>> accessed 31 July 2018.

⁷⁵ Queensland Health, 'Nobody smokes here anymore [picture]: promoting Queensland's new tobacco laws in the mass media' (*Queensland Health*, 2006) <<https://trove.nla.gov.au/work/163419996?q&versionId=178131118>> accessed 1 September 2018.

been found to have reduced the incidence of melanoma through its successful dissemination of the importance of sun safety.⁷⁶

Normative aspects of demand for online counterfeit goods

- 4.1 Described as ‘the crime of the twenty-first century’⁷⁷, counterfeit goods are illegal,⁷⁸ both the production and in some countries also the purchase of them.⁷⁹ Despite their illegality there is consumer demand online for the sale of counterfeit goods.⁸⁰ This deviation in social and legal norms is not exclusive to trade mark law and also arises in relation to copyright law and online piracy.⁸¹ Zhang and Brunn succinctly highlights the issue of social norms deviating from legal norms:

‘Norms indicate general rules of conduct within a group or society and serve as intermediaries between abstract values and concrete behaviour. Social norms are implicit among the people; whereas, legal norms are explicitly imposed on the people by a government body. Moreover, social norms and legal norms may not always be consistent with each other, and since individuals in a society may face different, possibly conflicting norms, they must decide to comply with certain norms and to violate others.’⁸²

- 4.2 It is highly likely that it has become a social norm for people in the UK to buy counterfeit goods online. Whilst the Youth Scoreboard did not consider whether the purchase of counterfeit goods online was a social norm, it did investigate if the use of illegal digital content providers is considered a social norm in each of the member states.⁸³ It was found that online piracy has become a social norm in several member states including in the UK.⁸⁴ This is compared to countries such as Austria, Denmark,

⁷⁶ Joanne Aitken and others, ‘Generational shift in melanoma incidence and mortality in Queensland, Australia’ (2017) *Int J Cancer* 142(8).

⁷⁷ Mohamed and Wahid (n 9) 249-257.

⁷⁸ Trade Marks Act 1994 s 10; Trade Marks Directive Arts 10, 11. Counterfeit goods may also constitute passing off.

⁷⁹ The source of the illegality of counterfeit goods depends on the goods themselves. For example if the counterfeit goods are drugs then the illegality stems not only from trade mark infringement but also from criminal laws instruments including forgery, assault and battery: Hans-Georg Hoch, ‘Strategies against counterfeiting of drugs: a comparative criminal law study’ in Geiger C (ed), *Criminal Enforcement of Intellectual Property: A Handbook of Contemporary Research* (Edward Elgar Publishing, Inc., 2012).

⁸⁰ As evidenced by the results of the IP Perspective Study (n 2) and EUIPO Youth Scorecard (n 1).

⁸¹ Sugden (n 25) 365.

⁸² Zhang and Brunn (n 31) 7.

⁸³ Youth Scoreboard (n 1) 39.

⁸⁴ Youth Scoreboard (n 1) 26, 39: ‘Streaming and downloading from illegal sources is widely accepted by young people. It has become part of their daily life and is often not questioned as it is seen as normal behaviour.’ This finding is consistent with academic thought that ‘copyright criminal provisions have never developed as normative constraints that it is wrong to copy without payment to the creator’: Sugden (n 25) 365; Alexander Peukert, ‘Why do “good people” disregard copyright on the Internet?’ in Geiger C (ed), *Criminal Enforcement of Intellectual Property: A Handbook of Contemporary Research* (Edward Elgar Publishing, Inc., 2012).

Finland, Germany and Sweden where the social norm is to use legal digital content providers.⁸⁵ Future EUIPO studies could include questions to assist in identifying what these countries are doing to maintain the social norm of respecting IPRs. These could include identifying whether the norms have persisted in respecting IPRs because there are affordable legal options available which everyone uses or if there are other reasons. The results regarding illegal digital content use in the UK can be extrapolated to assist in concluding that it is a social norm in the UK to engage in activities/use goods and services that infringe IPRs online. Consistent with this finding are suggestions by academics that ‘[t]he fact that the UK and the worldwide markets for counterfeit goods are thriving is symptomatic of the disregard that many have towards the protection of trade marks and IPRs in general.’⁸⁶

- 4.3 Recent studies by the EUIPO have found that people in the EU generally strongly condemn the purchase of counterfeit goods,⁸⁷ and the majority of people consider the purchase of counterfeit goods unjustifiable.⁸⁸ Young people do not like counterfeit goods,⁸⁹ and indicated that they would feel ashamed if their peers found out that they were wearing/using counterfeit goods.⁹⁰ These findings might reasonably lead to a conclusion that the purchasing of counterfeit goods had not become a social norm. However, ‘people do not always act in line with their stated positions.’⁹¹ The main reasons for young people purchasing counterfeit goods is the desire to save money,⁹² indifference and the belief they are getting a good deal.⁹³ Therefore the risk of their peers finding out they have purchased counterfeit goods is not identified as a top three reason that they would stop purchasing counterfeit goods.⁹⁴ Further, despite the condemnation of counterfeit goods there is ‘a shift towards increasing acceptance’ of counterfeit goods in the EU.⁹⁵

⁸⁵ Youth Scoreboard (n 1) 39.

⁸⁶ Frolova-Fox and Jones (n 6) 59.

⁸⁷ IP Perception Study (n 2) 10.

⁸⁸ IP Perception Study (n 2) Foreword.

⁸⁹ Youth Scoreboard (n 1) 17.

⁹⁰ Ibid 47.

⁹¹ IP Perception Study (n 2) 4.

⁹² Youth Scoreboard (n 1) 48.

⁹³ Ibid 95.

⁹⁴ Ibid 96, 113: ‘Less than half of young people would stop buying counterfeit goods ... simply because “it is not cool”’.

⁹⁵ IP Perception Study (n 2) 10.

- 4.4 It is clear from the IP Perception Study that there been an increase in the intentional purchase of counterfeit goods since 2013.⁹⁶ It is also clear that young people in particular are less convinced of the damage caused by counterfeit goods and are increasingly intentionally purchasing counterfeit goods.⁹⁷ Initiatives aimed at reducing the demand for counterfeit goods are required in order to stop the purchase of counterfeit goods from being a social norm.⁹⁸
- 4.5 The IP Perspective Study and the Youth Scoreboard looked at the broader social norms of people in the EU in relation to infringement of IPRs. They also asked survey participants about how they wish to be engaged on matters relating to counterfeit goods and IPRs generally. The notable findings include:
- (a) ‘Purchase of counterfeit goods as a result of being misled also remains low, but increases, especially for manual workers and the self-employed.’⁹⁹
 - (b) ‘10% bought counterfeit products as a result of being misled’¹⁰⁰ and 35% of Europeans surveyed have ‘wondered whether a product they purchased was genuine or counterfeit.’¹⁰¹
 - (c) The Youth Scorecard found ‘57% of respondents said they could judge the legality of websites’.¹⁰² It is likely that if approximately half of young people can judge the legality of a website than less than half of the general population can judge the legality of a website. This is based on Brussels’ assumption that younger people are more media literate than older people.¹⁰³
 - (d) ‘The availability of affordable products is the main reason that would make counterfeit buyers discontinues this behaviour, ahead of a personal bad

⁹⁶ Ibid 11.

⁹⁷ Ibid: ‘Declared purchase of counterfeit goods remains low, but increases, especially among the younger generation.’ ‘Among those who admit having intentionally purchased counterfeit products, there is an observable over-representation of youth, as 15% of the participants aged 15 to 24 admit having intentionally engaged in such behaviour, compared to the European average of 7% and only 4% of respondents aged 55 or over.’

⁹⁸ This is consistent with the EUIPO’s conclusion that given the findings of the IP Perception Study, the Observatory needs to undertake various initiatives see, IP Perception Study (n 2) Foreword. See also, Bikoff (n 29) 252.

⁹⁹ IP Perception Study (n 2) 12.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Youth Scorecard (n 1) 108.

¹⁰³ Adam Watson Brown, ‘Disinformation and “fake news”’ (European Commission, DGConnect, Brussels, 3 July 2018).

experience and the risk of punishment.¹⁰⁴ This is consistent with the Youth Scorecard which found the main three drivers which would motivate young people to not buy counterfeit goods are the availability of affordable originals, having a bad experience and risk of punishment.¹⁰⁵ The lack of available originals has similarly been identified as a driver for the purchase of counterfeit goods and pirated music in China.¹⁰⁶

- (e) ‘Clothing and accessories are the most popular category of counterfeit goods bought online.’¹⁰⁷
- (f) ‘[S]afe payment method, quality and price are the most important aspects while buying products online.’¹⁰⁸
- (g) ‘Although searching for reviews, comments and opinions online is the most popular method to check whether a source is legal or not, most respondents assume a source is legal if contact details are available.’¹⁰⁹

4.6 Only a small minority of young people in the EU indicated that there is nothing that would stop them from buying counterfeit goods.¹¹⁰ This is positive for PIPCU and the educational campaigns it is going to run as it means that with the right motivation the majority of people will not buy counterfeit goods.

4.7 The desired communication on the purchase of counterfeit goods online was identified as communication which emphasises assisting people with ‘their online purchase journey’¹¹¹ and on safety.¹¹² This includes providing information on the following:

- (a) ‘How can I tell if a website is legal and can be trusted? How can I tell if a product offered online is an original or counterfeit? Is there a site where I can check if a webshop is legal?’¹¹³

¹⁰⁴ IP Perception Study (n 2) 13.

¹⁰⁵ Youth Scorecard (n 1) 97.

¹⁰⁶ Laura Nastase, 'Made in China: How Chinese Counterfeits are Creating a National Security Nightmare for the United States' (2008) 19 Fordham Intell Prop Media & Ent LJ 143-178, 162-3.

¹⁰⁷ Youth Scoreboard (n 1) 18.

¹⁰⁸ Ibid 17.

¹⁰⁹ Ibid 104.

¹¹⁰ Ibid 96-97: Only 1 in 20 say there is nothing that would stop them intentionally purchasing counterfeit goods.

¹¹¹ Ibid 56.

¹¹² Ibid 58: ‘Finally, the notion of safety seems to be crucial in the communication.’

(b) ‘Real-life stories of people who have suffered as a consequence... of the purchase of counterfeit goods.’¹¹⁴

(c) ‘[I]nformation that can help them make more informed choices during the online purchase process; they are in search of certainty and guarantees that they are purchasing an original product. They said they prefer straightforward and factual information that tells them which websites are known to sell counterfeit goods, which webshops are to be avoided and which ones to be trusted, which payment methods are to be avoided and which ones are safe.’¹¹⁵

4.8 It identified that young people did not want to receive moralising messages telling them their behaviour is wrong, but instead want to receive ‘[n]eutral information that enables them to form their own opinion on the matter.’¹¹⁶ In keeping with this finding, it was found that there was a ‘...preference for concrete and factual information.’¹¹⁷

4.9 The preferred communication channels identified in Youth Scorecard are:

- (a) Local artists, emerging artists;
- (b) Fellow citizens with negative experiences;
- (c) School;¹¹⁸
- (d) The internet/social media;¹¹⁹
- (e) Television.¹²⁰

4.10 Both the normative aspects of the demand for counterfeit goods online and the desired communication methods and channels are informative for assessing the past and current attempts at changing the social norms around counterfeit goods. They are also informative for suggestions for PIPCU awareness campaigns.

¹¹³ Ibid 56.

¹¹⁴ Ibid.

¹¹⁵ Ibid 58.

¹¹⁶ Ibid 56.

¹¹⁷ Ibid 58.

¹¹⁸ Ibid: ‘...prefer an open, interactive class discussion on the subject introduced by an expert, or local artists or fellow citizens with a negative experience... The open, non-judgmental discussions made them aware of their behaviour and made them think about the consequences of this behaviour.’

¹¹⁹ Ibid.

¹²⁰ Ibid.

What attempts have been made to change the norms around buying counterfeit goods

- 5.1 PIPCU wants to run public awareness campaigns to reduce the demand for counterfeit goods. There have been numerous campaigns over the past fifteen years with similar aims of reducing the demand for counterfeit goods and educating the public about the dangers associated with such goods. Campaigns targeting counterfeit goods have varied drastically in target audience, method and convenor. They include use of celebrities such as Jackie Chan, twitter campaigns run by the EUIPO, ads on billboards in Time Square and lectures at TED Talks. PIPCU has also run campaigns. All of these campaigns are discussed below with comments on how they compare to how the young people of the EU want to be engaged on the issues of IP and counterfeit goods (ie the ‘desired communication’ identified in the Youth Scorecard.)
- 5.2 The 2005 ‘Fakes Cost More’ campaign was launched by Jackie Chan and involved him using a chain saw to cut counterfeit clothing off a ‘tourist’.¹²¹ The aim of the campaign was to increase awareness amongst consumers that counterfeiting is not a victimless crime.¹²² It was a global campaign launched in Hong Kong and later in Europe and the United States.¹²³ The success of the campaign included broad media coverage in China.¹²⁴ The campaign, as evidenced by the use of a ‘tourist’ in the demonstration, was not focussed on online purchases of counterfeit goods but on purchases made in person when people are on holidays. People are more likely to buy counterfeit goods on holidays if they are cheap.¹²⁵ This campaign did not directly address the harm suffered by consumers. The Youth Scorecard found that young people surveyed were more concerned by harm to themselves from counterfeit goods than to ‘elites’ [companies and celebrities].¹²⁶ ‘Celebrities such as established musicians/artists are not considered credible for promoting these messages. Their wealth and status reduce their value of aggrieved party.’¹²⁷ Accordingly, the PIPCU campaigns should not use celebrities/large companies but instead use unknown

¹²¹ Fionnuala McHugh, ‘Jackie Chan: Fakes Cop’ *Women’s Wear Daily*, (Hong Kong, 7 June 2005); Naeran Rubio, ‘Jackie Chan Fronts Anti-Counterfeiting Campaign’ *INTA Bulletin*, 15 July 2005, Vol 60, No 13.

¹²² McHugh (n 121).

¹²³ Rubio (n 121).

¹²⁴ See, for example, Nick Gentle, ‘Jackie kicks up a fuss about fakes: Star fronts crusade to show the true cost of counterfeits’ *South China Morning Post* (China, 3 June 2005); Rubio (n 120).

¹²⁵ Youth Scorecard (n 1) 48, 49; Mandy Zuo, ‘Silk Street video stirs debate on Beijing’s famous knock-off market’ *South China Morning Post* (China, 24 March 2018).

¹²⁶ Youth Scorecard (n 1) 58.

¹²⁷ *Ibid.*

individuals who can drive home how they were personally negatively impacted by purchasing counterfeit goods.

- 5.3 The EUIPO has an online repository of public awareness campaign materials targeted at consumers about counterfeit goods.¹²⁸ The repository includes a reference to PIPCU's Operation Creative aimed at disrupting websites infringing copyright.¹²⁹ As well as a 'Communications Guide: Creating an Effective Public Awareness Program, Combat Counterfeiting and Piracy'.¹³⁰ EUIPO's current social media campaign uses Twitter to discuss buying authentic goods rather than counterfeit goods. It tweets statistics, infographics and links to EUIPO reports. One such tweet had 1,291 views 12 days after it was posted. This is fairly low considering the EUIPO twitter page has 18.3K followers.
- 5.4 A Brand Protection Manager of Tommy Hilfiger gave a Ted Talk titled 'How fake handbags fund terrorism and organised crime'.¹³¹ It has been viewed 1,239,231 times as at 31 July 2018.¹³² However, in the comments online the link between counterfeits and funding terrorism was doubted and people have commented saying multi-national company tax avoidance was a bigger problem than counterfeits.¹³³ The lack of traction for the message of the lecture, may reflect the finding that '[a]rguments related to personal safety rather than moral values are better suited to convincing young people to think twice before using illegal sources or buying counterfeit goods.'¹³⁴

¹²⁸ EUIPO, 'Public awareness campaigns' (EUIPO, 2018) <<https://euipo.europa.eu/ohimportal/en/web/observatory/public-awareness-campaigns>> accessed 14 August 2018.

¹²⁹ Ibid.

¹³⁰ EUIPO, 'Communications Guide Creating an Effective Public Awareness Program, Combat Counterfeiting and Piracy' (EUIPO, 2011) <https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/public-awareness-campaigns/BASCAP-Guide_en.pdf> accessed 14 August 2018.

¹³¹ Alastair Gray, 'How fake handbags fund terrorism and organised crime' (Ted@Tommy, November 2017) <http://www.ted.com/talks/alastair_gray_how_fake_handbags_fund_terrorism_and_organized_crime/discussion#t-710854> accessed 31 July 2018.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Youth Scorecard (n 1) 110. This sentiment is repeated in Bikoff (n 29) 251: 'The most effective educational efforts portray the product as undesirable by focusing on the gruesome health and safety consequences of using poorly made counterfeit goods. Anti-counterfeiting public education and outreach efforts should thus focus on the personal— not social—risks of using dangerous counterfeit goods.'

- 5.5 This EUIPO finding also applies to the awareness campaign by the United Nations Office on Drugs and Crime (UNODC).¹³⁵ This involved billboards in Time Square focussed on the fact that purchasing counterfeit goods could fund organised crime groups. It also highlighted that counterfeit goods are risks to consumer health and safety and are associated with ethical and environmental concerns.¹³⁶ Similar to the moral arguments finding, the Youth Scorecard found that ‘more than half of young people (58%) would rethink the purchase of counterfeit goods if they knew that it could be bad for the environment.’¹³⁷
- 5.6 PIPCU already uses times of year which are of particular consumer interest, such a Father’s Day, Christmas and Halloween, as times when they run consumer education campaigns.¹³⁸ PIPCU also has a ‘Top tips to help you avoid buying counterfeit goods’ on their website.¹³⁹ This offers practical suggestions such as dealing with reputable sellers online and keeping personal computer security up to date as well as more nuanced tips such as confirming that website addresses for payments begin with ‘https’.¹⁴⁰ These tips should be more broadly circulated by PIPCU on social media.
- 5.7 Consumer protection charity, Electrical Safety First, also have useful lists of ‘Do’s and don’ts of online shopping’, ‘How to check if you’ve bought a fake’ and ‘What to do if you’ve bought a fake’.¹⁴¹ They conducted consumer research in 2018 of UK adults which found that 1 in 3 people in the UK mistakenly purchased counterfeit electrical goods online.¹⁴² They use the #SpotTheFake on Twitter to discuss counterfeit goods

¹³⁵ UNODC, “‘Counterfeit: Don’t Buy into Organized Crime” -UNODC Launches New Outreach Campaign on \$250 Billion a Year Counterfeit Business’ (UNODC, 14 January 2014)

<<https://www.unodc.org/unodc/en/frontpage/2014/January/counterfeit-dont-buy-into-organized-crime---unodc-launches-new-outreach-campaign-on-250-billion-a-year-counterfeit-business.html>> accessed 18 June 2018.

¹³⁶ Ibid.

¹³⁷ Youth Scorecard (n 1) 113.

¹³⁸ Jacobs (n 10); City of London Police, ‘Shoppers warned to avoid fake electricals this Father’s Day’ (*City of London Police*, 13 June 2018)

<http://news.cityoflondon.police.uk/r/1047/shoppers_warned_to_avoid_fake_electricals_this_fa> accessed 28 August 2018.

¹³⁹ City of London Police, ‘Counterfeit Goods’ (*City of London Police*, 2018)

<<https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/Pages/counterfeit-goods.aspx>> accessed 28 August 2018.

¹⁴⁰ Ibid.

¹⁴¹ Electrical Safety First, ‘Conline: 18 million Brits fall victim to counterfeit electrical goods online’ (*Electrical Safety First*, 4 June 2018) <<https://www.electricalsafetyfirst.org.uk/media-centre/press-releases/2018/06/conline-18-million-brits-fall-victim-to-counterfeit-electrical-goods-online/>> accessed 28 August 2018.

¹⁴² Ibid.

online.¹⁴³ The information and use of social media satisfy the desired content and methods of communication identified by the EUIPO.

- 5.8 PIPCU in 2015 launched a campaign informing consumers of the risks associated with counterfeit beauty products called ‘Wake up - don’t fake up!’¹⁴⁴ It is targeted at increasing awareness about the prevalence of counterfeit beauty products online, including makeup, electronic goods and perfumes.¹⁴⁵ The infographic included the following: ‘Did you know? Criminals behind websites selling counterfeit goods may use your card details and personal information for other scams. #WakeUpDontFakeUp’.¹⁴⁶ Whilst make up is not one of the top three things purchased by young people online,¹⁴⁷ the inclusion of information about use of consumer credit card details in scams is the type of information which would resonate with consumers.¹⁴⁸
- 5.9 In September 2017 PIPCU launched ‘There’s more at stake when it’s a fake’ campaign. This is an awareness campaign for consumers which highlight many of the negative consequences associated with buying counterfeit goods.¹⁴⁹ It hits on both the desired content and communication channel identified by the EUIPO studies – it includes a case study about a woman who unknowingly purchased counterfeit shoes online and subsequently had her identity used to set up fake websites. It talks about the possibility of your identity being stolen and the numerous negative consequences including to your credit score, the amount of time and effort required to regain your identity and the emotional toll it carries.¹⁵⁰ It then discusses the safety of counterfeit

¹⁴³ Electrical Safety First, ‘Safe Shopping’ (*Electrical Safety First*, 2018)

<<https://www.electricalsafetyfirst.org.uk/guides-and-advice/safe-shopping/>> accessed 28 August 2018.

¹⁴⁴ City of London Police, ‘PIPCU urges the public to “Wake up – don’t fake up!”’ (*City of London Police*, 21 May 2015) <<https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/wakeupdontfakeup/Pages/wakeupdontfakeup.aspx>> accessed 28 August 2018.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Youth Scorecard (n 1) 40.

¹⁴⁸ Ibid 88.

¹⁴⁹ City of London Police, ‘New PIPCU campaign warns “there’s more at stake when it’s a fake”’ (*City of London Police*, 25 September 2017)

<http://news.cityoflondon.police.uk/t/915/new_pipcu_campaign_warns_there_s_more_at_stake_w> accessed 28 August 2018.

¹⁵⁰ Ibid.

goods, common counterfeit goods and the use of #MoreAtStake to promote the campaign.¹⁵¹

- 5.10 Reducing counterfeits goods is an area of focus for several organisations and businesses. Alibaba, who was previously criticised for the number of counterfeit goods on its platforms,¹⁵² now runs several anti-counterfeiting programs which educate rights holders through its extensive rightsholders portal, rightsholder education day and its anti-counterfeiting alliance.¹⁵³ Such education campaigns can inform PIPCU campaigns for consumers. Or, Alibaba may be open to collaboration with PIPCU in running these consumer education campaigns.
- 5.11 Future initiatives will be able to take inspiration from the work of the European Commission and INTA. In January this year the European Commission launched a consultation on a future ‘Counterfeit and Piracy watch-List’.¹⁵⁴ This consultation comes a few months after a Communication outlining the measures the European Commission is taking to protect ‘Europe’s know-how and innovation leadership’, which includes ‘stepping up the fight against counterfeiting and piracy.’¹⁵⁵ Whilst these initiatives are focussed on platforms, trade mark owners and customs officials, and not directly at consumers, they will be informative for consumer directed campaigns. INTA hosts numerous conferences globally from which a number of initiatives arise such as the ‘Unreal Campaign’ which targets teenagers and aims to educate them about counterfeit goods.¹⁵⁶

¹⁵¹ Ibid.

¹⁵² Frederick Mostert, ‘Fakes give Alibaba chance to turn crisis into opportunity’ (*Financial Times*, 8 June 2016) <<http://www.ft.com/content/d838b4fc-2698-11e6-8ba3-cdd781d02d89>> accessed 29 June 2018; Frederick Mostert, ‘Hacked off: protecting intellectual property online’ (*Intellectual Property Magazine*, 30 April 2014).

¹⁵³ Trademarks and Brands Online, ‘Alibaba anti-counterfeiting alliance triples in size’ (9 May 2018) <<https://www.trademarksandbrandsonline.com/news/alibaba-anti-counterfeiting-alliance-triples-in-size-5231>> accessed 31 July 2018.

¹⁵⁴ European Commission, ‘Commission launches consultation on future “Counterfeit and Piracy watch-List”’ (*European Commission*, 22 January 2018) <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1786>> accessed 5 July 2018.

¹⁵⁵ European Commission (n 3); Communication, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Tackling Illegal Content Online. Towards an enhanced responsibility of online platforms’ COM (2017) 555 final.

¹⁵⁶ INTA, ‘How INTA’s Unreal Campaign Is Preparing a Future Generation to Fight Fakes’ (*INTA Bulletin*, 1 August 2018) <<https://www.inta.org/INTABulletin/Pages/HowINTAsUnrealCampaignisPreparingaFutureGenerationtoFightFakes7313.aspx>> accessed 1 September 2018.

Suggested actions to reduce the normative demand for counterfeit goods online

- 6.1 PIPCU's public education campaigns need to result in increased consumer respect for IPRs online. This should reduce the demand for counterfeit goods online. PIPCU's public awareness campaigns should be disseminated in the desired format and through the desired communication channels. They should address the normative aspects behind consumer demand for counterfeit goods as identified in the EUIPO studies.
- 6.2 Actions to reduce the demand for online counterfeit goods need to target those people who are more likely to deliberately purchase counterfeit goods. The most common reasons for buying counterfeit goods were identified as 'price, indifference and belief that the counterfeit product is a good deal.'¹⁵⁷ The top reasons that people would stop buying counterfeit goods are the '[a]vailability of affordable originals, bad experience and risk of punishment...'¹⁵⁸ It follows that increasing the availability of original goods, increasing the number of bad experiences and increasing the risk of punishment will reduce the demand for counterfeit goods online.
- 6.3 The availability of original goods should have increased since the EUIPO studies were conducted due to the EU's Digital Single Market initiative which removes geo-blocking and provides for cross-border portability.¹⁵⁹ PIPCU cannot directly increase the number of available original goods, but it can publish a list of websites of trade mark owners ('white list') so that people can easily identify where to go online to buy original goods. The white list could be a less detailed version of the list that customs officials have available to them to assist in determining if genuine or counterfeit goods.¹⁶⁰
- 6.4 There are a number of ways to increase the number of bad experiences of consumers. PIPCU could use similar tactics to Operation Creation which it uses to tackle digital piracy websites.¹⁶¹ Bad experiences could include PayPal not working and late

¹⁵⁷ Youth Scorecard (n 1) 93.

¹⁵⁸ Ibid; IP Perception Study (n 2) 13.

¹⁵⁹ Commission, 'A Digital Single Market Strategy for Europe' COM (2015) 192 final; Commission, 'A comprehensive approach to stimulating cross-border e-Commerce for Europe's citizens and businesses' COM (2016) 320 final; Regulation (EU) 2017/1128 of 14 June 2017 on cross-border portability of online content services in the internal market OJ L 168/; Commission, 'Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market' COM (2016) 593 final.

¹⁶⁰ See for example, EUIPO, 'Enforcement Database' (EUIPO, 2018)

<<https://euipo.europa.eu/ohimportal/en/web/observatory/enforcement-database>> accessed 22 June 2018.

¹⁶¹ Jacobs (n 10).

delivery of goods. PIPCU could work with companies like Amazon to arrange late deliveries were the goods have been identified as counterfeit. The Youth Scorecard found that people are concerned with fraud.¹⁶² PIPCU could approach credit card companies and online payment providers like PayPal and Ali-pay to deliver joint campaigns against counterfeit goods.

- 6.5 Some people believe that stronger enforcement action against individual consumers and larger penalties for those people who knowingly purchase counterfeit goods online would reduce the demand for counterfeit goods.¹⁶³ However, the Youth Scorecard suggested that ‘informing young people about the closure of illegal webshops’ was a desired communication about counterfeit goods.¹⁶⁴ This has the benefit of PIPCU not having to focus on increasing the number of individual prosecutions, which could potentially alienate PIPCU from the public if PIPCU was perceived as pursuing vulnerable people for infringing IPRs. Instead PIPCU can show it is enforcing the legal norms online by communicating to the public about the number of websites it has suspended as part of its joint operation with the domain registry .UK Nominet’s, Operation Ashiko.¹⁶⁵ This is a type of ‘black list’ of suspended websites. The European Commission is considering using a black list to tackle ‘fake news’ or disinformation.¹⁶⁶
- 6.6 The 10% of people who accidentally bought counterfeit goods online would benefit from educational campaigns to increase internet literacy.¹⁶⁷ This will also assist those people who believe websites are legal if they have contact details.¹⁶⁸ PIPCU’s current tips for identifying counterfeit goods online can form part of the educational campaign and should be spread on social media and at schools.
- 6.7 Social media platforms including the use of paid advertising to increase audience. These could include PIPCU, in addition to its Twitter account, setting up and

¹⁶² Youth Scorecard (n 1) 12, 88.

¹⁶³ Victor Caddy, 'Fake or the Real McCoy', (2014) 178 JPN 276; Bu (n 28) 30; Norum and Cuno (n 4) 38.

¹⁶⁴ Youth Scorecard (n 1) 58.

¹⁶⁵ City of London Police, ‘Over 50,000 websites suspended for selling counterfeits’ (*City of London Police*, 4 July 2018) <http://news.cityoflondon.police.uk/r/1060/over_50_000_websites_suspended_for_selling_counte> accessed 28 August 2018.

¹⁶⁶ Watson Brown (n 103): The black list would be located within an online EU platform which would include a repository of fake news that fact checkers would have access to when determining if something is fake news or disinformation.

¹⁶⁷ IP Perception Study (n 2) 12.

¹⁶⁸ Youth Scorecard (n 1) 104.

maintaining social media pages on Instagram and Facebook. PIPCU's Twitter page already tweets a couple of times a day about counterfeiting. The next step would be to increase the number of followers and increase its levels of interaction (in terms of likes and retweets). There are only 2,629 followers compared to EUIPO's 18K and IPO.GOV.UK's 52K. Given PIPCU is a fairly niche name there needs to be an increase in public awareness of name and function of PIPCU including its social media accounts.

6.8 PIPCU should also use social media 'influencers' to spread their educational campaigns. Remarkably, this does not require reliance on actual humans as shown by Lil Miquela.¹⁶⁹ However a few human 'influencers' from each target age group and demographic would be able to spread the message amongst their followers. This is consistent with the findings from the Youth Scorecard. It found 'real life people' are who young Europeans want to hear messages about counterfeit goods from and they do not want to hear from celebrities.¹⁷⁰ Social media has been used to support numerous campaigns including Black Lives Matter and This Girl Can. Care would need to be exercised in selecting and vetting social media influencers. PIPCU would need to ensure influencers do not have any 'objectionable' opinions or other endorsements which would be contrary to PIPCU's values and that they have the number of followers shown on their account.¹⁷¹

6.9 In addition to social media PIPCU should spread their campaigns via advertising inside public transport, tubes, buses, timeout magazine and YouTube videos. Whilst this would be expensive, if PIPCU collaborates with non-government organisations or companies such as Alibaba or Transport For London the cost could be reduced. An example of a successful use of advertising by these mediums is the Vitality Life Insurance advertisements with a sausage dog voiced by a comedian and taken along to different exercise activities by well-known Olympic athletes.¹⁷² The aim of these

¹⁶⁹ Lil Miquela was an Instagram star with over 1 million followers when revealed to be a computer generated image: Kaya Yurieff, 'Instagram star isn't what she seems. But brands are buying in' (*CNN Tech*, 25 June 2018) <<https://apple.news/APjJ3ckj-SRatVjijik2svUA>> accessed 27 June 2018.

¹⁷⁰ Youth Scorecard (n 1) 58.

¹⁷¹ Natasha Bach, 'World Second Largest Advertiser Takes a Stand on Social Media Influencers Who Buy Followers' (*Fortune*, 18 June 2018) <<http://fortune.com/2018/06/18/unilever-social-media-influencer-followers/>> accessed 2 September 2018.

¹⁷² Thomas Smith, 'Talking dog for Vitality ad campaign' (*Cover*, 19 January 2015) <<https://www.covermagazine.co.uk/cover/news/2390785/talking-dog-for-vitality-ad-campaign>> accessed 28 August 2018.

advertisements was to increase membership to the insurance company as well as increase the fitness of their members. The advertisements were humorous, eye catching and involved the sausage dog not wanting to exercise. The advertisements were developed as part of a brand relaunch and were found to have succeeded in changing behaviours of members to increase their levels of activity by a system of rewards where points were awarded for exercise and redeemable for certain prizes.¹⁷³

- 6.10 Like with piracy, new business models and technical solutions are already being developed to address the problem of people being unsure about whether or not they are buying a counterfeit good online.¹⁷⁴ These developments will continue alongside any public education campaigns by PIPCU and will assist in decreasing the demand for counterfeit goods online.

Conclusion

- 7.1 PIPCU know about the economic and personal harms associated with counterfeit goods. This knowledge needs to be conveyed to the public to change the social norms around counterfeit goods so that they are aligned with the legal norms. The Youth Scorecard shows that young people in the EU are open to receiving this information if it is delivered in a neutral tone, it is factual and concrete.¹⁷⁵ This finding can be extrapolated to the general UK population. The normative aspects of dealing with demand for counterfeit goods were identified via EUIPO studies and informed suggestions for public education campaigns (Appendix 1).
- 7.2 To judge the success of future PIPCU public education campaigns the UK specific statistics from the next IP Perspectives Study can be analysed against the 2017 results. Both the quantitative results - number of people buying counterfeit goods (deliberately and accidentally) - and the qualitative results - whether or not they have seen communication on counterfeit goods – would be useful indicators of success. These results will also be useful for informing any required updates to the strategies for future PIPCU public educational campaigns.

¹⁷³ Ben de Castella and others, 'Vitality Brand Launch' (*Marketing Society*, 2016) <https://www.marketingsociety.com/sites/default/files/thelibrary/Vitality_New%20Brand_Award%20Paper_REDACTED%20%281%29.pdf> accessed 1 September 2018.

¹⁷⁴ EUIPO Observatory, 'EU Blockathon 2018' (*EUIPO*, 2018) <<https://euipo.europa.eu/ohimportal/en/web/observatory/blockathon>> accessed 29 August 2018.

¹⁷⁵ Youth Scorecard (n 1) 58.

7.3 PIPCU can tackle the production and flow of counterfeit goods by reducing consumer demand for such goods. This will involve targeted public education campaigns aimed at educating consumers about the potential harms they could suffer from buying/using counterfeit goods.

Appendix 1 Strategies to reduce consumer demand for counterfeit goods online

- Public education campaign:

What: Develop an awareness campaign which will engage broadly with the public. Like Vitality Life Insurance, the campaign should be humorous and have several variations which make the public want to see the next iteration. Consider using an animal in the awareness campaign, such as a dog, which will assist with the campaign's attention grab and be a useful tool when doing school visits to educate school children about counterfeit goods. Instead of a sausage dog who is lazy and doesn't like to exercise, you could use a Chihuahua or a Poodle who is used to being pampered, dressed in accessories and clothes, and who will turn its nose up at counterfeit goods. This plays to the fact that 'clothing and accessories are the most popular category of counterfeit goods bought online.'¹⁷⁶ Or, given Labradors were found to be the most popular dog in the UK this year,¹⁷⁷ a Labrador who sniffs out counterfeit goods online and happily passes on informative tips for avoiding counterfeit goods online.

Where: Deploy the advertising campaign in large scale print advertisements on public transport, TimeOut, newspapers, on social media and YouTube videos.

How: Whilst PIPCU may have the internal resources to develop the advertising campaign itself the development of the campaign could form part of PIPCU's engagement with the public. PIPCU could run competitions for university students, high school students and companies to design the awareness campaign. PIPCU could then work with the idea internally or engage branding consultants to launch the campaign. The competition could include suggestions as to how the awareness campaign could be run including how to fund the campaign and what mediums to use. I suggest PIPCU could engage with Transport For London to see if an agreement could be reached in respect of payment of the public transport advertising costs.

Who: Collaboration with the trade mark owners and online marketplaces. Use social media influencers, local emerging designers and producers.

- White list of websites of trade mark owners for consumers to access when looking to purchase authentic goods.
- Black list of websites suspended for selling counterfeit goods.

¹⁷⁶ Youth Scoreboard (n 1) 18.

¹⁷⁷ Ann Gripper and Sara Wallis, 'Britain's Favourite Dogs in pictures: Top 100 most popular breeds in the UK voted the best by the public' (*Mirror*, 9 March 2018) <<https://www.mirror.co.uk/news/uk-news/uk-best-dog-breeds-2018-11858005>> accessed 1 September 2018.

- Social media influencers that share tips about how to recognise counterfeit websites and stories of purchases of counterfeit goods going wrong.
- PIPCU Instagram and Facebook accounts in addition to the existing Twitter account. Increase the public knowledge of the name PIPCU and these accounts and increase number of followers and engagement.
- Increase circulation of PIPCU's 'Top tips to help you avoid buying counterfeit goods'.

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