

FAKE PRODUCTS: REAL DANGERS



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BANGKOK ART AND CULTURE CENTRE, APRIL 27, 2013

CONTENT

I- PRELIMINARY REMARKS

II- FINDINGS

- ✧ ECONOMICAL, SOCIAL AND LEGAL CHALLENGES
- ✧ THE CHALLENGE OF COUNTERFEIT HARMFUL PRODUCTS
- ✧ ASSESSMENT OF AVAILABLE ACTIONS TO COMBAT HARMFUL COUNTERFEIT PRODUCTS

III- RECOMMENDATIONS

PRELIMINARY REMARKS

- THIS PRESENTATION AND CONTENTS DO NOT REPRESENT ANANDA IP NOR ANANDA IP'S CLIENTS
- FOCUS ON “**HARMFUL PRODUCTS**”- INCLUDE BOTH COUNTERFEIT AND SUBSTANDARD PRODUCTS : I.E “FAKE”, “COUNTERFEIT”, “SUBSTANDARD”, “FALSIFIED” MEDICINES IN THIS PRESENTATION SHALL BE UNDERSTOOD AS PER THE DEFINITION PROVIDED BY THE WORLD HEALTH ORGANIZATION: **“A COUNTERFEIT MEDICINE IS A PRODUCT WHICH IS DELIBERATELY AND FRAUDULENTLY MISLABELED WITH RESPECT TO THE IDENTITY AND/OR SOURCE. COUNTERFEITING CAN APPLY TO BOTH BRANDED AND GENERIC PRODUCTS AND COUNTERFEIT PRODUCTS MAY INCLUDE PRODUCTS WITH THE CORRECT INGREDIENTS OR WITH THE WRONG INGREDIENTS, WITHOUT ACTIVE INGREDIENTS, WITH INSUFFICIENT ACTIVE INGREDIENTS OR WITH FAKE PACKAGING”**.
- LOOK AT IP AND NON-IP LEGISLATIVE FRAMEWORK
- LOOK AT CASES STUDIES AND ACTORS OF ENFORCEMENT
- IDENTIFY AREAS WHERE FURTHER IMPROVEMENTS ARE NEEDED
- PROVIDE RECOMMENDATIONS TO IP RIGHT HOLDERS AND PUBLIC AUTHORITIES/DONORS.

FINDINGS

- **ECONOMICAL, SOCIAL AND LEGAL CHALLENGES**

EACH COUNTRY A DIFFERENT SITUATION YET COMMON CHALLENGES

ECONOMICAL CHALLENGES

EXAMPLE OF CAMBODIA

67.9% OF LABOR FORCE EMPLOYED IN THE AGRICULTURE SECTOR, WHICH CONTRIBUTES TO 29% OF THE GDP

19.5% IN SERVICE SECTOR (EXCLUDING TOURISM INDUSTRY) ACCOUNTS FOR 41% OF GDP.

12.7% IN THE INDUSTRY SECTOR CONTRIBUTES TO 30%

IMPRESSIVE ECONOMIC GROWTH BUT A PRESSING NEED TO DIVERSIFY THE ECONOMY TO ENABLE THE RURAL POOR TO CONTRIBUTE TO, AND BENEFIT FROM, IT

FINDINGS

SOCIAL CHALLENGES (1/2)

REDUCTION OF SOCIAL INEQUALITIES, ESPECIALLY BETWEEN THE URBAN AND RURAL POPULATIONS

68.2% OF CAMBODIANS LIVED IN 2008 ON LESS THAN 2 US\$ PER DAY

KEY PRIORITIES ARE: EDUCATION, MATERNAL HEALTH, ENVIRONMENTAL SUSTAINABILITY, CHILD MORTALITY REDUCTION, HIV/AIDS COMBAT AND PREVENTION, MALARIA, AND OTHER DISEASES.

FINDINGS

SOCIAL CHALLENGES (2/2)

LINK BETWEEN POVERTY AND COUNTERFEIT/SUBSTANDARD PRODUCTS.

EXAMPLE FOR PHARMACEUTICALS

ACCESS TO MEDICINES

AWARENESS AND SELF-MEDICATION

INFRASTRUCTURE DEVELOPMENT

UNDERSTANDING OF REGULATION AND ENFORCEMENT

FINDINGS

LEGAL CHALLENGES (1/2)

LEGAL TRANSPLANTATION/INTERPRETATION STRUGGLE

- CRIMINAL CODE/ CODE OF CRIMINAL PROCEDURE (FR+USA)
- CODE OF CIVIL PROCEDURE 2006 (FR+JP)
- IP LAWS (WIPO)

DRAFT, ENACT AND ENFORCE

- SHORTAGE OF LEGAL EXPERTISE (EX: PATENT AGENTS);
- LACK OF AWARENESS/UNDERSTANDING ON HOW TO APPLY THE LAW;
- CLARITY OF SANCTIONS, PENALTIES AND REMEDIES;
- LACK OF RESOURCES OR OVERLAP OF AUTHORITY AMONG ENFORCEMENT AGENCIES; AND
- COMPATIBILITY, INCONSISTENCY OR REDUNDANCY ISSUES WITH OTHER LEGISLATIONS WHICH NEED TO BE AMENDED.

FINDINGS

LEGAL CHALLENGES (2/2)

CORRUPTION

- TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTION INDEX 2010 CAMBODIA'S RANKING 154 OUT OF 178 COUNTRIES, THAILAND AND VIETNAM RANKED 78 AND 116.
- UNDERMINES INVESTORS' CONFIDENCE
- OBSTACLE TO ENFORCEMENT (NON ONLY IP BUT ALSO PRODUCT QUALITY LAW)

LEGAL AND JUDICIAL FRAMEWORK

- INCOMPLETE LAWS (EX: THAILAND ON REFILLING ISSUES, LANDLORD LIABILITY AND ONLINE PIRACY); DISPARITY AMONG ASEAN COUNTRIES
- LACK OF DETERRENCE (FINES, COURT'S DECISION)
- POLITICAL WILL

SMUGGLING AND TRANSSHIPMENT

- CUSTOMS AUTHORITIES SHOULD BE AUTHORIZED TO ACT EX OFFICIO TO INSPECT BOTH GOODS IN TRANSIT AND TRANSSHIPMENTS IMPORT

FINDINGS

- THE CHALLENGE OF COUNTERFEIT/SUBSTANDARD HARMFUL PRODUCTS (1/9)

MEDICINES

1-6% OF MEDICINES SOLD IN DEVELOPED COUNTRIES ARE COUNTERFEIT

ALL KINDS OF MEDICINES :

- ANTIBIOTICS (AMPICILLIN, AMOXICILLIN, CHLORAMPHENICOL, PENICILLINS, AND TETRACYCLINE), VACCINES, ANTIMALARIAL TREATMENT: ARTESUNATE, QUININE, CHLOROQUINE AND MEFLOQUINE
- ANALGESICS, ANTIHISTAMINIC
- COMFORT MEDICINES (VIAGRA[®], CIALIS[®]...)



THESE MEDICINES CAN CAUSE DEATH, FAILURE OF TREATMENT AND DRUG RESISTANCE.

FINDINGS

- THE CHALLENGE OF COUNTERFEIT/SUBSTANDARD HARMFUL PRODUCTS (2/9)

MEDICINES

EX: INTERPOL STUDY 2006-2007 IN CAMBODIA

498 DRUG OUTLETS/451 DRUG SAMPLES MONITORED:

79% OF DRUGS NOT REGISTERED

27% SUBSTANDARD/COUNTERFEIT AMONG THESE UNREGISTERED DRUGS

SOME RESULTS...

- IMPLEMENTATION OF GOOD MANUFACTURING PROCEDURES (GMP)
- POLICY OF PRE-PACKAGED MEDICINES
- DECREASE BY 65% OF ILLEGAL PHARMACIES AND STRONG DECREASE OF UNREGISTERED DRUGS (EX OF CAMBODIA)
- AWARENESS (MINISTRY OF HEALTH CAMPAIGN)
- PUBLIC DESTRUCTIONS

FINDINGS

- THE CHALLENGE OF COUNTERFEIT/SUBSTANDARD HARMFUL PRODUCTS (3/9)

MEDICINES

DECEMBER 2010, 13 TONS OF COUNTERFEIT PRODUCTS INCLUDING PHARMACEUTICALS, COSMETICS AND FOODSTUFFS WERE SEIZED AND DESTROYED.

SEVEN TONS OF FAKE CHINESE MEDICINE, 15 BOXES OF FAKE JOHNNIE WALKER, 58 BOXES OF FAKE FERMENTED MILK, 170 KILOGRAMS OF FAKE SOAP AND MORE THAN 80,000 CD AND DVD DISKS WERE PUBLICLY DESTROYED.

JANUARY 2011, 22 TONS OF COUNTERFEIT MEDICINES WERE SEIZED AND DESTROYED.

FINDINGS

- THE CHALLENGE OF COUNTERFEIT/SUBSTANDARD HARMFUL PRODUCTS (4/9)



Pictures courtesy of FSP Mekong

VKP Pharmaceutical Co., Ltd. Thailand

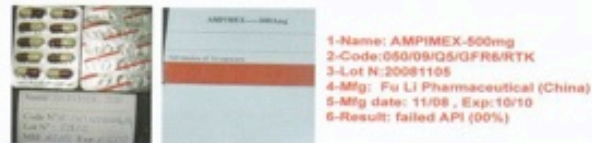


Fu Li Pharmaceutical Co., Ltd. China



AMPIMEX Capsule SP 500mg
Manufactured by:
Fu Li Pharmaceutical Co., Ltd. China

AMOXYMEX Capsule SP 500mg
Manufactured by:
Fu Li Pharmaceutical Co., Ltd. China



1-Name: AMPIMEX-500mg
2-Code:060/09/Q5/GFR&RTK
3-Lot N:20081105
4-Mfg: Fu Li Pharmaceutical (China)
5-Mfg date: 11/08, Exp:10/10
6-Result: failed API (00%)

Shen Wei Pharmaceutical Co., Ltd. China



AMPICILLIN Capsule SP 500mg
Manufactured by: Shen Wei
Pharmaceutical Co., Ltd. China

AMOXICILLIN Capsule SP 500mg
Manufactured by: Shen Wei
Pharmaceutical Co., Ltd. China



SG. Pharmaceutical. China



1-Name: AMOXICILLIN Capsules B.P. 500mg
2-Code:102/09/Q7/GFR&PVH
3-Lot N: 20081225
4- Register No : NO
5-Manufacturer: S.G. Pharmaceutical. China
6-Mfg date: N/A, Exp:11/2011
7-Result: API 67.52mg (13.50%)

China Southern Da Zhong Pharmaceutical Co., Ltd. China



AMPICILLIN Capsule SP 500mg



1-Name: Ampicillin Capsules BP 500mg
2-Code:078/09/Q7/GFR&PVH
3-Lot N: 20081226
4-Register No : NO
5-Manufacturer: S.G. Pharmaceutical. China
6-Mfg date: N/A, Exp:11/2011
7-Result: API 00mg (00%)

Pictures courtesy of FSP Mekong



© INTERPOL

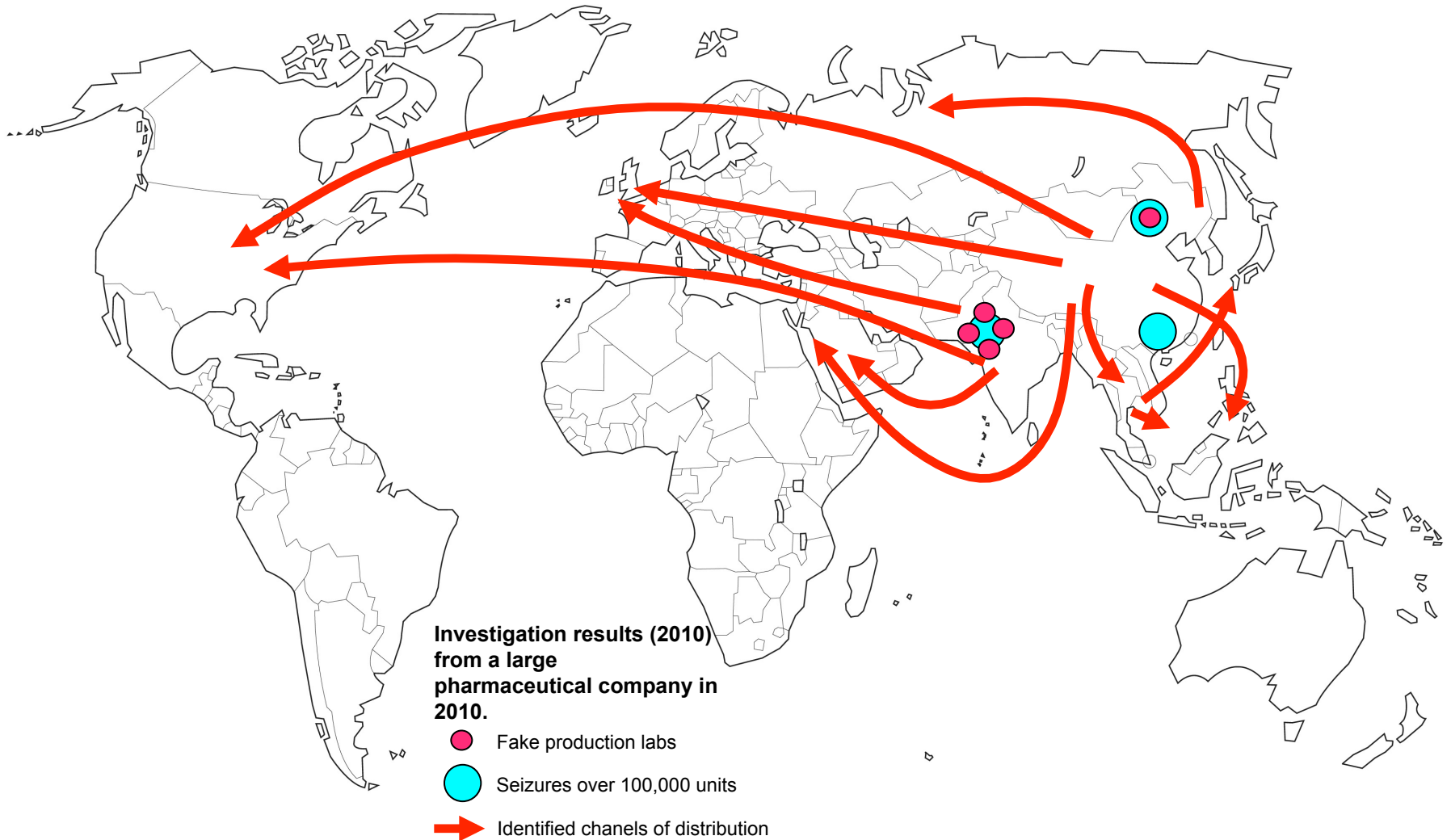


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HOW TO TELL THE DIFFERENCE?

Fake pharmaceutical companies at work





- **1995: PASTEUR AND SMITHKLINE ANTI-MENINGITIS VACCINES IN NIGERIA:**
3 000 PEOPLE DIED.
- **1990-2006: CAOUGH SYRUP CONTAINING DU GLYCOL ETHYLENE:**
89 CHILDREN IN HAITI, 30 BABIES IN INDIA, 21 PEOPLE IN PANAMA
- **SINCE 2006: TAMIFLU (5 000 COUNTERFEIT BOXES SEIZED IN UNITED KINGDOM IN 2006)**

FINDINGS

- THE CHALLENGE OF COUNTERFEIT/SUBSTANDARD HARMFUL PRODUCTS (6/9)

COSMETICS

MARCH 2010, A 23-YEAR-OLD WOMAN DIED AFTER USING A SKIN-WHITENING CREAM THAT CONTAINED HIGH LEVELS OF MERCURY.

SEVEN TONS OF COUNTERFEIT BEAUTY PRODUCTS WERE ALSO SEIZED IN OCTOBER 2010 IN RUSSEI KEO IN THE OUTSKIRTS OF PHNOM PENH.

CAMBODIAN BRANDS OF SOAP, LOTIONS, POWDERS AND COSMETICS INVOLVED ABOUT 15 BRANDS.

VETERINARY PRODUCTS

COUNTERFEIT GLUTARALDEHYDE, AN ORGANIC COMPOUND USED IN DISINFECTING POULTRY AND SWINE FACILITIES.

HALF OF THAILAND'S GLUTARALDEHYDE IMPORTS ARE FAKE, SAYS DOW MICROBIAL CONTROL (DMC), A PROVIDER OF BIOCIDES AND ANTIMICROBIAL TECHNOLOGIES.

FINDINGS

- THE CHALLENGE OF COUNTERFEIT/SUBSTANDARD HARMFUL PRODUCTS (7/9)

ALCOHOL

MARCH 2010, 700 BOTTLES OF FAKE JOHNNIE WALKER WHISKEY WERE SEIZED IN CAMBODIA. THE BOTTLES WERE APPARENTLY REFILLED WITH UNDISCLOSED ALCOHOL LEVEL BOOSTING PRODUCTS. IN SIMILAR CASES THE CONTENTS WERE FOUND TO BE HIGHLY DANGEROUS TO HEALTH.

Courtesy of FSP Mekong-
Public Destruction December 6, 2011



FINDINGS

- THE CHALLENGE OF COUNTERFEIT/SUBSTANDARD HARMFUL PRODUCTS (8/9)
FOOD PRODUCTS
- **1,9 MILLION** COUNTERFEIT FOOD PRODUCTS SEIZED AT EU BORDERS IN 2008
- BABY MILK (DOZEN OF DEATHS IN CHINA)
- FANTA: 4 000 FAKE BOTTLES SEIZED IN FRANCE
- “MÉCHOUIA” SALAD, 65000 POTS SEIZED IN FRANCE IN 2006
- FAKE TUNA IN THAILAND EXPORTED TO THE MIDDLE-EAST



FINDINGS

- THE CHALLENGE OF COUNTERFEIT/SUBSTANDARD HARMFUL PRODUCTS (9/9)

OTHERS

COUNTERFEIT CAR AND MOTORCYCLE SPARE PARTS, CONFECTIONARY, MOBILE PHONES, PRINTER COMPONENTS, ELECTRICAL APPLIANCE THAT CAN CAUSE SHORTCUTS, TOYS CONTAINING LEAD OR DANGEROUS CHEMICALS AND BATTERIES (**12% OF EUROPEAN MARKET**)



FINDINGS

- THE CHALLENGE OF COUNTERFEIT/SUBSTANDARD HARMFUL PRODUCTS (9/9)

OTHERS

-2% OF SPARE PARTS FOR PLANES: CONCORDE (2000)

-**166 AIRPLANE ACCIDENTS** IN USA IN THE LAST 20 YEARS CAUSED BY COUNTERFEIT SPARE PARTS

-**10 %** OF US PLANES CONTAIN FAKE SPARE PARTS

- **5 % TO 10 % OF CAR SPARE PARTS** IN EU ARE CONSIDERED TO BE FAKE

COUNTERFEITING

CREATE A CONFUSION BETWEEN ORIGINAL PRODUCT AND COUNTERFEIT PRODUCT TO:

-TAKE OVER IP RIGHTS, TECHNOLOGY OR KNOW-HOW;

-APPROPRIATE A BRAND IMAGE/NOTORIETY

-PROFIT FROM INVESTMENTS MADE BY ORIGINAL OWNER (MARKETING/R&D ETC...)



Real



Fake



A LONG STORY ...

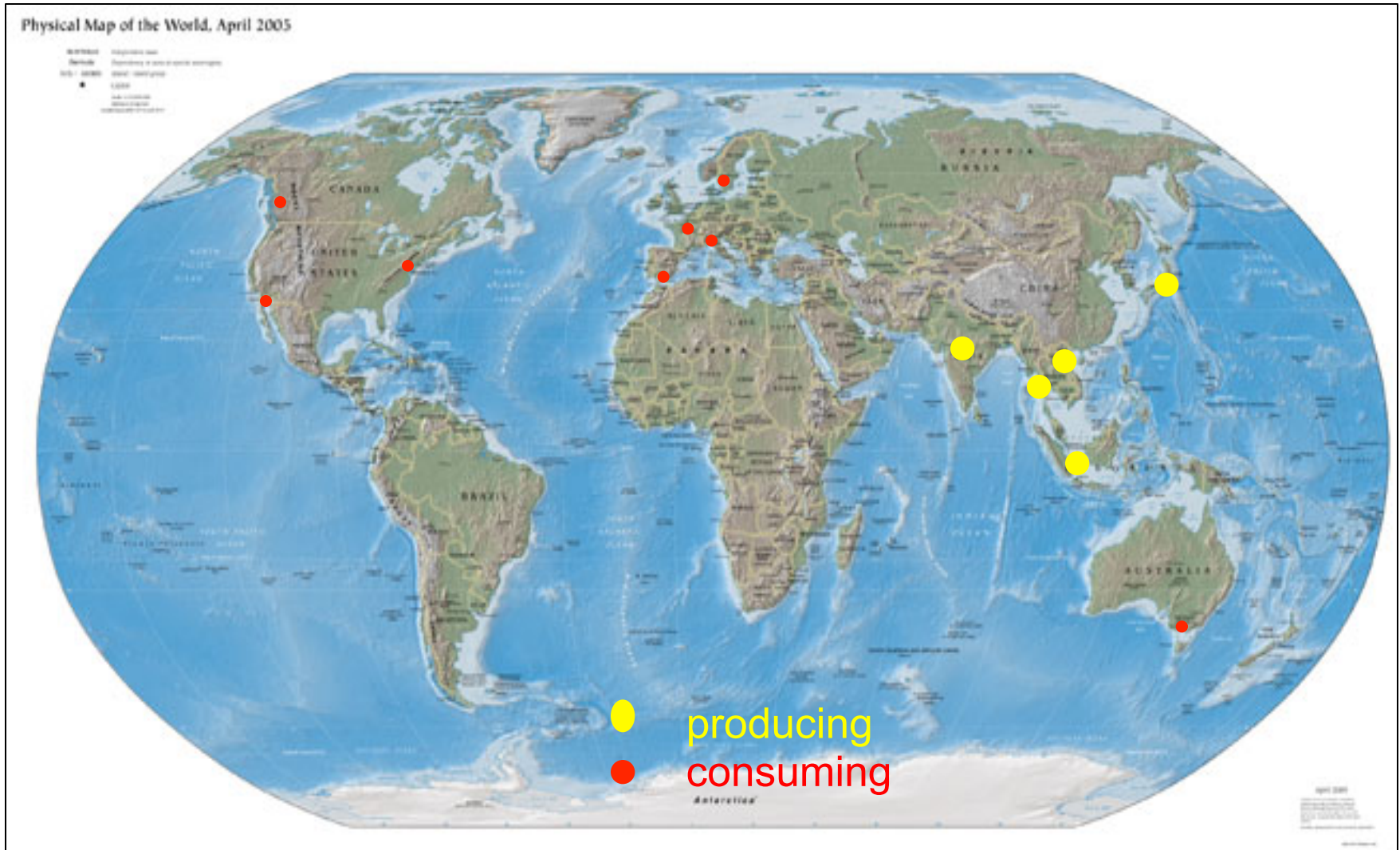


ROMAN AMPHORA
(MUSEUM OF
COUNTERFEIT GOODS,
PARIS)

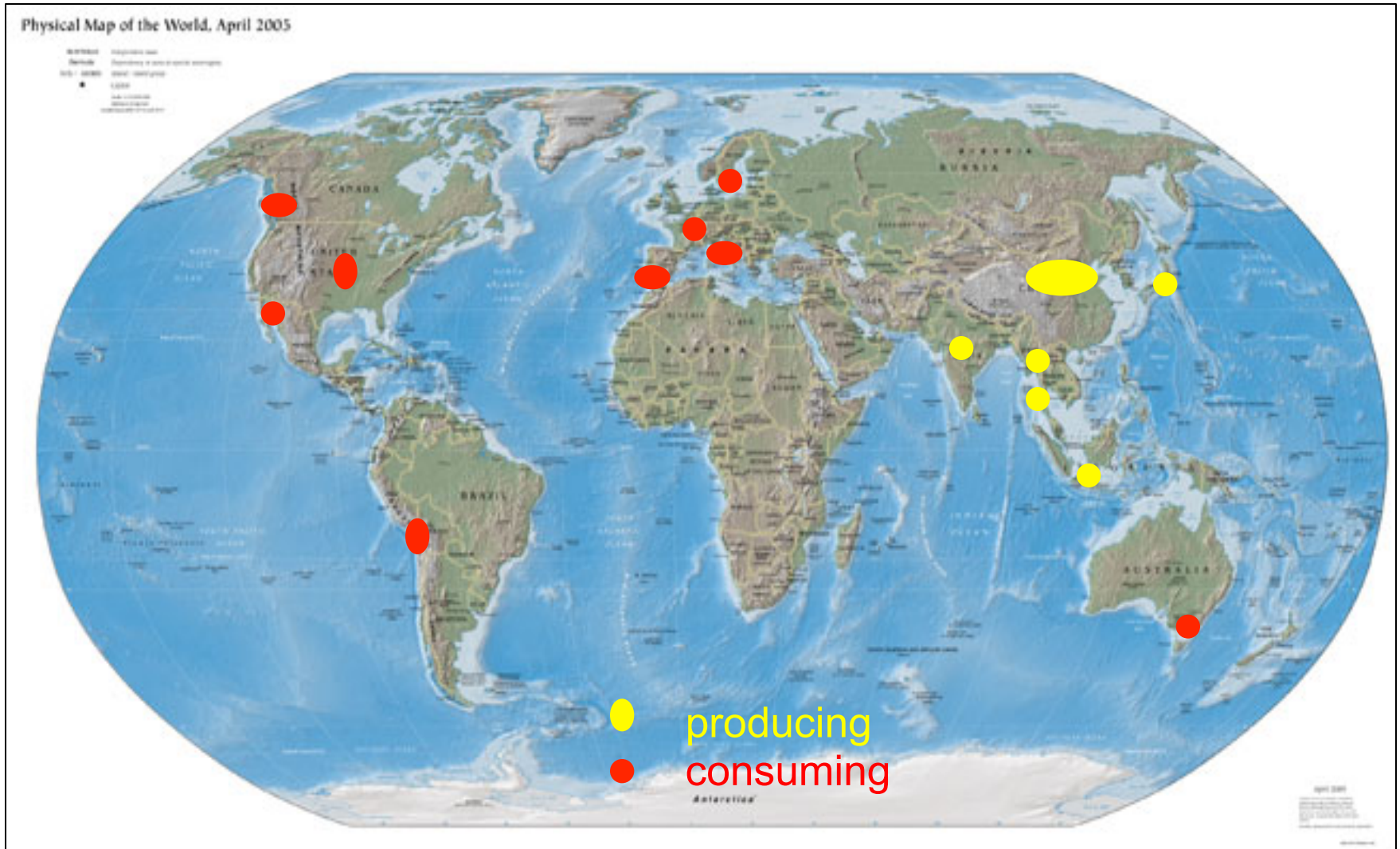
« CHINESE
CALLIGRAPHY »
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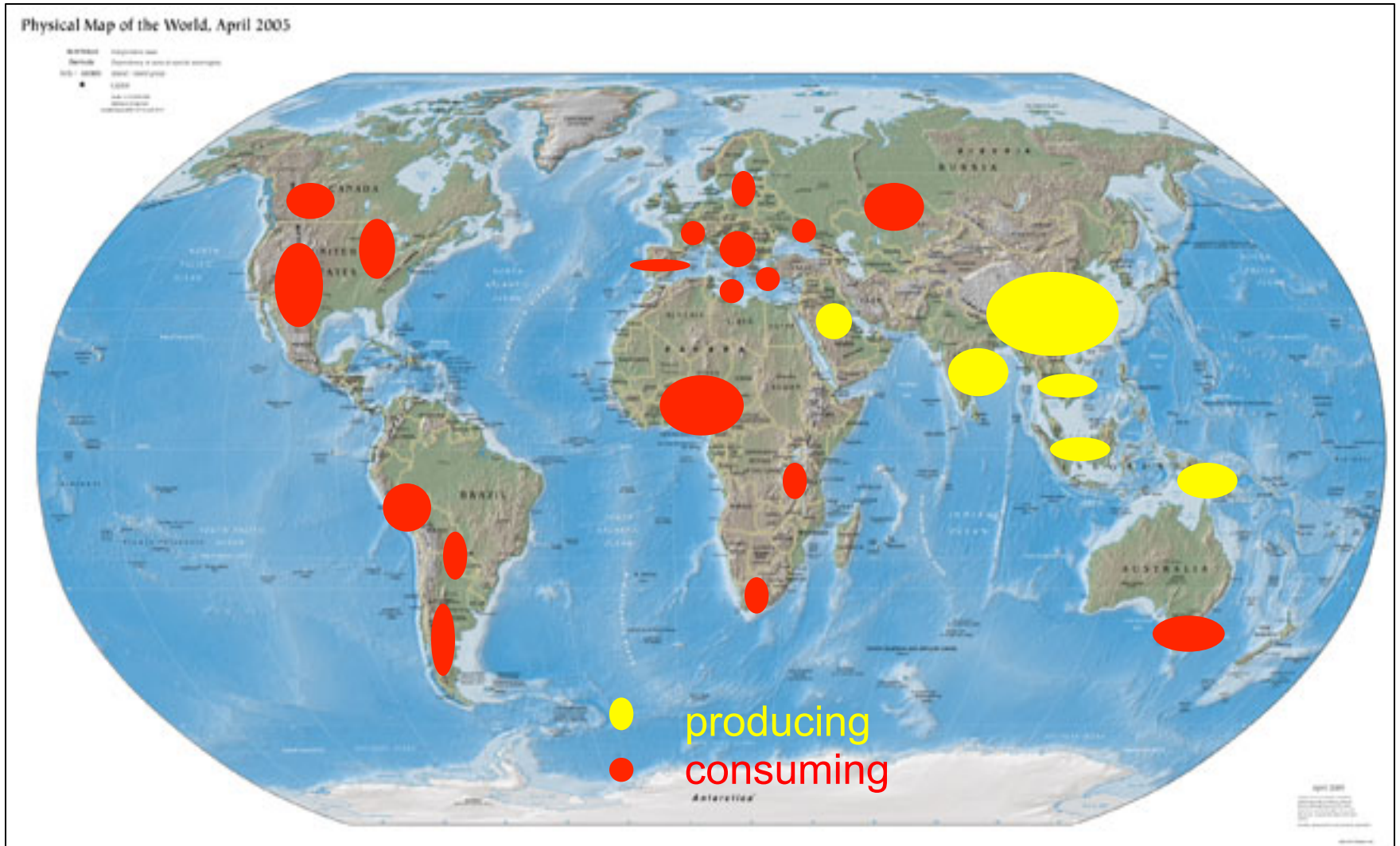
1970-1980



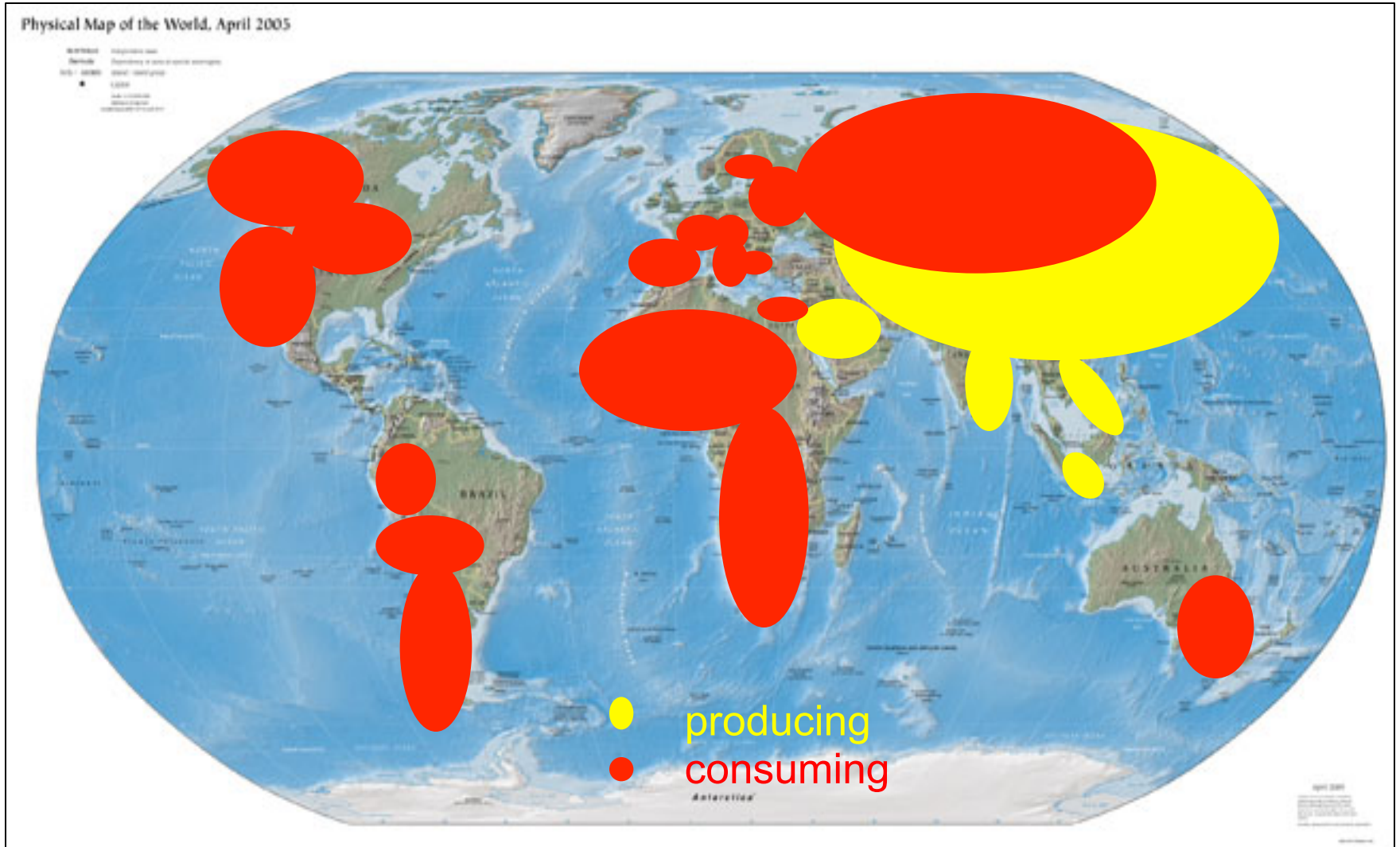
1980-1990



1990-2000



Today



A FEW NUMBERS...

- **250 BILLION DOLLARS PER YEAR (2009) OR ABOUT 7% OF GLOBAL TRADE**
- **FAKE MEDICINES REPRESENT 10% OF WORLD PHARMACEUTICAL MARKET (WHO)**
- **11% OF COUNTERFEIT GOODS SEIZED AT EU BORDER ARE CONSIDERED DANGEROUS**
- **IN A FEW ASIAN COUNTRIES (SUCH AS CAMBODIA) SOME MEDICINES ARE WIDELY COUNTERFEIT (MORE THAN 50% FOR ARTESUNATE IN RURAL AREAS)**

TODAY...



METHODS OF CONCEALMENT



METHODS OF CONCEALMENT



METHODS OF CONCEALMENT



METHODS OF CONCEALMENT



METHODS OF CONCEALMENT



METHODS OF CONCEALMENT



THE GREY ZONE: PASSING-OF



« SQNY »



« IVIKE »

THE GREY ZONE: PASSING-OF



THE GREY ZONE: PASSING-OF



THE GREY ZONE: PASSING-OF



Smart vs. Chinese Smart

THE GREY ZONE: PASSING-OF



BMW 7 vs BYD F6

THE GREY ZONE: PASSING-OF



BMW vs BYD

AND FOR DESSERT...



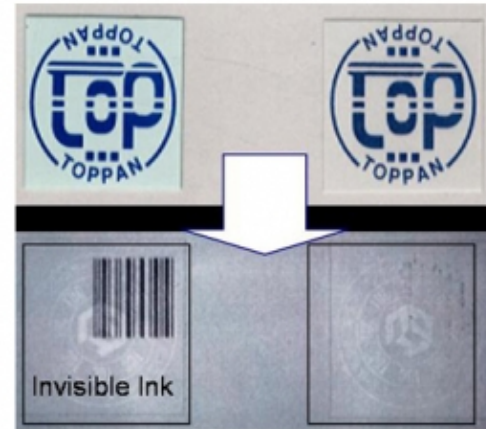
« Kentucky fried goose? »

HOW CAN IP RIGHT HOLDERS PROTECT THEIR RIGHTS?

SOME ANTI-COUNTERFEITING TECHNOLOGIES



Holograms



Invisible inks



Combined hologram and RFID tag

Codes, micro letters, chips, defects etc...

Source and copyright: <http://www.toppan.co.uk>

RECOMMENDATIONS

FOR IPR OWNERS:

- FILE IP RIGHTS
- ADAPT A CLEAR AND TARGETED STRATEGY
- IMPERATIVELY COMPLETE YOUR IP FILING STRATEGY WITH CONTRACTS :
MOUS, CONFIDENTIALITY, EMPLOYMENT, PROTOTYPING/WORK-FOR-HIRE/MANUFACTURE/DISTRIBUTION/R&D/JV/SHAREHOLDER AGREEMENT/MODEL AGREEMENT/END-USER SOFTWARE AGREEMENT/ TERMS OF USE ETC., LICENSE/FRANCHISING
- IMPROVE YOUR PRODUCT TRACECABILITY AND WAYS OF IDENTIFICATION OF COUNTERFEIT PRODUCTS.
- TRAIN YOUR STAFF, CUSTOMERS, RAISE AWARENESS
- JOIN FORCES WITH OTHER IPR OWNERS/AUTHORITIES (BEST PRACTICES ETC...)

RECOMMENDATIONS

AMENDMENTS

EXISTING IP LAWS CAN BE FURTHER PERFECTED BY ADDRESSING ISSUES SUCH AS:

- HIGHER PENALTIES FOR **“WILLFUL” INFRINGEMENT AND FOR COUNTERFEIT/ SUBSTANDARD PRODUCTS CAUSING A RISK FOR HEALTH;**
- DIFFERENTIATE **LEVEL OF FINES/COMPENSATION BETWEEN TRADEMARK AND PATENT INFRINGEMENT** BY INCREASING THE FINES FOR PATENT INFRINGEMENT IN ORDER TO TAKE INTO ACCOUNT THE SUBSTANTIAL INVESTMENTS MADE BY PATENT OWNERS;
- INCLUDE **DAMAGE CALCULATION PROVISIONS** IN THE EXISTING TRADEMARK AND PATENT LAWS IN ORDER TO PROVIDE JUDGES WITH BETTER CLARITY AND TO INCREASE LEGAL CERTAINTY;
- **FORBID SITUATIONS WHERE THERE IS A DISCRETIONARY POWER** FOR DECIDING WHETHER COUNTERFEIT GOODS SHALL BE DESTROYED OR NOT AS THIS UNDERMINES ENFORCEMENT EFFORTS;
- **ADOPT SPECIFIC ANTI-CORRUPTION PROVISIONS** TO ADDRESS THE SITUATION WHEN CORRUPTION INVOLVES OFFICIALS IN CHARGE OF THE INSPECTION AND SEIZURE OF POTENTIALLY DANGEROUS PRODUCTS TO THE CONSUMER;
- **ADOPT ANTI-REFILLING; DATA PROTECTION, LANDLORD LIABILITY AND ONLINE PIRACY LAWS.**

RECOMMENDATIONS

CONTINUE TRAINING

WHILE RELEVANT LAWS PROVIDE THAT EACH INTELLECTUAL PROPERTY AGENCIES ARE RESPONSIBLE AND ABLE TO TAKE ACTION (*EX OFFICIO*) ON INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, IT IS THE LACK OF KNOWLEDGE AND KNOW-HOW OF THE OFFICIALS THAT CONTINUE TO PROHIBIT AN EFFECTIVE ENFORCEMENT EFFORT. IN MOST CASES, THE INTELLECTUAL PROPERTY OFFICIALS CLAIM THAT THEY CANNOT DISTINGUISH THE INFRINGED PRODUCTS FROM THE AUTHENTIC ONES, EVEN IN MOST OBVIOUS COUNTERFEITING CASES.

SPECIALIZED JUDGES AND COURTS SHALL BE PROMOTED

IMPROVE COORDINATION BETWEEN AGENCIES

THERE IS A COORDINATION PROBLEM WHEN THERE ARE A NUMBER OF AGENCIES ENFORCING THE INTELLECTUAL PROPERTY LAWS AND REGULATIONS. THIS MAKES THE ENFORCEMENT PROCESS LONGER THAN IT SHOULD BE. MOUs, TASKS FORCES NEED TO BE SET-UP/IMPROVED IN CONSULTATION WITH THE INDUSTRY.

ananda

INTELLECTUAL PROPERTY

One of Thailand top IP firms (Tier 2/Tier 3)

Winner of 2013 International Law Office Award - Client Choice Award (IP-Patent)

Leading IP Practitioner (Legal 500, Asia Law and WTR 1000), Franck Fougere

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THANK YOU!