

*Hearing on Intellectual Property Rights and
Imported Counterfeit Goods*

**Opening Statement of
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Commissioner and Hearing Co-Chair**

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Good morning and welcome to today's hearing. Before we begin with our first panel, I would like to lay out several issues that will be covered in the Commission's hearing today and tomorrow. Of particular concern are the challenges and problems that U.S. companies are forced to address in the face of rampant IP infringement in China, and the negative impact that the export of China's counterfeit products has on U.S. consumers, businesses and our overall economy.

First, at the corporate level, American companies and other foreign businesses have invested in China and established operations there for both the domestic Chinese and international markets. The lack of adequate IPR protection forces changes in corporate strategies in China: focusing only on development in their R&D operations, or delaying the launch of certain products in the Chinese market. The latter strategy has proven unsuccessful in many cases. Where possible, foreign companies have increasingly relied on wholly-owned foreign enterprises in China to maintain as much managerial control over their companies' IP as they can. However, limitations on market access and investment behavior limit the ability of foreign companies to mitigate risks to their IP. In industries and regions where limitations to market access and investment exist, foreign IP is infringed, but foreign companies are unable to diminish such risks with the measures mentioned above. These key factors inhibit a major economic player from contributing to IP protection in China.

Second, while counterfeit DVDs or clothing pose a huge problem for U.S. industry, the criticality of which must in no way be diminished, no one is going to die or be made ill from a Dior knockoff or a bad copy of the Lion King. However, the export of counterfeit, substandard or even tainted pharmaceuticals poses a major health concern for unsuspecting U.S. consumers. Counterfeit drugs sold through the Internet often involve criminal rings that have manufacturing and export mechanisms in China and distributors in other countries, or even appear to be the in US or Canada.

Counterfeits of lifestyle drugs, such as Viagra, and health maintenance drugs, such as Lipitor, have been purchased in the United States via the Internet. Many of these drugs contain too much, too little or no active ingredient. They are often indistinguishable from the legitimate version of the drugs in both the appearance of the packaging and the pills, themselves.

The production of substandard and fake drugs is a worldwide problem, underreported, with very few U.S. patients understanding that drugs they order from websites that appear to be in Canada are actually located in third world countries, India or China, and the drugs that are their stock and trade are not made in the US and U-turned back out of Canada, but are counterfeit. Fake drugs are becoming a significant cause of unnecessary illness, mortality, and loss of public confidence in medicines. International security experts repeatedly warn that the prevalence of offshore drug counterfeiting creates a potential for the deliberate tainting of drugs by bad actors wanting to harm the US. The prevalence of counterfeit drugs appears to be rising and the World Health Organization estimates that upwards 15% of all drugs sold worldwide are fake, and in parts of Africa and Asia this figure exceeds 50%, particularly for drugs used to control HIV/AIDS.

Our founding fathers surely never envisioned motion pictures, a car and its associated parts, music downloadable from the internet, the health and longevity that we now enjoy due to pharmaceutical pills and potions or the \$800 required to purchase a genuine Prada handbag. The specific notion of 21st Century “intellectual” property was not part of their worldview.

Although the intricacy of today’s patents, trademarks and copyrights could not have been foreseen 250 years ago, the founders wisely recognized that in addition to the rule of law and individual liberty, the absolute guarantee of property was key to sustaining a free society.

Thomas Jefferson noted that “property is the foundation of all civilized society” and James Madison stated, “The protection of property rights is the first object of government.”

It is difficult enough for our government and industry to protect property rights on our own shores, but defending America’s IPR in a foreign nation that does not view property rights as an underpinning of its government or culture -- in some cases even actively flouting US property rights -- presents us with a Gordian knot of diplomatic, governmental and economic challenges.

Today, we will explore these challenges with regard to Chinese counterfeiting and the export of such products, and delve into any possible remedies available to cure the IPR violations that currently beleaguer our nation.

Perhaps our expert witnesses will help us find a way back to protecting this important aspect of our foundational principles currently under attack in the world market.