ANTI-COUNTERFEIT STRATEGIES DURING AN ECONOMIC CRISIS: A WISE CHOICE

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There is a lot that has already been written regarding anti-counterfeiting mechanisms, as IP Right holders are increasingly aware of the potential hazard and actual damage that fake articles represent for almost every single industry, from pharmaceuticals to processed foods, cosmetics, clothing, electronics, and luxury items.

Notwithstanding the increasing spread and growth of counterfeiting problems, many companies are choosing to cut the budgets destined to enforce their IP rights as a measure to reduce costs and counter some of the effects of the actual economic crisis, which may represent an error for the same companies that want to save precious resources and invest them wisely in these hard financial times.

We will try to help understand the reasons why it is necessary to reverse such policy and invest in protecting valuable resources such as IP rights (be them patents, trademarks or copyrights), that in the end are one of the most important assets any organization may possess.

In this regard it is very important to acknowledge that, as several economic and consumer behavior studies have shown, one of the most visible effects of an economic crisis is a reduction in the income of the general population, which in turn provokes a drop in the sales of most products because people have less money to spend and thus they either refrain from acquiring certain products and/or seek cheaper substitutes for the more necessary goods.

This phenomenon has a direct impact on how most companies perceive the need to enforce their IP rights portfolio, since the financial problems also impact on corporate budgets and the matters they deem important when resources are scarce; having noted this, companies need to be aware that a reduction on enforcement tasks may not be the best decision when cutting back budgets because:

a) if the counterfeits expand rapidly in the market due to the crisis, the consumer base may perceive this expansion as a loss of exclusivity and even loss of brand identity, which in turn could cause a long-term loss on the brand and even corporate image that may result in a very serious issue that can become quite troublesome and extremely costly to correct in the future.

b) if a market is flooded with counterfeit products, companies have the risk of not only losing their market participation to the fake products themselves, but also face the threat of legal liability derived from the low quality of fake products (this risk is specially worth considering on pharmaceutical, cosmetics, processed foods and some other mass consumer goods).

c) there are several examples of companies (even countries) that have thrived on the systematic violation of IP rights owned by successful companies -usually foreign-; once such entities have obtained enough capital out of manufacturing, selling and distributing counterfeits and/or IP-infringing goods to become “legitimate” businesses, they have emerged as some of the toughest competitors to the same established companies they once pirated.

The above may resemble some alarmist headlines of sensationalist tabloids, but there are several historic examples of once-successful brands that have lost their presence in the
market and had to close operations in some countries (in some cases the entire company almost disappeared) because of the poor management of their IP rights, specially regarding the lack of interest on enforcing and protecting those same rights.

If you most know, a text-book example of this happened in the mid-to-late 1980’s (coincidentally, at the height of a serious regional economic crisis) in Mexico and in other important Latin-American countries, when a notorious French brand of sportswear and designer clothing almost disappeared due to poorly enforced trademark rights and a general lack of judicious management of their trademark rights; this situation proved very hard to amend and took some years and a lot of financial resources to correct but, fortunately enough, nowadays such brand posses a very good image and enjoys an excellent market position despite the ongoing crisis, due in a large part to the change in their IP-enforcement policy and the aggressive protection of their IP rights portfolio since then.

So far, the facts listed above are well-known to most people on the IP community, but the main question remains: why is it important and even a good financial decision to spend valuable financial resources in the protection of your IP rights in times of a very hard economic crisis? The answer is simple: because it is an investment that works.

Before the crisis, countries with emerging economies -such as Mexico- represented an steadily increasing source of income for international companies present in such countries, since domestic markets were growing fueled by the expansion of their middle classes and their spending power; this also implicated that more profits were being obtained from the brands that were present in Mexico and those other emerging markets, and this was despite the fact that such emerging markets were and still are the main sources of pirated and counterfeited goods (unfortunately, Mexico is between the third and fourth largest producer, distributor and consumer of fake and/or illegally-copied goods, only surpassed by China, Russia and, in some products, by Italy).

The above shows that regardless of the extremely unfair competition that counterfeit goods represent for most -if not all- IP owners, even in countries like Mexico the market was large enough before the crisis to be profitable, which in turn justified and encouraged IP owners to invest on the enforcement and protection of their IP rights.

Nowadays, with the effects of the worst economic recession the world has seen in several decades at full force, companies with valuable IP assets that want to survive in Mexico and in other emerging economies ought to seriously consider investing in a well-planned strategy of protection and enforcement of their IP rights because, as previously seen, the risk of allowing the counterfeiters to take control of a market that was and -you can bet on it- will still be profitable is extremely high and may result irreversible when the economic situation improves.

To put it in another words: people that invest in security measures (alarms, safe boxes, guards, etc.) to protect their valuable assets when crime rates increase are less prone to suffer the loss of valuable goods, when compared to other people that did not want to “squander” on such measures because of hard financial times and, worse of all, if they are the victims of a robbery, most of those people almost never recover their property.

Fortunately, to counter the risks that piracy and counterfeiting represent, specially in the middle of a gruesome financial crisis, there are several means available that should be taken into consideration when planning a cost-effective strategy to enforce and protect IP-rights; such planning must be focused in three key aspects or goals:

i) The first effort should be directed at obtaining sufficient information to discover the source of the counterfeits and pirated goods, be them from foreign or domestic origin;
ii) Such information should point the direction where the legal actions should be aimed at, by effectively interrupting the process from production and/or import, storage, transportation and distribution of fake and pirated goods all the way to the selling points to the final consumer; iii) The legal actions should be well-publicized as strong statements that should reinforce the general perception about the relentless enforcement of IP rights (backed up by the two former aspects) of the IP owners.

If you wish to know more about these matters and maybe take actions to protect your IP rights, we can only recommend to seek professional counsel and, as we advised before, establish a serious commitment with one of your company's most valuable assets: your image and IP rights portfolio.