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HONG KONG REPORT 2004

By Alice Chan (excerpt)

A. Introduction

With the huge economic growth emanating for the Pan-Pearl River Delta in the Mainland China adjacent to Hong Kong, combating counterfeiting activities through the cross-border control points play an utmost significant role in stopping importation of counterfeits for re-export through Hong Kong to the rest of the world. The following figures demonstrate such importance:

- (a) each day, production of goods from the Guangdong province in the Mainland China adjacent to Hong Kong amounts to US\$385 million;
- (b) each day, the **Hong Kong Customs and Excise Department (“C & ED”)** has to check 27,000 container trucks and lorries crossing the boundary;
- (c) In 2003, the C & ED cleared a total of about 20 million **twenty-foot equivalent units (TEUs)** cargo containers, 13.9 million cross-boundary vehicles and 153 million passengers at the control points; and
- (d) In 2003, 2.64 million tones of air cargoes were processed at the **Hong Kong International Airport (HKIA)**

B. Effective Cross-boundary Measures for Anti-counterfeiting activities

To combat counterfeiting activities at the control points, the C & ED has installed a total of 42 sets of **Automatic Vehicle Recognition System (AVRS)** at the three land-boundary control points since May 2003. With AVRS, the C & ED is able to achieve higher accuracy in clearance and reduce the average clearance time for each goods vehicle by three seconds. In 2003, the C & ED also installed a Vehicle X-Ray Inspection System at the northbound land and another southbound lane at Lok Ma Chau, which results in shortening the inspection time for each goods vehicle from three to four hours to less than 20 minutes.

Other than installing new equipments, the C & ED has taken pre-emptive measures by establishing a global network with overseas customs administrations and enforcement agencies to combat transnational crimes. As a result of exchange of intelligence, significant cases in 2003

include the seizure of about HK\$16 million sticks of counterfeit cigarettes from two containers by the Italian Customs Agency.

In line with the operation of the **Marine Cargo Terminal (MCT)** at the HKIA, the C & ED adopted a one-stop clearance service for air-sea intermodal transshipment cargoes in and out of the Pearl River Delta.

In March 2003, the Intelligence Bureau of the C & ED introduced a “Single Trader Database” with a view to providing more detailed traders and business information to frontline officers, enhancing their enforcement effectiveness and facilitating trade. The Intelligence Bureau is developing Risk Profiles and Risk Priority Setting Engine to speed up C & ED’s risk-profiling capability and to achieve a higher targeting accuracy.

In 2003, the C & ED sent 95 officers overseas to receive training (including training from renowned universities in USA and the UK) on investigation, valuation techniques, intelligence analysis and risk assessment so as to cope with the world’s latest technologies and strategies in guarding the control points.

C. Recent Significant Seizure of Counterfeits by the C & ED

- 10 Sept 04 - Seized HK\$1.5 million worth of infringing goods, including about 5,000 pirated optical discs, 1,000 counterfeit handbags, 4,000 pairs of sports shoes and 15,000 telephone accessories at Man Kam To Control Point in a two-day anti-piracy parallel operation with the Guangdong Customs of the Mainland China.
- 29 July 04 - Seized 130,000 pieces of suspected counterfeit mobile phone accessories, valued at HK\$815 million.
- 7 July 04 - Successfully smashed a local pirated optical discs syndicate, which was suspected to have operated a number of discs replicating centres, storage centres, and a huge network of retail outlets of supplying pirated optical discs of computer software, and computer TV games. Hong Kong Customs first applied the Organised and Serious Crimes Ordinance in intellectual property rights related crime to freeze the assets of a syndicate worth nearly HK\$20 million.
- 10 June 04 - Seized HK\$5.6 million worth of goods (including 487 television sets and 148 air conditioners) in a 40-foot container from Huangpu, Mainland China to Panama through Hong Kong.
- 5 June 04 - Seized HK\$3.69 million of suspected counterfeit leather goods (including 12,641 handbags and 18 metal buckles) in a container from Huangpu, Mainland China to the United States through Hong Kong.
- 16 Mar 04 - Seized 27,000 pieces of counterfeit goods, including leather goods, ball pens and watches in HK\$3 million money worth.

D. Statistics of Seizures

In 2003, on the anti-piracy front, the C & ED detected 10341 copyright cases and arrested 1289 persons. About HK\$6.22 million pirated compact discs worth HK\$136 million were seized. In general, there has been a drastic decrease in piracy activities in 2003 as compared to that of 2002. At the manufacturing level, pirates now turn to operate small-scale workshops using computer and CD writers to replicate pirated discs inside industrial or domestic flats to evade C & ED's detection. At retail level, pirates adopt stealthy modus operandi such as through "self-service" at unmanned stalls and "pre-order sale" by displaying disc inlaid card folders inside the shop (i.e. customers pay first at the shop but collect the discs later at somewhere else with the receipt) to sell a small amount of discs.

To tackle internet piracy and other computer crime, the C & ED establish the Computer Forensic Laboratory in August 2002 to process digital evidence gathered from the Internet and other computer-related offences. Since the establishment of the Computer Forensic Laboratory, the C & ED has used more than HK\$6.6 million to procure the necessary equipment. So far, the Computer Forensic Laboratory has handled a total of 119 cases.

Customs and Excise Department Enforcement Results on Copyright Offences

	2002 ⁽⁵⁾ C&ED	2003 ⁽⁵⁾ C&ED	2004 ⁽⁵⁾ C&ED (Up to August) #	% change from 2002-2003
No. of Cases	11,477	10,340	5,541	-9.9%
No. of Arrests	1,409	1,287	781	-8.7%
Optical Disc type piracy				
Quantity of Optical Disc seizures ⁽¹⁾	9,524,536	6,216,984	6,184,904	-34.7%
Value of Optical Disc seizures(HK\$)	199,505,460	135,502,943	131,824,156	-32.1%
No. of Optical Disc production lines	35	21	37	-40.0%
Value of production lines(HK\$)	126,300,000	78,500,000	75,000,000	-37.8%
Quantity of CD-R Writer ⁽²⁾	1,377	655 *	443 *	-52.4%
Quantity of TV Game Cartridge	3,772	11,735	19,134	211.1%
Quantity of other seizures⁽³⁾	1,078,085	847,453 *	468,284 *	-21.4%
Total quantity of seizures⁽⁴⁾	10,607,805	7,076,848	6,672,802	-33.3%

Total value of seizures (HK\$)	334,422,752	229,446,297	221,138,351	-31.4%
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Remarks :

- (1) Optical disc seizures include DVD, music CD, CD-ROM, TV game disc/DVD, VCD, MD, LD and stampers.
- (2) CD-R Writer includes CD-R Writer, CD-R Reader and CD-R Drive.
- (3) Other seizures include blank optical disc, AV equipment, microcomputers, etc.
- (4) Total quantity of seizures include all seizures EXCEPT obscene articles, such as Obscene VCDs.
- (5) Before the new Case Processing System is smoothly run, a longer lag time of 2-3 months is required by Statistics Unit of C&ED to compile the department-wise enforcement statistics. Meanwhile, IPIB and STF statistics (which accounts for over 90% of the copyright enforcement seizures/arrests) up to the preceding month will be separately quoted for reference.

Provisional figures subject to change (CAPS position as at position as at 2 Sept 2004.)

* The figures have been adjusted according to statistics processed by IPIB.

In 2003, the C & ED detected 771 cases involving offences under the Trade Descriptions Ordinance and arrested 747 persons in 2003. Total seizures amounted to \$36.81 million pieces of counterfeit goods at a total value of around HK\$254 million, representing about four-fold and a 21 per cent increase respectively as compared with the seizures and corresponding total value in 2002. Ever since the Hong Kong government has implemented the "Individual Visit" scheme for Mainlanders (i.e. they could easily apply for a 14-day permit to visit Hong Kong), the number of individual visits from the Guangdong province increase substantially. The C & ED has increased man-power to detect smuggling and importation of counterfeits through individuals. Criminal syndicates continued to recruit Mainland visitors holding two-way permits to take part in importing pirated compact discs and counterfeit goods. In 2003, the C & ED prosecuted 1825 Mainland visitors who committed offences in Hong Kong, representing a more than two-fold increase, when compared with 570 Mainland visitors prosecuted in 2002.

Customs and Excise Department
Enforcement Results on Trade Mark/Trade Descriptions Offences

	<u>2002⁽²⁾</u>	<u>2003⁽²⁾</u>	<u>2004⁽²⁾</u>	<u>% change from</u> <u>2002-2003</u>
	<u>C&ED</u>	<u>C&ED</u>	<u>C&ED</u> <u>(Up to Aug) #</u>	
No. of Cases	839	771	546	-8.1%
No. of Arrests	641	730	388	13.9%
Quantity of Seizures				
Clothing (pcs.)	3,959,364	2,014,835	1,314,062	-49.1%
Leather goods (pcs.)	70,073	80,054	166,299	14.2%
Watch (nos.)	85,862	199,525	85,948	132.4%
Pharmaceutical Products (nos.)	18,622	222,511	6,045	1094.9%

Miscellaneous ⁽¹⁾	4,628,892	34,357,826	14,210,929	642.2%
Total	8,762,813	36,874,751	15,783,283	320.8%

Value of Seizures (HK\$M) **205.32** **254.04** **206.16** **23.7%**

Remarks :

- (1) Miscellaneous seizures include toys, stationery, household utensils, footwear, etc.
- (2) Before the new Case Processing System is smoothly run, a longer lag time of 2-3 months is required by Statistics Unit of C&ED to compile the department-wise enforcement statistics. Meanwhile, IPIB statistics up to the preceding month will be separately quoted for reference.

Provisional figures subject to change (CAPS position as at 2 September 2004)

F. Public Education

Increasing public awareness of intellectual property rights (IPR) and IPR protection is fundamental preventive measures to combat counterfeiting activities. Other than giving public lectures, studying guides, school visits, “I Pledge” concert in the past year, the Intellectual Property Department of Hong Kong (“IPD”) joined hands with other government departments, universities and IPR owners to launch new campaigns for the public.

Hong Kong as “A Shopper Paradise for Genuine Goods” Campaign

The C & ED and the IPD with the support of the Travel Industry Council of Hong Kong, the Hong Kong Tourism Board and the Consumer Council launched the campaign “Hong Kong – The Real Experience” in 2004.

Two major initiatives are the re-launch of the “No Fakes Pledge Scheme” run by the IPD and the establishment of the **Intellectual Property Rights Protection Alliance (“IPRPA”)** led by the C & ED.

Under the “No Fakes Pledge Scheme”, shoppers can easily distinguish reliable traders selling genuine goods by the “No Fakes” stickers displayed in their windows.

The IPRPA, set up in March 2004, aims at establishing a broad-based platform for fostering closer cooperation between the C & ED and the IPR industry. Cooperation between the enforcement bodies and owners of IPR is essential to the fight against IPR offences. In the past years, the C & ED maintained a close working relationship with the IPR industry, which facilitates the combating of the criminal offences relating to IPR. The IPRPA provides a more effective system in monitoring the piracy and counterfeiting activities and increase the public and traders’ awareness of the importance and advantages of IPR protection.

The public can access to IPRPA website at www.iprpa.org, where it depicts web-pages by various IPR owners on how to distinguish genuine goods from counterfeit goods. It also provides an effective means for verifying copyright owners and authorized users – the C & ED now only needs four weeks, instead of eight weeks, to verify infringing copyright cases. From its establishment in March up till October 2004, there are altogether 32 copyright or trademark holder organizations joining IPRPA as members.

3-D computer game to promote IP protection

On 20 August 2004, the IPD launched an action-packed 3-D computer game entitled “**Anti Piracy Action Team**” (APAT) to publicize IP rights and protection for youngsters. The actor in this computer game is an elite surveillance officer being sent from the 21 century back to the present via a time machine to carry out an operation to combat the piracy syndicate, “the Black Wolf Gang”. The computer game is produced in CD-Rom for free distribution to schools and non-Government organizations in Hong Kong and is also free for downloading at IPD’s web-site.

Conclusion

Successful anti-counterfeiting measures do not solely depend on the detection and seizure of counterfeits and pirated goods by the C & ED, but the joint efforts from various government departments, non-governmental organizations, IPR owners and the public at large to promote an all-round IP culture which covers sound legislation, efficient detection & enforcement, prompt prosecution, and above all, the public’s awareness of the importance of IPR and the protection. From what we have discussed above, Hong Kong has strived to make significant achievement in combating counterfeiting activities in the region.