

IPR Protection: A Program That Moves the Needle

Intellectual Property Strategies for Corporate Counsel

An international business was facing significant amounts of loss and brand devaluation due to counterfeit and other infringing goods in China. Under a mandate to monetize more intellectual property rights (IPR), the regional general counsel was tasked to renew IPR protection efforts. The results of past efforts had been checkered at best. Enormous resources had been spent on monitoring the markets, raiding the infringing products distribution channels, and product seizures. However, infringing products seemed to only increase in volume, quality and market share despite of these efforts.

Using Kenny's design and recommendation, the company implemented the following program. With top-level stakeholder buy-in, a cross-functional taskforce was assembled including representatives from legal, marketing, sales, supply chain, R&D, quality, internal audit, government relations and HR. The group agreed on the objectives and goals of the program pursuant to the mandate of senior management, including development of key performance indicators (KPIs) and measures such as rate of cannibalization of the company's product by infringing products.

Our facilitation enabled the taskforce to devise, test and implement actions in each of the stakeholders' areas of responsibility in this comprehensive initiative, *i.e.*, regular audits of facilities' security, supply chain, customers and business partners; tightening employees' right to workplace invention; simplified information categorization; stricter application of confidentiality measures; partition of trade secrets among functions and sub-groups; enhanced coordination between R&D and IPR staff on timely filing and maintenance of IPR applications; tightened monitoring of suppliers' contractual obligation to protect the company's IPR; and a more effective investigation program including monitoring unusual "night-shift" activities by suppliers and local competitors.

This program did not focus on "raid-and-seizure" operations which had previously formed the backbone of past interventions. Rather, Kenny coordinated professional investigative efforts and market leads to successfully obtain evidence that was in turn packaged by the government relations function to enlist relevant authorities in the ultimate shutting down of the infringing activities. Regular education and tighter coordination with customs authorities also resulted in tighter control of the export of infringing products.

Finally, by applying continuous improvement methodology over the next three years, starting with the initially agreed upon KPI measures, we were able to further refine and enhance the enforcement program which lead to 20% to 30% year-over-year reductions in the amount of counterfeit and other infringing goods entering the marketplace. This also correlated with net increases in sales for the corporation. This cross-functional, data driven approach delivered sustainable outcomes compared to the raid-and-seizure tactics that did not address the root cause of infringement.