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Managing Intellectual Property

The Global IP Resource

ASSERTIVE ANTICOUNTERFEITING IN AFRICA AND ASIA

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| Kingsley Egbuonu, Orlando

Your products are sold in emerging markets in ASEAN and Africa regions but you are dealing with a major counterfeiting issue. Considering that each country is unique in terms of legal system and culture, how should you tackle this problem?

Monday's session entitled "Anticounterfeiting Strategies in South East Asia and Africa" explored this. The session was moderated by Lara Kayode of O. Kayode & Co.

Kingsley Ejiofor of NAFDAC (Nigeria) said international and regional collaboration is crucial in the fight against counterfeits in Africa, and that his agency has benefitted from this approach. "When they escape from one place we can catch them where they go," says Ejiofor. He said conflict between various public authorities in a country can hinder efforts, and that engagement with local communities helps. "We've come to realize that awareness is key in this fight," he said. Ejiofor also informed registrants about next month's public hearing in the Nigerian Senate on the issue of counterfeiting.

Nick Redfearn of Rouse said the IP regimes and justice systems in ASEAN countries vary. For example, Thailand and Malaysia have specialized IP courts whereas Vietnam and Cambodia do not. Redfearn said strategically important ASEAN countries need to take the lead on IP enforcement in the region, picking out Singapore as a leading light. He noted the Internet has worsened counterfeiting in the region. "This is because of the boom in e-commerce. Governments are not yet able to understand where e-commerce is going," he said. For brand owners facing major counterfeiting problems in the region, Redfearn advised: "Self-help is the only way for now." He said the branded goods industries need to collaborate, just like the copyright-based industries, to deal with this problem.

Redfearn said the best way to approach the issue is through customs, but unfortunately most Southeast Asian countries do not yet have strong IP protection at customs. He believes Thailand's authorities operate well in this area, but it remains to be seen when others will get to that level. China, he said, has made progress due to health concerns. Corruption and smuggling can also affect anticounterfeiting efforts but this is not something the IP community can do anything about. "This is a failure of the legal system," he noted. He said the narrative should be that counterfeiting is part of general illegal activities.

"Don't put all your efforts into the administrative system. You need the criminal system to work too," he warned. His action points were: (1) act immediately, do not wait; (2) registration is critical, so do not come late to market, as trademark squatting is rife; (3) participate in organizations and be in the position to know what is happening on the ground in each country; and (4) be assertive, and do not take no for an answer.

William Mansfield of ABRO Industries Inc. urged Western brand owners not to give up on certain markets even though it is tough. "If you work in the right way you can be a success story," he said. He highlighted that the approach in developed countries is unlikely to work in developing countries. "In most of these countries lawsuits don't work. Let go of the lawsuit mentality," he warned. "These are different countries with different problems," he said, adding: "You have to adapt to the environment. Be prepared to think how they think." Lastly, he urged brand owners to venture out into these countries and present their cases to the government.