

# Global Brand Management: Risks and Strategies



**Interview with: Allan Diamond, Managing Partner, Diamond McCarthy LLP**

**“Chief Litigation Officers (CLOs)** should not limit themselves to traditional methods of protecting their companies’ brand and should think creatively in terms of implementing a global strategy that will result in keeping their authorized supply channel partners happy, minimizing lost sales/profits, and potentially obtaining affirmative recoveries for the company and its in-house legal department,” advises Allan Diamond, Managing Partner, **Diamond McCarthy LLP**.

Diamond McCarthy LLP is a service provider at the **marcus evans Chief Litigation Officer Summit Fall 2015**, in Miami, Florida, September 20-22.

## **What are the current threats to global brands?**

The first is counterfeiting typically through the production and sale of knockoffs of branded products. The second is gray marketing. Gray marketers buy genuine original equipment manufactured products (OEM) at a discount abroad for resale in the US at a higher price. This is so called parallel importation. While not strictly illegal in the US, as opposed to Europe, gray marketers may harm the brand by giving US customers the false impression that such products are authorized or endorsed by the original manufacturer. Moreover, use of the original manufacturer’s trademarks that

go beyond simply identifying the product for sale may constitute infringement. For example, when unauthorized resellers falsely advertise and associate branded products of original manufacturers by offering product amenities, such as rebates, warranties, special programs and the like that such gray market resellers have no authority to offer or are incapable of delivering. This results in economic harm not only to the original manufacturer, but also to the local authorized reseller who cannot reduce prices due to its contractual agreement with the original manufacturer.

The third threat involves all of those companies and individuals that are generally unfairly competing. For example, authorized resellers abroad sell products to unauthorized third parties, likely in violation of their contractual obligations with the original manufacturer. These third parties then acquire the products at low prices and resell them into the US and other market places creating an unfair competition.

Detection is a major challenge since unauthorized resellers can offer a combination of gray market and counterfeit goods. These threats are currently plentiful in the marketplace and happen all the time especially when original manufacturers do not have a closed distribution system, thus making it difficult, if not impossible, to forensically track the location and identity of their original product.

## **How can companies recover from counterfeiters or gray marketers?**

There are strong laws in the US and especially in Europe, known as Fortress Europe from a gray marketing perspective, allowing for the investigation, identification of and recovery from wrongdoers, including counterfeiters, gray marketers and others involved in false advertising and association activities that creates unfair competition in the market place. There are also trademark infringement claims

that can be brought against those that are counterfeiting, passing off goods as something they are not, or simply falsely misrepresenting protected marks.

The counterfeiters and gray marketers typically have partners in either the US or Europe and keep their assets there. Accordingly, one thing that can be done is to identify the location of the assets. Even if the wrongdoers are based out of one’s geographical reach abroad in jurisdictions where enforcement of trademark rights are less effective, they tend to sell products in the US and Europe where their assets can either be seized or frozen.

## Detection is a major challenge

## **If you were to give one message to CLOs, what would that be?**

Global brand protection strategies may differ from company to company and due care must be given before embarking on any aggressive path. If it is done correctly and appropriately, however, CLOs can indeed employ a global strategy minimizing lost profits, strengthening companies’ supply chain networks, protecting and enforcing their product brands, and taking steps, when appropriate, to obtain affirmative monetary recoveries, all of which can result in decreased in-house legal budget expenditures and very happy company managers, sales people, and supply chain partners.

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### Contact

Luzdary Hammad, Press Manager, **marcus evans**, Summits Division

Tel: + 357 22 849 385

Email: [press@marcusevanscy.com](mailto:press@marcusevanscy.com)

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