

Brand protection challenges in 2017

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The ability to juggle various interests has always been a key skill for any successful in-house brand protection manager. Developments in recent years have, however, increased the need to also have sound negotiation, communication and diplomacy skills: a successful brand protection manager will exercise these skills both within their company and with the ever growing number and complexity of external partners and stakeholders they encounter.

In most companies, pressure on legal and IP budgets is a constant theme. As is the need to “defend” IP work by showing the relevance and value add for the company. This includes a number of “soft” factors, which are difficult to quantify, such as protecting the reputation and value of a brand and the investments made in a particular product. It also means an increasing number of “hard” numerical facts to report and put into perspective: number of take-downs on marketplaces, infringing websites and social media accounts being removed, number of oppositions, C&D letters sent, custom procedures, counterfeit goods being destroyed, etc., etc.. All these facts can be subdivided into a nearly endless list of details: which countries, which IP rights, which platforms are concerned, type of infringements, who were the infringers and where did they sit. The form, the audience and frequency of any reporting method must of course also be carefully considered. In sum, **the art of meaningful reporting** has become a major task not only for in-house IP departments but also for the various number of external partners and agencies they work with. In addition to choosing the right facts and figures to track across jurisdictions, external agencies and in-house colleagues, the data must also be put in an attractive and understandable format. Certainly, a good, effective IP report must go beyond lists of numbers. It must try to show the real impact of the IP work for the business, whether by telling concrete “stories” on the field, putting things into context or by distilling the relevant numbers or facts that had a tangible impact on a particular market or deal.

Outside a company, life has in no way become easier for IP managers, in particular on the enforcement side. The internet is mainly to blame here: the ever growing number of online sources for doing business not only makes it challenging to keep track of the relevant ones, each of them usually comes with their own policies and procedures, sometimes different across jurisdictions. This means that you must adapt your own enforcement strategies to these various requirements and can no longer have a “one strategy fits all” approach.

¹ This article was written in the author’s personal capacity. The views expressed are his own and do not necessarily represent the views of Swarovski AG.

To add to this complexity, an increasing number of companies have or are in the process of using these platforms themselves. Even some luxury brands are now starting to sell on Amazon or Tmall or opening their own online e-commerce channels. Being a partner of these platforms opens new opportunities on the IP side and forces IP managers to work with their online business colleagues to discuss how to use your own brand but also how to deal with third parties who use your brand, be it illegitimately, by mistake or even legally, such as fair use or in relation to permitted parallel imports. It also requires a change of perspective in relation to some of these platforms. They can no longer be seen as the “evil” playground for counterfeiters and other criminals, serving as their perfect distribution platform while being difficult with brand owners and making it hard for them to enforce their rights by way of all sorts of bureaucratic and administrative burdens. Instead, IP managers have to increasingly see them as partners, having the same goal of reducing counterfeits and hence protecting end-consumers from low quality and potentially dangerous products. This change in attitude can be observed for some platforms at least, which genuinely take IP seriously and understand the benefits of a “clean” marketplace and efficient and effective procedures to take down infringing content. In the best case scenario, this will lead to **cooperation between online e-commerce platforms and brand owners**, in which they think about best ways and strategies to protect end-consumers, educate and inform the sellers on these platforms about the importance of IP and giving them the chance to comply with brand guidelines to avoid take downs. If successful, such a collaboration will lead to a win-win situation. No one likes take downs. The alternative is well-educated sellers and informed end-consumers: brands, platforms, sellers and end-consumers all benefit from this. This might be a somewhat naive view of the cold reality of online IP infringements, and there are certainly some notoriously bad players whose business model consists of selling counterfeits. Nevertheless, increased cooperation between all players and developing a common understanding and approach towards IP protection appears to be the best option, towards which all players should tend.

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