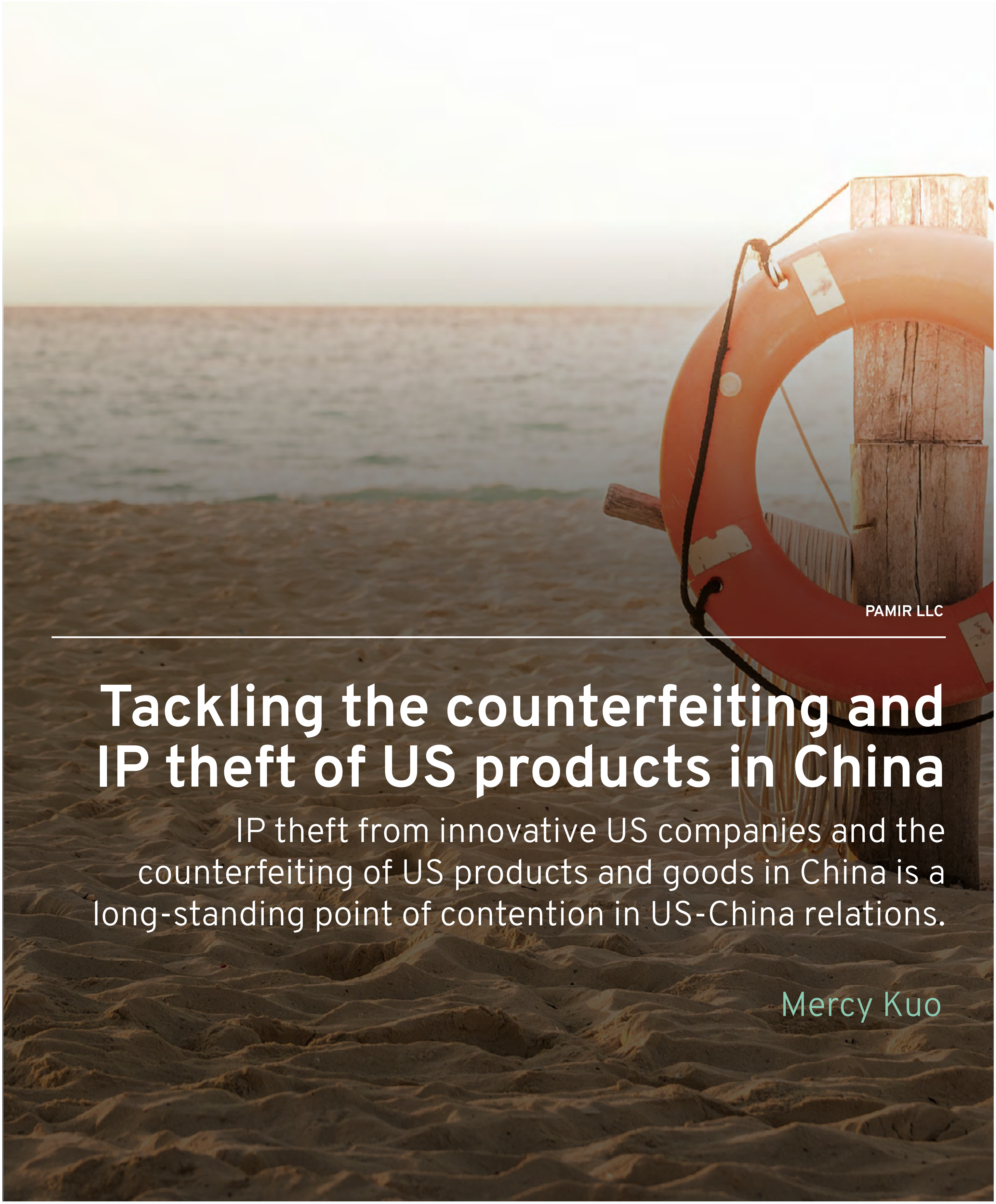


PAMIR LLC

Tackling the counterfeiting and IP theft of US products in China

IP theft from innovative US companies and the counterfeiting of US products and goods in China is a long-standing point of contention in US-China relations.

Mercy Kuo

PAMIR

Risk Data and Analysis to guide your decisions

Our analytical teams provide deep insight on geopolitical impact, risk landscape, and competitive strategies in foreign markets.

Pamir was founded in 2006 to help US corporations protect innovation, people and market share in foreign markets where there is no level playing field. Since then, we have served over 50 Fortune 500 companies in Agriculture, Aerospace, Automation, Biomedicine, Chemicals, Energy, Financial Services, Advanced Materials, Pharmaceuticals and Semiconductors.

PAMIR

Pamir Consulting LLC

8045 Leesburg Pike, Suite 220,
Vienna, Virginia
USA | 22182

Office: +1 703 783 5020
Mobile: +1 231 360 3408
Email: info@pamirllc.com
Website: www.pamirllc.com

The counterfeiting issue in China

On 26 April 2023, the Market Supervision and Administration (MSA) authorities located in Yiwu City, Zhejiang Province, China raided a warehouse in the city and seized hundreds of counterfeit belts and buckles based on Salvatore Ferragamo's iconic Gancini belt. It followed a joint investigation by the MSA and Amazon's Counterfeit Crimes Unit (CCU).

The fact that Amazon has a CCU based in China represents a growing trend for US companies setting up anti-counterfeiting units in the PRC to combat the growing problem of IP theft and counterfeiting. Pamir estimates that there are now between 30 to 40 US companies with active anti-counterfeiting units in China. It's a significant problem.

The theft of 'titanium white'

A high-profile example of IP theft is the case of Du Pont's titanium dioxide (TiO_2) protocol for producing 'titanium white', a superior brilliant white used in everyday items such as toothpaste and foodstuff.

Walter Liew and Tim Spitler stole DuPont's protocols for producing its superior titanium white from 1997 through 2011 and used it to win Liew's company at least three contracts from Pangang Group valued at $28 million. In 2014, Liew was convicted of economic espionage, possession of trade secrets, and tax fraud in federal court and began a 15-year sentence in prison.

Tackling counterfeiting and IP theft is a high priority for the US Government, which estimates that 41 percent of the country's total gross domestic product, or about US$7.8 trillion, was derived from IP-intensive industries in 2019, according to the US Patent and Trademark Office.

According to the Notorious Markets List, which is compiled annually by the United States Trade Representative (USTR), China - together with transshipped goods to Hong Kong - leads the world in counterfeit and pirated products, accounting for 83 percent of the value (measured by manufacturer's RRP) and 79 percent of the volume of counterfeit and pirated goods seized by US Customs and Border Protection in 2021.

Of course, it's not just IP theft. Many US and Western companies are keen to tap into the huge Chinese market, but counterfeiting by local companies is a significant problem.

The idiom in China runs along the lines of: "If it's worth buying, it's worth counterfeiting."

Notorious Markets List

The USTR identifies 39 online markets and 33 physical markets that reportedly engage in or facilitate substantial trademark counterfeiting or copyright piracy. It cites the WeChat e-commerce ecosystem as one of the largest platforms for counterfeit goods in China.

China-based online markets AliExpress, Baidu Wangpan, DHGate, Pinduoduo, and Taobao also remain part of the notorious markets list.

NOTORIOUS MARKETS: THE SEVEN WORST OFFENDERS

The **Notorious Markets List** cites the top seven worst physical markets for counterfeiting in China as:

- **Chenghai District, Shantou, Guangdong Province** - the district is well-known for factories that produce counterfeit toys, plastic products, and other consumer goods. Enforcement in the region is reportedly extremely difficult due to the closed nature of industry in the district and the close relations businesses have with local administrative and criminal law enforcement authorities.
- **Huaqiangbei Electronics Malls, including the Yuan Wang, Huaqiangbei Digital World, Long Sheng Communications Market, and Man Har Digital Plaza Malls, Shenzhen, Guangdong Province** - described by right holders as "the epicenter of the counterfeit electronics trade". Approximately 20 malls in the area serve as a central distribution hub for counterfeit electronic devices and components, as well as counterfeit smartphones, tablets, wireless earbuds, and other peripherals.
- **Silk Market, Beijing** - Silk Market remains one of the biggest markets for counterfeit goods. As counterfeit goods sales have moved online, some sellers reportedly offer to ship counterfeit goods to foreign countries to evade detection by customs enforcement authorities.
- **Wu'ai Market, Shenyang, Liaoning Province** - A large wholesale and retail market in Northeastern China that has a state-owned management company. The market is a hub for the distribution of counterfeit shoes, jewelry, handbags, luggage, and apparel.
- **Xingwang International Clothing Market, Shanghai** - A notable source of medium- to high-quality counterfeit fashion accessories, cosmetics, footwear, jewelry, and watches.
- **Yiwu International Merchandise City, Yiwu, Zhejiang Province** - One of the largest small-commodities venues linking manufacturers of counterfeit goods - such as handbags, shoes, and apparel - with large-scale distributors.
- **Zhanxi Market / Watch Market, Guangzhou Province** - A group of large, mall-sized markets located within a mile of each other, offering mainly counterfeit apparel, shoes, and watches. Right holders report frequent inspections and shop closures, but law enforcement authorities reportedly refrain from taking strong enforcement measures to minimize employment losses.

In addition, the USTR identifies seven physical markets in China that increasingly use brick-and-mortar storefronts as a contact point for customers and to support online sales of counterfeits.

While China claims to be responding to international calls for it to tighten counterfeiting legislation and punishment, one of the main challenges is that local enforcement activities can be patchy. As noted above, in the Chenghai District, for example, businesses and local authorities are in close alignment, as the latter are keen to protect local employment, which can make enforcement challenging.

A case of 'Whack-A-Mole'

However, every now and then local authorities make a show of how they are dealing with counterfeiting and IP infringement. For example, in November 2022, Chinese authorities made it known that they had destroyed 3,000 tonnes of counterfeit products valued at 500 million yuan ($69 billion) at an event held across 17 provinces and cities. The products were either burnt, dismantled, or thrown into landfill, and included the likes of counterfeit products from brands such as Nike and Louis Vuitton. Pamir considers the game of counterfeiting in China as being similar to a game of 'Whack-A-Mole' – a perfunctory performance rather than a systematic approach to resolving the problem.

At the same time, punishment for administrative errors only go as far as a proverbial slap on the wrist and the seizure of goods. Criminal proceedings can take years to get to court and even then, punishments are often unduly lenient.

Several laws and regulations govern how US and Western companies can protect their IP rights. China's primary IP laws are listed below:

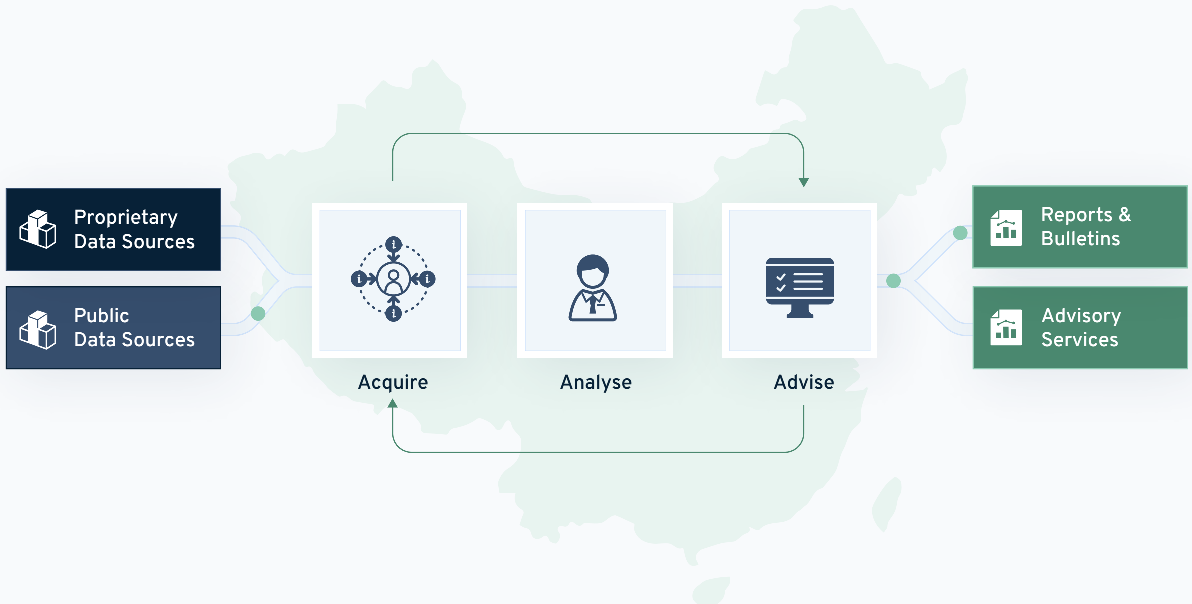
- Trademark Law
- Copyright Law
- Patent Law
- Administrative Punishment Law
- E-commence Law
- Anti-unfair Competition Law
- Civil Procedure Law
- Criminal Procedure Law

In addition, IP rights holders have the ability to initiate a civil litigation before the local Court in which they can seek, among other things, compensation. If the counterfeiting constitutes a crime, the local Public Security Bureau (PSB) may initiate a criminal action.

Chinese Customs also enforce IP rights at the border under the 'Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights'. IP rights holders should record their IP rights with Customs, file complaints with online e-commerce platforms, and file complaints with the local Administrative Authority (the AIC).

Recordation is a highly recommended course of action. Due to the sheer volume of movement of goods across Chinese borders, monitoring and identifying counterfeit goods is nigh on impossible. So right holders should record any infringements with the General Administration of China Customs (GACC).

The procedure is cost-free and straightforward, and recordation should be sent to the GACC, including the status of your IP rights, any contact details of the suspected infringer, and pictures or samples of the product and its packaging. This can help Chinese Customs to identify potential infringement at the border. Of course, the same also applies to the issue of local (non-export) infringements, which should be reported to the AIC.



Pamir: Fortune favors the brave

Pamir has built relationships with local resources and US businesses in China over decades. We act on infringements, which may be identified by US anti-counterfeit teams or customer intelligence, through our local resources, who will gather evidence about the alleged infringement.

We have accurate, up to date, on-the-ground intelligence, and unlike other advisory firms, we act from a local, in-country perspective, rather than looking in from the outside.

Our proven track record on anti-counterfeiting has resulted in a series of successful seizures of goods and local raids on factories and warehouses.

All of our data is locally sourced and, importantly, managed in accordance with local data protection regulations, which we leverage and process to deliver unique insights and deliverables. Our expertise and regional knowledge can help you identify threats that you may not even yet know about.

We promote the idea that 'fortune favors the brave', which means that we can advise you on how to assess high-impact, difficult decisions and be proactive in protecting your IP in China. We empower bold thinking by giving clients the confidence to navigate challenging environments and compete successfully on unfair playing fields.

Our intelligence collection capabilities are based on long-standing investments, providing clear actions and guidance, that enable you to respond to and pre-empt events. We provide privileged access to experts who have firsthand experience in the inner workings of China's complex legal system. We take agency methodologies, proven at the highest levels - and adapt them for the commercial market.

Ultimately, our goal is to help you to protect your core and critical assets, your people, and your profits through pre-empting, assessing, and mitigating risks. Our successful track record of helping US companies to mitigate risk in China is second to none. Contact us today to discuss your needs and challenges.

Address

8045 Leesburg Pike,
Suite 220,
Vienna, Virginia
USA | 22182

Phone

Office: +1 703 783 5020
Mobile: +1 231 360 3408

Online

Email: info@pamirllc.com
Website: www.pamirllc.com