

**RETHINKING COUNTERFEITING IN LIGHT OF THE
RELATIONSHIP BETWEEN INTELLECTUAL
PROPERTY AND DEVELOPMENT**

YAN LI

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Faculty of Law

University of Technology, Sydney

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CERTIFICATE OF ORIGINAL AUTHORSHIP

I certify that the work in this thesis has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree except as fully acknowledged within the text.

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LIST OF ABBREVIATIONS

A2K	Access to Knowledge
ACG	Anti-Counterfeiting Group
ACTA	Anti-Counterfeiting Trade Agreement
APEC	Asia-Pacific Economic Cooperation
AQSIQ	General Administration of Quality Supervision, Inspection and Quarantine
ART	Anti-Retroviral Therapy
BASCAP	Business Action to Stop Counterfeiting and Piracy
BIAC	Business and Industry Advisory Committee
CEBR	Centre for Economics and Business Research
CESCR	Committee of Economic, Social and Cultural Rights
CTEA	Sonny Bono Copyright Term Extension Act
DMCA	Digital Millennium Copyright Act
EPO	European Patent Office
EU	European Union
FDA	Food and Drug Administration
FDI	foreign direct investment
GAC	General Administration of Customs
GACG	Global Anti-Counterfeiting Network
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Production
GFD	Group of Friends of Development
GNI	Gross National Income
GNP	Gross National Production
HDI	Human Development Index
HDR	Human Development Report
IACC	International Anti-Counterfeiting Coalition
IBRD	International Bank of Reconstruction and Development
ICCPR	International Covenant on Civil and Political Rights
ICCPR	International Chamber of Commerce
ICESCR	International Covenants on Economic, Social and Cultural Rights
IDA	International Development Association
IDC	International Data Corporation
IFPMA	International Federation of Pharmaceutical Manufacturers Associations
IHDI	Inequality-adjusted Human Development Index
IIPi	International Intellectual Property Institute
IMF	International Monetary Fund
IMPACT	International Medical Products Anti-Counterfeiting Taskforce
IPR	Intellectual Property Right
MOU	Memorandum of Understanding

MPAA	Motion Picture Association of America
MSF	Médecins sans Frontières
NCA	National Copyright Administration
NGOs	Non-Government Organizations
NPC	National People's Congress
NPEs	Non-Practising Entities
OECD	Organization of Economic Co-operation and Development
PIPA	Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act
PRGF	Poverty Reduction and Growth Facility
RIAA	Recording Industry Association of America
SAIC	State Administration of Industry and Commerce
SCMGA	Stop Counterfeiting in Manufactured Goods Act
SFFC	spurious/falsey-labelled/ falsified/counterfeit
SIPO	State Intellectual Property Office of China
SOPA	Stop Online Piracy Act
SPLT	Substantive Patent Law Treaty
TPP	Trans-Pacific Partnership Agreement
TRIPs	Agreement on Trade Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UNDP	The United Nations Development Program
UNDRD	Declaration on the Right to Development
UNIDO	United Nations Industrial Development Organization
USTR	United States Trade Representative
WESP	World Economic Situation and Prospects
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

ABSTRACT

The thesis takes a critical approach to examine the meaning, the impact and the cause of counterfeiting within the context of the ever-increasing standards of international intellectual property right (IPR) protection and anti-counterfeiting enforcement. It finds that, while the TRIPs agreement does not require imitation to constitute counterfeiting, in practice using an identical trademark on the same goods will almost always involve product imitation as well as trademark imitation.

Drawing on economic and historical studies that demonstrate the value of imitation to development, this thesis argues that counterfeiting involves product imitation that can benefit consumer welfare and the original brand owner, support the local economy in regions where counterfeiting takes place, and facilitate the development of innovative capacity in developing countries. This value of imitation is supported by the history of the early stages of development in developed countries, which adopted protectionist policies, including intellectual property policy, to encourage importation, imitation and improvement of foreign technologies and products, so as to advance their national interest in increased innovative capacity.

It has been commonly accepted that strong IPR protection does not always stimulate innovation and promote development. Rather, when inappropriately designed, stringent IPR protection is very likely to stifle innovation and hamper growth. One important measure of whether IPR protection is appropriately designed depends on the balancing of such protection against the demands of development. In developing economies, the lack of innovative capacity determines that these economies still rely substantially on imitation and assimilation of foreign advanced technology and other forms of knowledge. Within this conceptual framework, this thesis argues that the prohibition of counterfeiting as illegal imitation reflects the imbalance between high standards of IPR protection and low levels of development.

These arguments are further tested and confirmed in the case study of counterfeiting in China. This thesis compares several Chinese terms with similar meanings to the English word counterfeiting, and conducts a doctrinal analysis of the Chinese approach to defining and regulating counterfeiting. Based on empirical data on patent statistics and development, this thesis argues that China remains largely an imitative economy with limited innovative capacity and still relies on imitation of foreign technologies and other forms of knowledge. It is thus not surprising that China adopts a cautious attitude towards prohibiting counterfeiting, which in a sense enables the pervasiveness of imitation in its domestic society.