

**Industrial Modernization Center
(IMC)**

Assessment of Brand Names Protection in Egypt

Talal Abu Ghazaleh Associates Ltd.



Al Dar Consultations

Final Report

2007

Subject: Assessment of Brand Names Protection
Ref: PS_165
Submitted to: IMC- Cairo
Submitted by: Talal-Abu Ghazaleh Associates Ltd (TAGA)

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I- INTRODUCTION

The aim of this study is to establish the scope and impact of the infringement and piracy of trademarks, to measure the public awareness of this subject, and to propose recommendations on how to begin combating trademark piracy and infringement.

This report, commissioned by Egypt TAGA, reviews the economic costs of counterfeit and pirated goods on the Egyptian economy. Tobacco and cigarettes, food and beverages, ready-made garments (clothing and footwear), electrical goods, pharmaceuticals, and home personal care products are sold every day in the huge Egyptian market of nearly 70 million consumers with purchasing power parity which is estimated as 1734.51 billion Egyptian pounds.

Counterfeiting and piracy hurt not only companies doing business in Egypt, but all major Egyptians industries, such as home personal care industries, which lose more than 30% of their sales to these illegal activities. Consequently, there are fewer jobs for Egyptians, the government collects less sales tax revenues, Egyptian consumers must pay higher prices for inferior products, and counterfeited products endanger the health and safety of consumers.

Measuring the full economic impact of counterfeiting and piracy is hard because these activities are clandestine. Even the Egyptian government lacks precise data on the economic damage caused by the sales of counterfeit or pirated goods.

Despite these limitations, a review of the best available industry estimates indicate that at least 2.1 billion Egyptian pounds are lost every year due to counterfeiting and piracy just on the types of goods measured in this study. The pharmaceuticals industry alone estimates yearly losses of nearly 28 million Egyptian pounds.

In addition, industry estimates also show that Egypt would have netted about 2100 million Egyptian pounds in additional sales tax revenue in 2003/2004 if counterfeiting or piracy had been eliminated. The report further establishes that if counterfeiting had been eliminated, an additional 488 million Egyptian pounds in income tax revenue would have been generated in the fiscal year 2003/2004.



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The indirect losses from counterfeiting were estimated to be 2.1 billion Egyptian pounds annually. Finally, if counterfeiting was significantly reduced the projected increase in Foreign Direct Investment (FDI) in Egypt in the fiscal year 2006/2007 would be 3.42 billion Egyptian pounds.



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II- THE ECONOMIC IMPACT OF COUNTERFEITING

1. INTRODUCTION

1. THE COUNTERFEITING INDUSTRY

1.1 DEFINITIONS AND TERMINOLOGY

Counterfeiting is ultimately an infringement of the legal rights of an owner of intellectual property. The Agreement on Trade Related Aspects of Intellectual Property Rights (the TRIPS Agreement) defines counterfeiting and piracy as follows:

FOR THE PURPOSE OF THIS AGREEMENT:

- a) “Counterfeit trademark goods” shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;
- b) “Pirated copyright goods” shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

Technically, the English term “counterfeiting” only refers to specific cases of trademark infringement. However, in practice, the term is allowed to encompass any making of a product which so closely imitates the appearance of the product of another as to mislead a consumer that it is the product of another. This is in line with the German term “*Produktpiraterie*” and the French term “*contrefaçon*”, which both cover a broader range of intellectual property right infringement (Clark, 1997).

A trademark or a service mark may be any word, name, number(s), letter(s), symbol, logo, slogan, package design, sound, color, smell, or other device, or combination thereof, whose purpose is to identify and distinguish particular products from others in the market. Thus, the term Coca Cola ® is a trademark which differentiates that product from other cola products such as Pepsi Cola ® (which itself is a trademark). The shape of the original Coca Cola bottle



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is also a trademark. Trademarks serve a variety of functions for their owners and society. Some of these include helping consumers identify and purchase a product or service based on its nature and quality, eliminating confusion in the market place, and protecting an owner's reputation or goodwill. Trademarks also reduce consumers' search costs by providing them with valuable information about brands while encouraging quality products.

2. COUNTERFEITING AND PIRACY HARM THE EGYPTIAN ECONOMY

2.1 INTRODUCTION

As part of its mission to actively pursue public policy matters relating to trademarks, Industrial Modernization Centre (IMC) requested that TAGA, Inc., located in 51 El Hegaz St., Egypt, to assess the impact of brand names violations in Egypt due to infringement and counterfeiting. Combating counterfeiting and infringement is tremendously costly for individual companies, and getting the authorities in many countries to address the problem can be difficult. A study providing quantitative evidence of the magnitude of the losses suffered from such activities would be a powerful tool in its ongoing efforts to persuade governments to commit more resources to reducing the level of counterfeiting and infringement.

This estimation was carried out for the following segments:

- Food and beverage
- Ready-made garments (clothing and footwear)
- Tobacco and cigarettes
- Electrical goods
- Pharmaceuticals
- Home personal care products

This study measures the impact of the level of trademark protection on sales of trademarked products directly, without making any assumptions about the actual level of counterfeiting or the effect, in turn, of counterfeiting on sales.



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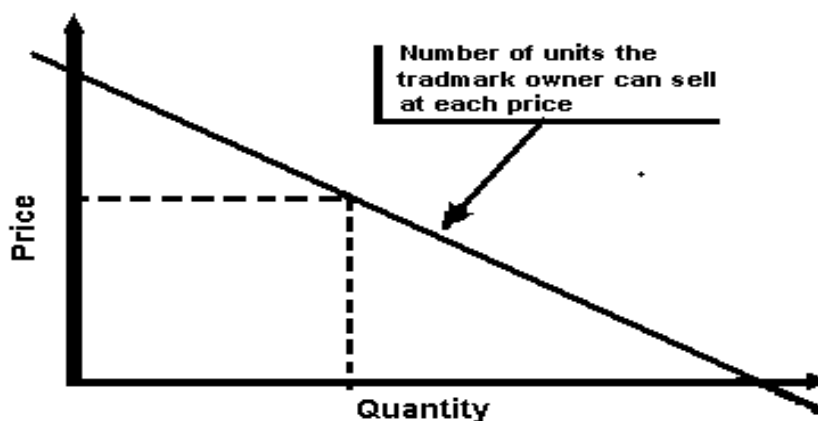
A univariant measure of trademark protection was constructed using the results of a survey of 1,000 attorneys in Cairo, Alexandria and Tanta. The second input into the model estimation effort was a database of (product groups) sales and quantity figures from some sectors for the period 2000 through 2004. The results indicate that in 2000, the participating companies lost an average of 22 % of their total sales, or 54 million Egyptian pounds, in Egypt for the sample products examined only, as a result of trademark infringement and counterfeiting. This estimate is based on per-capita sales for each of the product categories. The results of the model clearly demonstrate the high price that trademark owners must pay because of inadequate trademark protection.

2.2 THE VALUE OF TRADEMARKS

The economic treatment of trademarks and their value are derived from the exclusivity of the trademark. The owner of the trademark has the sole right to sell products with that mark. The value of a trademark can be measured by the *demand curve*: the measure of the quantity of the trademarked product people are willing to purchase at a given price.

In presenting the economic theory of trademarks, we begin by constructing the demand curve. We assume that sales of a trademarked product will fall as its price rises. In [Figure 1](#), we show the demand curve as a straight line, a simplification to assist in understanding the basic theory.

Figure1. Trademark Owner's Demand Curve



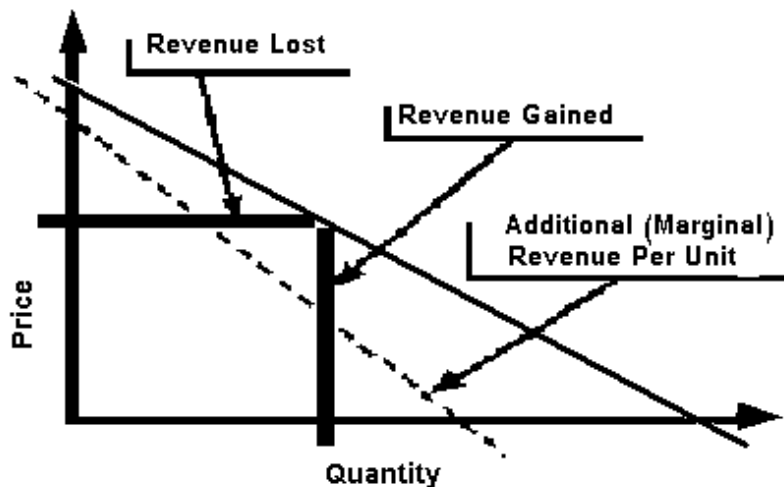
Source: A study by the International trademark Association INTA, (1998) the economic Impact of trademark counterfeiting and infringement: estimation of the impact of trademark counterfeiting and infringement on worldwide sales of apparel and footwear. (linear relationship)

The trademark owner must decide on a price. The lower the price, the more units of the trademarked goods or services the firm can sell. The demand curve contains all the information about the market for the trademarked goods. For example, to the extent that other products are close substitutes in the consumer's mind, the curve will be flatter.

In Figure 1, the area delineated by the dotted lines is the product of the number of units sold and the price at which they are sold, namely, the revenue.

When the firm lowers the price, it obtains additional sales, but loses revenue from previous sales that are now made at the lower price. The lower price for both previous quantities sold as well as new quantities causes revenue per unit to fall faster than price per unit.

Figure 2. Trademark Owner's Marginal Revenue Curve



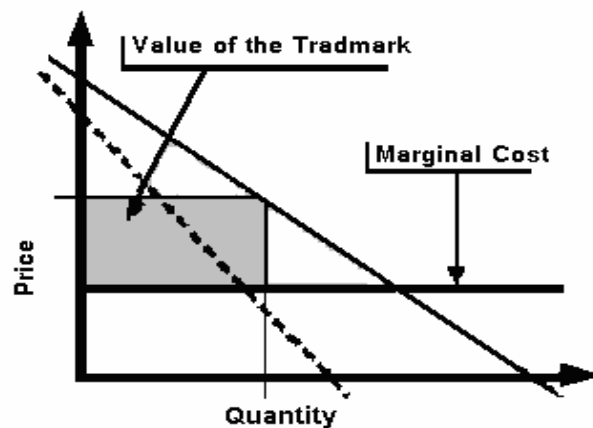
Source: A study by the International trademark Association INTA, (1998) the economic Impact of trademark counterfeiting and infringement: estimation of the impact of trademark counterfeiting and infringement on worldwide sales of apparel and footwear. (linear relationship)

The additional profit obtained from increasing sales by one unit is given by the marginal revenue less the marginal cost. The marginal cost is the cost of producing and selling one more unit.

For simplicity, let us assume the marginal cost is constant (see [Figure 3](#)). This is a reasonable assumption in most cases, as the additional cost is just the sum of the additional labor and materials required. An example of this would be an increase of the hours of plant operation by 10% to produce 10% more product. Note that plant and equipment costs are fixed while labor and material costs vary with the quantity produced.

A producer will maximize total profit by increasing production until the marginal revenue falls to the level of the marginal cost, producing zero marginal profit. As long as marginal revenue exceeds marginal cost, each additional unit sold will contribute a diminishing, but still positive, return.

Figure 3. Marginal Cost, Point of Maximum Profit for the Trademark Owner, and the value of the Trademark



Source: A study by the International trademark Association INTA, (1998) the economic Impact of trademark counterfeiting and infringement: estimation of the impact of trademark counterfeiting and infringement on worldwide sales of apparel and footwear. (linear relationship)

The total of revenue less marginal cost, shown by the shaded rectangle in Figure 3, is the value of the trademark. If the goods or services being sold were completely undifferentiated from all other similar products and there were enough of these similar products that the firm could not control the price by setting the level of its own production, then the demand curve would be flat and there would be no value. Only the extent of product differentiation by the trademark allows the producer to set the price and thus earn a value for the trademark.

We will estimate the losses based on a theoretical model using the following data:

- Total sales of trademarked goods in Egypt;
- Per capita gross domestic product in Egypt;
- Average price of the trademarked goods in Egypt

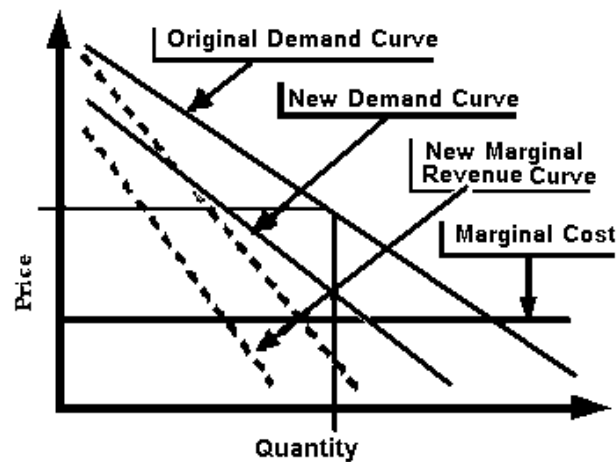
TO SUMMARIZE THE THEORY:

- The exclusivity of the trademark can be translated into economic terms as a downward sloping demand curve for the trademarked product. The more the trademark sets the trademarked products apart from competing products, the greater the trademark's value, and the steeper the demand curve.

- For simplicity, a flat marginal cost curve is assumed--that is, each additional unit of the product costs the same to produce as the last unit of the product.

As shown in [Figure 4](#), the presence of counterfeiting and infringement produces a leftward shift in the demand curve. That is, at each price, the trademark owner can sell less of the trademarked product in a given market.

Figure 4. New Demand and Marginal Revenue Curves in the Presence of Counterfeiting

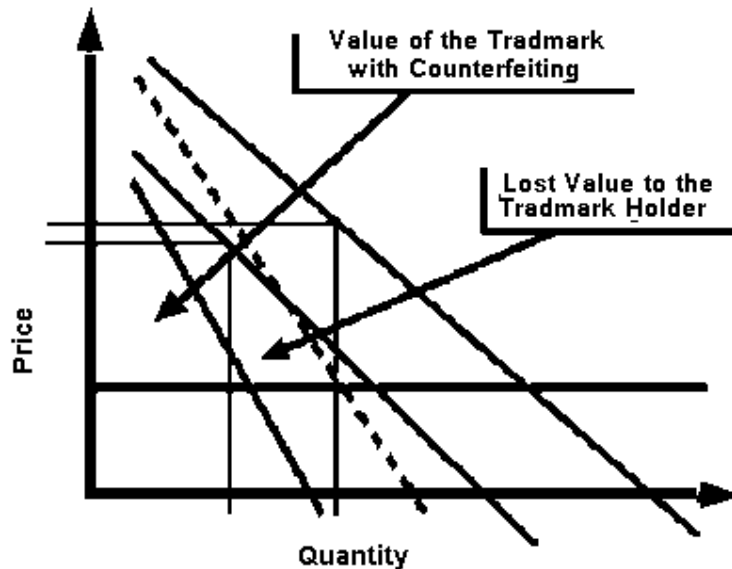


Source: A study by the International trademark Association INTA, (1998) the economic Impact of trademark counterfeiting and infringement: estimation of the impact of trademark counterfeiting and infringement on worldwide sales of apparel and footwear. (linear relationship)

Thus, the implication of lower trademark protection is lower revenues, reflecting lower prices and / or lower sales volumes of the trademarked product in a given market. The shape of the new demand curve depends on the nature of the counterfeiting or infringement. The nature and amount of counterfeiting or infringement need not be known, so long as it is possible to measure the shift in demand.

Projected losses are shown in [Figure 5](#).

Figure 5. New Demand and Marginal Revenue in the Presence of Counterfeiting



Source: A study by the International trademark Association INTA, (1998) *the economic Impact of trademark counterfeiting and infringement: estimation of the impact of trademark counterfeiting and infringement on worldwide sales of apparel and footwear. (linear relationship)*

Figure 5 shows the difference between the value the trademark owner receives with and without the presence of counterfeiting, or the loss to the owner. This is the value that needs to be measured.

2.3 DESIGN OF THE MODEL (MODEL FOR LOSSES)

On the basis of the description of the motives behind counterfeiting, we can postulate a relationship that can be represented mathematically; indeed, if there were sufficient data the relationship could be estimated using regression analysis.

IMPACT OF COUNTERFEITING ACTIVITY

We try to measure the impact of counterfeiting by predicting the effect of trademark protection on sales revenues of firms.

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THE TRADEMARK PROTECTION VARIABLE

The model employed uses data already held by the consultant in addition to the attorney survey and producer survey.

2.3.1 ATTORNEY SURVEY

A survey of trademark attorneys was conducted to provide country-specific estimates of trademark protection and sales data from the producers. Some 150 attorneys were surveyed in Cairo, Alexandria, and Tanta.

THE TRADEMARK PROTECTION VARIABLE

The trademark protection variable, and the economic impact subcommittee designed a Trademark Protection Survey and sent it to 1,000 attorneys in Cairo, Alexandria and Tanta and to 100 producers with experience in trademark protection issues. The Trademark Protection Surveys are provided in [Appendix B](#), and [Appendix C](#).

The Attorney survey sought to establish how effective trademark protection is in Egypt. The survey consists of 13 questions covering registration, maintenance, and enforcement of trademark rights. The answers are on a 1 to 5 scale, where 1 represents strongly disagree and 5 represents strongly agree.

2.3.2 PRODUCER SURVEY

The Producer survey sought to establish how counterfeiting affects revenues for trademark owners in:

- Food and beverage
- Electrical goods
- Ready-made garments (clothing and footwear)
- Tobacco and cigarettes
- Home personal care
- Pharmaceuticals

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The study assumed that the availability of counterfeit goods reduces the market for legitimate producers, with respect to actual sales. We assume the existence of a mathematical relationship between total revenue and the degree of trademark protection. When we control for each country's tastes, income levels, and other factors, total revenue should vary with the degree of trademark protection. The model being estimated is:

$$TR=f(P, Z)$$

Where TR is total revenue earned for a product or narrow group of products, P is the degree of trademark protection, and Z is the set of additional variables such as income per capita.

The specific econometric technique used is called Pooled Time-Series, Cross-Section Multivariate Analysis. This is a particular case of analysis of variance where data from different time periods and from different markets are pooled to give more data points and a better estimate. This is the standard approach for making estimates of the type we are discussing here.

To carry out the estimate, revenue received from the sales of trademarked goods in many different markets (EGYPT) needed to be examined to estimate the variation in revenue due to trademark protection. Data was needed for which there is significant variation in all of the important variables, namely:

- Trademark protection
- Income per capita
- Price
- Consumer preferences

Specifically, the model is as specified by equation (1) (please refer to Appendix A).

We undertook two parallel data-gathering activities:

- A trademark protection survey of attorneys
- Gathering data on sales revenues and quantities for:
 - a. Food and beverages
 - b. Electrical goods



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-
- c. Ready-made garments (clothes and footwear)
 - d. Tobacco and cigarettes
 - e. Home personal care products
 - f. Pharmaceuticals

This model does not make any assumptions as to the precise effect of counterfeiting on the demand curve.

Although a counterfeit product is not the same as a competitive product, in the consumer's view it plays the same role. The entrance of a counterfeit product into a market gives the consumer a new choice. Given that choice, some consumers may buy the counterfeit product. If the counterfeit product is a perfect substitute, then we might expect the type of shift in the value of a trademark's goodwill. Goodwill is, in economic terms, the ability of a firm to sell the product above the cost of a generic item. Clearly, if a consumer assumes that the counterfeit is genuine, and discovers it is of poor quality, there is an intangible loss of goodwill that will react back on demand for the trademarked product. As noted above, the model does not assume a particular mechanism for the effect of trademark protection on the demand for the trademarked good, only that trademark protection is a factor in that demand.

Table 1 provides the final results for the trademark protection variable. As a result of this process, the minimum value of the trademark protection variable is 1.0, corresponding to the highest degree of trademark protection, and the maximum is 5.0, corresponding to the lowest degree of trademark protection.

Table 1. Trademark Protection Variable		
City	Survey Results	Number of Responses
Cairo	2.5%	50
Alexandria	2.3%	40
Tanta	2.4%	30
Average	2.45%	120

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2.3.3 RESULTS

The estimated models included, for Egypt, per capita sales, trademark protection, and population. The measure of trademark protection entered the estimated equations only in combination with population rather than as a separate variable. This implies that the effect of lower trademark protection is very strongly affected by the size of the country.

In pooled time-series, cross-section analysis, the econometric technique was used in the estimation of the equations; one has the choice of varying the coefficients and the constant term across sectors. In the work being reported here, the consultant chose to have the same coefficients for all sectors, but to vary the constant term.

The seven equations that provide the results over the period 2000 to 2004 appear in Appendix A.

THERE ARE TWO EQUATIONS EACH FOR:

- Food and beverages
- Electrical goods
- Ready-made garments (clothing and footwear)
- Tobacco and cigarettes
- Home personal care
- Pharmaceuticals

The equation has total sales as the dependent variable. This is the equation form described at the beginning of this section. In addition, an equation for per-capita sales was estimated. This divides total sales in each sector by the population of Egypt. Because the data was on a sector basis, the cross-terms in the model equation were too highly correlated with the linear terms to provide estimates of the coefficients for either the cross terms or the linear terms.

Each of the equations was estimated for each year from 2000 through 2004, and for the full period. Table 2 provides the estimates of the elasticity of sales relative to trademark protection. The interpretation of each of the values shown in Table 2 is as follows. An elasticity of -0.11, for example, implies that a 10% increase in the trademark protection

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variable (10% less trademark protection) would result in a change (decrease) in sales of – minus 1.1% (the product of the coefficient with the percentage change, 10% in this case).

**Table 2. Estimates of the Elasticity of Sales Relative to Trademark Protection
 for Each Year of the Data and for the Entire Period**

Equation	2000	2001	2002	2003	2004	2000-2004
Cigarettes and tobacco						
Per capita sales	-4.92887	-4.91009	-4.89655	-4.88184	-4.88251	-4.89997
Food and beverage						
Per capita sales	13.9416	13.9656	14.0662	14.1997	14.2976	14.09414
Ready-made garments (clothing)						
Per capita sales	4.056986	4.048814	4.159099	3.938888	4.366889	4.114136
Ready-made garments (footwear)						
Per capita sales	-5.14086	-5.10984	-5.27515	-4.91122	-5.6185	-5.21111
Electrical goods						
Per capita sales	-3.55431	-3.60841	-3.30273	-4.21961	-2.79466	-3.49594
Home personal care						
Per capita sales	-9.05245	-9.04629	-9.03936	-9.07758	-9.03705	-9.05055
Pharmaceuticals						
Per capita sales	-384.754	-380.4588	-375.5722	-394.5265	-369.0454	-380.8713
Average	-55.4285	-55.017	-54.2658	-57.0683	-53.2448	-54.9194

The major result is the stability of the estimated equation and of the elasticity results across the different equation forms and products. It was concluded that the elasticity of sales relative to trademark protection for products over the period 2000 through 2004 is -54.9194.

Table 3 presents the calculations for each sector of the percentage decrease in sales as a result of decreased levels of trademark protection. The calculation involves only the value of the trademark protection variable for all sectors and the elasticity of - 54.9194:

Percent loss of sales = (value of trademark protection variable^{-54.9194} – 1).



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If the value of the trademark protection variable is 1, then the percent loss of sales is zero. If the value of the trademark protection variable is 5 and the elasticity is -54.9194, the percent loss of sales is -33%. Thus, the maximum possible percent loss of sales with this model as estimated is 33%.

In Table 4, these percentages of loss of sales are applied to 2003/ 2004 sales in all sectors that participated in the study. Lost sales are estimated to have averaged 22% across all of Egypt, and the total lost sales are estimated to have been 21 billion Egyptian pounds out of total sales of 80 billion Egyptian pounds. With the margin of error factored in, the resulting estimate of losses Egypt in 2003/2004 for sectors (tobacco, clothes, etc) is 22.4%±4%.

Table 3. Trademark Protection Results

	Trademark protection variable	Applying elasticity	Percent loss of sales
	T	XXX T	XXX T - 1
Cigarettes and tobacco	2	4.89997 T	29%
Food and beverages	2.45	14.09414 T	31%
Ready-made garments (clothing)	2.45	2.93944 T	14%
Ready-made garments (footwear)	2.45	5.21111 T	11%
Electrical goods	2.45	3.49594 T	23%
Home personal care	2.45	9.05055 2.45	33%
Pharmaceuticals	2	7.05831 2.45	13%

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Table 4 takes into account the total losses for all sectors covered in the study. The results are as follows:

Table 4. Trademark Protection Loss: All products in year 2003/ 2004 only					
Sector	2003/2004 sales in thousands of Egyptian pounds source :industry authorities			% Loss average	Loss in thousands of Egyptian pounds
	Public	private	total		
Food, beverages and tobacco	12078749	19373136	31451885	30%	9435566
Spinning, weaving and ready-made garments *	3986396	9979099	13965495	13%	1815514
Papers and chemical products*	3091346	20771935	23863281	33%	7874883
pharmaceuticals ,drug and medical supplies	1552358	4470565	6022923	13%	782980
Electrical industries	146596	3636374	3782970	23%	870083.1
Grand Total	20855445	58231109	79086554		20779026

*These two classes were used instead of ready-made garments and home personal care products, because the statistics for the latter two classes were not available.

2.3.4 CONCLUSION

The study shows that counterfeiting has a serious impact on the revenues, profits and investment levels of the sectors studied. Counterfeiting reduces company revenues, stifles investment and innovation, and retards economic growth. Its final effects on the general economy are observed directly through job losses and reduced GDP (Gross Domestic Products).

The results of the model clearly demonstrate the high price that trademark owners must pay because of inadequate trademark protection. This representative sampling shows that some industries lost a staggering one-fourth of their sales, on average, due to trademark



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infringement and counterfeiting. Nevertheless, many countries still lack the will or the resources to address the problem.

Trademark owners are not the only ones who suffer when countries lack strong protection for trademark rights. A country's economic growth is affected by the degree to which sectors feel confident that their valuable intellectual property assets will be protected. Public health and safety are also put at risk when counterfeiters focus their efforts on such products as baby formula and airplane and automobile parts. Governments should be aware that it is in their own best interests to see to it that their country is a safe place for trademarks.

2.4 LOSS IN SALES AND JOBS

Table 5. Estimates of the Impact on Employment	
Sector	Losses in thousands of Egyptian pounds in 2003/ 2004
Food, beverage and tobacco	9435566
Spinning, weaving and ready-made garments	1815514
Papers and chemical products	7874883
Pharmaceuticals ,drug and medical supplies	782980
Electrical industries	870083
Grand Total	20779026

The numbers of job lost are derived by taking the loss of sales of a sector or a company due to counterfeiting, and calculating the number of additional people that could have been employed with that revenue.

Per worker gross domestic product at (2003/2004) =

GDP in (2004/2005)*/labor force in (2003/2004) ** =536,000,000,000/19,220,000 = 28000 pounds/ worker

Estimating the number of jobs associated with the sectors in this study = total losses in Egyptian pounds of sectors studied / average per worker from GDP = 20.779.026.000/ 28000=742000 workers.



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Thus estimates in Egypt imply that more than 742000 jobs are lost due to counterfeiting in these six sectors alone.

It is extremely difficult to establish an accurate percentage of the jobs lost due to infringing goods smuggled from abroad and an accurate percentage of jobs lost by legitimate industry due to clandestine businesses here in Egypt producing infringing goods. However the following conclusions can be made:

A- For tobacco and cigarettes and ready made garments most of the infringing goods are smuggled from abroad.

B- For electrical goods at least half of the infringing goods including most of the electrical blenders, mixers, stereos, radios, televisions and irons are smuggled from abroad.

C- Infringing personal care products, pharmaceuticals and food and beverages are not made in factories but are for the most part made in hidden apartments and backyards using very primitive production methods. Hence elimination of these infringing goods will create in legitimate business at least double the jobs lost by clandestine business.

Thus it is safe to assume that at least half of the jobs lost by legitimate businesses 371000 jobs will be added as new additional jobs as a result of elimination of infringement in the six studied industries alone.

***Source: Ministry of Trade and Industry March 2006**
**** Source: Ministry of Planning**



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2.5 ESTIMATED IMPACT ON TAXATION

2.5.1 ESTIMATED IMPACT ON SALES TAX REVENUES

The table below indicates the amount of sales tax revenues lost due to the growth of the informal counterfeiting market. The average sales tax rate paid by the industries in this study is assumed to be 10%.

Table 6: Estimated Sales Tax		
Impact of goods being measured in Egyptian pounds	Impact on industry in Egyptian pounds (*)	Percentage of loss in sales
80 billion	21 billion	22.4%
21	2.1	10%

(*) *loss in revenues to industry, assuming same quantities of goods sold*

Counterfeiting and piracy result in lost sales tax revenue. If counterfeiting was eliminated on those types of goods being measured only, an additional 2100 million Egyptian pounds in sales tax revenues would have been generated in 2003 / 2004 alone.

ESTIMATED IMPACT ON CORPORATE INCOME TAXES

The *standard rate* for the corporate tax is 20%.

<u>Table 7. Estimates of the Impact on Corporate Income Taxes</u>			
Sector	Losses in thousand EGP. in 2003/ 2004	The net annual profits source :General taxation authority	The net annual profits 20% in Egyptian pounds
Food, beverage and tobacco	9435566	Average 9.5%	179275
Spinning, weaving and ready-made garments	1815514	12%	43572
Paper and chemical products	7874883	15%	236246
Pharmaceuticals ,drugs and medical supplies	782980	10%	15659
Electrical industries	870083	8%	13921
Grand Total	20779026		488673

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Decline in corporate income tax revenue due to counterfeiting and piracy result in lost tax revenue to the state. If counterfeiting was eliminated on goods of the type being measured only, an additional 488 million Egyptian pounds in corporate income tax revenue would have been generated in 2003/2004 alone.

2.5.2 ESTIMATED IMPACT ON PAYROLL TAXES

The *standard rate* for the payroll tax is 15%.

Payroll taxes = 15% X (1/4X12000) X742000 = 333900000 Egyptian pounds.

Decline in payroll tax revenues due to counterfeiting and piracy results in lost payroll taxes. If counterfeiting was eliminated on goods of the type being measured only, an additional 336 million Egyptian pounds in payroll taxes would have been generated in 2003 / 2004.

2.6 REDUCTION IN FOREIGN INVESTMENT

2.6.1 HYPOTHESES

This model is based on the testing of the hypotheses:

Resource endowments (oil and gas) owned by Egypt play an important role in attracting foreign direct investment.

- 1- Breadth of the market size in Egypt (expressed as gross domestic product) attracts FDI.
- 2- Increase in government expenditure on infrastructure attracts more foreign direct investment.
- 3- Increase in domestic credit granted by commercial banks increases the attraction of foreign investment.
- 4- Efficient procedures and legal policies will positively influence the flow of direct investments.

The study was to test these hypotheses in an attempt to assess the standard model of the previous transactions using a program E Views 4 along with a standard component of Multiple Regression Equation, through the use of Generalized Least Squares (GLS) Stepwise Regression.



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2.6.2 METHODOLOGY IN THIS MODEL

Test hypotheses using previous research curriculum qualitative and quantitative analysis, through analysis of the reality of foreign direct investment in Egypt between the period from 2000 until 2004 and the use of regression model compound based on the use of Pooled, Time-Series Regression Model.

2.6.3 THEORETICAL FRAMEWORK AND PREVIOUS STUDIES

To understand the flow of Foreign Direct Investment (FDI) requires a consideration of the determinants of the supply side, in addition to the demand side, or the attractions affecting pull factors of Foreign Direct Investment. In general, a downturn in the global economy leads to a decline in the real level of the flow of Foreign Direct Investment (FDI) to developing countries. Therefore, an understanding of the role of donors in the capital markets is necessary. (Goldsbrough, 1986).

Vernon's study of the Product Cycle (1966) is one of the most famous theoretical explanations of the role of Foreign Direct Investment (FDI) in manufacturing terms. In his analysis, the Product Cycle contains three stages: Innovation Stage which requires effective communication with consumers; Maturing Product Phase, which occurs with a certain degree of standardization and an increase in domestic and external demand for the product, along with attention to production costs; and finally, the Standardized Product Stage, during which production is shifted to another advanced State to serve the domestic market, but does not move quickly to developing nations because of their relative lack of efficiency in fulfilling the requirements of the initial stages of Product-Cycle. But developing countries do attract investment when they acquire normative production infrastructure and a trained labor force.

Lynton, in her 1977 study of the Indian economy, made it clear that despite the availability of natural resources (petroleum, coal, iron, precious stones, and a successful agricultural base), market size (93 million), large GNP (\$29 billion) and the presence of a highly educated middle class, the political and legislative barriers, bureaucracy and financial infrastructure still impeded the flow of foreign direct investment.

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2.7 DESIGN OF THE MODEL (*FOREIGN DIRECT INVESTMENT*)

This paper uses a different measure of intellectual property protection, which has both a time-series and a cross-sectional dimension. The time-series part helps to capture changes in patent law over time (particularly since standards have changed for a number of countries).

2.7.1 MODEL AND DATA

Testing the relationship between the flow of Foreign Direct Investment (FDI) and the political-economic influencing factor during the study conducted between the period from 2000 until 2004, has been a standard component of the building of Multiple Regression Equation including Foreign Direct Investment (FDI), constant variable and some of the economic variables and political independent variables, resulting in the expression of these relationships as equation (2) (Please refer to Appendix : A)

2.7.2. RESULTS

To test the hypothesis of this study, stated earlier, an effort was made to evaluate the parameters of the standard model using E View 4 (the results are shown in Table 23, below). The method of Generalized Least Squares (GLS) was used, where it was noticed that the value of R² is high. This proves the validity of a hypothetical relationship between Foreign Direct Investment (FDI) and some economical and political variables affecting the Foreign Direct Investment (FDI) environment in Egypt, and the statistical significance between Egypt's gross domestic product, population, government expenditures, number of mobile phones, and privatization to a level less than 1%. The results further show a direct relationship between the protection of trademarks and Foreign Direct Investment (FDI). This raises questions about the lack of a strong correlation between Foreign Direct Investment (FDI) and the Economical and Political Factors in this study despite the appearance of such correlation in previous studies, which may be mainly due to the Egypt's slowness in moving to provide effective protection for trademarks, and the lack of transparency between the government and the investors.

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Table 8

NATIONAL STATISTICAL DURING 2002 – 2004 CIGARETTES AND TOBACCO

No.		2000	2001	2002	2003	2004
	s_{it}/n_t	.07669776	.07944658	.08207761	.08458326	.08698393
1	s_{it} = total sales	4906739	5187703	5468667	5749632	6030596
2	n_t = population	63975000	65298000	66628000	67976000	69330000
3	y_t = Per capita gross domestic product	5344	5390	5778	6452	6943
4	p_{it} = average price of the trademarked goods	90	90	95	100	108
5	r_i = trademark protection variable	2.45	2.45	2.45	2.45	2.45
6	C_i = share of total consumer expenditure on goods	77	79	82	85	87

Table 9

Results

Constant coefficients	Value	t-Statistic	P-Value
B1	-0.2962	-34.4929	0.0185
B2	-0.3881	-29.1679	0.0218
B3	-30.8871	-3124.687	0.0002
B4	1.9744	114.3331	0.0056
C1	0.2444	25.1228	0.0253
C2	0.4332	29.0062	0.0219
C3	-2.2047	-115.4603	0.0055
C4	2.0292	3123.616	0.0002
R Squared	1		
D.W (Durbin-Watson Statistic)	2.218		



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Table 10

NATIONAL STATISTICAL DURING 2002 – 2004 FOOD AND BEVERAGES

No.		2000	2001	2002	2003	2004
	S_{it}/ n_t	0.056928	0.055775	0.054662	0.042736	0.031271
1	s_{it} = total sales	3642000	3642000	3642000	2905000	2168000
2	n_t = population	63975000	65298000	66628000	67976000	69330000
3	y_t = Per capita gross domestic product	5344	5390	5778	6452	6943
4	p_{it} = average price of the trademarked goods	4	4	4	5	7
5	r_i = trademark protection of trademarked goods	2.45	2.45	2.45	2.45	2.45
6	c_i = share of total consumer expenditure on goods	0.05	0.06	0.05	0.04	0.03

Table 11

Results

Constant coefficients	Value	t-Statistic	P-Value
B1	-23.8157	-0.7048	0.6091
B2	4.4482	0.1166	0.9261
B3	-9.1173	-0.0927	0.9412
B4	-68.5780	-0.5678	0.6712
C1	25.5281	0.6523	0.6320
C2	-5.2412	-0.1229	0.9221
C3	77.0093	0.5715	0.6695
C4	0.9292	0.1425	0.9099
R Squared	0.9872		
D.W (Durbin-Watson Statistic)	2.425		



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Table 12

NATIONAL STATISTICAL DURING 2002 – 2004 READY-MADE GARMENTS (CLOTHING)

No.		2000	2001	2002	2003	2004
	s_{it}/n_t	0.060758	0.059527	0.058339	0.078616	0.098096
1	s_{it} = total sales	3887000	3887000	3887000	5344000	6801000
2	n_t = population	6397500	6529800	66628000	6797600	6933000
		0	0		0	0
3	y_t = Per capita gross domestic product	5344	5390	5778	6452	6943
4	p_{it} = average price of the trademarked goods	80.5	80.5	80.5	82.3	97.6
5	r_i = trademark protection of trademarked goods	2.45	2.45	2.45	2.45	2.45
6	c_i = share of total consumer expenditure on goods	0.06	0.06	0.058	0.08	0.1

Table 13

Results

Constant coefficients	Value	t-Statistic	P-Value
B1	-88.01915	-16.0491	0.0396
B2	18.28615	16.0977	0.0395
B3	27.49613	13.5495	0.0469
B4	17.05760	16.8487	0.0377
C1	10.55789	16.0283	0.0397
C2	-21.15943	-15.9293	0.0399
C3	-19.04981	-16.4915	0.0375
C4	-32.2293	-17.1668	0.0370
R Squared	0.9999		
D.W (Durbin-Watson Statistic)	2.5159		



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Table 14

NATIONAL STATISTICAL DURING 2002 – 2004 READY-MADE GARMENTS (FOOTWEAR)

No.		2000	2001	2002	2003	2004
	s_{it}/n_t	0.078718	0.077123	0.075584	0.097181	0.095283
1	s_{it} = total sales	5036000	5036000	5036000	6606000	6606000
2	n_t = population	63975000	65298000	66628000	67976000	69330000
3	y_t = Per capita gross domestic product	5344	5390	5778	6452	6943
4	p_{it} = average price of the trademarked goods	30	30	30	33	33
5	r_i = trademark protection of trademarked goods	2.45	2.45	2.45	2.45	2.45
6	c_i = share of total consumer expenditure on goods	0.08	0.077	0.07	0.01	0.09

Table 15

Results

Constant coefficients	Value	t-Statistic	P-Value
B1	11.3823	499.3826	0.0013
B2	-29.6111	-630.4924	0.0010
B3	8.0522	418.9009	0.0015
B4	1.6811	25.1484	0.0253
C1	-12.7019	-503.5094	0.0013
C2	35.7424	675.2985	0.0009
C3	-1.8759	-25.2661	0.0252
C4	-1.1163	-895.1886	0.0007
R Squared	1		
D.W (Durbin-Watson Statistic)	2.9320		



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Table 16

NATIONAL STATISTICAL DURING 2002 – 2004 PHARMACEUTICALS

No.		2000	2001	2002	2003	2004
	s_{it}/ n_t	1.108792	1.086327	1.064642	3.024156	2.965094
1	s_{it} = total sales	70935000	70935000	70935000	205570000	205570000
2	n_t = population	63975000	65298000	66628000	67976000	69330000
3	y_t = Per capita gross domestic product	5344	5390	5778	6452	6943
4	p_{it} = average price of the trademarked goods	191.4	191.4	191.4	191.4	2
5	r_i = trademark protection of trademarked goods	2.45	2.45	2.45	2.45	2.45
6	c_i = share of total consumer expenditure on goods	1.1	1.09	1.06	3.02	2.96

Table 17

Results

Constant coefficients	Value	t-Statistic	P-Value
B1	-16.4366	-0.7992	0.5707
B2	20.2828	0.8114	0.5660
B3	-372.9738	-77.9357	0.0082
B4	3.6265	1.7819	0.3256
C1	16.5212	0.7203	0.6026
C2	-23.4017	-0.8388	0.5557
C3	-4.0248	-1.7664	0.3279
C4	21.7954	78.0491	0.0082
R Squared	1		
D.W (Durbin-Watson Statistic)	2.0464		



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Table 18

NATIONAL STATISTICAL DURING 2002 – 2004 ELECTRICAL PRODUCTS

No.		2000	2001	2002	2003	2004
	s_{it}/n_t	0.110481	0.158673	0.204929	0.249294	0.339391
1	s_{it} = total sales	7068000	10361000	13654000	16946000	23530000
2	n_t = population	63975000	65298000	66628000	67976000	69330000
3	y_t = Per capita gross domestic product	5344	5390	5778	6452	6943
4	p_{it} = average price of the trademarked goods	1395	1460	1525	1525	1485
5	r_i = trademark protection of trademarked goods	2.45	2.45	2.45	2.45	2.45
6	c_i = share of total consumer expenditure on goods	0.11	0.16	0.21	0.25	0.34

Table 19

Results

Constant coefficients	Value	t-Statistic	P-Value
B1	-16.4366	-0.7992	0.5707
B2	20.2828	0.8114	0.5660
B3	-372.9738	-77.9357	0.0082
B4	3.6265	1.7819	0.3256
C1	16.5212	0.7203	0.6026
C2	-23.4017	-0.8388	0.5557
C3	-4.0248	-1.7664	0.3279
C4	21.7954	78.0491	0.0082
R Squared	1		
D.W (Durbin-Watson Statistic)	2.0464		



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Table 20

NATIONAL STATISTICAL DURING 2002 – 2004 HOME PERSONAL CARE

No.		2000	2001	2002	2003	2004
	s_{it}/n_t	0.005909	0.023109	0.025485	0.02776	0.048969
1	s_{it} = total sales	378000	1509000	1698000	1887000	3395000
2	n_t = population	63975000	65298000	66628000	67976000	69330000
3	y_t = Per capita gross domestic product	5344	5390	5778	6452	6943
4	p_{it} = average price of the trademarked goods	4	4	5	5	5
5	r_i = trademark protection of trademarked goods	2.45	2.45	2.45	2.45	2.45
6	c_i = share of total consumer expenditure on goods	0.006	0.023	0.025	0.028	0.049

Table 21

Results

Constant coefficients	Value	t-Statistic	P-Value
B1	12.02837	13.2772	0.0479
B2	-62.80342	-13.4554	0.0472
B3	-12.64954	-13.6855	0.0464
B4	18.2427	12.2027	0.0521
C1	-15.05394	-13.3405	0.0476
C2	70.08785	13.4582	0.0472
C3	-20.3058	-11.6280	0.0546
C4	77.8596	13.6535	0.0465
R Squared	0.9999		
D.W (Durbin-Watson Statistic)	1.4321		



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Table 22

**NATIONAL STATISTICAL OF THE FACTORS AFFECTING TRENDS IN FOREIGN DIRECT
 INVESTMENT IN EGYPT**

No.		2000	2001	2002	2003	2004
1	FDI = Foreign direct investment in Egypt	2010550000	1959650000	1926000000	2761740000	23985000000
2	OR = Oil reserves in Egypt	3.7	3.7	3.7	3.7	3.7
3	GR = Gas reserves in Egypt	1444	1557	1657	1755	1755
4	GDP = Gross domestic product in Egypt	287000000000	296800000000	354560000000	365550000000	381000000000
5	POP = Population of country	63975000	65298000	66628000	67976000	69330000
6	GE = Government expenditures	64448800000	63581800000	67511500000	68103100000	7111500000
7	TL = Number of mobile phones	654000	2227000	3800000	4900000	5900000
8	PR = Privatization	381000000	952000000	113000000	542000000	5643000000
9	ER = Exchange rate	3.45	3.85	4.5	6.03	6.19
10	CAB= current account balance	0.7	0.7	4.4	2.4	4.5
11	DC = Domestic credit	162200000000	178600000000	200200000000	214300000000	223100000000
12	R i = Trademark protection	2.45	2.45	2.45	2.45	2.45

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Table 23

Results

Constant coefficients	Value	t-Statistic	P-Value
B1	32381.29	1.2804	0.2904
B2	6323.773	1.5623	0.2161
B3	0.1035	700.7259	0.00
B4	-1191.639	-1578.277	0.00
B5	0.0108	27.9039	0.0001
B6	-4508.733	-1151.729	0.00
B7	4.6553	1030.355	0.00
B8	519715.5	1.1515	0.2329
B9	3416.318	0.8208	0.4719
B10	0.3020	495.9157	0.00
B11	156319.6	0.4609	0.6762
R Squared	1		
D.W (Durbin-Watson Statistic)	1.4479		



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III . THE IMPORTANCE OF INTELLECTUAL PROPERTY IN ATTRACTING FOREIGN DIRECT INVESTMENT (FDI) AND ENCOURAGING TECHNOLOGY TRANSFER

Developing countries need Foreign Direct Investment (FDI) for economic development and modernization, income growth and employment. Countries have liberalized their economies and pursued other policies to attract Foreign Direct Investment (FDI). Foreign Direct Investment (FDI) triggers technology spillovers, creates a more competitive business environment and enhances enterprise development.

Strong Intellectual Property Rights (IPRs) in all forms -- patents, trademarks, copyrights, and trade secrets -- provide protection for exporting firms against local copying of their products, encouraging them to increase their market presence and inducing them to sell more. Overall, empirical evidence indicates that, other things being equal, countries with stronger IPRs attract more imports, although the effect varies across industries (Maskus and Penubarti, 1995). It is interesting to note that stronger trademark protection seems particularly effective in increasing imports of relatively low-technology goods, such as clothing and other consumer goods, because the ease of counterfeiting such products under weak trademark protection limits foreign firms' incentives to sell them locally. Stronger trademark protections also lower the costs of exporting, because a firm faces a smaller need to discipline local imitators (through lower prices). This is true also in pharmaceuticals, although they are more likely to be produced under local license than extensively imported. Trade in goods that are difficult to imitate, such as certain types of machinery, or for which trademarks protection are not as significant, such as basic metal manufactures, is less sensitive to variations in IP protection.

Studies have indicated that rapidly growing developing countries should develop a natural interest in improving their IPRs regime over time as they move up the "technology ladder" to an ability to absorb and even develop more sophisticated innovations.

The importance of technology transfer through trade in technologically advanced inputs (machinery, chemicals, software, producer services and so on) should also be emphasized. There is evidence that such trade is responsible for significant amounts of productivity gains across borders, and is a crucial part of the technology convergence that has emerged among the developed economies in recent decades (Coe and Helpman, 1995). This suggests that emerging economies have a joint interest in trade liberalization and linking their IPRs



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systems with those of the developed countries. The resulting gains in productivity spillovers could easily outweigh costs associated with additional market power.

Because intellectual property protection has taken on increasing importance to multinational enterprises, the adoption of stronger IP regimes has become a primary signaling device that governments in emerging economies use to indicate a shift toward a more business friendly environment. The objective is to attract more Foreign Direct Investment (FDI) through this signal, regardless of the particular incentives that may be generated in various sectors by stronger IPRs.

Although their impacts vary across countries and over time, Foreign Direct Investment (FDI) and licensing bear considerable promise for improving efficiency and growth in developing countries, particularly for those that are scarce in capital, are far from the efficient production frontier, and have limited managerial and entrepreneurial talents. These flows provide access to the technological and managerial assets of foreign Multi National Enterprises (MNEs), which provide both a direct spur to productivity and significant spillover benefits as they diffuse throughout the economy. This diffusion comes through numerous channels, including the movement of newly trained labor among enterprises, the laying out of patents, product innovation through the legitimate “inventing around” of patents and copyrights, and the adoption of newer and more efficient specialized inputs that reduce production costs (software is particularly important in this context). Further, the introduction of efficient and competitive international enterprises can stimulate local entrepreneurship and innovation by increasing competition and raising demands for sub-contracting. There could also be a beneficial “demonstration” effect for local firms.

Thus, successful adoption of competition-enhancing Foreign Direct Investment (FDI) and licensing should materially improve the knowledge base of the economy and move it toward the globally efficient production frontier. There is undeniable evidence that developing countries suffer from significantly lagging labor productivity and managerial efficiency, related in part to a failure to adopt the newest technologies (Trefler, 1995; Baumol, et al., 1992).

Recent experiences in numerous developing economies indicate that liberalization of trade policies and investment regimes can have significantly positive growth impacts in the medium term, even if there is an initial economic adjustment period. Further, there is little



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doubt that a major determinant of relatively rapid economic growth and industrial restructuring in East Asia has been access to foreign technologies through both licensing and Foreign Direct Investment (FDI), in addition to importation of advanced machinery and other technical inputs (World Bank, 1993). There are good reasons to expect these growth effects to be long lasting, because wider access to knowledge allows economic expansion to continue without necessarily running into diminishing returns. Additional benefits include access to a wider variety of specialized products, inputs, and technologies, a deeper and better trained skilled labor pool, and rising real wages.

Seen properly, IPRs do not necessarily generate monopoly market positions that result in high prices, limited access, and exclusive use of technologies. They are more similar to standard property rights, in that they define the conditions within which a right owner competes with rivals (UNCTAD, 1996). Except in particular sectors, cases are infrequent in which a patent holder or a copyright owner becomes a strong monopolist. Rather, there are likely to be competing products and technologies, including new ones that do not infringe the property right. Much depends on the scope of the protected product and process claims and on the technical characteristics of the invention. For example, narrow patent claims are relatively easy to invent around in generating follow-on innovations.

Thus, IPRs may encourage dynamic competition, even if they sometimes diminish competition among existing products. Advocates of strong IPRs maintain that they create competition with long-run consumer benefits. For example, survey evidence indicates that patent disclosure requirements are significant mechanisms for diffusing technical information to competitors within a short period (Mansfield, 1985). The information may then be used to develop a new product or process that competes with the original. This incremental nature of innovation is a key fact in most technical progress and generally builds dynamic competition rather than investing unassailable market power. Thus, patents, copyrights, and other IPRs can raise the costs of imitation, but likely do not materially retard the introduction of competing products. Moreover, patents and trademarks provide greater certainty to firms, lower the costs of transferring technology, and facilitate monitoring of licensee operations. Additional licensing could then result in greater adaptive innovation in user firms.

In this view, stronger IPRs in developing economies promise long-term growth and efficiency benefits as they attract additional Foreign Direct Investment (FDI) and licensing, and spur further follow-on innovations and technology spillovers. This outcome is far more



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likely, however, if the implementation of stronger IPRs is accompanied by complementary policies that promote dynamic competition.

An important component of any program to attract high-quality Foreign Direct Investment (FDI) and technology transfer is the development of a competent indigenous technological capacity. In the first instance, this calls for public and private investments in education and training and the removal of impediments to the acquisition of human capital. It also points toward the development of national innovation systems that promote dynamic competition (UNCTAD, 1996). This involves supporting basic research capabilities, removing disincentives for applied R&D and its commercialization, instituting incentive structures that help stimulate local innovation, and taking greater advantage of access to scientific and technical information that exists within the global information infrastructure. To date, governments and firms in many developing countries have made inadequate progress in this regard.

According to the Egyptian prime minister, the amount of foreign direct investment in Egypt in this fiscal year 2005/2006 is US\$ 3.5 billion. The official projections for Foreign Direct Investment (FDI) in the fiscal year 2006/2007 are US\$ 6.0 billion.

If a significant reduction is achieved in the rate of infringement of trademarks, it is reasonable to assume that this could contribute to a 10% increase in the Foreign Direct Investment (FDI), which is about US\$ 600 million (the equivalent of 3.42 billion Egyptian pounds, based on an exchange rate of 5 EGP to the US\$1) pounds of additional funds to be introduced into the Egyptian economy.

Not only that but the importance of the transfer of technology associated with Foreign Direct Investment (FDI) cannot be overestimated. This transfer of technology plays an important role in improving the knowledge and technology bases in a country and leading to better products. The increase in the quality of Egyptian products will naturally open more foreign markets to their export.



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IV - SOCIAL AND HEALTH EFFECTS AND INDIRECT COSTS OF INFRINGEMENT OF TRADEMARKS

1. FOOD AND BEVERAGES

The infringement and piracy of food in Egypt is based on local production facilities which are not subject to any form of control. The food produced in such illicit facilities contains, in many cases, extremely dangerous compounds that contribute to such serious diseases as colon cancer, carcinoma (lung cancer), intracranial tumor and kidney failure, as stated by the experts at the Cairo National Food Institute. Such products usually bear falsely the trademarks of reputable companies.

The infringing food includes some products that are eaten almost daily by Egyptians such as different kinds of cheese and other dairy products and juice.

In some cases, packages of meats and vegetables were found bearing well-known trademarks. An analysis of their ingredients found that the marks were imitated, and the packages were inflated due to the presence of clostridium botulinum bacteria, which causes acute gastronomic pains and botulism. These packages are being sold in the streets of some poorer areas.

There is another problem which contributes to the spread of the piracy and infringement of trademarks in the rural areas of Egypt, where illiteracy is particularly high. This problem stems from the fact that the Egyptian Trademark Office allows the registration of trademarks that are confusingly similar to prior registrations. This is done in violation of the articles of the Egyptian intellectual property law 82 for 2002, as stated in Article 77 which reads:

ARTICLE 77:

"The commercial registration department may, based on a justified decision, request the applicant for the registration of a trademark to make the necessary amendments on the subject mark for defining and clarifying same, in order to avoid confusion with another previously registered trademark or a prior application for trademark.

The applicant shall be notified of such decision, via registered mail with return receipt requested, within thirty days from the date of issuance thereof.



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The department may reject the application if the applicant did not make the amendments requested by the department within six months as from the date of notification."

This fact was confirmed by Dr. Mustafa Abu El Eneen, the newly appointed head of the commercial registration department of the Ministry of Trade and Industry, who confirmed that the Egyptian Trademark Office has in the past issued decisions for the registration of trademarks in flagrant violation of the law. He gave as an example the registration of the trademark "National Star" on electronic devices, despite the existence of the prior well-known and registered trademark "National" on the same type of goods. A second example was the registration of the trademark "Sonai" on electronic devices, despite the existence of the very well-known trademark "Sony".

2. HOME PERSONAL CARE PRODUCTS

Again, infringing goods in this class are for the most part locally made. In the case of infringing shampoo products, used bottles of trademarked brands are collected from the garbage and filled with products that are different from the genuine shampoos.

As for detergents, the packages bearing the genuine trademark are imitated in local printing shops and then filled with products that are different and of lower quality. These infringing products are sold in street markets in some poorer districts. The infringing goods also include soap, hair depilatory creams, and complexion whitening creams.

Experts in El Qasr El Aini Hospital and some other medical centers have stated that in many cases such products cause allergy, dermatitis, pus granuales, dermatological ulcers and in some cases skin cancer. In addition, imitated facial scrubbing creams were found to contain cortisone, which is a dangerous substance that should only be used under medical supervision. Imitated deodorants, pirating a well known trademark, are being produced in a factory in the City of the 6th of October and circulated at a price of less than 50% of the genuine product.

3. PHARMACEUTICALS

In a seminar held in Bibliotheca Alexandria on August 14, 2006, Minister of Health, admitted the existence of widespread corruption in the health sector, including, among other things, falsifying information for the registration of medicines and other equipment. He



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further stressed that penalties for fraud in medicine should be toughened. He added that 10% of the pharmaceuticals in the marketplace are adulterated.

In a case reported by the newspaper *Al Akhbar*, inspectors in the Ministry of Interior arrested a network of two veterinarians, a chemist, and an agriculture engineer who falsely imitated the trademarks of several pharmaceutical companies. They further distributed large quantities of the adulterated pharmaceuticals to pharmacies. The adulterated pharmaceuticals included medicines for the treatment of liver and colon, tonics, and aphrodisiacs.

Further investigation revealed the existence of a clandestine factory in an apartment in the City of the 6th of October that was not subject to any supervision or control by competent authorities. A raid on the factory, on the apartment of the gang's leader, and on two printing shops netted 94 cartons and 21 sacks containing adulterated pharmaceuticals, a machine for making and filling capsules, a quantity of empty pharmaceutical packages, and pamphlets from several pharmaceutical companies. Among pharmaceuticals subject to widespread infringement are aphrodisiacs, antibiotics, analgetics, and non-prescription drugs.

4. ELECTRICAL GOODS

Infringing electrical goods are displayed in the shops of Atabba and other markets side-by-side with the genuine products. They include telephones and small household appliances, such as irons, juicers, and blenders. The infringing goods also include electric wires, cables, and circuit breakers, as well as spare parts for large household appliances such as washing machines. Many of these goods are made abroad, particularly in China, while the rest are made in Egypt.

Statistics state that there are 20,000 fires yearly in Egypt. There is no doubt that substandard counterfeit goods such as circuit breakers, electric wires, and other electric appliances contribute to a considerable percentage of such fires, which lead to the loss of lives and the destruction of property. Such products falsely use the trademarks of well known companies or deliberately use trademarks that are confusingly similar to them.



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5. READY-MADE GARMENTS (CLOTHING AND FOOTWEAR)

Some infringing clothing products are made here in Egypt, but for the most part they are smuggled in large quantities from ports such as Alexandria and Port Said, as well as across the Libyan-Egyptian border. In most cases, the origin of such products is the Far East.

The quality of these products is substandard, and they are sold at a price much lower than that of the genuine products.

Infringing sport shoes bearing the trademark of very well known international brands are sold in shops and markets. Again, they are substandard in quality and sold at prices which are 50% or less than the price of the genuine goods.

Again, for the most part the source of these sport shoes is the Far East, and they are smuggled from major ports and across the Libyan-Egyptian border.

The counterfeited sport shoes may cause dermatological diseases such as taenia, and skew the feet of children.

6. TOBACCO AND CIGARETTES

The adulterated cigarettes in the Egyptian market are, for the most part, concentrated on a very well known international brand, which is made locally in Egypt under license from the international company.

The newspaper *Al Akhbar* reported in its edition of August 20, 2006, that inspectors from the Interior Ministry arrested in Port Said a gang that was smuggling counterfeits of the famous international brand from China into Egypt. They confiscated 226,000 infringing packages.

These adulterated cigarettes are sold by street peddlers at a price much lower than the genuine product.

The quality of imitation, when comparing the package of the genuine product with that of the counterfeit, varies from poor to very good.

As for the ingredients of the adulterated cigarettes, it is safe to assume, based on their much lower prices compared with the genuine products, that they are very harmful to those who smoke them. These adulterated cigarettes are smuggled across the Libyan-Egyptian border and in through the major ports of Egypt.



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Such counterfeited cigarettes will lead to higher rates of lung and heart disease, and to a higher incidence of cancer.

It should be noted that the tobacco industry estimates that the counterfeit cigarettes represent 3% of the global trade, with the total number of fake cigarettes produced and sold each year being approximately 150 billion sticks.

7. OTHER PRODUCTS

A. AUTOMOTIVE COMPONENTS

Air filters and brake oils are among the most common automotive components that are subject to imitation and piracy using certain well-known trademarks.

It is estimated that fake car components and spare parts account for 80% of carbon monoxide (CO) emissions, which in turn cause cancer, since it reacts with the hemoglobin at a rate higher than the degree at which the hemoglobin reacts with oxygen, and its reaction bars the oxygen from reacting with blood getting to the tissues of the body and brain cells. Its deployment to the air also causes headache, fatigue, and impairment of mental power.

There are, as well, some fake mechanical devices that account for emissions of nitrogen oxide, since they do not cause complete combustion of the fuel. The emission of such dense gases, even at very low levels, can partially destroy and decompose plant tissues and fibers, and cause grave damage to the animals and humans that eat these plants.

It has also been found in studies conducted by the Department of Chemistry that cars, trucks, and buses that use fake mechanical and electrical spare parts that do not fully burn fuel, produce photo-chemical fumes that cause chest contractions, angina, inflamed mucus membrane, headaches, whooping cough, and fatigue.

The National Research Center, Chemical Department, and Ministry of Industry affirm, by studies published in conferences and elsewhere, that fake vehicle accessories and spare parts are not limited only to those produced locally under pirated trademarks.

Some companies are importing pieces and spare parts, like filters, plugs, and brake components, for cheap prices under pirated trademarks. The Ministry of Health attributes the spread of the tuberculosis, lung putrefaction, angina, dermatitis, carcinoma (lungs cancer), and kidney failure to breathing the exhaust fumes from cars. The statistics of 2002 (the last



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year for which the statistics are available) indicate that there were 20,361 automobile accidents in Egypt resulting in the death of 6,000 people and the injury of 25,860.

B. AGRICULTURAL INSECTICIDES AND PESTICIDES

One of the most important agrarian problems is pests and insects. To combat them, the soil is either sprayed with lethal insecticides or chemical fertilizers. Research has revealed that D.D.T requires 30 years to be completely dissolved in the soil. Fake insecticides are being manufactured in unlicensed places and secretly sold by peddlers. They contain substances that cause serious diseases.

The following table illustrates the problems associated with fake pesticides bearing genuine trademarks.

No.	Pesticides	Composition	Time Necessary Until Half of the Pesticide Disappears	
			Genuine trademark	Fake trademark
1	Darin	Hydrocarbon	2 months	5 months
2	Caryaril	Carbamat	2 months	3 months
3	Fourat	Organo Phosphorus	1 month	3 months
4	Parathiane	Organo Phosphorus	20 days	2 months
5	Methyl Parathione	Organo Phosphorus	20 days	2 months
6	Malathione	Organo Phosphorus	20 days	2 months

C. HOUSE PAINTS

Wall paints bearing pirated trademarks are widely used and commonly known. Experts at the National Research Center and Housing Research Center have indicated that of the oil in many wall paints are causing inflammation and acute chest pain in children and result in recurrent whooping cough. Analysis of these products has found them not to be identical to their specifications, and that they are not being sold through licensed companies. This is true of plastic paints as well.

Tables from 1 to 24 are prepared by TAGA team



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The closure of clandestine factories producing infringing goods may result in the loss of employment for some workers. However, most of these will be reemployed by legitimate factories, once the demand for genuine products increases due to the closure of the clandestine factories.

Since clandestine factories producing counterfeit products operate in secrecy, the workers are usually not enrolled in the social insurance system. This results in loss of social insurance income to the government and loss of insurance benefits to the workers in those factories.

The move of these workers to legitimate factories would result in additional social insurance paid to the government and more social insurance benefits for the workers. This applies as well to the food and beverage, pharmaceutical, and personal care sectors.

As for the cigarette and tobacco and ready-made garments sectors, since most the infringing goods are made abroad, the reduction in the level of counterfeit goods would result in more employment, and more company and social insurance taxes paid to the government. This is based on the fact that this reduction will not result in closing of clandestine factories in Egypt, but will result in net additional jobs.

The infringing electrical products are a case where some of the goods are smuggled into the country, while the rest are made here in Egypt. Thus in this case too, a significant reduction in the rate of infringement would result in additional net employment, and more sales taxes and social insurance premiums paid to the government.

IMPACT OF COUNTERFEITING ON HEALTH AND ACCIDENTS:

It is extremely difficult to isolate the medical costs associated with the health problems that result from the infringement of trademarks. However, some observations can be made: Counterfeit food products in many cases do not comply with health regulations and usually contain very harmful chemical compounds. Substandard or adulterated infringing pharmaceuticals can lead to medical complications. Fake automotive spare parts pollute the air with very dangerous gases.

Factories which produce infringing products are, in most cases, not subject to any form of supervision. Thus, it is safe to assume that they do not abide by environmental requirements and are likely polluting air and water resources.



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We can assume that trademark infringements based on the above considerations are responsible for 2 % of Egypt's total health costs (a very conservative estimate). The latest figure available for Egypt from the World Health Organization (Per capita total expenditure on health at international dollar rate in 2003) is US\$ 235 in medical expenses per person.

If we multiply US\$ 235 by 70,000,000 (the number of Egyptians), we arrive at the total expenditures on health in Egypt (US\$ 16.5 billion). Thus, based on our assumptions, trademark infringement is responsible for medical costs in the range of US\$ 330 million, which is equivalent to 1.881 billion Egyptian pounds.

Fake automotive spare parts, which are in most cases substandard, contribute to the increase and severity of car accidents. A report released by the Egyptian ministry of transport in November 2005 estimated that 6,000 people die each year as a result of road accidents in Egypt and the annual economic loss caused by road accidents is at least EGP 3 billion (equivalent to US\$ 522 million) which amounts to 3% of the country's gross domestic product Around 30,000 people are also injured in road accidents each year, the report said.

Thus if we assume that infringing automobile parts are responsible for 5% of the costs of vehicle accidents (again a very conservative estimate), this would translate to US\$ 28.9 millions, which is equivalent to 150 million Egyptian pounds. Thus, the total losses due to health costs and automobile accidents are 2.03 billion Egyptian pounds.

The credibility of the Egyptian Government in being able to enforce its laws and fulfill its obligations according to signed International Agreements such as the TRIPS, is also an important dimension that should not be underestimated.



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V. LAW ENFORCEMENT

LAW ENFORCEMENT SHOULD BE BASED ON THREE MAIN PILLARS:

1. Appropriate legislation, which provides for a sufficient level of protection for the exclusive rights granted for the various forms of exploitation of the protected subject matter.
2. Management Mechanism, in the form of a sufficiently developed system for the management of rights under the intellectual property law. In the case of trademarks, the management mechanism consists of the Egyptian Trademark Office and the process of registration of the rights (Trademarks and Industrial Designs).
3. Enforcement, in the form of a system of sanctions to be applied in case the rights under the intellectual property law are infringed. They are needed in order to ensure the rights are respected. Without a sufficiently efficient system of enforcement, the temptation may simply be too great to violate the rights, something that is all the more tempting because the possibility of making a profit is so great. Without an appropriate system of sanctions, the law would be a toothless paper tiger.

Violations of intellectual Property rights are certainly not a phenomenon of purely academic interest, according to a study by the U.S. senate in 2005 an estimated US\$ 350 billion a year (1995 billion Egyptian pounds) or between 5 percent and 7 percent of worldwide trade.

Furthermore piracy and counterfeiting activities are nowadays part of organized crime. This has been shown in several studies, where it was made clear that income from piracy is used to finance terrorist activities or, more generally, organized crime. Examples are the activities of the so-called mafia gangs in certain countries in the former Soviet Union and the financing of certain paramilitary groups in Northern Ireland.

For any efficient enforcement system in the intellectual property field there are two priorities. The first is that the system of sanctions is sufficiently severe to serve as a deterrent. It must not be structured so that sanctions can be easily absorbed as operational costs.

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The second priority is that the system be constructed in such a way that it works quickly, because it is so easy to close down and move piracy and counterfeiting activities somewhere else if the perpetrator gets wind that enforcement action is being planned. The system must therefore contain sufficiently efficient provisional measures.

INTERNATIONAL STANDARDS FOR ENFORCEMENT

The mechanisms for enforcement of intellectual property rights are left to the laws of each country. However, for the countries which are members of the World Trade Organization such as Egypt, these minimum standards have been established by the TRIPS Agreement.

The member countries must abide by these standards, since lack of efficient enforcement could deprive the holders of intellectual property rights of the full enjoyment of those rights.

The main area where international standards exist is in the matter of enforcement.

The WTO dispute settlement procedure creates a strong mechanism for compliance, including the power to impose trade sanctions against member states that fail to abide by its Binding Agreements.

Article 41 of the TRIPS establishes the general obligations regarding enforcement of intellectual property rights.

These include:

EFFECTIVE ENFORCEMENT

Paragraph one requires that enforcement procedures be such as to permit effective action against any act of infringement of intellectual property rights, and that the remedies available must constitute a deterrent to further infringement.

PROCEDURES SHOULD NOT BECOME BARRIERS TO LEGITIMATE TRADE

Enforcement must be applied in such a manner as to avoid the creation of barriers to legitimate trade and provide safeguards against its abuse.

FAIR AND EQUITABLE PROCEDURES

Paragraph 2 deals with enforcement procedures. Such procedures must be fair and equitable, and they may not be unnecessarily complicated and costly, or entail unreasonable time-limits or unwarranted delays.



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DECISIONS ON THE MERIT OF THE CASE

Paragraph 3 of article 41 states that decisions on the merit of the case shall preferably be in writing and reasoned, and they shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merit of the case shall be based only on evidence in respect of which parties were offered opportunity to be heard.

OPPORTUNITY FOR REVIEW BY A JUDICIAL AUTHORITY

Paragraph 4 of article 41 states that parties shall have an opportunity for review by a judicial authority of final administrative decisions and subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of the case. However, there is no obligation to provide for review of acquittals in criminal cases.

NO OBLIGATION TO PUT IN PLACE A DISTINCT JUDICIAL SYSTEM

Finally paragraph 5 of article 41 states that provisions on enforcement do not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general nor does it affect the capacity of members to enforce their law in general.

CIVIL PROCEDURES FOR ENFORCEMENT OF RIGHTS

A fundamental principle which follows from Article 42 of the Agreement is that members shall make available to right-holders civil judicial procedures concerning the enforcement of any intellectual property right covered by TRIPS. This is a fundamental principle, in that it obliges TRIPS members to design civil procedures which make it possible for right-holders to enforce their rights. According to a Note to the Agreement, the term "right-holder" shall include federations and associations having a legal standing to assert such rights.

This provision also contains certain more specific obligations concerning procedure. Thus, it prescribes that parties shall have the right to written notice, and shall be allowed to be represented by independent legal counsel. Furthermore, it is prescribed that procedures shall not impose "overly burdensome" requirements concerning personal appearances. This provision came into the Agreement because courts in some countries have requested the Chief Executive Officer of large corporations to appear to testify whether products seized in a case were actually pirated.



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Furthermore, all parties shall have the right to substantiate their claims and to present all relevant evidence. Finally, it is also prescribed that the procedure shall provide means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements. This latter provision is particularly important in patent cases, where such confidential information is often presented.

Generally speaking, these provisions correspond to what actually exists in most procedural laws, but they contain certain provisions of particular relevance for intellectual property cases. As can be seen, they are all “shall” provisions, which means that they are obligations and that non-compliance is a breach of the TRIPS Agreement, with the consequences that such breaches may entail.

EVIDENCE

Rules concerning evidence are obviously a fundamental part of any enforcement system. In the TRIPS Agreement, such provisions are included in Article 43. One important element concerns the situation when a party in a case has presented reasonably available evidence sufficient to support its claims, and has indicated specific evidence that is in the control of the opposing party. In such cases, the judicial authorities shall have the power to order the opposing party to produce that evidence. This shall be subject to appropriate conditions that would ensure the protection of confidential information.

The provision just indicated is an obligation. The Article contains another provision which is not mandatory but a “may” provision, that is, a facultative one. It deals with obstruction by a party and refers to cases where a party voluntarily and without good reason either refuses access to or otherwise does not provide necessary information within a reasonable period, or otherwise significantly impedes a procedure relating to an enforcement action. For such cases, members of TRIPS may accord the judicial authorities the power to make preliminary or final determinations, affirmative or negative, on the basis of the information presented, subject to certain conditions which will not be repeated in detail here. The provision, of course, aims at facilitating decisions in intellectual property cases when one of the parties acts to obstruct the procedures in one way or another.

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INJUNCTIONS

The possibility of recourse to injunctions in various situations forms a particularly important part of the procedure in intellectual property cases. The reason is that such measures provide an efficient and quick way of limiting the practical effects of infringements, without having to wait for the final outcome of a civil or criminal proceeding.

Provisions concerning injunctions are included in Article 44 of the Agreement. The main provision, in Article 44.1, prescribes that judicial authorities shall have the power to order a party to desist from an infringement. This shall apply *inter alia* to prevent the entry into commercial channels of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. This provision consequently contains an obligation to ensure that such an authority exists, and its main thrust is that the court shall be able to order a party to desist from an infringement. Violation of such a court order normally entails severe sanctions.

While this provision is specifically designed to prevent infringing goods from entering commercial channels after customs clearance, it is not limited to such situations. also In this regard, the provisions in Article 50 on provisional measures in such cases are important as are the special requirements concerning border measures in Section 4, which allow customs officials to suspend the release of counterfeit and pirated goods.

The provisions in Article 44 contain one condition which is not mandatory but facultative. It states that members are not obliged to accord such authority in cases where the person acquired or ordered the subject matter concerned before he or she knew or had reasonable grounds to know that the act would entail an infringement of an intellectual property right. It is consequently up to each state to determine how far-reaching injunctions should be in this respect.

DAMAGES

Damages also form a particularly important part of system of sanctions for infringements of intellectual property rights. The owner of a right has to be compensated for the loss suffered from the infringement of that right. Such damages can either be purely compensative, or they can be punitive, in order to frighten others from committing the same violations.



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The issues of damages are a sensitive one, but at the same time an important one. It has happened, and still happens, that courts are inclined to be lenient as regards damages for intellectual property infringements for various reasons, which will not be discussed here. The TRIPS Agreement has tried to counterbalance this tendency through the provisions in Article 45 of the Agreement.

The main provision in Article 45.1 prescribes that judicial authorities shall have the authority to order an infringer to pay to the right-holder damages adequate to compensate for the injury that the right-holder has suffered because of the infringement. This is a particularly important provision because it clearly states as an obligation that the damage shall be an adequate compensation and not merely symbolic. The provision furthermore states that it is applicable in cases where the infringer acted with knowledge that he or she was involved in an infringing activity or had reasonable grounds to know this.

Another obligation in respect of damages is contained in Article 45.2, which states that the authorities shall have the power to order the infringer to pay certain costs which the right-holder has suffered, namely expenses, which may include appropriate attorney fees.

That part of Article 45 also contains a facultative provision relating to cases where the infringer had no knowledge and no reasonable grounds to know that he or she was involved in an infringing activity. For such situations, members of TRIPS may authorize judicial authorities to order recovery of profits and/or payment of pre-established damages. Also here, it is a matter for the national legislature to determine how far the obligation to pay damages should go.

DISPOSAL OF INFRINGING GOODS, AND OTHER REMEDIES

As intellectual property rights are of an immaterial nature and very difficult to control efficiently, it is of primary importance that actions can be taken with respect to infringing goods to avoid further damage to the right-holders.

The provisions in Article 46 in the TRIPS Agreement deal with this aspect, the purpose of which is, as stated in the introductory part, to create an effective deterrent to infringement. The judicial authorities shall have the authority to order that infringing goods be disposed of outside commercial channels in such a way as to avoid any further harm to the right-holder.



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The order can alternatively be that the goods be *destroyed*. In such instances, there is, however, the caveat that it does not apply in where such an action would be contrary to constitutional requirements.

As regards the counterfeit of trademarked goods, the Article contains a specific provision to the effect that the simple removal of the unlawfully affixed trademark shall not, except in “exceptional cases”, be sufficient to permit the release into commercial channels. The reason is that it is, of course, easy to affix the pirated trademarks on the goods again.

The purpose of this provision is the very practical one of preventing infringing goods from entering the market. The provision applies to infringing goods. The Article also contains a similar provision which concerns “material and implements the predominant use of which has been in the creation of infringing goods”. It concerns, in other words, for instance printing equipment, copiers and recorders; the condition is that their predominant use has been the production of the infringing goods. The sanction is that the material at issue shall be disposed of outside commercial channels in such a manner as to minimize the risk for further infringements.

The provisions concerning the disposal of material used for the production of infringing goods are clearly rather severe and can have far-reaching effects. The Article contains, therefore, a provision on proportionality. It states that in considering requests for such actions, the need for proportionality between the seriousness of the infringement and the remedies ordered shall be taken into account, as well as the interests of third parties. This proportionality principle applies only to material and implements and not to the infringing goods themselves.

RIGHT TO INFORMATION

In infringement cases it is of considerable practical importance to discover the commercial chain in which infringing goods have been used.

Article 47 of the TRIPS Agreement contains a provision in this respect. The provision is not mandatory, but a “may” provision. Members may provide that the judicial authorities shall have the authority to order the infringer to inform the right-holder of the identity of third persons involved in the production and distribution of the infringing goods or services, and their channels of distribution.



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This provision shall apply, unless it would be out of proportion to the seriousness of the infringement; consequently the principle of proportionality shall apply also here. As mentioned, the provision is not mandatory and members are free to implement it or not. It should be noted, however, that such a provision at the national level would be of considerable value, because of the difficulties which sometimes exist in ascertaining who the real pirates are; it is not enough to catch the street vendors when the real infringers are higher up in the chain.

Although this provision is optional, it should be stressed that it is very important to discover how pirated goods are brought on the market and from where they come. It would therefore be advisable to consider the introduction in national laws of such provisions along the lines of the TRIPS Agreement, which contains a considerable number of safeguards.

Another question is how far-reaching such a right of information should be. For instance, should it apply only to the infringer, or also to other persons who are in the possession of infringing goods? This raises questions about the protection of commercial secrets, etc., and has to be considered carefully.

INDEMNIFICATION OF THE DEFENDANT

Abuse of justice may, of course, occur in all kinds of cases, including intellectual property cases, and the defendant may have suffered considerable injury. This is a situation which should be remedied.

Article 48 in the TRIPS Agreement contains a specific mandatory provision in this respect. Article 48.1 relates to cases where a party at whose requests measures were taken has abused enforcement procedures. In such cases, the judicial authorities shall have the authority to provide a party who has been wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. In addition, the authority shall include orders to pay the defendant's expenses, which may include appropriate attorney fees. It should be stressed that this applies to "appropriate" attorney fees, and not to exaggerated fees, which may sometimes occur.



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Article 48.2 deals with a specific situation, namely *the liability of public authorities or officials* for their acts in respect to the administration of any laws pertaining to the protection or enforcement of intellectual property rights. Members shall only exempt such authorities or officials from liability to appropriate remedial measures where actions are undertaken or intended in good faith in the course of the administration of that law. This is, of course, an interesting provision: the immunity of public officials is limited, but at the same time wide (because it applies both to actions undertaken and to actions intended in good faith). The rationale for the provision is act as a barrier against unjustified exemptions from liability when public authorities or officials are involved.

PROVISIONAL MEASURES

In intellectual property cases, quick measures are often called for, particularly in order to prevent evidence of any kind from disappearing, and because the longer an infringement continues, the bigger the injury is to the right-holder.

Therefore, the TRIPS Agreement pays special attention to provisional measures. Detailed provisions in this respect are contained in Article 50. This article has caused some disputes between various WTO members, something that shows the importance of its provisions.

Normally, provisional measures are taken in the course of a civil procedure. Article 50.8 prescribes, however, that if a provisional measure can be ordered as a result of administrative procedures; such procedures shall conform to principles that are equivalent in substance to those contained in Article 50. Those principles, consequently, have general application regardless of the nature of the procedure.

Article 50.1 contains the basic provision in this respect. It states that judicial authorities shall have the authority to order prompt and effective provisional measures for two purposes. One such purpose is to prevent an infringement of an intellectual property right from occurring, and in particular to prevent the entry into channels of commerce of goods, including imported goods, immediately after customs clearance.

The other purpose is to preserve relevant evidence in regard to the alleged infringement. Normally, the opposing party shall be heard before such an order is issued. Article 50.2 contains, however, an exception from this rule, to the effect that measures can be undertaken without hearing the other party ("*inaudita altera parte*"). This may be the case in different



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situations, but the provisions mention, in particular, where any delay is likely to cause irreparable harm to the right-holder, or where there is a demonstrable risk of evidence being destroyed. As can be seen, the requirements for issuing orders without hearing the other party are rather strict; there must be a risk for “irreparable harm” or a “demonstrable risk” for the destruction of evidence.

The provisions in Article 50.2 are complemented by provisions in Article 50.4. According to that provision the parties affected shall be given notice, without delay after the execution of the measure ordered without hearing the other party. Furthermore, a review, including the right to be heard, shall take place at the request of the defendant within a reasonable period after the notification of the measures -- the purpose being to decide whether these measures shall be modified, revoked or confirmed.

Article 50.3 deals with certain procedural issues in relation to provisional measures. It says that the judicial authorities shall have the power to require the applicant to provide “any reasonably available evidence” in order to satisfy the authorities “with a sufficient degree of certainty” that a) the applicant is the right-holder, and b) that the applicant's right is being infringed or that such infringement is imminent. Furthermore, they shall be able to order the applicant to provide a security or equivalent assurance which is sufficient to protect the defendant and to prevent abuse. These provisions are mandatory and shall consequently be respected.

In addition Article 50.5 contains a further provision, which is facultative and which consequently can be considered at the national level. It states that the applicant may be ordered to supply other information necessary for the identification of the goods concerned by the authority that has to execute the measures. All these provisions are important in order to ensure that the procedure is in fact fair and equitable.

Further procedural requirements are dealt with in Article 50.6. Provisional measures shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period decided by the juridical authority that has ordered the measure. This applies in case the national law of the member so permits; if there is no determination, the period may not exceed 20 working days or 31 calendar days, whichever is longer.



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These are all safeguards to ensure that provisional measures are in fact provisional and not intended to be lasting. It may of course happen that the measure lapses or it is found that there was in fact no infringement. Provisions for such cases are included in Article 50.7. It is related to three situations, namely that the provisional measure is revoked, or it lapses due to any act or omission by the applicant, or it is found that there has in fact been no infringement or threat of infringement. In such cases, the judicial authorities shall have the authority to order the applicant, if the defendant so requests, to pay to the defendant appropriate compensation for any injury caused by these measures. Also this provision is there in order to ensure a fair and equitable procedure.

BORDER MEASURES

As regards counterfeit and pirated goods, an important issue is of course to control the import of them and their further distribution into the commercial channels of a country. Border controls are consequently of crucial importance and the customs authorities have an important role to play in this context. The TRIPS Agreement devotes an entire Section to border measures, which are thus considered to play an important role in controlling infringement of intellectual property rights.

The key provision is found in Article 51, which is a mandatory provision which the members of TRIPS have to comply with. Such members shall adopt procedures which enable a right-holder who has valid ground to suspect that import of counterfeit trademark may take place to apply for the suspension by the customs authorities of the release into free circulation of those goods the application shall be in writing and be lodged with the competent administrative or judicial authorities. This is the main provision, and it applies, as the wording indicates, to importation of counterfeit trademarked goods. A Note to the Agreement contains definitions of those two notions.

“Counterfeit trademark goods” shall mean any goods, including packaging, bearing without authorization a trademark which is identical to a trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.



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While the key provision concerns only importation, Article 51 also prescribes that corresponding procedures may be provided for suspension of infringing goods intended for *export*. This is an issue that can be considered at the national level.

According to Article 60 it is allowed for members of TRIPS to exclude from the application of the provisions in respect of “small quantities of goods of a non-commercial nature contained in travelers’ personal luggage or sent in small consignments.” Consequently, it is allowed to permit import of counterfeit or pirated goods if it is in small quantities and the purpose is personal use and not for commercial purposes. This is called “*De Minimis Import*”.

The Article then contains a number of procedural requirements. Thus Article 52 contains provisions concerning the application for such a suspension of the release of the goods. The applicant shall be required to provide a) adequate evidence that there is a *prima facie* infringement of the intellectual property right of the right-holder in the country of importation, and, b) a sufficiently detailed description of the goods to make them “readily” recognizable by the customs authorities.

A very important provision is contained in Article 55 which deals with the duration of the suspension. This duration is counted from the date when the applicant has been served notice of the suspension. The goods have to be released if during 10 working days from that date the customs authorities have not been informed that proceedings leading to a decision on the merit have been initiated by someone else than the defendant, or that the authority empowered has taken provisional measures to prolong the suspension of the release. “In appropriate cases” this 10-day period may be extended by 10 additional working days.

The decision to suspend the release of goods is, as just mentioned, to be taken by a “duly empowered authority”, which can be a customs or administrative authority, but may also be a judicial authority, and the decision may be a decision or a provisional measure under Article 50. In such a case, solely the provisions of that Article apply; in this instance Article 50.

As in the case of provisional measures under Article 50, it may happen that the suspension of the release of the goods is unfounded. Article 56 contains a provision which gives the relevant authorities the power to order the applicant to pay the importer, the consignee and the owner of the goods an appropriate compensation for the wrongful detention of the goods, etc.



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A particularly important element in proceedings like these is the possibility to inspect the goods detained. Article 57 contains a provision according to which the competent authorities shall be able to give the right-holder sufficient opportunity to inspect the goods detained in order to substantiate the right-owner's claims. Also, the authorities shall have an equivalent opportunity to inspect such goods. In case a positive determination has been made on the merits of a case, members of TRIPS may (not "shall") determine that the authorities shall have the authority to inform the right-holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods at issue.

As mentioned, the actions to be undertaken in respect to suspected counterfeit or pirated goods are based on an application by the right-holder (*"exparte" proceedings*). The TRIPS Agreement also contains some provisions on *ex officio* proceedings. Those provisions, in Article 58, apply only in cases where a member of TRIPS requires the competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed. For such cases, which consequently are not mandatory, that Article contains certain provisions.

One such provision is that the competent authorities may at any time seek from the right-holder any information that may assist them in exercising their powers. Furthermore, the importer and the right-holder shall be promptly notified of the suspension. In case the importer has lodged an appeal against the suspension, the provisions on the duration of the suspension in Article 55 shall apply.

Finally, Article 58 prescribes that public authorities and officials shall be exempted from liability to appropriate remedies only where actions are taken or intended in good faith. These provisions in Article 58 aim at ensuring a fair proceeding also in cases where actions are taken *ex officio* without any application from the right-holder.

A very important issue is which actions shall be taken with regard to the infringing goods. The basic provision in this respect in Article 59 prescribes that the authorities shall be able to order the destruction or disposal of infringing goods, and that this shall take place in accordance with the principles in Article 46, which have been dealt with above. This key provision is subject to any other rights of action which may be open to the right-holder and without prejudice to the defendant's right to seek review by a judicial authority.



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As regards counterfeit trademark goods, it shall not be permitted to allow the re-exportation of the goods in an unaltered state or subject them to a different customs procedure, except in exceptional circumstances. This provision is similar to the one in Article 46 respecting counterfeit trademark goods, and the aim is to prevent circumvention of the measures taken regarding such goods.

CRIMINAL PROCEDURES

Intellectual property law is part of civil law. It establishes exclusive rights in inventions, trademarks, literary and artistic works, or other protected subject matter for those who have created them. Therefore, the main responsibility for the protections of the rights lies with the right holders

In the last 20 years there has, however, been a growing tendency to give public authorities a responsibility to enforce at least some parts of intellectual property law, in particular copyright and trademark laws.

The Article first includes some mandatory provisions. The key provision is that members of TRIPS shall provide for criminal procedures and penalties to be applied “*at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale*”. In this case, as can be seen, criminal procedures and penalties are mandatory in these two cases, provided that the acts are undertaken willfully, that is, with knowledge.

The Article also, however, prescribes that members “may” provide for criminal procedures and penalties also in *other cases of infringement of intellectual property rights*, in particular where they are committed willfully and on a commercial scale. This means that TRIPS member are free to have criminal proceedings also where acts are committed not willfully but with, for instance, gross negligence. They are also free to apply criminal procedures and penalties for infringements of, for instance, patents and industrial design rights.

As far as remedies are concerned, it is prescribed that they shall include *imprisonment and/or monetary fines* sufficient to provide a *deterrent*, consistently with the level of penalties applied for crimes of a corresponding nature. This is an important provision. It makes it mandatory to include imprisonment and/or monetary fines as a sanction in these cases. It furthermore prescribes that the remedies must be severe enough to provide a deterrent against infringements, and that they shall correspond to crimes of a similar gravity. This is generally



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to be interpreted as meaning that the penalties should correspond to that of theft or similar crimes.

In addition to penalties of this kind, other remedies may also be appropriate. The Article specifically mentions that in appropriate cases the remedies shall include the *seizure, forfeiture and destruction of the infringing goods and of materials and implements whose predominant use* has been in the commission of the offence. These provisions correspond to those mentioned in Article 46, and their purpose is to ensure that the goods do not enter the market and that the devices used for their production are not used again for production of infringing goods. It is to be noted that the provision applies only to material whose predominant use has been for this purpose. Material which has been used also for other legal activities is not intended to be covered.

OTHER COMMENTS ON ENFORCEMENT

The TRIPS Agreement contains minimum provisions. Countries are perfectly free to apply additional measures if they so want, and in fact a number of countries have added some elements such as special intellectual property courts and tribunals.

A survey was conducted by the International Bar Association's Intellectual Property and Entertainment Committee regarding the subject of specialized intellectual property courts and tribunals.

THE KEY FINDINGS OF THE SURVEY WERE AS FOLLOWS:

- The lack of IP expertise in the judiciary is a major problem for the enforcement of IP rights.
- There exists a trend in the IP field to either create specialized courts or set up specialized divisions for IP matters within courts of general jurisdiction.
- A small number of courts (1-3) having jurisdiction over IP matters seems to be the preference.
- A specialized IP court model that is effective in one jurisdiction may not work in another. Factors such as local customs and practices, IP caseloads, number of judges, budgetary concerns and local procedural issues, among others, have contributed to the existence of different types of specialized IP courts established thus far.



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- In some jurisdictions, there are specialized areas in which the courts use panels to hear specific types of IP cases. Specialized judges help manage challenges of complexity in IP cases. Judges with specialized experience and understanding of IP can reduce hearing times and costs for litigants, increase efficiency, improve precision and predictability of adjudication, and provide unification and consistency of IP legal doctrine.

THE SURVEY ALSO INDICATED THE FOLLOWING:

- Four jurisdictions have developed specialized courts that exclusively hear IP cases.
- Eight jurisdictions have developed specialized tribunals that exclusively hear IP cases.
- Twenty nine jurisdictions have courts of general jurisdiction with specialized divisions that exclusively hear IP cases, or have specialist judges with IP backgrounds and expertise in IP cases.
- Six jurisdictions have commercial courts or divisions that hear IP cases in addition to other business disputes.
- Thirteen jurisdictions have appellate courts that exclusively hear IP cases and also hear other types of appeals.
- Eleven jurisdictions have explored and contemplated the potential of specialized IP courts in their countries.

THE SURVEY INDICATED THE FOLLOWING ADVANTAGES:

EFFECTIVENESS:

- *Quicker and more effective decision-making process.* The time that otherwise would be lost in educating the judge about aspects of the case will be saved, thereby shortening hearings and reducing costs for litigants, courts, and administrative staff. Specialization theoretically reduces delay because judges become familiar with the case patterns and the legal issues raised by the cases before them. Judges who hear the same types of cases regularly come to recognize fact patterns and issues more quickly and accurately than those who encounter such cases only occasionally. As a result, they can control the lawyers more easily, see possibilities for settlement, and



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write better decisions. Their increased opportunity to see trends may also put them in a better position than judges who see a mix of cases to develop the law to suit evolving conditions.

- Better understanding of IP issues by judges.
- Establishment of rules and procedures which are unique to IP issues, such as appointing associate judges or assessors to assist and provide technical knowledge.
- Reduced risk of judicial errors, which contributes to the effectiveness of the administration of justice.
- *Reduced caseload.* Specialist courts reduce the caseload of overburdened generalist courts. If a rash of cases in a specialist field emerges at a particular time, or if, for example, there is new legislation in the particular field requiring thorough interpretation by the court, then the specialist court will relieve the general court of this burden and thereby ensure that the stream of litigation is not impeded.

EFFICIENCY:

- IP courts are more likely to manage the challenges of complex IP cases more efficiently and precisely.
- Appeals may be made directly to the highest court, bypassing the courts of appeal.
- IP courts are more cost effective, due to efficiency and faster adjudication of cases.
- As many IP rights have acquired a multinational dimension, judicial cognizance of findings in other jurisdictions may be recognized and relied on by specialized IP courts, while generally not permitted in general courts.
- Court proceedings may be shortened as exhibits and experts may be less necessary.

It should be noted that there are also likely to be benefits to the jurisdictions that create specialized IP courts as well as to its litigants. For example, an increase in foreign direct investment may be realized by countries that create specialized IP courts. Additionally, litigation costs for plaintiffs and defendants may decrease, as exhibits and experts needed to establish facts in general courts may be unnecessary.



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POTENTIAL DOWNSIDES OF HAVING SPECIALIZED IP COURTS

It is important to stress, however, that potential benefits carry possible downsides. These have been identified through the survey as:

- Costs of maintaining IP courts may be high.
- Costs of training judges, court personnel, and public prosecutors may be high.
- A lack of a substantial caseload may not justify the creation of specialized IP courts in certain jurisdictions.
- A local presence may not be possible by specialized IP courts and therefore may be inaccessible to some.
- Repeat litigators will know judges well and will become well acquainted with the eccentricities of the specialized court's rules, therefore putting one-time litigants at a disadvantage.
- *Loss of generalists' overviews.* Generalist judges come to cases without preconceptions and are able to apply fresh perspectives to the problems at hand.
- *Informality.* Familiarity among those administering justice may lead to an undue reduction of formality.
- *Isolation.* The creation of a specialized court carries with it the risk that it may lead the particular area of law in a direction away from the development of the general law.
- *Overlap with other areas of law.* This is the case where, for example, an IP case, whether relating to patent, trademark or other matters, raises questions of contract outside the specific issue of IP. This situation may require a generalist judge to try the whole case, rather than a specialist judge, who might be tempted to develop inappropriate general principles of law to meet his or her particular view.
- *Geographical availability.* Specialized courts will usually require long-distance travel either by the judges or the parties. This will inevitably increase costs.

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Some of these disadvantages may be ameliorated by WIPO activities and development cooperation, such as: legislative advice and other assistance to countries contemplating the establishment of specialized IP courts; training members of the judiciary in IP matters; and promoting exchange of information among judges serving in IP matters (e.g., study visits, conferences, or collections of court decisions from various countries).

In conclusion, the time seems right for the development of specialized IP courts. It will be interesting to see the directions taken by various legal systems as they deal with the continuing problems of specialization and lack of resources. IP law has become a specialized and globalized area of law that requires a specialized IP judiciary and a specialized IP procedural regime. It is not a good use of judicial resources to assign a judge who has had mainly family or criminal experience when in practice or on a lower court bench to an IP case. The “all judges are equal principle” is not very sensible when dealing with specialized areas such as IP.

The survey confirms the existence of a large number of jurisdictions that have contemplated the potential of specialized IP courts for the enforcement and adjudication of IP rights.

The survey set out to identify core findings about enforcement-related issues in connection with IP rights that could, in turn, provide a factual basis for discussion. We feel that it has achieved this aim. It is for governments to take measures in order to speed up legal proceedings relating to IP and, in particular, to establish specialized courts or equip major District Courts with specialized sections having jurisdiction on IP matters. The reorganization of the local court system is not a purely administrative matter; it often requires the direct involvement of government to create such courts. Since specialized courts will give judges the chance to deal mainly or exclusively with IP disputes, they will create the opportunity to strengthen expert knowledge on the matter and, consequently, shorten the length of the court’s procedure.

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RECOMMENDATIONS FOR THE LAW ENFORCEMENT SYSTEM IN EGYPT

1. THE CREATION OF SPECIALIZED INTELLECTUAL PROPERTY COURTS

As stated earlier, there is no obligation under the TRIPS to create a judicial system for enforcement of intellectual property law that is distinct from law enforcement in general. On the other hand, Article 41 requires member countries to have legal procedures regarding the enforcement of intellectual property rights which are fair and equitable. Furthermore, they shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

The Egyptian legal system suffers from, among other things, very long delays, making it reasonable for the Egyptian government to consider of establishing special circuits for business litigation.

The 2006 special 301 report issued by the US government, which examines the adequacy and effectiveness of intellectual property rights protection in 87 countries, states the following about Egypt: "Egypt will remain on the priority watch list 2006. The United States is concerned about the continuing deficiencies in Egypt's IPR enforcement regime, problems with its judicial system". The report adds: "In addition, the Egyptian court system continues to operate inefficiently, resulting in the lack of satisfactory resolutions of copyright and trademarks cases, difficulties in obtaining deterrent sentences, and lack of transparency. The United State hopes to see improvements in Egypt's IPR regime that will significantly strengthen trade and investment ties between the two countries".

A specialized IP court system will allow for the training of the judges in the field of IP, and should result in more speedy and transparent rulings.

Help in this regard may be obtained from countries such as the EU and the USA, as well as from international organizations such as WIPO and others.

2- EFFECTIVE BORDER MEASURES

Article 51 sets out procedures regarding border measures and the suspension of release of counterfeit goods by customs authorities. The suspension stated in this article is based on an application to be filed by the right holder. However, a suggested improvement is to provide the customs outlets with an electronic database of the registered Egyptian trademarks. This will strengthen the process of fighting piracy and the prevention of entry into Egypt of



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counterfeit goods bearing trademarks, to make sure that they are imported only by the legitimate right holders. Tougher procedures should also be enacted to effectively reduce the amount of pirated goods which are smuggled through the ports of Egypt without being inspected by customs officials and without paying customs duties.

Another major source of entry of counterfeit and pirated goods is through the Egyptian-Libyan border. The counterfeit goods do not enter through the customs points along the border, but are brought in through routes known to smugglers.

Tightening of security at the border will result in a significant reduction in the volume of counterfeit goods entering Egypt.

3- HIGHLY TRAINED IP INSPECTORS

In our opinion, IP inspectors are the weakest link in the IP enforcement system, due to the following reasons:

- a- They are not well trained;
- b- They lack specific authorities;
- c- They do not have specific guidelines and procedures on how to conduct raids and collect evidence.

These deficiencies contribute to a lack of transparency and open the door for possible corruption.

It is highly recommended that specific guidelines for conducting raids and collecting evidence are approved through legislation or decree.

Furthermore, IP inspectors should be properly selected and given the highest possible training.

This is essential to have an effective enforcement system on the ground and not on the books only.

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4- ADDITIONAL TRAINING FOR THE STAFF AND TRANSPARENCY OF PROCEDURES AT THE EGYPTIAN TRADEMARKS OFFICE

Although the Egyptian Trademark Office has improved in the last few years, some aspects still need additional progress.

One of the troublesome aspects in this regard is the registration of well-known trademarks to third parties, in clear violation of Article 68 of the Egyptian trademarks law, and the obligation of Egypt under the Paris Convention and the TRIPS.

The non-existence of an electronic database of the registered Egyptian trademarks is another troublesome area.

5- TRAINING OF PROSECUTORS IN IP

Prosecutors are an essential component of an effective IP enforcement system. Training in IP law and procedures for prosecutors is highly recommended.

6- USING OF DAMAGES AS DETERRENT AND INJUNCTIONS WHEN APPROPRIATE

The Egyptian judges have been lenient when determining damage. It is recommended that judges start using damages not only as a compensation for the right owner for incurred losses, but also as a punitive tool when appropriate.

Judges should use injunctions where appropriate in the application of Article 44 of the TRIPS and Article 115 of the Egyptian trademark law.

7. RAISING THE AWARENESS OF THE EGYPTIAN CONSUMER

The fight against piracy cannot be won without educating and convincing the Egyptian population of the seriousness of the problem. Sustained campaigns may be needed in this respect.

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VI. CONCLUDING REMARKS

FIRST: THIS REPORT FACED SOME SERIOUS PROBLEMS, WHICH INCLUDED:

- A. Lack of significant official data relevant to the subject of infringement and piracy of trademarks in Egypt.
- B. The lack of awareness among the public concerning the piracy of trademarks and the problems resulting from it. Even lawyers, who are supposed to be aware of this subject, showed an alarming lack of awareness. This was clear from the results of the consumer and attorney surveys, and from discussions conducted with some of participants in those surveys.
- C. Reluctance of the majority of the companies that have suffered from the effects of the piracy of their trademarks, and were approached, to participate in this study or provide us with information on the subject.

SECOND: THIS REPORT ESTABLISHED SOME VERY SIGNIFICANT RESULTS, INCLUDING:

- A. The widespread piracy of trademarks includes all kinds of goods.
- B. The study established very significant results regarding the negative impact of piracy of trademarks on the economy. One such result is that if counterfeiting of the goods studied in this report was eliminated, about 2100 million Egyptian pounds in additional taxes would have been generated in fiscal year 2003/2004.
- C. The positive financial benefits from controlling the piracy of trademarks should not be understood as limited to just the direct economic impact.

For example:

A significant reduction in the rate of trademark piracy in Egypt, will send a clear and positive signal to foreign multinational companies.

This would be a very important factor in attracting more Foreign Direct Investment (FDI) to Egypt, which was US\$ 3.5 billion in fiscal year 2005/2006, and is badly needed to expand the economy and create more jobs.

Foreign direct investment is associated with technology transfer which contributes to raising the quality of Egyptian products and opening new foreign markets for them.



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A significant reduction in the levels of trademark piracy will also reduce instances of cancer and kidney failure which result from fake food products containing chemical compounds that are extremely hazardous to human health. This, in turn, will reduce the cost to government for providing medical treatment to Egyptians. The huge costs Egyptians themselves pay for medical treatment would also be reduced. The money saved could be used to expand the economy and create more jobs.

The image of the Egyptian Government's ability to control its markets and establish law and order should not be underestimated in sending positive signals abroad.

Finally we wish to express our sincere appreciation of the support of the IMC group during the preparation of this report.



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VII: Appendixes;

APPENDIX A: EQUATIONS ESTIMATIONS FOR THE PERIOD 2000 TO 2004

EQUATION 1:

$$\log(s_{it}/nt) = a + b_1 \cdot \log(y_t) + b_2 \cdot \log(p_{it}) + b_3 \cdot \log(r_1) + b_4 \cdot \log(c_i) + c_1 \cdot \log(y_t) \cdot \log(r_i) + c_2 \cdot \log(p_{it}) \cdot \log(r_1) + c_3 \cdot \log(c_i) \cdot \log(r_i) + c_4 \cdot \log(nt) \cdot \log(r_i)$$

Where:

s_{it} = total sales of trademarked goods of the sector I at time t,

nt = population of Egypt at time t,

a = constant term,

b_1, b_2, \dots = constant coefficients of the first order terms,

c_1, c_2, \dots = constant coefficients of the second order terms,

y_t = Per capita gross domestic product at time t,

p_{it} = average price of the trademarked goods of the sector I at time t,

r_1 = trademark protection of trademarked goods of the sector I,

c_1 = share of total consumer expenditure on goods of type being measured (sector i), for example, clothes and footwear .

The coefficients of the terms in the equation that contains the trademark protection variable, r_1 , can be used to estimate the economic impact of trademark protection.

- Tobacco and Cigarettes EQUATIONS

Per Capita Sales

$$\text{Intsales} = -0.2962 \cdot \ln \text{pgd} - 0.3881 \cdot \ln \text{avepr} - 30.8871 \cdot \ln \text{prf} + 1.9744 \cdot \ln \text{stce} + 0.2444 \cdot \ln \text{pgd} \cdot \ln \text{prf} + 0.4332 \cdot \ln \text{avepr} \cdot \ln \text{prf} - 2.2047 \cdot \ln \text{stce} \cdot \ln \text{prf} + 2.0292 \cdot \ln \text{pe} \cdot \ln \text{prf}$$

Adjusted R-Squared = 1

Intsales/population

- Food and beverage EQUATIONS



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Per Capita Sales

$$\text{Intsales} = -23.8157 * \text{Inpgdpd} + 4.4482 * \text{Inavepr} - 9.1173 * \text{Inprf} - 68.5780 * \text{Instce} + 25.5281 * \text{Inpgdpd} * \text{Inprf} - 5.2412 * \text{Inavepr} * \text{Inprf} + 77.0093 * \text{Instce} * \text{Inprf} + 0.9292 * \text{Inpe} * \text{Inprf}$$

Adjusted R-Squared = 0.9872

Intsales/population

- Ready-made garments (clothing) EQUATIONS

Per Capita Sales

$$\text{Intsales} = -880.1915 * \text{Inpgdpd} + 1828.615 * \text{Inavepr} + 274.9613 * \text{Inprf} + 170.5760 * \text{Instce} + 1055.789 * \text{Inpgdpd} * \text{Inprf} - 2115.943 * \text{Inavepr} * \text{Inprf} - 190.4981 * \text{Instce} * \text{Inprf} - 32.2293 * \text{Inpe} * \text{Inprf}$$

Adjusted R-Squared = 0.9999

Intsales/population

- Ready-made garments (footwear) EQUATIONS

Per Capita Sales

$$\text{Intsales} = 11.3823 * \text{Inpgdpd} - 29.6111 * \text{Inavepr} + 8.0522 * \text{Inprf} + 1.6811 * \text{Instce} - 12.7019 * \text{Inpgdpd} * \text{Inprf} + 35.7424 * \text{Inavepr} * \text{Inprf} - 1.8759 * \text{Instce} * \text{Inprf} - 1.1163 * \text{Inpe} * \text{Inprf}$$

Adjusted R-Squared = 1

Intsales/population

- Pharmaceuticals EQUATIONS

Per Capita Sales

$$\text{Intsales} = -16.4366 * \text{Inpgdpd} + 20.2828 * \text{Inavepr} - 372.9738 * \text{Inprf} + 3.6265 * \text{Instce} + 16.5212 * \text{Inpgdpd} * \text{Inprf} - 23.4017 * \text{Inavepr} * \text{Inprf} - 4.0248 * \text{Instce} * \text{Inprf} + 21.7954 * \text{Inpe} * \text{Inprf}$$

Adjusted R-Squared = 1

Intsales/population

- Electrical goods EQUATIONS



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Per Capita Sales

$\ln sales = -16.4366 * \ln pgdp + 20.2828 * \ln avepr - 372.9738 * \ln prf + 3.6265 * \ln stce + 16.5212 * \ln pgdp * \ln prf - 23.4017 * \ln avepr * \ln prf - 4.0248 * \ln stce * \ln prf + 21.7954 * \ln pe * \ln prf$

Adjusted R-Squared = 1

Intsales/population

Equation 2:

$FDI = b_0 + b_1 OR + b_2 GR + b_3 GDP + b_4 POP + b_5 GE + b_6 TL + b_7 PR + b_8 ER + b_9 CAB + b_{10} DC + b_{11} R_i + U$

Where:

FDI = foreign direct investment in Egypt

OR = oil reserves in Egypt

GR = gas reserves in Egypt

GDP = gross domestic product in Egypt

POP = population of country

GE = government expenditures

TL = the number of mobile phone

PR = privatization

ER = exchange rate

CAB = current account balance

DC = domestic credit

R_i = trademark protection of trademarked goods in COUNTRY

U = the rest of the variables are interactions terms. Referring to IPR law

b_0 = constant term.

b_1, b_2, \dots = constant coefficients of the first order terms

OR and GR: reflect Resource Endowments



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GDP and POP: reflect Market Size

GE and TL: reflect Infrastructure Quality

ER: refers to the rate of exchange, which reflects the extent of the decline in the ability to attract foreign direct investment in Egypt

CAB: reflect the economic performance in Egypt

DC: reflect the local facilities granted to foreign direct investment in Egypt

To evaluate the parameters of the standard former model, data was compiled for the period (2000-2004) from several different sources, and many adjustments were made on these data in order to match the objectives of this study, and also for the data concerning FDI inflows (dependent variable)



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5. Temporary and preliminary injunctive relieves are unduly difficult to obtain.

1 2 3

4 5 N.I.

6. Permanent indemnification relief is unduly difficult to obtain.

1 2 3

4 5 N.I.

7. Monetary damages are unduly difficult to obtain.

1 2 3

4 5 N.I.

8. Destruction of infringing goods is unduly difficult to obtain as a remedy.

1 2 3

4 5 N.I.

9. Customs procedures and other remedies are either unavailable or ineffective as an enforcement tool.

1 2 3

4 5 N.I.

10. Evidentiary rules and standards unduly prevent effective enforcement of trademark rights.

1 2 3

4 5 N.I.

11. Restrictive or unavailable discovery procedures unduly prevent effective enforcement of trademark rights.

1 2 3

4 5 N.I.

12. Criminal sanctions for trademark counterfeiting are not reasonably available.

1 2 3

4 5 N.I.

13. The process for indictment and criminal prosecution of trademark counterfeiters is unduly difficult for effective enforcement of trademark rights.

1 2 3

4 5 N.I.

Please indicate the amount of trademark counterfeiting in Egypt (circle one):

(1) Insignificant (2) small (3) moderate (4) large (5) very large



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APPENDIX C: TRADEMARK PROTECTION VARIABLE SURVEY (FOR PRODUCERS)

1(a). What is the nature of your business?

1(b). Which industry sector would you classify your business under?

- Food and beverage
- Electrical goods
- Ready-made garments (clothing and footwear)
- Tobacco and cigarettes
- Home personal care
- Pharmaceuticals

2. Who could be contacted for any follow-up questions?

(a) *Company name:*

(b) Name of contact person:

(c) E-mail of contact person:

(d) Telephone number of contact person:

3(a). The research team is interested in compiling a detailed list of (i) the specific counterfeited and pirated products that have been seized in recent years (at any time during 1999-2005), and (ii) the cities from which the seized products originated. The level of detail would preferably be comparable to the Harmonized System (HS) classification, at the six-digit level. Information on the type of infringement and the HS classification would also be appreciated. An example follows:



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Product:	Cities:	Type of infringement	HS	item number
----------	---------	----------------------	----	-------------

Automotive gear boxes	City A, City B	Trademark		8708.40
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Information on the products seized should be provided, even if other information (on Egypt, type of infringement and HS item number) is not available.

Product:	Cities:	Type of infringement	HS	item number
----------	---------	----------------------	----	-------------

3(b). If available, information on the quantity and value of the individual products counterfeited would also be appreciated. Such information could be for a recent year or, if possible, for a series of years. The information could be provided in whatever format is readily available.

4(a). To the extent possible, please provide data on the number and estimated value of counterfeit and pirated goods for the following years. Please report the “Total” number and value of counterfeits, even if data on the different types of counterfeits are not available. If data are not available, please indicate by entering “NA”. If data for all years (1999-2005) is not available, please provide information for those years where such data is available.

Types	1999	2000	2001	2002	2003	2004	2005
	Number of counterfeits						
Trademark							
	Estimated value of counterfeits						
Trademark							



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4(b). What currency is the value of counterfeits expressed in?

4(c). Please indicate whether the total value you reported is in denominations of thousands, millions, or otherwise:

4(d). What is the method used to compute the value of seized goods (*e.g.*, value of “legitimate” articles, market value of counterfeited and pirated items, etc.)?

4(e). If data on the total number of counterfeits are incomplete or unavailable, please provide your views (based on your observations and experience) on how the number of counterfeits of counterfeit and pirated goods seems to have changed between 1999 and 2005:

The overall number of counterfeits has (check one and complete, as appropriate):

increased, by about _____% between 1999 and 2005;
(*Note: percent can be expressed as a single number, or a range.*)

or

decreased, by about _____% between 1999 and 2005;

or

remained about the same between 1999 and 2005.



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-
5. Changes in the number of counterfeits between 1999 and 2005 reflect (i) changes in counterfeiting and piracy activity, (ii) improved detection methods, (iii) changes in the laws governing infringements, or (iv) other factors, or a combination thereof.
-
-
-

Based on your observations and experience, how much do you estimate the number of counterfeits changed between 1999 and 2005, due *only* to changes in counterfeiting and piracy activity (check one and complete, as appropriate)?

Increased, by approximately _____%.

(Note: percent can be expressed as a single number, or a range.)

or

Decreased, by approximately _____%.

or

No change.

6. How has the range (or types) of counterfeit and pirated products that have been seized during the past 5 years changed? (Check one)

The range of counterfeit and pirated products being seized:

has become more limited.

is basically the same.

has been expanding steadily.

has been expanding rapidly.



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7(a). What are the principal ways that your customs officials or government employee's use to detect counterfeit and pirated goods? Please indicate frequency by checking the appropriate box.

	Rarely	Sometimes	Often	Very often
Targeting (through profiling and related techniques)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Special alerts (or "tip-offs") received by customs officials that specific imported shipments are believed to contain infringing goods	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Random examinations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7(b). Additional information on the targeting techniques being used to detect counterfeit and pirated goods would be welcome (use additional sheets, as required)

8. Based on your experience, do you have a rough idea of the percentage of imported counterfeit and pirated goods that are being intercepted at the borders (either overall or in specific product categories)?

Yes No

1. Please provide any comments on (i) the information that has been provided in the questionnaire, or (ii) other comments related to the project.



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APPENDIX D: SOURCE DATA AND RESULTS

The Report on the Observance of Standards and Codes (ROSC) data module provides an assessment of the Arab Republic of Egypt's macroeconomic statistics.

The datasets covered in this report are national accounts, consumer and producer price indices, and government finance, monetary and balance of payments statistics.

The agencies that compile the datasets assessed in this report are the Ministry of Planning (MOP), the Central Agency for Public Mobilization and Statistics (CAPMAS), the Ministry of Finance (MOF), and the Central Bank of Egypt (CBE).

The datasets which pertain to this report can be accessed in print and on the Internet:

CAPMAS: <http://www.capmas.gov.eg>

CBE: <http://www.cbe.org.eg/>

MOF: <http://www.mof.gov.eg>

MOP: <http://mop.gov.eg>



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APPENDIX E: 1-CONSUMER SURVEY

- 1.Age Less than 20 years
 From 21 to 30 years
 From 31 to 40 years
 Over 40 years
- 2.Education level Graduate studies
 College education
 High school graduate
 Preparatory school graduate
 Less education
- 3.Monthly income Less than 500 pounds
 From 501 to 1000 pounds
 From 1001 to 2000 pounds
 From 2001 to 3000 pounds
 From 3001 to 4000 pounds
 Over 4000 pounds
- 4.Do you understand what a trademark is?
 Yes No
- 5.Did you knowingly buy goods bearing imitated trademarks?
 Yes No
- 6.Nature of these goods
- | | |
|---|---|
| <input type="checkbox"/> Clothes | <input type="checkbox"/> Video or CD |
| <input type="checkbox"/> Perfumes | <input type="checkbox"/> Electrical goods |
| <input type="checkbox"/> Tobacco | <input type="checkbox"/> Personal care goods |
| <input type="checkbox"/> Medicine | <input type="checkbox"/> Food and beverages |
| <input type="checkbox"/> Automotive spare parts | <input type="checkbox"/> Other (please specify) |



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7.Reasons for buying the goods with fake trademarks

- Price Not knowing that they are fakes
 Quality Other reason (please specify)
-

8.Are there any goods which you will not buy if they bear imitated trademarks?

- Yes No

In case of a yes answer please explain

9.Should trademarks be protected from infringement and piracy?

- Yes No

10. In case of a "no" answer please explain



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CONSUMER SURVEY ANALYSIS

The consumer survey was given to about 250 persons chosen at random. The results were as follows:

1. The age distribution was as follows;
 - A. 4% less than 20 years of age
 - B. 47% between 20 to 30 years of age
 - C. 26% between 31 to 40 years of age
 - D. 13% over 40 years old

2. The education distribution was as follows;
 - A. 13% with graduate studies
 - B. 62% college graduates
 - C. 22% high school graduates
 - D. 1% preparatory school graduates
 - E. 2% less education

3. The monthly income of the sample was as follows;
 - A. 14% have income less than 500 pounds per month
 - B. 23% have income between 500 and 1000 pounds
 - C. 23% have income between 1000 and 2000 pounds
 - D. 12% have income between 2000 and 3000 pounds
 - E. 13% have income between 3000 and 4000 pounds
 - F. 15% have income over 4000 pounds

4. 89 % said that they understand what is a trademark
11% said that they do not understand what a trademark is.

5. 74% said that they knowingly buy goods bearing imitated trademarks
26% said that they did not buy goods bearing imitated trademarks.



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6. 42% of the sample bought clothes bearing imitated trademarks;
19% bought video and CD tapes bearing imitated trademarks
30% bought perfumes bearing imitated trademarks
42% bought electric goods bearing imitated trademarks
1% bought tobacco bearing imitated trademarks
12% bought personal care products bearing imitated trademarks
6% bought medicines bearing imitated trademarks
8% bought foods and beverages bearing imitated trademarks

7. Of those who bought fakes:
83% said that they bought fakes because they are cheaper than the original products
3% said that they bought the fakes because they have the same quality of the original.
14% said that they bought fake products because they did not know that they were fakes.

8. 80% said that there are some fake goods they will not buy. The list included medicine, food and beverages, automotive spare parts and cosmetics.

9. 83% said that trademarks should be protected from infringement and piracy.
10% said that trademarks should not be protected from infringement and piracy.
7% did not record an opinion.

10. Those who thought that trademarks should not be protected from infringement and piracy justified this because in some cases they can not buy the original goods.

The survey point out a deep lack of awareness of the Egyptian consumers

This is clear from the contradiction of 83% of the sample being for the protection of trademarks against infringement and piracy while 74% knowingly buying fakes.

We strongly feel that the lack of awareness is a major contributor to the spread and circulation of fakes in the Egyptian market.



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APPENDIX F: GLOSSARY OF SOME INTELLECTUAL PROPERTY TERMS

ADULTERATION:

Replacing more valuable ingredients with less valuable ingredients.

COUNTERFEITING:

The act of producing or selling a product containing a sham mark that is an intentional and calculated reproduction of the genuine mark. A "counterfeit mark" is identical to or substantially indistinguishable from the genuine mark. Often, counterfeit goods are made to imitate a popular product in all details of construction and appearance so as to deceive customers into thinking they are purchasing the genuine merchandise.

INFRINGEMENT:

An invasion of one of the exclusive rights of intellectual property. Infringement of a utility patent involves the making, using, selling, offering to sell, or importing of a patented product or process without permission. Infringement of a design patent involves fabrication of a design that, to the ordinary person, is substantially the same as an existing design, where the resemblance is intended to induce an individual to purchase one thing supposing it to be another. Infringement of a trademark consists of the unauthorized use or imitation of a mark that is the property of another in order to deceive, confuse, or mislead others. Infringement of a copyright involves reproducing, adapting, distributing, performing in public, or displaying in public the copyrighted work of someone else.

PIRACY:

The act of exact, unauthorized, and illegal reproduction on a commercial scale of a copyrighted work or of a trademarked product.



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TRADEMARK:

(1) A word, slogan, design, picture, or any other symbol used to identify and distinguish goods. (2) Any identifying symbol, including a word, design, or shape of a product or container, that qualifies for legal status as a trademark, service mark, collective mark, certification mark, trade name, or trade dress. Trademarks identify one seller's goods and distinguish them from goods sold by others. They signify that all goods bearing the mark come from or are controlled by a single source and are of an equal level of quality. A trademark is infringed by another if the second use causes confusion of source, affiliation, connection, or sponsorship.

TRIPS:

Trade Related Aspects of Intellectual Property Rights. One of the agreements of the World Trade Organization (WTO)

Durbin-Watson:

The Durbin Watson is a test for the first- order serial correlation in the residuals of a time series regression.

R- Squared:

Statistical measure of how well a regression line approximates real data points; an r- squared of 1.0 (100%) indicates a perfect fit.

