The following is a compendium of news reports over the last three months that may be of interest to our AG offices that are dealing with intellectual property issues. Neither the National Association of Attorneys General nor the National Attorneys General Training & Research Institute expresses a view as to the accuracy of news accounts nor as to the position expounded by the authors of the hyperlinked articles.

April-May 2015

Presidential Initiative Summit

The NAAG Presidential Initiative Summit was held in Biloxi, Mississippi, hosted by Mississippi General Jim Hood. Several panels focused on intellectual property theft, including panels on pirate sites and counterfeit and non-FDA approved medications entering the United States. The keynote address was presented by the White House Coordinator on intellectual Property, Danny Marti. In his address, he emphasized the importance to the U.S. economy of safeguarding intellectual property and highlighted the dangers of cyber theft of trade secrets. A recording of the keynote address and other panels at the Summit can be found here.

News from AG Offices

Louisiana Attorney General Buddy Caldwell announced the arrest of Cheikh Kane, who is accused of illegally selling counterfeit handbags, watches, jewelry, and other items at a local flea market. The items have an estimated value of nearly $114,000.

Massachusetts Attorney General Maura Healey announced that Corey Kalenda pled guilty and was sentenced to three years’ in state prison for selling counterfeit Massachusetts Bay Transportation Authority (MBTA) passes. He made $60,000 by selling the 3,000 counterfeit passes and deprived the MBTA of revenue in excess of $225,000.

Mississippi Attorney General Jim Hood announced that Keith Danner, 42, of Senatobia, pled guilty to felony sale of counterfeit goods, possession with intent to sell counterfeit goods and possession of codeine. Danner was selling counterfeit merchandise from his car. He was sentenced to twenty years in the custody of the Mississippi Department of Corrections with ten years suspended and ten years to serve, followed by five years of post-release supervision. He was also ordered to pay $1,000 toward investigation costs. Another individual, Willie Lorenzo Greer, who admitted to AG investigators that he was selling counterfeit designer handbags, has been sentenced to five years with four years suspended, one to serve, and three years of post-release supervision.

New Hampshire Attorney General Joseph A. Foster issued a press release warning New Hampshire residents about the potential dangers of purchasing medications from on-line pharmacies.
Rhode Island Attorney General Peter Kilmartin announced that the Rhode Island Senate had passed S.B. 596 and it has now been sent to the House. Filed on behalf of Gen. Kilmartin, the bill would prohibit a person from making bad faith assertions of patent infringement against a Rhode Island business or individual. The law also gives the Office of Attorney General civil investigative powers, including the ability to bring civil actions against patent trolls; if found to have made a bad faith assertion, the patent troll could face a maximum penalty of $250,000.

Washington Attorney General Bob Ferguson announced that the legislation that he proposed, SB 5059, the Patent Troll Prevention Act, has been signed by Governor Jay Inslee. The legislation is designed to protect Washington small businesses from predatory and bad faith patent infringement claims and demands.

Federal Legislation

In Congress, there are competing bills addressing patent overhaul. S. 1137, introduced into the Senate at the end of April, would make it more difficult to sue for patent infringement by requiring that pleadings include each patent allegedly infringed, each process, etc., alleged to infringe the patent, and the acts of the alleged infringer. It passed out of the Senate Judiciary Committee in early June. S. 632, the STRONG Patents Act of 2015, does not address the patent troll issue and, thus, would not make it more difficult to bring a patent infringement claim; instead, it focuses on bolstering the quality of the patents granted. In the House, H.R. 9, similar to S. 1137, was reported out of committee, but not without controversy, both in the press and on the House floor.

The Senate passed the Trade Facilitation and Trade Enforcement Act of 2015, an amendment to H.R. 644. Part of that bill would require customs inspectors to inspect packages coming into the United States labelled “gifts.” Often, counterfeiters will use that designation to avoid having their goods inspected at the port of entry. The bill also creates a chief innovation and intellectual property negotiator tasked with the responsibility to conduct trade negotiations and enforce trade agreements. It includes improved enforcement for trade secrets.

The No Stolen Trademarks Honored in America Act, H.R. 1627, has been introduced. It would amend the Department of Commerce and Related Agencies Appropriations Act, 1999, to prohibit U.S. courts from recognizing, enforcing, or otherwise validating any assertion of rights by an individual (under current law, by a designated Cuban national) of a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated by the Cuban government unless the original owner of such mark or name, or such owner’s bona fide successor, has expressly consented. The bill is in committee.

The Grace Period Restoration Act of 2015, H.R. 1791, has been introduced in the House and is in committee. If passed, this would allow inventors a one-year grace period to file a patent even though the nature of the patent may have been disclosed prior to the patent's filing. Generally, patent applications are denied if a disclosure is considered “prior art.” This legislation would exempt these pre-filing disclosures made during the prior year from being classified as prior art.
H.R. 1881 has been introduced and is in the Committee on the Judiciary. Dealing with visual works of arts, it would expand copyright owners' exclusive rights to include the right to collect or authorize the collection of a royalty if the work is sold by a person other than the author for at least $5,000 in an auction.

Also in the House Committee on the Judiciary is H.R. 1896, the “Demand Letter Transparency Act of 2015.” If passed, it would require entities which send a specified number of demand letters within a year to submit to the U.S. Patent and Trademark Office specifics of the letters, including the number of recipients, and details concerning the patent asserted including evidence that the entity sending the letters is the owner of the patent.

State Legislation

The West Virginia legislature passed and Governor Tomblin signed into law S.B. 454, the state’s first law criminalizing the production, advertising, sale, and possession (with intent to sell) of items with counterfeited trademarks.

In the Courts

The e-commerce site Etsy, Inc., is facing fraud claims from its investors. A proposed class action suit has been filed against the Brooklyn, New York, based company and its executives after analysts announced that over 5% of the listing may be counterfeit or infringe on trademarked brands. Etsy is a platform for crafters and others to sell handmade clothing, jewelry, and collectibles. Altayyar v. Etsy, Inc. et al., No. 15-cv-02785 (E.D.N.Y. filed May 13, 2015).

State Intellectual Property Theft Investigations/Prosecutions

California

April 30, 2015: The Fresno County Sheriff’s Office arrested U.S. deputy marshal Edward Zucker for allegedly selling counterfeit sports jerseys. Investigators seized 38 counterfeit jerseys after executing a search warrant at Zucker’s home and job site.

Florida

April 10, 2015: A Ft. Pierce store owner has been charged with selling counterfeit items, including knock-off Michael Kors, Coach, Tory Burch, and Gucci.

Illinois

June 13, 2015: Cook County Sheriff Thomas Dart announced that the owner of a Chicago-area business was arrested on multiple felony charges because of counterfeit items found at this business, Max International Trading Corporation. Investigators found 130,000 glass inserts used in lampshades featuring counterfeit teams logos from the NHL, the MLB, the MBA, the NFL, and the Collegiate Licensing Company.
Indiana

May 28, 2015: Vanderburgh County prosecutors have charged Adrish Bannerjee and Catherine Yan He, both of Las Vegas, on counterfeiting charges, a level 6 felony. They are accused of distributing and selling rifle scopes manufactured using another company’s design but sold under a different brand name. The charges are possible because of an Indiana Supreme Court decision that expanded the interpretation of the state’s counterfeiting law to include anything of value.

April 1, 2015: An anonymous tip led Greenwood police to two thrift stores. There, they found nearly 1800 counterfeit DVDs which they seized. Charges are pending.

Massachusetts

May 16, 2015: Weymouth police arrested Kayla Meyer at a local McDonald’s and charged her with possession to distribute a counterfeit drug along with other charges.

New Hampshire

June 19, 2015: Laconia police invited an undercover investigator to inspect several vendor tents at the Laconia Motorcycle Week festivities. That investigation led to the arrest of Peichen Lee-Tu and her husband, Cheng Lee-Tu, of Westfield, Massachusetts, who were charged with dealing in counterfeit goods. Police seized more than 900 fake brand-name items, worth more than $30,000.

New Jersey

April 20, 2015: Andrew D. Mei was arrested by officers from the Bergen County Prosecutor’s office White Collar Crimes Unit. He is charged with theft by deception for allegedly selling counterfeit sports trading cards.

New York

May 1, 2015: A former New York state employee will receive five years of probation for running an online business selling counterfeit cellphone cases and stealing $40,000 by charging the state for time he didn’t work.

Ohio

Apr. 24, 2015: Fred L Motley was indicted by a Ross County Grand Jury for trafficking in a counterfeit controlled substance, a fifth-degree felony. Undercover agents purchased what Motley claimed was a bag of three grams of cocaine for $200. However, the substance tested as 1.13 grams of a non-controlled substance.

Oklahoma

April 9, 2015: Oklahoma City police arrested a local store owner and charged him with selling counterfeit Thunder t-shirts.
Pennsylvania

April 2, 2015: A traffic stop by Pennsylvania State Highway Patrol on I-81 has led to an investigation of possible counterfeit merchandise. After officers stopped the car, they saw a large amount of Michael Kors merchandise in the car.

Tennessee

June 8, 2015: The Bluff City Police Department received a tip that Terri Cradic, of Blountville, was selling counterfeit Michael Kors and Louis Vuitton handbags at a local flea market. A Grand Jury has now indicted her on two counts of criminal simulation.

April 17, 2015: Detectives from the Nashville Police Department’s Fraud Unit seized more than 650 counterfeit items from a store in Nashville. The owner, Samba Ba, was charged last June for selling counterfeit merchandise at another Nashville store.

Texas

April 15, 2015: A Waco store owner has been arrested by Waco police and charged with two counts of trademark counterfeiting. Experts confirmed that the store, Big T Fashion, had over 300 trademark counterfeit items in stock, including New Era, Ralph Lauren, and Timberland.

April 14, 2015: After receiving a telephone tip, a Hunt County Deputy Sheriff went to the Quinlan Trades Day and found over 65 pirated DVDs. Marco Antonio Ortiz-Marcias was arrested and charged with Labeling Unauthorized Recordings.

Information of General Interest

Although this newsletter primarily focuses on activity in the states regarding intellectual property theft, readers might be interested in the latest counterfeit scheme that attracted the attention of federal law enforcement. A Louisiana man was arrested in May on charges relating to his sale of fake coupons on various websites. He allegedly sold packages of counterfeit coupons that buyers could print out and use at local stores or resell to others.

Other large federal IP enforcement action this quarter included the arrest and charges against individuals who sold millions of dollars of Microsoft Corporation and Adobe Systems, Inc., software product key codes through a charitable organization and several online businesses. The affidavits in the criminal complaint state that the conspirators gained about $30 million in profit. Federal officials also announced charges against 11 individuals who allegedly counterfeited and illegally distributed the liquid dietary supplement 5-Hour ENERGY.

Leaders in the Senate and House have relaunched the Congressional Trademark Caucus that will focus on increasing awareness about the value of trademarks in the U.S. economy and the health and safety concerns of counterfeit products.
FDA, in partnership with international regulatory and law enforcement agencies, took action against 1,050 websites that sell potentially dangerous, unapproved prescription medicines and medical devices to consumers. Dubbed Operation Pangea VIII, the operation included FDA sending warning letters to nearly 400 websites.

U.S. Customs and Border Protection and Homeland Security Investigations reported that, in 2014, 23,000 seizures of counterfeit items occurred. Wearing apparel and accessories were the top items seized with consumer electronics coming in second.

Tennessee Bureau of Investigation officials issued a warning concerning counterfeit oxycodone pills found in the state.

Federal officials issued a warning in April that a counterfeit version of Botox had entered the U.S. market.

Procurement officers in state offices might be interested in a book released last fall titled *Counterfeit Electronic Parts and Their Impact on Supply Chains*. Among the issues addressed are the best practices for purchasing electronic components.

Federal officials have indicted six Chinese men for stealing code from U.S. tech companies. The indictments, under the Economic Espionage Act, allege that theft was committed on behalf of the Chinese government. One of the men was arrested when he came to the U.S. for a conference. Those indicted are accused of stealing the technology critical to cellphones.

The IPR Center has launched free training for acquisition professionals and the public on its website regarding securing supply chains from counterfeit goods.

An interesting article regarding call centers in the Philippines selling counterfeit drugs was published in the *Wall Street Journal*.

As many of you know, NAGTRI has a patent troll listserv where participants share information on issues occurring in their states. Oregon member Matt Shrumpf has reported that Oregon businesses are beginning to experience copyright trolls. This is the information he posted:

Oregon recently received another “copyright troll” complaint regarding juRightscorp Inc., http://www.rightscorp.com/, which contacted a consumer alleging violations of copyrights. They alleged they know that torrent software was used from the consumer’s IP address to download copyrighted materials (presumably music or movies). They requested $10,000 but offered a reduced price if the consumer made an immediate payment over the phone. Consumer declined and complained to the AG. During a subsequent call from Rightscorp consumer informed them she had complained to the AG and Rightscorp apparently told her they would no longer pursue their claim against her.