

# World Anti-Counterfeiting Day

13<sup>th</sup> June 2012

FICCI, Federation House,  
New Delhi



# About INTA

Not for profit organization of trademark owners and professionals, with 5900+ members in 190+ countries

India members: **181**

## **Activities:**

### **Information and publishing**

–INTA Bulletin, *The Trademark Reporter*

### **Educational events and meetings**

–Roundtables, regional conferences and the Annual Meeting

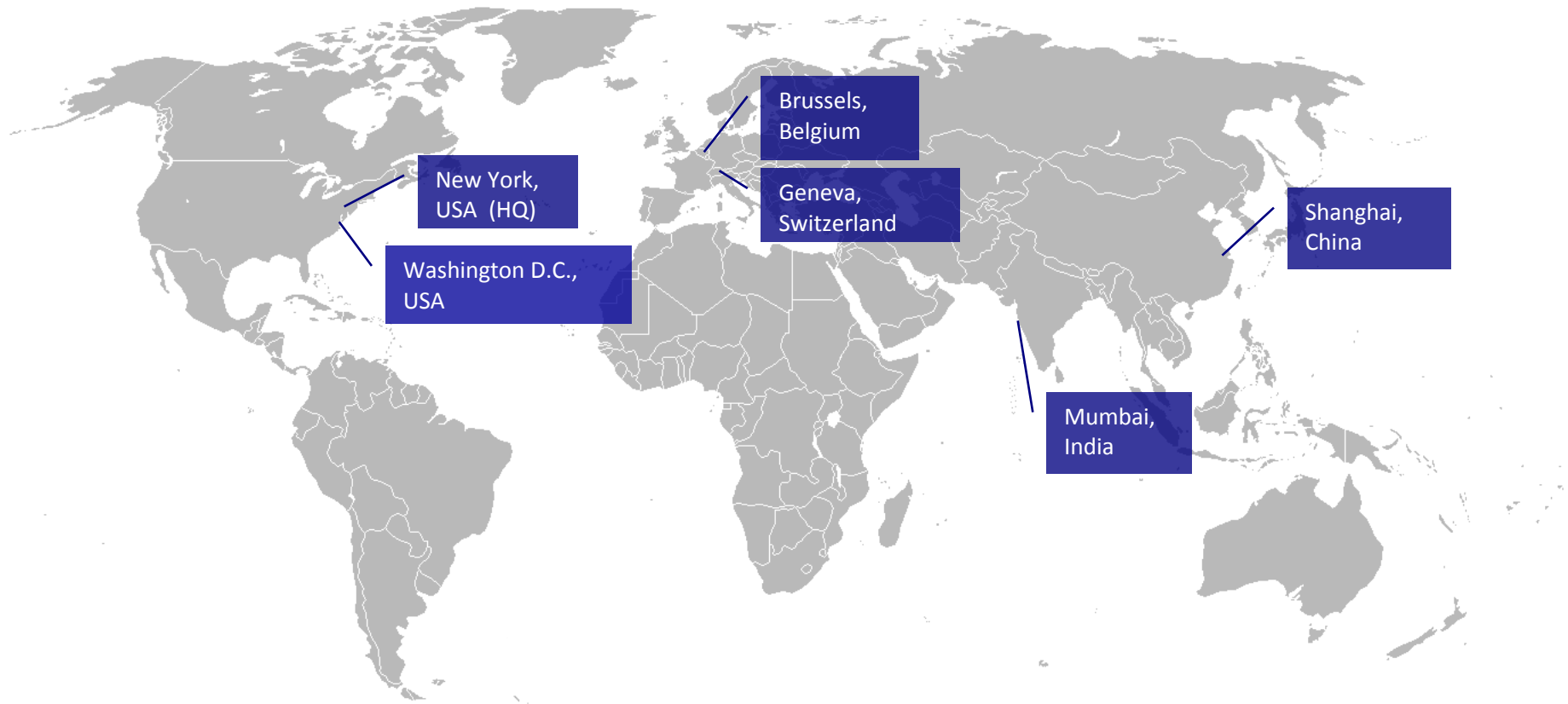
### **Policy development and advocacy**

-To advance trademark law development and protection

-Anticounterfeiting: a major priority for INTA members worldwide



# INTA Global Presence



# Picture of India



© imagesofasia.com



# Picture of India



# Picture of India

- The blend of Organized Retail Stores in the mega-cities and small shops
- Difficult to trace
- Difficult to curb
- Strategies have to be different
- Select markets have to be identified.

# Types of Markets

- Electrical markets
- Pharmaceutical markets
- Garment markets
- Food markets
- FMCG wholesale markets
- Electronic markets

# Remedies for IPR Protection

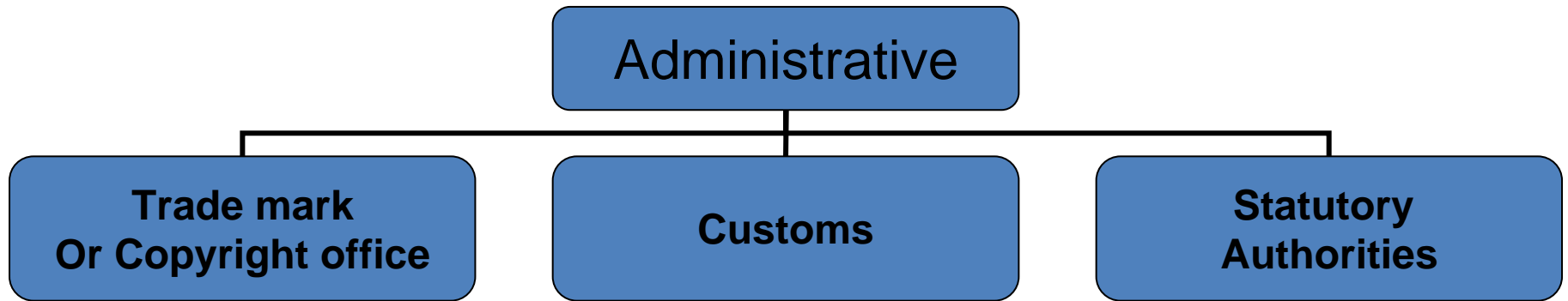
**Administrative**

**Criminal**

**Civil**



# Administrative Measures



# Role of Customs

- **Section 11 of the Customs Act, 1962 prohibits goods for importation and exportation for following purposes:-**
  - **the protection of patents, trade marks and copyrights;**
  - **the prevention of deceptive practices;**

# Border Enforcement

- Customs Notification No. 49/2007
- Intellectual Property Rights ( Imported Goods) Enforcement Rules, 2007 vide Notification No. 47/2007-CUSTOMS (N.T.)
- Circular No. 13/2012-Customs (Enforcement of Intellectual Property Rights on imported goods - Clarification on the issue of parallel imports)

# Border Enforcement

- India's national IP laws recognize border enforcement and read into it the related provisions from the Customs law
- The Ministry of Finance, Government of India has framed Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007
- Customs also given authority to take *suo motu* action against the suspected infringing goods

# Enforcement - Customs

- Customs conducts enquiry
  - Proceedings are required to be adjudicated within a period of 10 days in case of non-perishable goods and 3 days in case of perishable goods
  - Liberty to seek any technical assistance from the right holder

# Enforcement - Customs

- Goods found to be infringing goods, the same are seized
- Seized goods are to then either destroyed or disposed off in consultation with the Right Holder
- Right Holder is also at liberty to retain samples of the goods for the purpose of evidence

IPR eRegistration Home :: - Windows Internet Explorer

http://220.227.154.188/IPR/

Automated  
Recordation &  
Targeting  
for IPR Protection

TRADE MARK COPYRIGHT  
DESIGN PATENT  
IPR  
GEOGRAPHICAL INDICATIONS

### INTELLECTUAL PROPERTY RIGHTS E-REGISTRATION

Please read the Applicant's Guide carefully before moving ahead with

<b>REGISTRATION</b>	CUSTOMS ACT, 1962	IPR RULES, 2007	NOTIFICATIONS	CIRCULARS by CBEC	PARENT ENACTMENTS
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- Copyright Registration
- Trade Mark Registration
- Patent Registration
- Design Registration
- Geographical Indication Registration

Generate [Duplicate Copy](#) of Your Application. || [Applicant's Guide](#)

Website : <http://icegate.gov.in/>

Waiting for http://220.227.154.188/IPR/...

Start | :: IPR eRegistration H...

Internet 100% 19:58

# Enforcement - Customs

- IPR owner can register on the website <http://icegate.gov.in/>
  - Requires to furnish Copyright/ Trademark/ Patent/ Design/ Geographical Indication registration certificate
- Report to the customs whenever infringing goods enter the country



# Statutory authorities

- Drug Controller – Drugs & Cosmetics Act
- The Central Excise Act – for liquor and other excisable products
- But their powers are extremely limited

# ACTA

- ACTA is a means to ensure enforcement of existing IP Rights, and focuses on the creation of a harmonized international framework for the same.
- ACTA also seeks to curb commercial scale infringements that have a negative impact on the world economy

# ACTA

- ACTA contains specific provisions for public health safeguards, in line with TRIPS and the Doha Declaration
- As an international agreement, ACTA requires to be interpreted in good faith, while giving ordinary meaning to the terms of the treaty



# INTA & ACTA

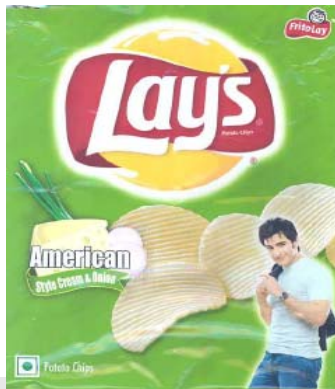
- INTA supports ACTA
- INTA emphasizes the importance of strong anti-counterfeiting measures and increased awareness of the harms of counterfeiting
- INTA does not believe that ACTA will be targeting generic drugs since patents are not included in the border measures section of ACTA.



# INTA & ACTA

- INTA believes that not only should consumers be able to access medicines, but they should also be protected from counterfeit medicines. We understand that there are cases of counterfeit generic medicine brands as well.
- India is still circumspect about ACTA in view of the issue relating to seizure of generic drugs in transit.

## Picture of some Counterfeit & Pass Off Products



# Contribution of the Judiciary



- Most proactive in protecting IPRs
- Since the mid-80s, judiciary has the lion-share in IPR protection
- Has been ahead of the Statutes in most cases & has prompted Amendments therein.

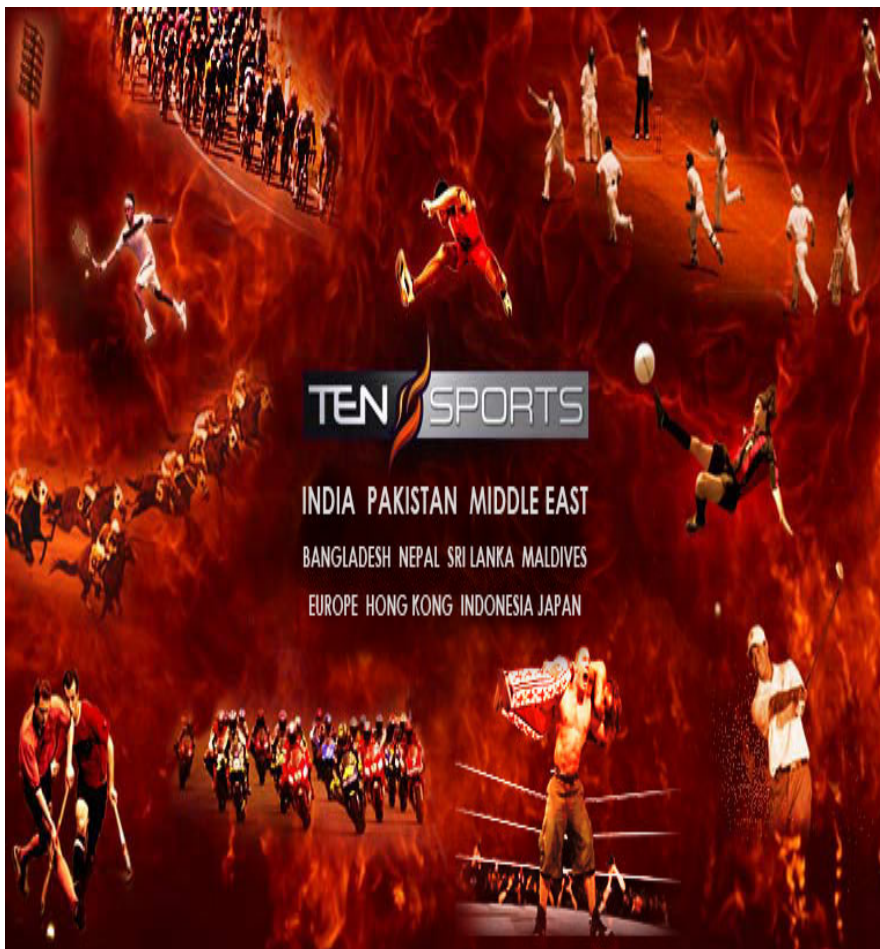
# Contribution of the Judiciary - Reported Precedents

	Copyright	Trademark	Design	Patent
Supreme Court	25	26	Nil	11

	Copyright	Trademark	Design	Patent
Delhi	385	269	18	65
Mumbai	66	95	2	13
Kolkata	38	42	1	51
Chennai	63	81	3	23



# CASES



## Zee Turner Ltd vs. M/s Classic Cable Network & Others

- Civil suit filed against 350 Cable operators
- Local Commissioners appointed who were on stand-by
- As soon as the Cricket matches began, raids conducted simultaneously in 3 cities
- Overnight approximately 250 cable operators signed subscription agreements

# CASES

- Hawkins Cookers Ltd. Vs. Rakesh Kumar, Mukesh Kumar and Ors.

*2005(30)PTC375(Del)*

Really speaking, it is a case of counterfeiting, a much graver version of the offence of the infringement of trademark or passing off



- Cisco Technologies v. Shrikanth

*2005(31)PTC538(Del)*

It is an obligation of all statutory and governmental authorities to ensure that laws are not violated by any person in this country



# CASES

- Asian Paints vs. Chandra Paints and Brush Industry - Assignment of Trademark “GREAT ASIAN” in favour of Asian Paints
- PepsiCo Vs. Pure Water Beverages and Ors – Assignment of the mark Aquafine in favour of PepsiCo



# CONCLUSION

- Anti-Counterfeiting policies have strengthened
- Indian brand owners should join forces to have a bigger say in global anti-counterfeiting policies
- Membership in bodies like INTA would help in this mission
- Brand owners need to invest time and manpower in anti-counterfeiting policy making.