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The Culture of Counterfeiting: The interplay of social norms in the regulation and creation of
counterfeit goods

Regina Roediger

INTRODUCTION

Throughout the world, countries and corporations are incessantly combating the imitation and illegal reproduction of protected products. Although many individuals find themselves enjoying these cheaper counterfeit commodities, numerous problems arise from the lack of regulation on counterfeit production. In order to address the legitimate harms birthed from the global counterfeit market, the interplay between policy and culture must be considered.

Every day thousands of counterfeit cosmetic products find their way from China to the United States (US). Though many citizens enjoy purchasing imitation designer products for a bargain, they are unaware of the damaging and horrifying effects these counterfeits can have. Tucked away in the smooth and vibrant shades of replicated M.A.C. lipsticks and Urban Decay palettes are traces of animal waste, dangerous bacteria, and toxic chemicals, such as arsenic and paint thinners.¹ These seemingly harmless imitation cosmetics can produce disastrous harms on the human body.²

Unfortunately, China's forged cosmetic industry is just the start. The production and sale of counterfeit pharmaceuticals is an increasingly global concern. Unsurprisingly, these false replications have led to heartbreaking adverse reactions and fatalities. Not only do these fake drugs find themselves in the hands of citizens, but also in hospitals and pharmacies where the administration of these drugs can mean life or death.³

¹ City of London Police, *PIPCU urges the public to 'Wake up – don't fake up!'*, (May 21, 2015), <https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/wakeupdontfakeup/Pages/wakeupdontfakeup.aspx>

² See Hetty Tullis, *13 Terrifying Dangers of Counterfeit Makeup*, The Talko (Dec. 15th 2015), <https://www.thetalko.com/13-terrifying-dangers-of-counterfeit-makeup/>

³ World Health Organization, *Substandard and falsified medical products*, (Jan. 31 2018), <http://www.who.int/mediacentre/factsheets/fs275/en/>

As the US has evolved into a forerunner of innovation and advancement, so too has the desire to monopolize and brand each invention. Innovation and the ability to protect that innovation through the development of intellectual property law, is a key factor in the progression of the economy, consumer happiness, and personal motivation. As the US launches itself forward into new technological advancements and pharmaceutical breakthroughs, the ability to secure a patent is paramount. Still, even with a patent, the control and protection of one's work is only as secure as enforcement allows. As the counterfeit market demonstrates, when new innovation arises, the desire to copy follows, regardless of legitimate legal restrictions.

Curtailling these counterfeit manufacturing practices has been a difficult and often frustrating goal. As patents start from a purely national level, the global marketplace remains a difficult warzone to maneuver. Even as international organizations have taken steps to bridge these national gaps, the main conflict remains unaddressed.⁴ In order to tackle counterfeiting globally, enforcement agencies, businesses, and policymakers need to understand how culture influences the implementation and consideration of legal remedies. No better example of this very critical cultural misunderstanding is seen than in the interplay between the US and China in the manufacturing and purchasing of counterfeit goods.

I. COUNTERFEITING

Counterfeiting is defined as “any unauthorized manufacturing of goods whose special characteristics are protected by intellectual property rights.”⁵ Within this broad category of copycat invention are various degrees of specificity, quality, and purpose. Altogether, counterfeit products

⁴ See United States Trade Representative, *2016 Report to Congress On China's WTO Compliance*, (Jan. 2017), <https://ustr.gov/sites/default/files/2016-China-Report-to-Congress.pdf> [hereinafter USTR].

⁵ Victor Cordell et al., *Counterfeit purchase intentions: Role of lawfulness attitudes and product traits as determinants*, 35 J. Bus. Research 1, 41 (1996).

are categorized into three distinct types: high-quality, low-quality, and knockoffs.⁶ High and low-quality counterfeit items are the most commonly recognized type of counterfeit product. Simply summated, high and low-quality counterfeit products are attempted recreations of the original product.⁷ That is, manufacturers attempt to reproduce the exact same name brand product but with inferior materials and without authorization. The only difference between high-quality and low-quality counterfeits is the deceptiveness of the counterfeit. High-quality products are so skillfully created that they are capable of fooling layman consumers and product specialists. Low-quality counterfeits, by contrast, are often easily detected and made with occasional errors. Poorest of the three, knockoffs are simply manufactured items that look like or copy the original product but that avoid replicating the brand name and logo. Beyond the traditional counterfeit classification, there are two additional systems of intellectual property infringement. The first is the selling of “legitimate and original products . . . through unauthorized channels.”⁸ These items are termed greychannel goods and are easily obtainable through the recent explosion in internationally focused websites.⁹ The second form of IP infringement is piracy, which differs from counterfeiting by the mechanism in which the good is copied. Unlike manufacturing aimed at recreating familiar products with new materials, piracy is simply the “unauthorized copying of software, music, or video.”¹⁰ Altogether, these infringements lead to numerous name brand products being duplicated and replicated outside the scope of traditional regulation and safety controls.

⁶ *Id.*

⁷ Ling Jiang & Juan Shan, *Counterfeits or Shanzhai? The Role of Face and Brand Consciousness in Luxury Copycat Consumption*, 119 *Psychological Rep.* 181, 183 (2016).

⁸ Yao Qin et al., *Integrating consumers' motives with suppliers' solutions to combat Shanzhai: A phenomenon beyond counterfeit*, 61 *Bus. Horizons* 229, 230 (2017).

⁹ *Id.*

¹⁰ Jiang, *supra* note 7, at 183.

With ease and efficiency, counterfeit products are exported and traded around the world, creating an intimidating and growing global market.¹¹ According to the most recent report released by the Organization for Economic Co-operation and Development (OECD) and the European Union’s Intellectual Property Office, counterfeit trade is “worth almost half a trillion dollars a year.”¹² This startling sum makes up “around 2.5% of global imports,” which is almost double the percentage estimated in the OECD 2008 study.¹³ This steady increase in global imports seems to be fueled by the rise in online commerce and international trade capabilities, as 62% of seizures from 2011 to 2013 were found through postal parcels.¹⁴ Furthermore, the OECD report indicated that the majority of counterfeit goods originate in “middle income or emerging countries, with China as the top producer.”¹⁵ In fact, as of data collected in 2017, China was not only the top producer of counterfeit products, but was also recognized as “the engine of the global counterfeiting industry.”¹⁶ China’s counterfeiting market is estimated to amount to around 12.5% of their total exports and 1.5% of their GDP.¹⁷ The OECD notes that the reason China and other similarly situated emerging economies tend to be pioneers in counterfeit trade is because their growing economies are able to outpace and surpass their slow-forming institutional and enforcement capabilities.¹⁸

¹¹ Organization for Economic Co-operation and Development, *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact*, (2016), <http://dx.doi.org/10.1787/9789264252653-en> [hereinafter OECD].

¹² Janne Suokas, *China is the world’s biggest producer of fake goods, OECD says*, *gbtimes* (Apr. 18, 2016), <https://gbtimes.com/china-worlds-biggest-producer-fake-goods-oecd-says>.

¹³ OECD, *supra* note 11.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ European Union Intellectual Property Office, *2017 Situation Report on Counterfeiting and Piracy in the European Union* 18 (2017) [hereinafter EUIPO].

¹⁷ *Id.*

¹⁸ OECD, *supra* note 11.

Unfortunately, the creation of the “fake goods market” leads many countries, companies, and consumers to suffer both economic and physical injuries. The countries that have been affected the most by this counterfeit enterprise are the US, Italy, France, and Switzerland.¹⁹ The US alone had their brands and patents implicated in 20% of the knockoff market, with Italy following close behind at 15%.²⁰ This vast enterprise of fake goods can quickly bankrupt and overturn economies by reducing business revenues, decreasing sales, and leading to layoffs and cutbacks which injure prominent companies and small business alike.²¹ There is no clearer example of this economic destruction than the stark piracy rate of the software market. According to the Business Software Alliance’s 2011 Global Software Piracy Study, China’s illegal software market, worth nearly \$9 billion, dwarfs the legal software market which is valued at less than \$3 billion.²² This gap in the world’s legal software sales and China’s piracy market depletes software companies’ commercial value and limits company development.²³ Not only are businesses and countries’ economies injured by the creation of counterfeit goods, but consumers are personally affected as well. Counterfeited items are produced and manufactured in ways that can endanger lives and make individuals extremely ill. Common counterfeit items such as perfume and cosmetics proffer some of the largest safety concerns as the majority of these bogus products contain rat droppings and “toxic levels of chemicals and harmful substances such as; arsenic, mercury, and lead.”²⁴

¹⁹ *Id.*

²⁰ *Id.*

²¹ EUIPO, *supra* note 16.

²² Business Software Alliance, *Shadow Market, 2011 BSA Global Software Piracy Study*, 9 BSA 2012 1, 4 [hereinafter BSA].

²³ *Id.* at 13.

²⁴ City of London Police, *supra* note 1.

Moreover, the fake products are not guaranteed to work and many items end up producing horrifying results.²⁵

II. THE SHANZHAI MOVEMENT

As the leading proprietor of counterfeit goods, China has given birth to a whole new movement called Shanzhai.²⁶ Shanzhai is a novel form of patent infringement which goes beyond simple imitation and focuses on innovation, offering “affordable alternatives to genuine branded products.”²⁷ Instead of only emulating or duplicating products, Shanzhai merchandise includes enhanced features, lower manufacturing costs, and faster production cycles.²⁸ Originating in China in the 1990s, Shanzhai was born out of the electronics industry and was focused on the production of mobile phones.²⁹ Quickly, Shanzhai expanded to industries beyond digital products, “including luxury high-priced consumer items.”³⁰ Altogether, this new counterfeit market is considered a unique and special subsection of Chinese innovation.³¹

Going beyond mere counterfeiting, the Shanzhai movement creates a genuine inquiry into the meaning of innovation and has become a turning point in China’s capital process. With Shanzhai products not only emulating name brands, but also adding consumer desired modifications, many specialists and lawyers are beginning to run into difficulties in determining the line where a

²⁵ OECD, *supra* note 11. The OECD research have found auto parts that fail, pharmaceuticals that make people sick, toys that harm children, baby formula that provides no nourishment and medical instruments that deliver false readings.

²⁶ Qin, *supra* note 8, at 229. The Chinese symbols for shanzhai 山寨.

²⁷ Jiang, *supra* note 7, at 182.

²⁸ Qin, *supra* note 8, at 231. Shanzhai production times vastly outperform brand name items. For example, a Shanzhai mobile phone manufacturer needs only 45 days to complete a cell phone’s entire production process, whereas an original mobile phone company usually need 180 days.

²⁹ Jiang, *supra* note 7, at 182.

³⁰ *Id.*

³¹ *Id.*

counterfeit item ends and a genuine new product begins.³² This confusion is further intensified by Shanzhai manufacturers selling their products under their own brand names. Thus, some Shanzhai products are considered legal under varying trademark laws as a genuine business.³³ In fact, the manufacturing of Shanzhai products “provides jobs and generates revenue that is vital” to certain local economies in China.³⁴ Even the CEO of the Alibaba Group, Jack Ma, “publicly endorsed Shanzhai products” insinuating they were a better investment than name brand products based on the ratio between price and quality.³⁵ This opinion is mirrored in consumer purchases, where many Shanzhai customers feel spending money on expensive name brands is pointless when the counterfeit item is a functional and quality product.³⁶ Unsurprisingly, the Shanzhai movement is establishing itself as a valid economic resource in certain regions of China and as a staple in the broader Chinese market.³⁷

III. INTELLECTUAL PROPERTY RIGHTS

In order to combat and understand counterfeiting, it is imperative that the development and nuance of intellectual property (IP) be discussed. IP law deals with creating rules that help enforce and secure rights to “patents, industrial designs, utility models, trademarks, copyrights, and other rights given to creators over the creation of the mind.”³⁸ These designed and granted rights provide the creator with exclusive ownership for a designated period of time, variable on the type of IP

³² Gady Epstein, *China's Black Market Boom*, Forbes (Feb. 6, 2009), <https://www.forbes.com/global/2009/0216/014.html#40f44c7b51cc>.

³³ Jiang, *supra* note 7, at 182.

³⁴ Alan Zimmerman, Contending with Chinese counterfeits: Culture, growth, and management responses, 56 Bus. Horizons 141, 145 (2013).

³⁵ Qin, *supra* note 8, at 230. Jack Ma is one of the worlds 50 richest billionaires.

³⁶ *Id.* at 232-233.

³⁷ Zimmerman, *supra* note 34.

³⁸ Deli Yang, *Culture matters to multinationals' intellectual property businesses*, 40 J. World Bus. 281 (2005).

protected.³⁹ Overall, IP is made of various divisions and qualities to handle differing fields and works, but there are four common characteristics that permeate all of IP rights: “intangibility, exclusivity, legality, and territorially.”⁴⁰ The first element, intangibility, simply showcases the stark difference between property rights and IP rights. Unlike tangible items that endow ownership when transferred, IP will normally be licensed to a user for a specific duration of time and under a condition of royalties. Thus, though the property is being used by another individual, the IP proprietor maintains ownership. At the heart of IP is exclusivity, which is constructed to exclude others from exploiting an owner’s IP. This characteristic of IP rights is critically examined throughout different disciplines as it tends to be the leading consideration for determining how long an IP should be protected and why IPs should be protected. Legality is the guaranteeing of the limited monopoly granted to owners of IP. This prong is designed to balance the benefits provided to society along with the designated rights of the IP owners. Lastly, territoriality, a pivotal element of IP, explains variations in countries’ enforcement of IP rights and the difficulty of combating counterfeiting in differing countries. As each nation develops regulations and rights for “IP to serve their political and economic objectives,” IP becomes extremely spatially restricted.⁴¹ This individualized approach to IP rights has recently began to harmonize globally as IP regulation has fallen under more of a hegemony.⁴² To mitigate conflicts in IP protection and elicit business cooperation and trade, international offices have been created to offer more guidance. Specifically, the World IP Organization (WIPO) and the World Trade Organization (WTO) which have formed

³⁹ *Id.*

⁴⁰ *Id.* at 284.

⁴¹ *Id.*

⁴² *Id.* A symbolic regional example is the European Patent Office governing the community activities of patents.

strong relationships with various nations to mitigate conflicts and increase the trend of globalization.⁴³

Embedded in the territoriality of IP is an explanation for China's dominance over the counterfeiting market. With the rise of IP rights and global business growth, China has long been considered a late developer on the IP forefront. In fact, before 1985, China had no patent right protections, whereas the US was involved in creating patent protections as early as 1790.⁴⁴ In addition, it wasn't until 1982 that China even created trademark laws.⁴⁵ Yet, with the hope of continuing to enhance and sharpen their regulated IP rights, China focused on development and on steadily growing capital.⁴⁶ The main spark that ignited China's progression towards more fully encompassing IP regulations was their Open Door Policy. Focusing on economic development through trade and technological advancements, China realized that they were unequipped to handle "protecting investors' creative rights."⁴⁷ Unfortunately, China showcased just how behind their nation-based IP structure really was during the 1980s to the 1990s when their systematic framework failed to attract strong business relationships and led to intractable disagreements about business deals.⁴⁸ Yet, as time has progressed, China has quickly begun to address their IP issues and has attempted to replace the nation-based IP construction with a more universally composed mechanism. Following their desire to become a member of WIPO and WTO, the Chinese

⁴³ *Id.*

⁴⁴ Titus Awokuse & Hong Yin, *Does Stronger Intellectual Property Rights Protection Induce More Bilateral Trade? Evidence from China's Imports*, 38 *World Dev.* 1094, 1095 (2010).

⁴⁵ *Id.*

⁴⁶ Tani Fukui et al., *Are U.S. exports influenced by stronger IPR protection measures in recipient markets?*, 56 *Bus. Horizons* 179, 180 (2013). In fact, research has found that when countries improve their intellectual property systems, they are likely to undergo a market expansion effect through increased imports.

⁴⁷ Yang, *supra* note 38, at 282.

⁴⁸ *Id.*

government focused on implicating new regulations and enforcing strategies to comply with international patent laws.⁴⁹

Attempting to navigate the international market and regulations from international organizations, China has focused on reforming many of their IP nation-based flaws. Instructed by the WTO and WIPO, the Chinese government was required to not only enhance the regulations covering IP, but also their enforcement of IP rights. To start, China was asked to instate patent searches and ensure prosecution of patent infringements within China.⁵⁰ These specific performance requirements helped accelerate China's reformation and contributed to the strengthening of their IP laws, which garnered them membership into WIPO in 1995.⁵¹ Continuing to maintain momentum, China instituted the "2014 Red Shield Sword Action," which was a special project to address online trading and e-commerce. The State Administration of Industry and Commerce (SAIC) generated the act in an effort to help "clean up the online shopping environment, and protect the interests of consumers and IP right holders."⁵²

Yet, China's actual enforcement of IP law has been under scrutiny for some time as the US and other nations argue that China is not doing enough to protect IP rights.⁵³ In the US Trade Representative's 2016 Report to Congress on China's WTO compliance, concerns regarding China's enforcement campaigns and policies formed the cornerstone of the report. The report fully appreciated China's attempts at reform but stated that "key weaknesses remain" not only in enforcement, but in the pressure from government policies and practices to "transfer intellectual

⁴⁹ Awokuse, *supra* note 44, at 1095.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Michele Ferrante, *China's Renewed attention to the Fight Against Counterfeit Products Sold Online: The impact of Taobao's new policy and punishments*, 18 J. Internet L. 3 (2015).

⁵³ Awokuse, *supra* note 44, at 1095. China has more IPR laws violations than any other country in the world.

property rights to enterprises in China.”⁵⁴ Particular areas of concern regarded China’s need for improved regulation of the manufacturing of “active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications.” This topic is at the heart of an ongoing debate between the US and China, as China agreed to amend their Drug Administration Law in 2014 and 2015, but has still failed to comply with this agreement as of December 2016.⁵⁵ The report concludes that since China’s acceptance into WTO, they have developed “a framework of laws” that can satisfy WTO requirements, but fail to actively provide protection in key areas of IP law.⁵⁶ Thus, the report placed China on the “Priority Watch List” in the hope that further negotiations and discussion of IP regulations can help China overcome their continued struggle with enforcing IP laws.⁵⁷

IV. CULTURAL DIFFERENCES

Though numerous factors have influenced and affected China’s slow start and continued difficulties with IP law, one of the most effectual and least studied elements is the cultural nature of China. To understand the cultural traditions of Chinese citizens, it is imperative to look at the immense history of China. China is considered one of the oldest civilizations in the world, with written records recorded as early as 1250BC.⁵⁸ These accounts indicate China was ruled by dynasties that strongly impacted cultural development through creating mechanisms to justify imperial rule.⁵⁹ Beyond dynasty control, most historians believe that the Warring States period led

⁵⁴ USTR, *supra* note 4.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ William G. Boltz, *Early Chinese Writing*, *World Archaeology*, 17 Early Writing Systems 420, 436 (1986).

⁵⁹ Kallie Szczepanski, “*What is the Mandate of Heaven in China?*,” ThoughtCo. (Apr. 19, 2018), <https://www.thoughtco.com/the-mandate-of-heaven-195113>. The concept of the Mandate of Heaven had several important effects on China and on other countries such as Korea and Annam that were within the sphere of China's cultural influence.

to the creation of much of traditional Chinese culture, literature, and philosophy.⁶⁰ These cultural underpinnings survived and built much of modern China's cultural considerations and development, still leeching into modern China's communist principles.⁶¹ The effects of this long standing cultural background and ancient communal structure has led China to form a strong sense of tradition and social cohesion that is unwavering in the face of change. These cultural dynamics are quite different from newer, more modern Western countries like the US, which have been molded by uniquely democratic structures.

Analyzing the historical and changing social climates of both China and the US, researchers have begun to discern the different cultural underpinnings of both countries. According to a 2005 study conducted by Deli Yang, the most polarizing cultural difference between China and the US is the way in which citizens view themselves in relation to the country.⁶² In China, there is a strong sense of collectivism, where the citizens feel more inclined to sacrifice individual needs for the overall benefit of the community.⁶³ This communal investment is argued to have been born from the religious and philosophical ethics of Confucianism and Taoism, which focus on "self-cultivation, human dignity, and respect," and endow Chinese citizens with a hierarchical structure based on social harmony.⁶⁴ This social structure compels individuals to live a "simple natural way," highlighting the importance of community conflict-resolution instead of formal legal

⁶⁰ See Yuri Pines, *Legalism in Chinese Philosophy*, Stanford Encyclopedia of Philosophy (Dec. 10, 2014), <https://plato.stanford.edu/entries/chinese-legalism/>. See the Editors of Encyclopaedia Britannica, *Warring State*, Encyclopaedia Britannica (Feb 10, 2014), <https://www.britannica.com/event/Warring-States>. The Warring States period has been seen to be the most fertile and influential in Chinese history. Impacting every citizen, regardless of their social hierarchy.

⁶¹ China Daily, *A good example is the best sermon: how Chinese communism has gone from strength to strength*, China Daily (July 31, 2017), <https://www.telegraph.co.uk/news/world/china-watch/politics/china-communist-party-strength/>.

⁶² Yang, *supra* note 38, at 285.

⁶³ *Id.*

⁶⁴ *Id.*

proceedings.⁶⁵ The US, by contrast, is considered an individualistic society, where there is a heightened focus on individual rights and freedoms.⁶⁶ Following individualism, the US accentuates “competition, self-interests, self-reliance, and personal achievement.”⁶⁷ In a manner unknown to China’s hierarchical structure, the US citizen is capable of undergoing extreme social mobility on the basis of merit and individual performance. This social flexibility is due to the US being predominantly an “attainment-based society.”⁶⁸

The clear cultural distinctions between China and the US have been shown to have a large impact on the formation and protection of IP regulations. The distinction between collectivism and individualism primes citizens to either respect or ignore IP regulation. This is due to the fact that “national culture is strongly associated with piracy and has a significant impact on its prevalence.”⁶⁹ In China, citizens believe that technological and artistic creations belong to the public.⁷⁰ Instead of a focus on self-interests and personal achievement, as propagated by individualism, collectivism feels that the reward of creating is in the fame, not the materialistic control.⁷¹ In fact, historically, China has considered “copying and imitation as an effective way of learning,” dismissing intellectual monopolies as going against the communal good.⁷² Here again, China’s strong historical precedent comes into play as Confucianism enforces the “traditional Chinese belief that inventions draw on past knowledge belonging to all citizens.”⁷³ Yet, Chinese

⁶⁵ *Id.* at 287.

⁶⁶ *Id.* at 285.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Yang, *supra* note 38, at 286. See Venkatachalam Shore et al., *Softlifting and piracy: behavior across cultures*, 23 *Tech. Sci.* 563 (2001).

⁷⁰ Yang, *supra* note 38, at 286.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Zimmerman, *supra* note 34, at 142.

citizens do not simply believe that exact replication is an effective learning technique, instead the copying must be partnered with individual improvement. This cultural belief in building upon others' creations, is an imperative element of the Shanzhai movement. By contrast, as researched by Marron and Steel, individualistic countries tend to have lower IP piracy rates and stronger regulatory contracts protecting IP rights.⁷⁴ With individualistic cultures closely entwining personal identity with achievement, individuals are forced to place great importance on their creations and intellectual property.⁷⁵ Therefore, individualistic societies maintain strong IP regulations and protections in order to sustain the attainment-based society structure. Collectivist societies like China, dismiss this private right to IP and maintain that IP is a collective asset.⁷⁶ With this collective asset ideology, Chinese citizens are much less likely to adhere to IP ownership, as evidenced by China's struggle to enforce IP laws.⁷⁷

In addition, cultural norms not only affect IP regulation, but also significantly influence consumer counterfeit practices. Undeniably, the demand for counterfeiting products is the central force behind the counterfeiting market.⁷⁸ Without a strong and worthwhile demand, counterfeiting enterprises would not be lucrative and the rise in vast quantities of counterfeit products would not be sustainable. Although many factors play a vital role in consumer habits and desires, various studies have determined that five variables can explain purchasing intention for counterfeit items.⁷⁹ One of these five variables is "the cultural and social context in which the counterfeit purchase

⁷⁴ DB Marron & DG Steel, *Which countries protect intellectual property? The case of software piracy*, 38 Econ. Inquiry 159 (2000).

⁷⁵ Yang, *supra* note 38, at 285.

⁷⁶ *Id.* at 294.

⁷⁷ Zimmerman, *supra* note 34, at 142.

⁷⁸ Jiang, *supra* note 7, at 183.

⁷⁹ *Id.*

decision is made from.”⁸⁰ Yet, many actions to counteract counterfeiting fail to consider the consumer’s cultural perspective. The US is especially blind to consumers’ cultural values as US business executives believe that the demand for counterfeiting items is mainly being driven by the “ease of obtaining them.”⁸¹ Ironically, it is these US executives’ own cultural understandings that shapes their view of the problems and solutions to counterfeiting.

CONCLUSION

Overall, empirical research and historical precedent highlight the influence of cultural difference on the counterfeit market. Not only is this cultural structure influential, it is also vital to understanding how to combat and stop counterfeiting practices. Through juxtaposing China, the main producer of counterfeit products, and the US, the country most affected by these illegal practices, a clearer picture develops: if companies and legal institutions continue to dismiss and ignore national cultural factors that influence IP policies and consumer habits, measures attempting to address the counterfeit trade will likely fail.⁸² It is only through understanding China’s historical cultural traditions that organizations and countries alike can create stronger IP policies and engage in more effective dialogue. Likewise, the efforts and measures set to combat the overall counterfeiting market must consider the influence and impact borne on Chinese citizens – some of which rely solely on the counterfeit market to live. One can see how individualistic versus collectivist attitudes change the entire landscape of IP rights. Fortunately, with China’s new Open Door policy, their government’s desire to more forcefully comply with global individualistic understandings of IP law will likely follow. Yet, countries and organizations must understand the

⁸⁰ Kim Wilcox et al., *Why do consumers buy counterfeit luxury brands?*, 46 J. Marketing Res. 247, 248 (2009).

⁸¹ Stephen Stumpf & Peggy Chaudhry, *Country matters: Executives weigh in on the causes and counter measures of counterfeit trade*, 53 Bus. Horizons 305 (2010).

⁸² *Id.* at 307.

change and development that is currently taking place in China, as centuries of traditional collectivist culture are being reshaped and molded to adhere to the modern prescriptions of attainment-based societies. Instead of looking with disdain and exasperation at China for failing to adhere to current IP structures, the world should look to appreciate China's development and consider how globalization has affected culture around the world.