

Mendel University in Brno
Faculty of Business and Economics

**Intellectual property and its protection
in EU**
Diploma Thesis

Supervisor:

Mgr. Ing. Jana Mikušová, Ph.D.

Author:

Bc. Olga Haitl

Brno 2016

Acknowledgement

I would like to thank to Mgr. Ing. Jana Mikušová, Ph.D., the supervisor of my diploma thesis for her valuable recommendations, advices and for her professional guidance while writing this diploma thesis.

Statutory Declaration

Herewith I declare that I have written my final thesis: Intellectual property and its protection in EU by myself and all sources and data used are quoted in the list of references. I agree that my work will be published in accordance with Section 47b of Act No. 111/1998 Sb. On Higher Education as amended thereafter and in accordance with the *Guidelines on the Publishing of University Student Theses*.

I am aware of the fact that my thesis is subject to Act. No. 121/2000 Sb., the Copyright Act and that the Mendel University in Brno is entitled to close a licence agreement and use the results of my thesis as the "School Work" under the terms of Section 60 para. 1 of the Copyright Act.

Before closing a licence agreement on the use of my thesis with another person (subject) I undertake to request for a written statement of the university that the licence agreement in question is not in conflict with the legitimate interests of the university, and undertake to pay any contribution, if eligible, to the costs associated with the creation of the thesis, up to their actual amount.

In Brno on:

.....
signature

Abstract

HAITL, Olga. *Intellectual property and its protection in EU*. Diploma Thesis. Brno: Mendel University, 2016.

The aim of this diploma thesis is to provide complex information about intellectual property and its protection in EU and to explore law conditions both in European legislative as well as in national. This thesis will try to answer the question, whether the protection of IPR in EU is on proper level and what the demand motives for counterfeited goods are.

To achieve these goals the thesis will be divided theoretical and practical part. In the theoretical overview will cover definitions of intellectual property and its categories, analysis of legal environments. The practical part is divided into analysis of case law and results of questionnaire. The theoretical and the practical part are not strictly divided.

Key words: intellectual property, intellectual property rights, counterfeit goods, piracy, intellectual property protection

Abstrakt

HAITL, Olga. *Duševní vlastnictví a jeho ochrana v EU*. Diplomová práce. Brno: Mendelova Univerzita, 2016.

Cílem této diplomové práce je popsat komplexní informace o duševním vlastnictví a jeho ochraně v EU a objasnit jak evropské právo, tak národní. Tato práce se pokouší odpovědět na otázku, zda je úroveň ochrany práv duševního vlastnictví v EU na dostatečné úrovni a jaké jsou motivy poptávky po padělcích.

K dosažení těchto cílů je práce rozdělena do dvou částí, teoretické a praktické. Teoretický přehled obsahuje definice duševního vlastnictví a jeho kategorií, analýzu právních předpisů. Praktická část je rozdělena na analýzu vybrané judikatury a na výsledky z dotazníku. Teoretická a praktická část nejsou striktně odděleny.

Klíčová slova: duševní vlastnictví, práva duševního vlastnictví, padělané zboží, pirátství, ochrana duševního vlastnictví

Table of content

1	Introduction	11
2	Objectives and Methodology	13
2.1	Objectives	13
2.2	Methodology.....	13
2.2.1	Questionnaire.....	13
3	Literature survey	15
3.1	General definitions.....	15
3.2	Historical overview	15
3.3	Types of intellectual property.....	16
3.3.1	Copyright and Neighbouring right.....	17
3.3.2	Patent	17
3.3.3	Industrial design	18
3.3.4	Utility models	19
3.3.5	Trademark.....	19
3.4	Institutions and organizations.....	20
3.4.1	Industrial property office in The Czech Republic	20
3.4.2	WIPO (World Intellectual property organization)	21
3.4.3	EUIPO (European Union Intellectual Property Office)	21
3.4.4	WTO (World Trade Organization)	21
3.5	Intellectual property and its relevancy to SME	22
3.6	Unfair competition.....	22
3.7	Intellectual property protection.....	24
3.7.1	Enforcement of Intellectual property in Czech Republic.....	24
4	Legal Environment in the Czech Republic.....	26
4.1	Act no. 14/1993 (amended).....	26
4.2	Act no. 221/2006.....	26
4.3	Act no. 441/2003 (amended).....	26
4.4	Act no. 478/1992 (amended).....	26
4.5	Act no. 207/2000 (amended).....	26
5	Legal Environment in the European Union	28
5.1	Article 118 TFEU	29

5.2	Directive (EC) 2004/48	29
5.3	Regulation (EU) 2015/2424	30
5.3.1	European IPR Helpdesk	30
6	Customs	31
6.1	Cooperation between customs and right holders	32
6.2	New customs rules.....	34
6.3	Appraisalment of intellectual property and intangible assets.....	34
7	Counterfeit trade	36
7.1	The Use of Antipiracy Marketing Techniques to Educate the Consumer	38
8	Managerial Counterattack	39
8.1	Patent attorneys	39
8.2	Intellectual property as a source of further development	39
9	Case law	41
9.1	STIHL.....	41
9.1.1	Communication with customer	42
9.2	Case No. D2014-0576	43
9.3	Google vs. Louis Vuitton	44
9.3.1	Cases C-236/08 to C-238/08	44
9.4	Minibike Blata s.r.o.	45
9.4.1	Blata Malta case.....	47
10	Results of questionnaire	50
11	Results.....	55
12	Discussion.....	57
13	Conclusion	59
14	List of references.....	60
15	List of figures	64
16	List of tables.....	65
17	List of Abbreviations	66
	Annex.....	67

1 Introduction

People tend to invent for thousands of years. Inventions are for human being important to make work easier, to make goods look better, to make their life as comfortable as possible. Quite interesting is fact, that almost all of the biggest inventions of humans were at first used for wars and armed conflict. Many goods, which people use in their everyday life have their origin in technology development during wars. In this group belongs for example, little bit unexpectedly, stretch foil. Even Cold War between USA and Soviet Union was mainly concentrated on fight in development of technology and inventions, rather than direct conflict.

On the other hand, the quick development in industries in last centuries motivated people to start protect their ideas and developments. Therefore protection of intellectual property become and still is very actual topic. People, who developed some technology are very motivated to protect values, they created. However, within development of means of transportation and international trade the topic became much more discussed than before. The modern process of protection of intellectual property started with founding of first intellectual property offices. One of the most important World Intellectual Property Office was founded in 1967. On the other hand Czech Industrial Property Office history is dated since 1919, that time called Patent Office. This 50 years difference in foundation is explained as there were at first local, national offices and as a trade become more international and global, there was a need for international and global offices.

In Europe, the integration processes started after WWII. In 1952 was founded European Economic Community, followed by ECSC. After decades of integration process in EU and signing Lisbon Treaty in 2007 we have European Union. Nowadays, after 60 years of integration in process, there is EU single market composed of 28 member states. This single market consists of 500 million consumers, which makes it highly attractive and unfortunately a prime target for counterfeit goods and plagiarism.

Even if nowadays, there are national as well as continental, or global databases, which cover millions of designs, patents, arts, etc. , over the last decade, the counterfeit goods and piracy phenomenon has risen to very dangerous dimensions and it became a serious and devastating factor of world business. (Chaudhry, Zimmerman, 2013)

Registered intellectual property is just the beginning of the protection. The most important part of the protection is law enforcement, when intellectual property is broken, copied or stolen.

We are in the continuous process of European integration. A lot of legal proceedings are changing from just national to higher – European. In terms of Intellectual Property are European institutions such as European Commission quite active. There is a legal environment, which should help inventors to secure their rights in the territory of EU. This thesis will, inter alia, concentrate on legal environment in EU.

On the other hand, the space for counterfeited goods provides customers, which demand confirms possible success of traders with counterfeited goods. People could buy such products for many hypothetical reasons, such as price, prestige, fashion trend for a limited time period, etc. Data based on questionnaire, will provide primary data to analyse if people buy rather original or counterfeited goods and what are their motives to do so.

The importance of avoiding of trade with counterfeited goods is also because a lot of these goods are connected with bad working conditions as e.g. child work, poor payment terms, long working hours, etc. People and customers usually know that any form of support of this trade is bad. There are many organizations and institutions, which help to protect intellectual property and spread information among all stakeholders. The growth of importance of commit the general public is a World Day of Intellectual Property, which on 26th April celebrate all member states of WIPO. (mkcr, 2016)

2 Objectives and Methodology

2.1 Objectives

The objective of the thesis is to provide complex information how to deal with intellectual property and how it can be protected in the area of EU. The objective will be achieved by gradually obtaining information about intellectual property and its protection within the EU and in the Czech Republic itself. There won't be observed only legislation but as well solved cases of IPR infringement and consumer behaviour.

Based on the findings of the thesis, there will be following research questions:

- Is Intellectual Property protection of proper level in EU?
- What are the main demand motives for counterfeited goods?

Questions will be answered at the end of this thesis, in chapter conclusion.

2.2 Methodology

Data used for this thesis was collected through listed literature, legislative documents, acts, press releases, journals and web pages. Because EU legislation is changing quite a lot it is important to work with actual publications. Therefore a big part of the thesis consists of data from electronic sources. The purpose of this thesis is to provide readers with complex information about intellectual property and how to deal with its protection in the area of EU. Furthermore, there will be proposed amendments, based on the current practice and the development in the European Union.

There are remaining problems, mainly about the harmonization of the laws among the countries of EU. Even if there are ways how to protect inventions and all intellectual property in the area of EU, there are remaining problems with its protection and protection of older registration. Therefore, the aim is increase the confidence in intellectual property protection in the area of EU. The goal of this thesis is attached by the analysis of Czech legislation as well as EU legal environment with particular attention paid to Directive 2004/48/EC, which is currently enforceable and Regulation No 2015/2424, which came into force on 23rd march 2016. All the analysis is supplemented with primary and secondary data. As secondary data are used examples from case law and descriptions how the courts have interpreted the law or how it was implemented in the national legislation. As a source of primary data is used questionnaire distributed among customers.

2.2.1 Questionnaire

One part of the research part of this thesis is based on questionnaire. The aim of the questionnaire is to find out if people buy counterfeit products. Further questions are concentrated on motives to buy counterfeit as well as rather original products. Finally there are questions, which aim is to find out if respondents perceive antipiracy advertisements and campaigns. Questionnaire will be distributed in 2 languages, which

were Czech and English. For distribution, collection and primary analysis of data have been used university system UMBRELA.

The diversification of respondents for further analysis is based on sex, age, level of achieved education and average monthly income. Distribution by age is based on European Commission, which uses age groups:

- 0 - 24 years
- 25 - 49 years
- 50 - 64 years
- 65 and more years

This diversification enables analysis of children, students and young people. In the second group 25-49 years old there are covered people during the most productive age. In this age group people usually buy a lot of goods. The third group covers people, who usually have strong market power. Last group covers older and retired people.

Diversification by highest level of education covers all levels of education. They are:

- primary education
- specialized school
- secondary education
- higher professional education
- high school/university – bachelors level
- high school/university (master, engineer, PhD.)

The last diversification is based on average monthly income. For determining income groups was used minimum wage in Czech Republic for 2016, which is 9900CZK. (CZSO, 2015) and average wage in Czech Republic, which was in 3rd quarter of 2015 26072CZK, in questionnaire rounded to 26000CZK. The average income groups used in questionnaire are:

- less than 9900 CZK, understand as below the minimum wage
- 9901 – 15000 CZK, understand as very below average income
- 15001 – 22000 CZK, understand as below average income
- 22001 – 26000 CZK, understand as average income
- 26001 CZK and more, understand as above the average income (European Commission, 2004)

For analysis of collected data, was used Excel and tool contingency table.

3 Literature survey

3.1 General definitions

For better orientation and understanding of this diploma thesis, there will be at first mentioned the most important terms and definitions.

Property describes an ownership of a person towards a good, law or other value. There are three types of property:

- Movable property
- Immovable property
- Intellectual property

This thesis will mainly concentrate on the last, the third, mentioned property, which is intellectual property. In term IP are hidden categories of IP, which are patents; trademarks; industrial designs and copyrights.

Malý (2007) defines intellectual property widely as: *“aggregate of rights related to intangible assets, which can be used for business purposes and its legal protection. The subject of intellectual property are mostly patents and other inventions protected by industrial designs and trademarks. Another way of protection IP is the designation of origin, geographical indication or name of a company.”*

British Intellectual Property Office in its IP Crime Report from May 2014 defines IP as: *“Intellectual Property (IP) results from the expression of an idea. IP exists in a brand, an invention, a design, a song or other intellectual creation. These fall into four areas – patents, designs, copyright and trademarks.”*

Connected to intellectual property are rights connected to this ownership. Industrial rights are property rights, which based owner absolute and exclusive rights over the subjects of protection. They are part of the major competition law. From industrial rights arise two types of claims. It is entitled to special protection (public law) and claims arising from the legal granted legal protection (private law). (Jakl, 2011a)

Important aspect of IP is the aspect of intangibility, which can be classified as: *either indefinite or definite depending on the specifics of that asset. For example a company brand name is considered to be an indefinite asset, as it stays with the company as long as the company continues operations.* (Investopedia, 2016)

3.2 Historical overview

As a tangible evidence of peoples interest to secure their ideas and innovations is book written by James Fraser in 1860 in London. This handbook focuses on law and practice of patents, the law of copyright of designs, and the law of literary copyright. (Fraser, 1860)

From the historical point of view, the IP development might be understood as continuous process. People always tend to create new things and innovate those ones they already had. Creativity and ingenuity are from time immemorial part of human

being. Intellectual property was in the history mainly connected to the area of literature and arts (nowadays copyrights). On the other hand the term industrial property was used to cover functional creations in industry (patents, industrial designs, trademarks).

Intellectual property law generally establish following rules:

- The registration and administration of IP
- Licencing or selling IP
- Resolving disputes when companies sell or make similar goods or products.

According to Stim (2014) the ownership of IP does not automatically prevent an IP owner that someone else will be not stepping on his work. But it gives him a chance or the ammunition to protect his IP and to take a trespasser to the court. This is generally considered as a main advantage of owning an IP. On the other hand, if the owner of IPR will not do anything, than the illegal activity is likely to continue.

3.3 Types of intellectual property

According to Kur and Dreier (2013), there are following groups of IP:

- copyrights
- related rights (rights related to copyrights)
- patents
- industrial designs
- trademarks

This diploma thesis focuses mainly on patents, industrial designs and trademarks. These groups of intellectual property are mainly used in industries.

Validity and origins of the effects of industrial rights protection		
invention	validity from	origin of IP protection
patent	20 years from application	announcement of patent right by UPV
industrial designs	5 years from application + 4x5 years renewal = 25 years in total	date of registration
trade marks	10 years from application + unlimited extension each by 10 years	date of registration

Table 1: Validity and origins of the effects of industrial rights protection

Source: own creation based on studied literature

In the above mentioned table are mentioned general characteristics of selected intellectual property. There are differences between above mentioned groups of IP. The main difference is that copyrights are not registered. On the contrary, patents, industrial designs and trademarks have to be registered in database. More details about each group of IP are described in following chapter.

To be registered, there are posted fundamentals, which each possibly IP has to fulfil. Even if there are differences among member states, in these fundamentals are little differences. There generally are:

- to be patented, inventions must be novel, inventive and industrially applicable
- inventions must be creative (original) in order to attract copyright protection
- trademarks must be distinctive in the sense to identify and distinguish goods or services (Kur, Dreier, 2013)

3.3.1 Copyright and Neighbouring right

According to Peggy and Zimmerman (2013) copyright is *“an exclusive right or conferred by the government on the creator of a work to exclude others from reproducing it, adapting it, distributing it to the public, performing it in public, or displaying it in public. Copyright does not protect an abstract idea. It protects only the concrete form of expression in a work. To be valid a copyrighted work must have originality and possess a modicum of creativity.”*

3.3.2 Patent

Patents shall be available for any inventions, whether processes or products, in all fields of technology, if provided that they are new, are capable of industrial application and involve an inventive step. (Maskus, 2000)

Patenting is concerned with the process of transforming the results of research into a valid and vulnerable patent. The research is ideally connected with process of patenting in mind. Inventors should always think about competitive environment on the market and adapt the protection of their inventions. (Junghans, Levy, 2008)

In case when the subject of protection is invention and the form of invention is patents there exist following rules. The inventions have to be worldwide new, they have to be a subject of invention action and they have to be applicable industrially to get a patent. On the other hand inventions, scientific theories, mathematical methods, aesthetic creations, plans and rules of games or business activities, computer programmes and providing of information cannot be patented. (Jakl, 2011a)

The right to get patent have:

- the inventor or its legal representative
- joint inventors within the scope of participation in invention
- employer to which the invention was made, if he applies to this right in a given period

Procedure for granting a patent is initiated with submission of patent application. In the application have to be fulfilled all given requisites based on law and each application can include only one invention. The place registration of applications is in Czech Republic Office of Industrial Property in Prague. Czech inventors can apply through this office as well European and international patent applications. Registration is followed by proceeding of the patent application, which can end:

- rejection of the application
- stopping the application procedure
- granting of the patent and patent publication

Patent effect occurs from the date of notification of the granting of patents. The validity of patent is 20 years and the scope of protection is determined by wording of the patent claims (description, drawing). (Jakl, 2011a)

Termination of patent occurs when there is its expiration (20 years since application registration), failure to pay maintenance fees or by surrendering the patent. (Jakl, 2011a)

3.3.3 Industrial design

As well as previously mentioned patents, industrial designs are part of industrial rights.

Industrial design are in Czech Republic regulated by law No. 207/2000, about protection of industrial designs, amended by law no. 474/2004, no. 501/2004, no. 59/2005 and no. 221/2006. In EU are regulated by Council regulation EC no. 6/2002 of 12 December 2001 on Community designs.

At the most basic level, industrial design is the development and design of products for manufacturing. Its main aim is to optimise the function, appearance and value of products for its users. Industrial designs aim on developing a design concept as a marketable product solution that takes financial, social, and economical factors into account, but as well it takes care about ergonomics, usability and aesthetics. (Hespe, 2007)

In EU are industrial designs edited in Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

In case of industrial designs companies can as in other IP decide, if they want to protect its new design only in the country when they do the business or in the whole EU. If company decide to protect it only in their national they have exclusive right to produce goods with this design in the country of registration. However, they are not protected from copying it in another member states of EU.

Termination of industrial design arise expiration of the term of protection, non-payment of maintenance fee, surrendering by its owner, if there was a fact of its termination (ex nunc). (Jakl, 2011a)

3.3.4 Utility models

It is very important to distinguish between industrial design (mentioned in previous chapter) and utility model. The difference is, that utility model subject-matter is a technical solution and in case of industrial design the subject-matter is only the external (aesthetic) appearance of the product. (Jakl, 2011a)

3.3.5 Trademark

Trademarks are in Czech law regulated by act 441/2003 about trademarks and amending some acts (act about trade marks), and amending decree no. 97/2004 to implement the law on trademark. In European Union it is regulated by Council Regulation ES no. 40/94 of 20 December 1993 on the Community trade mark.

Term “trademark” includes any word, name, symbol or device or any combination of, used by any person or entity, to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods. (Janis, 2013)

Groves (2011) defines Trademark in his A Dictionary of Intellectual Property Law according to Trade Mark Act as: “Any sign capable of being represented graphically which is capable of distinguishing the goods or services or one undertaking from those of other undertakings.”

Trademarks are divided into 45 classes under the so The Nice Classification (NCL), which was established by Nice agreement in 1957. Classes 1 – 34 include products, goods are classified in classes 35 – 45. For example class 25 includes clothing, footwear and headgear. As an example of services, class 41 includes education, providing of training, entertainment, sporting and cultural activities. Each class includes corresponding set of keywords, which allows better definition of products or services which should be protected by given community trade mark application.

Trademarks can easily be company most valuable assets. Trademark helps customer to identify companies and its products. It differentiates company’s product from the competition. Therefore it is very reasonable to protect it.

Companies in EU can decide to register its trademark in the domestic country, or they can register through OHIM an community trade mark (CTM), which is valid in all countries in EU. Benefits of CTM are easy registration which can be done only in one language. CTM is also able to provide its owner exclusive right in all current member states as well as future member states of EU. Validity in the whole EU opens to the trademark door to more than 500 million consumers.

There are 6 types of trademarks, which can be according to EUIPO registered:

- word mark
- figurative mark
- figurative mark with letters
- 3D mark
- colour per se mark

- sound mark (EUIPO, 2016)

Regulation (EU) no. 2015/2424 of the European Parliament and Council amending the Community trademark regulation has been published in the Office Journal of the European Union. This regulation will entry into force on 23 March 2016. This date is important, because since that time the office will be called European Union Intellectual Property Office (EUIPO) and the Community trademark will be called the European Union trademark. EUIPO register each year 120 000 trademarks. (EUIPO, 2016b)

3.4 Institutions and organizations

Around the world are many national and international organizations which are focusing on the intellectual property. Generally, each country has its own national intellectual property office. The international ones are quite well known. Below are mentioned some of the most important ones.

Each of the mentioned organization is able to help inventor to protect his or her ideas. IP can be registered and afterwards protected on national, European or international level, therefore there are below mentioned both national and international entities.

3.4.1 Industrial property office in The Czech Republic

Industrial property office is the central state office in the Czech Republic for the protection of the intellectual property. It is headed by chairman, which is appointed by the government. It has quite a long history, in 1919 was founded Patent office, which is a base for today's Industrial property office. The main functions are :

- Cooperation with international organizations and patent offices of another countries in terms of industrial property
- Actively participate in discussion with other bodies on government when assessing industrial rights
- It makes decisions in the context of administrative proceedings about industrial rights
- Performs activities according to the rules of patent agents
- Acquires, develops, and makes available fund of world patent literature
- Ensures fulfilment of international treaties and international agreements on industrial property which member is Czech Republic (upv.cz, 2015)

As development and inventions continue, the activity of Industrial Property Office expands. Being the important body of state administration, Industrial Property Office and as a coordinator and gestor in terms of international treaties of IP rights to which the Czech Republic is committed. Another activity is to support development and protection of IPR. Last but not least activity is providing literature and be a specialized information centre. (UPV, 2015)

3.4.2 WIPO (World Intellectual property organization)

WIPO is according to its own definition: "a global forum for intellectual property services, policy, information and cooperation." It was formally established by Convention Establishing the World Intellectual Property Organization, which entered into force on April 26, 1976 to lead the development of IP. Nowadays, there are 188 member states all around the world. (WIPO, 2015). WIPO seat is in Geneva in Switzerland.

The predecessor of WIPO was French United International Bureaux for the Protection of Intellectual Property, which was founded in 1893 to administer the Paris Convention for the Protection of Intellectual Property and the Berne Convention for the Protection of Literary and Artistic works.

WIPO is a co-publisher of Global Innovation Index, which is annual ranking of economies around world in terms of their invention capabilities and results. GII is nowadays leading reference of innovation. According GII report 2015 are in leading countries in innovation in Europe Switzerland followed by United Kingdom and Sweden. (Cornell University, INSEAD, and WIPO, 2015)

3.4.3 EUIPO (European Union Intellectual Property Office)

EUIPO is the new name of institution before known as OHIM; in full name Office for Harmonization in the internal market. EUIPO is the European body, which takes care about IP in EU. Its seat is in Alicante in Spain. EUIPO (OHIM) was founded in 1st September 1994 and first started to accept applications for trade marks from year 1996 and industrial designs application from year 2004.

EUIPO web pages are available for all stakeholders and provide wide information about IP. They provide databases of European trademarks and industrial designs as well as connection to international databases. There is available jurisprudence of each member state and other important information, which may IPR holder help to protect his or her rights. (EUIPO, 2016)

3.4.4 WTO (World Trade Organization)

WTO is located in Geneva, Switzerland. It was founded on 1st January 1995. On 15th November 2015 had WTO 162 participating countries.

World Trade Organization does not deal only with intellectual property. Its engagement is much wider. It is an organization for trade opening. They help governments to negotiate international agreements and it operates a system for trade rules. WTO is run by governments of its member states. Ministers of participating states usually meet once in two years, their ambassadors meet regularly in Geneva. (WTO, 2016a)

WTO main functions are:

- administering WTO trade agreements
- forum for trade negotiations
- handling trade disputes

- monitoring national trade policies
- technical assistance and training for developing countries
- cooperation with other international organizations (WTO, 2016b)

WTO is a administration of TRIPS agreement, which came into effect on 1st January 1995 and is considered as the most comprehensive multilateral agreement on IP. It covers areas of IP such as copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout design of integrated circuits and undisclosed information. Three main areas of this agreement are standards, enforcement and dispute settlements. Standards set out the minimum protection, which has to be provided by each member state. Enforcement set of provisions dealing with domestic procedures and remedies for the enforcement of IPR. (WTO, 2016c)

3.5 Intellectual property and its relevancy to SME

Intellectual property is all around us. Innovation are created not only by big companies, but as well by SME. Small and medium enterprises (SME) are according to European Commission companies which have less than 250 employees and their turnover is lower than 50 million Euro. It is important to consider SME in all aspects, because according to EC they represent 90% of businesses in EU. (European Commission, 2016) Almost every SME has it trade name or other trademarks, which they should consider to protect. Companies may want to protect their consumer database as well as invention of their products, new design of goods or secret receipt. In such a case each SME should think about the best way how to protect its IP and how to benefit from this protection. Appropriately chosen protection of IP can be great advantage in future business competitive strategy and development. Advantage over competitors can be in design, packaging, marketing, delivery services and in a lot of other areas. In future company IP can be evaluated and sold in a form of licence of franchise. (WIPO, 2016)

3.6 Unfair competition

Unfair competition is defined as: *“Unjust and often illegal attempt to gain unfair competitive advantage through false, fraudulent, or unethical commercial conduct.”* As unfair competition is considered for example, below-cost selling, counterfeiting, dumping, imitation, misleading advertising and rumour mongering, trademark or trade secret infringement. (Business dictionary, 2015)

Unfair competition is commercial conduct that some of national laws may prohibit. Person who is injuring by any act of unfair competition may take a civil action against this behaviour. However, protection against unfair competition is mandatory under the Paris Convention. (Groves, 2011)

Protection against unfair competition is an actual topic for at least last century. Generally, protection against unfair competition is considered as a great supplement in protection on intellectual property. The existence of unfair competition is connected with the existence of market economy systems. Free market competition is meant to be the best is setting equilibrium on the market by intersection and aggregate demand and aggregate supply. This system supposed to win the company, which satisfies customer

needs and wants with the most useful and effective product or service. However, this situation can be achieved only if all competitors respect certain set of basic rules. This indicates, that on the other hand, this system allows as well the existence of unfair competition.

According to WIPO the self-regulation system has not been sufficient against unfair competition. Therefore, to prevent unfair competition effectively, the self-regulation has to be supplemented by system of legal enforcement.

Unfair competition is in Czech law defined in § 44 to § 55 Commercial Code no. 513/1999, amended as competitive conduct that is in contrary to good morals of the competition and which may be detrimental to other competitors, consumers or other customers.

Examples of unfair competition defined by law are:

- deceptive advertising
- comparative advertising
- deceptive labelling of goods and services
- recalling the likelihood of confusion
- riding on the reputation of the company, products or services of a competitor
- bribery
- detraction
- violation of trade secrets
- endangering consumers' health and environment

Entities whose rights have been violated by unfair competition against e infringer may claim:

- refrain from acting, correct the defect
- to provide adequate compensation, any damage suffered and release unjust enrichment

In EU are consumers protected not solely by national laws but as well by European law. Directive 2005/29/EC of 11 May 2005 concerning unfair business to consumer practices defines practices which are prohibited in the area of internal market. EU decided to protect consumers, because certain groups of population have be protected due to their particular vulnerability to the practice of the product, because of their credulity or mental or physical infirmity or because of their age (children and elderly people). This direction thus protects economic interest of consumers before, during and after a commercial transaction takes place.

European Commission defines prohibited practises as those which:

- do not comply with the requirements of professional diligence;
- are likely to materially distort the economic behaviour of the average consumer.

In mentioned directive 2005/29/EC are misleading practices divided into two groups:

- misleading actions
- misleading omissions

Misleading actions are practices containing untrue or false information or is likely to deceive average customer, even if the provided information might be correct. This cause him to take a transactional decision he would not have taken otherwise. Examples of such actions are:

- the existence or nature of the product
- the main characteristics of the product (availability, benefits, geographical origin, etc.)
- the extent of the trader's commitments
- the price or the existence of a specific price advantage
- the need for service or repair

On the other hand, misleading omissions are by EC defined as :*" These arise when material information that the average consumer needs, according to the context, to take an informed transactional decision is omitted or provided in an unclear, unintelligible, ambiguous or untimely manner and thereby causes (or might cause) that consumer to take a purchase decision that he or she would not have otherwise taken."*

3.7 Intellectual property protection

The IP can be protected on different levels. In terms of national levels is the protection solved as well on national level with regarding institutions. For many companies in open economies, which dominates nowadays market is more important to protect their IP in EU or even worldwide. During the process of protection of IPR there is very important cooperation of right holders and customs, which is mentioned in next chapter.

3.7.1 Enforcement of Intellectual property in Czech Republic

There exist two types of legal means of intellectual property rights; there are:

- Private means
- Public means

Private means are solved by legal proceedings. This can be done e.g. by the action by the Commercial Court. The result of this action could be either abstention from infringement or removal of infringement (e.g. destroy counterfeit goods, income replacement, etc.) This results are based on laws on intellectual property, Commercial Code in terms of unfair competition, business name, commercial and contractual relationship and on Civil Code in terms of damages and unjust enrichment. (Jakl, 2011b)

Public means are solved through decisions of selected institutions. It is:

- Industrial property Office, which determines the scope of protection and which initiates revocation procedure and declaration of invalidity.

- Other state authorities, e.g. customs which takes care on measures at the boards such as non-releasing the counterfeit goods into the common market, damage of counterfeit goods, etc. Another decision by state authority is police action in infringement proceeding, which results in seizing of counterfeit goods. (Jakl, 2011b)

4 Legal Environment in the Czech Republic

In the law of the Czech Republic are more than ten acts related to IP. Selected Act, mentioned below, are directly connected to this thesis:

4.1 Act no. 14/1993 (amended)

This act no. 14/1993 on Measures for Protection of Industrial Property (amended) determines that Czech Office for Industrial Property is the governmental body for protection of IP in the Czech Republic, which seat is Praha and its chairman is appointed and dismissed by the government. Office for Industrial property decides about providing protection of patents, industrial designs, trademarks, topographies of semiconductor products and indication of geographical origin. It performs activities according to the regulations concerning patent agents. Office for Industrial property also keeps the central fund of world patent literature.

4.2 Act no. 221/2006

This act no. 221/2006 on enforcement of Intellectual property rights and to change laws to protect intellectual property implemented into Czech legislation European legislation and therefore changes national laws about intellectual property protection.

4.3 Act no. 441/2003 (amended)

This act no. 441/2003 on trademarks and about change of act no 6/2002 (amended) determines trademarks, its definition. It determines designations, which may create trademark, reasons for refusal, rights related to trademarks, reproduction of trademarks, limitations of trademark, exhaustion of rights, using of trademark, change of owner, licences, co-ownership of trademark, application, date for application registration and other terms connected to registration, validity and renewal, surrender of rights, extinction. Another part of this act is dedicated to collective trademarks and its details.

4.4 Act no. 478/1992 (amended)

This act no. 478/1992 on utility models strictly defines utility model, It determines designations, which may create utility model and which cannot be registered, reasons for refusal, rights related to utility models, , limitations of utility model, exhaustion of rights, application, date for application registration and other terms connected to registration, validity and renewal, surrender of rights, extinction.

4.5 Act no. 207/2000 (amended)

This act no. 207/2000 on industrial designs determines industrial designs, its definition. It determines designations, which may create industrial design, novelty, individual nature, availability for public, technical function, contradiction to public policy and morality, exhaustion of rights, using of industrial design, change of owner, employment industrial design, licences, co-ownership of industrial design, application, date for

application registration and other terms connected to registration, validity and renewal, surrender of rights, extinction.

5 Legal Environment in the European Union

The main objective of the first thoughts about European integration was mainly economical. Jean Monet wanted economic integration of European rivals on that level, that it would be almost impossible to run another conflict in Europe as world war second. However, since that time European become integrated much more. We have common market, common custom union, common policies and European Union as a body provides also member states law.

Treaty of Lisbon clarifies the competences between European Union and the member states. It is for the first time when there is such a clarification in the founding treaty. TFEU distinguished between three main types of competences: exclusive competences, shared competences and supporting competences. Even if this clarification does not mean any notable transfer of competences, it is still very important and has its key role. In the past there were many misunderstanding and problems during national and European explanation. Lisbon Treaty bring more transparency and clarity. As a result of this permanent internationalization and Europeanization it extends to a lot of areas, we have:

- **Supranational power/exclusive competences** which is described in article 3 TFEU. Exclusive competences means that European Union is able to legislate and adopt binding acts in these fields. The role of Member State of EU is therefore limited to applying these acts, unless the EU authorizes to adopt certain Acts themselves. It contains competition on the internal market, protection of fish stocks, customs policy, trade policy and monetary policy.
- **Shared and complementary power/shared competences**, article 4 TFEU, means that both EU and Member States are authorized to adopt binding acts in this fields. Member States may exercise their competence only in so far as EU has not exercise, or has decided not to exercise. It is containing policies regarding energies, environment, consumer protection, expansion of the EU, terrorism, humanitarian aid, etc.
- **Supportive power/supporting competences**, article 5 TFEU, means that the EU can only intervene to help, coordinate, complement. In this case EU has no legislative power to or to support the action of Member State and may not interfere into the action of Member States. This competences cover public health, youth, cultural and sport policy, foreign and security policy, civil protection, etc.
- **No power** of EU is in education policy, social security, administrative law, etc.

Intellectual property protection is on the border of supportive power/supportive competence and shared and complementary power/shared competence.

5.1 Article 118 TFEU

In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.

The Council, acting in accordance with a special legislative procedure, shall by means of regulations establish language arrangements for the European intellectual property rights. The Council shall act unanimously after consulting the European Parliament. (European Union, 2012)

5.2 Directive (EC) 2004/48

Regarding to enforcement of IP in EU there is a directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

According to Article 288 TFEU: *“a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.”*

The date of foundation of this directive is not random. In the same year, there was the biggest enlargement of EU in its history. On 1st May Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. According to Chaudhry and Zimmerman these countries had weak legislation and enforcement of IPR regimes.

This directive does not harmonize IPR regimes, but it sets minimum standards which have to be used during enforcement of IPR in current member states of EU.

This act can be considered as a starting point of the beginning of harmonization intellectual property protection in the area of EU. It also aims to harmonize national laws, thus ensuring that IP will have an equivalent level of protection in the whole internal market. Within this directive there have been created some unitary rights of Community level. These are Community trademark and Community Design, which are immediately valid through EC.

As mentioned above the main goal of Directive 2004/48/EC is to ensure equivalent level of protection within EU, there are also some other objectives. These are:

- Promoting innovation and business competitiveness
- Safeguarding employment in Europe
- Preventing tax losses and destabilisation of the markets
- Ensuring consumer protection
- Ensuring the maintenance of public order

(European Union, 2004)

Related act to Directive 2004/48/EC is Statement 2005/295/EC by the Commission concerning Article 2 of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights.

5.3 Regulation (EU) 2015/2424

This regulation of The European Parliament and of The Council of 16th December is amending Council Regulation (EC) No 207/2009 on the Community Trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trademark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade marks and Designs). This regulation came into force on 23 March 2016. Mentioned regulation is one of more reforms of EU, which aim is to increase protection of IP in EU. This regulation is long-awaited change in law, which means in final result for entrepreneurs easier orientation in European Trade marks. The protection of Trade marks becomes more effective. Regulation change Community trade mark into European Union Trade Mark. So since 23 March 2016 all registered Community Trade Marks as well as applications in process of approval automatically become European Union Trade Marks. Change in terminology is also in the name of office, where it is changing from OHIM (Office for Harmonization on Internal Market) into EUIPO – European Union Intellectual Property Office. After registration of application EUIPO since 23 March 2016 has to issue, without delay, a confirmation, that an application have been filed. This confirmation will contain details such as description, expression mark, number of documents and their number. This confirmation can be sent as well electronically. This change should help entities who are registering trade mark in disputes, when the application is filled, but registration is not yet done. Now, there will be immediate confirmation of registration in hands of applicant. Another new is that applicant may its trademark register only in one class, with decreased fee. This can be motivation for innovators, who are considering costs of registration. Since September 2017 there enter into force cancellation of obligation of graphical drawing of trade mark. EUIPO has an opportunity to examine the rejected application of the so-called absolute reasons.

There is a general decrease in fees. Basic fee for the application for an individual trademark is 1000 EUR. If the application is registered electronically, the basic fee is 850 EUR. The opposition fee is 350 EUR. In terms of fees, there will be a new feature provided in EUIPO web page, which is online calculator, which will enable calculate the fee immediately.

5.3.1 European IPR Helpdesk

European IPR Helpdesk is an initiative of EC, which is free of charge and its aim is to provide first-line advice and information about IP and IPR. There are provided info lines, library, and special info line for SME and lot of other information. IPR is especially designed for European Small and Medium Enterprises and inventors.

6 Customs

European integration process had many impacts on European citizens, companies located on European continent, national law and many other institutions. One result of this continuing process is common customs for member states of EU.

Thanks to the European Union Customs Union there are no customs duties at the borders between EU member states. The second advantage is uniform system of duties imposed on goods imported from outside of EU. (European Union, 2016)

Customs have several tasks:

- Enforce rules to protect environment and customers safety and health
- Take care about legitimate export of sensitive technology which can be used to manufacture e.g. chemical or nuclear weapons
- Deal with counterfeit goods and piracy from two points of view. At first they protect health and safety of consumers. The second point of view is protection of job of those people who work for legitimate companies.
- Monitor if anyone who travel with larger amount of money is not laundering them or evade taxes.
- Help police and immigration police to fight against organized crime and terrorism such as trafficking in people, drugs, pornography and firearms.
- Protect endangered species like endangered animals, plants, birds, etc.
- Protect European cultural heritage

As visible on the picture below, piracy is serious issue not only for companies producing luxury goods but for a lot of other industries. Special attention should be paid to counterfeit medicines which in 2013 accounted almost one quarter of seized goods. On average counterfeit medicines represented by 10,10% in the whole amount of seized goods. (Evropská komise, 2014)



Figure 1: Counterfeit goods seized by customs

Source: European Union, cited 27. 12. 2015, available at: http://europa.eu/pol/cust/index_en.htm

European Union registers annually stable results, where two thirds of seized goods which are suspected of infringing intellectual property rights are from China. From the other point of view, there is rapid increase in the mean of transport of counterfeit goods – 70% of them are delivered by post or courier services. (European commission, 2014) This causes problems to reveal. On the other hand, there is annual slow decrease in sea transportation. This fact is explained by the highest percentage of success of revealing of counterfeit goods through this type of transportation. (European Union, 2015)

6.1 Cooperation between customs and right holders

According to European Union right holder may lodge an application which requesting customs to take an action if there occurs a suspicion of IPR infringement. These applications can be requested on national or European Union level. Both are valid for one year. In the Czech Republic is a contact place for custom supervision application Customs Directorate in Hradec Králové and the application may be registered for either Czech Republic or for entire EU. Requests for surveillance of the market, when it comes to goods that are not subject to customs supervision, that consumer protection measures, then served with the local customs office. Customs consider this cooperation as very important in protection of IPR, therefore there are manuals how to correctly lodge application and how to communicate with customs. From statistical point of view, in last decade, the number of applications almost doubled, which verifies interest of companies and right holders to actively participate in IPR protection. Concrete numbers

may be found in the graph below. As visible, there is almost linear increase in the number of application every year from 2007. The decline in 2014 is caused by new Regulation (EU) No. 608/2013 applicable from 1 January 2014, which says that all application with expiring in 2014 has to be replaced by new application. This had an effect that some of the right holders did not submit new application, which is the most likely reason of the decline in applications. (European Union, 2015)

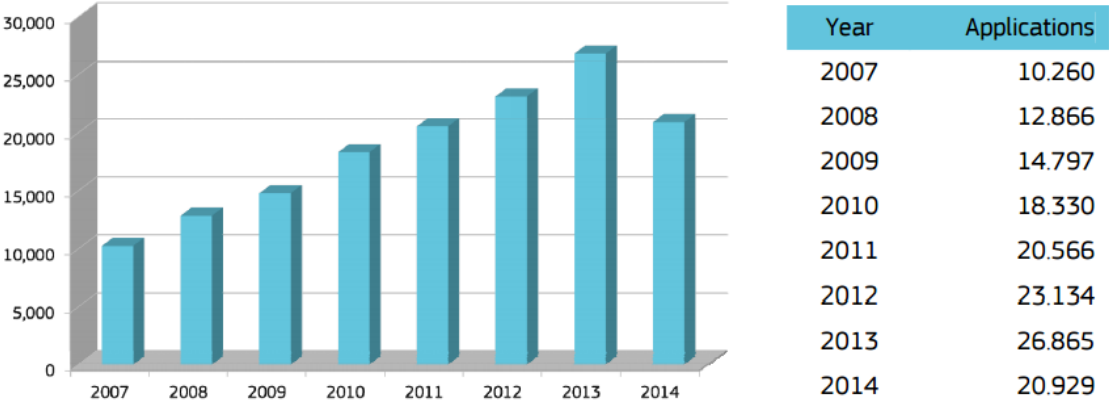


Figure 2: Application to customs supervision (years 2007-2014)

Source: European Commission. Report on EU customs enforcement of intellectual property rights: Results at the EU border 2014. European Union, 2015.

Graph below shows data from European Union of registered cases and articles detained by the EU customs between 2007 and 2013. E.g. in 2010 EU customs reported 79 112 cases of seized goods, which value is estimated at 1,110,052,402 euros. These cases included around 200 million Euros in clothing and accessories. 166 million of euros in shoes (different types), approximately 100 million of euros in bags, wallets and purses, 94 millions of Euros in watches. Another 76 million were determined in mobile phones and accessories to mobile phones. Counterfeit cigarettes represent nearly 125 million of euro. (Chaudhry, Zimmerman, 2013)

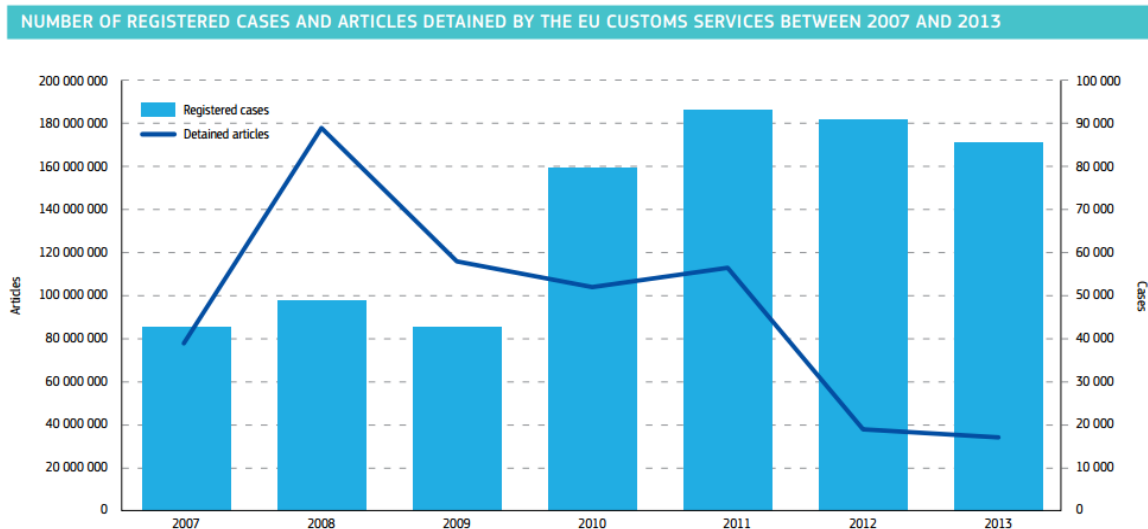


Figure 3: Detained cases and articles by the EU customs (between 2007-2013)

Source: European Commission. Report on EU customs enforcement of intellectual property rights: Results at the EU border 2014. European Union, 2015.

6.2 New customs rules

In June 2013 was adopted new Regulation (EU) No 608/2013 of the European Parliament and of The Council concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003. The regulation has been applicable in all member states of EU since 1st January 2015 and it strengthens protection of intellectual property. The main changes which regulation introduces are:

- Procedural change for destruction of goods which are suspected of infringing IPR. Such a goods could be now destroyed by customs control, without the need to initiate legal proceedings, in which will be determined the type of infringement.
- New procedure for simplified destruction of small consignments. This procedure will be used if right holder asks for it, if the IPR infringement occurs.

EU promises by this new procedure on small consignments increase in success of revealing and destroying of counterfeit goods, which transported by post or courier services. As mentioned in previous chapter, this mean of transport represents significant part. Therefore is this new regulation necessary and desirable. (European Union, 2016)

6.3 Appraisalment of intellectual property and intangible assets

To know the value of IP is important during the whole process of its protection. IP is intangible, however usually plays key role in business. It creates some kind of comparative advantage towards competitors.

When appraising intellectual property it is important to define two basic forms of value:

- Utility value
- Exchange value

Utility value generally defines the utility, which can the intellectual property or intangible asset provide to its owner. In money it can be defined as sum of utility during asset service life. However, it could be hard to precisely define the sum, because the utility changes in time. When counting future profit it is also important to know preferences and interests of owner. This complicates the process of defining utility value because each entity has different preferences and interests, which depends on market position, strategic plan and other factors. (Malý, 2007)

If an asset has utility value and it is available in limited amount it has also an **exchange value** and may become a subject of an exchange. Afterwards it could be expressed in money. If owner want to determine this value it goes on the market and assuming the there are more subjects on the market, the value is determined by interaction of supply and demand. In ideal the exchange value is the same as market value of an asset. The problem is that this value setting complicated and not always corresponds to the value or price for which the asset will be really sold. Moreover, the exchange value is continuously changing, because market is continuously changing over time as well.

From above mentioned reasons, according to Malý (2007), there is no theoretical, optimal and universal method, how to calculate the exchange value. On the other hand, the quality and completeness of information play a critique role, when setting the estimation of the exchange value, which than has to be able to pass critique discussion.

In praxis there are many methods, how exchange value of asset is determined. They differ in terms of input data as well as different principles of calculation. Unfortunately, most of them are subject of know-how of each valuator, and therefore are secret. (Malý, 2007)

7 Counterfeit trade

The existence of counterfeit trade is long lasting problem and is proven by registration of IP. Even if counterfeiting started in ancient times, recently it very discussed problem. Logical step would be to determine the market and the use some methods to eliminate. Unfortunately, this estimation is very hard tasks and there are no direct methods which could be used to do so. The IACC reported in 2012 that world counterfeit trade estimates around 600 USD each year and it estimated its growth over 10.000% in last two decades. One reason which fuel this rapid increase in consumer demand. However, this numbers can be even bigger, because it is hard to determine and most of the analysis are based on police and customs seizures. (Chaudhry, Zimmerman, 2013)

Customers may be harmed in a very different way. In a better case they will lose few euros or other currency, or they will be disappointed by non-functioning product. On the other hand, in worst case, buying of counterfeit product can cause serious illnesses or diseases. This is mainly the case of counterfeit medicine.

On the other hand, from the point of view from legitimate manufactures there are many losses which may happen:

- Direct loss of sales
- Loss of goodwill
- Irreparable damage to corporate or brand reputation
- Trademark dilution
- Costs of protection and enforcement of IPR

Another aspect which is usually not mentioned is that from selling of counterfeit goods are usually financed organized crime organizations and terrorists. The EU Organized Crime Threat Assessment identifies that some of the Chines organized crime groups are financed and participate in production and distribution of counterfeit toys, clothes, shoes, cigarettes and medicine. (Chaudhry, Zimmerman, 2013)

There are many reasons for growth of counterfeit goods. On the diagram below are graphically shown 7 main forces, which causes increase and growth of this market.



Figure 4: Reasons for the growth of counterfeit goods market

Source: Chaudhry, Zimeerman. Protecting Your Intellectual Property Rights. Understanding the Role of Management, Governments, Consumers and Pirates. 2013.

Producer of counterfeit goods usually avoid costs related to research and development, marketing of products, advertising or warranty service. They usually avoid minimum wages requirements as well. Therefore their cost are significantly lower than those of original manufacturers. This problem is in above mentioned diagram called as **Low Cost High Technology = Low Investment High Profits**. As a great example may be used computer technology, R&D cost are high, but once the product is started to be sold, the counterfeiters are able to copy product without these costs. **Globalization and Lower Trade Barriers** have many advantages for customers as well as for producers and traders. There are more goods on the market and prices are more reasonable because of increase in competition. On the other hand free trade areas such as EU can be seen as a safe haven for counterfeiters. In case of **consumer complicity** there is a great difference in countries. Important factor are cultural differences. There is an evidence that people buy products even if they know they are counterfeit. According to Chaudhry and Zimmerman they do so for particular reasons, including a perception that counterfeit products are the same quality as original ones, expression of anti-big-business sentiment or lax attitude towards law and protection of IPR. Connected to globalization is **expansion of channels and markets**. Attract new markets is nowadays easier than before. Counterfeiters usually use three main channels of distributions. They establish retail shops or they use more informal channels such as sidewalk vendors and

clandestine shops. Of course the third channel is Internet. Internet is considered as a biggest market, because through it piracy producers are able to operate worldwide. It is very hard to measure how big his market is, however magazine *The Economist* estimated in 2003 that through internet are annually sold counterfeited products in value around 25 billion of USD. As a five main reasons why internet is so popular OECD in 2007 defined anonymity, flexibility, market size, market reach and deception. **Developing of truly global brands** such as Coca-Cola, Apple, IBM, Google and others motivate counterfeiters to produce fake products. This is implied by consumers wants to have premium brands and enjoy exclusivity from the ownership. Another reason why there is increasing trend in counterfeit products market share is **weak international and national enforcement**. There are still differences in intellectual property laws between countries and the enforcement is highly connected to motivation and will to not give up of companies. On the other hand, EU is trying to develop this law in the area of EU as possible. Even if **high taxation and tariffs** seems to be good way how to fight counterfeit products, the effect could be exactly the opposite. There are relations between number of counterfeit products and the taxes imposed on them. As a good example may be used cigarettes or alcohol. Evidence of this effect was seen in Ireland between years 2000 and 2009. Government rapidly increased taxes and in the same period inflow of counterfeit products increased by 25%. (Chaudhry, Zimmerman, 2013)

The leading countries in counterfeit goods sold in EU are according to EU seizures by the country of origin in 2010 China, India, Hong Kong, Moldavia and Turkey. (Chaudhry, Zimmerman, 2013)

7.1 The Use of Antipiracy Marketing Techniques to Educate the Consumer

Most of marketing techniques which tries to educate consumers about risks of counterfeit products are social marketing concepts. Based on logic, the best way how to decrease market with counterfeit goods will be to decrease number of consumers, who buy these products.

One of the most famous anti-piracy advertisement in Czech Republic in last decade is campaign of Czech antipiracy union called "Filmy nejsou zadarmo". This campaign aims mainly on copyrights and its illegal sharing on internet and CD/DVD. Czech inhabitants may see two trailers of this campaign before movies on DVD, Blu-ray or even before the movie in cinema starts. The main idea is to educate the customer that he would not steel anything tangible, and the intangibility of copyrights should not become a factor, which leads to moral hazard and illegal sharing.

8 Managerial Counterattack

It is obvious that governments solely are not able to solve the problem with counterfeiting. The solution for proper results is cooperation of governments, institutions, companies, IP right holders and consumers.

From a point of view of companies it is important to set an effective IP protection strategy. In the Czech Republic as well as in other member states of EU are dozens of patent attorneys, which provide services, connected to IP and its protection.

8.1 Patent attorneys

As mentioned theoretical overview in previous chapters, it is obvious that for layman or person without appropriate education may be problematic to understand all details about IPR and to manage it. Therefore law no. 417/2004 about patent attorneys define patent attorney as:

“Entity which provides professional assistance to physical and legal entities in terms of intellectual property”

Patent attorney law instructs to:

- Represent legal on physical entity during communication with the Industrial Property office, or with other institutions and in the extent of law before the courts;
- Provides professional assistance and advices. (Jakl, 2011a)

Patent attorney has to fulfil criteria defined by law to obtain status of patent attorney. These are:

- legal capacity,
- integrity,
- higher education (at least bachelor),
- passing the professional exams and 3 years of experience in intellectual property problematics,
- oath and registration to Chamber of Patent Attorneys.

For communication and IP applications in Czech Republic or EU it is not necessary to hire patent attorney.

8.2 Intellectual property as a source of further development

Ownership of IP can be used for further development and expansion of company. As a main goal of company is considered profit maximization. On diagram below are described possible ways of expansion of company. As two main factors are considered costs and control of new part of company. As a very inexpensive, but very weak controllable is possibility of direct or indirect export, which is done mainly by business partnership and treatment. Advantage of this mean of expansion are low costs, determined mainly by costs of searching business partner and costs of

training/education of that partner. On the other hand, company has very limited control over the business. The second option is contract of concession, commercial agent agreement, licensing or franchising.

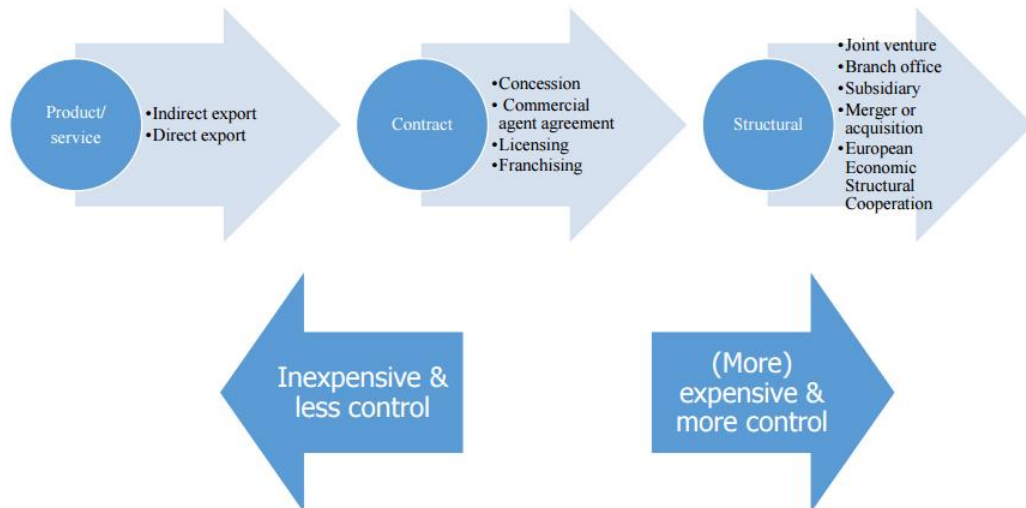


Figure 5: Possible ways of company expansion

Source: Own creation based on EU and Global governance seminars

9 Case law

In the following part of the thesis is intellectual property and its protection analysed through selected cases. There are mentioned three of the cases in the history of EU, which represent some periods of integration of EU and harmonization of the law in member states.

One of the most famous case in the history of IP is dispute between Isaac Newton and Gottfried Wilhelm Leibniz. In the end of 17th and beginning of 18th century arose a big debate. In 1684 and 1686 Gottfried Wilhelm Leibniz published papers in which he invented the study of calculus. Few years later, in 1704 Isaac Newton published his book *Opticks*, in which he consider himself as a founder and inventor of study of calculus. Newton argued that he wrote papers about this topic, which he named science of fluxions, earlier than Leibniz. Exactly, in years 1665 and 1666. However, according to his arguments he only share this writings with his closest colleagues. The debate heated up and Newton accused Leibniz of plagiarism. Unfortunately, Leibniz died in 1716, before there had been any results or settlement of this case. Nowadays, after 300 years are these two intellectuals from Germany and England consider as co-founders of this famous mathematics theory. (Gambino, 2011)

Since time, when Newton and Leibniz argued about their inventions, there has been a long time. Countries in Europe had changed as well as their political and geographical arrangements. Nowadays we have fledged system of laws, which help inventors to prove and protect their inventions more effectively. In the following part of the thesis are mentioned few cases from recent past (meant after the start of European integration process), on which are shown changes and development in European and national laws or trade practices.

9.1 STIHL

Famous company, which is fighting against plagiarism every day, is German company STIHL. STIHL is famous producer of machinery, well known are for example for their chainsaws. Company was founded by Andreas Stihl in 1926 in Stuttgart in Germany and since that time become a world leader on the market. They have branches all around the world (e.g. Brazil, EU, and China). Company is till today owned by Stihl Family and they actively manage it. STIHL says about itself that they are medium sized family company. (stihl, 2015) There is very high stress on CSR, quality and tradition.

STIHL uses a lot of forms of intellectual property. They have registered trademarks such as combined trademark of STIHL logo, which is graphically illustrated or colour trade mark, which depicts orange and grey, which are used on STIHL products. One of trademark is on picture below, it is trademark registered in EUIPO and it is used for product and services classes 4, 7, 8, 9, 10 and 24.

STIHL

Figure 6: Trademark STIHL

Source: Industrial property Office. Cited: 22.3.2016 Available at: http://isdv.upv.cz/portal/pls/portal/portlets.ozs.det?pozik=345610&plan=cs&s_naze=&s_sezn=%20&s_majs=stihl

STIHL deals very serious problems with plagiarism. On picture below is example of chainsaw manufactured by STIHL and fake product.



Figure 7: Original STIHL MS 381 and fake product SWOOL

Source: STIHL. Cited 24.3.2016 Available at: <http://www.stihl.cz/boj-proti-padelku.aspx>

As visible on the picture, for layman customer could be very hard to reveal plagiarism and deceptive practices of traffickers.

9.1.1 Communication with customer

Except the fact, that STIHL fights counterfeited products through IPR, they run simultaneous communication with their customers. On company webpages are shown pictures of counterfeited products as well as original products, so the buyer can see the difference. Moreover, there are mentioned as well advantages of buying original STIHL tools. On STIHL official web page www.stihl.cz may be found video, which have been acquired during liquidation of counterfeit products of STIHL chainsaws. These goods have been seized by customs and subsequently destroyed. To ensure maximum security to its customers, STIHL products are sold only in stores of authorized dealers and their

e-shops. All products offered in petrol stations, kiosks, and other places should be, based on company statements, considered as risky. Moreover, there is a help line for customers, who are not sure about originality of their product. Customer may through email communicate with company and draw attention to the source of counterfeited product.

9.2 Case No. D2014-0576

The evidence of rigorous monitoring of the market and protection of STIHL IP is Case No. D2014 – 0576 from year 2014. The dispute was resolved between:

- The Complainant is Andreas Stihl AG & Co KG of Waiblingen, Germany, represented by McGuireWoods LLP, United States of America.
- The Respondent is Andrew Davis of Port of Spain, Trinidad and Tobago, self-represented.

Subject of the case was domain <stihl.ceo> registered by Andrew Davis. The complaint was filed with the WIPO arbitration and mediation centre on April 8, 2014. The centre verified that the complaint verified formal and content requirements and started solving the case. In accordance to the rules, centre formally notified respondent about the complaint and asked him for explanations. Factual background in this case says that The Complainant has many registered trademarks STIHL and many trademarks, which incorporate STIHL. These trademarks are registered by WIPO, OHIM and other offices, when the earliest is from 1968. To advertise its products The Complainant has registered domains featuring its name like <stihl.net> registered in 2001, <stihl.com> registered in 2003 and <stihl.net> registered in 2004. As explained on company webpages, their manufacture tools for forestry, agriculture and other industries. Their products are available for professionals as well as for private use. Their authorized dealer network consist of 40.000 retailers and they operate in over 160 countries. The respondent registered above mentioned domain <stihl.ceo> on March 19, 2014. Based on previous cases from 2008 and 2010, there was determined that the STIHL trademarks and the family of trademarks incorporation the element STIHL are distinctive, well known and because are widely use they have significant goodwill. The complainant says that registration of domain with similar name to their trademark may lead into confusion. The Respondent argued, that he registered this domain based only on surname Stihl, which is numerous and that he want to register other frequent surname domains like <smitl.ceo>, <james.ceo> and others and that it has no relationship with company STIHL. As other argument the respondent stated that his plan is to create new social network based on surnames domain. Based on argumentation of both The Complainant and The Respondent, WIPO centre decided that, The Complainant provided enough evidence, that he has an extensive portfolio of trademarks STIHL and world-wide reputation. The decision holding that in general, registration of a known trademark as a domain name may be a clear indication of bad faith in itself, even without considering other elements. Finally, based on above mentioned reasons WIPO decided, that the domain has to be transferred to complainant. (WIPO, 2014)

Based on significant experience with fighting counterfeit products and plagiarism Dr. Rüdiger Stihl becomes a chairman of German Anti-piracy association.

9.3 Google vs. Louis Vuitton

French company Louis Vuitton was founded in 1854. It is a world well known producer of luxury handbags, suitcases, trunks, shoes, jewellery, watches and accessories. Most of its products are adorned with famous LV monogram. It is 14th most valuable brand in the world and its value is estimated at 28.1 billion USD. (Forbes, 2015)

Internets become a significant part market last decade. Essentially, e-commerce is part of the business model of enterprises, complementing their conventional commercial activities for selling and buying aimed at enhancing their performance. During 2014, 43 % of large enterprises made e-sales corresponding to 24 % of total turnover in this size class. Similarly, 28 % of medium sized enterprises made e-sales corresponding to 13 % of total turnover in this size class. By contrast, 17 % of small enterprises engaged in e-sales, corresponding to only 6 % of the turnover of such enterprises. (Eurostat, 2015) As obvious, e-sales become a significant part of total sales.

9.3.1 Cases C-236/08 to C-238/08

These cases cover conflict between Google France SARL, Google Inc. v Louis Vuitton Malletier SA (C-236/08), Google France SARL v Viaticum SA, Luteciel SARL (C-237/08), and Google France SARL v Centre national de recherche en relations humaines (CNRRH) SARL, Pierre-Alexis Thonet, Bruno Raboin, Tiger SARL (C-238/08).

These references for a preliminary ruling concern the interpretation of Article 5(1) and (2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), Article 9(1) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) and Article 14 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

The references have been made in the course of proceedings between, in Case C-236/08, the companies Google France SARL and Google Inc. (individually or jointly 'Google') and the company Louis Vuitton Malletier SA ('Vuitton') and, in Cases C-237/08 and C-238/08, between Google and the companies Viaticum SA ('Viaticum'), Luteciel SARL ('Luteciel'), Centre national de recherche en relations humaines (CNRRH) SARL ('CNRRH') and Tiger SARL ('Tiger'), and two natural persons, Mr Thonet and Mr Raboin, concerning the display on the internet of advertising links on the basis of keywords corresponding to trade marks.

The legal content to this cases was Directive 89/104 of 21 December 1988 to approximate the laws of The Member States relating to trade marks by the Council of European Communities. Article 5 of this directive, entitled to Rights conferred by a trade mark, provides:

1. The registered trade mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

(a) any sign which is identical with the trade mark in relation to goods or services which are identical with those for which the trade mark is registered;

(b) any sign where, because of its identity with, or similarity to, the trade mark and the identity or similarity of the goods or services covered by the trade mark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trade mark.

2. Any Member State may also provide that the proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade any sign which is identical with, or similar to, the trade mark in relation to goods or services which are not similar to those for which the trade mark is registered, where the latter has a reputation in the Member State and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.

3. The following, inter alia, may be prohibited under paragraphs 1 and 2:

(a) affixing the sign to the goods or to the packaging thereof;

(b) offering the goods, or putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder;

(c) importing or exporting the goods under the sign;

(d) using the sign on business papers and in advertising.

These cases are very important to e-commerce market, because it changed a way how internet giant Google do its advertisement service AdWards. Moreover, this conflict made from enemies allies, which are now together fighting against counterfeited goods.

9.4 Minibike Blata s.r.o.

Company Blata s.r.o. is Czech company which was officially founded in 1998. However, the development of first mini bike started earlier in garage of its founder, motorbike professional rider Pavel Blata. Company is a type of garage company, which become a world known producer. Their products covers minibikes, mini quads and motor scooters. Blata determines the direction of development in their sector of industry.

Company uses intellectual property to safe their ideas and development. In database of Intellectual property office of Czech Republic they have registered trademarks as well as industrial designs.

Trademarks of company Blata are verbally and graphically connected to word "Blata". On the pictures below are some of the trademarks.



Figure 8: Blata trademark 104384/205349, combined trademark

Source: Industrial Property Office, Cited 6.3.2016 Available at: http://isdv.upv.cz/portal/pls/portal/portlets.ozs.det?poztk=56531&plan=cs&s_naze=&s_sezn=%20&s_majs=blata



Figure 9: Blata Trademark 126953/209318, combined trademark

Source: Industrial Property Office Cited 6.3.2015, Available at: http://isdv.upv.cz/portal/pls/portal/portlets.ozs.det?poztk=115523&plan=cs&s_naze=&s_sezn=%20&s_majs=blata



Figure 10: Blata Trademark 126954/212293, combined trademark

Source: Industrial Property Office, Cited 6.3.2016 Available at: https://isdv.upv.cz/webapp/webapp.ozs.det?poztk=115525&plan=cs&s_naze=&s_sezn=%20&s_majs=blata

In terms of industrial designs in database of Czech Industrial Office there are 31 registered industrial designs, from which are valid only few designs. Some of them are mentioned below. Rest of them extinct due to non-renewal by Blata. This corresponds to the new company strategy, which is registration of IP internationally, not only in the Czech Republic, but as well at least in EU or worldwide. The speed of development in the sector, when some of the technologies become outdated, there is no motive to

renewal industrial design. Therefore there are that many industrial designs, which are no longer valid.

Registered and valid design is e.g. industrial design no. 34574 – small motorbike, registered in 2009.

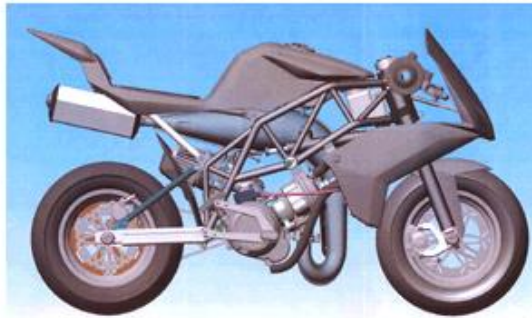


Figure 11: Blata industrial design 34574

Source: Industrial property Office. Cited 26.3.2016 Available at:
http://isdv.upv.cz/portal/pls/portal/portlets.vzs.det?xprim=1253558&lan=cs&s_majs=&s_puvo=&s_naze=



Figure 12: Blata industrial design 34575

Source: Industrial property Office. Cited 26.3.2016 Available at:
http://isdv.upv.cz/portal/pls/portal/portlets.vzs.det?xprim=1253558&lan=cs&s_majs=&s_puvo=&s_naze=

9.4.1 Blata Malta case

According to Lukáš Vašíček, manager of company Blata, the rapid increase in number of counterfeit products of company started around year 2003. Concurrently, 2003 was the most productive year of Blata. Their production was around 20000 pieces of products. The first counterfeit minibike from China was offer on USA market.

One of the first revealing of counterfeited goods was in Milan during the motor show. Representatives of company Blata founded that there is another exhibitor, who

exhibit counterfeited goods of their company and therefore acting contrary their IPR. (Crove, 2005)

After realizing the seriousness of the situation, management of the company decided to go to China and monitor Chinese market personally. As a potential consumers they visited several producers of counterfeit minibikes, took photographs and videos.



Figure 13: Production of counterfeited minibikes Blata in China

Source: Tyden.cz. Cited 27.3.2016 Available at: <http://www.epochtimes.cz/200706282871/Blata-Blansko-Jak-cinske-padelky-malem-znicily-ceskeho-vyrobce.html>

As a main problem in fight with Chinese counterfeiters company considered the length of registration of intellectual property in China and the speed how these producers can copy original products. According to Blata are Chinese producers able to offer counterfeit minibike after two months of official launching of market by Blata. On the other hand, registration of IP in China takes more than a year.

Year 2005 was for company breaking year in terms of protection of their IPR. Blata obtained internal information from one of the Chinese counterfeiters that they are going to transport a container of counterfeited mini squads to EU. The container should arrived to Hamburg. Blata find out all necessary information as number of the container, boat, etc. Unfortunately, Chinese producer noticed the information leakage and decided to change the direction of the container and wanted to transport it back to China. When Blata get to know, their only chance was to attempt to hold the container in Malta, which was the last stop port in EU, so the last place, where it could be seized. They send company representative there on Friday and he managed all the documents and permissions, such as in collaboration with the Maltese law firm action to ensure the request for the extraordinary opening of the courthouse, court orders to disembark from the container ship moored in a free zone, to ensure delivery injunction captain of the ship and so on. It was a very risky decision, because if there will be no counterfeit goods, Blata would have to pay loss of profits of owners and companies of thousands of containers, which was transported on the same boat. Despite that the departure of the

boat was on Monday, they completed all permissions and finally succeed. Maltese customs union detected a container, which contained counterfeited mini squads Blata.



Figure 14: Detection of counterfeited mini squads Blata in Malta

Source: Týden.cz. Cited 27.3.2016 Available at: <http://www.epochtimes.cz/200706282871/Blata-Blansko-Jak-cinske-padelky-malem-znicily-ceskeho-vyrobce.html>

After confirmation, that seized goods are counterfeited Blata products, company Blata wanted a out-of-court settlement. Due to no response of Chinese company, Blata was forced to start legal action. Maltese court decided, that all seized goods have to be destroyed. Afterwards, Blata was thinking about enforcement of lost profit. Unfortunately, Chinese company ceased to exist shortly after notification of the judgement. (Šmíd, 2007)

Lukáš Vašíček, manager of company Balta, answered for magazine Epoche Times, that after noticing how the Chinese counterfeiters work, Blata has to completely changed their strategy. They founded out that Chinese counterfeiters offer counterfeited minibikes only after two weeks, since Blata introduced the new original product. Even if they did have produced pieces yet. Blata noticed that the Chinese counterfeiters monitor demand this way. Moreover, they were able to produce counterfeited minibike in a month from its introduction by Blata. (Týden.cz, 2008)

10 Results of questionnaire

Questionnaire was distributed from 4th March 2016 to 2nd April 2016. In the questionnaire were used distributions according to gender, age, education level and average income distribution. The number of respondents is 355, from which were 33,52 % men and the rest 66,48 % were women. More detail gender and age distribution is available in the following table:

Gender	Age category	Number of respondents
Man	0-24	40
	25-49	45
	50-64	13
	64 and more	21
Total man		119
Woman	0-24	97
	25-49	102
	50-64	19
	64 and more	18
Total woman		236
Total		355

Table 2: Distribution according to gender and age

Source: own creation based on results of questionnaire

Distribution based on gross average income is as following:

Gender	Avarage gross monthly income	Number of respondents
Men	less than 9900 CZK	20
	9901CZK -15000 CZK	32
	15001 CZK - 22000 CZK	22
	22001 CZK - 26000 CZK	16
	26000 CZK and more	29
Men total		119
Women	less than 9900 CZK	80
	9901CZK -15000 CZK	64
	15001 CZK - 22000 CZK	59
	22001 CZK - 26000 CZK	19
	26000 CZK and more	14
Women Total		236
Total		355

Table 3: Distribution according to gross average monthly income

Source: own creation based on results of questionnaire

Based on gained data revealed, that women (58,05 %) have ever bought counterfeited goods fractionally more than men (56,3 %), no matter if the purchase was planned or impulsive. But, it in terms of impulsive purchases answered 37,71 % of women and only 25,21 % of men that they have ever impulsively buy a counterfeited goods. This result proved that women are prone to impulsive purchases. The situation is completely opposite when the purchase is planned. Than are more sophisticated men, from whom 31,09 % planned the purchase of counterfeited good, in women it was only 20,24%. On the other hand the percentage of both genders is almost the same in last two possibilities. 25,21 % of men and 24,15 % of women buy only original products. 18,49 % of men and 17,8 % of women does not care if the products is original or counterfeited. Most of respondents answered (77,75 %) that they do not consider counterfeited goods the same quality as original goods.

On the graph below is graphically described answer yes, to question whether respondents have ever ordered counterfeited good from abroad. As visible, in terms of women there is decreasing trend, which might be interpreted, that the higher income women have the more original and possibly luxury goods they buy. Results of men are not that significant as results of women.

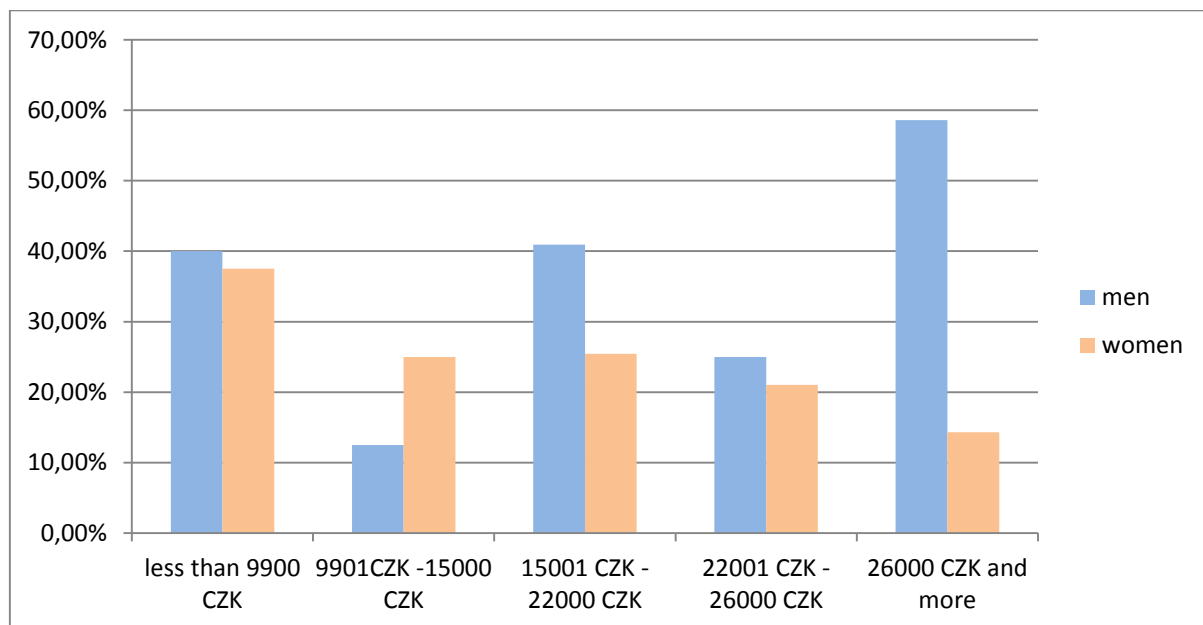


Figure 15: Ordering counterfeited goods from abroad based on gross monthly income

Source: own creation based on results of questionnaire

Customs in EU regularly control imported and exported goods to reveal as much counterfeited goods as possible. However, based on customs reports the remaining problem is that a lot of counterfeited goods are sent into EU in small deliveries by post or courier services. From respondents who answer that they have ever get a

counterfeited good from abroad answered 82,22 % of men and 88 % of women that they use post or courier services or they bring it by themselves from holiday abroad or from another foreign trip. These findings correspond to founding of customs.

Quite negative result is that from respondents, who answered that they have ever planned bought counterfeited product 51,35 % of men and 47,92 % of women concurrently answered, that they know that buying counterfeited product may indirectly finance organized crime or that it might be connected with child work or bad working conditions.

According to 87,28 % of women and 80,6 % of men make sense the implementation of campaigns, which would inform customers about difference between original and counterfeited products. (Percentage covers both answer yes and yes, if it would not be deceptive advertising). Following graph shows percentage of respondents in selected forms of communication about originality of products between them and producers. These percentages cover only respondents who concurrently answered, that they consider these communications useful.

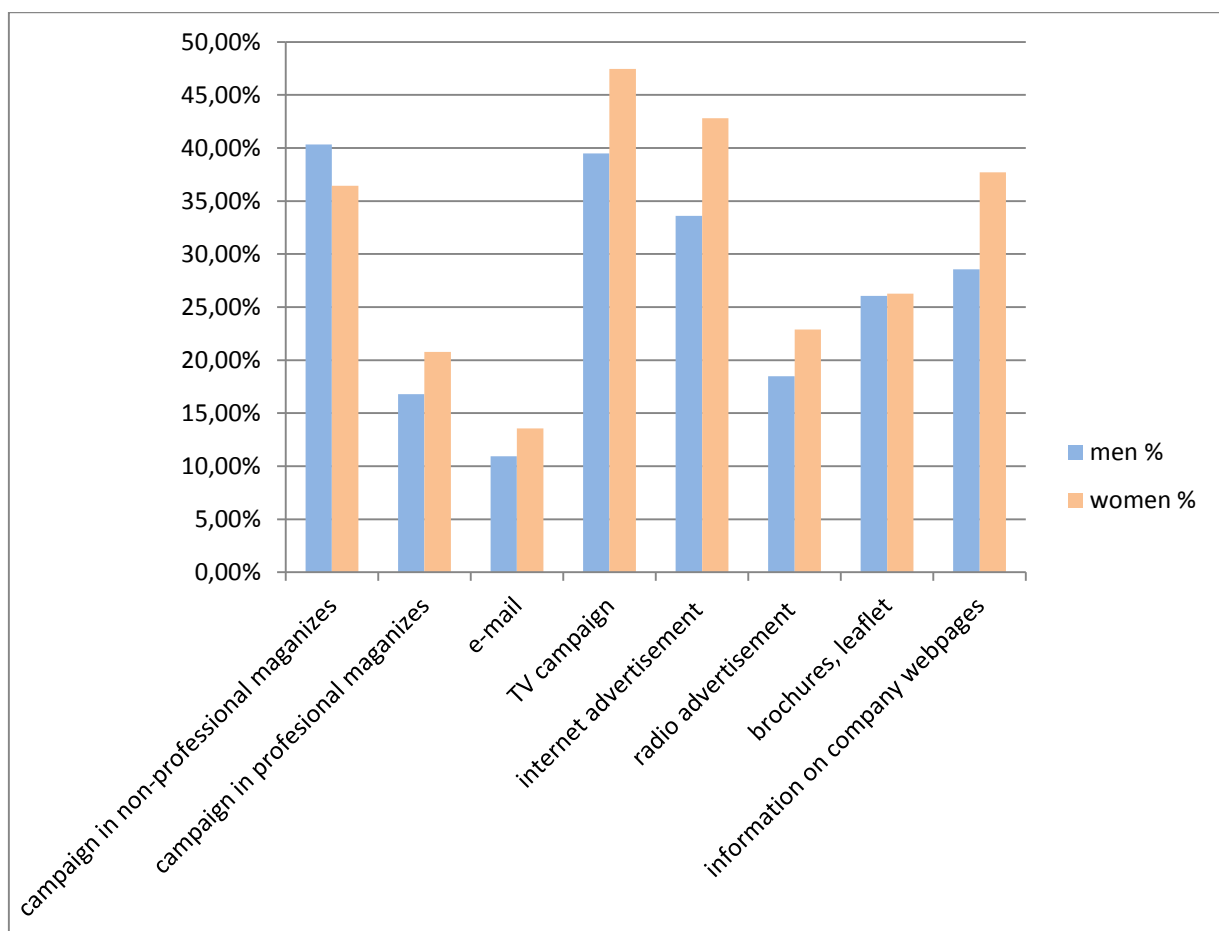


Figure 16: Suitable forms of communication with customers

Source: own creation based on results of questionnaire

Most favourable sources of communication are TV campaigns, campaigns in non-professional magazines and information of company webpages. On the other hand both genders are not so much willing to communicate directly through email. These results may indicate that people like to search for information about products either by themselves or unobtrusive form. Some respondents answer that they would like to read this information about originality and its advantages on product packaging. Another respondent answered that she supposes discussions in schools could be useful.

Another founding showed that 67 % of women all age categories would buy cosmetics as original and only 0,5 % of them would buy it as a counterfeited product. Situation is very similar in case of medicine, where 95,53 % of women and 94,96 % of men would buy it only as an original products and on the contrary only one men from the whole research would buy medicine as a counterfeited.

13,56 % of women and 17,65% of men would buy clothes as original but 72 % of women and 66,39 % of man would buy counterfeited clothes. In terms of fashion accessories 10,59 % of woman and 14,28 % of men would buy it original, conversely 72,88 of women and 62,18% of men would buy counterfeited accessories.

Graph below graphically describe answer, why would respondents buy counterfeited products. It is obvious, that the main motive for purchase of fake product is price, which marked 53,39 % of women and 59,66 % of men. Surprisingly this fact does not very differentiate between income groups of both genders.

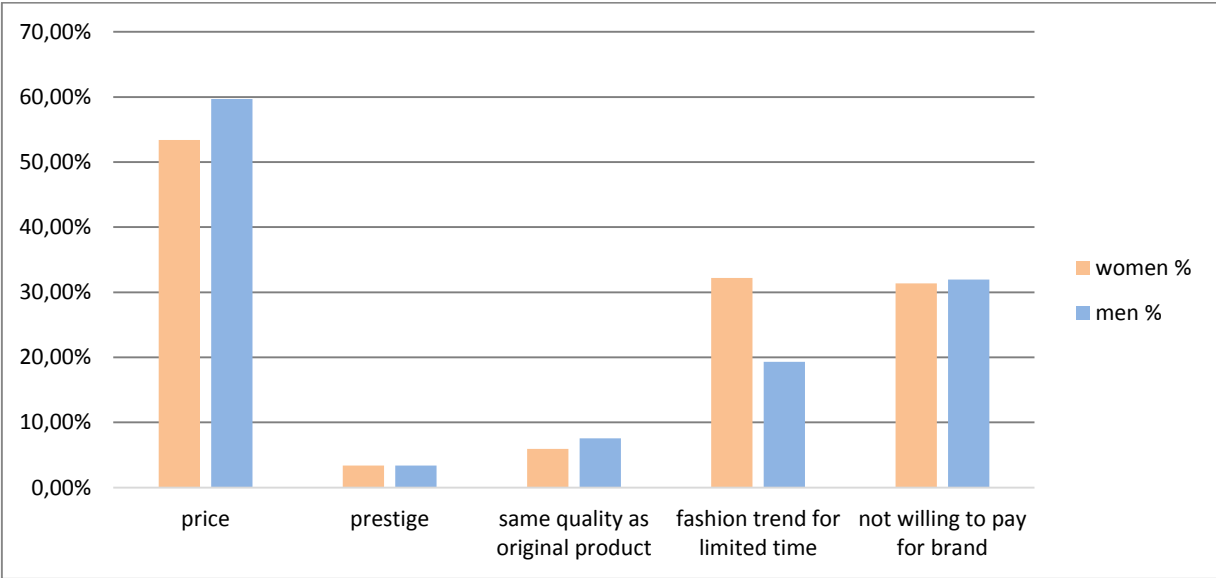


Figure 17: Motives for buying counterfeited goods

Source: own creation based on results of questionnaire

On the other hand motives for buying original products are dominantly quality, which marked 84,32 % of women and 78,99 % of men. Quite important seems to be as well brand, which is a determinant of purchase for 26,69 % of women and 36,97 % of men. Prestige is important for less than 20 % of both women and men.

11 Results

This diploma thesis worked with information and founding from literature, case law and primary data based on distributed questionnaire. All sources were very valuable and they complement each other.

Study of national and European law showed, that protection of inventors ideas is increasing every year. The basis of IP protection is enshrined in TFEU, which proves that EU from its early begging want to take care about ideas and inventions, which have been created in its territory. EC innovate law with various forms to increase cooperation of all member states and make IP protection as effective as possible. Big step towards unification in all member states of EU is Regulation (EU) no. 2015/2424 of the European Parliament and Council amending the Community trademark regulation, which entry into force 23 March 2016. This regulation makes changes in fees, which are advantageous for IPR holder. Only in one case there is increase in fee, which happens when the trademark is registered in all classes of protection. On the other hand, there appeared possibility to register only in one or two classes, which make protection cheaper. There is decrease in other fees as well, such as opposition, cancellation and revocation. This step of EC is positive, because it motivate inventors to register their ideas and continue in R&D process, which lead to sustainable development.

Customs in EU are interconnected within member states, which increase the probability of revelation of counterfeited products. However, based on statements of customs many of counterfeited goods are transferred into EU through postal or courier services. This statement was proved with the results of questionnaire. In questionnaire 82,22 % of men and 88 % of women answered that they use post or courier services or they bring it by themselves from holiday abroad or from another foreign trip. These founding prove, that it is very complicated to capture individual counterfeited goods. Based on these results it would be good to implement some effective mechanism to increase the level of checking consignments from countries outside EU.

Results of analysis of case law provided a lot of information from three member states of EU (France, Germany and the Czech Republic) and three different industries (luxury fashion, motorbikes and tools). The results indicate that all three IPR holders have to expend a lot of energy and money to fight for their rights. However, connected to the results of questionnaire there is still demand for counterfeited goods mainly because of price, which partially ties hands producers of original goods. The results of case law prove that to successfully guard IPR it necessary to spend a lot of energy and costs. In terms of company STIHL Dr. Rüdiger Stihl, member of the supervisory board of STIHL, become head of German antipiracy association. Spent energy is greatly visible in company Blata, where representatives of the company personally monitor producers of counterfeited products in China and afterwards take steps to try their lien. Other results of the case law, such as Blata Malta case show that reviling and detention of counterfeited goods is in most cases based on incentive of IPR holder. All of these results show, that it would be good to implement mechanism, which would work a

communication and cooperation hub between IPR holders, IP offices and institutions and customs to share as much information as possible.

Results of questionnaire are based on answers of 355 respondents. Respondents are mainly in age categories 0-24, 24-49 and 50-64. The last age group 65+ is represented only by 10,98 % of all respondents. Author of this thesis ascribes this distribution to the fact, that the questionnaire was distributed through internet, which is not that much expanded in older generation. On the other hand there is good representation of buyers in productive age, which makes obtained data useful and meaningful. The results, besides other, indicate that people are willing to pay more money for quality. This indicates that it would be appropriate if companies will concentrate on quality to attract these customers.

One of the results of this thesis is that law environment in the EU is on appropriate level and still increase. Generally, IPR holders are able to protect their rights, but according to results of this thesis they have to be very purposeful and selfless to do so. Results of case law prove that protection of IPR is continuing process and when there is convicted one seller or producer of counterfeited product there appear another one. Author of this thesis ascribes this affect to the demand for cheap products, which were proved in the questionnaire. It would be appropriate to increase education of customers and explain them what are the consequences of consciously buying counterfeited products. However, the form of this campaign have to be very coherent and well design, because 51,35 % of men and 47,92 % of women answered that they have ever planed bought counterfeited good even if they know what could be the background of this product (child labour, unfair working conditions, organized crime). This education could be provided separately by each company, which uses analysed company STIHL or it could be organized in a form of campaign of EU. EU market consists of 500 millions of customers, which is a huge amount of people to be informed and educated. According to 87,28 % of women and 80,6 % of men make sense the implementation of campaigns, which would inform customers about difference between original and counterfeited products. This result is proving that people are interested in such a campaigns and education. In terms of form of this education respondents of questionnaire are mainly interested in campaigns in TV, which as a mass media could be used for wide spread campaigns of EU or national bodies. On the other hand internet advertisement, information in non-professional magazines and company web pages could be used as closer communication between buyer and supplier about concrete product.

Even if the results showed that there are many improvements in law environment the customs statistics show that the number of counterfeited goods still increases. Therefore decrease of demand for counterfeited products seems to be the most effective way how to decrease the number of counterfeited goods produced.

12 Discussion

This diploma thesis focused on topic Intellectual Property and its protection in EU. There was mentioned related legislation in Czech Republic and in European Union. In this discussion part the results and recommendations will be critically evaluated. Analysis of legal environment in the Czech Republic and in the European Union testifies that legal protection increased during last decade on good level and that the legal environment in EU member states is becoming similar. Registration and protection of IP, as well as connected information, is available for almost all of inventors. EC is innovating and implementing law, so the conditions and law enforcement is becoming more and more similar in all member states of EU. In author's opinion, the overall level of protection of IP and related rights is in EU on quite good level in terms of legislation. However, there are still some areas, which are weak and would enable space for suggesting some changes. Customs offers possibility of cooperation with IPR holders, which may significantly help revealing counterfeited goods, which is according to author very important. Information about customs provided in chapter Customs tells, that it is necessary that IPR holders have to register application for custom supervision. This application is valid for one year and enables IPR holder to invite the customs to check suspicious cargo. If customs prove that goods in cargo are counterfeited or broke IPR they can seize the goods. This system is quite well coherent, but in reality there are some issues. It often happens that customs have so many requests, that check of suspicious cargo is not quick enough. There is also needed impulse from the side of IPR holder. There are available dozens of patent attorneys, which are available to help with registration application and other issues connected to IP. Generally, according to author's opinion, there should be support of inventors and companies who invest into R&D. Thanks to these groups of people can earth enjoy technological progress and inventions, which make life easier. The nature of protect own ideas is reasonable and should be supported by national as well as international law and bodies.

Based on study of cases, there is the most important determinant of number of counterfeit goods - the demand for them. All of three mentioned companies, which fight for their IPR, have to invest a lot of money. Detecting of plagiarism as well as catching counterfeited goods seems to be as fighting windmills. In 1957 Festinger described cognitive dissonance, which refers to a situation when one solves a situation involving conflicting attitudes, beliefs or behaviour. This usually produces a feeling of discomfort, which leads to an alternation in one of the beliefs, attitudes or behaviour to reduce the discomfort and restore balance. As an example may be mentioned a person who smoke, even if, he or she knows that it causes cancer. (McLEOD, 2016) The similar case could be applied on IP. Customers usually know that when buying counterfeited goods they negatively affect company, which owns IP of given good. (This statement was proved in the distributed questionnaire.) Moreover, they usually know that they support child labour, undignified working conditions, in some cases organized crime groups, and other. When properly chosen form, companies may use this feature to affect customers behaviour on the market. The most active communication with customers run STIHL, on

which webpages are available a lot of information about fake and original products. They also provide info email, which is only for purposes of communication with customers about counterfeited goods. Based on gained results it is obvious that fighting with producers of counterfeited goods is continuous process, which should be part of company strategy.

WIPO did in 2008 a research among US customers about their preferences in buying original or counterfeit goods. Research showed that younger people tend to buy counterfeited goods more than older people. (Research, 2016) Questionnaire research connected to this thesis did not prove that European young people tend to buy counterfeited goods more than older ones. As a main determinant or motive for purchase of counterfeited good was among all age and gender groups price and then fashion trend for limited time period or non-willingness to pay for brand. It would be a good base for next deeper research to study, whether are people that much oriented on price, because of economic crisis which started in 2009 and how looked their purchase decision process before crisis. The questionnaire was also distributed among Czech and Slovak respondents, whose answers are the basis for results. It would be good to explore the questionnaire in all member states of the EU and compare the results of EU citizens. On the other hand main motive for buying original products is quality, where almost 78 % of respondents answered that quality of counterfeited goods is lower than the original ones. According to author there is a space to educate customers about characteristics of original products and explain why it is more expensive than the counterfeited product. Based on research respondents would welcome these education campaigns mainly non-intrusive form in magazines, TV and on the company's web-pages. According to author, for IPR holder, who is fighting for his or her IPR, possibilities of enforcement of law and concurrently actively started communication with customers could be an ideal way how to increase possibility of success. Generally, according to results of this thesis it would be good if companies incorporate different strategies in terms of communication with customers. Nowadays technologies and multimedia provide huge amount of possibilities of direct or indirect communication. It was proved that consumers are willing to get information about products they buy. This could lead to wider relationship between customer and company and increase in customer loyalty, which could decrease the risk that customer would buy counterfeited product of that company.

Based on study of all mentioned parts, it is obvious that situation should become more advantageous for IPR holders. EU customs cooperation is quite close as well as IP institutions and offices. We will see in the future how unification of legislation and international bodies will change the situation and there will be breaking point of counterfeited products and the number of them will start to decrease.

13 Conclusion

This diploma thesis topic was Intellectual property and its protection in EU. The reason of elaboration of this thesis was to answer the questions weather legislation environment is on proper level on EU and what are the main motives why there is a demand for counterfeited products. These goals were achieved with studying of literature and law, studying related case law and distribution of questionnaire. These methods provided valuable primary and secondary data, which were a good basis for this diploma thesis.

In the past, the level of Intellectual Property Protection was quite poor. Enforcement of IPR was very complicated and time consuming. With the development of global trade and internationalization of market is even easier for counterfeiters to overwhelm markets. The creation of European Union is one of the factors, which started to improve the overall situation. The whole concept should provide better condition for holders of IPR to use and protect their rights. In last two decades law making bodies implemented many recommendations, directives and laws, which simultaneously change the environment. Because the integration of member states of EU is on higher and higher level, as well as international trade and technology progress, another new law have to be implemented. Proof of continuous development of law environment of EU is very actual implementation of Regulation (EU) 2015/2424 of The European Parliament and Council of 16 December 2016, which introduced changes term Community trade mark into European Union trade mark and it changed name of Office for harmonization of internal market (OHIM) to European Union Intellectual Property Office (EUIPO), entered into force on 23 March, 2016.

Results based on deep study of literature and online sources and following analysis of secondary and primary data prove that for IPR holders could be a good way how to protect their rights education of customers.

Cases which have been studied showed that there is necessary big and continuous motivation of IPR holders to protect their rights. These entities have to invest a lot of money and time to find out sources of counterfeited products and prepare all materials for customs or court ruling. Concurrently, available database of EUIPO or WIPO proves that cases solved by court are usually those of bigger companies. SME such as company Blata are not so often. However, in it is important, that people and companies follow to protect their ideas, know-how and other immovable property, which is a result of human creativity and entrepreneurship.

The overall trend in EU is to implement as protective policies as possible. However, there are still gaps, how these rights can be broken. Therefore it is important to continue and prepare as effective law environment as possible.

14 List of references

- ABOUTWIPO. *What is WIPO?* [Online] 2015 [Cited 14.11.2015] Available at: <http://www.wipo.int/about-wipo/en/>
- ABOUTTRADEMARK. *Trade marks.* [Online] 2016 [Cited 4.2.2016] Available at: <https://euipo.europa.eu/ohimportal/cs/trade-marks>
- BRITISH INTELLECTUAL PROPERTY OFFICE. *IP Crime Report.* Intellectual Property Office. 2014. United Kingdom.
- BUSINESS DICTIONARY. *Unfair competition.* [Online] 2015 [Cited 6.10.2015] Available at: <http://www.businessdictionary.com/definition/unfair-competition.html>
- CORNELL UNIVERSITY, INSEAD, AND WIPO: *The Global Innovation Index 2015: Effective Innovation Policies for Development.* Fontainebleau, Ithaca, and Geneva. 2015 ISBN 978-2-9522210-8-5
- CROVE, Paul. *Counterfeited motorcycles seized at Milan show.* [Online] 2005 [Cited 27.3.2016] Available at: <http://thekneeslider.com/counterfeit-motorcycles-seized-at-milan-show/>
- CZSO. *Průměrné mzdy 3. Čtvrtletí 2015.* [Online] 2015 [Cited 27.3.2016] Available at: <https://www.czso.cz/csu/czso/cri/prumerne-mzdy-3-ctvrtleti-2015>
- ČESKÝ ROZHLAS. *Czech firm halts innovation as a result of piracy.* [Online] 2006 [Cited 27.3.2016] Available at: <http://www.radio.cz/en/section/curraffrs/czech-firm-halts-innovation-as-result-of-piracy>
- EUIPO. *Euipo.* [Online] 2016 [Cited 2.4.2016] Available at: <https://euipo.europa.eu/ohimportal/cs/>
- EUIPO. *Trade mark definition.* [Online] 2016b [Cited 28.3.2016] Available at: <https://euipo.europa.eu/ohimportal/en/trade-mark-definition>
- EUROPEAN COMMISSION. *The European Union Explained: Customs, 2014.* European Commission, 2014. ISBN 978-92-79-41585-2.
- EUROPEAN COMMISSION. *Report on EU customs enforcement of intellectual property rights: Results at the EU border 2014.* European Union, 2015.
- EUROPEAN COMMISSION. *Social Inclusion.* [Online] 2004 [Cited 27.3.2016] Available at: http://ec.europa.eu/employment_social/social_inclusion/docs/nap_incl_2004_anex_2_cz.pdf
- EUROPEAN COMMISSION. *Regulation No608/2013 of the European Parliament and of the Council of 12 June 2013.* [Online] 2013 [Cited 2.1.2016] Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:181:0015:0034:en:PDF>
- EUROPEAN UNION. *Customs.* [Online] 2016 [Cited 4.1.2016] Available at: http://europa.eu/pol/cust/index_en.htm

- EUROPEAN UNION. *Consolidated version of The Treaty of The Functioning of The European Union*. [Online] 2012 [Cited 27.3.2016] Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=CS>
- EUROPEAN UNION. *Directive 2004/48EC of The European Parliament and of The Council of 29 April 2004 on the enforcement of intellectual property rights*. [Online] 2015 [Cited 6.10.2015] Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1444119035322&uri=URISERV:l26057a>
- EUROSTAT. *E-commerce statistics*. [Online] 2015 [Cited 23.3.2016] Available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics
- EVROPSKÁ KOMISE. Nařízení Evropského Parlamentu a Rady (EU) 2015/2424 ze dne 16. prosince 2015. [Online] 2015 [Cited 27.3.2016] Available at: <http://eur-lex.europa.eu/legal-content/CS/TXT/HTML/?uri=CELEX:32015R2424&from=EN>
- EVROPSKÁ KOMISE. *Politiky Evropské Unie: Cla, Evropská Unie, 2014*. Evropská komise, 2014. ISBN 978-92-79-41581-1.
- FORBES. *The world's most valuable brands*. [Online] 2015 [Cited 14.3.2016] Available at: <http://www.forbes.com/companies/louis-vuitton/>
- FRASER, James. *A Handy-book of patent and copyright law: English and foreign for the use of inventors, patentees, authors and publishers*. Sampson Low, Son and Co. London, 1860.
- GAMBINO, Megan. *Ten Famous Intellectual Property Disputes*. [Online] 2011 [Cited 3.1.2016] Available at: <http://www.smithsonianmag.com/history/ten-famous-intellectual-property-disputes-18521880/?no-ist=&page=1>
- GROVES, Peter. *A dictionary of intellectual property law*. Cheltenham, UK: Edward Elgar, 2011. ISBN 978-1-84980-777-7
- HESPE, Michelle. *Industrial Design: Conceptual careers in the making*. Career FAQs Pty Ltd, 2007. ISBN 9781921106637
- CHAUDRY, Peggy, ZIMMERMAN, Alan. *Protecting Your Intellectual Property Rights: Understanding the Role of Management, Governments, Consumers and Pirates*. 2013. Springer. ISBN 978-1-4614-5567-7
- INVESTOPEDIA. *Intangible Asset*. [Online] 2016 [Cited 1.4.2016] Available at: <http://www.investopedia.com/terms/i/intangibleasset.asp>
- JAKL, Ladislav. *Právní ochrana průmyslového a jiného vlastnictví*. Metropolitní Univerzita Praha, 2011a. ISBN 978-80-86855-63-9
- JAKL, Ladislav. *Legal Protection of Inventions and Utility models Drafting of Specifications and Claims*. Metropolitan University Prague. Prague, 2011b. ISBN 978-80-86855-75-2

- JANIS, Mark D. *Trademark and Unfair Competition law in a nutshell*. LEG, 2013. ISBN 978-0-314-16341-7
- JUNGHANS, Class, LEVY, Adam. *Intellectual Property Management: A Guide for Scientists, Engineers, Financiers and Managers*. WILEY-VCH, 2008. ISBN 3-527-31286-2
- KUR, Annette, DREIER, Thomas. *European Intellectual Property Law*. Edwar Elgar Publishing limited, 2013. ISBN 978 1 84844 879 7
- KOTTLER, Philip, KELLER, Kevin. *Marketing management*. Grada, 2013. ISBN 978-80-247-4150-5
- MALÝ, Josef. *Oceňování průmyslového vlastnictví: Nové přístupy*. Praha, C. H. Beck, 2007. ISBN 978-80-7179-464-6
- MASKUS, Keith E. *Intellectual property rights in the global economy*. Institute for international economics. Washington, 2000. ISBN 0-88132/282-2
- McLEOD, Saul. *Cognitive dissonance*. [Online] 2016 [Cited 25.3.2016] Available at: <http://www.simplypsychology.org/cognitive-dissonance.html>
- MKRC. *Světový den duševního vlastnictví*. [Online] 2016 [Cited 1.4.2016] Available at: <http://www.mkcr.cz/cz/zpravodajstvi/zpravy/svetovy-den-dusevniho-vlastnictvi-131573/tmplid-228>
- STIHL. *Responsibility*. [Online] 2015 [Cited 27.12.2015] Available at: <http://www.stihl.com/Responsibility.aspx>
- STIM, Richard. *Patent, Copyright and Trademark. An Intellectual Property Desk Reference*. NOLO, 2014. ISBN 978-1-4133-1969-9
- ŠMÍD, Jakub. *Blata Blansko: Jak čínské padělky málem zničily českého výrobce*. [Online] 2007 [Cited 27.3.2016] Available at: <http://www.epochtimes.cz/200706282871/Blata-Blansko-Jak-cinske-padelky-malem-znicily-ceskeho-vyrobce.html>
- TÝDEN.CZ. *Jak padělané motorky z Číny skončily ve šrotu*. [Online] 2008 [Cited 27.3.2016] Available at: <http://www.finance.cz/zpravy/finance/70237-soud-na-malte-padelky-ctyrkolek-blata-museji-byt-zniceny/>
- UPV. *Základní informace*. [Online] 2015 [Cited 14.11.2015] Available at: <https://www.upv.cz/cs/upv/zakladni-informace.html>
- WIPO. *Administrative panel decision: Andreas Stihl AG & Co KG v. Andrev Davis, Case No. D2014-0576* [Online] 2014 [Cited 2.1.2016] Available at: <http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2014-0576>
- WIPO. *IP Outreach research: Consumer demand for counterfeited goods*. [Online] 1998 [Cited 4.4.2016] Available at: <http://www.wipo.int/ip-outreach/en/tools/research/details.jsp?id=19>
- WTO. *Overview: The TRIPS Agreement*. [Online] 2016c [Cited 2.4.2016] Available at: https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

- WTO. *Who we are*. [Online] 2016a [Cited 27.3.2016] Available at: https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm
- WTO. *What we do*. [Online] 2016b [Cited 27.3.2016] Available at: https://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm
- Zákon č. 14/1993 Sb., ze dne 20. prosince 1992, o opatřeních na ochranu průmyslového vlastnictví, ve znění pozdějších předpisů.
- Zákon č. 221/2006 Sb., ze dne 25. dubna 2006, o vymáhání práv z průmyslového vlastnictví a o změně zákonů na ochranu průmyslového vlastnictví (zákon o vymáhání práv z průmyslového vlastnictví)
- Zákon č. 441/2003 Sb., ze dne 3. prosince 2003, o ochranných známkách a o změně zákona č. 6/2002 Sb. o soudech, soudcích, přísedících a státní správě soudů a o změně některých dalších zákonů (zákon o soudech a soudcích), ve znění pozdějších předpisů, zákon o ochranných známkách)
- Zákon č. 478/1992 Sb., ze dne 24. září 1992, o užitných vzorech, ve znění pozdějších předpisů.

15 List of figures

Figure 1: Counterfeit goods seized by customs	32
Figure 2: Application to customs supervision (years 2007-2014)	33
Figure 3: Detained cases and articles by the EU customs (between 2007-2013)	34
Figure 4: Reasons for the growth of counterfeit goods market	37
Figure 5: Possible ways of company expansion	40
Figure 6: Trademark STIHL	42
Figure 7: Original STIHL MS 381 and fake product SWOOL	42
Figure 8: Blata trademark 104384/205349, combined trademark	46
Figure 9: Blata Trademark 126953/209318, combined trademark	46
Figure 10: Blata Trademark 126954/212293, combined trademark	46
Figure 11: Blata industrial design 34574	47
Figure 12: Blata industrial design 34575	47
Figure 13: Production of counterfeited minibikes Blata in China	48
Figure 14: Detection of counterfeited mini squads Blata in Malta	49
Figure 15: Ordering counterfeited goods from abroad based on gross monthly income	51
Figure 16: Suitable forms of communication with customers	52
Figure 17: Motives for buying counterfeited goods	53

16 List of tables

Table 1: Validity and origins of the effects of industrial rights protection	16
Table 2: Distribution according to gender and age	50
Table 3: Distribution according to gross average monthly income	50

17 List of Abbreviations

CTM	Community Trade Mark
IP	Intellectual property
IPR	Intellectual property right(s)
EC	European Commission
EEC	European Economic Community
EP	European Parliament
EU	European Union
EUIPO	European Union Intellectual Property Office
OHIM	Office for harmonization at the internal market
TFEU	Treaty of Functioning of European Union
WIPO	World intellectual property organization
WTO	World Trade Organization

Annex

Dotazník k Diplomové práci

1 Jaké je Vaše pohlaví?

Z následujících možností vyberte jednu.

- Žena
- Muž

2 Jaké je Vaše nejvyšší dosažené vzdělání?

Z následujících možností vyberte jednu.

- základní
- střední odborné učiliště - výuční list
- střední škola s maturitou
- vyšší odborné
- vysoká škola - bakalářské
- vysoká škola - inženýrské, magisterské, doktorské

3 Do jaké věkové kategorie se řadíte?

Z následujících možností vyberte jednu.

- 0-24
- 25-49
- 50-64
- 64 a více

4 Koupil/a jste někdy vědomě padělaný výrobek? (např. kabelku, nářadí, apod.)

Z následujících možností vyberte jednu.

- Ano, koupil/a a šlo o plánovaný nákup.
- Ano, koupil/a a šlo o impulzivní nákup.
- Nevím, nezajímá mě, za jsou výrobky originální, nebo padělané.
- Ne, kupuji jen originální výrobky.

Dotazník k Diplomové práci

12 Jak nejčastěji nakupujete originální zboží?

Z následujících možností můžete vybrat několik, všechny nebo žádnou, případně doplnit vlastní.

- Internet
- Kamenný obchod
- výstavy
- tržnice
- second hand, obchody s použitým zbožím
- jiné (uveďte):

13 Jak nejčastěji nakupujete padělané výrobky?

Z následujících možností můžete vybrat několik, všechny nebo žádnou, případně doplnit vlastní.

- Internet
- Kamenný obchod
- Výstavy
- Tržnice
- Second hand, obchody s použitým zbožím
- Jiné (uveďte):

14 Má podle Vás smysl realizace kampaní, které informují a vzdělávají zákazníky o rozdílu mezi originálními a padělanými výrobky?

Z následujících možností vyberte jednu.

- Ano
- Ano, pokud nepůjde o klamavou reklamu
- Ne

Dotazník k Diplomové práci

15 Jaký způsob sdělení varování výrobců/poskytovatelů originálních produktů je pro vás vyhovující?

Z následujících možností můžete vybrat několik, všechny nebo žádnou, případně doplnit vlastní.

- Sdělení v odborných časopisech
- Sdělení v neodborných časopisech
- E-mail
- Televizní reklama
- Reklama na internetu
- Reklama v rádiu
- Letáky, informační brožury
- Informace na stránkách firmy
- Jiné (uveďte):

16 Věděl/a jste, že koupí padělků nepřímo podporujete financování organizovaných skupin, dětskou práci, špatné pracovní podmínky zaměstnanců apod.?

Z následujících možností vyberte jednu.

- Ano
- Ne

17 Jaký je Váš průměrný hrubý měsíční příjem?

Z následujících možností vyberte jednu.

- méně než 9900Kč
- 9901Kč -15000Kč
- 15001Kč - 22000Kč
- 22001Kč - 26000Kč
- 26000Kč a více