

Setting Precedents

A Case Study of Anti-Counterfeiting in China

By Dr. Hans Joachim Fuchs

German enterprise WILO SE is a leading pump and pump systems manufacturer for heating, refrigeration, and air conditioning technology, as well as for water supply, waste water treatment, and sewage disposal worldwide. The company steadily goes after counterfeiters, not only to protect its brand, but, most of all, to keep its promises regarding quality.

WILO's greatest concern in its fight against counterfeiting and piracy is consumer protection and user confidence. Almost all fakes are subject to increased wear-out and, therefore, cannot meet the German security standards which all WILO products are liable to. The company has therefore implemented a consistent anti-counterfeiting policy to preserve the confidence users place in its trademark.

At the Source

WILO SE generally tackles the problem at the very source – in China. It is essential to begin at the end of the supply chain and go from there to tackle counterfeiters and stop their activities for good. Market observation and on-site investigations have led to about 30 relevant counterfeiters being identified so far. They were classified into the risk categories “aggressiveness” and “damage potential”, and are treated according to different priorities.

Since the foreign company is also known as a premium supplier in China, counterfeiters frequently copy the trademark. Sometimes, they claim to be related to the original manufacturer and try to give customers the impression of selling real WILO pumps or being an actual WILO partner. Chinese

Fake WILO pumps seized in an anti-counterfeiting raid in China





Website and packaging of the fake pump manufacturer Wile. With its deceptively similar appearance, Wile pretended to be a subsidiary of the original producer

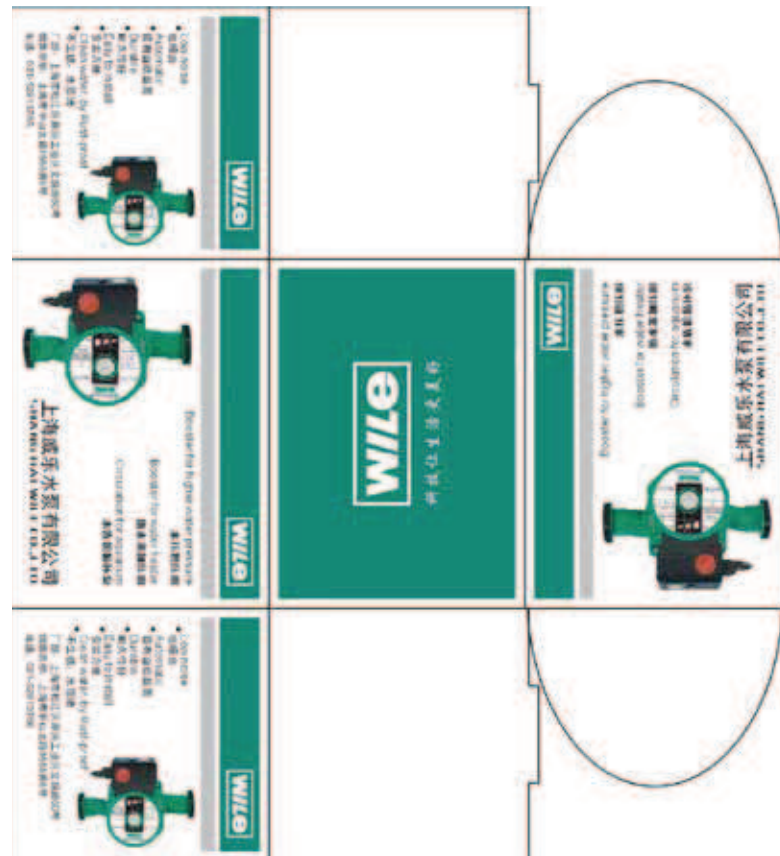
manufacturers introduce visually identical or very similar pumps to the market, using brand names such as XINWILO (new WILO), CHAOWILO (super WILO), or WIGO. Also, they often try to register strongly resembling brands such as VILO at the Chinese trademark office. The counterfeiter Wile, for example, pretended to be a subsidiary of the German original producer by means of a deceptively similar internet appearance. A Chinese pump manufacturer even publicly feigned to belong to a Sino-German joint venture with WILO SE.

In China, WILO relies on co-ordinated legal measures to combat counterfeiters. Procedures are based on extensive preliminary research to provide solid evidence that can meet all legal requirements. Professional experts are appointed for direct on-site investigations. Every piece of evidence is notarised so as to be valid and able to stand in court.

The company observes the Chinese market very closely and, where needed, performs raids in which counterfeited pumps are confiscated by the authorities. The same is true for printers and packaging manufacturers who produce counterfeited tags or packaging boxes labelled with the WILO brand. In fact, pumps and labels are often delivered separately so as to impede tracking. Moreover, regular surveillance of trade fairs and annual analyses of counterfeiter markets serve as an early warning system and provide the required transparency.

Actions and Lawsuits

The German pump manufacturer counters attacks on its own trademark with legal actions and lawsuits, while being able to draw upon Chinese laws, such as patent and trademark law, copyright, and competition law. WILO SE has filed several lawsuits in China – and won them all. For example, major counterfeiter XinWilo Electric Motor Co., Ltd. was sentenced by the Supreme Court in Beijing at second instance to immediate cessation of counterfeit production, a



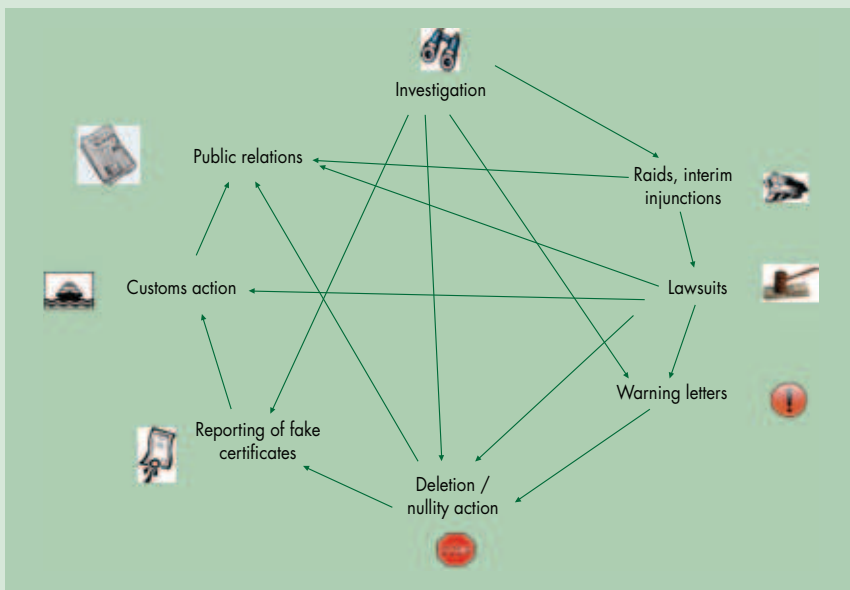
considerable fine, and a public apology in the Chinese trade press. As a result, Taizhou Taifu Pump Co., Ltd. also pledged to refrain from counterfeiting in the future and to destroy all copies under the court's supervision so as to avoid trial. WILO's latest success in China is the sentence against Wile Pump Ltd., which the court prohibited from using the brand Wile and making counterfeit pumps.

Such successes also hit the headlines in China. By now, the sentence against XinWilo Electric Motor is regarded a precedent case, having been widely communicated in the press. The China Intellectual Property News, China's leading publication for intellectual property (IP), covered the case at length.

Many foreign companies fail to prosper in China because they make formal mistakes. Yet the WILO example proves that they can not only defend themselves against counterfeiters, but that they even have a chance to set the rules. To do this, however, processes must be strategically planned and implemented professionally.

China is a society of relationships, where familiarity and trust are highly important. A major factor for succeeding in legal processes is that the appointed Chinese lawyers are well established at the respective courts and personally know the judges. Also, they must have many years of experience in the field of commercial protective rights. They must show responsibility and determination in court, steadily attend to the proceedings, and explain background and facts.

Synergy Effects through Cross-linked Measures



Source: Chinabrand Consulting

infringement of protective rights and theft of IP are not worthwhile. What is more, the counterfeiter risks losing face if the sentence is publicised within his industry.

Further Measures

Successful lawsuits and official decisions in favour of WILO are also used as a basis for further anti-counterfeiting measures. The Dortmund-based company will, for example, arrange for websites to be deleted if they offer counterfeited pumps. Fake certificates like G/S, CE, or CCC printed on pump labels will be reported to the responsible authorities. Traders who buy counterfeits will be identified and admonished, or listed out, while Chinese customs officials receive training from the company to recognise WILO fakes that are intended for export in major

Furthermore, it is essential to continually inform relevant industries about successful countermeasures. WILO's successes are systematically published in the Chinese print and online media so that traders and buyers are informed and warned. Such public relations efforts are an important instrument to show commitment and willingness to rigorously counter IP theft. Publicly visible measures of know-how protection send a positive signal and prove that

logistics hubs like Shanghai, Ningbo, or Urumqi.

WILO SE's network of systematically co-ordinated strategies against counterfeiting has proven successful. Just news of winning trials is often all it takes: Several counterfeiters gave up only because they learned that defensive actions were being taken. Counterfeiting WILO products had simply become too dangerous.

Profile

CHINABRAND Consulting is a German management consulting firm that is focused on the business of Western brand companies (B2B and B2C) in China. We advise European, US, and Asian companies, experienced in China, in demanding projects regarding markets, competition, and intellectual property. CHINABRAND also acts as a supervisor and surveyor. CHINABRAND concentrates on markets and competitive intelligence, competitive and brand strategy, mergers and acquisitions, innovation, IP management, protection of know-how and intellectual property, and anti-counterfeiting. The firm has offices in Boston, Munich, and Shanghai and employs highly-qualified consultants with years of experience. Our clients are famous brands from various industries, including pharmaceuticals, mechanical engineering, electronics, consumer goods, fashion, media, and health-care.

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