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### An Introduction to Grey Market Goods

#### AUTHORS

Justin E. Pierce

Elissa Brockbank Reese

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Is your company and brand ready and aimed to fire against the threats posed by unauthorized grey market goods and parallel imports? Recently, Justin Pierce, a Partner in Venable's Trademark Practice Group, presented "Combating Grey Market Goods in the United States and Europe" at the 7th Anti-Counterfeiting & Brand Protection Conference in New York.

Differing from counterfeits, grey market goods, also known as parallel imports, are genuine trademarked goods purchased outside of a country (e.g., the United States) or a specified territory by someone other than the designated/exclusive importer, who then imports these goods into the United States for sale in competition with exclusive or authorized U.S. importers and distributors. Grey market goods can have a significant impact on a business and its brand as such goods can, for example, cause: (1) loss in profits and margins; (2) disruption to relations with authorized or exclusive importers and distributors, and with internal sales forces; (3) brand dilution, *i.e.*, loss of control in branding and user experience because, e.g., the goods are produced for various local preferences; and (4) health and regulatory concerns, e.g., drug shortage profiteering, and imported products that may not meet FDA standards.

There are a number of key legal concepts which directly affect how a business should deal with grey market goods. These include: (1) the standard for trademark infringement for grey market goods; (2) the first sale doctrines for copyrighted and trademarked goods in the context of foreign sales; and (3) the standards applied by customs in stopping grey market goods. Over the course of the next few months, *IP Buzz* will publish articles that examine each of these issues in-depth.

Ultimately, the goal for every business is to implement an effective grey market enforcement program, which should strategically use trademark, copyright and customs law in concert with certain business actions to limit the flow of unauthorized grey market goods. The best practices include: (a) protecting your business's IP; (b) keeping your own house in order; (c) preventing the importation of grey market goods; (d) engaging in grey market intelligence through the concerted assistance of attorneys and investigators; (e) enforcing your rights; and (f) educating your own company and other businesses, media, and public on your efforts to combat grey goods and the value (economic and public safety) of your anti-grey goods and counterfeit efforts.

In today's globalized and technologically advanced market, it behooves every business to employ a comprehensive brand protection strategy. Stay tuned to Venable's *IP Buzz* publication for upcoming articles that will delve further into the key concepts and strategies for combating unauthorized grey market goods.