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## Survey & Legal Analysis of Select Global Trademark Anti-counterfeiting Statutes & Evidence of Prosecutions

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# SURVEY & LEGAL ANALYSIS OF SELECT GLOBAL TRADEMARK ANTI- COUNTERFEITING STATUTES & EVIDENCE OF PROSECUTIONS

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#### I. OVERVIEW OF THE CRIMINALIZATION OF TRADEMARK COUNTERFEITING GLOBALLY<sup>2</sup>

The phenomenon of trademark counterfeiting is global in nature and spans almost every jurisdiction in the world where branded products are sold. Recent estimates by the OECD quantify the trade of trademark counterfeiting globally as more than \$464 billion USD in 2019, or 2.5% of world trade,<sup>3</sup> with customs seizures of counterfeit and pirated goods consistently exceeding 130,000 yearly.<sup>4</sup> Governments often criminalize trademark counterfeiting, as well as legislate a cause of action for civil trademark infringement. Countries often have both of these legal approaches, but they use them in varied ways, often inconsistently from jurisdiction to jurisdiction, and sometimes even within the same jurisdiction. For example, the United States (“US”) criminalized trademark counterfeiting at the federal level in 1984 with the passage of the Trademark Counterfeiting Act.<sup>5</sup> Individual states in the US then passed similar, but sometimes widely varying, criminal trademark statutes after that, which we have examined in prior studies.<sup>6</sup> Many of the countries in this study have only passed legislation criminalizing trademark counterfeiting recently, with one of the more recent being Ecuador in 2016.<sup>7</sup>

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2. Please note that all foreign statutes, cases, and articles were translated with Google Translate when writing and editing this article.

3. OECD, *Global Trade in Fakes: A Worrying Threat*, 9 (2021).

4. OECD, *Trade in Counterfeit Goods at First Glance*, 27 (2019).

5. 18 U.S.C. § 2320 (a).

6. See generally Kari Kammel Esq., Brandon A. Sullivan Ph.D. & Lorryn P. Young, *The Crime of Product Counterfeiting: A Legal Analysis of the Usage of State-Level Statutes*, 18 CHI.-KENT J. INTELL. PROP. 125 (2019).

7. Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016, 4 N 889, (Ecuador).

In this project, we researched criminal trademark counterfeiting-related legislation and evidence of prosecutions in twentyfour countries,<sup>8</sup> and additionally, the approach of the European Union (“E.U.”). Our initial goal was to understand, describe, and evaluate the effectiveness of criminal punishment for trademark counterfeiting in this comparative study, while also exploring the feasibility of further studies of global governmental criminalization and prosecution of trademark counterfeiting. We found open-source data on criminal statutes, as well as evidence of criminal prosecutions in the form of press releases and some caselaw or case details. Because of the international nature of this project, many cases require local access to a country-level criminal database system, accessing materials in the local language, or working with local lawyers to access relevant data. While many of the countries examined currently have some type of criminal anti-counterfeiting statute and some evidence of use, much of the details of prosecutions or case details are not easily available in open-source information. The available information we found often referred to how the criminal procedures work and who administers criminal investigations and prosecutions.

## II. EXPLORATION OF COUNTRIES ANTI-COUNTERFEITING LEGISLATION AND RESULTING PROSECUTIONS

In this section, we surveyed and examined legislation, press releases, and other information gathered about criminal anti-counterfeiting statutes, both in common and civil law countries, from the following jurisdictions: Argentina, Bolivia, Brazil, Canada, China, Ecuador, France, Germany, Greece, India, Israel, Italy, Mexico, Panama, Romania, Russia, Sweden, Taiwan, Turkey, United Arab Emirates, Uruguay, United Kingdom, Vietnam, and the European Union. We also examined recent cases that have been prosecuted under these statutes. As one might imagine, the statutes vary widely, as do the cases brought under them. We looked primarily at trademark statutes but also investigated overlapping areas in intellectual property, such as copyright, industrial designs, and trade secrets.

In our searches, for many of these countries, we found evidence of police or customs activity in the form of raids or seizures that were published in the news or in press releases but less evidence of criminal cases. Many articles or press releases referenced pending criminal prosecution or cases based on the raids or seizures, which we cite below.

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8. Argentina, Bolivia, Brazil, Canada, China, Ecuador, France, Germany, Greece, India, Israel, Italy, Mexico, Panama, Romania, Russia, Sweden, Taiwan, Turkey, United Arab Emirates, Uruguay, United Kingdom, Vietnam, and the European Union.

### A. Argentina

Argentina has several laws that govern intellectual property. The first is Law No. 11.723, which sets out the “legal regime of intellectual property” for the country and deals primarily with copyrights; Law No. 11.723 is primarily a civil law but also allows for criminal action to be brought as well.<sup>9</sup> Law No. 22.362 covers trademarks and designations,<sup>10</sup> and Decree-Law No. 6.673, meanwhile, governs industrial designs.<sup>11</sup> Finally, the Penal Code of Argentina, in Articles 289 and 290, specifically address “falsifying” or “making” false trademarks or manufacturers.<sup>12</sup>

There is some evidence of individuals being criminally prosecuted in Argentina for trademark counterfeiting. In 2020, the Argentinean cyber police identified an active Facebook store selling high-end brands at a low cost.<sup>13</sup> The people involved in this crime were tracked down, through the contact number on the Facebook publications, and more than 4,577 clothing items were seized. At least fifteen people were charged in the case, of which five have already been convicted of the crimes of fraud, fraud to the public administration, and violation of the measures adopted by the Covid-19 pandemic.<sup>14</sup> The Public Prosecution of the Ministry of Argentina destroyed 50,000 masks, equivalent to two million Argentine Pesos, as well as equipment used to make the masks.<sup>15</sup> The masks were very similar to other branded masks, and the packaging included labels specifying that the masks were developed in connection with Conicet,<sup>16</sup> M3, KN-95 between other companies.<sup>17</sup>

In 2021, a famous clothing store was closed, because they were selling counterfeit clothing items.<sup>18</sup> Several brands, whose products were being

9. Law No. 11.723, 1933, A.D.L.A. (Arg.) (WIPOLex: Argentina) (mainly a civil statute, but has provisions for criminal law).

10. Law No. 22.362, 1980, A.D.L.A. (Arg.) (WIPOLex: Argentina) (Article 32 allows for criminal justice under Book I of the Penal Code “insofar as [the provisions] are compatible with this law”).

11. Decree-Law No. 6.673, 1963 (Arg.) (WIPOLex: Argentina) (authorizes both civil and criminal lawsuits).

12. *Id.*; CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] arts. 289, 290 (1984) (Arg.) (maximum fine of \$120 for sale of counterfeit goods) (WIPOLex: Argentina).

13. *More than 50,000 Counterfeit Protective Masks Destroyed*, MINISTERIO PUBLICO FISCAL, <https://mpfciudad.gob.ar/noticias/2021-10-21-14-05-19-destruyen-mas-de-50000-barbijos-truchos> (last visited Jan. 11, 2023).

14. *Id.*

15. *Id.*

16. *CONICET against COVID-19*, CONICET, <https://www.conicet.gov.ar/?lan=en> (last visited Jan 19, 2023) [<https://perma.cc/8LMQ-JMH8>].

17. *Id.*

18. *Business closed down in Argentina that sold counterfeit luxury brand clothing to famous soccer players*, INFOBAE.COM (Mar. 19 2021),

counterfeited, reported the store to the prosecution. Then the Fraud and Fraud Division of the Economic Crimes Department of the City Police, in conjunction with the General Directorate of Operational Coordination of the Buenos Aires Ministry of Justice and Security, raided the store.<sup>19</sup> The prosecutor was acting under article 289 of the Penal Code, which penalizes trademark counterfeiting, and the owner of the store was later charged under this article.<sup>20</sup> Famous soccer players and singers posted their purchases from this store on social media.<sup>21</sup>

### *B. Bolivia*

In Bolivia, intellectual property is protected under a few different laws. On the civil side, the Regulatory Law of Trademarks sets out the general law on trademarks and industrial and commercial registrations for the country;<sup>22</sup> and Law No.1322 covers copyright and neighboring rights.<sup>23</sup> On the criminal side, the Penal Code, specifically Chapter X, covers intellectual property crimes.<sup>24</sup>

Criminal prosecution and penalties in Bolivia appear to be minimal. The maximum penalties for intellectual property crime in Bolivia do not exceed three years, and the perpetrator of the crime usually does not go to jail, as they can substitute that penalty for another measure, such as regular check-ins with the court.<sup>25</sup>

In 2015, Operation Jupiter VII, which involved eleven countries, including Bolivia, seized over 800,000 counterfeit goods, which resulted in \$130 million

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<https://www.infobae.com/america/colombia/2021/03/19/clausuran-negocio-en-argentina-que-vendia-ropa-falsificada-de-marcas-de-lujo-a-famosos-futbolistas/>.

19. *Id.*

20. *Id.*

21. *Id.*

22. Regulatory Law of Trademarks, arts. 45, 47- 48, (1918) (Bol.) (WIPOLex: Bolivia) (with a maximum fine of \$43 USD for counterfeiting); *see also Regulatory Law of Trademarks*, art. 56, (1918) (Bol.) (WIPOLex: Bolivia) (excluding sellers from punishment if they cooperate with the court).

23. *See generally* Law No.1322, 1992 (Bol.) (WIPOLex: Bolivia) (Title XIV, Chapter I allows for criminal proceedings “to which infringements of this Law give rise shall be judged by the Ordinary Criminal Judiciary, in accordance with the Law on Judicial Organization, the Penal Code, the Code of Penal Procedure, and this Law”).

24. *See generally* Counterfeiting and Misuse of Trademarks and Passwords Penal Code Ch. X, arts. 362, 193 (Bol.) (WIPOLex: Bolivia); *see also* Counterfeiting and Misuse of Trademarks and Passwords Penal Code Ch. X, arts. 235-236, (Bol.) (WIPOLex: Bolivia) (fraud Tradan and Deception in Industrial Products).

25. Merchant & Gould, *Criminal Liability For Trademark Infringement: A Collaborative International Study*, 22, Scott Johnson et al. eds., 2021, [https://www.vda.pt/xms/files/05\\_Publicacoes/2021/CriminalLiabilityForTrademarkInfringement.pdf](https://www.vda.pt/xms/files/05_Publicacoes/2021/CriminalLiabilityForTrademarkInfringement.pdf).

USD of counterfeit goods being removed from the markets and over 800 people arrested or placed under investigation.<sup>26</sup>

In 2018, two people were captured for selling counterfeit kitchen items in an open

market.<sup>27</sup> The police discovered that they were storing several kitchen items without a mark in a motel close by, and were subsequently adding trademarks of different brands.<sup>28</sup> In addition, the police discovered that one of the men had been eluding the authorities of another city in Bolivia, because he was found guilty of drug trafficking.<sup>29</sup>

Additionally, Bolivia has taken steps to improve its responses to illicit trade, including counterfeits, such as the Port Control Unit, comprised of the Bolivian Special Force to Fight Drug Trafficking (“FELCN”) and Bolivian Customs officials, who in 2019 were trained and equipped to identify risk profiles of containers that may contain counterfeit, amongst other illicit products.<sup>30</sup>

At the end of 2020, the Bolivian health authorities were notified about the counterfeiting of chocolates that were being distributed in open markets.<sup>31</sup> The authorities determined that the chocolate was, in fact, counterfeited; they collected all the products and taught people how to identify a genuine chocolate from a counterfeited one.<sup>32</sup>

### C. Brazil

The legal framework of Brazil’s intellectual property law consists of four main statutes, in both the civil and criminal variety: (1) the Industrial Property Law (criminal), which “regulates rights and obligations regarding industrial

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26. *South American Operation Targets Crime Networks Behind Fake Goods*, INTERPOL (Sept. 21, 2015), <https://www.interpol.int/en/News-and-Events/News/2015/South-American-operation-targets-crime-networks-behind-fake-goods>.

27. Elio Mamani Rivero, *Arrested for forgery has sentence for 1008*, LOS TIEMPOS EN OTRA DIMENSIÓN (Jan. 14, 2018), <https://www.lostiempos.com/actualidad/cochabamba/20180114/detenido-falsificacion-tiene-sentencia-1008>.

28. *Id.*

29. *Id.*

30. *Bolivia and UNODC inaugurate Port Control Unit to boost fight against illicit drug trafficking*, United Nations Office on Drugs and Crime (Feb. 8, 2019), <https://www.unodc.org/unodc/en/frontpage/2019/February/bolivia-and-unodc-inaugurate-port-control-unit-to-boost-fight-against-illicit-drug-trafficking.html>.

31. *Denounced Counterfeiting of Harasic Chocolate*, REDPAT.TV, <https://www.redpat.tv/denuncian-falsificacion-del-chocolate-harasic/> (retrieved on Nov. 4, 2022).

32. *Id.*

property;<sup>33</sup> (2) the Copyright Law (civil), which governs copyright and neighboring rights;<sup>34</sup> (3) the Software Law (criminal) concerns the protection of intellectual property of software;<sup>35</sup> and (4) the Internet Law (civil), which “establishes the principles, guarantees, rights, and obligations for the use of [the] Internet in Brazil.”<sup>36</sup>

Evidence of actions against criminal activity is seen through media articles, such as in October of 2021, when approximately 20,000 pairs of shoes were intercepted in Brazil, with the total value estimated to exceed R\$1 million.<sup>37</sup> In a separate incident the same month, an individual was found to be counterfeiting alcoholic beverages, including well-known brands, such as José Cuervo and Ciroc.<sup>38</sup> The individual in question had previously been ticketed for the selling of counterfeit products and theft, and has subsequently been fined and jailed.<sup>39</sup>

#### D. Canada

Canada’s intellectual property law is governed by three main statutes (two civil and one criminal): (1) the Trademarks Act;<sup>40</sup> (2) the Copyright Act; and (3) the Criminal Code.<sup>41</sup> Section X of the Criminal Code, in particular, deals with Fraudulent Transactions Relating to Contracts and Trade, including trademark violations and counterfeiting.<sup>42</sup>

Although Canada is no stranger to prosecuting offenders for crimes listed under these statutes, the Canadian criminal justice system seems to lean more

33. *See generally*, The Industrial Property Law, Lei No. 9.279, de 14 de maio de 1996, Diário Oficial Da União [D.O.U.] de 14.5.1996 (Braz.) (WIPOLex: Brazil).

34. *See generally* The Copyright Law, Lei No. 9.610, de 19. de fevereiro de 1998, Diário Oficial Da União [D.O.U.] de 20.2.1998 (Braz.) (WIPOLex: Brazil).

35. *See generally* The Software Law, Lei No. 9.609, de 19 de fevereiro de 1998, Diário Oficial Da União [D.O.U.] de 20.2.1998 (Braz.) (WIPOLex: Brazil).

36. *See generally* The Internet Law, Lei No. 12.965, de 23 de abril de 2014, Diário Oficial Da União [D.O.U.] de 14.4.2014 (Braz.) (WIPOLex: Brazil).

37. Carlos Paiva, *IRS seizes about 20,000 pairs of counterfeit sneakers*, JM ONLINE (2021), <https://jmonline.com.br/novo/?nohttps://www.glp.com.br/en/trademark-infringement-presumption-of-imprisonment/ticias,5,POL%C3%8DCIA,218676>.

38. *Police locate counterfeit drink counterfeit drink bottling shed and arrest man in Campinas*, CAMPINAS E REGIÃO (2021), [https://www.bpg-org-br.translate.goog/single-post/pol%C3%ADcia-localiza-galp%C3%A3o-de-embalamento-de-bebidas-falsas-e-prende-homem-em-campinas?\\_x\\_tr\\_sl=pt&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en&\\_x\\_tr\\_pto=nui,sc](https://www.bpg-org-br.translate.goog/single-post/pol%C3%ADcia-localiza-galp%C3%A3o-de-embalamento-de-bebidas-falsas-e-prende-homem-em-campinas?_x_tr_sl=pt&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=nui,sc).

39. *Id.*

40. *See generally* The Trademarks Act, R.S.C. 1985, c T-13, (Can.) (WIPOLex: Canada) (incorporates criminal offenses and penalties).

41. *See generally* The Criminal Code, R.S.C 1985, c C-46, (Can.) (WIPOLex: Canada).

42. *Id.* at Part. X.



towards the imposition of fines as punishment, instead of imprisonment.<sup>43</sup> In 2019, nine people were charged with selling or distributing counterfeit goods in an Ontario mall.<sup>44</sup> Prior to that, in 2014, an individual was sentenced to two months of incarceration for trademark and copyright offenses, which included the sale of counterfeit goods.<sup>45</sup>

In 2014, the Combating Counterfeit Products Act was enacted with the purpose to increase seizures; but the Canadian customs officers only detained a total of fortyeight shipments of potential counterfeit goods during the three years following the enactment.<sup>46</sup> Additionally, in September 2021, a joint effort between the Ontario Provincial Police, the Canadian Anti-Counterfeiting Network, the US Department of Homeland Security, and the Canadian Anti-Fraud Centre conducted a search and seizure operation in Wasaga Beach, Ontario, Canada.<sup>47</sup> The investigation involved six stores and resulted in the seizure of \$700,000 worth of counterfeit products.<sup>48</sup> The investigation is ongoing, and charges are pending, as of the writing of this article.<sup>49</sup> However, many believe that Canada is not seizing enough shipments of fake goods, despite having a law targeting counterfeits.<sup>50</sup>

#### *E. China*

There are four main laws that provide the legal framework of intellectual property law in the Republic of China. The three civil laws are: (1) the

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43. Jim Holloway, *Procedures and strategies for anti-counterfeiting: Canada*, WORLD TRADEMARK REVIEW (May 24, 2018), <https://www.worldtrademarkreview.com/anti-counterfeiting/procedures-and-strategies-anti-counterfeiting-canada-0>.

44. *Eight people charged in counterfeit goods investigation at Pacific Mall*, CTV NEWS (May 28, 2019), <https://www.ctvnews.ca/canada/eight-people-charged-in-counterfeit-goods-investigation-at-pacific-mall-1.4440470>.

45. *R. v. Strowbridge*, 2014 NLCA 4, 2014 CarswellNfld 30 (Can.) (WL).

46. Dean Beeby, *Canada seizing few shipments of fake goods despite law targeting counterfeits*, CBC. CA (May 22, 2018), <https://www.cbc.ca/news/politics/border-counterfeit-customs-cbsa-white-house-trade-pirate-pacific-mall-1.4577505>.

47. Daina Goldfinger, *\$700K in counterfeit items seized in case involving 6 retail stores in Wasaga Beach*, Global News (Sept. 9, 2021), <https://globalnews.ca/news/8178249/counterfeit-clothes-wasaga-beach-retail/>; see also Alicja Sieklerska, *How the RCMP is cracking down on the rise of counterfeit goods*, YAHOO! FINANCE (June 11, 2019), <https://ca.finance.yahoo.com/news/how-the-rcmp-is-cracking-down-on-the-rise-of-counterfeit-goods-183553135.html>.

48. Siekierska, *supra* note 47.

49. *Id.*

50. Beeby, *supra* note 46.

Trademark Law;<sup>51</sup> (2) the Law Against Unfair Competition;<sup>52</sup> and (3) the Tobacco Monopoly Law.<sup>53</sup> Each of these laws lays out its purpose of promoting the development of a socialist market economy, as well as protecting the interests of consumers.<sup>54</sup> Under the Criminal Law of the People's Republic of China, Articles 213, 214, and 215 govern criminal charges for trademark counterfeiting.<sup>55</sup>

Procedurally, both the public prosecutor and the Intellectual Property ("IP") rights-holder can initiate criminal proceedings in China.<sup>56</sup> If the level of counterfeiting meets the threshold for criminal action, the AIC office or Chinese Customs will transfer the case to the police, who transfer the case to the prosecutor.<sup>57</sup> Police can start an investigation after the IP rights-holder informs them as well.<sup>58</sup> The IP rights-holder can also directly bring a charge before the court with enough evidence.<sup>59</sup>

China has begun to show an increased interest in enforcing intellectual property rights through criminal adjudication.<sup>60</sup> According to a report by Merchant & Gould, China courts heard 4,982 cases relating to trademark infringement in 2019, which was a 21% increase from the previous year.<sup>61</sup>

For example, on October 28, 2021, the head judge of the Intellectual Property Tribunal of Shanghai Pudong New Area People's Court, and others sentenced five individuals to "imprisonment ranging from one year [and] seven months to three years for the crime of counterfeiting registered trademarks for

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51. *See generally* Trademark Law of the People's Republic of China, (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 23, 1984, rev'd Apr. 23, 2019) (China) (WIPOLex: China) (Articles 67, 68, and 71 allow for investigations into criminal liabilities).

52. *See generally* Law of the People's Republic of China Against Unfair Competition, (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 2, 1993, rev'd Nov. 4, 2017) (China) (WIPOLex: China) (Articles 27 and 31 allow for criminal liabilities).

53. *Id.*; Tobacco Monopoly Law of People's Republic of China, (promulgated by the Standing Comm. Nat'l People's Cong., June. 29, 1991, (China) (WIPOLex: China) (Article 36 brings in the possibility of criminal liability for trademark infringement, and for the Tobacco Monopoly Law, Articles 20, 21, 36, and 37 deal specifically with trademarks).

54. *See generally* Trademark Law of the People's Republic of China; Law of the People's Republic of China Against Unfair Competition; Tobacco Monopoly Law of People's Republic of China (China) (WIPOLex: China).

55. Criminal Law of the Peoples' Republic of China, 1997, arts. 213-15 (China) (WIPOLex: China).

56. *Protection of trademarks against counterfeiting in China*, LEHMAN, LEE & XU, <http://www.lehmanlaw.com/resource-centre/faqs/intellectual-property/protection-of-trademarks-against-counterfeiting-in-china.html> (last visted January 19, 2023).

57. *Id.*

58. *Id.*

59. *Id.*

60. Merchant & Gould, *supra* note 25, at 38-39.

61. *Id.*

KIWI shoe polish” and also fined them for the crime.<sup>62</sup> This trial and sentencing follows a March 2021 raid on the counterfeiting locations of the defendants and their arrest by the Shanghai police.<sup>63</sup>

Additionally, in October of 2021, sixty nine defendants were sentenced for counterfeiting luxury goods.<sup>64</sup>

#### F. Ecuador

The main law governing intellectual property in Ecuador is the Organic Code on the Social Economy of Knowledge, Creativity and Innovation.<sup>65</sup> The Comprehensive Organic Criminal Code has several provisions related to the counterfeiting of goods: Article 217 penalizes the production, manufacturing, marketing, and distribution of counterfeit drugs with imprisonment of up to three to five years.<sup>66</sup> Article 235 penalizes the deception of the buyer regarding the identity of goods sold.<sup>67</sup> Article 208A sanctions trademark counterfeiting and piracy that is harmful to copyrights with fines.<sup>68</sup>

Intellectual property rights holders and practitioners in Ecuador have recently pushed to increase criminal sanctions, but as of yet, they have not been very successful.<sup>69</sup> Some evidence of prosecution of counterfeits exists in Ecuador. The first successful case of criminal prosecution of pharmaceuticals was in 2016, where, after a raid and seizure of over 1.5 million counterfeit tablets, a man was sentenced to one year in custody.<sup>70</sup> In 2019, the National Service of Intellectual Property in Ecuador imposed a large fine in a trademark infringement case, amounting to \$95,625, on a group of offenders accused of

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62. Aaron Winiger, *China Sentences Shoe Polish Counterfeiters to Up to 3 Years in Prison in Criminal Trademark Case*, THE NATIONAL LAW REVIEW (Oct. 31, 2021), <https://www.natlawreview.com/article/china-sentences-shoe-polish-counterfeiters-to-to-3-years-prison-criminal-trademark>.

63. *Id.*

64. Aaron Winiger, *China's Shanghai Pudong Court Sentences 69 Defendants for Counterfeiting Chanel, Cartier and Gucci Products for up to 5 Years 9 Months with a \$1.8 Million USD Fine*, NATIONAL LAW REVIEW (Oct. 23, 2021), <https://www.natlawreview.com/article/china-s-shanghai-pudong-court-sentences-69-defendants-counterfeiting-chanel-cartier>.

65. *See generally* Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 899 (2016) (Ecuador) (WIPOLex: Ecuador) (copyright, trademarks, patents, industrial designs, utility models, and more are all covered under this law).

66. Comprehensive Organic Criminal Code, 180, art. 217, (2014) (Ecuador) (WIPOLex: Ecuador).

67. *Id.* at art. 235.

68. *Id.* at art. 208A.

69. Merchant & Gould, *supra* note 24, at 54.

70. Phil Taylor, *Landmark criminal action sets legal precedent in Ecuador*, OPSEC SECURITY (Sept. 7, 2016), <https://www.securindustry.com/pharmaceuticals/landmark-criminal-action-sets-anti-counterfeiprecedent-in-ecuador/s40/a2931/#.YZgiyNDMJPY>.

copying the 3D design of Crocs.<sup>71</sup> In July of the same year, the Ecuadorian Police reportedly seized around 1,700 products in four different operatives.<sup>72</sup> In 2017, seven people were accused of counterfeiting Pfizer medicine; and six of them were prosecuted.<sup>73</sup>

### G. France

The French Intellectual Property Code covers copyright, patent, trademark, and trade secret law;<sup>74</sup> and the French Customs Code covers general customs procedures, dealing partly with trademark protection and the handling of counterfeit goods in the process.<sup>75</sup>

Through preliminary research, we were able to locate several examples of criminal prosecution within the country, via news articles and press releases. An inside criminal ring that was creating fakes of the Hermès brand was faced with criminal charges in 2020; the crimes took place in 2011, but criminal sentences were handed down eight years later, ranging from six months to three years.<sup>76</sup> France has also applied their enforcement measures to e-commerce platforms. In 2020, France launched an investigation into the US-based e-commerce platform, Wish.<sup>77</sup> The report generated from the investigation was referred to a court in Paris to determine the online retailer's guilt.<sup>78</sup> It should also be noted, that France does not stop its criminal prosecutions at the manufacturers and distributors of counterfeit goods, but also prosecutes those found in possession of fake designer goods.<sup>79</sup>

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71. Erika Hidalgo, *Largest Trademark fine imposed in Ecuador Crocs counterfeiters*, LEXLATIN (Mar. 15, 2019), [https://lexlatin-com.translate.goog/noticias/imponen-la-mayor-multa-marcaria-en-ecuador-falsificadores-de-crocs?\\_x\\_tr\\_sl=es&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en-US&\\_x\\_tr\\_pto=nui,op,sc](https://lexlatin-com.translate.goog/noticias/imponen-la-mayor-multa-marcaria-en-ecuador-falsificadores-de-crocs?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui,op,sc).

72. *Confiscation of counterfeit products increases*, LAHORA (July 12, 2019), [https://lahora-com-ec.translate.goog/tungurahua/noticia/1102257395/se-incrementa-decomiso-de-productos-falsificados?\\_x\\_tr\\_sl=es&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en-US&\\_x\\_tr\\_pto=nui,op,sc](https://lahora-com-ec.translate.goog/tungurahua/noticia/1102257395/se-incrementa-decomiso-de-productos-falsificados?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui,op,sc).

73. *Case Highlight: Custodial Sentences for the Distribution of Counterfeit Pharmaceutica*, CORRALROSALES (Mar. 4, 2020), <https://corralrosales.com/en/tag/pharma/>.

74. *See generally* Code de la propriété intellectuelle, [C. IP.] [Intellectual Property Code] (establishes criminal offenses and penalties).

75. *See generally* Code des douanes, [C.D.] [Customs Code] (establishes criminal offenses and procedures).

76. *An Inside Job: The \$20 Million Counterfeit Bust that Put Hermès' Own Employees Under the Microscope*, THE FASHION LAW (May 28, 2022), <https://www.thefashionlaw.com/an-inside-job-the-2012-counterfeit-bust-that-put-herms-own-employees-under-the-microscope/>.

77. Romain Dillet, *French administration suspects Wish of Selling counterfeit products*, TECH CRUNCH (Nov. 30, 2022, 11:27 AM), <https://techcrunch.com/2020/11/30/french-administration-suspects-wish-of-selling-counterfeit-products/>.

78. *Id.*

79. Hayley Phelan, *New French Anti-Counterfeit Campaign Reminds Tourists that Knockoffs Could Get You Three Years in Jail*, FASHIONISTA (May 30, 2012),

Regarding seizures, it appears that seizures of counterfeits by the French government peaked in 2016 and have decreased since then.<sup>80</sup>

#### H. Germany

There are several pieces of legislation in Germany that deal with intellectual property: (1) the Trademark Act;<sup>81</sup> (2) the Design Act;<sup>82</sup> (3) the Utility Models Act;<sup>83</sup> (4) the Copyright and Related Rights Act;<sup>84</sup> (5) the Act Against Unfair Competition;<sup>85</sup> and (6) the Trade Secrets Act.<sup>86</sup>

As in other European countries, there is evidence of Germany arresting and prosecuting suspected counterfeiters. In 2019, three German nationals were arrested in the US and faced prosecution in both the US and Germany for operating a ‘darknet’ market, which facilitated the sale of counterfeit goods, among other things.<sup>87</sup> Again in 2019, German customs and law enforcement, working with Hewlett Packard’s brand protection team, seized thousands of counterfeit computer components and printer cartridges.<sup>88</sup>

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<https://fashionista.com/2012/05/new-french-anti-counterfeit-campaign-reminds-tourists-that-knockoffs-could-get-you-three-years-in-jail>.

80. Statista Research Department, *Evolution of the number of counterfeit items confiscated by the French customs agents from 2010 to 2019*, STATISTA (Sept. 29, 2022), <https://www.statista.com/statistics/1124980/evolution-seized-counterfeit-customs-france/>.

81. *See generally* Markengesetz [MarkenG] [Amended Trademark Act], Oct. 25, 1994, (Ger.) (WIPOLex: Germany) (part 8 lays out criminal offenses and penalties).

82. *See generally* Designgesetz [DesignG] [Amended Design Act], Mar. 12, 2004, (Ger.) (WIPOLex: Germany) (section 51 covers penal provisions generally, while section 65 deals specifically with criminal infringement of a community design).

83. *See generally* Gebrauchsmustergesetz [GebrMG] [Amended Utility Models Act], May 5, 1936, (Ger.) (WIPOLex: Germany) (section 25 lays out criminal penalties).

84. *See generally* Urheberrechtsgesetz [UrhG] [Amended Copyright Act], Sept. 9, 1965, (Ger.) (WIPOLex: Germany) (subchapter 2 deals in part with criminal provisions).

85. *See generally* Gesetz gegen den unlauteren Wettbewerb [UWG] [Amended Act Against Unfair Competition], July 3, 2004, (Ger.) (WIPOLex: Germany) (chapter 4 deals in part with criminal provisions).

86. *See generally* Gesetz zum Schutz von Gesch. . . ftsgeheimnissen [GeschGehG] [Trade Secrets Act], Apr. 18, 2019 (Ger.) (WIPOLex: Germany) (penal provisions can be found in Section 4).

87. *Accused operators of illicit ‘darknet’ market arrested in Germany, Brazil*, THOMAS REUTERS (May 3, 2019, 4:43 PM), <https://www.reuters.com/article/us-germany-security-darknet/accused-operators-of-illicit-darknet-market-arrested-in-germany-brazil-idUSKCN1S923R>.

88. *HP seizes counterfeit products in Germany*, THE RECYCLER (June 28, 2019), <https://www.therecycler.com/posts/hp-seizes-counterfeit-products-in-germany/>; *see also Counterfeiting in alleged gifts*, STIMME,

<https://www.stimme.de/polizei/heilbronn/markenfaelschungen-in-angeblichen-geschenksendungen;art1491,4518461> (last updated Oct. 8, 2021, 3:34 PM); Bert Rosch, *Fashion counterfeits worth almost 43 million euros confiscated*, TEXTILWIRTSCHAFT (May 5, 2021),

[https://www-textilwirtschaft-de.translate.google.com/business/news/zWEI-230606?crefresh=1&x\\_tr\\_sl=de&x\\_tr\\_tl=en&x\\_tr\\_hl=en&x\\_tr\\_pto=nui,sc](https://www-textilwirtschaft-de.translate.google.com/business/news/zWEI-230606?crefresh=1&x_tr_sl=de&x_tr_tl=en&x_tr_hl=en&x_tr_pto=nui,sc).

### I. Greece

Intellectual property law of Greece is protected by: (1) the Trademark Law;<sup>89</sup> (2) the Law on Copyright, Related Rights, and Cultural Issues;<sup>90</sup> (3) the Unfair Competition Law;<sup>91</sup> (4) the Penal Code;<sup>92</sup> and (5) the Code of Criminal Procedure.<sup>93</sup>

In Greece, there are some examples of counterfeiters being charged with crimes under these statutes. For example, over 16,000 bottles of counterfeit alcohol were brought in between September 2020 and January 2021 with pending criminal cases.<sup>94</sup> A case was also brought forth against a warehouse owner who planned on selling more than 800 units of counterfeit clothing items.<sup>95</sup>

### J. India

India's intellectual property laws are laid out in multiple statutes, including: (1) the Trademarks Act;<sup>96</sup> (2) the Copyright Act;<sup>97</sup> (3) the Geographical Indications of Goods (Registration and Protection) Act;<sup>98</sup> (4) the Drugs and Cosmetics Act;<sup>99</sup> (5) the Food Safety and Standards Act;<sup>100</sup> and (6) the

89. See generally Nomos (2020:4679) *dikaio perí emporikón simáton* [Trademark Law] (Greece) (WIPOLex: Greece) (criminal provisions provided in Article 45).

90. See generally Nomos (1993:2121) *Copyright, Related Rights and Cultural Matters* (Greece) (WIPOLex: Greece) (criminal sanctions in Article 66).

91. See generally Nomos (1914:146) *Dikaio Athémitou Antagonismou* [Unfair Competition Law] (Greece) (WIPOLex: Greece) (includes criminal penalties).

92. See generally POINIKÓS KÓDIKAS [P.K.] [PENAL CODE] (Greece) (available at <https://www.e-nomothesia.gr/kat-kodik-es-nomothesias/nomos-4619-2019-phek-95a-11-6-2019.html>).

93. See generally KODIKAS POINIKES DIKONOMIAS [KPOI.D.] [CODE OF CRIMINAL PROCEDURE] (Greece) (available at <https://www.e-nomothesia.gr/kat-kodik-es-nomothesias/nomos-4620-2019-phek-96a-11-6-2019.html>).

94. Panagiotis Spiropoulos, *Drinks mafia: How Roma and FEDIA would fill up illegal "bombs" the focus after the lockdown*, THE TOC (Jan. 17, 2021, 2:58 PM), [https://www.thetoc-gr.translate.goog/koinwnia/article/mafia-ton-poton-pos-o-roma-kai-fentia-tha-gemizan-lathraies-mpompes-tin-estiasi-meta-to-lockdown-eikones/?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en-US&\\_x\\_tr\\_pto=nui](https://www.thetoc-gr.translate.goog/koinwnia/article/mafia-ton-poton-pos-o-roma-kai-fentia-tha-gemizan-lathraies-mpompes-tin-estiasi-meta-to-lockdown-eikones/?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui).

95. Manos Tsagarakis, *"Monkey" clothes and shoes in a Rhodes company*, HELLAS. (Apr. 26, 2017, 10:55 PM), [https://www.protothema-gr.translate.goog/greece/article/674466/rouha-kai-papoutsia-maimou-se-etaireia-tis-rodou/?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en-US&\\_x\\_tr\\_pto=nui](https://www.protothema-gr.translate.goog/greece/article/674466/rouha-kai-papoutsia-maimou-se-etaireia-tis-rodou/?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui).

96. See generally Trademarks Act, 1999 (Ind.) (WIPOLex: India).

97. See generally Copyright Act, 1957 (Ind.) (WIPOLex: India).

98. See generally The Geographical Indications of Goods Act, 1999 (Ind.) (WIPOLex: India).

99. See generally Drugs and Cosmetics Act, 1940 (Ind.) (WIPOLex: India).

100. See generally Food Safety and Standards Act, 2006 (Ind.) (WIPOLex: India).

Information Technology Act.<sup>101</sup> The Customs Act's Chapter IV gives the "power to prohibit importation or exportation of goods" for "the protection of patents, trademarks, and copyrights."<sup>102</sup> Finally, on the criminal side, there is the Indian Penal Code<sup>103</sup> and the Code of Criminal Procedure, in which Chapter XVIII particularly deals with counterfeiting marks, devices, and more.<sup>104</sup>

Current trends toward digital platforms have created new challenges for the government, in combating the proliferation of counterfeit activity. Advertising counterfeit goods on e-commerce sites, as well as deceptive domain names, allows infringers a shield of anonymity when posting goods.<sup>105</sup> In the case *M S Mont Blanc Simplo GmbH v. Gaurav Bhatia*, the court held the defendants in contempt for deliberately infringing on the plaintiff's trademark rights through the website "www.montblancwriting.com," after a judgment for nominal damages and a submission that the defendants would no longer violate the plaintiff's trademark.<sup>106</sup> The court appointed local commissioners and police officers to visit the premises of the defendants and take into custody the impugned products.<sup>107</sup> Although the issue of online counterfeiting will seemingly continue in India, and the rest of the world, as this case illustrates, the actionability against counterfeiting in the country has a statutory foundation. Awareness campaigns, led by the government and brand owners, seek to enlighten the public on the dangers of such illegal activity, and the criminal and civil penalties that can be placed on infringers.<sup>108</sup> Along with increasingly sophisticated technology that can detect illegal brand usage throughout the interwebs, it is becoming increasingly feasible to prosecute trademark infringement in India.

In September of 2021, the Economic Offenses Wing of the Mumbai Police conducted raids at a shopping center, and recovered a number of counterfeit watches; several individuals were arrested during the raid.<sup>109</sup>

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101. *See generally* Information Technology Act, 2000 (Ind.) (WIPOLex: India).

102. Customs Act, 1962, Section 11 (Ind.) (WIPOLex: India).

103. *See generally* Indian Penal Code, 1860 (Ind.) (WIPOLex: India).

104. Code of Criminal Procedure, 1973, Chapter XVIII of the Classification of Offenses (Ind.) (WIPOLex: India).

105. Shobhit Agrawal & Saif Khan, *Procedures and strategies for anti-counterfeiting: India*, WORLD TRADEMARK REVIEW (May 11, 2021), <https://www.worldtrademarkreview.com/anti-counterfeiting/procedures-and-strategies-anti-counterfeiting-india-3>.

106. *MS Montblanc Simplo GmbH v. Gaurav Bhatia & ors*, AIR 2018 SC 817 (2018) (India).

107. *Id.*

108. *Counterfeiting Landscape in India*, OECD, [https://www.oecd.org/governance/risk/CHANDRA\\_Menu%20OECD%20Illicit%20Trade%20Works%20hopshort.pdf](https://www.oecd.org/governance/risk/CHANDRA_Menu%20OECD%20Illicit%20Trade%20Works%20hopshort.pdf) (last visited Jan. 19, 2023).

109. *Fake Watch: Those selling fake watches of expensive brands busted, Mumbai Police takes action*, TIMES NOW DIGITAL (Sept. 6, 2021 10:50 AM), <https://www.timesnowhindi.com.translate.google/crime/article/those-selling-fake-watches-of-expensive-brands-busted-mumbai->

### K. Israel

In Israel, trademark counterfeiting is criminalized under section 3(2) of the Merchandise Marks Ordinance, which applies to the false trade description of goods.<sup>110</sup> Trademark counterfeiting carries a penalty of up to three years imprisonment and a maximum fine of up to 1.5 million shekels (~ \$300,000 USD).<sup>111</sup> Corporations are subjected to a fine up to double that amount.<sup>112</sup>

### L. Italy

Italy's intellectual property law is established through three main pieces of legislation: (1) the Code of Industrial Property;<sup>113</sup> (2) the Copyright Law No. 633; and (3) the Criminal Code.<sup>114</sup> The first of these consolidated the principal laws relating to intellectual property matters in Italy, especially those concerning trademarks and trade secrets.<sup>115</sup> The second concerned the protection of copyright and neighboring rights. As for the Criminal Code, Articles 473, 474, and 648 deal with trademark infringement, while Article 623 deals with trade secret matters and Article 517 deals with unregistered marks.<sup>116</sup>

A 2019 operation involving Europol and other law enforcement personnel named "Oro Giallo" led to the arrest of twentyfour people and a seizure of \$1.34 million worth of fake olive oil.<sup>117</sup> The criminal organization would sell one million liters of fake oil to Germans every year. We also were able to identify product seizures that the financial police took from counterfeiters. In early

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police-took-action/361933?\_x\_tr\_sl=auto&\_x\_tr\_tl=en&\_x\_tr\_hl=en-US&\_x\_tr\_pto=nui; see also Tanseem Haider & Himanshu Mishra, *Fraudster Sukesh Chandshekhkar and his wife Leena taken into custody by ED*, HINDI NEWS (Oct. 9, 2021, 6:37 PM), [https://www.aajtak.in.translate.google.com/translate/crime/police-and-intelligence/story/sukesh-chandrasekhar-with-wife-leena-maria-paul-questioned-by-enforcement-directorate-ntc-1339130-2021-10-09?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en-US&\\_x\\_tr\\_pto=nui](https://www.aajtak.in.translate.google.com/translate/crime/police-and-intelligence/story/sukesh-chandrasekhar-with-wife-leena-maria-paul-questioned-by-enforcement-directorate-ntc-1339130-2021-10-09?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui); S.S. Rana & Co. Advocates, *Counterfeit Water Purifiers Seized in Bengaluru Raid*, MONDAQ (Jan. 6, 2020), <https://www.mondaq.com/india/trademark/880298/counterfeit-water-purifiers-seized-in-bengaluru-raid>.

110. Merchandise Marks Ordinance, 5689-1929, ISR 1 2 (Isr.) (WipoLex: Isreal).

111. Advisory Committee on Enforcement, *The Protection Of Intellectual Property Rights In Israel; A Survey Of Legislation, The Court System, Enforcement And Public Awareness Programs*, 9 (2004), [https://www.wipo.int/edocs/mdocs/enforcement/en/wipo\\_ace\\_2/wipo\\_ace\\_2\\_12.pdf](https://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_2/wipo_ace_2_12.pdf).

112. *Id.*

113. Codice de propiedad industrial [C.p.i.] (It.) (WIPOLex: Italy) (Article 127 deals in part with criminal sanctions).

114. Codice penale [C.p.] (It.) (WIPOLex: Italy).

115. Codice de propiedad industrial.

116. *Id.* at arts. 473, 474, 517, 623, and 648.

117. Joe Whitworth, *Authorities bust criminal ring dealing in 'yellow gold' aka fake olive oil*, FOOD SAFETY NEWS (May 16, 2019), <https://www.foodsafetynews.com/2019/05/authorities-bust-criminal-ring-dealing-in-yellow-gold-aka-fake-olive-oil/>.



November 2021, they seized over 600 pieces of counterfeit fashion products from street vendors.<sup>118</sup>

Counterfeit alcohol was also seized by government officials.<sup>119</sup> This preliminary research indicates that seizures and eventual prosecutions do take place within Italy; however, as with many countries above, additional time and resources will be needed to identify the extent of these actions.

#### *M. Mexico*

In Mexico, the Mexican Institute of Property (“IMPI”) was passed in 1993, with a focus on: “a decentralized public body with legal personality and its own assets and with the legal authority to administer the industrial system in Mexico.”<sup>120</sup> Mexico also has the Federal Law for the Protection of Industrial Property, which was passed in 2020; this law extends the exceptions and limitations to patent rights.<sup>121</sup> According to the Institute for the Protection of Intellectual Property and Legal Commerce, a Mexican trade group, counterfeiting and piracy account for \$12.5 billion USD of annual business in Mexico.<sup>122</sup>

#### *N. Panama*

In Panama, on the civil side, Law No. 64 governs copyright and neighboring rights, while Law No. 35 governs industrial property, including utility models, patents, industrial designs, trade secrets, and trademarks.<sup>123</sup> Additionally, Chapter IV of the Criminal Code of Panama deals with crimes

118. *Guardia di Finanza, 620 counterfeit products seized, AREZZO* (Nov. 9, 2021), [https://www-lanazione-it.translate.google.com/arezzo/cronaca/guardia-di-finanza-sequestrati-620-prodotti-contraffatti-1.7015232?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en-US&\\_x\\_tr\\_pto=nui](https://www-lanazione-it.translate.google.com/arezzo/cronaca/guardia-di-finanza-sequestrati-620-prodotti-contraffatti-1.7015232?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui).

119. *Bitonto, counterfeit alcohol directed throughout Italy: an unauthorized deposit seized 2 complaints*, QIL QUOTIDIANO ITALIANO BARI (Nov. 10, 2021), [https://bari-ilquotidianoitaliano-com.translate.google.com/cronaca/2021/11/news/bitonto-traffico-illecito-di-prodotti-alcologici-sequestrato-un-deposito-non-autorizzato-2-denunce-video-339045.html/?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en-US&\\_x\\_tr\\_pto=nui](https://bari-ilquotidianoitaliano-com.translate.google.com/cronaca/2021/11/news/bitonto-traffico-illecito-di-prodotti-alcologici-sequestrato-un-deposito-non-autorizzato-2-denunce-video-339045.html/?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui).

120. *IMPI or INPI?*, MX MARKS, <https://mxmarks.com/trademark/impi/> (last visited Jan 19, 2023).

121. *See generally* Federal Law for the Protection of Industrial Property [LFPPI], Diario Oficial de la Federacion [DOF] 1-7-2020 (Mex.) (WIPOLex: Mexico).

122. Jose Luis Ramos-Zurita, *Anti-Counterfeiting in Mexico*, UHTHOFF, GOMEZ VEGA, & UHTHOFF, S.C., <https://en.uhthoff.com.mx/articles/anti-counterfeiting-in-mexico/> (last visited Jan 19, 2023).

123. *See generally* Ley N° 35 por la cual se dictan Disposiciones sobre la Propiedad Industrial [Law No. 35 on Industrial Property], (1996) (Panama) (WIPOLex: Panama) (allows for criminal proceedings).

against intellectual property, including copyright, industrial property, and the collective rights of indigenous peoples and their traditional knowledge.<sup>124</sup>

In September and October 1998, the Tenth District Attorney's Office of Panama conducted a series of raids at and around the Tocumen Airport, which resulted in the seizure of over five million pirated CDs and CD-ROMs, along with other pirated and counterfeit items.<sup>125</sup> The seizure amounts included 3.5 million, 450,000, 850,000, and 285,000 units, in four separate actions—a conservative estimate of the value of these seized CDs might be equivalent to \$20 million USD.<sup>126</sup> In this case, the shipments were sent from Hong Kong, to Taipei, to Los Angeles, and then to Panama, where they were re-packed to continue on to Ciudad del Este, Montevideo, and Buenos Aires, with the final destination being Brazil.<sup>127</sup> As a part of the Challenge case, Colon Free Zone (“CFZ”) officials decided to revoke the operating licenses of the companies owned by the defendants, and they are now banned from conducting business in the CFZ.<sup>128</sup>

In 2016, the border authorities of Tocumen International Airport seized 9 bundles of clothing bearing counterfeit trademarks of Calvin Klein, Adidas, Niké, Fila, Puma, Gucci, Chanel, Versace, Moschino, Guess, Disney, Kenzo, Tommy Hilfiger, Hugo Boss, Lacoste, Náutica, Ralph Lauren, Balenciaga, CAT, Under Armour, Christian Dior, and Michael Kors, among others.<sup>129</sup> On September 6, 2016, three different cases of counterfeit clothing were settled with thirtytwo months of incarceration each.<sup>130</sup> In 2019, under Operation Maya III, customs and law enforcement conducted a series of raids and inspections in markets and at borders in several countries in the Americas and the Caribbean, including Panama.<sup>131</sup> “[A]round 746,000 items with a total estimated value of

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124. Código Penal de la República de Panamá [Criminal Code of the Republic of Panama], ch. IV, (2008) (Panama) (WIPOLex: Panama).

125. Silka Niño, *IP Privacy and Enforcement in Panama*, PARDINI & ASSOCIATES ATTORNEYS, <https://www.pardinilaw.com/EN/padela/articles/101/ip/ip-piracy-and-enforcement-in-panama/> (last visited Jan. 19, 2023).

126. *Id.*

127. *Id.*

128. *Id.*

129. *Nine packages with allegedly counterfeit merchandise are retained by the DPFA of the Airport Zone*, NATIONAL CUSTOMS AUTHORITY (Sept. 7, 2020, 6:50 PM), [https://www.ana.gob.pa/w\\_ana/index.php/23-news/nueve-bultos-con-mercancia-presuntamente-falsificada-es-retenida-por-dpfa-de-la-zona-aeroportuaria](https://www.ana.gob.pa/w_ana/index.php/23-news/nueve-bultos-con-mercancia-presuntamente-falsificada-es-retenida-por-dpfa-de-la-zona-aeroportuaria).

130. *Three Hearings in one day for Trademark Counterfeiting and Piracy*, PUBLIC MINISTRY OF PANAMA (Sept. 7, 2016), <https://ministeriopublico.gob.pa/tres-audiencia-dia-falsificacion-marcas-pirateria/>.

131. *Illicit goods worth more than USD 3.5 million seized in Americas and Caribbean*, INTERPOL (Jun. 18, 2019), <https://www.interpol.int/en/News-and-Events/News/2019/Illicit-goods-worth-more-than-USD-3.5-million-seized-in-Americas-and-Caribbean>.

more than USD \$3.5 million” were seized, though it is not clear how many of these items were linked specifically to Panama.<sup>132</sup> However, as one of its examples, the report states that 63,000 cigarette packs were confiscated in Panama.<sup>133</sup>

#### *O. Romania*

Romania has a relatively solid set of trademark laws and government ordinances. The Unfair Competition Law is focused on the repression of unfair competition and establishes criminal liability and penalties.<sup>134</sup> The Trademark Law addresses trademarks and geographical indications, noting the protection of rights of trademarks as well as criminal liability and penalties.<sup>135</sup>

In October 2019, seventytwo pairs of footwear, with an approximate value of 258,485 lei, were seized by the Romanian Coast Guard as they were coming in from China, and found to be counterfeit.<sup>136</sup> Additionally, the Romania Customs Agency notes that recent customs seizures reports in Romania could be a helpful source of information.<sup>137</sup> The Public Prosecutor in Romania is only likely to send infringement cases to court in more serious instances, such as when there is a large number of counterfeit products, the infringer is a repeat offender, or when organized crime is involved.<sup>138</sup> The infringers are rarely sentenced to jail time, and when they are, it is because they are also guilty of other crimes, such as tax evasion or endangering public health and safety.<sup>139</sup>

#### *P. Russia*

Russia, like the US, has seen an explosion in counterfeit goods being trafficked and sold both internationally and domestically. Approximately 40% of all handbags, apparel, and accessories sold in Russia are believed to be

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132. *Id.*

133. *Id.*

134. *See generally* Lege nr. 11 din 29 ianuarie 1991 privind combaterea concurenței neloiale [Law No. 11 on the Repression of Unfair] (1991) (Romania) (WIPOLex: Romania) (establishes criminal liability and penalties).

135. *See generally* Lege nr. 84 din 15 aprilie 1998 privind mărcile și indicațiile geografice [Law No. 84 on Trademark and Geographical indications] (1998) (Romania) (WIPOLex: Romania) (establishes criminal penalties).

136. *Counterfeit goods worth more than 258,000 lei, seized in Constanta Sud Agigea Port*, ROMANIAN BORDER POLICE (Nov. 1, 2019), <https://www.politiadefrontiera.ro/ro/garda-de-coasta/i-bunuri-contrafacute-in-valoare-de- peste-258000-lei—confiscate-in-portul-constantasud-agigea—18489.html>.

137. THE MINISTRY OF FINANCE ROMANIAN CUSTOMS AUTHORITY, [www.customs.ro](http://www.customs.ro) (last visited Jan. 19, 2023).

138. Merchant & Gould, *supra* note 25.

139. *Id.*

counterfeit<sup>140</sup>, and 30% of Russians admitted to purchasing counterfeit goods in 2017.<sup>141</sup> A 2018 study from Moscow's Higher School of Economics indicates that total illicit trafficking in consumer markets surpassed 9% of the total retail trade volume in Russia.<sup>142</sup> Geographic challenges have long made the expansion of e-commerce platforms into the most remote regions of the world's largest country difficult. Not only is Russia large, but a large portion of it is extremely cold and difficult to traverse.<sup>143</sup> In 2019, e-commerce accounted for only 1.4% of Russia's economy<sup>144</sup>—about half of the amount in the US during that same period.<sup>145</sup> COVID-19 drastically accelerated the demand for e-commerce providers in the country's typically underserved regions, and annual online sales are expected to continue growing as distributors follow demand. Given the prominence of counterfeits currently in circulation, their geographic proximity to global counterfeit leaders, and increasing interconnectivity to its most remote regions, an examination of Russia's trademark regime is essential.

Russia currently provides for civil, administrative, and criminal causes of action against trademark counterfeiters. Criminal cases are governed under Article 180 of the Criminal Code.<sup>146</sup> Additionally, IP enforcement at numerous international borders is governed by the Customs Code of the Union, the Federal Law on Customs Regulation, and the Administrative Regulations.<sup>147</sup> Russia is also a member of the Eurasian Customs Union ("ECU"), composed of Belarus, Kazakhstan, Russia, Armenia, and Kyrgyzstan, and its purpose is to harmonize member countries' existing IP and customs regimes. There is evidence of seizures, as well, in Russia.<sup>148</sup>

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140. Galina Utesheva, *How the counterfeit market played into the hands of luxury goods manufacturers*, FASHION UNITED (Feb. 25, 2016), <https://fashionunited.ru/novostee/beezyes/kak-rynok-poddelok-sygral-na-ruku-proizvoditelyam-luxury-tovarov/2016022514597>.

141. Ekaterina Khranova, *Ambivalence of consumer attitudes towards counterfeit products*, ECONOMIC SOCIOLOGY (Jan. 2012), <https://cyberleninka.ru/article/n/ambivalentnost-otnosheniya-potrebitelov-k-kontrafaktnoy-produktsii>.

142. David Aylen & Maria Aronikova, *Procedures and strategies for anti-counterfeiting: Russia*, WORLD TRADEMARK REVIEW (May 24, 2018), <https://www.worldtrademarkreview.com/anti-counterfeiting/procedures-and-strategies-anti-counterfeiting-russia-0>.

143. Anna Rzhavkina & Alexander Morrow, *COVID-19 crisis: a shot in the arm for Russian e-commerce*, REUTERS (Nov. 19, 2020), <https://www.reuters.com/article/us-russia-ecommerce-focus/covid-19-crisis-a-shot-in-the-arm-for-russian-e-commerce-idUSKBN27Z10Z>.

144. *Id.*

145. *Id.*

146. Ugolovnyĭ Kodeks Rossiĭskoĭ Federatsii [GK RF] [Criminal Code] art. 180 (Russ.) (available at [https://www.wto.org/english/thewto\\_e/acc\\_e/rus\\_e/WTACCRUS58\\_LEG\\_362.pdf](https://www.wto.org/english/thewto_e/acc_e/rus_e/WTACCRUS58_LEG_362.pdf)).

147. Aylen, *supra* note 142.

148. *Shoes under the brands ADIDAS and NIKE turned out to be counterfeit*, ARGUMENTY I FATKY (Aug. 30, 2021, 08:26 AM), [https://samara-aif-ru.translate.google/society/obuv\\_pod\\_markami\\_adidas\\_i\\_nike\\_okazalas\\_kontrafaktnoy?\\_x\\_tr\\_sl=auto](https://samara-aif-ru.translate.google/society/obuv_pod_markami_adidas_i_nike_okazalas_kontrafaktnoy?_x_tr_sl=auto)

*Q. Sweden*

Swedish intellectual property is mainly governed by the Trademarks Act,<sup>149</sup> along with additional EU regulations. Chapter 8, Article 1 of The Trademarks Act establishes that anyone who intentionally, or by gross negligence, infringes on a trademark holder's rights may face up to two years in prison or a fine.<sup>150</sup> Intentionally serious violations are punishable with between six months to six years in prison.<sup>151</sup> The Article describes several criteria to consider when deciding if trademark infringement constitutes a serious intentional violation.<sup>152</sup> As a member of the EU, Sweden is also subject to EU criminal regulations; however, at this time, no specific EU criminal-trademark statutes were located. A 2013 case against Christer Skult for counterfeiting ball bearings resulted in him being found guilty of violating the act, being fined SEK 600,000 (~\$95,000 USD) and being sentenced to one year in jail.<sup>153</sup> Further research and time will be needed to locate additional criminal cases within this country.

*R. Taiwan*

Two pieces of legislation are relevant in Taiwan's trademark enforcement regime – the Trademark Act<sup>154</sup> and the Regulations Governing Customs Measures in Protecting the Rights and Interests of Trademarks.<sup>155</sup> Both civil and criminal complaints may be directed to the Intellectual Property Rights and Commercial Court, which has the ability to hear civil, criminal, and administrative IP cases.<sup>156</sup> The Trademark Act does not contain an explicit

&\_x\_tr\_tl=en&\_x\_tr\_hl=en-US&\_x\_tr\_pto=nui; Editorial Rus.LSM.lv, *Trade in counterfeit "moved" to the Internet*, LATVIAN PUBLIC MEDIA, (July 5, 2020, 09:22 PM), [https://abnews-ru.translate.google.com/2020/08/20/baltijskaya-tamozhnya-zaderzhala-gruz-poddelnoj-odezhdy-izvestnyh-brendov/?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en-US&\\_x\\_tr\\_pto=nui](https://rus-lsm.lv.translate.google.com/statja/novosti/ekonomika/torgovlja-kontrafaktom-pereehala-v-internet.a365270/?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui; Dmitry Mateev, <i>Baltic Customs Detained a Cargo of Fake Clothes of Famous Brands</i>, ABN (Aug. 20, 2010), <a href=).

149. 8 ch. VARUM. . RKESLAG (I. . NDRAD LYDELSE UPP TILL LAG) [Trademark Act as Amended up to Act 2020:545] (Svensk författnings [SFS] 2020:545) (Swed.) (WIPOLex: Sweden) (chapter 8 covers criminal liability).

150. *Id.*

151. *Id.*

152. *Id.*

153. Phil Taylor, *Update: Counterfeit ball bearing dealer jailed in Sweden*, SECURING INDUSTRY (Mar. 8, 2013), <https://www.securingindustry.com/electronics-and-industrial/ball-bearing-counterfeiter-jailed-in-sweden/s105/a1655/#.Y9FY-uzMIq1>.

154. *See generally* 商標法 [Amended Trademark Act], Ministry of Justice Laws and Regulations Database of the Republic of China 法務部全國法規資料庫 (L. & Reg. DB) (Taiwan), May 4, 2022, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0070001> (chapter IV covers penal provisions).

155. *Id.*

156. *Id.*

notice-and-takedown procedure, but has been read as such when reviewing a provider's liability for contributory trademark infringement.<sup>157</sup> Preliminary research into this country did not yield any cases of criminal charges being brought forth against defendants; however, we were able to locate cases of product seizures. Over 12,000 pairs of counterfeit glasses were seized by local police after raiding a warehouse for counterfeit goods.<sup>158</sup>

### *S. Turkey*

Turkey's main intellectual property laws are both civil and criminal and include: (1) Law No. 6769 on Industrial Property;<sup>159</sup> (2) Law No. 5846 on Intellectual and Artistic Works<sup>160</sup> (also known as the Copyright Act); (3) the Turkish Commercial Code;<sup>161</sup> and (4) the Turkish Criminal Code.<sup>162</sup>

Considering Turkey is listed as the third largest historical counterfeit and pirated goods economy, following only China and Hong Kong, the government has plenty of opportunities to make seizures of such goods and several criminal arrests.<sup>163</sup> As the country also ranks sixth in exported counterfeit products, it has historically been known as a European hotspot for counterfeit and IP-infringing activity.<sup>164</sup> Initially, the cases' official names have not been identified; however, reports of the arrests, seizures, and smuggling interceptions were recorded largely from European news outlets, which spread

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157. Crystal J Chen & Nick JC Lan, *Procedures and strategies for anti-counterfeiting: Taiwan*, WORLD TRADEMARK REVIEW (Apr. 23, 2020), <https://www.worldtrademarkreview.com/anti-counterfeiting/procedures-and-strategies-anti-counterfeiting-taiwan>.

158. Su Yihuan, *It's fake! Land-based Mizuno Glasses Claims Nissan Infringes Millions of Companies*, YAHOO! NEWS TAIWAN (Nov. 9, 2021), [https://tw-news-yahoo-com.translate.goog/攏系假-陸製-美津濃眼鏡-稱日產侵權百萬-業者跨海告-022704488.html?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en-US&\\_x\\_tr\\_pto=nui](https://tw-news-yahoo-com.translate.goog/攏系假-陸製-美津濃眼鏡-稱日產侵權百萬-業者跨海告-022704488.html?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui).

159. See generally SINAİ MÜLKİYET KANUNU [Industrial Property Law], 6769, (2016) (Turk.) (WIPOLex: Turkey) (section 6 deals with infringement of trademark rights, including penal provisions).

160. See generally FIKİR VE SANAT ESERLERİ KANUNU [Law on Intellectual Artistic Works], 5846, (1951) (Turk.) (WIPOLex: Turkey) (part 5, section B deals with criminal actions and prosecution).

161. See generally TÜRK TİCARET KANUNU [Turkish Commercial Law], 6102, (2011) (Turk.) (WIPOLex: Turkey).

162. See generally TÜRK CEZA KANUNU [Turkish Criminal Law], 5237, (2004) (Turk.) (WIPOLex: Turkey).

163. *OECD-EUIPO Names Turkey as the Fourth Largest Economy for Counterfeit and Pirated Goods*, MOROGLU ARSEVEN (May 31, 2019), <https://www.morogluarseven.com/news-and-publications/oecd-euipo-report-names-turkey-as-the-fourth-largest-economy-for-counterfeit-and-pirated-goods/>.

164. *Id.*

across the five years since Turkey passed new laws increasing prison terms and fines for counterfeit traders.<sup>165</sup>

Given the proficiency of counterfeiting and product infringement in Turkey, and the newly introduced anti-counterfeiting laws, it would be reasonable to assume that criminal prosecution cases and general law enforcement action toward counterfeit prevention would increase. As the details of the cases listed revealed, the Turkish police have had several largely successful seizures, leading to arrests on multiple fronts; further prosecution details currently remain unknown. However, the identification of specific case names, titles, and party details, apart from the information summary attached to the research file, remains currently unknown to us. Overall, pursuing further research would be reasonable as the country of Turkey has a historically high amount of counterfeit and IP-infringement market activity, has strengthened anti-counterfeiting laws in the past five years, and has demonstrated evidence that large amounts of illicit products are still trafficked through, manufactured, and sold in Turkey.

#### *T. Uruguay*

Uruguay has a rich history of IP-related law that dates back to at least 1892, according to a legal database maintained by WIPO.<sup>166</sup> Uruguay's criminal trademark enforcement appears to be primarily through Law No. 17.011 of September 25, 1998, establishing Provisions on Trademarks.<sup>167</sup> Criminal and civil remedies are highlighted in chapter 14, article 81 of the law, which sets minimum imprisonments of six months and a maximum of three years.<sup>168</sup> An article translated from *Subrayado*<sup>169</sup> by *Brand Protection News*<sup>170</sup> describes the seizure of over 20,000 fake toys from China. It also highlights that several

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165. Emma Smith, *Turkey: The counterfeiters on Europe's doorstep*, RED POINTS, <https://www.redpoints.com/blog/turkey-the-counterfeiters-on-europes-doorstep/> (last visited Jan. 19, 2023).

166. *See generally* Ley N° 2.267 que aprueba el Tratado de Montevideo sobre Propiedad Literaria y Artística, Montevideo [Law No. 2.267 Approving the Montevideo Treaty on Literary and Artistic Property], 2.267 (1889) (Uru.) (WIPOLex: Uruguay).

167. *See generally* Ley N° 17.011 que Dicta Normas Relativas a Las Marcas [Law No. 17.011 Establishing Provisions on Trademarks] 17.011, (1998) (Uru.) (WIPOLex: Uruguay).

168. *Id.*

169. *Customes Seized 20,000 products thousands were Chinese toys*, SUBRAYADO (July 2, 2020, 04:09 PM), <https://www.subrayado.com.uy/aduanas-incauto-20000-productos-truchos-miles-eran-juguetes-chinos-n643376>.

170. *Uruguayan Customs Seizes more than 20,000 Fake Toys from China*, BRANDS INTELLECTUAL PROPERTY NEWS (July 6, 2020), <https://www.brandsprotectionnews.com/en/uruguayan-customs-seizes-more-than-20000-fake-toys-from-china/>.

prosecutions related to this seizure took place;<sup>171</sup> however, we were not able to locate these cases within the legal system during our preliminary research. Another 2020 seizure at the Port of Montevideo resulted in over \$3.5 million worth of product seizures.<sup>172</sup>

In a related civil case, an Uruguayan civil court judge has ordered a man found guilty of counterfeiting Nintendo games to pay Nintendo \$2.5 million in damages and legal expenses.<sup>173</sup> The Court found that the man in question and his three companions were responsible for the sale and distribution of tens of thousands of counterfeit Nintendo products.<sup>174</sup> This investigation began in 2001, when the National Board of Intelligence raided four shops and a warehouse, seizing seven truckloads of bogus Nintendo swag in Montevideo.<sup>175</sup> A principal owner of the locations was identified and charged with trademark counterfeiting, though he was later given an unexplained executive pardon at the criminal trial.<sup>176</sup>

#### *U. United Arab Emirates*

The United Arab Emirates (“UAE”) has several statutes governing intellectual property, both civil and criminal. The most important of these statutes include Federal Law on Trade Marks (No. 37 of 1992), which is the main statute providing enforcement options for anti-counterfeiting.<sup>177</sup> Federal Law No. 19 deals with combating commercial fraud generally, and expands on remedies provided by No. 37.<sup>178</sup> The UAE also has several other established laws that contribute to the prosecution of anti-counterfeiters, including: (1) DIFC IP Law No. 4 of 2019; (2) Federal Law No. 8 of 2019; (3) Federal No. 3

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171. *Id.*

172. Panagiotis Spiropoulos, *Drinks mafia: How Roma and FEDIA would fill up illegal “bombs” the focus after the lockdown*, THE TOC (Jan. 17, 2021 04:58 PM), [https://www-thetoc-gr.translate.goog/koinwnia/article/mafia-ton-poton-pos-o-roma-kai-fentia-tha-gemizan-lathraies-mpompes-tin-estiasi-meta-to-lockdown-eikones/?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en-US&\\_x\\_tr\\_pto=nui](https://www-thetoc-gr.translate.goog/koinwnia/article/mafia-ton-poton-pos-o-roma-kai-fentia-tha-gemizan-lathraies-mpompes-tin-estiasi-meta-to-lockdown-eikones/?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui).

173. Susan Arendt, *Counterfeiter Owes Nintendo \$2.5 Million*, WIRED (July 6, 2007, 06:49 AM), <https://www.wired.com/2007/07/counterfeiter-o/>.

174. *Id.*

175. *Id.*

176. *Id.*

177. *See generally* Federal Law No. 37 on Trade Marks, No. 37 (1992) (U.A.E.) (WIPOLex: United Arab Emirates).

178. *See generally* Federal Law No. 19 on Combating Commercial Fraud, (2016) (U.A.E.) (WIPOLex: United Arab Emirates).



of 1987—The Penal Code;<sup>179</sup> and (4) the GCC Unified Customs Law.<sup>180</sup> In the UAE, trademark infringement is usually dealt with via civil actions, or through actions brought before the Ministry of Economy-Trademark Office (“TMO”) and/or Department of Economic Development (“DED”).<sup>181</sup>

It was difficult to find specific cases of prosecutions involving these statutes; however, there is evidence of active efforts to deter anti-counterfeiting in the UAE. In addition to the country’s formal criminal complaint process for such issues,<sup>182</sup> a report found that, as of 2018, 25 million counterfeited goods were seized every year in the UAE.<sup>183</sup> The UAE has also worked to crack down on the pandemic-related rise in the counterfeiting of certain types of products. The rise in demand for hygiene products, such as face masks, sanitizers, and disinfectants, has led to a rise in the production and sale of counterfeits of these products. In 2020, the UAE busted nearly 20 factories that were selling these types of counterfeits.<sup>184</sup> Most of the counterfeiters involved were arrested and referred to public prosecutors.<sup>185</sup> Additionally, between 2015 and 2020, the Dubai police arrested 2,430 suspects and recorded 2,145 cases of economic crimes.<sup>186</sup> Finally, the US has also removed the UAE from its intellectual

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179. See generally Federal Law No. 3 Concerning the Penal Code, No. 3 (1987) (U.A.E.) (available at [https://elaws.moj.gov.ae/UAE-MOJ\\_LC-En/00\\_PENALTIES%20AND%20CRIMINAL%20MEASURES/UAE-LC-En\\_1987-12-08\\_00003\\_Kait.html?val=EL1](https://elaws.moj.gov.ae/UAE-MOJ_LC-En/00_PENALTIES%20AND%20CRIMINAL%20MEASURES/UAE-LC-En_1987-12-08_00003_Kait.html?val=EL1)).

180. See generally Common Customs Law of the GCC States, (2003) (U.A.E.) (available at <https://www.gcc-sg.org/en-us/CognitiveSources/DigitalLibrary/Lists/DigitalLibrary/Customs/1274258180.pdf>).

181. Merchant & Gould, *supra* note 25, at 240-41.

182. Omar Obeidat, Rasha Al Ardah & Ahmad Zaza, *Procedures and strategies for anti-counterfeiting: United Arab Emirates*, WORLD TRADEMARK REVIEW (May 24, 2018), <https://www.worldtrademarkreview.com/anti-counterfeiting/procedures-and-strategies-anti-counterfeiting-united-arab-emirates>.

183. Adam Houldsworth, *UAE counterfeit seizures, Brazil predicted for 2019 Madrid accession, and Lacoste scores big win: news round-up*, WORLD TRADEMARK REVIEW (Dec. 11, 2018), <https://www.worldtrademarkreview.com/uae-counterfeit-seizures-brazil-predicted-2019-madrid-accession-and-lacoste-scores-big-win-news>; see also United Trademark & Patent Services, *United Arab Emirates: Ajman Police Seized Counterfeit Goods Worth An Estimated AED 30 Million (Approximately USD\$ 8,167,721)*, MONDAQ (July 30, 2021), <https://www.mondaq.com/trademark/1097430/ajman-police-seized-counterfeit-goods-worth-an-estimated-aed-30-million-approximately-usd-8167721>.

184. Mazhar Farooqui, *Busted: 20 factories selling counterfeit masks, sanitisers in UAE*, GULF NEWS (Dec. 7, 2020), <https://gulfnnews.com/uae/busted-20-factories-selling-counterfeit-masks-sanitisers-in-uae-1.75724340>.

185. *Id.*

186. *Dubai Police arrest 2,400 seize Dh8.9b worth of fake goods in 5 years*, KHALEEJ TIMES (Dec. 4, 2020), <https://www.khaleejtimes.com/crime-and-courts/dubai-police-arrest-2400-seize-dh8-9b-worth-of-fake-goods-in-5-years>.

property rights protection and enforcement watchlist, due to such enhanced enforcement procedures.<sup>187</sup>

#### V. United Kingdom

The key statutes governing intellectual property regulation in the UK include several statutes. The Trade Marks Act 2006 covers trademark infringement and criminal anti-counterfeiting offenses.<sup>188</sup> The Proceeds of Crime Act 2002 deals with the recovery of assets and proceeds resulting from IP crimes.<sup>189</sup> The Fraud Act 2006 establishes criminal offenses relating to fraud.<sup>190</sup> Finally, there is also the Copyright, Designs and Patents Act 1988, which covers the offense of fraudulently applying or using a trademark.<sup>191</sup>

In addition to this, the UK has been used as a transit point for counterfeit products headed to other European countries; evidencing the UK's efforts, Trademark and Rights Holders Against Piracy ("TRAP") has reported £2.3 million in physical seizures of counterfeit goods.<sup>192</sup> The country's Crown Prosecution Service even has a Specialist Fraud Division for larger and more complex IP crime cases.<sup>193</sup> According to the UK's Ministry of Justice, in 2019, 401 people were found guilty under the Trade Marks Act, and 23 under the Copyright, Designs and Patents Act.<sup>194</sup> However, in 2020 those numbers seemed to go down to 180 and 1, respectively.<sup>195</sup> Additionally, in 2012, a conviction of eight years imprisonment was upheld for a conspiracy to defraud by importing counterfeit medicinal products, which purported to be required for treating serious illnesses. This was done partially to act as a deterrent against such infringements.<sup>196</sup> In *R v. Khan*,<sup>197</sup> the trial judge had considered deterrence

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187. Nadeen Helou, *Worldwide: The United States of America has Dropped the UAE From its Watchlist*, MONDAQ (Jun. 24, 2021), <https://www.mondaq.com/international-trade-investment/1083504/the-united-states-of-america-has-dropped-the-uae-from-its-watchlist>.

188. Trade Marks Act of 1994, UK Public General Acts, c. 26, (UK) (available at <https://www.legislation.gov.uk/ukpga/1994/26/contents>).

189. Proceeds of Crime Act 2002, UK Public General Acts, c. 29 (UK) (available at <https://www.legislation.gov.uk/ukpga/2002/29/contents>).

190. Fraud Act, UK Public General Acts, c. 35, (UK) (available at <https://www.legislation.gov.uk/ukpga/2006/35/contents>).

191. Copyright, Designs and Patents Act 1988, UK Public General Acts, c. 48, (UK) (available at <https://www.legislation.gov.uk/ukpga/1988/48/contents>).

192. *IP Crime and Enforcement Report 2019/20*, IP CRIME GROUP (2020), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/913644/ip-crime-report-2019-20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913644/ip-crime-report-2019-20.pdf).

193. *Id.*

194. *Id.*

195. *Id.*

196. *R. v Gillespie* (Peter Hugh), [2012] 2 Cr. App. R. (S.) 24.

197. *R. v Khan* (Yasar), [2013] EWCA Crim 802.

as a factor when sentencing four offenders for a conspiracy to sell counterfeit goods; however, the trial judge's sentence, which ranged between 12 months and 24 months imprisonment, was held to be too excessive.<sup>198</sup>

Another high-profile prosecution took place in 2021 against counterfeiters of the Supreme brand, in which father and son were sentenced to eight and three years in prison, respectively, after facing private prosecution by a New York-based company.<sup>199</sup> The City of London Police has also received referrals directly from companies like Apple, which in one case resulted in a company director being sentenced to twentyeight months imprisonment for importing and selling counterfeit Apple and Samsung Batteries.<sup>200</sup> Finally, as recently as October 2021, the UK carried out its “biggest ever police operation against counterfeiting,” resulting in over 200 tons of goods (valued at over £500 million) being seized and two people being arrested.<sup>201</sup>

### W. Vietnam

Since becoming part of numerous multilateral trade treaties at the turn of the century, Vietnam's IP regime has undergone many changes. The Law on Intellectual Property 2005<sup>202</sup> and the Penal Code 2015<sup>203</sup> both control the regime in addition to governmental decrees. While the laws are given a higher degree of authority, the decrees are most often referred to, as they provide the most detailed information.<sup>204</sup> There is evidence of police seizures of counterfeit goods in Vietnam as well.<sup>205</sup>

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198. *Id.*

199. Jonathan Browning, *Counterfeiters Sentenced for 'Hijacking' Supreme Clothing Brand*, BLOOMBERG (Jun. 28, 2021, 8:04 AM), <https://www.bloomberg.com/news/articles/2021-06-28/supreme-counterfeiters-sentenced-for-hijacking-clothing-brand>.

200. City of London Police Press Release, *Company director who sold fake Apple and Samsung phone batteries to get a mortgage is sentenced*, CITY OF LONDON POLICE (Oct. 8, 2021, 10:36 AM), <https://www.cityoflondon.police.uk/news/city-of-london/news/2021/august/company-director-who-sold-fake-apple-and-samsung-phone-batteries-to-get-a-mortgage-is-sentenced/>.

201. City of London Police Press Release, *Biggest ever police operation against counterfeiting sees over £500m worth of goods seized*, CITY OF LONDON POLICE (Oct. 9, 2021, 10:24 AM), <https://www.cityoflondon.police.uk/news/city-of-london/news/2021/september/biggest-ever-police-operation-against-counterfeiting-sees-over-500m-worth-of-goods-seized/>.

202. *See generally* Law on Intellectual Property, No. 50/2005QH11, (2001) (Viet.) (WIPOLex: Vietnam).

203. *See generally* Criminal Code, No. 100/2015/QH13, (2015) (Viet.) (WIPOLex: Vietnam).

204. Loc Xuan Le, Linh Duy Mai & Diep Thi Bich Le, *Procedures and strategies for anti-counterfeiting: Vietnam*, WORLD TRADEMARK REVIEW (May 14, 2018), <https://www.worldtrademarkreview.com/anti-counterfeiting/procedures-and-strategies-anti-counterfeiting-vietnam>.

205. *See* Le Nam, *Raiding 2 production warehouses, storing fake products branded “Thuan Phat.”* KINHTE & DOTH, (Dec. 11, 2021, 8:48 PM), <https://kinhtedothi-vn.translate.google.com/dot-kich-2-kho-hang-san-xuat-tang-tru-san-pham-gia-mao-nhan-hieu-thuan-phat>.

### X. *European Union*

Preliminary criminal research into the European Union consisted of searching the internet to locate criminal cases that were prosecuted in the European General Court or Court of Justice of the European Union (“CJEU”). Although there is evidence of criminal prosecutions, researchers were not able to locate any criminal cases that made their way through the EU legal system. It is theorized that cases utilizing EU criminal provisions, if they exist, are used in prosecutions in the countries where the crimes took place. Further research should focus on locating counterfeit crimes that happen within EU countries and identifying if EU criminal provisions exist and are being utilized in those prosecutions.

The search to identify the criminal counterfeit statutes of the European Union proved to be just as fruitful as the search for the cases prosecuted using them. Researchers were able to locate a vast pool of civil counterfeit legislation in the European Union. As previously noted, criminal prosecutions have been identified; however, they are believed to happen in the country where the crime happened and not at the EU level. The only criminal provision located was proposed regulation 2005/0127/COD;<sup>206</sup> however, this provision was withdrawn from the commission after five years. More research will be needed to collect and analyze if there are any EU criminal provisions.

### III. OVERALL ANALYSIS OF STATUTES & PROSECUTIONS

While almost every country we examined had criminal anti-counterfeiting legislation in place, there is little evidence of their use. The criminal laws often complement the civil laws in place protecting trademarks and are usually woven into the criminal codes. However, prosecutions are minimal. Any evidence of sentencing that we found was also minimal and appeared to be more along the lines of monetary fines. However, the monetary fines did not appear to be significant. Some countries appear to be slightly more active in their criminal responses, such as the UK or China, but what we cannot tell by this study is how this correlates to the amount of counterfeiting activity, and whether the prosecutions, convictions, and punishments have any impact on continued counterfeiting.

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440757.html?\_x\_tr\_sl=auto&\_x\_tr\_tl=en&\_x\_tr\_hl=en-US&\_x\_tr\_pto=nui; *see also* Tran Manh, *Putting banned substances into pesticides, counterfeiting ‘same’ packaging*, TUOITRE (Sept. 11, 2021, 9:26 AM), [https://tuoitre-vn.translate.google.com/dua-chat-cam-vao-thuoc-bao-ve-thuc-vat-lam-gia-bao-bi-y-chang-20211108231507241.htm?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en-US&\\_x\\_tr\\_pto=nui](https://tuoitre-vn.translate.google.com/dua-chat-cam-vao-thuoc-bao-ve-thuc-vat-lam-gia-bao-bi-y-chang-20211108231507241.htm?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui).

206. 2005 O.J. (COD 127) (available at [https://eur-lex.europa.eu/procedure/EN/2005\\_127](https://eur-lex.europa.eu/procedure/EN/2005_127)).

More evidence exists, at least in the media, of police or customs seizures of counterfeit goods at ports, but often little follow-up through the system. While we do not have the statistical capability at this point to claim whether prosecution is an effective deterrent, we can definitely say it is not being used frequently or at all.

In cases where it is used, we see consistent sentence reductions or minimums. The question we ask is this: while every country's political/legal system differs, why do each of these countries go through the process of creating legislation and criminalizing it but consistently do not use it? It appears to cross all barriers of North/South, developing, and most-developed, with some slight increases in the US and European countries.

#### IV. RECOMMENDATIONS FOR FUTURE RESEARCH

We suggest that a rigorous, empirically valid study of the effects of product counterfeiting prosecutions is possible but would take on-the-ground resources in every country we examine; not only to find the laws, which in most cases are readily accessible, but to find evidence of prosecutions from within the domestic courts. Additionally, we recommend interviewing local lawyers, prosecutors, police, and customs agents to determine why cases are not brought more often against counterfeiters. This will take time, skilled interviewers, and language skills, given the research across multiple countries. We do believe it is possible to undertake this study and to glean more information about prosecuting outcomes, or failure to prosecute.