

101.3 Defending the Brand by Using Investigative Services

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Defending the Brand? Enforcement !!

Consider:

- Does it fit the business strategy?
- Commercial (how restrictive)?
- Reputation?
- How likely is success of enforcement?
- Organized crime, then what?
- Qualified resources?
- Impact on third parties?

Brands and Investigation: What's it all about?

- Global issue, global solution
- Increasingly ownership of brand does not necessarily imply ownership of manufactory or trade: the reason for verification
- Trademarks, licenses, patents, franchises
- When right is contract based, think of verification

Choice of verification

- Annual report with auditor's opinion?
- Investigating or Auditing?
 - Auditing: "tell me" (process focus)
 - Investigating: "show me" (detail focus, sensitivity to conflict)
- Royalty audit \neq Financial audit (scope, materiality)
- Investigation: internal resource versus external resource?
- Benefits internal versus benefits external

Verification clause in the contract

- Who is allowed access to what data at what moment (keep your options open, element of surprise)
- Who makes the choice for the one that verifies?
- Who pays the bill of the verification?
- Verification should be agreed upon as a routine measure
- When there is contract, deal with issues beforehand:
 - Clear prices
 - Clear royalty tables and basis for calculation
 - What about samples
 - What about discounts?
 - What about damaged goods?
 - What about returns?
 - What about

When investigating/auditing: keep the ‘why’ in mind

- Deterrence > routine check (is all okay?)
- Detection > checking for deviations (is something wrong?)
- Keep it always factual, no advocating during investigation/audit
- Be honest about motives
- Be sensitive to principle of equality of arms

To be considered

- Local legal requirements
- Is verification worthwhile?
- Consider other methods: test buying, check on custom filings, check on logistics provider, detective agencies and valuers
- Privacy issues
- Data and money transfer issues