

An Empirical Study of Enforcement on Counterfeit and Infringement in China

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Abstract: Previous authors have stated that the “number of cases dealt at SAIC remain stable for many years which indicates that the infringement situation of the whole country does not change.” [1] But the total number of cases dealt by SAIC consist of both counterfeit and infringement, and the underlying reason why the total numbers remain unchanged is primarily because counterfeit is decreasing and infringement is increasing. The results of this analysis will show that through the years, counterfeit and infringement cases are changing in different trends, and it further lead us to reflect that these two categories should be analyzed separately.
Keywords: Empirical; Trademark counterfeit and infringement; Enforcement; Ratio and Mean changes.

1. INTRODUCTION

From a very early point in Anglo-American legal development, the use of another firm’s trademarks or trade symbols has been considered to be “unfair competition.” Such unfairness flows from both the theft of the competitor’s good name and from the deception of the public, which relies on trademarks as an indicator of product quality. [2] It is believed that such wide-spread and penetrating character of SAIC enables the local governments to have sufficient agents, officials and enforcers to perform its regulatory role, to seize counterfeit and infringements, and to settle the disputes. Such wide-spread enforcing mechanism is incomparable by other departments. [3] However, such deterrence might be temporary since as we mentioned in the previous paragraphs that enforcement is costly, and the agencies would not be able to detect all offenses, counterfeiters and infringers would always compare the possibilities of being seized to the profits of infringement. Though there are plenty of enforcement activities, it does not result in effective sanctions in the form of significant fines. [4] Thus, any analysis of trademark enforcement by AICs requires a more clearer understanding of the seriousness of current infringing situations, and the changes of enforcement strengths facing different seriousness.

2. SERIOUSNESS OF COUNTERFEIT AND INFRINGEMENT, AND THE ENFORCEMENT ON THEM

(1) How serious is trademark counterfeit and infringement?

In 2011, all of the total number of cases, infringement cases and counterfeit cases reached the peak, and before the year, the numbers kept increasing and then started to decrease greatly, as shown in figure 1.

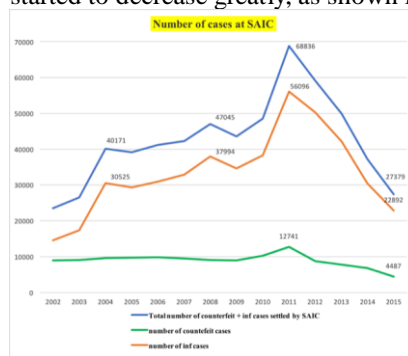


Figure 1 Number of Cases

The mean case numbers of counterfeit after 2011 has reduced 30% compared to the mean of that before 2011, and mean of infringement has increased 36%, on the contrary, as shown in figure 2.

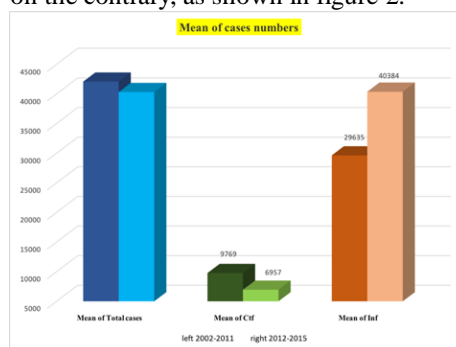


Figure 2 Means of cases numbers

Meanwhile, the total cases numbers remain stable from 2002 to 2015. The ration of counterfeit in total cases was 25% before 2012, and decreased to 16% after then, and the ratio of infringement cases has increased from 75% to 84%. Thus, the most remarkable conclusion of this analysis is that counterfeit and infringement change differently so that looks only at the total numbers of them does not tell us about the situation of current seriousness, let along the enforcement on them.

To understand Seriousness, the second variables in this study used to estimate Seriousness is the

Infringing Value of cases. The results of the analysis for Infringing Value of cases and the comparison of changes in means are shown in figure 3. A little bit different from the situation of Case numbers as shown above, Case infringing value increased since 2008 to 2009, reached the peak in 2012, and started to decrease greatly since then. Infringing value in cases at SAIC (named as “Case Value” in the reports), generally refer to the total monetary value by which the infringer has infringed on the trademark owner.

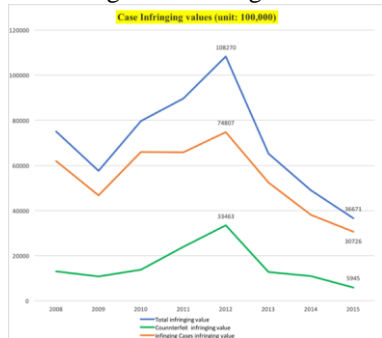


Figure 3 Case Infringing Values

After 2012, all of the Infringing Value in total, counterfeit and infringement dropped greatly, that the total infringing value is now 1/3 of that in 2012, counterfeit infringing value is 1/6 of that in 2012, and infringing value is 1/2 of that in 2012. Thus, it seems like the changes in total, counterfeit and infringement is very similar to each other. However, when we look further into figure 4, it finds that the means of each of the categories, the means for total changes from 82,000 (before 2012) to 50,000 (since 2013), which shows a decrease of 39%; means for counterfeit has decreased 48%; and means for infringement has only decrease 38%. This shows that even though all of the three categories are decreasing, the extents to which they have been decreasing are different – counterfeit decreases more greatly than infringement do.

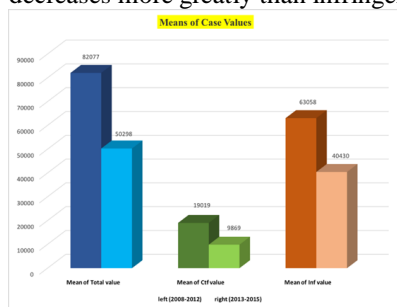


Figure 4 Means of case values

The third variable of Seriousness at SAIC is Number of extremely serious cases. In this study, extremely serious cases in counterfeit and infringement refer to the cases in which SAIC imposes fines larger than ¥100,000. The results of the analysis for Extremely serious cases and Comparison of in means are shown in figure 5.

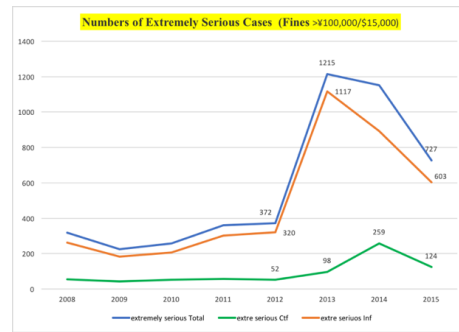


Figure 5 Number of extremely serious cases

Started from 2012, Extremely serious cases in total, counterfeit and infringement increased sharply, by which the seriousness numbers in total and in infringement in 2013 was nearly three to four times of the previous year. In the same time, counterfeit also shows an increase in the number of serious cases but the change is slower and more mildly. When to turn to the comparison of the means before the peak year 2012 and that after, it finds that all of the Serious cases in total increased 724 in the mean; counterfeit increased 106; and infringement increased 616, and that that the means in all three categories after 2012 are three times of that before the year, as shown in figure 6.

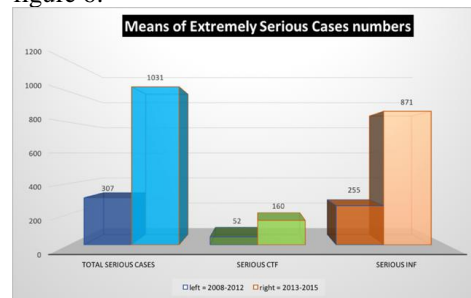


Figure 6 Means of extremely serious cases numbers

Extremely serious case represents those counterfeits and infringements which have larger infringing value and larger scale of infringing activities, and because of such serious and probably willful nature they are imposed greater fines by SAIC. Such picture of Extremely serious cases provides us a new view to look at the situations of counterfeit and infringement which no precious authors have mentioned before. One of the remarkable conclusions by analyzing this variable is that it tells us even though the case numbers in total remain stable and the counterfeit case numbers show decrease, they ignore the facts that extremely serious cases in every section – in total, in counterfeit and infringement are increasing greatly. Based on the analysis on the changes in means in total, counterfeit and infringement, I compare the extremely serious cases to total cases numbers, counterfeit cases and infringement cases. The results are shown in figure 7, that in total, every 100 cases would have 2 more extremely serious cases; every 100 counterfeits cases now have 2 more cases which are extremely serious, and every 100 infringements now have 2 more cases which are extremely serious.

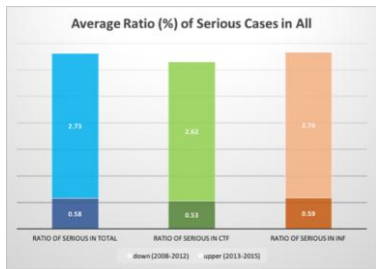


Figure 7 ratio of serious cases in all cases

Having analyzed the changes of the variables, the general conclusion for the Seriousness handled by SAIC is that looking from the perspective of Case numbers, counterfeit seriousness is decreasing while infringement is increasing; looking from the perspective of Case infringing values, both counterfeit and infringement are improving with lower infringing value, but counterfeit is decreasing more; and looking from the perspective of Extremely serious cases, both counterfeit and infringement increase largely.

(2) How Is the Enforcement Strength?

The variables applied to examine Enforcement Strength of SAIC include Fines imposed by SAIC; Destroyed marks and products by SAIC; and Numbers of Cases and people transferred to criminal prosecution. These variables are categorized under Enforcement primarily because they involve the subjective decisions by SAIC based on their understanding of laws, regulations and their work experience. The results of the analysis on Fines imposed by AICs are shown in figure 8.

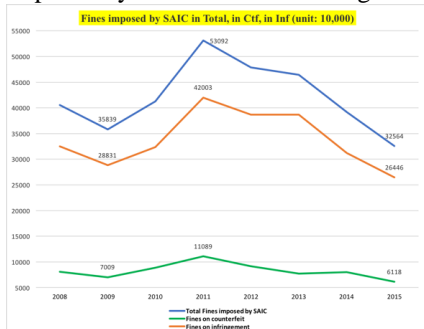


Figure 8 Fines in Total, counterfeit, and infringement Total Fines imposed by SAIC has been increasing since 2009 and reached its peak in 2011 with an amount of ¥530,920,000, in which Fines on Counterfeit was ¥110,890,000 and infringement was ¥420,030,000. After 2011, Fines started to go downward and now the Fines in each category appears to be only half of that in 2011. During the increase period, it is likely that Fines on Infringement underwent a sharper growth which dragged the Total fines to increase, while Fines on Counterfeit is likely to increase minor. Looking at the change in means of the Fines imposed by SAIC as shown in figure 9, it supports the view that Total fines and Infringement Fines increase more than Counterfeit does, by which Fines on Infringement increases by ¥41,910,000 (10%), and Counterfeit remains stable. Therefore, the

sum of Fines imposed by SAIC on Infringement is greater than that on Counterfeit, and Fines of Infringement experienced an increase.

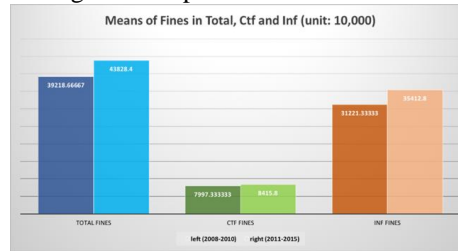


Figure 9 Means of fines in total, counterfeit and infringement

Legal theories suggest that Enforcement Strength should be related to the situations of the illegal activities or crimes being committed, and more serious illegal activities should result in more strict enforcement. [5] The second variable used to understand the Enforcement of SAIC is Numbers of Infringing marks and products destroyed by SAIC. As shown in figure 10, before 2011, counterfeit products being destroyed kept increasing while infringing products decreased, and in both counterfeit and infringement are going downward after then though with a slight increase around 2014.

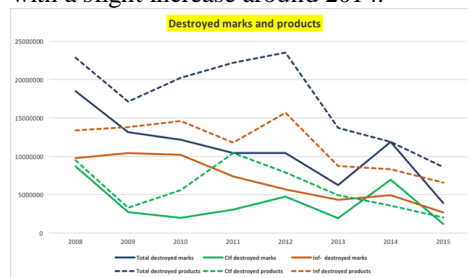


Figure 10 Destroyed marks and products

It is similar in the marks trend that counterfeit marks being destroyed before 2011 was increasing while infringing marks decreased, and both of them are going downward after the year. However, compare with the analysis in the previous sections, the trends here released in the reports do not tell too much about the situations, so I continue to compare the means in Total, Counterfeit and Infringing Destroyed products and marks in Figure 11. For Destroyed marks, Destroyed Infringing marks have decreased 5131445 pieces since 2011 (50%), while Counterfeit marks remains stable, and Total marks being destroyed also decreased 50%. Based on this section of information released in the reports, previous studies have concluded that the Enforcement by SAIC is not improving since “marks and products destroyed in each case are not large enough.”

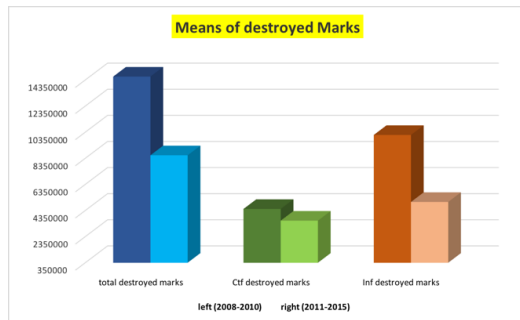


Figure 11 Means of destroyed marks

The third and also the last variable used to estimate Enforcement of SAIC is Number of cases and people in counterfeit transferred to criminal prosecution. The analysis on this variable also generates one of the remarkable conclusions of this study that previous authors talk very few about. Both of the transferred cases and people have increased greatly since 2008, but is currently undergoing a decreasing trend. The analysis of the result and the changes in means are shown in Figure 12.

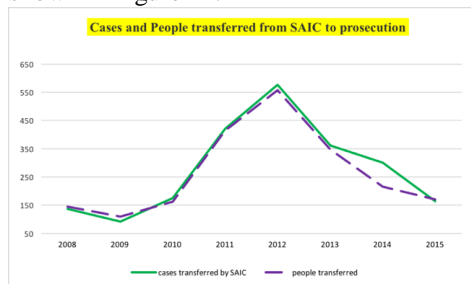


Figure 12 Cases and people transferred from SAIC to criminal prosecution

Cases and people transferred have been increased greatly before 2012 and reached its peak of 576 cases and 557 people in that year, and then started to decrease sharply. Thinking back to the Destroyed marks and products in counterfeit, it did not change greatly but remained stable. And also think back to the Fines imposed by SAIC on counterfeit, it remained stable as well. When we further examined the means as shown in figure 13, it finds out that during the years with increasing transferred cases and people, the mean of cases being transferred has been increased from 135 to 353, and people being transferred has been increased from 139 to 341,

which are 2.7 times and 2.5 times respectively.

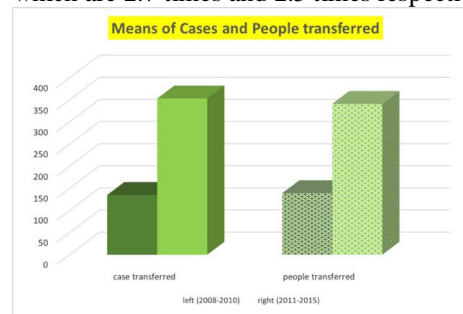


Figure 13 Means of cases and people being transferred

The analysis on Enforcement of SAIC suggests that looks from the perspective of Fines imposed by SAIC, Fines on Infringement has an obvious increase while Counterfeit remains stable. Looking from the perspective of Destroyed items, Infringing items appear to keep decreasing while Counterfeit has experienced an increase after 2013. However, criminal transfer is occurring much more than before. The conclusion made by previous authors that “SAIC enforcement on counterfeit is not strict enough” is unpersuasive since it ignored the facts in criminal transfer, and that Destroyed items actually does not tell much about the Enforcement story. A discussion on Enforcement without concerning the Seriousness is like a tall building without foundation.

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