

**Challenges and Opportunities for U.S. Business in the Digital Age**  
**Senate Finance Committee**  
**June 15, 2016**

**I. Introduction**

Chairman Hatch, Ranking Member Wyden, and distinguished members of the Senate Finance Committee, thank you for the opportunity to testify on the important subject of challenges and opportunities facing U.S. businesses in the digital age.

My name is Tom Triggs and I am the Chief Legal Officer and General Counsel of Belkin International, Inc. I lead an international team of attorneys that assists the company in growing, developing, and protecting all aspects of Belkin's business.

As the esteemed Members are well aware, ecommerce presents tremendous opportunities for businesses both here in the United States and abroad. That much is obvious. We at Belkin celebrate the digital age. This is reflected by the praise we have received from a variety of publications for our innovative spirit, including recognition from *Fast Company* as one of the top 10 most innovative "Internet of Things" (IoT) companies in the world.

The digital economy has contributed to Belkin's growth from its humble beginnings in a Southern California garage in 1983, while also creating significant challenges for the operation of our businesses. I would like to speak to you today about certain of those challenges, in particular, the increasing complexity of international brand management, the proliferation abroad of counterfeit products and the ease with which such products are purchased and sold online.

**II. About Belkin**

**i. Belkin's Businesses**

At Belkin, we create products that help people realize the power of technology and make their lives better, easier and more fulfilling. This has been Belkin's mission since 1983 when our Founder and CEO, Chet Pipkin, created the company in his parents' garage in Hawthorne, California. Even back then, Chet's passion was driven by a desire to satisfy customers' needs. He manufactured computer cable assemblies in the evenings and on weekends, and sold them to local computer manufacturers and dealers in response to the burgeoning personal computer market in the 1980's.

We remain true to our Southern California origins, and today we are based in Playa Vista, in the heart of Silicon Beach, the Los Angeles tech center. We have grown significantly since our roots in Chet's parents' garage. We currently employ over 1,200 employees in 22 countries throughout the world, over 700 of whom are based here in the United States. While we are at our core an American company, we are global in reach and outlook.

Belkin owns three core brands: Belkin, Linksys and WeMo, each a premium consumer electronics brand. Belkin delivers mobile and computer accessories, known for their quality, reliability, simplicity and ease of use. Linksys delivers consumer networking products, and helped make wireless connectivity mainstream around the globe, delivering top-ranked consumer Wi-Fi routers and connectivity devices. Our newest brand, WeMo, is taking on the Internet of Things, delivering market-leading customizable smart home experiences that empower people to monitor, measure and manage their electronics, appliances and lighting at home and on-the-go.

Belkin has recently embarked on an ambitious joint venture called “Phyn” with our new Finnish partner Uponor, a leading supplier worldwide of plumbing for residential and commercial spaces. Phyn’s mission is to utilize Belkin’s technology-leading intellectual property to provide an intelligent water solution that protects families and their homes from leak damage, enables mindful conservation of water within the home, and enhances household water usage with automated and anticipatory controls.

## **ii. Belkin’s Product and Brand Development**

At Belkin, we believe we enjoy success because we are an advocate for the consumer in every facet of our business. Our brand purpose is built on the belief that the sole reason technology exists in the world is to make people’s lives better, easier and more fulfilling. We realize this purpose by making it our mission to understand what people wish technology would do, what drives them crazy about technology, and what they never even dreamed technology could do. We simplify, streamline, enhance, and beautify to make technology work effectively, effortlessly, harmoniously and efficiently.

Belkin is about peace of mind. Product quality is essential to this. Our products are thoughtfully designed to be highly desirable, delightful to use, and a pleasure to live with. We seek to lead the standard for design quality in the consumer electronics industry.

For over 30 years, Belkin has invested billions of dollars in developing and manufacturing products that provide the highest quality experience for our consumers. Our cross-functional teams work together to ensure that our products work seamlessly, are safe and reliable, and look good. This commitment to quality is the reason our products are found at major retail stores that U.S. customers know and trust, such as Best Buy, Walmart, Target and Apple stores.

Our products are recognized both by industry experts and consumers for their excellence, and the substantial investment we make in delivering the best experience possible to our consumers is reflected in the numerous awards we have won, particularly for our innovative product designs.

In addition to the resources that we devote to product development, Belkin also spends tens of millions of dollars each year developing our brands. These brands communicate who

we are, and our values, to consumers. When consumers see a Belkin product, or a Linksys product, or a WeMo product, they know that it is a product they can trust, and one that carries a rich heritage of commitment to quality and excellence.

### **III. Brand Management in an International Digital Market**

#### **i. The Digital Revolution**

When Belkin was formed in 1983, the Internet and the transformative role that it would play in global commerce was unknown and unknowable. Our products were originally sold, like all other consumer products at the time, in brick and mortar retail stores, and developing brand awareness was dependent upon gaining shelf space in those retail stores.

Today, according to a UPS report released last week, online orders now surpass in-store purchases, with 51% of shoppers' purchases, excluding groceries, made online within the three-month period prior to the report's publication. Also, those consumers who are not buying online are likely to be researching products online before making a purchase, whether to locate product specifications, read product reviews or simply find the best prices.

As the ecommerce market emerged and grew, so did our business, and the way we interacted with our consumers evolved in sync with these developments. We launched an online store in the United States, belkin.com, in 2000, and we currently operate online stores in the Americas, Europe, Asia, and Australia. Today virtually all of our retail store customers operate their own websites in addition to their physical stores. In fact, some of our largest customers are now exclusively online sellers, such as Amazon and Newegg. Our websites are an important tool for not only selling products to customers, but also for educating them about who we are, what products we offer and how to communicate with us.

#### **ii. New Challenges Presented by the Digital Age**

While the Internet has opened new markets and provided Belkin with global growth momentum, it has also brought challenges, one of the most significant being the unprecedented access to markets that online commerce has afforded counterfeiters.

The Internet has provided us all with a virtual storefront to the rest of the world. While Belkin built the foundations of its business by developing strong retail relationships, today anybody online, including criminals, can sell anything, anywhere. There are very low barriers to entry. Third parties who have not invested the money, time and resources that Belkin has in developing, designing, testing and manufacturing products and building strong, dependable brands, are now able to inexpensively manufacture inferior counterfeit copies of our products and sell them to unsuspecting consumers on the global market.

The sale of counterfeit products has now become a big business worldwide; as estimated by the International Chamber of Commerce ("ICC") in a 2012 report, the annual value

of counterfeit goods sold globally would exceed U.S.\$1.7 trillion by 2015, representing over 2% of the world's total economic output in 2012.<sup>1</sup>

The United States is the country that is hardest hit by the trade in fake goods. According to an April 2016 report by the Organization for Economic Co-operation and Development (“OECD”) and the European Union’s Intellectual Property Office, almost 20% (by total value) of the fake goods seized globally infringe intellectual property rights registered in the United States.<sup>2</sup> In 2015, U.S. Customs & Border Protection and Immigration & Customs Enforcement seized over 28,000 shipments of counterfeit goods valued at U.S.\$1.35 billion, of which 18% (by value) were consumer electronics products.<sup>3</sup> We ourselves have been notified of more than 100 seizures since 2013 of counterfeit Belkin products that third parties attempted to import into the United States; these are just the shipments that were identified to us, and we know that many more such shipments made it through despite the diligence of our customs enforcement agents.

There is a real and substantial cost associated with the sale of these fake products; the ICC has estimated the annual cost of lost tax revenue and additional welfare spending due to counterfeit goods at U.S.\$125 billion in the G20 countries alone.<sup>4</sup>

### **iii. Belkin’s Anti-Counterfeiting and Brand Management Program**

At Belkin, we are committed to protecting our consumers from these counterfeiters, thieves who profit from the creativity, good will and investment of others.

We have already invested many millions of dollars in legal and other fees, as well as valuable time and resources, in our unstinting efforts to protect our company and our consumers from counterfeit goods.

We have been systematically focused for years on the goal of eliminating counterfeits of our products, in order to maintain both the strong Belkin brand recognition and the trust of consumers, as well as to provide a safe and quality product experience to the end user. Counterfeiting is a problem that does not go away if ignored. It is not curbed with a single legal notice. Rather, it requires around the clock monitoring on a global basis and the application of consistent pressure to the relevant law enforcement authorities around the world. It is because we have this focus that we are a leader in the worldwide effort to rid the consumer electronics space of counterfeit products. Our extensive anti-counterfeiting and brand management program leverages the strong relationships that we have established with customs officials in

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<sup>1</sup> See: <http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/BASCAP-Research/Economic-impact/Global-Impacts-Study/>.

<sup>2</sup> See: <http://www.oecd.org/governance/risk/trade-in-counterfeit-and-pirated-goods-9789264252653-en.htm>.

<sup>3</sup> See: <https://www.cbp.gov/sites/default/files/assets/documents/2016-Apr/FY%202015%20IPR%20Stats%20Presentation.pdf>.

<sup>4</sup> See: <http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/BASCAP-Research/Economic-impact/Global-Impacts-Study/>.

the U.S. and around the world by proactively informing them of instances of counterfeiting and other illegal brand-dilutive activities that we track through our private resources.

Counterfeiting and other illegal brand-dilutive activities present in a myriad of different forms, and, as a result, require experts drawn from a variety of disciplines to combat effectively. To ensure that we protect our brand, we have established an internal business unit network to detect potential violations of our intellectual property rights (“IPR”), and to investigate, identify, report, and enforce our rights with respect to, actual violations. This business unit network is comprised of subject matter experts in a broad range of fields, including legal, NetNames, testing (to determine whether a product is counterfeit), reporting (of the suspected items to the appropriate authorities), and customs. Our coverage is global in nature and collected (using SharePoint software) in a single in-house repository of information.

We constantly monitor the Internet, no small task indeed, for potential instances of counterfeiting or other illegal brand-dilution activities. We compile a monthly report listing instances of detected infringement, ranging from brazen counterfeiting to brand abuse. Oftentimes, in the case of U.S.-based online marketplaces operating both in the U.S. and abroad, when we identify a counterfeit product online, we are able to have that product removed relatively quickly from the subject marketplace. Counterfeit sellers, unfortunately, know how to manipulate the safety measures that many of the marketplaces have established. They do this in a variety of different ways. They may occasionally feature neither quantity nor pricing information, instead advising the buyer to contact the seller directly to discuss options. In some instances, where listings have been successfully closed, the seller may simply re-list the auction and attempt to sell the infringing item again, necessitating multiple actions to close the case successfully.

You might be wondering how we are able to identify a potentially infringing product. The answer is through a multifactor process. During the initial stage, we look for the following indicia of counterfeit packaging, among others:

- (1) Shipments of Belkin-branded products sent directly from Asia are almost always counterfeit, as Belkin does not ship from resellers in Asia to any other market;
- (2) The existence of spelling mistakes on the rear of a package;
- (3) The security sticker being clear;
- (4) Location of advertising, e.g., in the case of an iPhone model, on the front of the product;
- (5) The language and scope of warranties; and/or
- (6) The product being sold purportedly under the Belkin brand is simply one that we do not make (internally, we refer to these as “ghost” products).

In an effort to educate the public and minimize consumer confusion, we have included a page on our website with information to help consumers identify fake products and report potential incidents.

Overall, we are an efficient and effective team. This year alone, we have already taken down 5,738 online listings of counterfeit Belkin products in Europe and the U.S.

When we have evidence of extensive counterfeiting activity by a seller abroad, we go in country, engage in private investigations, and then reach out to the relevant law enforcement authorities.

As a result of our constant vigilance, Belkin has filed complaints and injunctions in more than 22 countries against entities that violate its intellectual property rights, all in an effort to thwart the sale of unlawful and potentially dangerous products. Counterfeit electronics affect much more than our bottom line. These cheap, knock-off products also harm the business of legitimate retailers and can even pose a safety risk to end consumers. Our ultimate goal is to rid the market entirely of these counterfeit items so that only authentic Belkin-branded products that provide a quality and safe experience for our consumers are available under our name.

Working with U.S. Customs and Border Protection and foreign agencies, we have seen some success in removing counterfeit products from the market. Below are a couple of salient examples of our work to detect and remove these products. Unfortunately, we know that there are many more we won't discover or won't be able to get off the market.

In December 2014, after months of investigation, undercover surveillance, planning and coordinated effort, Belkin's Supply Chain Team in Hong Kong and Shenzhen, SinoFaith (an IPR group that specializes in this type of operation) and the law enforcement agencies in Shenzhen, Dongguan and Guangzhou conducted concurrent raids on 11 counterfeit manufacturing or selling sites in Southern China. Belkin and the China State Administration for Industry and Commerce seized more than one million counterfeit Belkin goods in this effort, leading to jail time for six individuals. The company would not have been able to see this operation through without the cooperation of both the U.S. and Chinese governments.

Our most recent success story occurred earlier this year when, in coordination with the Department of Economic Development (DED) of Dubai, we oversaw a series of raids across Dubai. In this sting, authorities raided 22 separate stores located in four main Dubai marketplaces and confiscated more than 1,400 counterfeit Belkin-branded products. The counterfeit Belkin products confiscated during the raids included smartphone accessories such as cases, cables, and chargers for both car and home. In Dubai, these resellers, including Dragon Mart and E-City Shop, caught with counterfeit goods are subject to confiscation of merchandise and a fine of 15,000 AED.

While we are able to point to a few success stories today, the reality is that we meet with far more obstacles than success stories when it comes to fighting those who seek to profit from the strength of our brand and its association with consumer safety. Our global fight against the counterfeit brand "Melkin" is one such example of the continued frustrations that we face. We currently have suits pending in China, Hong Kong, and the U.S., as well as over 20 trademark

oppositions around the world, relating to these infringing products manufactured by a China-based company.

These products are branded with the express purpose of confusing consumers into thinking that in purchasing these products they are purchasing Belkin products. This company, and the individuals and entities behind it, are benefiting unfairly from the Belkin name and reputation while causing significant harm to our business. The infringing products are sold to the same customers through the same channels of trade at a price slightly lower than that of the genuine Belkin products.

In June 2015, we were granted an injunction from the courts in Hong Kong to block Melkin-branded products from entering Hong Kong, which included an order to remove such products from the Global Sources trade fair in Hong Kong.

On November 13, 2015, Belkin filed a complaint under section 337 of the Tariff Act of 1930 with the U.S. International Trade Commission (“USITC”) against Dongguan Pinte Electronic Co., Ltd. and Dongguan Shijie Fresh Electronic Products Factory (the entities behind Melkin). The complaint details the infringement of Belkin’s federally registered trademarks resulting from these companies’ unlawful importation into the United States, sale for importation into the United States and/or sale within the United States after importation, of certain computer cables, chargers, adapters, peripheral devices and packaging under the brand name “Melkin”. We are seeking in this action an Exclusion Order that would bar from entry into the United States such infringing products, and also a cease and desist order to bar sales of such infringing products that have already been imported into the United States. In December 2015, the USITC agreed to open the complaint for an official review, which is now underway. We expect to prevail in this action, but at a cost of several hundreds of thousands of dollars.

#### **IV. Belkin’s Experience as a Microcosm of the Problems Facing U.S. Businesses in the International Digital Marketplace**

Of course, Belkin’s experiences with the explosion in counterfeit goods in the international digital marketplace are not unique. As government and industry witnesses have previously observed before both this and other Congressional committees, the availability of cheap manufacturing around the globe makes it easy for counterfeiters to produce packaging that is almost identical to that of the brand owners. However, in our case, and that of many other quality American manufacturers and distributors, the product inside is nothing close to the quality product that we deliver to our consumers. It has not passed through the rigorous safety certifications, testing, or protocols that we are required to satisfy to market our products. Consumers simply cannot know this from looking at the package or the product, for counterfeiters even have the audacity to include counterfeit safety certification marks on the packaging. The result is consumer frustration, Belkin brand damage, and, occasionally, harm to consumers. This story is the same regardless of whether you are talking about consumer electronics, clothing, medicine or a wide range of other industries impacted by this worldwide problem.

Ecommerce presents tremendous opportunities and risks for consumer electronics firms like Belkin. On the one hand, a powerful platform for reaching vast numbers (billions, in fact) of new customers, both at home and abroad, has been created. But this same platform also presents a new, almost universally accessible, channel for counterfeiters to sell fake products through, hurting brand owners like us and in some cases endangering consumer safety.

No place illustrates both the relevant opportunities and risks on the same scale as China. China reportedly has over 700 million Internet users, and last year recorded U.S.\$672 billion in ecommerce sales from approximately 380 million Chinese consumers shopping online<sup>5</sup>. And by 2020, China's ecommerce market is expected to reach U.S.\$1.1 trillion. But that market is also plagued by rampant sales of online fakes. The above-referenced OECD study from April 2016 also found that nearly all of the counterfeit goods captured by customs offices around the world came from China.

China has in place a recently revised Trademark Law that provides some new enforcement tools, and we have recently seen improvement in effective enforcement from Chinese agencies like AIC that we work with. We also spend significant time with large Chinese ecommerce companies, and I personally have traveled twice to Alibaba's campus in Hangzhou, China, to identify and take down criminals using Alibaba's platforms to sell counterfeit Belkin products in huge volumes. Alibaba has told me repeatedly that they want their ecommerce sites and brands to meet the highest standards of integrity and support for U.S. businesses.

But our efforts are not as effective in China as they are, say, here at home. China's comparatively weak rule of law in general, and an IPR protection regime that still has a long way to go, both on paper and in practice, before it even approaches international best practices, pose big barriers for U.S. companies seeking effective solutions to these problems. Simply put, IPR enforcement is less developed, and less predictable, in China than it is in the West.

On that front, I want to point out that the former chairman of this Committee, Ambassador Max Baucus, is doing a great job to help U.S. companies in this fight. I have met with him, and his team of State and USPTO officers, numerous times, and I can tell you directly that our Mission in China is working vigorously with the Chinese government to strengthen its IPR regime, and is also calling on Chinese ecommerce platforms to live up to their "no tolerance" rhetoric.

There is no cut and dried answer to what Congress or any other legislative or regulatory body across the globe can do to eliminate or substantially reduce the online sale of counterfeit goods. Hearings like these are an important step, and certainly helpful in highlighting the nature and scope of the problem so that our legislators have the "facts on the ground" needed to craft the appropriate remedial legislation. However, beyond that, it becomes much more murky, as

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<sup>5</sup> See: <http://beijing.usembassy-china.org.cn/2016ir2/ambassador-baucuss-remarks-on-iacc-conference.html><<http://redirect.state.sbu/?url=http://beijing.usembassy-china.org.cn/2016ir2/ambassador-baucuss-remarks-on-iacc-conference.html>>



one approaches the intergovernmental/diplomatic side of the equation. Belkin appreciates the efforts of the U.S. government to work within the current system. We also appreciate its efforts to raise the IPR bar internationally and especially in the Asia-Pacific region. The high IPR standards embodied in the Trans-Pacific-Partnership (TPP) would be particularly conducive to our efforts in the Asia-Pacific region, clearly with TPP members, but also, we would hope, with non-members like China.

## **V. Conclusion**

Chairman Hatch, Ranking Member Wyden, and distinguished members of the Committee, I want to thank you again for the opportunity to testify before you today. If I were to leave you with one last thought, it would be that the business of counterfeiting is big business in other countries, and one which many such countries make (both on paper and in practice) hard to shut down, if not actively encourage. The branded intellectual properties of American businesses are not only critical to the success of those businesses but to the success of our American economy as a whole, and, I would posit here, of the still expanding global digital economy in which we all participate. We must ensure that our representatives abroad actively monitor any activity in foreign jurisdictions that may unfairly dilute the value of our American brands. We love the digital marketplace, as we support all channels of commerce, and appreciate that we, like other businesses, must evolve with the evolution of such marketplaces. We believe in the value of global eCommerce and its importance to Belkin and American job growth. Like all of our peer-group companies, we are simply advocating for level playing fields across all of those marketplaces, and believe that, with fair competition, we and other American companies will succeed in that competition by working harder and with more innovation than our competitors abroad. We therefore need enhanced and predictable IPR standards and laws, and corresponding enforcement mentality, across the globe, especially in the Asia-Pacific region.

Belkin will continue to enjoy the opportunities and challenges that U.S. businesses face in the digital age. And we will continue to work with appropriate authorities around the globe to enforce our intellectual property rights to shut down the sellers of counterfeit Belkin products. We as a company are firmly committed to fighting those who seek to damage our brand, undermine our valued customer relationships and flood the market with inferior and potentially dangerous products. We hope this information will be contributory to, and helpful in, the decision-making ahead of you that will impact all of us.