



Statement of the National Electrical Manufacturers Association

U.S. Ambassador's Roundtable on Intellectual Property Rights in China
Grand Hyatt Hotel, Beijing
January 13, 2005

The National Electrical Manufacturers Association (NEMA), headquartered in Rosslyn, Virginia, USA, is the largest trade association representing the interests of U.S. electrical industry manufacturers, whose worldwide annual sales of electrical products exceed \$120 billion. Its mission is to improve the competitiveness of member companies by providing high quality services that impact positively on standards, government regulation and market economics. Our more than 400 member companies manufacture products used in the generation, transmission, distribution, control, and use of electricity. These products, by and large unregulated, are used in utility, industrial, commercial, institutional and residential installations. The Association's Medical Products Division represents manufacturers of medical diagnostic imaging equipment including MRI, CT, x-ray, ultrasound and nuclear products. NEMA has offices in Mexico City and Sao Paulo, as well as our new office in Beijing.

As we indicated during our presentation at the last of these roundtables in November 2003, the U.S. electrical industry continues to have fundamental, ongoing concerns about Intellectual Property protections in the People's Republic. While we recognize that the national government in Beijing has made moves to address the counterfeiting problem, NEMA member companies are still all too often victimized by repeated, vast trademark infringement and piracy. The evidence of counterfeit electrical products in the marketplaces around the world, most of which originates in China, demonstrates that despite the initiatives of the Chinese government, China has still not achieved a level of deterrence through public policy and law enforcement.

For the past three years, NEMA has been asked by several NEMA members and Underwriters Laboratories to assist them in their efforts to understand and combat the spread of counterfeit electrical products in the global markets in which they compete. We have identified a number of products within NEMA's scope, such as the following, where either the trademark of the manufacturer or the certification mark of a product certification organization has been misappropriated -- and most of this counterfeit product has been manufactured in China:

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- Dry cell batteries
- Smoke detectors
- Circuit Breakers
- Control relays
- Lighting systems components
- Fuses
- GFCI receptacles
- Receptacles
- Lamps
- Wire and cable
- Electrical Connectors

There is the obvious economic loss associated with counterfeiting, but in the case of counterfeit electrical products this is not a victimless crime because of the threat to the health and safety of persons who use or benefit from electrical products. Circuit breakers have been found in the Middle East that are nothing more than a good looking switch providing no electrical protection whatsoever. Fires were reported in Cairo, Egypt in 2004 caused by counterfeit circuit breakers failing to protect. In the United States, manufacturers of dry cell batteries have removed mercury from their products as is now required by law, but counterfeit batteries have been found that contain mercury. In England, counterfeit control relays have been found with defective contacts that caused a machine to malfunction creating a dangerous situation. Similarly, counterfeit fuses have been found and testing of the fuse product confirmed that it would not act as a protective device and under certain circumstances would explode. Counterfeit wire and cable has been found that contains substandard gauge wiring and materials in the jackets and insulation increasing the risk of a safety hazard. Substantial numbers of counterfeit wiring device products bearing NEMA member trademarks have been found in South American and Latin American markets.

NEMA members are not only concerned about the damage to their brand reputation when their marks are misappropriated, but they are also concerned about counterfeit certification marks, such as the well-known marks of Underwriters Laboratories, the Canadian Standards Association, and other international marks used to indicate conformity to product safety and other standards. NEMA members make a substantial investment in research and development and product design to meet or exceed these safety standards. When counterfeiters use these certification marks without authority and their products do not comply with the standard, the counterfeiters do not make the same level of investment and they are not on the same competitive playing field as those who do comply. Consumers are deceived and consumers can be injured.

Our members inform us that China has not been standing still in addressing the problem of counterfeit goods. They are aware that at the top of the Chinese government, the national policy is hostile to counterfeiting and that counterfeiting is against the interests of Chinese brands and patented technology. They are aware that in some parts of China, authorities have been active in raids that have seized increasing quantities of counterfeit product. Yet deterrence remains elusive. Indeed, the amount of counterfeit product *in the global marketplace* coming from China appears to be growing, not shrinking.

Current legal institutions in China do not adequately recognize and deal with counterfeiting as a crime. The Chinese government needs to persuade its citizens to recognize that counterfeiting is a crime: effective communication to its people; the imposition of serious criminal penalties for counterfeiting that will lead to deterrence; adjustment of legal rules that make criminal prosecutions easier to pursue; criminal prosecutions of all those engaged in the manufacture or distribution of counterfeit products --- so that the Chinese people understand the law is applied evenly, regardless of one's standing in China's business and political community.

The export of counterfeit product from China to the rest of the world is a growing problem for NEMA members. Our members have seen communications from Chinese traders to distributors in Latin America advertising their ability to provide counterfeit product, and to meet them at trade fairs in China to see what they can sell. On the civil enforcement side, Chinese Customs should set increasing annual goals for inspections and seizures of counterfeit export products before they leave China and to publicize those efforts. If it is recognized that counterfeit products have a more difficult time leaving China, the greater will be the prospect of additional deterrence. Further deterrence can be achieved if the machinery of the counterfeiters is destroyed right alongside the product of the counterfeiters.

NEMA recognizes that a cultural revolution in China about counterfeit products is a challenge for diplomacy. In its discussions with China, the United States should continue to make clear that counterfeiting is a serious crime. It is a component of international crime organizations' activities, and it is not a victimless crime as we have tried to show in the case of counterfeit electrical products. The United States should be pressing China to show in the coming years that counterfeiting is more widely recognized in China as a crime and that it will be treated as a serious crime so that a much higher level of deterrence is achieved.

Thank you for your consideration of these remarks.