



Testimony of

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On behalf of the
Motor & Equipment Manufacturers Association

Before the
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Committee on Small Business

**“The Impact of Intellectual Property
on Entrepreneurship and Job Creation”**

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The Motor & Equipment Manufacturers Association (MEMA) represents over 600 companies that manufacture motor vehicle parts for use in the light vehicle and heavy duty original equipment and aftermarket industries. Motor vehicle parts suppliers are the nation's largest manufacturing sector, directly employing over 685,000 U.S. workers and contributing to over 3.2 million jobs across the country. The motor vehicle parts supplier industry is a leader in developing technologies critical to making today's vehicles safer and more fuel efficient and is investing in product development to help meet future consumer demand. Suppliers also manufacture the aftermarket products necessary to repair and maintain over 247 million cars and trucks on the road today.

Collectively, U.S. motor vehicle parts suppliers are a \$388 billion industry, comprising three distinct segments: original equipment, heavy duty, and aftermarket parts manufacturers. MEMA's Brand Protection Council leads industry efforts on brand protection and intellectual property issues.

Intellectual property and strong IP protections are critical to the success of motor vehicle parts manufacturers who continually innovate and develop new technologies. Suppliers are responsible for two-thirds of the value of today's vehicles, for nearly 30 percent of the total \$16.6 billion automotive research and development investment and provide much of the intellectual capital required for the design, testing and engineering of new parts and systems.

MEMA is represented in this hearing by ABRO Industries, Inc., a small aftermarket supplier headquartered in South Bend, Indiana. If you have never heard of ABRO Industries before, do not feel bad – virtually no Americans have. That is because ABRO operates in a manner once common in America, but which is now almost unheard of. ABRO has a variety of automotive, hardware and basic consumer goods such as radiator fluid, glues and tape manufactured in America under the ABRO® brand name. ABRO then sells those items exclusively overseas, mostly in developing nations. ABRO does not sell any items in the U.S.

ABRO is able to compete against cheaper foreign competitors for two reasons. The first is that the label "Made in America" has great value in developing nations when it comes to non-electronic consumer goods. The rest of the world has faith in the quality of ABRO's products. Secondly, ABRO has spent decades building its brand name into a reliable identifier of high-quality goods. In fact, ABRO is so popular that in some countries, it has entered the language. For example, in Pakistan masking tape is known as "ABRO tape" (similar to how, in the U.S., invisible tape is known as "Scotch tape").

Because of this, ABRO greatly values its name. Matching ABRO's global product distribution is its global trademark coverage. The name ABRO is registered in multiple categories in over 160 countries. This is necessary because ABRO faces counterfeiters around

the world. To protect the name, ABRO has a very aggressive anti-counterfeiting program and has fought counterfeiters on 6 continents.

The safety and economic implications of counterfeit auto parts will be the focus of today's testimony. Comments will outline the global counterfeit challenges facing the motor vehicle parts industry, give you an idea of the particular counterfeit issues faced by ABRO Industries and then offer some ideas, legislative and otherwise, that would help combat the intellectual property piracy that faces ABRO and other parts manufacturers.

A. Economic Impacts

The magnitude of global counterfeiting is significant. In 2008, an OECD report estimated that industry losses due to counterfeiting and piracy of trademarks, copyrights, patents and design rights were \$250 billion. This does not even begin to estimate the value of pirated non-physical goods. In April 2010, the Government Accountability Office reported that counterfeiting and piracy are "expanding" and "a sizeable problem, which affects firms' incentives to innovate."

Pirated luxury goods as well as movies and music are often the first things that come to mind for many people when they think about IP infringement. In many cases, consumers are seeking bargains and are aware that they are purchasing counterfeit or pirated goods. However, international intellectual property protection is about much more than the entertainment or luxury industries of the East and West coasts, though both will always be an important component of the battle. Intellectual property protection is also about the safety of a wide variety of consumer products developed and manufactured all across this country such as pharmaceuticals and motor vehicle parts. IP protection is critical to the health and safety of American families as well as the economic health of these industries and the communities that support them.

Counterfeit parts and components for cars, trucks, buses and commercial vehicles pose a critical problem to the American economy and the supplier industry because of the wide range of counterfeit products manufactured and trafficked worldwide. In the past, MEMA has estimated that counterfeit goods cost motor vehicle suppliers at least \$3 billion in the United States and \$12 billion globally in lost sales. Please note that the industry believes these numbers are conservative. In fact, Frost and Sullivan estimated in 2006 that the global losses to motor vehicle suppliers due to counterfeiting would be as high as \$45 billion in 2011.

While the media tends to focus on the intellectual property struggles of major multinational corporations, IP is an extremely critical issue for small businesses like ABRO, which has only 24 employees, because a single act can destroy a small business. A giant corporation can recover from a hit to its reputation. They have the money to hire top PR firms and to spend whatever is

necessary in terms of advertising in order to repair any damage to their name. A small company, however, does not have this ability. If counterfeiters have managed to undermine their brand name by selling low-quality and/or defective products under that name – they can easily be permanently damaged or even destroyed.

Small companies usually only have one or two pieces of key intellectual property. In ABRO's case, that key piece of IP is the brand name. Other companies may be built entirely on a single patent or copyright. A giant corporation can offset damage to one trademark, patent or copyright with the profits from a thousand others that they own – a small company usually has all its intellectual property eggs in a single basket.

While a major corporation sees intellectual property protection in terms of maximizing profits, for small businesses it is a matter of survival. Either the ABRO name stands as a guarantor of quality or the company goes out of business. There is no fall-back position, no second chances, no Plan B.

It is common to blame all counterfeiting on China. This, of course, is not the case. While the motor vehicle parts manufacturing industry faces problems with counterfeits made in China, it also face problems with counterfeits made in India and Russia and other countries. It is true that most counterfeits do appear to be made in China, but this is more a result of the fact that many legitimate products are also made in China. The counterfeiters have grown along with the manufacturing capabilities in general in China, and it is unfair to blame counterfeits originating from that country as the result of some cultural proclivity – as some commentators have done in the past.

Rather, ABRO has been pleased overall with the efforts of the Chinese government in fighting counterfeiters within their borders. In just this last year, Chinese authorities have raided over 20 major sources for counterfeit ABRO merchandise in China. Over two dozen shipments of counterfeit merchandise have been seized and destroyed by Chinese customs authorities on ABRO's behalf. Finally, ABRO also has seen the conviction for three years on counterfeiting charges of a counterfeiter who embodied the type of villain that companies felt they couldn't touch under the old system – a well-connected and wealthy regional figure.

Since China joined the World Trade Organization in 2001, the government has upgraded intellectual property protections to world standards. In addition, the motor vehicle supplier industry is seeing evidence that enforcement is improving in China. China experienced a history changing shift in the 1990s, and went from a developing nation to a growing economic powerhouse in the space of just one decade. Not surprisingly, many counterfeiters found a weakness to exploit in this delay between the growth of manufacturing ability and the rise of the legal and enforcement regime necessary to enforce international intellectual property rights.

What companies and the people that established their prejudices regarding China in the 1990s are slow to recognize and credit is that just as China has made dramatic leaps in manufacturing ability in the 1990s, it has made equally dramatic leaps in IP enforcement in this decade. The Chinese system isn't perfect, but it also isn't what it once was. The Chinese authorities deserve significant credit for the dramatic modernization of their enforcement system that they have managed to pull off.

B. Health and Safety Impacts of Counterfeit Motor Vehicle Parts

There is a wide range of counterfeit parts and components for cars, light trucks, buses and commercial vehicles that are manufactured and distributed globally. Many counterfeit products, especially in the automotive parts industry, go undetected and are purchased unintentionally. Because trademark and brand infringement are so convincing, many times consumers or installers of these components may not be able to recognize or distinguish the genuine part from the counterfeit part. In many instances, the part manufacturer becomes aware of counterfeit products when responding to warranty claims of a failed product.

Counterfeit motor vehicle parts may fail to meet U.S. Federal Motor Vehicle Safety Standards (FMVSS) or other industry-accepted safety standards; likewise, these parts may be produced with dangerous, inferior materials and have a shorter-than-average service life. Thus, the use of these counterfeit vehicle parts – such as brakes, brake pads, brake fluid, tires, belts, and automotive lighting which look identical to genuine, brand name parts – may result in sudden, catastrophic engine failure, brake failure, or other system malfunction, endangering the car or heavy duty truck driver operating the vehicle and all motorists traveling the same roads with these vehicles.

Trademark or brand infringement is the most immediate problem faced by many motor vehicle suppliers. It is the most direct and easiest method for pirates to get their counterfeit goods into the market. Stolen trademarks give instant market credibility to pirated goods.

Another method used by pirates is to copy trade dress or the unique appearance of product packaging. Usually the pirates do not make perfect copies, instead making the packaging confusingly similar, to allow them to disingenuously claim that they are not infringing. The average consumer cannot always distinguish the two packages and erroneously concludes that the counterfeit package is also an authentic product. The pirate preys on the market recognition of the trade dress owner. Further, the infringed trademark owner may be faced with honoring warranty claims for pirate products or risk loss of customer confidence and loyalty. This is an added and unanticipated cost of doing business.

C. Other Industry Experience Regarding Counterfeit Parts

Counterfeit issues are wide-spread in the motor vehicle parts industry, including with two other MEMA members, Bendix Commercial Vehicle Systems, LLC, headquartered in Elyria, Ohio and the Gates Corporation, headquartered in Denver, Colorado.

Bendix manufactures active vehicle safety systems and braking systems for commercial vehicles which includes, but is not limited to, semi trucks, fire engines, ambulances, vocational vehicles and passenger buses. Due to the wide scope of products they design and manufacture, Bendix frequently encounters multiple counterfeit products – many of which are safety critical – not only for operation of the commercial vehicle on which these components are installed, but also for those who share the highways with these vehicles. Of particular note are two recent reported cases involving air dryers for buses. Air dryers are a critical component for vehicle braking systems. In the first situation, a school bus equipped with what was thought to be a replacement genuine Bendix air dryer was causing a loss of air pressure and erratic operation of the vehicle, placing the safety of the students riding the bus in jeopardy.

The second incident involved a transit bus driver traveling through the streets of a major southeastern U.S. city. While en-route, dropping off and picking up passengers, a sudden, loud sound reverberated through the inside of the bus. The sound originated from something that actually shot through the floor of the bus, ripping up the floorboard, damaging the body, and forcing the vehicle to come to a complete stop. Fortunately, neither the driver nor any passengers were injured. But extensive repairs were needed, and the bus required a tow from the road.

Maintenance technicians determined that a knockoff air dryer installed on the bus had malfunctioned, causing the part to tear through the vehicle floor and create the loud noise. An ineffective dryer design and construction caused the retaining ring that held the canister to split in the middle and fail. The failure propelled the canister off the dryer with enough force to drive it through the floor of a bus. The desiccant in the cartridge had broken down into powder and was injected throughout the braking system, contaminating the system and contributing to the potential for future failures of downstream parts. The dryer and cartridge – which had just been installed a few months before – was not a genuine Bendix product.

Gates is a major manufacturer of a range of belts used in motor vehicles. Gates has faced a number of cases worldwide of counterfeit belts. Timing belts allow the internal components of the engine to operate with proper timing; namely, the valves and pistons. A counterfeit timing belt may wear and fail prematurely causing serious cost, health, and safety ramifications for consumers. Gates has tested pirated timing belts and has found they have a significantly shorter life when compared to genuine product. Unexpected and premature failure of a timing belt would be highly problematic to a motorist since it would result in the destruction of the engine

for all practical purposes. Consequently, a broken timing belt could strand a motorist and cost several thousand dollars to repair the damaged engine.

D. Existing and Potential Solutions

MEMA supported and applauded the passage of the Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act in 2008. The PRO-IP Act strengthens the nation's trademark and copyright laws and increases domestic enforcement efforts to protect intellectual property. It provides new resources for the Federal Bureau of Investigation (FBI) and the Department of Justice (DOJ) for enforcement and prosecution efforts. It also creates the Intellectual Property Enforcement Coordinator (IPEC) within the Executive Office of the President tasked with coordinating the various federal agencies working to enforce our intellectual property laws.

Implementation of this legislation is critically important. The federal government has begun carrying out the requirements of this legislation. Funding has been provided for the FBI and DOJ to hire new Special Agents and new U.S. Attorneys solely focused on intellectual property crimes. Victoria Espinel has been appointed as IPEC and she recently released the Joint Strategic Plan required in PRO-IP.

The Joint Strategic Plan is the first ever plan with multi-agency support and input to include a roadmap on how to address the multi-billion dollar challenge of counterfeiting and piracy of American intellectual property. MEMA applauds the release of this plan, its focus on the robust enforcement of IP rights worldwide, and the goal of enhancing US advocacy on IP issues in multiple international forums. If the plan is fully implemented, our nation's ability to combat counterfeiting and piracy will be greatly improved. The goals included within the Strategic Plan are important, and to be met, additional resources will be necessary. To release the plan, the IPEC relied on detailees from other federal agencies and does not have any permanent staff. Congress should consider providing additional funding and resources for this office.

Our country must promote and defend a robust international system of IP laws and norms while strengthening cooperation with like-minded countries and key trading partners to promote shared IP protection. Customs reauthorization legislation, pending before the Senate Finance Committee, includes authorization for additional resources at Customs and Border Protection and Immigration and Customs Enforcement to enforce intellectual property laws at our borders. Additionally, the Administration is working to conclude an ambitious and comprehensive Anti-Counterfeiting Trade Agreement (ACTA) before the end of this year. Such an agreement should include robust provisions to confront IP theft worldwide. This will help protect American jobs, stimulate the economy, and encourage innovation. We firmly believe an agreement that includes

robust provisions to confront IP theft in both the physical and online environments will help protect American jobs and stimulate the economy. MEMA is supportive of both of these efforts.

A relatively inexpensive method that would help provide businesses with the tools they need to address counterfeiting overseas would be the expansion of the Intellectual Property Attaché position. Currently, less than a dozen U.S. Embassies have an IP Attaché on staff. These contacts have greatly assisted the industry in understanding the local anti-counterfeiting procedures, gaining access to key foreign government personnel and obtaining the necessary resources to fight counterfeiting in other nations. By putting one IP Attaché in each US Embassy we would greatly expand US businesses ability to respond to the production and sale of counterfeit goods overseas. Moreover, these attachés act as spokespeople to their assigned country for the importance of respecting intellectual property rights. Finally, they send a clear message to counterfeiters that the United States takes the IP rights of its citizens very seriously. Especially for smaller businesses with limited resources, IP Attachés greatly help to even the playing field between the legitimate rights holders and the counterfeiters.

E. Conclusion

Protecting intellectual property is of the utmost importance to companies like ABRO as well as MEMA. It has been a priority that has garnered support from the current Administration as well as both sides of the aisle here in Congress. All stakeholders must continue to work together to see that the existing laws are enforced, that IP protections overseas continue to improve and that the necessary resources are being utilized to safeguard the investment made by companies and individuals across all industries and sectors.

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