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COUNTERFEIT PHARMACEUTICALS: AN INTRODUCTION

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In February 2008, the *Wake Forest University Intellectual Property Law Journal* sponsored a symposium titled Counterfeit Pharmaceuticals.² The symposium brought together academics and practitioners to explore issues involving combating the supply of and controlling the demand for counterfeit pharmaceuticals and to recommend policy solutions to those issues. This symposium is particularly timely given recent issues concerning access to affordable pharmaceuticals, the use of internet pharmacies, and the tragic deaths of patients who used counterfeit drugs in developing countries as well as numerous reports of adulterated or fake drugs entering the United States and other developed countries. The contributions made in this symposium provide a productive step toward creating practical solutions to the complex issues involving counterfeit pharmaceuticals.

The symposium included a keynote presentation by Professor Bryan A. Liang, the Executive Director and Professor of Law at the Institute of Health Law Studies, California Western School of Law, and presentations by William K. Hubbard, the Former Senior Associate Commissioner for Policy, Planning, and Legislation of the Food and Drug Administration; Jake Wharton, an associate at Womble Carlyle; James Thomas, partner at Troutman Sanders and Former Vice President and Trademark Counsel for GlaxoSmithKline; and Professor Sandra L. Rierson, an Assistant Professor of Law and Director of the Center for Law, Technology and Communications at Thomas Jefferson School of Law. This symposium issue of the *Wake Forest University Intellectual Property Law Journal* is dedicated to addressing issues concerning counterfeit pharmaceuticals and includes papers by Professor Liang; Professor Robert C. Bird, an Assistant

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² The symposium website is at <http://ipjournal.law.wfu.edu/symposium>.

INTRODUCTION

Professor at the School of Business, Department of Marketing and Law, University of Connecticut; Professor Daniel Cahoy, an Associate Professor of Business Law at the Smeal College of Business, Pennsylvania State University; and Professor Rierson.

Professor Bryan A. Liang provides an extensive analysis of problems related to the access of authentic pharmaceuticals and the availability of pharmaceuticals at affordable prices in his article, *A Dose of Reality: Promoting Access to Pharmaceuticals*. Through this framework, Professor Liang identifies root causes for the counterfeit pharmaceutical crisis and proposes a legislative solution that attempts to address issues concerning the price of and access to authentic pharmaceuticals. The proposal includes a low cost/no cost drug program for certain patients along with the identification and registration of wholesalers. The proposal also provides for a ban of Internet pharmaceutical sales without proper accreditation, the prohibition of drug importation, a public and provider education program concerning pharmaceutical drugs, and increased criminal penalties for counterfeiters.

Professor Bird asserts that an examination of consumer demand for counterfeit pharmaceuticals has been under-analyzed in legal literature and examines marketing literature concerning consumer behavior and counterfeit pharmaceuticals in *Counterfeit Drugs: The Global Consumer Perspective*. Professor Bird proposes that pharmaceutical companies can use lessons from marketing literature to effectively tailor messages to consumers to direct them to purchase genuine pharmaceuticals instead of counterfeits, and thus reduce the demand for counterfeits.

Professor Daniel Cahoy, in *Addressing the North-South Divide in Pharmaceutical Counterfeiting*, analyzes the division between the developed and developing worlds and how differences between the two inform the creation of solutions to safety issues raised by counterfeit pharmaceuticals in developing countries. He proposes that policy makers provide positive and negative incentives for private industry to combat pharmaceutical counterfeiting in developing countries. Some of those incentives include tort liability for not using technology to stop counterfeiting, increased awareness of the counterfeiting of pharmaceuticals to create distrust in the minds of consumers leading to loss of market share and shame, and direct rewards for anti-counterfeiting initiatives such as subsidies.

Finally, *In Pharmaceutical Counterfeiting and the Puzzle of Remedies*, Professor Sandra L. Rierson examines the remedies provided for counterfeiting pharmaceuticals and other goods, and argues that the law both overpenalizes some types of counterfeiting and underpenalizes other forms of counterfeiting. She proposes that legal remedies for counterfeiting should take into account the amount of moral culpability and the actual harm resulting from counterfeiting, and should provide federal remedies not only to trademark holders, but also end-consumers.

Thank you to all of the participants, presenters, and contributors in the Counterfeit Pharmaceuticals symposium and this symposium issue of the *Wake Forest Intellectual Property Law Journal*.