

An abstract graphic on the left side of the slide, featuring a large, stylized 'V' shape. The 'V' is composed of various shades of blue and green, with a grey rectangular block partially overlapping it. The graphic has a layered, 3D effect.

International Trade Commission (ITC) Litigation

Andrew Pratt

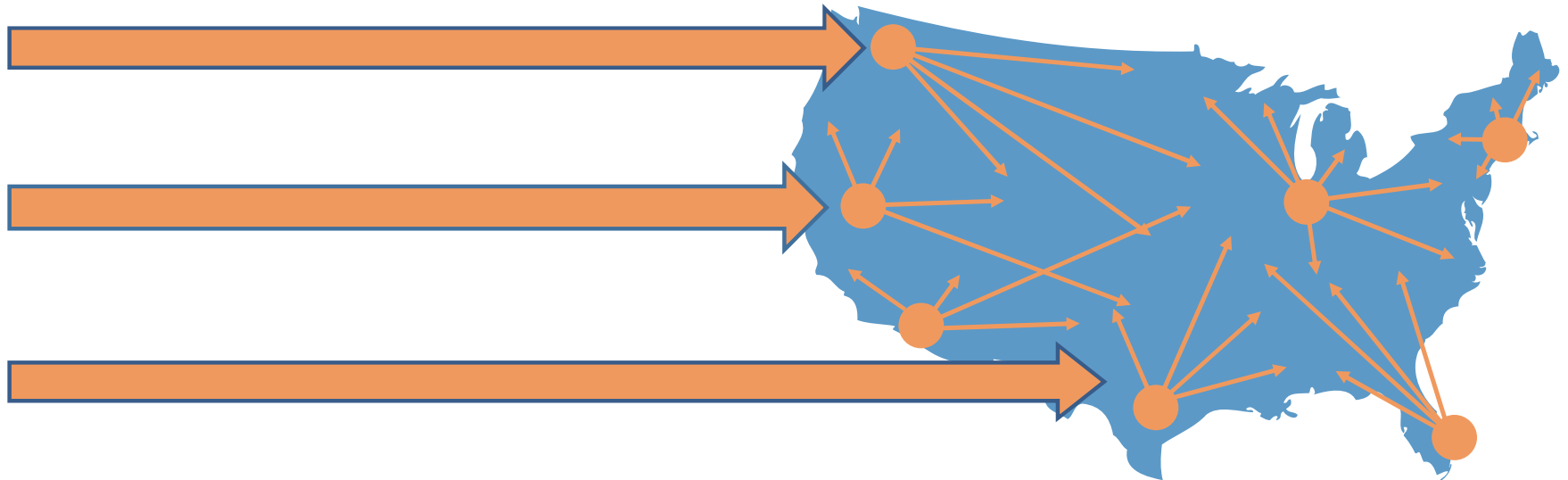
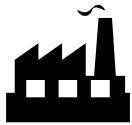
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Food and Drug Law Practice, Venable LLP

The Problem Faced by Many Companies Today

↑ Rapid
proliferation of
unfair imports

↓ Sales decline





Foreign Unfair Competition is Harmful, and Hard to Stop With Conventional Means



Foreign manufacturers harming brands with knock-offs sold into the United States



Difficulty identifying source of knock-offs due to opaque sales channels




Limitations of courts to reach the bad actors



Bad actors easily circumvent court orders through changing names and opaque sales channels



Quick Facts about the ITC



The ITC is a federal agency tasked with protecting domestic industries from foreign unfair competition



The unfair acts can be almost any legally cognizable claim, the most common being infringement of IP



ITC Exclusion Orders prevent imports of goods connected to unfair acts



ITC Cease-and-Desist Orders prevent sale and distribution of goods connected to unfair acts



District Court

Damages and
injunctive

Personal – minimum
contacts

Rule 4 – Hague
convention

Slow

Same transaction

Forum Features

Relief

Jurisdiction

Service

Speed

Joinder

ITC

Exclusion from U.S.
& cease-and desist

In rem

Via overnight mail

Fast

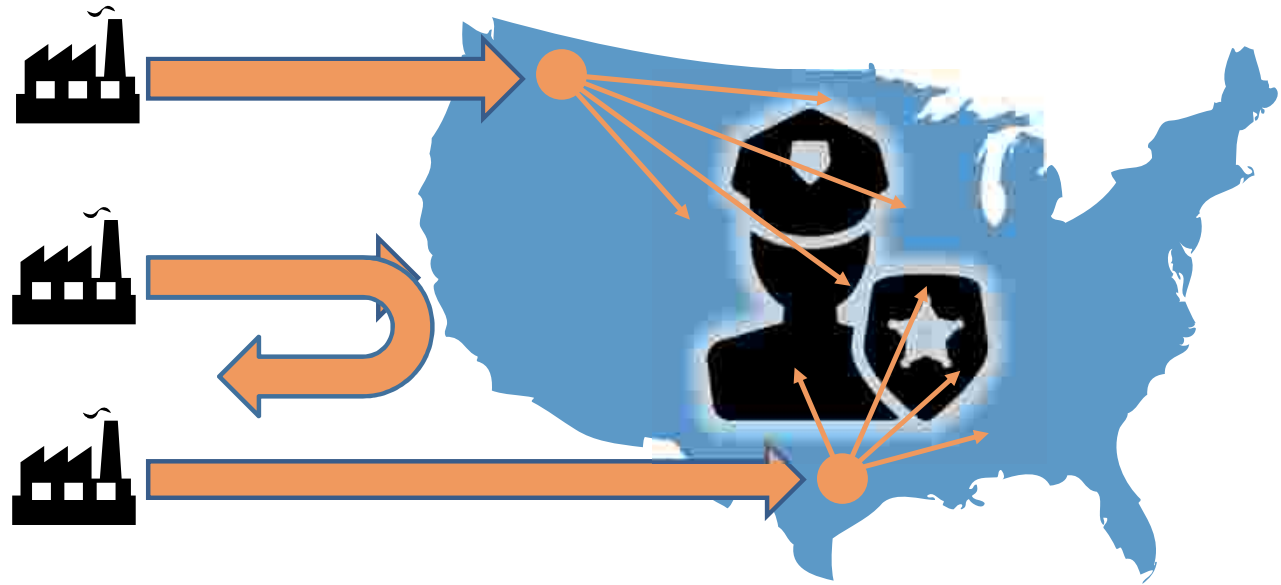
Unrelated parties

Relief Available from the ITC

Exclusion
Orders

ENFORCEMENT

Enforced parties can
import its foreign
products from the
ports



Relief Available from the ITC

Exclusion Orders

GENERAL

Excludes accused products **all** parties



Source of goods
Circumvention is
difficult to
likely
identify

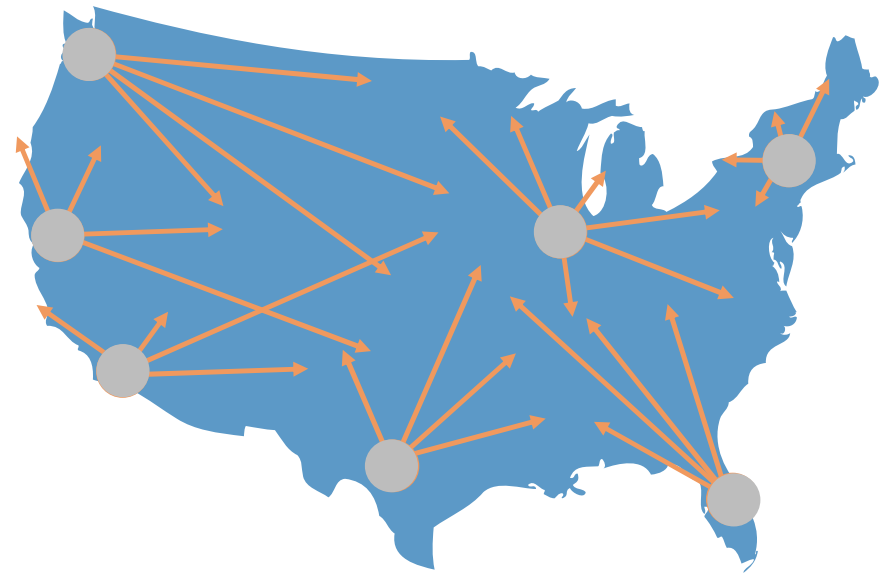


Relief Available from the ITC

Cease and Desist
Orders

INJUNCTION

Preventing or
injunction to
selling, transferring,
or marketing
any day
products, or
aiding and abetting
those activities



A Domestic Industry Is Required to Use the ITC

Investments and Activities that Comprise a Economic Domestic Industry



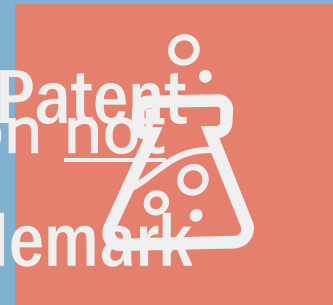
Domestic Industry for Statutory IP

Articles Must Practice the IP / Investments Must Relate to the Articles

Articles must practice the IP

- Domestic production not required
- But domestic investments must relate to the articles

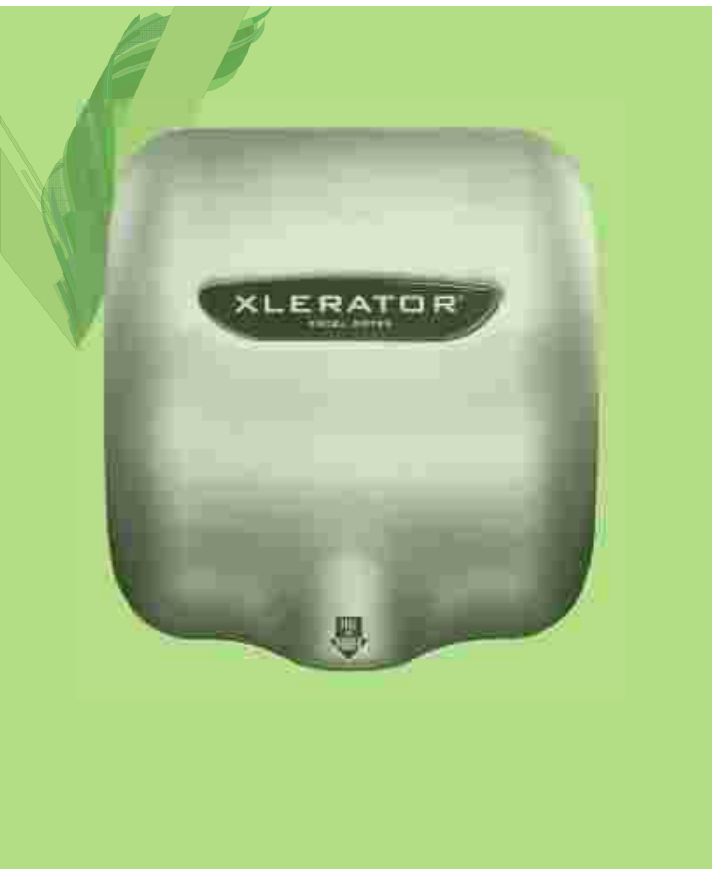
Patent
Trademark
Copyright



Injury & Threat of Injury to Domestic Industry

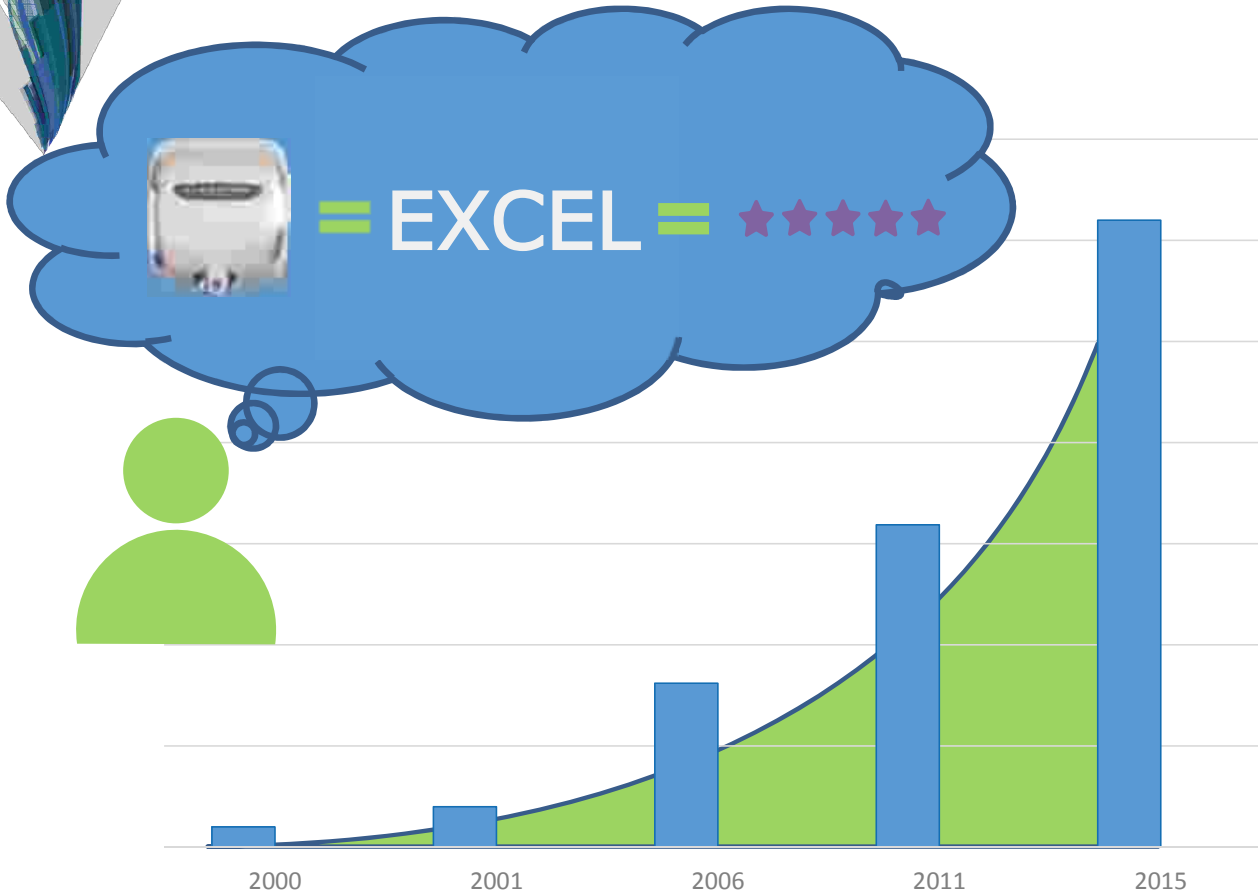
Applies Non-Statutory IP and Other Unfair Acts





Case Study: Leveraging Trade Dress to Battle Knock-Offs in the ITC

Excel's strong brand drove growth year over year



Sustained growth over 15 years



Brand identity strengthened with market success

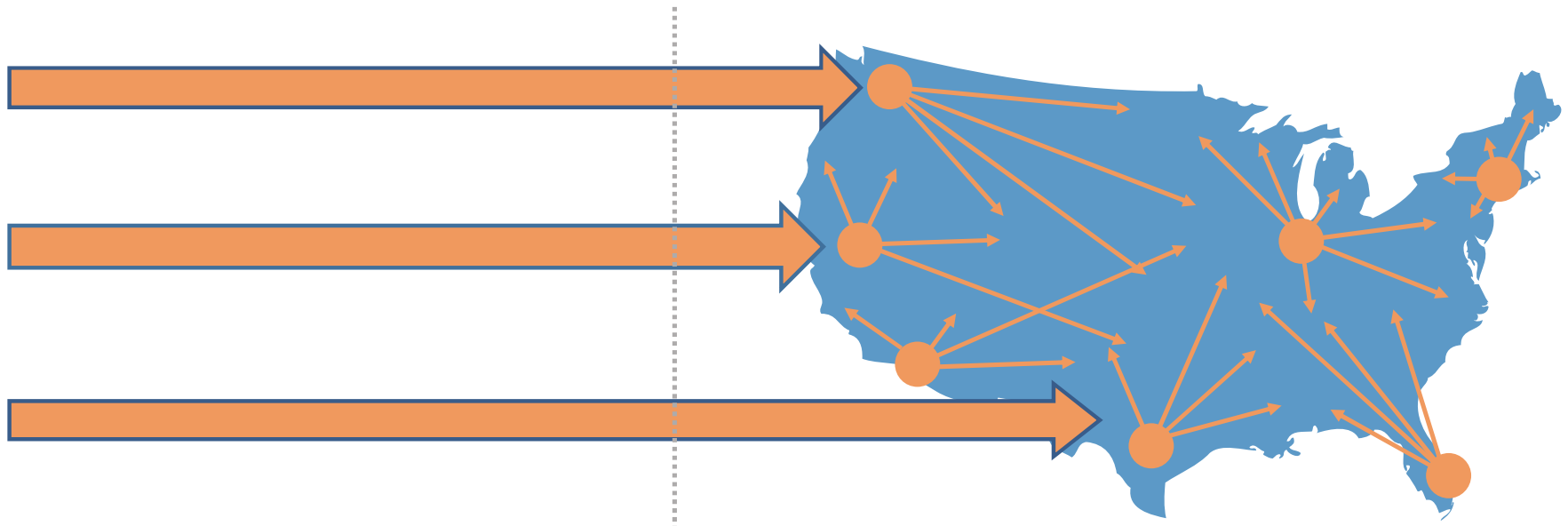
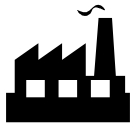
But Excel's success created opportunities for copyists



Rapid proliferation of knockoff hand dryers sold mainly through online sales channels



Sales decline for first time in 15 years



Excel Chose the ITC

Half of respondents entered into consent orders within weeks

The remaining half of respondents defaulted


Trade dress found protectable and infringed

GEO issued against all infringers (named and unnamed) and CDOs against the defaulting respondents






Could the ITC Work for Your Company?



Will excluding foreign, infringing products from the United States benefit your competitive position?



Is it difficult or impossible to bring the foreign actors into district court and obtain money damages and an injunction?



Are the actors numerous and difficult to identify?



Does your company invest in domestic R&D, engineering, design, and/or manufacture of products affected by the unfair imports?