



Enforcement of Intellectual Property Rights, Jamaican Law Enforcement Perspective

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Aim

- Promote an understanding of Intellectual Property Rights
- Look at Jamaica's Role in Enforcing Intellectual Property Rights
- Look at Drivers that fuels the IP Trade
- Successes

What is IP?



Intellectual property refers to
the creative expressions of the
human mind...
(Tangible & Intangible)





What Rights are Derived?

Intellectual Property Rights should not be confused with IP. It's a right vested in the asset, not the asset itself e.g.:

- ❑ an idea / invention is IP, a patent registration is an IPR
- ❑ a customer / price list is IP, a right of confidentiality is an IPR
- ❑ a secret production method is IP, a right to a trade secret is an IPR
- ❑ a particular way of representation is IP, copyright or a design registration is an IPR
- ❑ a brand / trade name is IP, a trade mark registration is an IPR

Usual Suspects



International Legal Framework



- ☐ Protection for industrial property
- ☐ Trade mark
- ☐ Patent
- ☐ Unfair competition
- ☐ Governed by domestic legislation

International Legal Framework



- ❑ Protection of Literary and Artistic Work
- ❑ Governed by National Legislation

International Legal Framework

TRIPS

Trade **Related** Intellectual Property **Rights**

- ☐ Additional to Paris and Berne.
- ☐ Minimum requirement.
- ☐ Strong enforcement procedure.

Domestic Legal Framework

- ☐ Trademark Act –Sec.69
- ☐ Copyright Act –Sec. 46(1) (B), 134(1)D (11)
- ☐ Town and Community Act-Sec. 5(a)
- ☐ Excise Duty Act-Sec. 102
- ☐ Food and Drugs Act- Sec. 55
- ☐ Pharmacy Act- Sec. 26
- ☐ Consumer Protection Act- Sec 28
- ☐ Patent Act
- ☐ Geographical Indications Act

Trademark Act-Section 69

Subject to subsection(4)- **Trademark must be registered and has a reputation in Jamaica. Any use would create an unfair advantage to the Trademark, or would be detrimental to the distinctive character or reputation of the Trademark.**

Commits an offence - Intent+ Gain (Himself or Another)= Cause loss and without consent of the Rights Holder applies :

- (A) to goods a sign identical with, or likely to be mistaken for, a registered trade mark; or
- (B) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign; or
- (C) has in his possession, custody or control in the course of a business

Trademark-Sec.69

Penalty—Resident Magistrate Court (Parish Court)... a fine not exceeding **one million dollars** or to a term of imprisonment not exceeding twelve months or to both such fine and imprisonment;

(*b*) on conviction before the Circuit Court to a fine or to imprisonment not exceeding five years or to both such fine and imprisonment.

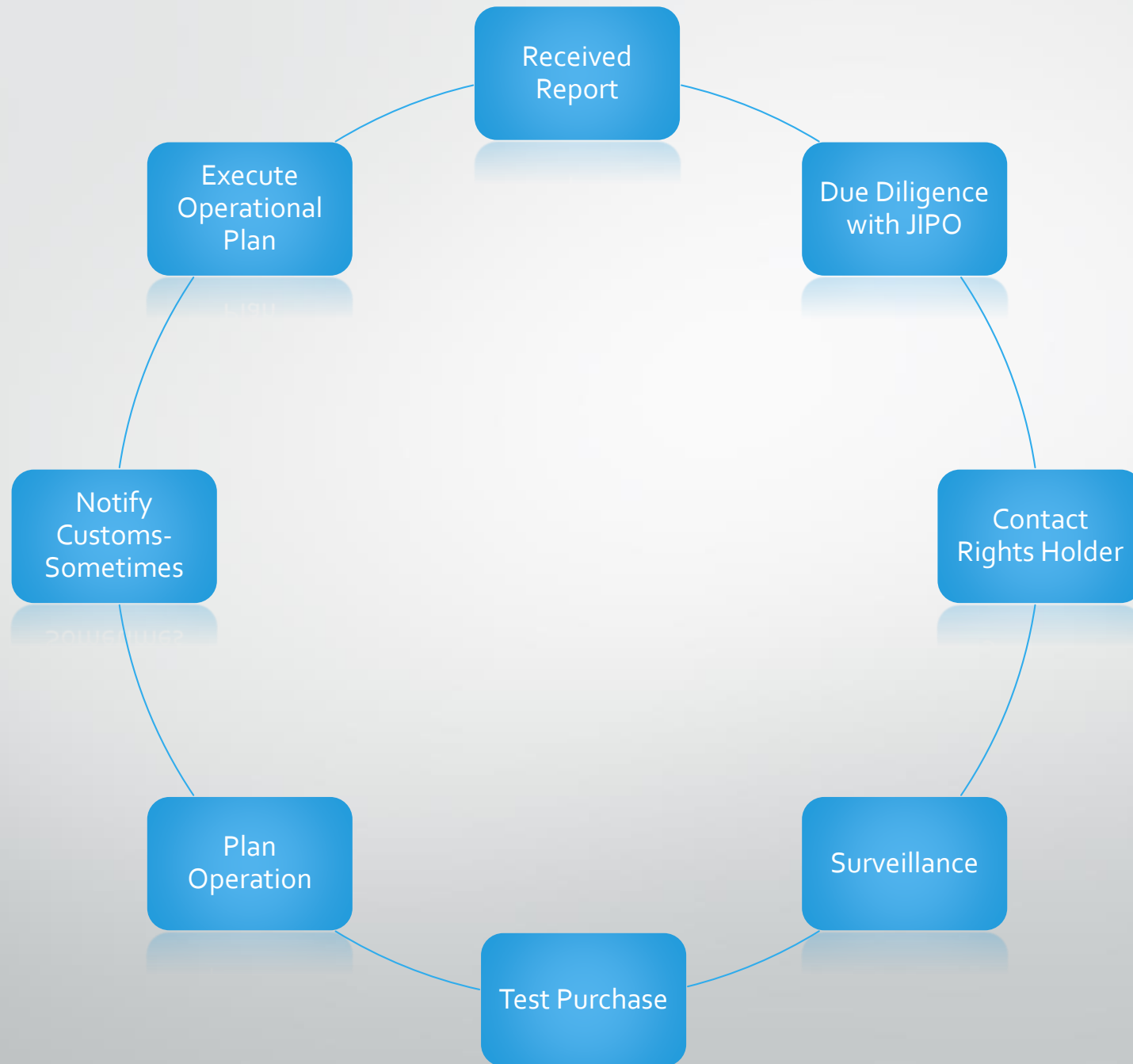
Two Types of IP Crimes

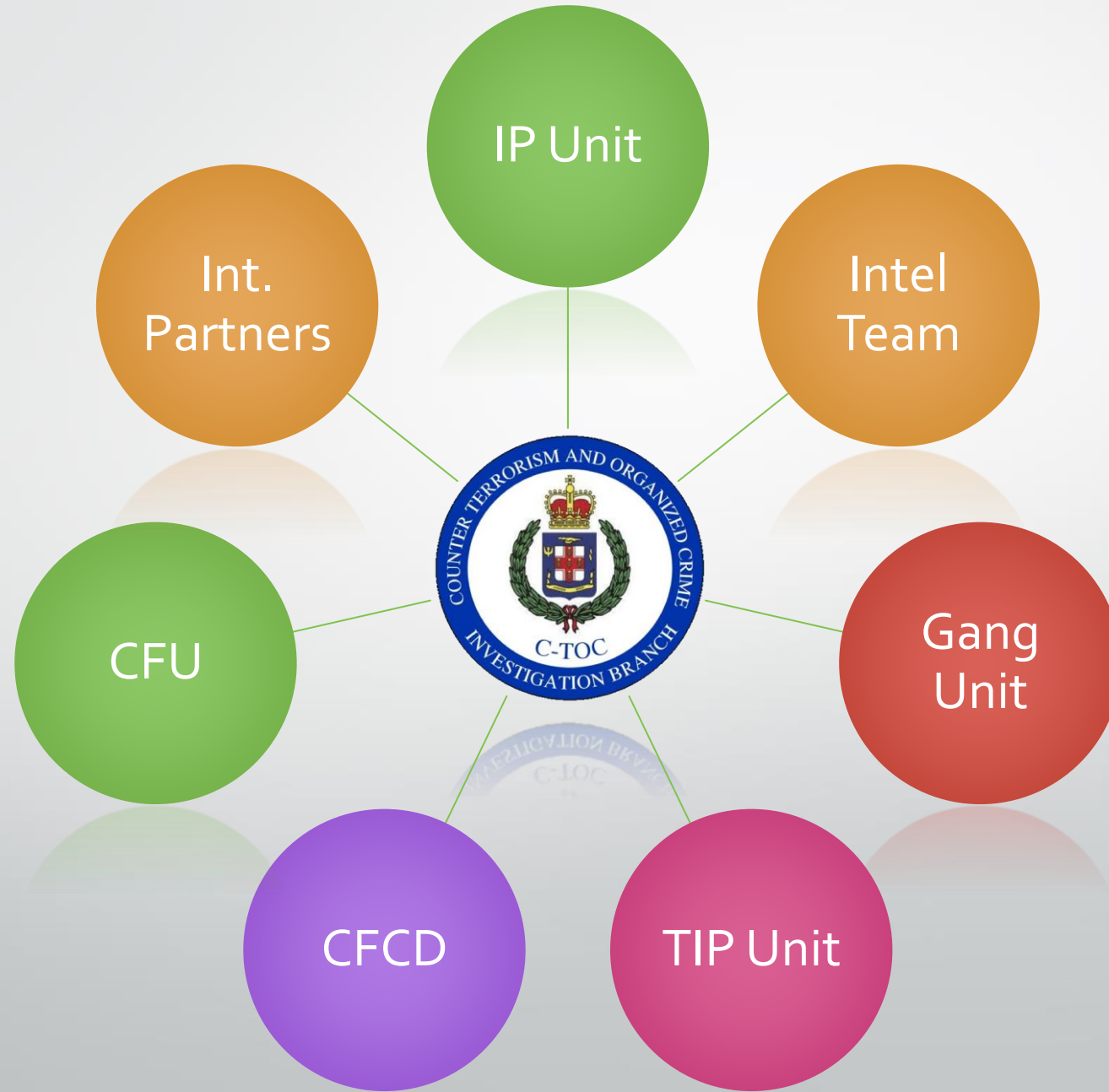
Counterfeit

- Counterfeit has to do with the fraudulent imitation of something.

Piracy

- While Piracy refers to the illegal copying, distribution or use of...





Drivers Enabling the Counterfeit Trade

- ❖ New element - the Internet
- ❖ Economic motive – poverty, and looking for “bargain” products
- ❖ Not recognized as an international threat
- ❖ Loopholes or ambiguity in national legislations
- ❖ Illicit trade in counterfeit/substandard products attract criminal networks due to **high profits** and **low risks** associated with **modest penalties** of IP crime.





Closer Look at Counterfeit

COUNTERFEITING DOES NOT ONLY
TAKE PLACE LOCALLY...
THE PROFITS FROM THE SALES OF
COUNTERFEIT PRODUCTS ARE USED
TO FUND *CRIMINAL UNDERGROUND
NETWORKS.*

Taking the Profits Proceeds of Crime legislation-POCA



- ☐ Shift the balance between risk and reward.
- ☐ Depriving criminals of their illicit profits can have a much greater punitive effect than imprisonment.
- ☐ Confiscation of criminal assets- FID



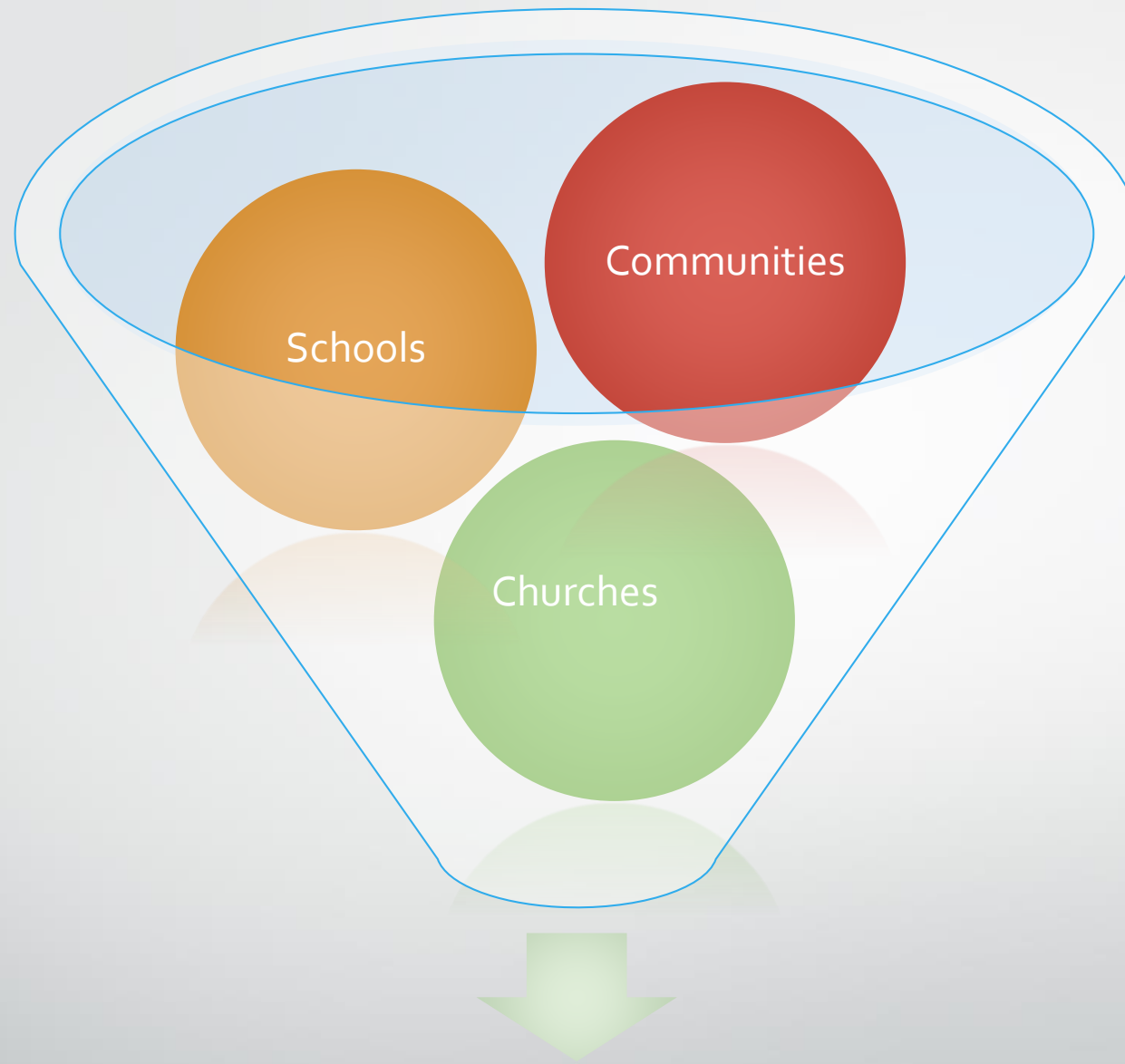
News

Gov't seeks \$203m forfeiture from businesswoman over counterfeit goods

Monday, July 02, 2018



- KINGSTON, Jamaica — The Assets Recovery Agency is seeking the forfeiture of over \$203 million from Chinese-Jamaica businesswoman Lan Yan as her alleged benefit from the retailing of counterfeit goods.
- According to a release from the Ministry of Finance and the Public Service, the agency has filed a **Pecuniary Penalty Order** against her pursuant to section 5 of the Proceeds of Crime Act (POCA) in the Home Circuit Court.



Awareness Campaign

Enforcement Successes -2018

\$1.5Billion Jamaican Dollars



jamaica-gleaner.com/.../9-million-worth-counterfeit-goods-seized-downtown-kingston

Dec 18, 2018 - **Counterfeit goods** valued at \$9 million have been seized by investigators from the police's Counter Terrorism and Organised Crime Branch (**CTOC**). ... C-TOC said the seizure was made during a special operation conducted between 12:10 p.m and 7:00 p.m at a premises on Mark Lane in ...

[CTOC Seizes \\$9m in Counterfeit Goods amidst Christmas Shopping ...](#)

nationwideradiojm.com/ctoc-seizes-9m-in-counterfeit-goods-amidst-christmas-shoppi...

Dec 20, 2018 - With Christmas Day only six days away, the Constabulary's Counter-Terrorism and Organized Crime Investigation Branch (C-TOC) swooped ...

[\\$300-m 'fake' goods bust - Jamaica Observer](#)

www.jamaicaobserver.com/front-page/-300-m_129755?profile=1606

Apr 5, 2018 - Police seized the goods which they estimated to be valued at more than ... by **CTOC** to clamp down on **counterfeit goods** across the island.

[C-TOC makes big 'counterfeit' haul at downtown Kingston wholesales ...](#)

www.loopjamaica.com/.../c-toc-makes-big-counterfeit-haul-downtown-kingston-whol...

Apr 4, 2018 - Reports are that C-TOC teams have locked down two wholesales along Princess Street, and have seized **counterfeit goods** valued at millions ...

[CTOC Seizes Illegal Items worth \\$1.5 Billion - Jamaica Information ...](#)

<https://jis.gov.jm/ctoc-seizes-illegal-items-worth-1-5-billion/>

Unified Approach

Consumer: greater awareness of risks

Government:

- Elevate priority and raise penalties
- Interagency coordination (Police, Customs and Regulatory)

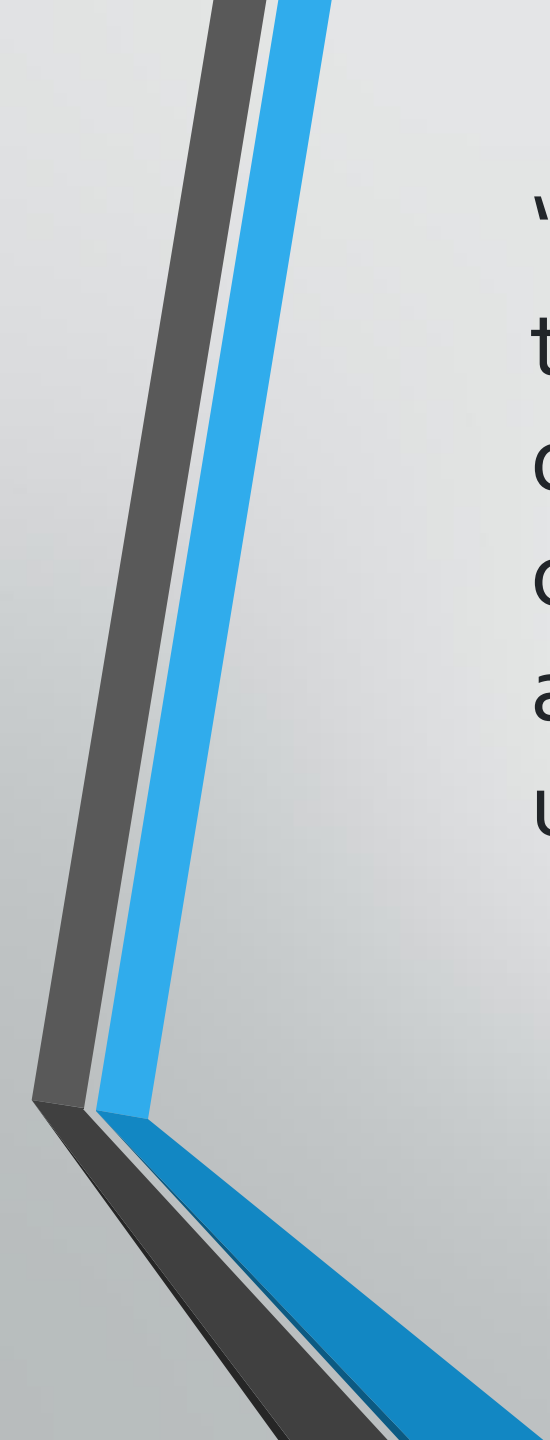
Industry: use existing laws in place; use technology to foil counterfeiting; lobby new laws

Wholesalers: higher standards of association

Pharmacists: know supply chain

Everyone: *Work to reduce reliance on counterfeit Products*





“Teamwork is the ability to work together towards a common vision. The ability to direct individual accomplishments towards organizational objectives. It is the fuel that allows common people to attain uncommon results.” --*Andrew Carnegie*



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