FICPI OPEN FORUM
Venice, Italy - 25-28 October, 2017

BORDER CONTROL: Special Programs
to Prevent Piracy and Counterfeiting

Presentation by
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Introduction: Legal Framework - Brazil

- Civil Law Country
- Strong Tradition in IP Protection
- Full Democracy – Independent Judicial System
- Recession 2015/2016 – fell from 6th to 9th largest Economy
- IP Infringement Acts are both Crimes and Civil Torts
- Criminal persecution is not effective
- Import Counterfeits barred through law-suits or administrative measures
- Parallel Imports: Special Remark
Brazilian exposure to counterfeit trade import/export

- High level of domestic taxation: 36% of the country’s GDP
- 16,000km of borders with neighbouring countries
- Smuggling ↔ Counterfeiting
- Cigarettes: 45% of the Brazilian Market are counterfeits
- Other main sectors affected: clothes, cosmetics and pharmaceutical drugs
- Brazil does not export counterfeits
Measures available to trademark owners

• Customs Authorities: “Directory of Trademark Representatives”
• BPTO: “National Anti-Counterfeiting Directory” – redundant!
Basis for Actions

• Provisions in TRIPs Agreement, the Brazilian Industrial Property Act and the Brazilian Customs Regulations.

• Trademark must be registered in Brazil
Procedure for registration with customs

- Trademark and Registrant info and contact details
- Portuguese language mandatory in the proceedings
- Local representative is mandatory
Timeframe and cost for the filing procedure

- No oficial fee for filing; service fees minimal
- Registration is straightforward
- Customs officers inform Trademark Owners, who have 10 days to file a complaint
- Different customs offices in Brazil have diferente procedures: sometimes it is a purely administrative procedure; sometimes a law-suit is required
- Total costs of a complaint vary: lower if it is purely administrative complaint; higher if there is the need of a law-suit
Effectiveness of Customs

• Highly Effective, in the cases detected by Customs
Procedure for seizure

- There is no small consignment exemption
- Destruction of counterfeits is not always obtained
Strategy for good border control

- Professional relationship with Customs officers
- Quick reaction by Trademark Owner
- Burden of Proof relies on Importer
- Training Customs Agents is Advisable
• Special Appeal 725,531 - Superior Court of Justice - April 28, 2009: Customs Authorities have the legal competence to seize counterfeit goods without the need of a court order
Court Decisions

- Appeal 200051010055070 the Federal Court of Appeals of Rio de Janeiro - March 14, 2011: autoparts labelled “original” are counterfeits, despite the fact that an autopart manufacturer is allowed to mention the trademark of the automobile in which the parts will be used
THANK YOU!

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