

FICPI OPEN FORUM
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**BORDER CONTROL: Special Programs
to Prevent Piracy and Counterfeiting**

Presentation by
Gabriel Leonardos

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 official 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 different 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

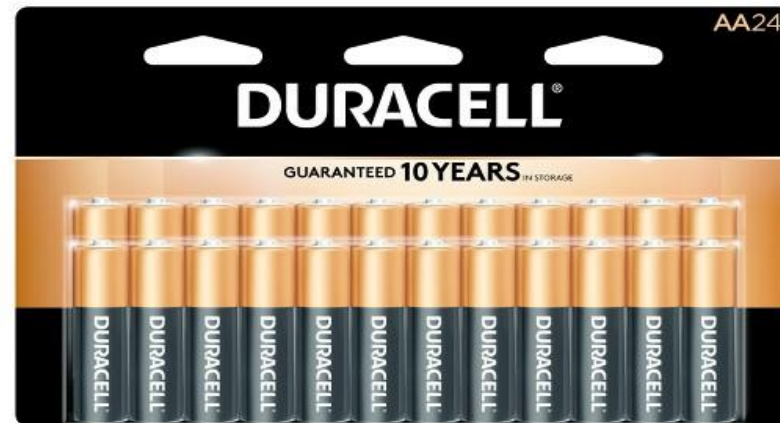
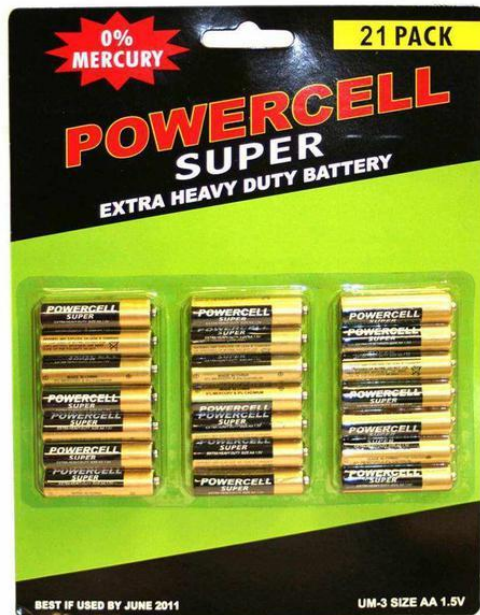
Strategy for good border control

- Professional relationship with Customs officers
- Quick reaction by Trademark Owner
- Burden of Proof relies on Importer
- Training Customs Agents is Advisable



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- 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!

Gabriel Leonardos

Gabriel.Leonardos@kasznarleonardos.com