COMBATTING COUNTERFEITING AND PIRACY IN BRAZIL
IP Infringement – A Criminal Approach

- Which IP rights are protected?

- Patents
- Industrial Designs
- Copyrights

- Trademarks
- Geographical Indications
- Softwares

- Clientele
- Advertising expressions or signs
- Trade dress

- Corporate name
- Confidential and commercial knowledge

Acts of unfair competition
IP Infringement – A Criminal Approach

- What is forbidden?

**Direct Exploitation**
- Production
- Use
- Reproduction
- Imitation
- Alteration

**Indirect Exploitation**
- Exportation
- Importation
- Sale
- Stock

- Imprisonment up to one year, or a fine
- Imprisonment up to three months, or a fine

**Exception**: copyright and software
Broader protection – imprisonment up to four years and fine
How to Combat Counterfeiting?

- IDENTIFYING COUNTERFEITERS
  - Investigation / Market Survey
  - Border Control: Inspection Request

- ENFORCEMENT MEASURES
  - Border Enforcement Measures
  - Preliminary Action of Search and Seizure
  - Criminal Court Action
  - Police Inquiry
Identifying Counterfeiters

INVESTIGATION / MARKET SURVEY

- First Stage
  - Gather previous information
  - Analysis of client’s prices in force and supply chain controls

- Second Stage
  - Market data and on-site investigation
Identifying Counterfeiters

**BORDER CONTROL**

- Almost 15,000 miles of borders
- Border Countries: Argentina, Bolivia, Colombia, French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay, Venezuela
- Imported products reach Brazil directly or though routes using Paraguay, Uruguay, Argentina, Chile, Bolivia, Colombia, Venezuela and Panama
Identifying Counterfeiters

BORDER CONTROL
Identifying Counterfeiters

BORDER CONTROL

[Map showing the borders of Brazil, Paraguay, and Argentina]
Identifying Counterfeiters

BORDER CONTROL

PARAGUAY

BRAZIL
Identifying Counterfeiters

BORDER CONTROL: INSPECTION REQUEST

- COANA and Brazilian main ports

- Documents needed
  - Certificates of registration
  - List of authorized importers
  - “Counterfeit guide”

- How to achieve results
  - Make the properties known
  - Exchange information
  - Training programs
Enforcement Measures

BORDER ENFORCEMENT MEASURES

- Shipment is retained by Customs Authorities
- IP owner is notified to take action

Administrative Proceedings

Judicial Proceedings
BORDER ENFORCEMENT MEASURES

1. Customs detains suspicious goods

2. Customs notifies IP owner

3. IP owner examines detained goods

   - Does the IP owner confirm that goods are counterfeit?
     - YES: Customs send official letter with additional information

4. Administrative Proceedings

   - NO: Does the letter require the filling of a court action?
     - YES: Does IP owner have the intention to file the court action?
       - YES: Goods are destroyed
       - NO: Court action is filed
     - NO: Goods are released

   - NO: Goods are released
Enforcement Measures

PRELIMINARY ACTION OF SEARCH AND SEIZURE

- Confirmation of the infringement: technical report
- Technical report can later be used for civil or criminal court actions

CRIMINAL COURT ACTION

- Infringing company’s directors and shareholders
- Positive aspects
  - Pressure on counterfeiters
  - Increase chances of agreement
  - Indirect intimidation
Enforcement Measures

POLICE INQUIRY

- Practical purpose:
  Seizure and destruction of counterfeit goods
Case Report: Investigating and Combating the Production and Distribution of Counterfeit Caps in Brazil

São Paulo

Apucarana
Case Report

PRELIMINARY INVESTIGATION: MARKET SURVEY IN THE CITY OF SÃO PAULO

September, 2012

Counterfeit caps spotted at:
- Retailers
- Distributors
- Storage companies
Case Report

FIRST POLICE RAID

October 9, 2012

- More than 7,200 counterfeit caps seized
- 26 individuals appointed as responsible for the crimes
- 3 companies temporarily closed

Gathered information suggested that the products were manufactured in the city of Apucarana, State of Paraná
THE CITY OF APUCARANA

- 121,924 inhabitants
- The National Capital of Headwear (the city is responsible for 80% of Brazilian production)
Case Report

THE CITY OF APUCARANA – SPOTTING FACTORIES AND MAJOR RETAILERS

From December, 2012 to February, 2013

- Counterfeit caps sold in Brazil and exported to the U.S.A.
- Major factories of Apucarana produce counterfeit caps at the backyards of small houses (called “facções”)

![Image of counterfeit caps in a store]
Case Report

THE CITY OF APUCARANA – SPOTTING FACTORIES AND MAJOR RETAILERS

1) Dealers and Distribution Centers

- Approximately 3,000 caps distributed daily
- Products packaged in boxes containing 278 caps each
Case Report

THE CITY OF APUCARANA – SPOTTING FACTORIES AND MAJOR RETAILERS
Case Report
THE CITY OF APUCARANA – SPOTTING FACTORIES AND MAJOR RETAILERS
Case Report

THE CITY OF APUCARANA – SPOTTING FACTORIES AND MAJOR RETAILERS

2) Manufacturers and Stores

• Companies equipped with machines and raw materials destined for the production of fake caps

• Caps acquired by phone and shipped to all over Brazil
Case Report

THE CITY OF APUCARANA – SPOTTING FACTORIES AND MAJOR RETAILERS
**Case Report**

**GOING DEEPER – SEARCH AND SEIZURE OF MANUFACTURERS AND MAJOR RETAILERS**

One of the biggest Brazilian anti-counterfeiting police operations

April 9, 2013

- 15 companies raided and temporarily closed
- Thousands of counterfeit products seized
- 25 people arrested

**Massive media coverage**
Case Report

GOING DEEPER – SEARCH AND SEIZURE OF MANUFACTURERS AND MAJOR RETAILERS

Counterfeiters and criminals arrested:

• Wealthy local entrepreneurs
• Wife of a local politician
• Two police officers
• Police Chief Commissioner

Conducted by more than 150 officials of the State Prosecutor’s Office, the State Police and the Federal Revenue Service
Thank You!