Anti-Counterfeiting Measures in Brazil

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“DISCOVERING BRAZIL”

- Overview of the problem
- Industries affected
- How the counterfeits enter in Brazil?
- Existing Legislation and Law Enforcement
- What brand owners are doing in Brazil?
- What brand owners can do in Brazil to be more effective?
Overview of the Problem

- Brazil has a border line with 9 countries with a total extension of 16,886 Km (largest country in South America)
- Brazil has a coast line of 7,491 Km (ex.)
- **Border Countries**: Argentina, Bolivia, Colombia, French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay, Venezuela (except Chile and Ecuador)
- **Area – comparative** - slightly smaller than the US

[Map of Brazil and border countries]
Brazil – Basic Information

- Population – 191,081,622
  (March 2009 est.)

- This continental size gives to Brazil the inevitable condition of important international route of counterfeit products in South America, since it facilitates transshipment, illegal transit and smuggling of goods

- 70% of the Brazilian population bought counterfeit products in the last 12 months
OVERVIEW OF THE PROBLEM

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Particularities

- Large border and coast line
- Final destination of products
- Huge local consumer market
- Problem identified relatively recent
- Enforcement authorities unaware of the problem
- Enforcement authorities not trained
- Important increasing of local production

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OVERVIEW OF THE PROBLEM

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Customs

- Lack of investments
- Lack of human resources
- Insufficient border protection
- Legislation not up to date
- Absence of database (ex.: Lanhan Act and EU)
- Absence of standard proceeding
- Confidentiality
- Only trademarks and copyrights

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EXISTING DIFFICULTIES

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Federal Police, Federal Highway Police, State Police and Military Police

- Lack of human resources
- Lack of investments
- They don’t know the problem
- Deficient investigation procedure
- Ex-officio raids limited by people and time
- Other priorities

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EXISTING DIFFICULTIES

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The Role of the Consumer

- Around 70% of the Brazilian population bought counterfeit products in the last 12 months
- In many cases the consumers buy counterfeit products intentionally
- Counterfeit products tend to cost 50% or less
INDUSTRIES AFFECTED

TOP 10 Counterfeit Products

- Sneakers and shoes
- Handbags
- Sunglasses
- Clothing
- Apparel
- Luxury goods
- Electronics
- Software
- Toys (with famous characters)
- Spare parts (cars and motorcycles)
HOW THE GOODS ENTER IN BRAZIL?

Most Common Routes

- Border with critical countries (Paraguay, Uruguay, Argentina and Bolivia)
- Products coming from Asia can reach Brazil directly or though routes using Paraguay, Uruguay, Argentina, Chile, Bolivia, Colombia, Venezuela and Panama
- Products coming from Paraguay enter through Foz do Iguacu or illegally through the “blind regions” of the border
Most Common International Routes

- Vitória
- Rio de Janeiro
- Santos
- Paranaguá
- Itajaí
- Rio Grande
Current Situation
Tri-Border

- Counterfeit products are still coming from Paraguay and sometimes Argentina due to the geographical proximity.

Friendship bridge – Brazil/Paraguay
Current Situation
Tri-Border
Current Situation
Tri-Border
Current Situation
Tri-Border
EXISTING LEGISLATION AND LAW ENFORCEMENT

- **Industrial Property**
  - Brazilian Constitution - Article 5, item XXIX
  - Law no. 9,279/96

- **Copyright**
  - Brazilian Constitution - Article 5, item XXVII]
  - Law no. 9,610/98
  - Law no. 9,609/98 (software)
  - Brazilian Criminal Code

- **Conventions and Agreements**
  - Paris, Bern, Rome, Trips

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EXISTING LEGISLATION AND LAW ENFORCEMENT?

Possible Legal Remedies

Civil Sphere
- Civil injunction
- Civil court action

Criminal Sphere
- Criminal injunction
- Private criminal action
- Public criminal action

Administrative Sphere
- Police Inquest
- Border measures
EXISTING LEGISLATION AND LAW ENFORCEMENT?

Possible Legal Effects

Civil Sphere
- Seizure
- Indemnification
- Destruction

Criminal Sphere
- Seizure
- Imprisonment
- Fine
- Destruction

Administrative Sphere
- Seizure
- Fine
- Destruction
EXISTING LEGISLATION AND LAW ENFORCEMENT?

Cumulation of Offenses

CRIMINAL CODE

Art. 180. Receiving of illegal goods (3 to 8 years)

Art. 175. Fraud in Commerce (6 months to 2 years)

Art. 171. Larceny by Fraud (1 to 5 years)

CONSUMER CODE

Art. 7. Crime against Consumers (2 to 5 years)

Cumulation of Offenses

TAX EVASION

Art. 1. Tax Evasion (2 to 5 years)
WHAT BRAND OWNERS ARE DOING?

Most Successful Anti-Piracy Campaigns

1) Investigation
   1) Proceeding with market surveys (to identify local players)
   2) Proceeding with online investigation

2) Customs
   1) Filing inspection requests
   2) Following up administrative cases and destruction of the goods

3) Onsite Enforcement
   1) Organizing police raids
   2) Filing civil law suits
WHAT BRAND OWNERS ARE DOING?

Most Successful Anti-Piracy Campaings

5) Online Enforcement
   1) Sending C&D letters
   2) Triggering police inquiries through specialized PD

6) Intelligence
   1) Using information raised during the raids to generate new cases
   2) Finding providers of raw material and parts of the final products

7) Preventive work
   1) Organizing training for law enforcement agents
HOW TO BE MORE EFFECTIVE?

1) IP Protection
   1) Update local registrations of IP rights

2) Investigation
   1) Proceed with onsite and online surveys (local players)

3) Customs
   1) File a request before COANA
   2) File a request before the most relevant Customs Units (ports, airports, dry ports, borders)
   3) Maintain the contacts with the customs agents
   4) Always provide technical support and tools
   5) Provide samples of original products and support destruction procedures

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HOW TO BE MORE EFFECTIVE?

4) Onsite Enforcement
   1) Organize police raids
   2) File civil law suits
   3) Create groups for multilateral enforcement
   4) Join enforcement initiatives organized by some local governments

5) Online Enforcement
   1) Notify the Search Engines
   2) Serve C&D letters to infringers
   3) Trigger police inquiries before specialized PD
   4) Filing civil law suits
HOW TO BE MORE EFFECTIVE?

6) Preventive work
   1) Know the “size of the problem”
   2) Join a local Association of Brand Owners
   3) Cooperate with public initiatives (CNCP)
   4) Organize public informative campaigns

7) Legislation Changes
   1) Follow up Bill PLC 11/2001
   2) Organize precise lobbying initiatives (mainly for Customs Procedures)
In the Future
THANK YOU!

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