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A NATIONAL STRATEGY TO COMBAT INTELLECTUAL PROPERTY CRIMES IN ZAMBIA

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ABSTRACT

Zambia, surrounded by eight neighbors, is a hub of trade in Southern Africa. It is because of her strategic geographical location that the Headquarters for COMESA (Common Market for Eastern and Southern Africa) is in Zambia. Due to its location, Zambia became vulnerable to pirated goods and counterfeits. Realizing the negative impact that intellectual property (IP) crimes have on the economy and the security of the country, the Zambia Police Service developed the so-called PESTEL MODEL in a bid to reduce IP crimes to negligible levels. The application of the PESTEL MODEL in the fight against IP crimes in Zambia has yielded positive results.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

I. INTRODUCTION

A. BRIEF GEOGRAPHICAL BACKGROUND OF ZAMBIA

1. Zambia is a land-locked country located in Southern Africa between latitudes 8 degrees south and 18 degrees south of the Equator; and between longitudes 22 degrees east and 34 degrees east of the Prime Meridian.
2. Her land area is 752,614 square kilometers with a population of about 15 million people. Her neighbors are: Angola, Botswana, the Democratic Republic of the Congo, Malawi, Mozambique, Namibia, Tanzania and Zimbabwe. In the fight against IP crimes, the geographical background of a country is important because those factors have a bearing on policing. For example, the size of the country's population gives law enforcement officers an indication of the possible size of the market of pirated goods and counterfeits in that country. Moreover, the geographical landscape suggests the possible entry points for pirated goods and counterfeits. It also determines the area that security officers have to cover and the equipment they have to use in the fight against piracy and counterfeiting.

B. THE MAIN PIRATED GOODS AND COUNTERFEITS IN ZAMBIA

3. Although there are many pirated goods and counterfeits in Zambia, the main ones are: DVDs, CDs, audio-visual software, baby milk, pharmaceuticals, body lotions, motor vehicle spare parts (such as tires and brake pads), beverages, cigarettes, toothpastes, electrical appliances and agricultural inputs like fertilizer, pesticides and corn seed.

II. THE NEGATIVE IMPACT OF PIRACY AND COUNTERFEITING

4. The principal negative impacts of piracy and counterfeiting are:
 - A decrease in government tax revenue, which leads to cutbacks in national development programs and public sector employment. This slows economic growth and development since the ability of the government to build more schools, roads, hospitals and the like gets undermined.
 - Legitimate businesses are forced out of the market due to the "uneven playing field", which leads to unemployment.
 - A threat to public health in form of high death toll because of traffic accidents caused by fake tires or break pads and because of illnesses such as cancer or skin diseases triggered by fake body lotions. Fake condoms and fake antiretroviral drugs escalate the spread of HIV/AIDS leading to death among consumers. Fake electrical appliances are responsible for fire accidents, which may be lethal.
 - A threat to public security in that organized crime has moved into piracy and counterfeiting on a considerable scale. The prospect of high profit and low risk has given pirates and counterfeiters an incentive to perpetrate their criminal activities. Criminal gangs have also taken advantage of the fact that counterfeiting may be perceived as a "victimless" crime. Worse still, the profits from counterfeiting and piracy may fund other kinds of organized crimes like terrorism, human trafficking, among others.

- A threat to ecology, the environment and food security. For example, fake fertilizer and seeds do not only destroy the environment and the ecology of an area, but also reduce yields, thereby undermining food security and public safety since democracy without food is fragile. Hence the old adage: "A hungry man is an angry person."
- A discouragement of invention and creativity due to the existence of "free riders".

III. REASONS FOR PROTECTING IP RIGHTS

5. The chief reasons for protecting IP rights are:

- To stimulate invention and creativity so that the nations of the world can advance;
- To promote and protect genuine businesses so that economic growth and development can thrive;
- To disrupt criminal networks since piracy and counterfeiting are a possible source of funds for other organized crimes like money laundering;
- To promote public health; and
- To create jobs and employment which in turn increase the Government revenue through a broadened tax base, thereby enabling the Government to implement various developmental projects.

IV. THE USE OF THE PESTEL MODEL IN THE FIGHT AGAINST IP CRIMES IN ZAMBIA

A. WHAT IS A MODEL?

6. A model is an abstract way of representing reality. It can be in any form. However, most models are in the form of:

- a mathematical equation;
- a diagram;
- a graph/sketch; and
- words.

B. THE IMPORTANCE OF MODELS IN PROBLEM SOLVING

7. Models are very important indeed in problem solving in that they:

- aid memory: by using a model, one can retrieve forgotten information. For example, a mnemonic can help one to recall forgotten data; and
- can be used to predict an outcome: for example, in research, models can be used to predict an outcome of a situation of interest. Even in weather forecasting, meteorologists use models to predict the weather for the following day or week.

Equally, in policing, models are used to predict an outcome of an operation against a crime of interest.

C. THE PESTEL MODEL

8. The PESTEL Model is an acronym and each letter in the model not only reminds an investigator what it stands for, but also guides him or her on what to do so that desired results can be predicted and achieved by applying the model to the fight against piracy and counterfeiting.

(a) The Letter "P"

9. The "P" stands for the importance of the following factors:

- *Prevention*: It was realized at the outset that "prevention was better than cure". The aim was to ensure that pirated goods and counterfeits were prevented from entering the Zambian market. To achieve this aim, we brought in the other factors of "P" in the model. To prevent any crime from occurring, one needs to be proactive and to be proactive, one needs to bring on board a number of stakeholders and to seek political will.
- *Proactivity*: It was envisioned that we could prevent Zambia from becoming a haven of pirated goods and counterfeits by being proactive as opposed to being reactive.
- *Partnership*: We realized that we could achieve our goal of being proactive by bringing on board all the essential stakeholders in our fight against piracy and counterfeiting. The following stakeholders were identified: Zambia Bureau of Standards, The Drug Enforcement Commission, The Competition and Consumer Protection Commission, Zambia Revenue Authority, Customs and Immigration, Zambia Chamber of Commerce, Copyright Office of the Ministry of Information, Local Dealers in Motor Vehicle Spare parts and Pharmaceuticals, Anti-corruption Commission and the Patents and Companies Registration Agency. Eventually, the academia and the media became partners after they had seen that our efforts were bearing fruits.

The efforts of the partners are coordinated at two main levels. Firstly, a Steering Committee provides direction on policy matters concerning the fight against IP crimes. It is composed of the Chief Executive Officers of all partner organizations. For example, the Zambia Police Service is represented by the Inspector General of Police and the Zambia Revenue Authority by its Commissioner General.

Secondly, coordination is also achieved at the operational level. Notably, each organization has nominated a focal person. Through the network of focal persons, information concerning pending operations can be easily shared. Moreover, investigators from the cooperating agencies have also developed a strong network among themselves to the extent that they have each other's cell phone number and coordinate their operations through cell phones.

Any of the cooperating agencies can host a meeting to allow for deliberation upon the following operation modalities:

- The nature of the operation to be carried out (proactive or reactive);
- The logistics required (finances and equipment);

- The source of the logistics;
 - The number of officers to be involved in the operation and the specific role of these officers and the security agencies to which they belong; and
 - The drafting of the Operation Order.
- *Political Will:* We realized that we needed political will in our fight against IP crimes and sought the support of the Minister of Home Affairs and the Permanent Secretary. Fortunately, the then Minister of Home Affairs was a lawyer and both the Permanent Secretary and the Deputy Permanent Secretary were former police officers. We received overwhelming political will up to the then Republican President who by coincidence was also a former police officer. The overwhelming political will has also continued from the current Minister of Home Affairs up to the Republican President, who was in the recent past the Minister of Home Affairs and is a lawyer by profession. We also received a lot of support from the Minister of Information, under whose jurisdiction the copyright office falls. He is also the Government Spokesperson and as such, advocates the fight against piracy and counterfeiting when, from time to time, he warns of the scourge, which had preventive effects.
- *Potential Consumers:* The “P” also stands for potential consumers of pirated goods and counterfeits. A simple survey was conducted on the demographic attributes of the Zambian population so that we could design appropriate awareness-raising programs. For example, role plays, songs and drama were used to inform people with very low literacy levels of the negative impact of piracy and counterfeiting. They were able to appreciate the consequences for their health and their socio-economic well-being. Community radio stations were also used to raise the awareness of the general public.

(b) The letter “E”

10. The “E” stands for the importance of the following factors in the fight against piracy and counterfeiting:

- *Environment:* Investigators of IP crimes should have sound knowledge of the physical environment of their operation area and possible entry points for pirated goods and counterfeits so that operations can be better coordinated. For example, the entry points for pirated goods and counterfeits in Zambia are: Nakonde Border Post, Mwami Border Post, Chirundu Border Post, Kariba Border Post, Mwami Border Post, Mikambo Border Post, Sakanya Border Post, Kasumbalesa Border Post, Victoria Falls Border Post, Kazungula Border Post, Katimamulilo Border Post, Kenneth Kaunda International Airport, Simon Mwansa Kapwewe International Airport, Harry Mwaanga Nkumbula International Airport, Mfuwe Airport as well as some porous border areas.

At these entry points, the stakeholders have worked together to prevent counterfeit goods from entering into Zambia. The most prominent actors at border control points are the Zambia Police Service, the Zambia Bureau of Standards, the Zambia Revenue Authority, and Immigration and Customs. In addition, platoons of the Mobile Unit of the Zambia Police Service patrol some areas along the porous border between Zambia and her neighbors and confiscate goods being smuggled into the country. With the help of the Zambia Bureau of Standards, counterfeit goods are destroyed on the spot.

Joint operations have also been conducted by Zambia and her neighbors under the auspices of SARPCCO (Southern African Regional Police Co-operation Organization) and at bilateral level through the Joint Permanent Commission. Although these operations do

not specifically target IP crimes, they have added value to the fight against IP crimes in that in some instances counterfeiters have been arrested and their counterfeit goods seized and destroyed.

- *Entry Points:* The Zambia Bureau of Standards runs the so-called Import Quality Monitoring Scheme (IQMS). The products entering Zambia are thoroughly inspected to ensure that they meet the minimum requirement of the set standards of the country. This scheme has given importers an incentive to import genuine products, thereby protecting the consumers from buying pirated goods and counterfeits. The inspections are done at entry points so that fake goods cannot be allowed to enter the country. During inspection, samples are drawn and a sample Request Form is filled in.

(c) The Letter "S"

11. The letter "S" stands for the importance of the following factors in the fight against piracy and counterfeiting:

- *Sensitization:* Community radio stations, drama clubs and local musicians have been used to sensitize the people to the dangers of buying and consuming pirated goods and counterfeits. The academia and the media have also assisted in this area. The Curriculum Development Centre has helped formulate appropriate methodologies for public awareness raising. Civil society has also mobilized awareness creation.

In the sensitization process, different categories of people were targeted for specific reasons:

- Urban poor people were targeted because they are the major consumers of counterfeit and pirated goods. They perceive genuine goods to be expensive and hence opt for counterfeits which they perceive as cheap. Community radio stations, role plays and pieces of drama were used to disseminate sensitization information. The message centered on the negative effects of counterfeit and pirated goods with a view to curbing demand for these products.

- Bus operators and motor vehicle spare parts dealers were targeted because they are the major consumers of counterfeit brake pads, tires and other motor vehicle spare parts. They were sensitized through the Bus Operators' and Bus Drivers' Association. Genuine dealers of motor vehicle spare parts, who suffered from losing business due to motor vehicle spare parts, participated in the sensitization process as partners to the Police.

- Rural poor people were targeted because they are the major consumers of counterfeit fertilizers, pesticides and seeds, especially maize (corn) seed as maize (corn) is the staple food in Zambia. Readers may also wish to know that about 99% of the rural dwellers in Zambia are engaged in farming. The sensitization was done through community radio stations and through outlets of major dealers in agricultural products. Posters warned farmers about the dangers of buying counterfeit agricultural products. They were also encouraged to buy agricultural products from authorized dealers and not from individuals.

Raising awareness was very effective in relation to rural farmers as they easily connected the use of fake agricultural products with poor yields and started to share information on the negative effect of buying fake seeds and fertilizer among themselves. As for the urban poor people, the response was very slow because some of them did not own radios or did not understand English. Sensitization was more difficult in urban multi-lingual areas than in rural areas where one language is spoken.

As a further result of the awareness-raising campaigns, informants within the strategic trading areas and entry points could be identified and recruited after seeing that they appreciated the message and expressed interest to work with the Police. They have been trained to work under cover, provide intelligence data to the Police and, as such, have proved to be useful in the fight against IP crimes. In one instance, for example, an informant told us that a trader had imported, in piecemeal, a machine that he used for making counterfeit beverages at night at his residential premises. After obtaining a search warrant for his premises, the machine and the counterfeit drinks were confiscated and the trader was prosecuted and convicted. During the course of the interview, he stated that if he had imported fake drinks, he could have been detected at the entry point but by importing the beverage-making machine in pieces he evaded detection. We learned a lot from this experience and widened our procedures to prevent piracy and counterfeiting.

There are also free-toll lines which members of the public can use to inform the Police, the Zambia Bureau of Standards, the Anti-corruption Commission and the Competition and Consumer Protection Commission about any matter concerning piracy and counterfeiting. We have collected a lot of intelligence on piracy and counterfeiting through this arrangement.

- *Storage Rooms*: The “S” also stands for the need to have storage rooms for seized pirated goods and counterfeits. This is important because seized pirated goods and counterfeits are exhibits that need to be produced in a court of law as evidence.

(d) The letter “T”

12. *Technology*: “T” stands for the importance of technology in the fight against piracy and counterfeiting. There are a lot of ways in which technology can be used in preventing piracy and counterfeiting. For example, in one of the operations that we jointly conducted with INTERPOL (the International Criminal Police Organization), the technology of FIND and MIND were used to detect fake passports. Another technology that we use at the National Central Bureau is I – 24/7. This technology entails the use of scientific knowledge or equipment to solve, prevent or investigate crime. Both counterfeiters and investigators can use technology to their advantage. A counterfeiter, for example, can use a computer to forge a document. Conversely, an investigator can use a gadget to detect whether or not a passport is forged.

13. As the world has become a “global village” due to technology advancement, technology needs to be exploited in the fight against IP crimes. In a certain way, technology is the “currency” of counterfeiting because counterfeiters rely on technology in an abusive manner to carry out their activities. As a result, those fighting against IP crimes also need to use the same technology to outdo them.

(e) The letter “E”

14. The letter “E” stands for the importance of the following factors in the fight against piracy and counterfeiting:

- *Evaluation*: There is a need to evaluate each operation using the SWOT analysis (Strengths of your operation, Weaknesses of your operation, Opportunities for your operation and Threats for your operation). We have ascertained that we have been improving our operations over time because of the SWOT analyses.
- *Economy*: The “E” also stands for the Economy. For any operation resources are needed. At the beginning of our operations, resources were very scarce. However, after achieving some positive results in our operations, a number of stakeholders provided additional resources. What we learned from this experience is that once there are positive results, people will be supportive. It is analogous to a child who does very well at school. Even if the parent has little money, he or she will make an effort to find some money to support that child.

(f) The letter “L”

- *Legal Framework*: The letter “L” stands for the legal framework. There is a need for apt statutes and fast-track court procedures in the fight against piracy and counterfeiting. Law enforcement officers need be trained in joint seminars with legal officers of the court on issues of piracy and counterfeiting. In Zambia, we have an appropriate legal framework and the fast track court system is in place because we know very well that “justice delayed is justice denied”. Some of the important Statutes are The Trademarks Act, Cap 401 of the Laws of Zambia; The Copyright Act, Cap 406 of the Laws of Zambia; The Patent Act, Cap 400 of the Laws of Zambia; The Standards Act, Cap 416 of 1994; The Competition and Consumer Protection Act No. 24 of 2010; The Registered Design Act, Cap 402 of the Laws of Zambia; The Companies Act, Cap 388 of the Laws of Zambia; and The Registration of Business Names Act, Cap 389 of the Laws of Zambia.

V. CONCLUSION

15. In conclusion, one can argue that major strides have been made in Zambia in the fight against piracy and counterfeiting. However, more still needs to be done. For example, Zambia needs to widen the scope of cooperation in the fight against IP crimes by cooperating with international organizations such as WIPO, the World Health Organization (WHO), the Food and Agriculture Organization (FAO) and others.

16. Furthermore, it is necessary to continually train IP crimes investigators so that they can be ahead of sophisticated pirates and counterfeiters and embrace a comprehensive approach as set out in the PESTEL model.

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