THE ACTIONS OF THE NATIONAL COUNCIL ON COMBATING PIRACY AND INTELLECTUAL PROPERTY CRIMES IN BRAZIL

Luciano Benetti Timm
President of the National Council on Combating Piracy and Intellectual Property (CNCP) and National Secretary for Consumer Affairs
Data from Brazil’s National Forum Against Piracy and Illegality shows that in 2018 alone, Brazil lost approximately USD 48 billion as a result of piracy and the illicit trade in counterfeit products in 13 industrial sectors, including lost taxation.

Annually, Brazil loses 58 thousand jobs because of piracy.

BRL 721 million (aprox. USD 185 million) is lost just in taxes.

Impact of BRL 2 billion (aprox. USD 500 million) on the Brazilian GDP.

Source: Ipsos/Oxford Research from 2013
Between December 2015 and May 2016, the biggest piracy and counterfeit websites were accessed 1.7 billion times.

These sites are accessed 20 x more than the most accessed website of the Brazilian government (the Brazilian Public Revenue site) and 8 x more than Netflix Brazil.
LOSSES CAUSED BY ILLICIT TRADE BY SECTOR, IN BRL BILLIONS

* The data regarding the losses in the sunglasses sector is from 2017.
Between 2011 and 2013, Brazilian brands were ranked as 23\textsuperscript{rd} most affected by counterfeiting. Between 2014 and 2016, Brazil was ranked 16\textsuperscript{th}. The products mostly come from Asia.

Brazil also exports fake products, ranking 50\textsuperscript{th} (data from 2016).

*CNCP has received this study in 2019 from the OECD Task Force on Countering Illicit Trade, but it has not been published yet.
THE NATIONAL COUNCIL AGAINST PIRACY AND INTELLECTUAL PROPERTY CRIMES (CNCP)

- Created in 2004 by presidential Decree n. 5,244/04.
- Since 2019, the current National Secretary for Consumer Affairs, Luciano Benetti Timm, has presided over the CNCP.
Necessary to fight piracy and counterfeiting
The government is represented by members of the:

- Ministry of Justice and Public Safety;
- Federal Police;
- Federal Highway Police;
- Secretary of Public Safety;
- Federal Revenue Service;
- Ministry of Economy;
- Ministry of Foreign Affairs;
- Ministry of Science and Technology, Innovations and Communications;
- Ministry of Citizenship;
- Chamber of Deputies;
- Federal Senate;
- National Telecommunications Agency;
- National Agency for Sanitary Surveillance;
- National Cinema Agency;
- National Institute of Metrology;
- National Institute of Industrial Property.

First Meeting of 2019: February 27, 2019
The private sector is represented by associations covering sectors including

- Software;
- Textiles;
- Sports;
- Video games;
- Commerce and services;
- Glass and tobacco;
- Audiovisual;
- Medicines and medical equipment for human and animal health;
- Orthoses, and beverages.

The CNCP president may invite collaborators to participate in the Collaborators Panel.
Important meetings in 2019

II National Encounter of Fighting Piracy and related crimes
Venue: Ministry of Justice and Public Safety
June 5

Meeting about online movie piracy at the Technical Chamber on Fighting Piracy from the National Movie Agency (ANCINE)
April 4, Rio de Janeiro
PURPOSE AND ACTIVITIES

THE FIGHT AGAINST PIRACY CONCERNS ALL AND SHOULD INVOLVE MUNICIPAL, STATE AND FEDERAL GOVERNMENTS AND SOCIETY.

- Examine and propose measures and actions against piracy and IP crimes in Brazil.
- Initiates, assists in and promotes the training of public workers.
- Develop and propose public policies on combating piracy and related crimes.
- Negotiate agreements with e-commerce platforms and the issuers of electronic payment means (such as credit cards) and develop a public database.
- Support innovation management and entrepreneurship under three areas: education, repression and economic incentives.
CNCP ACTIONS AND PURPOSE

THE FIGHT AGAINST PIRACY CONCERNS ALL AND SHOULD INVOLVE MUNICIPAL, STATE AND FEDERAL GOVERNMENTS AND SOCIETY.

**Legislative**
Possibility to propose legislative amendments through the National Secretariat for Consumer Affairs.

**Repressive**
Promote coordination between several players, such as the Federal Revenue, Local and Federal Police, Food and Drug regulators.

**Economic incentives**
Develop studies and ways to promote the formal economy and reduce the informal markets in which IP-infringing products are sold.

**Promote awareness regarding consumer safety.**

**Educational**
Promote training of public workers involved in operations.

**Studies on fighting piracy and counterfeit goods in digital market places.**
Special Committees

There are 5 working committees:

1) Electronic commerce: focus on measures against counterfeit products sold online.
Main activity so far: MOU negotiation with the British Government

2) Payment methods and digital publicity.

Meeting with online publicity market agents
August 6
Mechanisms to prevent/stop publicity actions from websites and e-commerce platforms which sell counterfeit products
Special Committees

3) Hardware
- Activities with the Brazilian Telecommunications Agency (Anatel)
- Legal cell phone project

4) Medications
- Activities with the Brazilian Health Agency (Anvisa)

May 2019
- Operation with Anvisa at São Paulo apprehended 30 pieces of travel luggage with medical equipment.
- Similar operation undertaken in June at Goiania.

5) Contraband:
- Identification of the criminal organizations and articulation with the police.
ACTIVITIES TO FIGHT CONTRABAND and PIRACY

- **Operation Labarus – 2019**
  - 666,095 vehicles and 598,697 people were inspected
  - 18.37 tons of marijuana / 2.11 tons of cocaine / 10.7 million packs of cigarettes / 155 guns

- **Operation Horus – 2019**
  - 5 million packs of cigarettes
  - Avoided prejudice of BRL 35 million in loss of tributes, but it could go as far as BRL 1,75 billion
  - 43 vehicles
  - 22 boats
  - 19 criminals arrested
  - 15 search warrants issued
### January to March 2019

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Measure</th>
<th>Value</th>
<th>Total so far</th>
<th>% of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cigarettes and similars</td>
<td>60</td>
<td>kg</td>
<td>12,829,27</td>
<td>279,975,727,18</td>
<td>40,24%</td>
</tr>
<tr>
<td></td>
<td>56,424,847</td>
<td>pack</td>
<td>279,962,897,91</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apparel industry</td>
<td>353,939</td>
<td>kg</td>
<td>28,391,686,76</td>
<td>62,538,397,26</td>
<td>8,99%</td>
</tr>
<tr>
<td></td>
<td>2,667,433</td>
<td>units</td>
<td>34,146,710,50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eletronic devices</td>
<td>500,589</td>
<td>units</td>
<td>47,075,569,05</td>
<td>47,476,838,24</td>
<td>6,71%</td>
</tr>
<tr>
<td></td>
<td>30,505</td>
<td>kg</td>
<td>401,269,19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Toys</td>
<td>816,460</td>
<td>units</td>
<td>11,996,080,73</td>
<td>22,198,042,02</td>
<td>3,19%</td>
</tr>
<tr>
<td></td>
<td>102,773</td>
<td>kg</td>
<td>10,201,961,29</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total of main item</td>
<td></td>
<td></td>
<td>412,189,004,70</td>
<td></td>
<td>59,13%</td>
</tr>
<tr>
<td>Others</td>
<td></td>
<td></td>
<td>283,557,594,14</td>
<td></td>
<td>40,87%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td>695,746,598,84</td>
<td></td>
<td>100,00%</td>
</tr>
</tbody>
</table>
CONCLUSION

- There is a cultural challenge due to the perception that those who sell illegal and counterfeit products are workers and are trying to survive.

- Paying a cheaper price for illegal and counterfeit products is often regarded as acceptable, even though producers of these products do not pay taxes and the products present a risk to consumers’ health.

- Consumers’ limited purchasing power correlates with a lack of full understanding of how the purchase of such illegal and counterfeit products help to finance organized crime.

- Illegal and counterfeit products present an important challenge to different entities and bodies of government, for which they should collaborate internally and with border countries.
THANK YOU

Luciano Benetti Timm

Luciano.timm@mj.gov.br
The Coordinating Authority for Market Supervision and the Fight Against Illicit Trade (SYKEAAP)
The Coordinating Authority for Market Supervision and the Fight Against Illicit Trade

- Established in 2012, as the Coordinating Authority Against Illicit Trade (SYKAP)

- The responsibility of Market Supervision was added in 2017.

- **Illicit trade**: all kinds of trade not supported by legal documentation (invoices, shipping documents etc.).

- **Infringements of IP rights** are also considered as illicit trade.
The Coordinating Authority for Market Supervision and the Fight Against Illicit Trade

- **SYKEAAP’s mission is to:**
  - develop a common strategy to tackle illicit trade, including IP rights infringements,
  - ensure the implementation of the relevant legislation for the handling of goods and services in the market,
  - safeguard the orderly and legitimate functioning of the market in the interests of consumer health and safety.
The Coordinating Authority for Market Supervision and the Fight Against Illicit Trade

- SYKEAAP’s vision is to optimize the efficiency and readiness of the market control by developing a culture of cooperation among competent enforcement authorities and providing a single response to any occurrences of illicit trade while continually providing high-level services.
The Coordinating Authority for Market Supervision and the Fight Against Illicit Trade

- SYKEAAP’s responsibilities comprise:
  - coordinating actions to clamp down on the trafficking and control the movement of goods and services;
  - organizing action plans at local, regional and national level to set up joint task forces;
  - dealing with complaints and information brought before it by any appropriate means;
  - coordinating meetings with representatives of the central government, regional and local authorities;
  - collecting and analyzing information and data derived from controls carried out by each competent authority.
The Coordinating Authority for Market Supervision and the Fight Against Illicit Trade

- **SYKEAAP consists** of representatives from both the public and the private sector. **Its Board consists of:**

  - The General Secretary for Trade and Consumer Protection (as chair),
  - the Executive Director,
  - a representative of the General Secretariat for Trade and Consumer Protection,
  - a representative of the Greek Police,
  - a representative of the Greek Coast Guard,
The Coordinating Authority for Market Supervision and the Fight Against Illicit Trade consists of (2)

- a representative of the Special Secretariat for the Financial and Economic Crime Unit,
- a representative of the General Directorate of Customs,
- a representative of the Central Union of Greek Municipalities
- a representative of the Union of Regions,
- a representative of the General Secretariat of Industry,
- a representative of the General Secretariat of Agricultural Development,
- a representative of the Transport Directorate,
The Coordinating Authority for Market Supervision and the Fight Against Illicit Trade consists of (3)

- a representative of the Central Union of Greek Chambers,
- a representative of the Greek Confederation of Trade and Entrepreneurship,
- a representative of the General Confederation of Professional Craft Traders in Greece.

- SYKEAAP has its own market control team.

- It is envisaged to create a control body that would consist of market controllers from all the enforcement authorities involved.
The Coordinating Authority for Market Supervision and the Fight Against Illicit Trade

**SYKEAAP’S OPERATING MECHANISM**

- The most important tool for SYKEAAP is intelligence.

- The representatives of all relative enforcement authorities draw up an action plan.

- Action plan will be implemented directly, without delay or bureaucratic barriers.
The Coordinating Authority for Market Supervision and the Fight Against Illicit Trade

- **SYKEAAP’S OPERATING MECHANISM – EXAMPLE:**
  In March 2019, SYKEAAP received anonymous information concerning imported counterfeited goods in Rhodes.

  The Board of Representatives took the following action:
  - The representative of the General Secretariat for Trade and Consumer Protection sought more information about the company.
  - The representative of the General Directorate of Customs requested the customs authorities of Piraeus and Rhodes to conduct controls on containers imported on behalf of the company,
SYKEAAP’S OPERATING MECHANISM – EXAMPLE:

- The representative of the Greek Police requested the police authorities to carry out controls on the warehouses of the company in Rhodes.
- The representative of the Special Secretariat for the Financial and Economic Crime Unit requested colleagues in Rhodes to audit the registered offices of the company.

**Results:** 15,000 items of counterfeit goods were seized, fines of thousands Euros were imposed, criminal proceedings followed.
## Achievements of the Greek IPR Enforcement Authorities

<table>
<thead>
<tr>
<th>2018</th>
<th>CONTROLS</th>
<th>TOTAL SEIZED GOODS</th>
<th>Counterfeited Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Market Authorities</td>
<td>70.963</td>
<td>2,298,271 items (illicit trade)</td>
<td>884,071 items</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1,112,292 items</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5,491 items</td>
</tr>
<tr>
<td>Customs</td>
<td>6.455</td>
<td>23,956,224 items Counterfeit items</td>
<td>287,339 items</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>213,812 items</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>4,948 items</td>
</tr>
</tbody>
</table>
# Achievements of the Greek IPR Enforcement Authorities

<table>
<thead>
<tr>
<th>2017</th>
<th>CONTROLS</th>
<th>TOTAL SEIZED GOODS</th>
<th>Clothing/ Footwear</th>
<th>Accessories etc.</th>
<th>Electrical/ Electronic devices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Market Authorities</td>
<td>82.813</td>
<td>2.246.912 items (illicit trade)</td>
<td>213.341 items</td>
<td>1.058.917 items</td>
<td>24.234 items</td>
</tr>
<tr>
<td>Customs</td>
<td>236</td>
<td>22.113.175 items Counterfeit items</td>
<td>238.576 items</td>
<td>1.367.365 items</td>
<td>7.218 items</td>
</tr>
</tbody>
</table>
# Achievements of the Greek IPR Enforcement Authorities

<table>
<thead>
<tr>
<th>2016</th>
<th>CONTROLS</th>
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<tr>
<td>Domestic Market Authorities</td>
<td>95,305</td>
<td>1,994,288 items (illicit trade)</td>
<td>61,735 items</td>
<td>272,314 items</td>
<td>10,004 items</td>
</tr>
<tr>
<td>Customs</td>
<td>219</td>
<td>28,876,426 items Counterfeit items</td>
<td>49,495 items</td>
<td>12,231,006 items</td>
<td>439 items</td>
</tr>
</tbody>
</table>
## Achievements of the Greek IPR Enforcement Authorities

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td></td>
<td></td>
<td>Clothing/</td>
<td>Accessories</td>
<td>Electrical/</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Footwear</td>
<td>etc.</td>
<td>Electronic</td>
</tr>
<tr>
<td></td>
<td>Domestic</td>
<td></td>
<td>266.606 items</td>
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<td>42.735 items</td>
</tr>
<tr>
<td></td>
<td>Market</td>
<td>(illicit trade)</td>
<td>(illicit</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Authorities</td>
<td></td>
<td>trade)</td>
<td></td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>3.043 items</td>
</tr>
<tr>
<td></td>
<td>Customs</td>
<td>10.358.016 items</td>
<td>73.003 items</td>
<td>410.572 items</td>
<td>757 items</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Counterfeit items</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Comparing the achievements in the Domestic Market for the years 2017 and 2016

<table>
<thead>
<tr>
<th>Year</th>
<th>CONTROLS</th>
<th>TOTAL SEIZED GOODS</th>
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## Comparing the achievements in the Domestic Market for the years 2018 and 2017

| Year | Controls | Total Seized Goods | | | |
|------|----------|-------------------|----------------|----------------|
|      |          | Clothing/Footwear | Accessories etc.| Electrical/Electronic devices |
| 2018 | Domestic Market Authorities | 70.963 | 2.298.271 items (illicit trade) | 884.071 items | 1.112.292 items | 5.491 items |
| 2017 | Domestic Market Authorities | 82.813 | 2.246.912 items (illicit trade) | 213.341 items | 1.058.917 items | 24.234 items |
International Collaboration on the Enforcement of Intellectual Property Rights

- SYKEAAP established a cross-border cooperation with the Bulgarian authorities.


- SYKEAAP attended meetings with the Consulate of France in Athens in 2017 and with members of the Embassy of the United States of America in 2019.
Conclusions

- Combating IP rights infringements and illicit trade requires a **holistic approach**.

- **Coordination of all enforcement authorities is key to victory in this battle.**

- **SYKEAAP is a good example**, not only in the specific battle against IP rights infringements, but also for other aspects of public administration.
THANK YOU FOR YOUR ATTENTION!!!
SYSTÈME DE LABELLISATION DES CIRCUITS DE DISTRIBUTION DES PIÈCES DE RECHANGE AUTOMOBILES AU MAROC : LA MARQUE COLLECTIVE DE CERTIFICATION "SALAMATOUNA" POUR LA LUTTE CONTRE LA CONTREFAÇON

- Genève, 2 septembre 2019 -
Contexte

Construction automobile au MAROC


1er secteur exportateur

+ 60 Md DHS CA à l’export en 2018

85 000 postes d’emplois 2014 - 2018

50,5% d’intégration locale

1er hub de construction sur le continent
Contexte

Marché des pièces de rechange Automobile au MAROC

Valeur du marché intérieur de **15 milliards** de DH en 2017.

2ème **secteur** le plus touché par la contrefaçon.

La contrefaçon est estimée à près de **700 millions** de dirhams.

Distribution informelle significative favorisant la mise sur le marché de produits contrefaits, qui contribuent au bilan affligeant des accidents de la route.
Enjeux

Sécurité du citoyen et protection du consommateur

Consolidation de l’offre PDR automobile au Maroc

Croissance du secteur de la construction automobile au Maroc
Le label SALAMATOUNA

Effet fédérateur

- Fruit de collaboration Publique/Privée initiée dans le cadre du Comité National de la Propriété Industrielle et Anti-Contrefaçon (CONPIAC).

- Concertations avec les professionnels du secteur (AMICA, AIVAM, GIPAM) et les associations de consommateurs.
Système de Labellisation du circuit de distribution des pièces de rechange Automobile (PDR)

Objectifs:

- Lutte contre la mise en circulation de PDR contrefaites qui peuvent mettre en danger la sécurité du consommateur.

- Renforcement de la traçabilité des PDR depuis leur mise sur le marché initiale jusqu’au consommateur final.

- Organisation du marché intérieur des PDR.
Le label SALAMATOUNA

Marque collective de certification

Fondée sur un Règlement d’usage:

- Règlement d’usage basé sur le respect de la traçabilité et de la conformité des pièces commercialisées aux normes de qualité.

- S’applique aux constructeurs, importateurs, distributeurs, revendeurs grossistes et détaillants commercialisant des PDR.
Intervenants dans le système de labellisation

Demandeur: Constructeur, Importateur, Distributeur, Revendeur de PDR Automobile ou autre véhicule

Titulaire Marque: IMANOR

Comité Labellisation: Présidé par MIICEN

Demande: Organisme de contrôle

Marque collective de certification

Usagers labellisés

Consommateurs
Comité de labellisation

Présidé par le Directeur de la Protection des Consommateurs, de la Surveillance du Marché et de la Qualité (MIICEN).

Membres :

- Institut Marocain de Normalisation (IMANOR);
- Comité National de Prévention des Accidents de la Circulation (CNPAC);
- Institut de Formation aux Métiers de l'Industrie Automobile (IFMIA);
- Organisations professionnelles du secteur Automobile;
- Organisations de protection des consommateurs;
- OMPIC.
Processus de Labellisation

Demande en ligne d'octroi d'usage de la marque collective de certification SALAMATOUNA

Etude de Recevabilité par IMANOR

Recevable

Oui

Audit du Site du Demandeur / Contrôle de l'usage de la marque «SALAMATOUNA»

Examen du Rapport d'audit par le Comité de labellisation

Décision motivée de Non Octroi

Contrôle périodique pour le maintien du droit d'usage et sanctions en cas de non-respect des règles

Décision d'Octroi du Droit d'usage

Oui

Intégration dans la Liste publiée des Labellisés

Non

Irrrecevabilité de la Demande

Demande du Comité d'essais complémentaires

Changement dans la liste des pièces gérées par le labellisé
Processus de labellisation

Demande de labellisation via la plateforme gérée par l’OMPIC

www.salamatouna.ma

Examen de recevabilité effectué par l’IMANOR

Audit initial pour s’assurer de la traçabilité et de la conformité des pièces aux normes de qualité

Octroi du label SALAMATOUNA par le Comité de labellisation, présidé par le Ministère de l’Industrie
Processus automatisé via la plateforme www.salamatouna.ma
www.salamatouna.ma
Espace Professionnels des pièces de rechange pour déposer et suivre en ligne les demandes de labellisation
Espace Comité de labellisation pour la gestion et le traitement des demandes (recevabilité, audits et contrôles, octroi du label)
Espace Consommateurs avec un service de géolocalisation des magasins labellisés sur tout le Maroc
Avantages du Label

Pour le labellisé SALAMATOUNA

Il peut se distinguer des entreprises qui commercialisent des pièces de rechange non authentiques, voire de contrefaçon.

• Publication de la liste actualisée des labellisés;
• Affichage du logo du Label sur Lieu de vente;
• Mention du logo de Label sur les documents de livraison et de correspondance;
• Compostage du logo du Label sur les emballages de livraison;
• Utilisation du logo du Label sur les moyens de transport et supports de COM.

Pour le secteur Automobile

Un “circuit vert” au cours de la chaîne d’approvisionnement, notamment l’importation et par conséquent contribue à l’essor du secteur.
**Avantages du Label**

**Pour le consommateur**

*Alternative pour mieux identifier les lieux de commerce de pièces de rechange authentiques*

Les magasins labellisés SALAMATOUNA sont des « clean shops » auprès desquels le consommateur peut s’approvisionner en pièces de rechange qui ne mettent pas en danger sa sécurité.

**Pour les acteurs d’application des droits**

Enclenchement d’office d’actions coercitives civiles et pénales prévus par la loi relative à la protection de la propriété industrielle en cas de contrefaçon de la marque SALAMATOUNA, vu que la sécurité du consommateu est concernée.
Cérémonie de remise des premiers labels

Cérémonie présidée par M. Moulay Hafid Elalamy, Ministre de l’Industrie, de l’Investissement, du Commerce et de l’Economie numérique: 15 Novembre 2018

Premières entreprises labellisées: 17
Entreprises Labellisées

26 entreprises labellisées

48 points de vente directe

Géolocalisation des entreprises et magasins labellisés sur tout le Maroc
Perspectives

- Renforcement de la communication autour du Label ‘SALAMATOUNA’.

- Étude de l’impact de l’usage du Label sur la lutte contre la contrefaçon dans le secteur des pièces de rechange Automobile.

- Élargissement de l’approche de labellisation à d’autres secteurs touchés par la contrefaçon (Ex. Secteur Electrique, ...).
Larbi Benrazzouk, Directeur Général, Office marocain de la propriété industrielle et commerciale (OMPIC)  
benrazzouk@ompic.ma
Recent Legislative Amendments to Strengthen the Protection of Industrial Property in the Republic of Korea

September 2, 2019

Cho, Sangheum
Deputy Director, Intellectual Property Protection Policy Division
Korean Intellectual Property Office
01 Introducing Punitive Damages
02 Enhancing the Protection of Trade Secrets
03 Extending the Competences of the Special Judicial Police
04 Future Plans
a. Background

Previous Definition of “Damages”

Damages (=monetary compensation) **shall not exceed amount of the actual damage** incurred by the right holder as calculated in Article 128(3) *(The Patent Act)*

Concerns

☞ Meager payment
☞ Recurring intentional IP infringement
☞ IP devalued and innovation discouraged

Necessary to consider **an increase in the amount of compensation for damage and to deter intentional infringements of IP**
b. Patent Act Amendment

Introduction of Punitive Damages

- **Article 128(8)** [Newly inserted in January 2019]
  
  Where patent infringement is found to be intentional, damages may be awarded for an amount up to *three times the damage incurred*.

- **Article 128(9)** [Newly inserted in January 2019]
  
  The court shall *consider the following factors* when determining damages under the provision of Article 128(8): [Next slide]

*(The Patent Act)*
b. Patent Act Amendment

- Unfairly taking advantage of a superior position
- Degree of intent or degree of perceived possibility of causing loss
- Severity of damage
- Financial gains obtained from infringement
- Imposed fines & penalties
- Infringement duration & frequency
- Financial standing of the infringer
- Efforts to remedy the damage

(The Patent Act)
Introducing Punitive Damages

b. Patent Act Amendment

Burden of Proof

Article 126-2

[Newly inserted in January 2019]

In litigation involving the infringement of a patent or violation of an exclusive license, the suspected infringer must clarify the specific circumstances of their own action to deny the assertion of infringement brought by the right holder

(The Patent Act)
c. Trade Secret Protection Act Amendment

Introduction of Punitive Damages

- **Article 14-2(6)**
  [Newly inserted in January 2019]
  Where a trade secret infringement is found to be intentional, damages may be awarded for an amount up to three times the damage incurred.

(Unfair Competition Prevention and Trade Secret Protection Act)

- **Article 14-2(7)**
  [Newly inserted in January 2019]
  The court shall consider the following factors when determining damages under the provision of Article 14-2(6):
  - Same criteria as Article 128(9) of the *Patent Act*
a. Broadening the Definition of Trade Secrets

Previous Definition of “Trade Secret”

Trade secret defined as information... that is not publicly known [and] is the subject of “reasonable efforts to maintain its secrecy”
(Article 2.2 of the Unfair Competition Prevention and Trade Secret Protection Act)

Concerns

- Ambiguity of “reasonable effort”
- Strict application by courts
- SMEs at a disadvantage (i.e. infrastructure, personnel, policies, etc.)
02 Enhancing the Protection of Trade Secrets

a. Broadening the Definition of Trade Secrets

- Article 2(2) [Amended in January 2019]

“Trade Secret” means information, including a production method, sale method, useful technical or business information for business activities, that is not known publicly, is managed as a secret, and has independent economic value.

(Unfair Competition Prevention and Trade Secret Protection Act)

Original Law

“reasonable efforts to maintain its secrecy”

Amendment

“managed as a secret”
Enhancing the Protection of Trade Secrets

b. Extending the Scope of Criminal Liability

- Article 18(1)  
  [Amended in January 2019]

1. An act of using or disclosing trade secrets to obtain improper benefits or to damage the owner of the trade secrets;

2. (added) An act of unauthorized taking trade secrets out of designated place to obtain improper benefits or to damage the owner of the trade secrets;

3. (added) An act of continuing to possess trade secrets even though there were request for removal or return to obtain improper benefits or to damage the owner of the trade secrets;

4. (added) An act of acquiring trade secrets by theft, deception, coercion, or other improper means, or subsequently using the trade secrets improperly acquired; and

5. (added) An act of acquiring or using trade secrets knowing that an act under the aforementioned 1~4 was involved

(Unfair Competition Prevention and Trade Secret Protection Act)
c. Increasing the Severity of the Criminal Penalty

**Article 18(1), 18(2)**

<table>
<thead>
<tr>
<th>Category</th>
<th>Imprisonment</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Domestic</td>
<td>Overseas</td>
</tr>
<tr>
<td>Original Law</td>
<td>5 years</td>
<td>10 years</td>
</tr>
<tr>
<td>Amendment</td>
<td>10 years</td>
<td>15 years</td>
</tr>
</tbody>
</table>

[Amended in January 2019]

(Unfair Competition Prevention and Trade Secret Protection Act)
Established in 2010 for the purpose of trademark enforcement, the SJP takes action against the manufacturing, distribution and sale of counterfeit goods.

To date, 2,800 arrests and 5.1 million counterfeit goods confiscated in total.

Successful performance and the necessary high level of technical knowledge and expertise in IP led to a broadening in the scope of the SJP authority against other IP crimes.
### b. The Act on the persons performing the duties of Judicial Police Officers

#### Extending the Scope of Investigation of the SJP

<table>
<thead>
<tr>
<th>Category</th>
<th>Scope of Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Original Law</strong></td>
<td>Offenses of unfair competition defined in Article 2(1)(a) of the <em>Unfair Competition Prevention and Trade Secret Protection Act</em> such as using a person’s name, trade name, trademark, etc</td>
</tr>
<tr>
<td></td>
<td>Infringements of exclusive use rights prescribed under the <em>Trademark Act</em></td>
</tr>
<tr>
<td><strong>Amendment</strong></td>
<td>Unauthorized acquisition, use or disclosure of trade secrets</td>
</tr>
<tr>
<td></td>
<td>Unfair competition activities that copy the form of another product</td>
</tr>
<tr>
<td></td>
<td>Infringements of patents and/or exclusive use rights</td>
</tr>
<tr>
<td></td>
<td>Infringements of designs and/or exclusive use rights</td>
</tr>
</tbody>
</table>

*Act on the Persons Performing the Duties of Judicial Police Officers and the Scope of their Duties*
KIPO Plans to...

The Punitive Damages
...make an effort to extend the scope of the punitive damages to also cover trademark and design infringements

The Protection of Trade Secrets
...expand support programs such as providing education and consultations on trade secret protection, in particular for SMEs

In the Field of Enforcement
...establish a cooperative arrangement with the police and prosecutors to combine enforcement expertise of IP and investigation
THANK YOU

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ACTUACIÓN NACIONAL E INTEGRAL DE LUCHA CONTRA LA VENTA DE PRODUCTOS FALSIFICADOS Y PARA LA OBSERVANCIA DE LOS DERECHOS DE PROPIEDAD INDUSTRIAL EN ESPAÑA
La Oficina Española de Patentes y Marcas
Antecedentes

• Comisión Interministerial para actuar contra las actividades vulneradoras de los derechos de Propiedad Industrial e Intelectual.
• Comisión Intersectorial.
• Grupos de trabajo.
• Más: 1998: Libro Verde de Lucha contra la usurpación de marca y la piratería en el mercado interior.
Misión y principios inspiradores

Respuesta coordinada.

Principios inspiradores:

1. Visión integral.
2. Colaboración.
3. Eficacia y eficiencia.
5. Garantía de la observancia.
Actores involucrados

• Sector público
  – Administración General del Estado.
  – Administración de las Comunidades Autónomas.
  – Administración Local.

• Sector privado y Tercer Sector

• Actores fuera de España
Ejes y líneas de acción

1. Eje de regulación

2. Eje de coordinación

3. Eje de análisis

4. Eje de formación y concienciación
1. Eje de regulación

- Adecuar la regulación española a las nuevas realidades del mercado.
- Adaptar la regulación española al marco europeo.
- Potenciar la colaboración a nivel internacional.
Ejes y líneas de acción

Primera jornada de debate para una actuación integral contra la falsificación en España.

9 y 10 de abril de 2019
Ejes y líneas de acción
Ejes y líneas de acción

2. Eje de coordinación

- Apoyar la acción aduanera.
- Mejorar y adecuar las herramientas existentes.
- Acciones comunes con el Servicio de Aduanas y las Fuerzas y Cuerpos de Seguridad del Estado.
- Potenciar la colaboración a nivel nacional, comunitario e internacional para la persecución de las infracciones.
- Intensificar el intercambio de información con Juzgados y Tribunales.
- Potenciar el conocimiento de la jurisprudencia.
- Formación de jueces en materia de Propiedad Industrial.
Ejes y líneas de acción
Ejes y líneas de acción

3. Eje de análisis

- Mejorar la elaboración y la presentación de datos estadísticos.
- Obtener datos judiciales concretos en materia de Propiedad Industrial.
- Cooperar a nivel nacional, comunitario e internacional.
Ejes y líneas de acción
Ejes y líneas de acción

4. Eje de formación y concienciación

- Analizar la decisión de compra de productos falsificados.
- Organizar ciclos formativos.
- Realizar acciones de sensibilización.
- Fomentar sinergias.
Ejes y líneas de acción
Duración y actualización

2020-2023.

Vocación de continuidad de las medidas necesarias.

Impulso y seguimiento del Plan.
¡Muchas gracias por su atención!

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Oficina Española de Patentes y Marcas, O.A. (OEPM)
Enforcing IP rights in foreign trade zones

Susan Wilson
Intellectual Property Attaché to the EU
United States Mission to the EU
Overview

• Background and history
• Legal frameworks related to IP enforcement in FTZs
• Illegal activities in FTZs
• Enforcement best practices and technological approaches
Background and history
Definition

• Free trade zones (also called foreign trade zones) are geographic areas of a country or economy where any goods introduced are generally regarded insofar as import duties are concerned, as being outside the customs territory.

• Common misunderstanding: FTZs are not extraterritorial to the nation and thus are still subject to the host economy’s laws.
Background and history

- World’s first free zone: Shannon, Ireland
- 7 million sq. ft. of development buildings for manufacturing, distribution and offices
- 100 companies across a range of sectors
Today’s FTZs

- Activities include production, manufacturing, warehousing and distribution operations.
- Assembly of the final product may take place in the FTZ thereby minimizing or eliminating duty payments on component parts.
- FTZs may also house other businesses including shopping centers, technology centers and logistics centers.
Today’s FTZs

• 3,500 FTZs worldwide in 130 economies that collectively employ 55 million workers,

• Generating USD 500 billion in direct trade-related value added

• In the United States of America alone, every state has at least one FTZ and there are 191 active FTZs in all 50 states and Puerto Rico with more than 3,200 companies employing 450,000 workers.
Benefits and criticisms of FTZs

**Benefits**
- Reduced duty payments
- Attracting foreign investment
- Creating jobs
- Enhancing export performance

**Criticisms**
- Reduced revenues normally accruing to the host economy
- Attracting and promoting illegal and criminal activities
Legal frameworks related to IP enforcement in FTZs
Legal frameworks

• International agreements and conventions play a part in strong enforcement of intellectual property (IP) rights in FTZs . . .

but suffer limitations in that the minimum requirements or non-mandatory nature of some provisions of the agreements result in overall weak enforcement.
Paragraph 6 of Chapter 2 of Annex D

• Recommended Practice

• Admission to a free zone of goods brought from abroad should not be refused solely on the grounds that the goods are liable to prohibitions or restrictions other than those imposed on grounds of:
  – public morality or order, public security, public hygiene or health, or for veterinary or phytosanitary considerations; or
  – the protection of patents, trademarks and copyrights.

• Irrespective of country of origin, country from which arrived or country of destination

• Goods which constitute a hazard, which are likely to affect other goods or which require special installations should be admitted only to free zones specially designed to receive them.
Art. 51 Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.
Illegal activities in FTZs
Counterfeits

- Legitimate activities in FTZs may lend themselves to counterfeiters to create their illegal goods.
- Additionally, transhipment of counterfeit goods may use FTZs by disguising the country of origin and country of destination of counterfeit goods through transit via multiple ports and FTZs.

Credit: U.S. Immigration and Customs Enforcement
Threats to health and safety and organized crime

- Counterfeit pharmaceutical goods, pose a health and safety concern.
  - Inspectors have found that the counterfeiters relabeled and repackaged the items to be sold.

- Money laundering, counterfeiting and piracy have also been prosecuted in the United States.
Enforcement best practices and technological approaches
US FTZ risk-based audit system

- Operator files with the Customs and Border Protection Agency (CBP) an application for Activation and Procedures and Operations Manual.
- Application describes internal compliance processes and goods moving through the zone or subzone.
- Risk-based audit system that does not require a permanent on-site supervision system though access to zones at any time is permitted by CBP.
Other best practices

• Improving awareness and understanding that FTZs are not extraterritorial to the nation and thus subject to the host economy’s laws

• National customs authority should enjoy legal authority to control the admission of merchandise into the zone, the handling and disposition of merchandise in the zone and the removal of merchandise from the zone.

• Giving customs agents ex-officio authority to detain goods suspected of infringing IP rights in FTZs

• Improving and fostering a cooperative relationship between customs authorities and private industry in a transparent manner would also improve the rule of law to allow for the regulation of FTZ.
Technological approaches

• Radio-frequency identification (RFID) technologies coupled with securing shipping manifests using blockchain technologies in a distributed ledger system, have the potential to prevent manufacturing, shipping origin and general supply chain fraud to take place.

• Note that none of these technologies are endorsed by the US government or the speaker.
Thank you!

Susan Wilson
Intellectual Property Attaché to the EU
United States Mission to the EU

www.uspto.gov