Workshop on the Investigation and Prosecution of Intellectual Property Crimes

CURACAO COSTUMS



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Very important.....

• MAIN OBJECTIVE IPR- CRIMES IS ALWAYS......

MONEY



CRIMINAL ORGANISATIONS.....

- The main objective of those criminals is to gain money. That's why its also very important during the investigations to focus on their illegally financial gain (cars, houses, boats, motorcycles ...etc) in order to seize them.
- IP-crime is mostly used to fuel inter/transnational criminal organizations
- Money laundering......

SEIZURES -CONFISCATED..













Threat...

• I am sure that by now everybody on this world is supposed to be aware of counterfeit and/or piracy. But you are free to act on it or ignore this situation. If you choose to act on it, that means that you recognize it as a threat. You will automatically take the necessary precaution to avoid this threat.

At the end of the day you will at least be able to mitigate these threats.

Very important tools for mitigating the Risk.....

The following TOOLS are very essential:

- Be aware of the threats (acceptance)
- Recognize the threats
- To take the necessary precaution to avoid threats (preventive) and/or
- Know how to mitigate/combat the threats (repressive.....)

Important repressive tool: LEGAL FRAMEWORK....



- Penal Code (According the Penal Code its an offence)
- Wetboek van Strafvordering (Penal Procedure Code)
- Algemene Verordening In-, Uit en Doorvoer 1908 *(Customs Regulation)*
- Opium Landsverordening (ordinance narcotics
- Vuurwapen verordening (ordinance weapons)
- Landsverordening op Geneesmiddelen (pharmaceutical)
- Merken Landsverordening (BIP)
- Treaties (CCLEC, WCO)
- Other ordinance...

<u>Operation Maya 2 is considered</u> to be the basic for the successful collaboration regarding working relationship among Police, Customs and Judiciary...enforcement IPR-CRIME

- 1. Interpol
- 2. Customs
- 3. Local Police (immigrations)
- 4. Coastguard
- 5. Public Prosecutor
- 6. Ministry of Public Health, Environment and Nature
- 7. IPR –Office (BIP)
- 8. Representatives of/or brandowners (private sector)
- 9. Waste management unit (dispossal/destruction)

Some experiences and seizures of 2015....(Joint efforts of various agencies)



Crocs....



Beats.....



Beverage with expired dates...





Cigarettes.....(excise and tax invasion)



LV & MK-purse, MK -Glasses staring at \$6.00 (the price is a good indication)



Pharmaceuticals.....





Counterfeit goods.....

• The biggest raid took place in 2009 .More than 80 officers took part in this action. 30 stores were checked for the presence of counterfeit goods. As result 84cm3 of clothing, glasses, watches and footwear were seized and afterwards destroyed



LEGAL FRAMEWORK



• The most important tool in the context of anticounterfeit is adequate legislation. Since the end of 2011 there is a new article 2:324 included in the Penal Code. According to this article is the <u>import</u>, <u>export and transit</u> of counterfeit goods an offence.

Ministry of Economic Development



• The Ministry of Economic Development provides direction to sustainable economic development of the island with the main objective high quality of life and a prosperous life for the inhabitants of Curacao. The Ministry brings this to life by effectively anticipating social and international developments, to deliver optimal services to the population and follow-depth strategy. The ministry is responsible for supporting local businesses, providing the necessary permits and maintaining international contacts and attract investors, which can provide more jobs.

Continuation....

• The Free Zones resorts under this ministry. The minister visits some countries in connection with the fight against counterfeit goods. Before the introduction of the new article in the Penal Code, the transit of counterfeit goods was not an offence. This is the reason why the Free Zones are full of counterfeit goods. A substantial portion of these goods are introduced (illegally) in our local market. A lot of of shops in the town are selling these fakes goods. Not to mention the fact that these fakes goods are also offered for sale to tourists that are visiting our island. That's why its decided to tackle the Free Zones as first. There was a special task force created for this purpose consisting of Department of Justice, Curinde, Customs and Public Ministry.

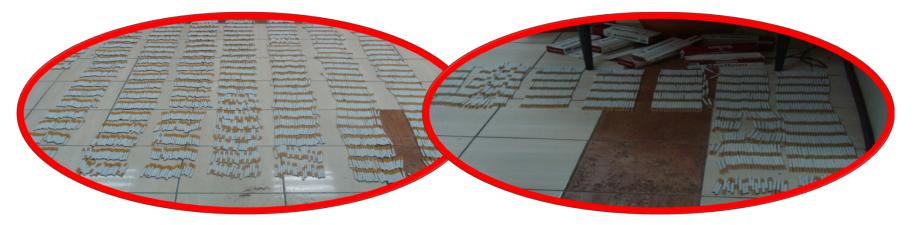
The First raid at the Free Zones will hopefully be in the first week of december.

• Some custom-officers got a training by the different brand representatives so they can detect and recognize the fake goods.

Illicit trade in tabacco product...

- According to an investigation by Colombian newspaper El Tiempo.
- Criminal and rebel groups from Colombia are believed to be laundering money through the sale of smuggled cigarettes produced by a company owned by the President of Paraguay, using a transnational contraband networks believed to "wash" drug trade profits.
- Police investigators from the Netherlands have been meeting with their Colombian counterparts to exchange information on contraband networks that move Paraguayan cigarettes into Colombia via the islands of Aruba and Curacao.
- Cigarettes (illicit whites) coming from Paraguay are stored in de Free Zone and then shipped to Venezuela

Continuation.....



- In 2013 more than 100.000 piece of counterfeit cigarettes were seized in different local stores on the island. (Richmond and Marlboro)
- More than 200 mastercases were seized during an investigation in the Free Zone. (Marlboro)

Pharmaceutical crime.....

- Besides the main harbour, goods are also introduced at the airport.
- At the airport the custom officers are mostly confronted with counterfeit or illegal parmaceuticals.



Continuation.....



- A mayor problem Customs of the Airport is goods coming from the Dom-Rep and China. which most of the time consist for a greater part of pharmaceuticals. Customs have a procedure for these pharmaceutical goods, because they need to be inspected by the Inspection of Pharmaceuticals from the Ministry of Health & Sanitation. The legal customs procedure is arriving passengers that have goods that can be considered as pharmaceuticals must declare them. Customs will take those goods in custody waiting for an inspector of the Ministry of Health and Sanitation to inspect the goods and then decide which of them can be imported.
- Those that are not approved will stay in custody to be destroyed.

Continuation.....

- But, the reality is other and travellers most of the time try to smuggle pharmaceuticals in to the land.
- As they know that some of the goods won't get an permission of importation they will try anything to get the goods trough customs. (see pictures).
- At this moment we have legally by legislation a problem in handling those goods. Customs can take them in custody as they are being illegally imported by smuggling. Although this action we cannot take the goods and destroy them...... The Ministry of Health & Sanitation also cannot take the goods by their legislation, because the goods are not found by them inland after illegal importation, the goods are still in transit.

Possible solution....



- The Ordinance on Medicines (PB 1969, No 24) is very antique.
- We, customs for example need to be empowered by law in Health and Sanitation rules (new legislation) to act when smuggling of pharmaceuticals is detected.
- The customs can then give those passengers a fine and subsequently destroy those pharmaceutical goods. The passenger/owner most of the time is not even a registered salesmen and the quantity they bring is not for personal use. It's for business purposes.
- A possible solution is to empower some custom officers in article 45 of The Ordinance on Medicines (PB 1969, No 24)

Curacao Freezone Distributors..

(acquittal due to lack of intentional evidence)

Nepomuceno vrijgesproken van handel in vervalste merkpordukten

- March 08, 2014 1:31 PM
- WILLEMSTAD Xerxes 'Checo' Nepomuceno, ex-voorzitter van de Freezone Association of Curação (FrezaCur) en zijn bedrijf zijn door de rechter vrijgesproken van het invoeren, doorvoeren of in het bezit hebben van vervalste merkproducten in juni vorig jaar. Het Openbaar Ministerie eiste tijdens de behandeling van de zaak op 14 februari, in totaal 250.000 gulden boete tegen de man en zijn bedrijf.
- Het gaat hier om ruim 400 dozen met kleding van het merk Lacoste, ruim 900 dozen met sigarettenpakken van het merk Marlboro, ruim 400 dozen met spijkerbroeken van het merk Calvin Klein en ruim 800 dozen met nagemaakte Armani-shirts, afkomstig uit onder andere China. De spullen zijn bij een bedrijf van Nepomuceno gevonden, tijdens controles bij de Vrije Zone en door het OM in beslag genomen.
- Het OM kon ter zitting bewijzen dat alle in beslag genomen producten, met uitzondering van de Calvin Klein-spijkerbroeken, nagemaakt waren. De spullen zijn onttrokken aan het verkeer. Alleen de spijkerbroeken zijn in bewaring genomen om te bepalen wie de eigenaar is. Nepomuceno heeft hiervan afstand gedaan.
- Het OM kon echter de opzet van Nepomuceno niet bewijzen. "De directeur is niet op de hoogte van de precieze inhoud van de containers, behalve dan van de (globale) omschrijving van de inhoud op de invoice en de bill of lading. De directeur vergt van zijn opdrachtgevers dat de omschrijving met de inhoud van de containers klopt, in verband met douanecontrole. De controle die hij zelf uitvoert, beperkt zich tot het checken of er dozen in de container zitten en strekt zich niet uit tot de inhoud van die dozen." Hoewel deze controle tamelijk beperkt is, betekent dit niet dat hij opzettelijk heeft gehandeld, voegt de rechter daaraan toe.
- Gelet op de vrijspraak zijn de vorderingen van de merkhouders Nike International Ltd, Philip Morris Sarl en Calvin Klein Trademark Trust in het strafproces niet-ontvankelijk. Zij hebben de mogelijkheid om een procedure te starten bij een civiele rechter.

New phenomenon in the Freezone.

- Some companies in the Freezone that is doing business in clothing have registered their own brands correctly at the IPR-Office.
 Nevertheless they are still dealing in counterfeit clothes. Their clothes are still imitating other brands.
- I have here an example of a jeans Red Tag but which has all the characteristics of an Levi's jeans.



RED TAG....jeans ...(look alike goods)



RED TAG..jeans

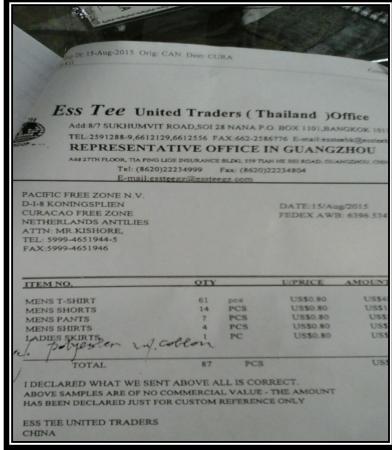


RED TAG .. jeans



Registered brand (The Big Jump)





The Big Jump.....



Import of energy drink. (from the middle east)



Expired Meat Products.....

- More Expired Meats Now At A Popular Supermarket In Curação
- WILLEMSTAD After their regular inspections, the Ministry of Economic Development, together with police officers and the Tax Accountants Service of the government, decided to pay the popular wholesale supermarket Goisco a visit. They did this after receiving tips from several employees.
- Upon arrival, the multi-disciplinary team encountered resistance from the owner, Joel Gois, who indicated that no one will enter his business while his lawyer was not present. When his lawyer arrived he ordered the press to leave the premises or they will be detained.

The multi-disciplinary team discovered a huge quantity of expired products. An entire freezer was clean up because of these products.





IPR-crime investigation...

- Exchange of information and collaboration is mandatory in the fight against IP-crime.
- Engage and challenge each other not only with words but also in your actions
- We have to attack the demand and the supply of these goods
- Do you have a different opinion?

Suggestions.....

- Verification of paper trail and money trail.
- Compare this information with the trail of goods. (to detect eventually money laundering)
- Try as much as possible to have always the same officials participating in the operations/investigations (they will gradually gain more experience)
- All participating agencies in the operations must be aware of their responsibility. (to avoid unnecessary misunderstanding)

- UNITED WE STAND.....
- DIVIDED WE FALL





Thanks for your attention