

Strategies for Combatting Trademark Infringement

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Trademark basics Curaçao

- Law: Trademark Ordinance 1995 (1 Jan 2001)
Madrid Protocol (28 April 2003)
- Acquisition: first to file followed by registration (previously first use, transition year 2000 – re-affirmation)
- Duration: 10 years
- Authority: Bureau for Intellectual Property Curaçao (2018: 125 years of trademark filings)
- Dissolution Netherlands Antilles 2010: automatic transition existing trademark rights to Curaçao (and St. Maarten)

Trademark basics Curaçao

- Parallel import is allowed
- Distributor can act independent of brand owner only if agreed in writing
- Remedies
 - Prohibition
 - Damages (must substantiate, loss/lost profit)
 - Payment profit made
 - Rendering of accounts (incl. information re suppliers and clients)
 - Seize infringing goods & funds collected therefore
 - Demand destruction infringing goods

Trends Curaçao

- More foreign brand owners than local brand owners; foreign brand owners tend to take action
- Not many court cases; C&Ds, criminal action mostly limited to warning if merchants abandon merchandise; few repeat offenders, less counterfeit items
- Goods: clothing, apparel, handbags, personal hygiene products, cigarettes, pharmaceuticals
- 2009: first large scale operation seizure counterfeit goods in Willemstad; regular actions have diminished number of counterfeit goods
- Seaport & airport – awareness campaigns holiday season
- Close cooperation customs, prosecutor, coast guard, brand owners, attorneys; close contact international & regional organizations/authorities
- Seizure MEO Enforcement Team/Customs/Police/Health Inspectorate: temporary inspection purposes

Curaçao Free Trade Zone

- Goods in transit: Use of a trademark is not
 “import with the apparent destination of re-export”
 (art. 23 paragraph 2 under c Trademark Ordinance)
 same situation Criminal Code until 2011 (no offence)
- Action in Free Trade Zone?
 - Copyright Ordinance
 - Pharmaceutical Ordinance – time & cost effective
 - Customs Regulation
 - Criminal Code (complaint) – cost effective, tough burden of proof ‘intent’
 - Civil Code (wrongful act)
 - Curinde – active role

Takeaways

- Evaluate civil, criminal or administrative action on a case-by-case basis
- Criminal vs civil action can be more cost-effective, but not time effective
 - tough burden of proof - suspect knowingly accepted the reasonable chance of handling counterfeit goods
 - Seek support of other brand owners to file a complaint
 - provide as much information as possible to authorities, e.g. results of preliminary investigation conducted by/on behalf of the brand owner, training/information on how to detect the counterfeit goods
- Involve specific authorities (e.g. Health Inspectorate re pharmaceuticals) as they have specific authority, can also be cost-effective for the brand owner
- Seek legal opinion lawyer country of manufacture and destination re trademark infringement
- Counterfeit affects us all; Region must combine efforts to educate & enforce

Thank You!



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