

Peru: The Border Measures in Safeguard of the Intellectual Rights

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Intellectual Property enforcement and border measures are important to detect those foreign trade operations in which the rights of intellectual property are violated.

Well-known trademarks are those which have such a great reputation that they are capable of protection and distinction worldwide, no matter the country or class they are protected for.

A major role of public authorities and also private companies in assuming the great challenge of ensuring the observance of Intellectual Property Rights is being implemented by improving IP regime in Andean countries. There is an obligation of members of Andean Community to introduce border measures for the protection of intellectual property rights. Specifically, for Peru, and as a part of the enforcement of the Trade Promotion Agreement entered between Peru and The United States in 2008, the Legislative Decree number 1092, and its regulation (Supreme decree No. 003-2009) entered into force on the 1st of February 2009, approving border measures for the protection of copyrights or related rights and trademark rights.

The border control measures can be initiated by a citizen, a legal entity or the customs administration. Peruvian customs are able to perform spontaneous inspections of goods if they have reasonable grounds that are counterfeited or pirated and cannot be held liable for any damage to inspected goods.

When requesting protection at the borders, the petitioner will be required by the customs administration to deposit a bond to cover possible losses or damage cost to the importer, exporter, and/ or consignee of the goods resulting from any suspension of the release of non-infringement goods. This bond must be a sum equivalent to 20% of Free on Board (FOB) value of the goods. In the case of perishable goods, the guarantee shall be constituted by 100% of the FOB value of it. Merchandise under US\$ 200 FOB value will not be affected.

The precautionary measures that can be granted are immobilization, seizure or withholding of the merchandise.

In order to verify the ownership of the relevant goods and to suspend them at the border, trademark owners or the legal representatives or agents must be registered in an official database kept by the customs administration. The customs board will liaise with the Peruvian Trademark Office (INDECOPI) for the purpose of registering rights holders.

There is a recent case of the mark ANGRY BIRD, which is a well-known trademark owned by the firm ROVIO ENTERTAINMENT LTD. Due to the success of this mark and its products and services involved, many persons are trying to introduce and sell counterfeited products bearing this mark in Peru. The amount of goods entering to the Peruvian market is so big, that each week is received several appointments to appear before the Judiciary, also police and judicial notifications are received to confirm the trial initiated ex-officio by the Public attorney. As almost products are made abroad and imported to our country, it is not possible to find the factory of these faked goods, and the only way to stop these infringements is through Peruvian customs, which, by the way, is making an excellent job.

The process seeks to be brief, if the accused has been caught in the infringement act, or has confessed the commission of the infringement, or the elements of conviction are sufficient and evident, in this case the Public Ministry starts the criminal process and promotes the application of the principle of opportunity (Principio de oportunidad) which is intended to reach an agreement between both parties to compensate for damages and losses that have been incurred. Another requirement to apply for this principle is when the damage caused does not have a significant impact on the society and the penalty to be imposed is minimal. This border measures are very important to avoid exploiting the prestige of the brand, low quality products, smuggling and also for consumer protection.

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