

Jurisdiction report: Peru

Head: **Trademark right in action**

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In recent years, the filing of infringement actions has increased and the fight against counterfeit products has greatly intensified. For intellectual property lawyers as representatives of brand owners in Peru, lobbying for improved IP enforcement is vital. Many counterfeit goods enter the Peruvian market every day, and while 10 years ago, it was simply falsified t-shirts, bags and watches, now the offenders have the technology to make all sorts of products, including medicines and spare parts for motors and aircraft.

However, recent events have improved the situation, thanks to the Free Trade Agreement signed with the United States of America. When the agreement was implemented on June 28, 2008, the Peruvian government issued Legislative Decree No. 1075, which brought several innovations to the field of intellectual property: it prescribed that all infringement actions concerning trademark rights must be resolved in a maximum of 180 working days; and more severe potential penalties for infringement were imposed, of up to \$200,000.

On February 4, 2009, a legislative decree and customs resolution were published to the effect that marks registered before the Peruvian Patents and Trademark Office (INDECOPI) can be recorded before the customs administration, which will monitor imports and exports, and send alerts to the original owners or their brand representatives if they suspect counterfeiting.

It is good to emphasise the efficiency of the customs administration, which in some cases, manages to stop the counterfeit merchandise the same day it is detected.

There is also a role in the fight against counterfeits for an 'overseer' from INDECOPI, who monitors merchandise in the customs terminal. This is especially useful when the importer does not mention the brand of products in the custom form, in order to smuggle counterfeits or use registered trademarks illegally in Peru.

Customs registration is very useful because it allows Peruvian customs to learn about the characteristics of genuine, original products, such as the packaging, authorised distributors, distribution channels, etc. This registration is valid for a year and can be renewed every year for the same period.

Thanks to these new developments, trademark and copyright owners can now confiscate and destroy counterfeits that go through customs.

We applaud the excellent initiative of some trademark owners, such as Group Schaeffer, that are interested to send people from the company to teach Peruvian custom employees about the

difference between an original product and a counterfeit by looking at codes, packing and other technical specifications.

And in a successful infringement action, when an importer commits an infraction, it is possible to file a judicial demand, because bad faith has already been shown. This can result in a jail sentence.

Finally, we have been underlining the importance of IP enforcement. A good system needs to see trademark rights respected and transgressors punished with a high fine. This market benefits because infringers don't sell falsified products, and therefore consumers and trademark owners are protected. Traders are discouraged from sending counterfeits when there is strong IP enforcement. Businessmen might realise the importance of registering their trademarks and the value of infringement actions. Moreover, transgressors have to pay all the costs of an infringement action; the counterfeits are confiscated and destroyed, and the infringer's name is recorded in the national registry of infringers. Finally, infringers may have to pay substantial damages.

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