

ALL'S WELL THAT ENDS WELL: Trademarks Search and Seizure in Belize

Alhaji Tejan-Cole, Deputy Registrar, BELIPO (www.belipo.bz)

Act I – Prologue: The Law

In June 2000, Belize enacted the Trade Marks Act, Chapter 257 of the Laws of Belize. This statute provided for the registration and enforcement of trademarks in Belize. According to section 24(1) of the Trade Marks Act, the owner of a registered trademark has exclusive rights to use the trademark, and such exclusive rights are infringed by use of the trademark in Belize without the trademark owner's consent. A person uses a trademark if he affixes it to goods, offers or exposes goods for sale under the sign or offers or supplies services under the trademark, imports or exports goods under the trademark, or uses the trademark on business papers or in advertising.¹ The term of protection of a registered trademark is ten years from the date of registration.² The term of protection may be extended for further periods of ten years.³

The Trade Marks Act gives wide powers to customs and police officials with regard to the enforcement of the rights of trademark owners. The trademark owner or licensee may give a written notice to the Comptroller of Customs that he or she is the proprietor or licensee of the registered trademark, that at a time and place specified in the notice infringing goods, material or articles are expected to arrive in Belize, and that he or she requests the Comptroller to treat the goods as prohibited goods.⁴ As long as such a notice is in force, the commercial importation of the relevant goods is prohibited and the importer is liable to the forfeiture of such goods.⁵ In making such a notice to the Comptroller, the trademark owner or licensee shall comply with such conditions relating to the form of the notice; the furnishing of evidence; the payment of fees; the giving of security; the indemnification of the Comptroller; and any other incidental or supplementary matters.⁶

Any police officer may enter and search any premises; stop, board and search any vessel, aircraft, or vehicle; or seize, remove or detain any infringing goods.⁷ A police officer may also, in exercise of the powers conferred by the Trade Marks Act, break open any outer or inner door of any place; forcibly board any vessel, aircraft or vehicle; forcibly remove any

person or thing obstructing the police officer; detain any person until such place has been searched; detain any vessel or aircraft and prevent any person from approaching or boarding such vessel or aircraft until it has been searched; or detain any vehicle until it has been searched.⁸ However, no domestic premises shall be entered and searched by a police officer unless the magistrate has issued a warrant authorizing a police officer to enter and search the premises.⁹

The above provisions give the Belizean law enforcement authorities the legal cover required to conduct search and seizure operations. The Trade Marks Act also provides for the erasure of the offending sign from any infringing goods, material or articles in the infringer's possession.¹⁰ If the erasure of the offending sign is not practicable, the Court may order the infringer to destroy the infringing goods, material or articles in question.¹¹

Act II – Scene I: The Levi Strauss and Tommy Hilfiger Affair

In February 2004, Belize reached a significant milestone in the enforcement of intellectual property rights with the seizure by the Belize Customs Department of about \$300,000 worth of clothing carrying counterfeit Levi's, Dockers and Tommy Hilfiger trademarks.

Representatives of the Levi Strauss and Tommy Hilfiger companies assisted the Customs Department in identifying the counterfeit merchandise. Officials of the United States (U.S.) Embassy in Belize stated that the container originated somewhere in the Far East and had been determined to contain the counterfeit goods while in transit through Jamaica and Curacao. The container had 406 boxes including 226 boxes of clothing carrying the counterfeit Levi's, Tommy Hilfiger and Dockers trademarks. The container also included imitation Tommy Hilfiger perfumes, and other counterfeit merchandise labeled as Adidas, Nike, Nautica and Ralph Lauren.¹² This was the first seizure of counterfeit trademarks under the Trade Marks Act.¹³

Act II – Scene II: The Planet Pharmacy Affair

In May 2004, BELIPO was informed by the U.S. Embassy that the U.S. Trade Representative had placed Belize on the 2004 Special 301 Report Watch List, for allegedly providing 'only minimal efforts at enforcement'.¹⁴ One of the main causes of this listing was the United States International Trade Commission's investigation of a pharmaceutical company in Belize,

as a result of a complaint filed by the pharmaceutical giant Pfizer Inc.¹⁵ Pfizer Inc. alleged that its patented pharmaceutical product ‘VIAGRA’ (also a registered trademark) was being infringed by Planet Pharmacy of Ladyville, Belize.¹⁶ Officials at the U.S. Embassy in Belize also complained to Belize government officials that Planet Pharmacy was producing over strength versions of ‘VIAGRA’, marketing the products on the Internet, and subsequently exporting them to the U.S., thereby endangering the health of innocent American citizens.¹⁷

Act II – Scene III: The Marlboro Affair

In October 2004, two containers of ‘slippers’ destined for the Corozal Free Zone were inspected by Customs Officers and were found to contain 1,644 cases of counterfeit Marlboro cigarettes valued at BZ\$2,650,000. Representatives of the trademark owner, Philip Morris International, had notified the Comptroller of Customs that the company was the proprietor of the registered trademark and that the consignment was expected to arrive in Belize. Further, they requested the Comptroller to treat the cigarettes as prohibited goods. According to Philip Morris International, the counterfeit cigarette consignment originated in South Korea and was to be transshipped through the Corozal Free Zone to its eventual destination – the Mexican market.¹⁸

Act III - Epilogue

In May 2004, the representatives of the Levi’s Strauss and Tommy Hilfiger companies requested that the confiscated merchandise should be donated to charitable causes in Belize, after the erasure of the counterfeit labels from the clothing. Consequently, the ‘no-frills’ (without the counterfeit trademarks) clothing was donated to local charitable organizations such as the Lions Club, Rotary Club and Teeny Tiny Hands. The alleged infringer of the ‘VIAGRA’ patent and trademark, Planet Pharmacy, was subsequently shut down by the authorities. Also, the counterfeit Marlboro cigarette consignment was destroyed by the Customs Department.

Further, BELIPO has been engaged in the following activities. First, the delivery of papers at intellectual property enforcement seminars organized for law enforcement officials. Second, the production of

industrial property and copyright enforcement manuals for use by the Customs Department, the Police Department, the Director of Public Prosecutions' Office, the Judiciary and members of the Bar Association. Third, the provision of specialized legal advice to the Customs Department in the matter of the seizure of the 1,644 master cases of counterfeit Marlboro cigarettes.

In the words of the great playwright, William Shakespeare, **'all's well that ends well'**.

Notes

¹ Section 25(4) of the Trade Marks Act.

² Section 20(1), *ibid.*

³ Section 20(2), *ibid.*

⁴ Section 74(1), *ibid.*

⁵ Section 74(2), *ibid.*

⁶ Section 74(3), *ibid.*

⁷ Section 79(1), *ibid.*

⁸ Section 79(2), *ibid.*

⁹ Section 80(1), *ibid.*

¹⁰ Section 50(1)(a), *ibid.*

¹¹ Section 50(1)(b), *ibid.*

¹² A. Ramos, **BZ\$600,000 worth of fake Levi's, Dockers, and Tommy Hilfiger seized at Belize Customs**, *Amandala Newspaper*, No. 1843, Sunday, February 29, 2004, P. 1-2.

¹³ Chapter 257 of the Laws of Belize, Revised Edition 2000.

¹⁴ United States Trade Representative, **2004 Special 301 Report Watch List**, available on www.ustr.gov.

¹⁵ United States International Trade Commission, **ITC Institutes Section 337 Investigation on Certain Sildenafil or any Pharmaceutically Acceptable Salt Thereof, such as Sildenafil Citrate, and Products Containing Same**, News Release 03-020, available on www.usitc.gov.

¹⁶ *Ibid.*

¹⁷ United States Embassy in Belize, **Present State of IP Protection in Belize**, May 6, 2004, Unclassified Document, 2.

¹⁸ United States Embassy in Belize, **BZ\$2,650,000 Worth of Counterfeit Marlboro Cigarettes Seized**, Press Release, November 15, 2004, available on www.channel5belize.com/news/archive/15-11-2004-news.shtml.