

# Insight



The British-Caribbean  
CHAMBER OF COMMERCE

The Newsletter of the British Caribbean Chamber of Commerce, Trinidad Chapter

◆ **The REAL Cost of Counterfeit Goods** Penny Sellier reports on a Forum held on 8th Nov with highlights from the Panelists' presentations

## The REAL Cost of Counterfeit Goods

The British-Caribbean Chamber of Commerce hosted a Forum “**The REAL Cost of Counterfeit Goods**” on 8<sup>th</sup> November 2012. Counterfeit Goods are not unique to Trinidad and Tobago, as they appear in the marketplace worldwide. “Goods” refers to a broad range of items including (but not limited to) apparel, automotive parts and accessories, pharmaceuticals, electronic products and intellectual property such as music and film. The Forum examined the REAL Cost of Counterfeit Goods – to the consumer, the authorised distributor, the rightful owner of a brand or trademark, and its affect on the economy. It reviewed the challenges in enforcement and discussed the issues in the international context.



Continued on Pg 2



**ABOVE** from left to right:

**James Telfer**, Honorary Chairman BCCC; **Gillian Lucky**, Moderator; **MEMBERS OF THE PANEL: Jean-Pierre Du Coudray**, WITCO; **Richard Aching**, Intellectual Property Office; **Ariane Ramnath**, JD Sellier & Co; **John Blanc**, Director, Lange Trinidad Ltd

## The REAL Cost of Counterfeit Goods *(continued from page 1)*

*“This is not a problem unique to Trinidad & Tobago. In April this year the U.S. International Trade Commission ruled in favor of Louis Vuitton in a counterfeiting lawsuit after 15 months of investigation. The French house filed a suit against several companies for allegedly importing and selling designs with the iconic Toile Monogram marks.”*

*James Telfer*

The Panel members included Business Persons, Government Regulatory Agencies and an Attorney-at-Law. The Panel Discussion was moderated by Gillian Lucky. She is well known as a “no-nonsense” person dedicated to the welfare of the country, and she extols the tenets of Integrity, Truth and Justice.

The International Chamber of Commerce - Business Action Group to Stop Counterfeiting and Piracy (ICC-BASCAP) contacted the British-Caribbean Chamber of Commerce applauding its efforts to raise awareness of Counterfeit Goods through this Forum. BASCAP has been tackling counterfeiting and piracy issues that affect all industries from music, to pharmaceutical, to electronic goods, luxury goods and automotive. Their members include representatives from all of the above industries who work collectively to strengthen its voice/ fight on this Global issue. They have been working with a number of countries on a series called Maximizing the Value of Intellectual Property and have invited Trinidad and Tobago through the British-Caribbean Chamber of Commerce to join its ongoing international campaign. The BASCAP, a European based organisation, picked up on an article about the Forum published in the Business section of the Trinidad Express Newspaper the weekend before the

Forum. They provided this Chamber with Anti-Piracy posters for its use to convey the message.

The Forum was well attended and represented by a broad spectrum of business activities – Automotive, Pharmaceutical, Technology, Clothing and Shoes, Legal Services and more. There was lively Question and Answer at the end of each session.

The following is a re-cap on each presentation .....

- ◆ Lange Trinidad
- ◆ WITCO
- ◆ JD Sellier & Co
- ◆ Intellectual Property Office
- ◆ T&T Bureau of Standards
- ◆ Customs & Excise
- ◆ Ministry of Trade, Industry & Investment

### LEFT

One of several “ I BUY REAL” posters provided by the Business Action Group to Stop counterfeiting and Piracy

[www.ibuyreal.org](http://www.ibuyreal.org)

**FAKES COST MORE**  
**FAKES COST LIVES!**

Counterfeit medicines, brake pads, and even toys could cost the highest price of all—your life or the life of someone you love. Fake versions of these products and many more come with dangerous risks to your health, your safety, and even your life.

Governments and law enforcement agencies worldwide work hard to stop counterfeiters from producing and selling fakes and pirated products. It's up to you to put the fakers out of business. Stop buying counterfeit products.  
**BUY REAL. Because fake products have real costs.**

Learn more at [www.IBUYREAL.ORG](http://www.IBUYREAL.ORG)

An ICC initiative  
**BASCAP**  
Business Action to Stop Counterfeiting and Piracy

The British Caribbean  
CHAMBER OF COMMERCE

## Lange Trinidad Ltd

John Blanc, Director of Lange Trinidad Limited, made the first presentation. As far back as 1979 Lange Trinidad Ltd encountered the appearance of replica original equipment (OE) packages (e.g. Toyota) with counterfeit parts inside (gaskets, filters, pistons etc) 60% cheaper. Information and samples were gathered, and a meeting with TTBS was arranged. TTBS immediately investigated. Within months a news conference held, highlighting findings by TTBS. "Gypsy Parts" were exposed. TTBS confiscated "Gypsy Parts", Customs & Excise assisted with control, and the market was sensitised. This was successfully controlled and the market for "Gypsy Parts" dried up.

In the 1990's imitation low quality RIK Piston Rings were brought onto market at cheap prices. Samples sent to Riken for verification, and the Counterfeit rings took over the market. Initially Lange's sales declined due to competitive pricing, so they reduced the prices of their Genuine brand to move inventory. Meanwhile the imitation parts started to fail, and the consumer lost confidence and the RIK brand was perceived as untrustworthy and was virtually unsalable. Lange had to write off thousands of dollars of stock and Riken Corporation lost entire market in Trinidad.

In 2012 there was the emergence of imitation '555' brand of steering and suspension parts. The original 555 parts are manufactured by Sankei Industry Co. Ltd in Japan, and is the OE supplier to most Japanese car manufactures. The imitation parts emerged on the market in two forms of packaging - similar packaging, and different packaging, but using the 555 brand name. The T&T distributors of 555 met with a Sankei Industry Co. Ltd representative in June 2012. Sankei is taking legal action in T&T and in the country of manufacture of the counterfeit products. Lange is calling on TTBS and Customs and Excise to assist on this occasion. The scam is ongoing and action is still required.

### The REAL Cost of Counterfeit Goods

*The Cost to the Distributor*

*The Cost to the Retailer*

*The Cost to the Consumer*

*The Cost to the Repairer*

*The Cost to the Manufacturer*

*Potential Loss of Life*

*John Blanc  
Director*

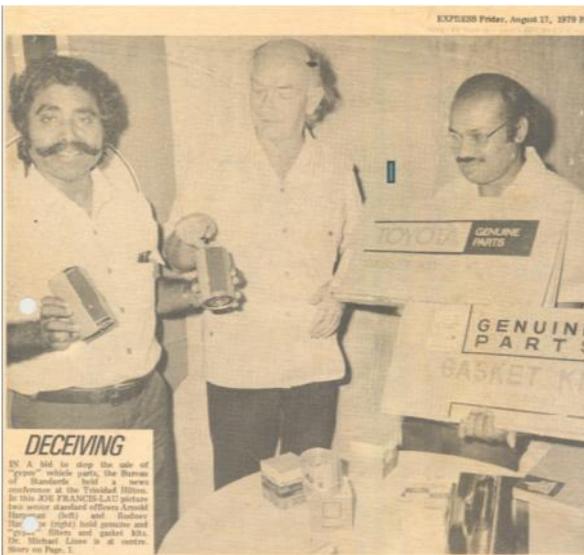
*Lange Trinidad Ltd*

#### BELOW LEFT

Newspaper clipping August 1979 Trinidad Express

#### BELOW RIGHT

Original packaging for RIK Piston Rings

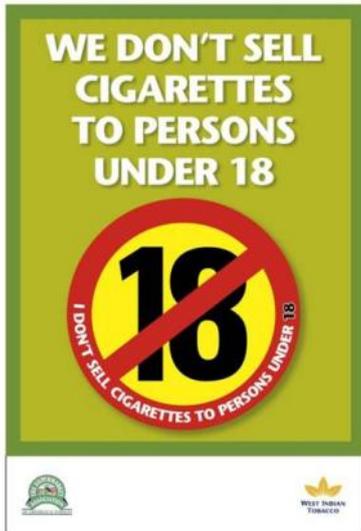


# Insight

## WITCO

Jean-Pierre du Coudray, Managing Director, WITCO, opened his presentation with a short video “Who’s in Control”. This dramatic film, with a drama unfolding from two different viewpoints, suggested that increased legislation to control the legitimate sale of Tobacco is actually making it easier for the Counterfeit Tobacco trade.

He followed with a brief presentation. He stated that Tobacco is one of most illicitly traded products in the world. Over the last 10 years, the Global share of Illicit Trade has increased from 8% to 14%. Unreasonable taxes and over-regulating the sale of Tobacco compounded with the massive profits in illicit Tobacco fuel this problem. The illicit trader has evolved from individuals to well organized criminal units. Some of the consequences of Illicit Tobacco Trade include: Sales to children; unapproved ingredients not complying with regulatory standards; undermining of brands and the investment of all legitimate manufacturers and lost revenue to governments. In Canada: 1991- 1994, the retail price of a carton of cigarettes rose from C\$26 to C\$48. By 2001, contraband tobacco accounted for an estimated 60% of the market. In February 1994 the Federal Government introduced a plan that saw federal taxes rolled back. Similar examples of over-regulation in other countries were given. Mr Du Coudray stated that Governments do not have to follow the more extreme proposals. They can consult with the well run and responsible tobacco industry to shape sound regulation.



### ABOVE

Regulating the sale of cigarettes to children

### The legitimate tobacco industry can help to:

- ◆ *Block illegal sales to children*
- ◆ *Fight illicit trade*
- ◆ *Set standards for appropriate marketing*
- ◆ *Support thousands of jobs and*
- ◆ *Pay valuable taxes, especially in tough economic times*

Jean-Pierre Du Coudray  
Managing Director  
WITCO

## BECOME A SPONSOR OF A MEMBERS NETWORKING MEETING

Do you want to have the opportunity to highlight your business to other members?

Why not sponsor a BCCC Members Networking Meeting?

## JD Sellier & Co

Ariane Ramnath, Partner, JD Sellier & Co presented “Fighting the Counterfeit Trade – Enforcing Trademark Rights”. She began with the definition of a **Trade Mark** “*a mark used or proposed to be used in relation to goods/services for the purpose of indicating or so as to indicate a connection in the course of trade between those goods/services and some person having the right to use that mark either as a registered proprietor or registered user (licensee)*”.

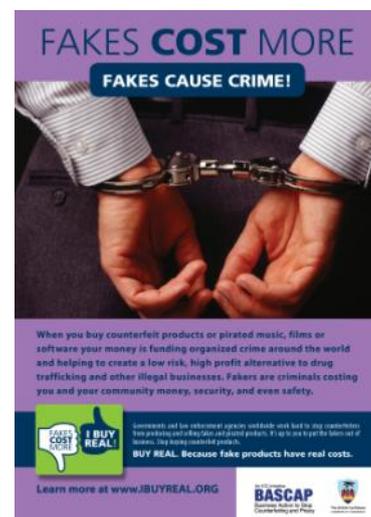
Ms Ramnath identified 4 Causes of Actions used for enforcing trade mark rights: Infringement, Passing off, Unfair Competition and Border Measures. She noted that the right to sue for **infringement** only lies with a registered mark. **Passing off** - makes it an actionable wrong for one trader to represent that his goods/services are those of another. **Unfair Competition** is governed by the Protection Against Unfair Competition Act no. 27 of 1996 a broad act that according to its general principles covers any “...act or practice in the course of industrial or commercial activities, that is contrary to honest practices” and its reference to Trademarks is “whether registered or not”. Enforcement can also include “Cease and Desist” letters. High Court Actions usually involve Interlocutory Injunctions such as the Anton Piller Order, allowing entry onto premises, seizure of counterfeit goods, and copies of records of sale and import.

**Border measures** are governed by the Trade Mark Act and apply to goods manufactured outside of T&T which are imported into T&T and subject to the control of the Comptroller of Customs & Excise. The owner (registered licensee) of a registered mark can lodge a Notice of Objection to Importation with Customs (valid for 2 years), giving Customs the right to seize goods bearing a mark that is substantially identical with or deceptively similar to the notified trademark in respect of similar or related goods. The Comptroller gives notice of the seizure to the importer (designated owner) as well as the objector. The objector must bring an action for infringement before the High Court within 10 days of receiving said Notice.

## Intellectual Property Office

The IPO falls under the Ministry of Legal Affairs. Mr Richard Aching, Manager, Technical Examination, Intellectual Property Office presented “Intellectual Property - The Other Property Right”. He began with an overview of the Responsibilities of Office, which include: Granting of IPR’s; Determining of Opposition Hearings; Making IP information available to the public; Receipt of International Applications; Advising the Government; Public Awareness Campaigns; Promoting inventiveness; Participating in development of International Treaties and Participating in the development of International Instruments.

*Continued on Pg 6*



### ABOVE

One of several “I BUY REAL” posters provided by the Business Action Group to Stop counterfeiting and Piracy [www.ibuyreal.org](http://www.ibuyreal.org)

### BELOW

**Richard Aching**, *Manager, Technical Examination, IPO*



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## Intellectual Property Office *(continued from Pg 5)*

Intellectual Property can be classified under 2 broad sub-headings – **Industrial Property** and **Copyrights and Related Rights**. Industrial Property includes Trade-marks, Patents, Industrial Designs, Geographical Indications, Integrated Circuits and New Plant Varieties. Copyrights and Related Rights include Writings, Musical Works, Dramatic Works, Stage Production, Audio-visual Works, Paintings, Drawings, Engravings, Sculptures, Photographic, Architectural Work, Sound Recordings, Public Performances, Works of Mas, Illustrations, Maps, Plans and Computer Programs.

### What is IP?

*“Intellectual Property (IP) is a bundle of exclusive rights, with exceptions and limitations; granted by law for a fixed period of time to prevent the economic exploitation of the expressed or manifested form of an idea.”*

Non-genuine items can be **“Bootleg”** (Illicit goods; unauthorised recordings. Usually music and video or live performances with very low quality sound and video); **“Pirated”** (Illegal copies of recordings, video and software. Usually good copies of genuine items but on recordable media e.g. CD-Rs, DVD-Rs but with low quality packaging) or **Counterfeit** (Pressed digital media, authentic-looking packaging, difficult to detect without close examination).

Pharmaceuticals can be subject to Counterfeit, but the definitions are often misused. Mr Aching explained that **Generic Drugs** are permitted where there is no patent in force. They have the correct API (Active Pharmaceutical Ingredient); bioavailability may differ from original. **Counterfeit Drugs** have authentic-looking packaging and trade marks; but may have only trace amounts or no API; and may contain hazardous or inedible ingredients. They are difficult to detect without testing. **Low Grade Drugs** are permitted where there is no patent in force. They may have correct API (Active Pharmaceutical Ingredient); bioavailability may be very poor.

To demonstrate the value a brand can have and therefore the need for protection, Mr. Aching provided some examples of well-known brands. In 2012 the brand Coca-Cola is ranked number 1 at 77.839 Billion US Dollars. This was followed by Apple and IBM.

[www.ipa.gov.tt](http://www.ipa.gov.tt)

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## Trinidad & Tobago Bureau of Standards



Mr Steve Williams, Head of the Implementation Division, TTBS presented “Quality Control and Safety Standards as they relate to the Consumer”. He stated that an OECD study found that Trade in Counterfeit Goods amounts to US\$500 billion annually. This amounts to 5-7% of world trade. Growth rate is 20 -25% annually. Counterfeit Goods result in premature failures, increased cost of legitimate products, loss of consumer confidence in safety systems and links to organized crime. He stressed the need for **Proactive Post-Market Surveillance**.

*Continued on Pg 7*

## Trinidad & Tobago Bureau of Standards *(continued from Pg 6)*

Consumers are faced with obstacles. There is a conflict between social responsibility and profit. Consumers with low purchasing power may not be able to afford the genuine product and may be ignorant of the risks involved. There is a lack of consumer information, education and understanding.

Often when faced with a quality issue the consumer can't be bothered to complain or may not know how to report problems. Complaints may be frustrated by the costs involved with testing and law enforcement, and there may be a lack of resources. There may be a lack of co-operation among agencies local and international.

Standards can improve consistence and promote best practice. Standards need to be user-friendly and understandable. Standards are needed on market surveillance. Mr Williams suggests that there must be Legislation first, with Standards providing technical support. Many standards already exist. He believes that educating the consumer is key to their protection.

The global metrology system protects consumers against short measure and fraud, and also covers regulatory measurements. Some measurements lack transparency or the quantities used may be inappropriate.

### How Standards Can Help

*Market surveillance*

*Comparative testing*

*Developing MOUs between agencies*

*Compensating consumers*

*Border control*

*Consistent classification of complaints data*

*Accident-data sharing in a common format*

## Customs & Excise

Mr Fitzroy John, Comptroller of Customs & Excise sought to clarify some of the misconceptions about the authority of the Customs & Excise Division in the control of Counterfeit Goods. He stated that unless a formal legal complaint by the rightful 'owner' of a brand is made to Customs & Excise about a Counterfeit shipment, nothing can be done to seize the shipment. Legislation does not allow for Customs to seize goods on suspicion of it being counterfeit. It is

*Continued on Pg 8*



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**Left to right:**

**Steve Williams**, Head, Implementation Division, TTBS;

**Fitzroy John**, Comptroller, Customs & Excise;

**Wayne Punnette**, Director of Investment, MTI

## Insight

### Customs & Excise Contact Info.

#### **Comptroller**

[compt@custmos.gov.tt](mailto:compt@custmos.gov.tt)

Tel: 625-5525

After 4 pm

(Wharf Office)

Tel: 623-5178

### **BCCC Members** **Networking Meeting**

#### **Save the Date!**

22<sup>nd</sup> Jan 2013

4:30 to 6:30 PM

Further information  
Will be circulated in  
January



**From the**  
**British-Caribbean**  
**Chamber of Commerce**

### **Customs & Excise** *(continued from Pg 7)*

up to the licensee to protect its brand, and the only way to be able to do this is by registering the brand in Trinidad & Tobago.

Several questions from the audience raised the point about Customs being the 'border control' and it did not seem logical that trade in Counterfeit Goods could not be managed at the borders. Mr John reiterated that Customs & Excise operated within the legislation, and it does provide for the seizure of goods if an objection under the Trade Mark Act is made. The objector has to post a bond and the shipment is held for a period of 10 days while the objector has opportunity to file legal action. The Customs Act can only apply if goods have been concealed or under valued.

Mr John assured those present Customs and Excise will act upon objection and that he has confidence that the process would not be hindered. He provided useful contact information for Customs & Excise.

### **Ministry of Trade, Industry & Investment**

Mr Wayne Punnette, Director of Investment, MTI discussed the Economic effect of trading in Counterfeit Goods. He identified these as being: Cost to the Consumer, Loss of Government Revenue, and the Cost of Policing. He pointed out that there has to be the tools, skills, support and education to identify Counterfeit Goods. He suggested that there could be a mechanism for tracking Counterfeit Goods triggered by a Notice of Objection.

### **Conclusion**

Gillian Lucky, Moderator concluded as follows:

- ◆ **How to reach the Consumer?** - to convert the culture and convince the Consumer to be aware of Counterfeit and want to buy Genuine
- ◆ **How to prevent the Distribution?** – perhaps better sharing of information is required
- ◆ **The Law** – perhaps there is a need for stricter penalties and enforcement of existing laws by better detection

**James Telfer**, Honorary Chairman, BCCC added that existing (worldwide) Standards should be used and applied in Trinidad. He suggested that there be better surveillance by the regulatory agencies. He agreed that Consumer

*Continued on Pg 9*

## Conclusion *(continued from Pg 8)*

education was important. He wondered if there is sufficient manpower and skilled resources to detect and control Counterfeit Goods. He suggested that the Customs & Excise could have a Database to refer to so that if a shipment of X brand is consigned to someone other than the licensee, a 'red-flag' is raised immediately. Perhaps legislation could then be changed to allow for Customs & Excise to act in the absence of an Objector. Finally, he asked, "Do we have the will?"

## What's Next?

The British-Caribbean Chamber of Commerce will further explore this theme of Counterfeit Goods, with a more focused approach on one aspect of this issue: Pharmaceuticals. This is one area that affects all, and it is also potentially the most dangerous. It is intended that the major Pharmaceutical Companies, Pharmacies, the Medical Association and Ministry of Health discuss the issues. This action group will set out to achieve specific objectives. It is hoped that ultimately Counterfeit Drugs can be eliminated, and the Consumer will be aware of Genuine and Generic; and will not be fooled into using sub-standard or Counterfeit drugs that at best will not cure, and at worst can kill. This is planned for January 2013 at a date to be confirmed.

## Welcome to our newest Member

### BCQS International

The British-Caribbean Chamber of Commerce is pleased to welcome its newest member, BCQS International, one of the largest and most experienced independent property and Development companies throughout Latin America and the Caribbean.

BCQS opened its Trinidad office in November 2011, and offers a comprehensive range of consultancy services including valuations, cost management / quantity surveying, project management, construction management and feasibility studies.

[www.bcqs.com](http://www.bcqs.com)

## ATTENTION BCCC MEMBERS

*Do you have important news to share? Do you wish to highlight a particular project, occasion, service or product? Send us your news and we will consider publishing it in our next edition of 'Insight'*

## ABOUT US

Trade links between Britain and the Caribbean are centuries old and whilst relationships have changed over the years the same mutual interest and opportunities for bilateral trade are as strong today as they have always been.

BCCC helps British firms play a part in the Caribbean economy; and assists Caribbean companies find their place in the UK market. We have offices in Port of Spain, Trinidad and Hull, United Kingdom, and experienced staff in each location.

BCCC is the first stop for any British or Caribbean company wanting to do business in the other country.

## CONTACT US ...



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