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The Thin Red Line of Parallel Imports in the DR

By El Mercantil

Lic. Monika Fiallo Paradas

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Parallel imports and how an authorized distributor can react in the DR

Mónica Fiallo, Treasurer of the Board of Directors of the Dominican Association of Intellectual Property (ADOPI), explains the alternatives.

Parallel imports refer to the imports of original products that resellers and dealers acquire abroad to commercialize inside the national territory, in parallel to a distributor that is exclusive or authorized by the manufacturer or the owner of the product brand.

As these imports are made by a natural or legal person acting outside of the "official" distribution channel or uncontrolled by the product owner or manufacturer, this action is considered unlawful competition with the authorized distributor, because the latter has incurred in expenses and is subject by contract to fulfill the requirements of such authorized distribution, including the representation of those products, their promotion, the compliance with the manufacturer's standards for the management of the products, the maintenance of minimum sales volumes and the procurement of government permits for marketing.

Products that are imported in parallel, although not falsified, as they are manufactured by the trademark owner or by a licensee, are not destined for the Dominican Republic and could therefore present a label in another language in their packaging, for example, or could fail to indicate who is responsible in our country in case of a flaw or an adverse effect and, especially, could lack a sanitary registry. That is, the Dominican authorities have not evaluated nor approved its commercialization in the country.

The Dominican legislation does not explicitly prohibit parallel imports. It considers, under the provisions of article 88 of the Law 20-00 on Industrial Property, that from the moment the manufacturer or the product owner makes a first sale anywhere in the world, his rights over the brand are exhausted and, consequently, those products can be imported into the Dominican Republic by anyone. Therefore, Dominican customs could allow the entry of those products to the national territory, if they are original, without considering whether or not the importer is an authorized distributor, based on the principle of free trade. There lies the importance of the authorized distributor to comply with the labeling rules, and especially to have the pertinent commercialization permits and sanitary registry, as those requirements will become a defense mechanism to stop a parallel import. In this way, customs, health authorities and consumer rights authorities could prevent their entry into the national territory and, once in the Dominican territory, remove them from the distribution centers and points of sale if the products, although original, do not comply with the rules on sanitary registry and labeling.



Actions

In these cases, the owner or the authorized distributor in the Dominican Republic may file criminal charges against the parallel importer for (i) presumption of falsified products, (ii) commercialization of products without a sanitary registry, and (iii) non-compliance with labeling rules, which are actions covered by the Industrial Property Law, the General Health Law and the General Law of Consumer and User Protection Rights. The owner could equally file civil actions, aimed at the cessation of the infringing acts, the payment of compensations and the destruction of the merchandise imported in parallel.

Within the process they could also request "border" measures so that the General Directorate of Customs suspends the dispatch of the allegedly infringing merchandise, and at the same time provide the necessary information to allow the identification of the infringing importer.

The choice of research

In cases of parallel imports of original products that do not require a sanitary registry (e.g., clothing, shoes, electrical appliances) and that comply with Dominican labeling rules (e.g., in Spanish language), the options of the brand owner or the authorized distributor are limited to conducting research with their commercial partners who may be commercializing the products outside of the territory they have been assigned to by contract. In this case, the legal actions would be for the violation of the distribution contract, which would fall under the jurisdiction of the Dominican civil courts or those to which the contract had conferred jurisdiction.

mfiallo@rvhb.com

By:

Russin, Vecchi & Heredia Bonnetti
Santo Domingo | www.rvhb.com

República Dominicana
Russin, Vecchi & Heredia Bonetti
Edificio Monte Mirador, 3er. Piso
Calle El Recodo No. 2, Santo Domingo, 10101
Monika Fiallo Paradas (mfiallo@rvhb.com)
+1 809 535 9511 – www.rvhb.com