

CONTRIBUTION TO:

ITU EVENT ON COMBATING COUNTERFEIT AND SUBSTANDARD ICT DEVICES

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- Country case studies, including policy, regulatory and enforcement measures and initiatives taken by governments, regarding the combat against the spread of counterfeit and/or substandard ICT devices, and lessons learned in respect of the same.

SUCCESS STORY: SAMSUNG

In the early morning hours on April 24, 2014 in the city of Maringa, Parana State Brazil, a cadre comprised of specialized police and prosecutors supported by representatives from PAICA do Brasil, a subsidiary of PICA Corporation, executed simultaneous search warrants on six targets spread out over different locations across the city.

The enforcement action was directed at a criminal organization that had been colluding to defraud the Brazilian government during public solicitations for imaging supplies. By day's end PAICA and Brazil's GAECO, Grupo de Atuação Especial de Combate ao Crime Organizado, would effect the single largest Brazilian enforcement action in history involving imaging supplies.

Hundreds of thousands of counterfeit packaging materials, finished goods, cartridges, counterfeit security labels as well as offset printers and associated machinery were seized in five of the six locations. This loosely cobbled together criminal organization was impacting Samsung, Hewlett Packard, Xerox, Canon and Lexmark. The estimated value by one industry expert tallied the haul to exceed 20 million USD in potential counterfeit sales.

This project began in early 2012 when one brand owner, Samsung, tasked their brand protection consultant, PAICA do Brasil, to attack the very heart of criminal counterfeiting activity in Brazil in Maringa. Maringa had always been an impenetrable haven for Brazilian organized crime based on its closed environment and endemic corruption and control exerted by the gangs operating there.

THE CHALLENGE

For over a decade the Brazilian government consumer segment has been the victim of counterfeit imaging supplies activity. Brazilian agencies at the local, state and federal level have long been defrauded by entities that have sold and delivered counterfeit imaging supplies upon winning public solicitations for products, relying on the relatively closed bid system and stringent payment terms to impede the validation of “shell” bidders and their wares before transactions have to be completed. This fraud has cost the Brazilian government hundreds of millions of Reais (BRL).

Samsung chose a strategic course of action to protect the government consumer segment by investing in a long-term project to engage with government entities in an aggressive education and authentication program. Fraud discovered in this process led to a second phase where PAICA systematically recorded and catalogued each incidence of fraud, carefully mapping out the entities associated with providing counterfeit imaging supplies at the completion of a public tender.

The resulting investigative analysis executed by PAICA drove the mapping of and link analysis between dozens of criminal entities who were concentrated in a single geographic location, Maringa. PAICA secured additional evidence to demonstrate the organized criminal activities of each organization, utilizing traditional business intelligence development techniques. After compiling, cataloguing and defining the networks, PAICA was ready to take its investigative findings to the authorities. PAICA chose GAECO based on the nature of the crimes identified, the geography, corruption and its historical experiences.

GAECO is Brazil’s elite organized crime task force which draws it’s officers and prosecutors from the normal rank and file of the military and federal police. However, each official is vetted extensively and given additional training and resources in how to investigate and prosecute organized crime throughout the country. Upon receiving PAICA’s investigative findings, GAECO set out to confirm all associated data points related to alleged criminality. In August of 2012 GAECO and PAICA do Brasil filed multiple criminal complaints against fifteen distinct targets located in Maringa.

Normally, this is where GAECO and PAICA would have expected the granting of immediate search warrants allowing them to move on to the complex planning of what would amount to a significant tactical operation against multiple, related targets. However, to everyone’s amazement, the criminal court in Maringa denied the criminal complaint and refused to authorize the search warrants.

This was an unbelievable development as GAECO presented to the courts overwhelming evidence of the criminal nature of this ongoing enterprise. To understand the courts response one must look at the political landscape at the time. By the close of 2012 it was clear Brazil was to be selected to host not only the World Cup in 2014 but also the summer Olympics of 2016. The country’s focus shifted to the pacification of the most violent areas in the country and for the next 15 months the Brazilian government invested heavily in this endeavor.

IP crime took a back seat to violent crime and many in the judiciary were commenting that the best way to enforce IP rights would be through the civil courts essentially decriminalizing the act of making, distributing or selling counterfeit product.

Although a tremendous set back, Samsung and PAICA were not deterred from continuing to attempt to pursue criminal remedies to this illegal activity, knowing that a decriminalization of IPR crime would have a nationally devastating impact on not only the imaging supplies industry but all intellectual property rights in Brazil. Over the next 18 months Samsung and PAICA would continue to invest in the operational and tactical aspects of the investigation securing additional evidence on each of the targets and their victims (the Brazilian government agencies) and by the end of 2013 the target list grew to eighteen targets all centered in and around Maringa.

In early 2014 PAICA engaged GAECO again with renewed enthusiasm and evidence on all eighteen targets. Additionally, PAICA and GAECO began to heavily lobby the judiciary. Providing evidence of a crime was not enough to secure the support of the criminal courts; PAICA needed to demonstrate how this activity was specifically preying upon Brazilian government agencies and the impact of IPR crime on Brazilian society, to include funding of organized crime, lost tax revenues, jobs and unfair competition with legitimate businesses.

THE VICTORY

In February of 2014 PAICA and GAECO again petitioned the criminal court in Maringa to authorize eighteen search warrants and once again the courts denied the petition. Over the course of the next four weeks PAICA engaged the court with its legal resources and the prosecuting attorneys in a marathon lobbying effort to educate the court and its judges until finally in late March the criminal court in Maringa authorized search warrants on six of the worst offenders.

Upon securing the partial victory GAECO and PAICA took the next three weeks to lay out the tactical operation to raid all six targets concurrently. The resources and manpower required would be significant, surprise and operational security was paramount to the success and safety of the officers, prosecutors and PAICA personnel. In the early dawn hours of April 24th, 2014 the cadre referenced above executed a kinetic and dynamic operation simultaneously on the six worst offenders as defined by the criminal courts with astonishing results. One of the defendants was actually producing hundreds of thousands of units of counterfeit packaging when the raid occurred and at most locations subjects were found “fat” with components, finished goods and their means of production in flagrante.

Having achieved this enforcement milestone, Samsung and PAICA have validated their case for criminal remedies and set the stage for further actions of this nature. More importantly, it has been proved that the private sector can partner with the Brazilian criminal justice system successfully to investigate and prosecute IPR crime at an impactful level for the benefit of the Brazilian government, its people and the commercial sector.