



Promoting Intellectual
Property Rights in the
ASEAN Region

EU Administrative and operational best practices

Tom Peperstraete | 21/04/2022



Funded by the European Union



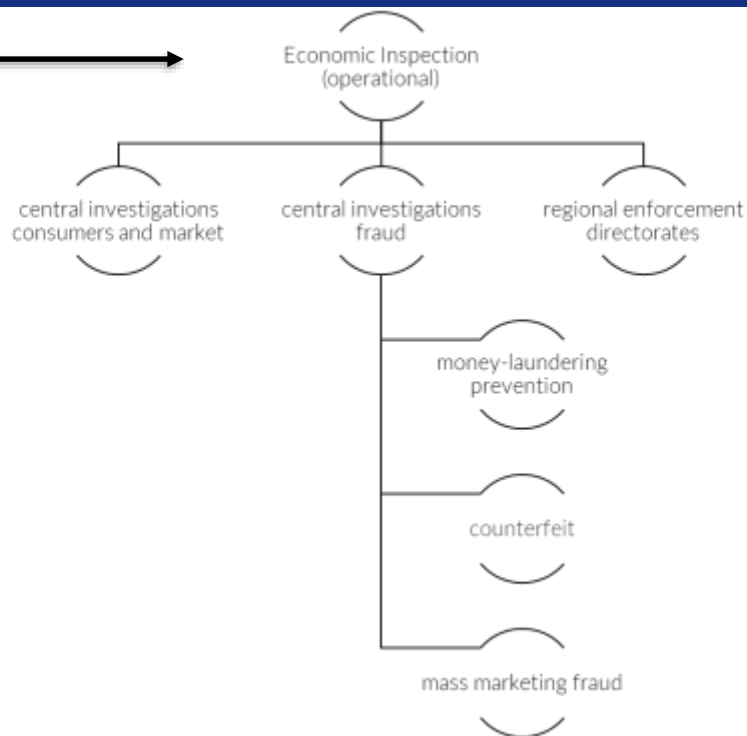
This Project is funded by the European Union and implemented by the European Union Intellectual Property Office (EUIPO)

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- IP Enforcement in Belgium
 - Definitions / types of infringement
 - Actors involved
 - Powers
 - Effective use of the power to take down websites
 - Course of an investigation
 - Measures concerning goods

IP Enforcement in Belgium



FPS Economy, S.M.E.s, Self-employed and Energy



Definitions / types of infringement

→ Counterfeit (Economic Inspection) = infringement of intellectual property rights / (art. XV.103 to XV.106 CEL)

≠ infringements detected by the customs authorities during border controls

≠ art. 173 Criminal Code

Definitions / types of infringement

- Trademarks and designs
- Patents / supplementary protection certificates
- Plant breeder's rights
- Author's rights
- Computer programmes / data bases

“ ... is to be regarded as an infringement in the course of trade when it is committed within the framework of a commercial activity, the objective of which is to achieve an economic benefit.”

Actors involved

- Economic Inspection
- FPS Finances / Customs and Excise Administration (art. XV.25/1 CEL)
- Local and federal police
- Recently: Interministerial Commission for the Fight against Counterfeiting and Piracy

Actors involved

→ EUIPO

→ EUROPOL

→ OLAF



Powers

- Investigative reports / evidential force until proven otherwise
- art. XV.3. 1° - *“at all times, access or gain access to...”*
- art. XV.3. 1° - *“Inhabited premises may nevertheless be entered with the prior written consent of the occupant.”*
- art. XV.3. 2° - make findings / collect information
- art. XV.3. 3° - interrogating people

Powers

→ art. XV.3. 4° - opening packages

→ art. XV.3. 5° - obtaining information

→ art. XV.3. 6° - making an inventory of goods

→ art. XV.3. 7°, 8° - sampling / analysing goods

→ art. XV.3. 9° - *“purchase goods and services as a test purchase, if necessary also using a fictitious identity and approaching companies by posing as clients or potential clients, without having to disclose their capacity and the fact that the findings made on this occasion may be used for the purposes of supervision.”*

Effective use of the power to take down websites

“Pick the best procedure for your case”

→ Administrative: easy, bulk takedowns

No infringement to prove / no legal procedure

→ Legal: investigation possible / all technical options

→ Notice & action: no investigation possible

Liability -> clear-cut cases with serious infringements

Course of an investigation

- Complaint / information
- Identification
- On-site investigations
- Measures concerning goods









Measures concerning goods

→ Seizure (art. XV.5 (1) - XV.23 CEL)

→ Sealing (art. XV.5 (2))

→ Expertise

→ Destruction



Sanctions

- Warning (art. XV. 31 CEL)
- Transaction procedure (art. XV. 61 and 62 CEL)
- Administrative fine (art. XV. 60/2 et seq. CEL)
- Criminal prosecution (art. XV. 69 et seq. CEL)

“The level 6 sanction consists of a criminal fine ranging from 500 to 100,000 euros and of one to five years’ imprisonment, or of either one of these penalties” (Art. XV. 70 CEL)



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