

WIPO'S CAPACITY-BUILDING ACTIVITIES AND SUPPORT FOR TRAINING ACTIVITIES IN THE AREA OF BUILDING RESPECT FOR IP AND IP ENFORCEMENT IN BOTSWANA

Contribution by Mr. Conductor Paul Masena

*Registrar General, Companies and Intellectual Property
Authority (CIPA)*

Geneva, Switzerland 2019

Presentation Outline

- ❖ Introduction to Botswana
- ❖ Overview of the Companies and Intellectual Property Authority (CIPA)
- ❖ Intellectual Property (IP) Laws
- ❖ WIPO Assistance to Build Respect for IP in Botswana
- ❖ WIPO Recommendations
- ❖ Implementation of the Recommendations
- ❖ Capacity Building Initiatives
- ❖ Progress in the Area of IP Enforcement
- ❖ Other Enforcement Initiatives
- ❖ Conclusion

Introduction to Botswana

- ❖ Botswana is a land-locked country situated in Southern Africa.
- ❖ Population: 2,230,905.
- ❖ Major export revenue earners are gem diamonds followed by copper, soda ash, beef and tourism.



Location of Botswana (dark blue)

Overview of the Companies and Intellectual Property Authority (CIPA)

- ❖ A parastatal entity under the Ministry of Investment, Trade and Industry (MITI) established through the Companies and Intellectual Property Authority Act, 2011 (CAP 42:13).
- ❖ CIPA's mandate is to register businesses and to protect IP rights.
- ❖ Administers four pieces of legislation: the Companies Act (CAP 42:01), the Registration of Business Names Act (CAP 42:05), the Industrial Property Act (CAP 68:03) and the Copyright and Neighboring Rights Act (CAP 68:02).
- ❖ Established to improve operational efficiency and fulfill an effective awareness-raising public relations function in relation to CIPA's services.

Intellectual Property Laws

- ❖ Industrial Property Act (CAP 68:03): amended in 2008.
- ❖ Enable Botswana to effectively comply with its obligations under:
 - ❖ The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement);
 - ❖ Patent Cooperation Treaty (PCT);
 - ❖ Madrid Agreement and Protocol Concerning the International Registration of Marks;
- ❖ The Copyright and Neighboring Rights Act (CAP 68:02): enacted in 2000 and amended in 2006.
- ❖ Generally compliant with:
 - ❖ The TRIPS Agreement;
 - ❖ The Berne Convention;
 - ❖ The WIPO Copyright Treaty (WCT);
 - ❖ The WIPO Performances and Phonograms Treaty (WPPT).

WIPO Assistance to Build Respect for IP in Botswana

- ❖ Legislative assistance

- ❖ In 2013, CIPA requested WIPO to undertake a diagnostic assessment of the national legislative framework for IP enforcement.

- ❖ Several laws which can assist in the enforcement of IP were assessed.

- ❖ Results of the assessment:

- ❖ Botswana had adequate laws that could be used to enforce IP rights despite a potential need for review in some of the laws.

- ❖ The challenges of IP enforcement could therefore not be completely attributed to the legal framework.

WIPO Assistance (continued)

- ❖ Entities involved indicated a number of difficulties encountered in enforcing the various legislative Acts:
 - ❖ Lack of coordinated efforts;
 - ❖ Police officers lack capacity in terms of awareness of the laws and charges that apply in IP infringement cases;
 - ❖ Results in an unabated flood of pirated and counterfeit goods onto the market.

- ❖ WIPO Recommendations:
 - ❖ Introduction of a provision on border measures in the Customs Act;
 - ❖ Civil remedies in both the Copyright and Neighboring Rights Act and the Industrial Property Act;
 - ❖ Setting-up of an inter-agency body;
 - ❖ Establishment of a specialized unit on IP crime within the police;
 - ❖ Raising public awareness on the importance of respect for IP;
 - ❖ Ensuring the availability of accessible information as guidance in cases of IP infringement.

WIPO Assistance (continued)

- ❖ Recommendations implemented by Botswana:
 - ❖ A new Customs Act, incorporating provisions for border measures, was passed in 2018.
 - ❖ An inter-agency body has been set up to deal with IP enforcement issues.
 - ❖ Initiatives have been conducted to establish a specialized unit on IP crime within the police. Officers have been trained to assist CIPA in dealing with IP crimes.
 - ❖ Several public-awareness programs throughout Botswana have been conducted on the importance of respect for IP.

WIPO Assistance (continued)

- ❖ Capacity Building Initiatives:
 - ❖ June 27 to 29, 2018: *Workshop on Building Respect for IP for Senior Police Officials, Public Prosecutors and Magistrates;*
 - ❖ WIPO developed a customized version of training materials, *Investigating and Prosecuting Intellectual Property Crimes* for use in Botswana
 - ❖ Provides general guidance on the legal elements of piracy and counterfeiting
 - ❖ Covers relevant investigative and evidential issues;
- ❖ Benefitted from WIPO online courses over the years;
- ❖ Masters Degrees in Intellectual Property Law offered through the Open University in Zimbabwe.

Current Initiatives Undertaken to Improve IP Enforcement

- ❖ Implementation of the Recommendations:
 - ❖ Currently developing a national IP Policy;
 - ❖ Both the Copyright and Industrial Property Laws are being reviewed.

- ❖ Progress in the area of IP enforcement:
 - ❖ Moving away from charging infringers of IP-protected works with admission of guilt and trading without license;
 - ❖ Heading towards fostering the use of criminal enforcement mechanisms in collaboration with the DPP and Botswana Police Service;
 - ❖ Joint raids and destruction of infringing materials have been undertaken;
 - ❖ Educating new recruits and services officers;
 - ❖ Entered into an agreement with the Botswana Unified Revenue Services (BURS) and the University of Botswana in an effort to strengthen IP enforcement and awareness;
 - ❖ Judges educated in prosecuting IP crimes.

Other Enforcement Initiatives

- ❖ In 2016 and 2017, collaborated with the Embassy of the United States of America (USA) in Botswana on carrying out IP Workshops for right holders and law enforcement agencies.
- ❖ From April 23 to 25, 2019, the Embassy of the USA, in collaboration with ARIPO, hosted a Workshop in Botswana, intended to equip judges from the SADC Region with knowledge of IP prosecution.
- ❖ May 20 to 22, 2019, Botswana hosted a *Regional Train-the-Trainers IP Enforcement Workshop for Police Instructors and Prosecutors* to train police officers and prosecutors to deal with IP crimes.

Awareness-raising Activities

- ❖ Botswana has developed a concept for the establishment of IP clubs in schools as a sustainable way of creating IP awareness among schoolchildren (coordinated by ARIPO with the support of WIPO and Republic of Korea).
- ❖ Since 2012, Botswana commemorates World Intellectual Property Day to create awareness on the importance of IP.
- ❖ Many activities have been undertaken to improve awareness of IP which includes, workshops, seminars, debates on national television, anti-piracy marches, radio programmes and engagements at universities and secondary schools.

Conclusion

- ❖ Botswana is greatly honored by the assistance that WIPO has extended in the field of building respect for IP.
- ❖ The advice given by WIPO has contributed immensely to prosecuting IP cases.
- ❖ CIPA has now partnered with the DPP for the prosecution of IP cases.
- ❖ CIPA also works in collaboration with various enforcement agencies in ensuring the implementation of all Acts that support the protection of IP in Botswana.

Conclusion

Thank you !!!

Conclusion





THE EASTERN CARIBBEAN SUPREME COURT AND CAPACITY BUILDING IN INTELLECTUAL PROPERTY

The Hon. Mde. Gertel Thom
Justice of Appeal
The Eastern Caribbean Supreme Court

THE EASTERN CARIBBEAN SUPREME COURT



Member States:

- Antigua and Barbuda
- Dominica
- Grenada
- St Kitts and Nevis
- St Lucia
- St Vincent and the Grenadines
- The United Kingdom Territories:
 - Anguilla
 - British Virgin Islands
 - Montserrat

JURISDICTION OF THE COURT IN INTELLECTUAL PROPERTY RIGHTS

- Treaty of Basseterre – Organisation of Eastern Caribbean States
- National Laws



THE TREATY JURISDICTION

The purpose of the Organisation of Eastern Caribbean States (OECS) includes:

- to promote cooperation among its member states at the regional and international levels, having due regard of the Revised Treaty of Chaguaramas and the Charter of the United Nations;
- to assist member states in the realization of their obligations and responsibilities to the international community, bearing in mind the role of international law as a standard of conduct; and
- to serve as an institutional forum for discussion and facilitation of constitutional, political and economic changes necessary for the successful development of member states and their participation in the regional and global economies.

TREATY JURISDICTION CONTINUED

- In keeping with the purpose of the OECS, the Treaty of Basseterre mandates its member states to, among other things, pursue joint policies in various fields including Intellectual Property Rights.
- The Treaty of Basseterre also gives the Court of Appeal original jurisdiction to determine any disputes between member states which arise from the Treaty including intellectual property rights disputes.

DOMESTIC JURISDICTION



- All the OECS member states are members of the World Trade Organization (WTO).
- All member states have legislation on Intellectual Property Rights (IPRs) including: copyright, trademarks, patents and geographical indications.
- The Supreme Court exercises jurisdiction in enforcement of IPRs under these various legislations – both in civil and criminal cases.

THE JUDICIAL EDUCATION INSTITUTE (JEI) COLLABORATION WITH WIPO

- The peculiar circumstances of the OECS do not permit the Member States to have a special court dealing with IPRs.
- Training of all Judicial Officers in enforcement of IPRs is critical for the OECS.



JEI COLLABORATION WITH WIPO CONTINUED

The Colloquium held on the 25th and 26th of July 2018 in St. Lucia focused on:

- Building Respect for IP – A Balanced Response to the Infringement of IPRs.
- IP Crimes
- IP Protection and Enforcement in the Eastern Caribbean
- IP Crimes and the Public Interest
- Sentencing, Proportionality and Disposal
- Piracy, counterfeiting and Copycat Packaging



J.E.I
JUDICIAL EDUCATION INSTITUTE



JUDICIAL RESPONSE TO 2018 COLLOQUIUM

- Overwhelming support of the Judicial Officers
- Cases determined by the Court of Appeal since the Colloquium:
 - ❖ Mega-Plex Entertainment corporation v Eastern Caribbean Collective Organisation For Music Rights (ECCO) Inc *SLUHCVAP2017/0032 (delivered 30th January 2019)*.
 - ❖ Outlook Asset Management LP et al v Capstone Corporate Limited et al *BVIHCMAP2018/0016 (delivered 11th February 2019, unreported)*.

THE WAY FORWARD



- Continued collaboration with WIPO
- Caribbean Judges Forum

CONCLUSION

Courts constitute a critical component of IPRs enforcement, hence the necessity to build the capacity of Judicial Officers to deal with IP cases effectively and timeously.

Thank
You!