

Leah Evert-Burks: This is Leah Evert-Burks with the Center for Anti-Counterfeiting and Product Protection @ Michigan State University and *this is Brand Protection Stories* - stories about the practice of brand protection by those who live it. In *Brand Protection Stories* we talk to those in the brand protection community about particular cases in their careers. Through some *stranger than fiction* real life scenarios we learn about the practice of brand protection and the challenges faced by brand-owners worldwide.

Leah Evert-Burks: This episode of Brand Protection Stories is brought to you by Digimarc.

Hernan Albamonte: It has been widely evidenced that there is a connection between illicit trade whether its tobacco or any other type of fast moving consumer good with financing of criminal organizations or terrorist organizations now, obviously this make sense because there is a very, very low risk business operation and the profitability as you rightly pointed out is quite big, right so you can make approximately 2.3 million dollars for a container of counterfeit tobacco products and cost of making those in China is 10 cents per pack if you want to add the shipping costs it would not get much higher than 200 thousand of investment and as you can see the profitability is quite big.

Leah Evert-Burks: Hernan Albamonte is the Head of Illicit Trade Prevention for Philip Morris International or PMI. Based in Washington D.C., he has served in various roles around the globe during his fourteen year tenure. He started his career as a Communications Intern in his native country of Argentina. As PMI's Head of Illicit Trade Prevention U.S., Hernan is charged with coordinating the company's campaign to combat illicit trade - including, training law enforcement officers so illicit products can be easily spotted and removed from underground networks; and is responsible for cultivating and briefing the government authorities on PMI's core initiatives. Before transitioning to his current role in 2019, Hernan served as PMI's Global Government Affairs Manager in Switzerland where he developed a network of alliances with third party stakeholders and executed government affairs and media campaigns for Europe, Latin America, the Middle East and Africa. Previous to that Hernan was stationed in Costa Rica where he expanded the region's public-private partnerships, resulting in the seizures of over \$36 million of unlicensed tobacco products and the closure of five illicit enterprises. Additionally, he generated a *cross-industry anti-illicit trade web app* sponsored by Chambers of Commerce and Ministries of Finance in three Central American countries. Hernan has also worked in the markets of Mexico, Guatemala, Belize and the US and during that tenure, Hernan and his team recovered \$42 million of illicit goods by deploying anti-black market commercial strategy. Hernan earned a double bachelor's degree in International Relations and Political Science from Pontificia Universidad Católica Argentina 'Santa María de los Buenos Aires' and was awarded a master's degree in Business and Corporate Communications from Universitat de Barcelona

Leah Evert-Burks: Good morning, Hernan.

Hernan Albamonte: Good morning, Leah. How are you today?

Leah Evert-Burks: I'm good, thank you. This episode of Brand Protection Stories relates to a case from last year. 2020 was a year of many things--worldwide pandemic to state the obvious. The world felt like it stopped for many of us. We

were in isolation, learning to work from home, the necessity to master zoom, some of us teaching our kids remotely, and of course shopping more online. But we know that the world didn't stop for essential workers who allowed us to stay safely isolated. And this category of workers included those carrying out the protection of the public during this very trying time, including those officers monitoring the interstate highways, responding to collisions, dangerous road conditions, and the nature of vehicles that we're taking to the US interstates or the county roads. They were monitoring what they were carrying, but it also included the courts, who must carry out the rule of law, no matter a pandemic, especially when safety is at risk. So to highlight one of those cases today we're going to talk to you, Hernan about a case against Jose Francisco Guerra, and it related to contraband cigarettes and goes down as the largest seizure of tobacco products in US history. So talking through this case, it took place in Texas, which of course is a border state with Mexico, and I believe Mr. Guerra operated warehouses that we're licensed and bonded warehouses in the border communities of Hidalgo and McAllen, Texas. So, seemingly a legitimate business, again, bonded and licensed as a custom broker, but instead it was found that there was illicit trading going on, and this was first discovered by the Texas Department of Public Safety, who, as I understand, it stopped a tractor trailer. So, if you can start us on this story?

Hernan Albamonte: Absolutely. Thank you Leah for inviting us to participate in this podcast. We're very excited to be here. So as you rightly pointed out, this was the largest seizure in US history. Essentially, because the authorities, both local and federal authorities, were able to seize more than 422 million cigarettes. And this is equivalent to 422, 40 foot containers. So, you can imagine the amount of product is huge, and there has been obviously, additionally, a huge effort from the authorities in order to count all those products and collaborate the case. As you rightly pointed out, the trailer from Guerra company or Victor Guerra company which is the legal name of this operation was detained or stopped trying to cross the border with Mexico. They were asked for papers. And these papers were misstated if you want. So they were declaring other types of products. They were not declaring cigarettes, and that obviously led to the first seizure, which was approximately 70 million. Now obviously authorities under this situation, they knew that something else was happening, and therefore, they asked for raid warrants in order to raid the warehouses from this operator, and this is where they actually found those 422 million cigarettes.

Leah Evert-Burks: Wow. Wow.

Hernan Albamonte: This was the kick start off of a larger investigation.

Leah Evert-Burks: Right. So, something that you just mentioned about a deceptive manifest. So, we find that in counterfeiting and illicit trade, where they're obviously carrying or trying to import or export goods that may raise red flags with customs and border authority. So, they declare it as something different. I come from a footwear apparel background, and we had a number of seizures at the port where the goods were declared as linens or even furniture. Sometimes that's done to avoid a certain amount of taxes because the import taxes are based on the type of products. But in this situation, it was done to try to evade the authorities and hide the fact that they were transporting cigarettes.

Hernan Albamonte: Yes, indeed. This was the case now this is not abnormal. This happens, as you pointed out, when it comes to counterfeit products, or it also happens in this particular case that we are speaking about what we call in the tobacco industry “illicit whites.” Right so, for quite some time the tobacco industry had a big issue of counterfeit products but very quickly criminal organizations were able to identify that it was less risky to produce brands that are not bound by trademarks, right? So you don’t have big tobacco companies going against you if you’re infringing those trademarks, and they decided to conduct an entire business operation, based on the manufacturing of what we call “illicit white brands.” And this was precisely the case. This is the most growing trend that we see in the industry. And again, this was one of those cases where the products were coming from different locations like the UAE, like, Panama, so transiting a Free Trade Zone or two Free Trade Zones because the UAE--it also, the products were manufactured at Free Trade Zones are coming from China, from Vietnam, from different locations, and what this operator was doing was consolidating those brands and then, illegally, bringing those products into Mexico with obvious cooperation from unfortunately, corrupt government officials and also criminal networks operating in those areas that then will distribute the products in Mexico.

Leah Evert-Burks: The discipline of brand protection is derived out of trademark law- since counterfeiting is a violation of trademark rights – it’s important to remember that these are laws set up regionally throughout the world to protect the consumer. Yes, trademarks are assets of companies, but they tell the consumer the source of the goods and provide the assurance of origin. But, brand protection isn’t only the responsibility of the legal profession, it’s multi-disciplinary by nature, *and* necessity. People find themselves in this field from such diverse career paths as security, supply chain, law enforcement, marketing, IT, finance and yes legal, as well as many more.

Leah Evert-Burks: Is that also referred to as contraband, as opposed to counterfeit?

Hernan Albamonte: Yes, exactly. So technically speaking, the crime associated would be smuggling with tobacco products, right, because it's avoiding the tax payment. But in the industry we decided to call them “illicit whites” because what we are seeing on a permanent basis is the appearance of new brands, right, so new names, and sometimes you might think, okay, they might have a legal distribution in the countries of origin, but it's something that we really doubt because brands like a El Chapo are unlikely to have a huge distribution in China, for example, right.

Leah Evert-Burks: Right.

Hernan Albamonte: Those are targeted to appeal specific group of consumers that are looking unfortunately for cheap alternatives in those markets.

Leah Evert-Burks: Okay, so they were avoiding paying taxes, but as you also mentioned, this is a lucrative revenue generating for criminal rings. So, in thinking first about taxes, you know, cigarettes are taxed by state and I think in Texas, it's \$1.40 a pack, and though people listening may not have possibly much sympathy for the product industry of tobaccos or for someone evading taxes--no one loves to pay taxes--we know that taxes, they do fund health care and schools, road maintenance, infrastructure, and so forth. And so if you talk about the numbers that you presented of the seizure of cigarettes in this case, there was a substantial amount of tax

revenue that was lost that could have gone to the citizens of the state of Texas. What you just talked about with respect to the criminal networks, as we understand and in this case reflected, the sale of these cigarettes really financed or was the currency for narco cartels. So can you tell us a little bit more about that?

Hernan Albamonte: Indeed. Absolutely. So, it has been widely evident that there is a connection between illicit trade--whether it's the tobacco or any other type of fast moving consumer goods--with financing of criminal organizations or terrorist organizations. Now, obviously, this makes sense because it is a very, very low risk business operation, and the profitability as you rightly pointed out is quite big. Right so, you can make approximately \$2.3 million for a container of counterfeit tobacco products, and the cost of making those in China is 10 cents per pack. If you want to add the shipping cost, it would not get more than, it would not get higher than \$200,000 of investment, and as you can see, I mean the profitability is quite big. There are very important cases in the United States that confirm those links. Back in the year 2000, there was a scheme that involved Lebanese operators that were buying products in North Carolina and then shipping them to Michigan, trying to take advantage of that tax differential, cashing out that money, and then sending them to Lebanon to finance Hezbollah activities. This was an operation that was called "Operation Smoke Screen," and it was a very emblematic operation that combined different law enforcement agencies like ATF, HSI, state and local law enforcement agencies as well.

Leah Evert-Burks: Right. So, another aspect of illicit operations on the borders, many times in these bonded warehouses, there is legal operation of transit products. In the United States, if they're just going through the United States to get to another market they're typically not taxed, but what happens and what happened, obviously, in this situation is, is that difficulty for HSI in Customs and Border Patrol to make that distinction whether these were in-transit or they really were going to a different country without taxes being paid, it makes for a difficult problem for customs authorities. Would you agree?

Hernan Albamonte: Absolutely. This is definitely a big, big challenge, because criminal organizations and those operators are trying to take advantage of the current regulation are abusing from certain loopholes. So, this case is not new. I mean, perhaps this is new because of the amount of product that will be seized, and that is impactful. But back in the time when I was based in Mexico, we were working on a very similar case that was moving products through Long Beach in California then taking it to Calexico and then crossing the border to Mexico Valley. So, as you can see, the modus operandi is exactly the same: using custom bonded warehouses to then divert the products illegally into Mexico. Now, that was back in 2010 and HSI was extremely successful in dismantling that operation. And what happened, they moved from the west coast to the east coast, and they started operating in Texas. So, as you can see, this is, unfortunately, loopholes that make it also very difficult for CBP, for HSI, to be able to conduct operations because in the end, these products are in-transit, so they're not testing to be consumed in the US market. You know they're in-transit to Mexico, and you know, because of the cooperation that exists between HSI and the local authorities in Mexico, that those products are illegal. But still, in some locations, you are not able to seize those products because they are in-transit.

This is the same thing and same mechanism that occurs with Free Trade Zones. Free Trade Zones have the same operation, and what is more worrisome is that Free Trade Zones have already been identified as vulnerable to money laundering activities and terror financing activities. So, this is certainly one of those areas where at PMI we put a lot of focus on in order to try to enhance the transparency of these types of operations.

Leah Evert-Burks: Right. So the intent of, for instance Free Trade Zones, is to encourage trade. But as you indicated, it has also been used as a mechanism to hide illicit trade operations. Can you speak to that just a little bit more?

Hernan Albamonte: Absolutely. Free Trade Zones have been identified as an enabler for money laundering and terror financing, a long time ago. Actually, the Financial Action Task Force, which is sitting in Leon, France have conducted certain research, assessing the existence of the different Free Trade Zones under control and mechanisms and have clearly pointed out that these are places where money laundering and terror financing is easy to occur, and what is more interesting, at least from our perspective from the brand protection perspective, is that the way in which these organizations are financing their activities, is to through illicit trade. Now, what happens in Free Trade Zones is they have very lax controls, there is always this push back and forth between customs authorities and the Free Trade Zone administrators. Because, obviously, they are not allowing customs to get in with ex-officio powers, so they cannot come in to inspect what is happening. And, arguably, from the perspective of the Free Trade Zone administrations, they say, look I mean this corresponds to our ability to conduct trade in a very fast manner. This is one of the most important things that we try to offer as services at Free Trade Zones.” But unfortunately, this is, I mean, also a double edged sword, and this is what is creating these opportunities for the criminals which bring those products, they move it across different operators, there is no trail of those sales, and then when the products are coming out, then nobody knows what is in those containers, right.

Leah Evert-Burks: Mm hmm. And we know from the Guerra case that some of these cigarettes, as you indicated, had come out of Free Trade Zones.

Hernan Albamonte: Indeed. Panama, the Colon Free Trade Zone, to be more precise is unfortunately one of those transit areas in the Latin American region that does not only use the United States to divert products to Mexico but also affects directly the Latin American countries. A lot of what Panama is bringing of those products goes to Central America to Colombia to Ecuador. So, it is difficult to manage.

Leah Evert-Burks: Right. And kind of returning to a comment I made as to why we should care. You know, again, given the product line is cigarettes and one of the main incentives for Mr. Guerra was to avoid export taxes, as a consumer listening or brand protection professional listening, how would you make the case as to why we should care about this space?

Hernan Albamonte: Well, Certainly I can understand that. Obviously, there is a large number of people who would not care about tobacco. Now, obviously, the legal tobacco industry which pays taxes contributes in a way with those taxes to other obviously to the--Sorry, the industry while paying taxes contributes to the use of

that money for other purposes, right. So, that is certainly something that doesn't happen when it comes to the legal business, which obviously doesn't pay any type of taxes. And for us, it's also very important that's part of our transformation. So, our transformation we mean the fact that we're trying to transition into less harmful products, products which have the potential to reduce the harm people, and it is fundamental for us, that we are able to fight against illicit trade in order to ensure that those policies, health-driven policies that are promoted to, in a way, discourage the use of combustible cigarettes are successful. Illegal products or illicit tobacco products are cheap products, which in the end, go completely against or jeopardize the objectives of health authorities. That's why we strive at PMI to make sure that we can fight against those dosages.

Leah Evert-Burks: Fake cigarettes and illicit whites have been found to contain chemicals that have a higher risk of causing cancer than branded cigarettes, due to higher levels of toxic chemicals including tar, nicotine, carbon monoxide, lead, cadmium and arsenic. Making the already harmful product of combustible cigarettes, even more dangerous.

Leah Evert-Burks: So, going back to the Guerra case, as I understand the recommendations were 10 year prison sentence, but Mr. Guerra was an elderly man at the time that this case occurred and he was arrested. But, I believe there was also a fine of about \$250,000. What message do you think that this sent to the operators of illicit tobacco trade?

Hernan Albamonte: Well, certainly sends a deterrent message, certainly sends, the fact that even if the sentence is low, even if there is the ability because of being elder to get out of complying with the time in prison, certainly sends a message that the U.S. authorities are taking a look at what is happening, and that this is not going to go unnoticed. And this is certainly very encouraging not only for the tobacco industry but also for all other industries that have difficult times in trying to enforce brand protection, whether it's counterfeits, whether it is localized, whatever it is the IP infringement that they have, it's very encouraging to see authorities taking clear stands against these issues.

Leah Evert-Burks: It certainly is. So in thinking about this case, and really your experience with the illicit tobacco industry, if you could select one word to describe this case--and again, the illicit trade of tobaccos--what would it be?

Hernan Albamonte: I would say, in one word is complicated, but I would say commitment. But, I can collaborate a little bit more. This demonstrates the commitment of Homeland Security Investigations, CBP, state, and local law enforcement in fighting this issue. We can do, I mean, many different things and we have a very strong and robust program to fight illicit trade, but we cannot do anything on our own. We really need the support of law enforcement authorities and governments to fight against this, and this certainly demonstrates a strong commitment from authorities in the US, and we're very proud to be able to partner with them and assist them in these types of investigations.

Leah Evert-Burks: Yeah, it really highlights the public-private partnerships that are necessary to protect the public. I think it's interesting in this case that it was the Department of Public Safety that was the first to pull over this tractor trailer and be

able to open up a very lucrative business, illicit business that was going on there on the border of Texas and Mexico.

Leah Evert-Burks: Cooperation is key in combating counterfeiting and illicit markets. In a recent effort a number of brands and institutions, including Philip Morris International and A-CAPP, have come together in a public-private sector partnership, for an integrated campaign to bring awareness. You may have seen the “United to Safeguard America from Illegal Trade” or (USA-IT) ads in your local newspapers and networks, serving as public service announcements. As part of this initiative USA-IT, will also sponsor law enforcement trainings, host an online resource center, produce live events, and other media engagements along with the PSAs, to spread the word. As the coalition states: *No one government or single industry can address this complex problem on its own. With private and public sectors working together, we can combine each other's expertise to put illegal trade out of business and restore security and prosperity to our communities.* For more information visit usa-it.org.

Leah Evert-Burks: So, thank Hernan for walking us through the Guerra case and for giving us a chance to hear about the tobacco industry and what you're doing and and truly thank you for doing the hard work to battle illicit trade in the tobacco space.

Hernan Albamonte: Thank you so much to you for inviting us and for the time to explain a little bit about this case and the efforts our company is promoting to fight this issue. Thank you so much.

Leah Evert-Burks: The cigarette market may not engender a sympathetic response when talking about illicit activities that may damage their business - whether it be contraband cigarettes, or what Hernan refers to as “illicit whites” (non-branded or off brands), or actual counterfeit cigarettes, *there is reason to care.* This product category instructs us on how something of value can be used to support criminal organizations using high demand/high value products such as cigarettes as illegal currency.

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Leah Evert-Burks: In the next episode Sasha Lazarevich, Deputy City Attorney for the City of Los Angeles, talks about how a hybrid approach of civil and criminal prosecutions that amounted to convictions of individuals selling counterfeit toys.

The City of Angels serves as a shining example of how this cross-over strategy keeps toxic and dangerous toys out of the hands, and mouths, of our the most vulnerable members of society.

Leah Evert-Burks: Thanks for joining us today for this edition of *Brand Protection Stories*, produced by the Center for Anti-Counterfeiting and Product Protection (or A-CAPP) @ Michigan State University in East Lansing, MI. Please visit us @ a-capp.msu.edu. A-CAPP is a non-profit organization founded in 2009. It is the first and only academic body focusing upon the complex global issues of anti-counterfeiting and product protection of all products, across all industries, in all markets. In addition to this series, we offer certificate courses in brand protection, applied education and academic courses, executive education, student internships, live summits and virtual events, ground-breaking research, and publish the quarterly digital industry journal, *The Brand Protection Professional*.

Leah Evert-Burks: Thank you to this episode's sponsor Digimarc.

Leah Evert-Burks: This is Leah Evert-Burks with A-CAPP. Until our next session, keep protecting your brands, and the world's consumers. Keep it real.