

INTEGRATED LEGAL CONSULTANTS



EDITOR'S NOTE

Integrated Legal Consultants (ILC) was founded in April 2007, in Accra, Ghana, to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and our network of international clients benefit from the highest quality of corporate and commercial legal services that the ILC provides.

As part of this vision, ILC has introduced the publication of newsletters on legal and economic issues that would be of interest to its clients and equally may affect their transactions. This is our 4th edition.

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In this issue, we have taken a look at counterfeiting of trademarks and the enforcement of the law against offenders in Ghana.

We hope you find it informative and educative. Your feedback is welcomed.

Happy Reading!

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Editor

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This newsletter includes general information about legal issues and developments in the law. Such materials are for informational purposes only and may not necessarily reflect the most current legal developments. This article does not amount to legal advice nor does it represent the opinion of the Practice. It is purely based on research conducted by a student. Should you require legal advice on counterfeiting in trademarks you may contact any of the team members of Integrated Legal Consultants or email ilc@integratedlegalconsultants.com



PROTECTING TRADEMARKS AGAINST COUNTERFEITS IN GHANA- by *Rodney Dzwario (Intern)

Counterfeit goods are a serious issue in Ghana. Not only do they violate the legal rights of businesses which is detrimental to the economy, they also pose health and safety risks to the wider public.

Ghana is a party to several international treaties and conventions such as the Universal Copyright Convention, Patent Cooperation Treaty and the Madrid Protocol Concerning the International Registration of Marks.

The international agreements Ghana has ratified impose an obligation on the country to ensure businesses can have their trademarks secured and protected.

The Law

The country has implemented legislation that in theory should protect trademarks. In 2004, the Trademarks Act (2004) was passed which is the primary legislation on the matter.

Section 26 of the act creates several criminal offences relating to trademarks.



The offences include;

- To “falsely apply to goods a trade mark or mark so nearly resembling a trade mark as to be likely to deceive”
- To “forge a trade mark”
- To “sell or expose... goods or things ... to which a forged trade mark or false trade description is applied “forge a trade mark”

All the above offences as amended by later legislation carry a maximum sentence of 15 years and a fine of a maximum fine of 7000 penalty points.

The Trademarks Act (2014) further added to the existing law by adding to the 2004 Act a section 32A.

The new section gives the Trademarks Registry the power to seize and destroy counterfeit goods. Public citizens may apply to have goods they suspect are fake to be seized by the authority under section 32A.

Enforcement

It seems that the government has taken legislative steps to protect trademarks in Ghana but as various investigations have shown counterfeiting is rampant.

The issue is mainly that the enforcement of the law is weak. The police body that deals with trademarks, the Criminal Investigations Department, operates small scale investigations and primarily focuses on counterfeit electronics and drugs.

A further problem is that various government bodies deal with trademarks. The Ghana Standards Authority, Ghana Immigration Services, and the Ministry of Trade and Industry all have a role in trade mark protection. This makes the enforcement of the legislation even more difficult as there is so much overlap in responsibility in this area.

Reform

The government and its bodies have realized the harm counterfeit drugs do to the public and the economy and they have taken steps to remedy the issue. The focus in the change has been training various officials to better spot and seize counterfeit goods.

Officers at the Immigration Service have been trained to recognize counterfeit goods as they come into Ghana. This is beneficial as it means goods can be seized and destroyed before they are circulated into society.

The police have also been training their regional investigators to spot counterfeit goods in public markets so as to combat those goods that made their way into the mainstream. Another possible change that could stem the flow of counterfeit goods into Ghana is the new tax stamp regime.

The Ghana Revenue Authority recently implemented new laws requiring certain goods such as beverages now require a government issued tax stamp. This new regime could make it easier to identify fake goods which would likely not have any such tax stamps.

Lastly, the government has started a campaign to petition the public to report counterfeit goods which could help reduce the issue on a small scale.

Conclusion

Counterfeiting is rampant in Ghana and not necessarily understood to be the serious issue it is. Counterfeit products like fake medicine have been responsible for thousands of deaths in Ghana which demonstrates the danger of such goods. It is commendable that the government has taken various steps to tackle the issue. But further steps are required.

