

Alert: Counterfeiting is not a victimless crime!

Picture this: You are a dedicated, hardworking entrepreneur and have invested valuable time, tireless effort, and hard-earned funds in developing your products and protecting your company's intellectual property. This includes registration of your company's trademarks with BIP SXM and in the other Dutch Caribbean islands to secure your exclusive usage rights. Your products earn rave reviews, they are sold in your local stores and by your distributors in the Dutch Caribbean. Intensive use of the trademarks through marketing and promotion campaigns enable consumers to easily distinguish your products from those of your competitors and increases product sales. However.....

Your products suddenly get bad reviews and some retailers refuse to sell your products. You are forced to close one of your stores and take drastic cost reduction measures for your company to survive, including terminating some employees. You are shocked to learn that your registered trademarks are being used without your permission for imitation products that are sold for a much cheaper price. The fake products are of less quality, several consumers have reported skin rashes and burns.

This example clearly illustrates that counterfeiting does not only affect the entrepreneur/trademark owner, but also the supply chain, consumer health and safety and even a country's economy. The latter also considering that counterfeit activities often take place "underground" with less costs of doing business, which often leads to a loss of tax revenues for the government and unfair competition with the entrepreneur/trademark owner.

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Studies have even linked counterfeiting to money laundering and organized crime.¹ The estimated gross value of the counterfeit business on a global scale grew from US\$461 billion in 2013 to US\$509 billion in 2016, accounting for 3.3% of all international trade.² Countries with weak legislation and minimal enforcement activity are often fertile breeding grounds for counterfeiters.

The perception is often that counterfeiting only targets popular luxury brands and luxury products, such as clothing, handbags, watches, and sunglasses, while no one would really be a victim of "innocent imitation". However, consumer goods (batteries, phone chargers, cosmetics), cigarettes, alcoholic beverages (beer and whiskey) and pharmaceuticals are more and more counterfeited. It is chilling to learn that rat droppings have been found in cigarettes, high levels of lead and mercury in make-up, cement and dish washing liquid in beer, road paint and floor polish in pharmaceutical products, while the latter have been found to be cut in severe unsanitary conditions with blunt metal cutters coated in old and heavy rust.

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Enforcement activities are therefore not exclusively limited to customs, upon entry of the fake goods, and the prosecutor/the police force inland but can also be carried out by health authorities if appropriate.

Illegally manufactured trademarks, trademark imitation, falsely marking goods with a third parties' trademark or tradename, stating a false place of origin on goods with a condensed tradename and trading in counterfeit goods is punishable with imprisonment of up to 4 years or a penalty up to ANG. 25.000 under the Criminal Code. Counterfeit goods bearing the imitated trademark can be confiscated. The entrepreneur/trademark owner can take civil court action to demand a prohibition of use of the trademark, claim damages, rendering of accounts, and destruction of fake goods among other things. Consumers have a pro-active role in educating themselves on pointers how to identify fake goods (e.g. normal retail price, normal points of sale, packaging, product material, manufacturer, country of origin, websites).

Since counterfeiting affects us all, the Caribbean as a region is called to unite and strengthen regional collaboration between all levels of enforcement officers in the fight against counterfeiting and to educate its citizens on the importance of supporting legitimate trade and the risks of purchasing counterfeit products. Policy Dialogues on exchange of best practices are already ongoing, particularly upon initiative of INTA and IPCA, between Curacao, Jamaica, the Dominican Republic and Trinidad and Tobago, and are planned to expand to more countries in the future.

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Notice

20/12 - 31/12 The Bureau will be closed to the public from December 20th, 2021 through December 31st, 2021. Regular office hours will resume on Monday, January 3rd, 2022.

¹ The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime, United Nations Office on Drugs and Crime

² Report OECD/European Union IP Office - Trade in Counterfeit and Piracy Goods, Mapping the Economic Impact 2016

Disclaimer

The Bureau is not a regulatory body and therefore does not have any law enforcing authorities. By law, the Bureau can only carry out tasks pertaining to the registrations of trademarks, provide information to the public regarding intellectual property, and thereto related matters. The Bureau's position is neutral. Given the fact that the Bureau must serve all entrepreneurs, it cannot take the side of one party in a conflict, since this would automatically result in no longer being able to serve all. The Bureau cannot act against any infringement of intellectual property rights or the suspicion thereof. Furthermore, the law does not provide for any instruments for the Bureau to conduct any procedures in relation to infringement or dispute settlement. In the event of any (suspected) infringement, a lawsuit should be filed with the civil court by the owner of the intellectual property rights.

