

## **COUNTERFEITING IN NIGERIA – A GROWING MENACE.**

### Introduction

At a time that the protection of intellectual property is assuming greater prominence in international economic relations, counterfeiting has become a menace in Nigeria. Whilst the danger posed by the importation and sale of overseas is by far of greater magnitude, the burgeoning of locally manufactured counterfeits cannot be overlooked, especially for the future.

Key reasons for the growth of counterfeiting in Nigeria include: - Downgrading and neglect of the Nigerian/ African market by international intellectual property owners. This appears to be surprising in view of the size of the African/ Nigerian potential market;

- Frustration of the said intellectual property owners with the Nigerian/African frameworks for, and implementation of, intellectual property protection;
- Economic recession, and especially the fall in Nigerian/African currency exchange rates, which have made genuine items relatively more expensive in Nigeria/ Africa;
- Poor appreciation by Nigerian/African authorities of the value of intellectual property and merits of protecting it.
- Lack of information on anti-counterfeiting measures available in Nigeria/Africa.

Industries worst hit by counterfeiting include the garments/textiles, electronics. Vehicle spare parts, drinks, pharmaceuticals and cosmetics/personal products industries.

## **Remedies Against Counterfeiting.**

Nigerian law provides both civil and criminal sanctions against counterfeiting. Criminal sanctions are primarily embodied in three statutes:

- The Criminal Code Act;
- The Merchandising Marks Act;
- Counterfeit and Fake Drugs (Miscellaneous Provisions) Act.

Of the above named Acts, the last two are of the purpose of combating counterfeiting. The Merchandising Marks Act is founded on the eponymous English Acts of the late 19<sup>th</sup> / early 20<sup>th</sup> century. It is hardly used. The Counterfeit and Fake Drugs (Miscellaneous Provisions) Act was promulgated with the special vulnerability of a largely illiterate populace to counterfeit, and probably all dangerous drugs, in view. Its hallmark is the setting up of Task Forces at the Federal and State levels in Nigeria to fight against counterfeiting. The basic task of the various task forces is to seize counterfeit, adulterated and/ or fake drugs.

The criminal sanctions against counterfeiting are cumbersome and time consuming. Most importantly, there is virtually no right of private criminal prosecution. Consequently, recourse to criminal prosecution is hardly ever advisable, albeit it is a useful option to have in certain circumstances.

Civil remedies however do not suffer from the defect of being dependent on a third party for their application, although Nigerian law does not provide any specific civil remedies for counterfeiting qua counterfeiting. Depending on the intellectual property right infringed, the remedies would include injunctions, damages, accounts, seizure and destruction of offending material etc. These remedies are

cost in the Federal High Court, which is a specialized court with exclusive jurisdiction for intellectual property matters. The few intellectual property right owners have sought the protection of their rights against counterfeiters in Nigeria have probably been pleasantly surprised that the system can, and does indeed work.

At the present time, the level of actions against counterfeiting activity is nowhere near the level of counterfeiting activity. This appears to be due to many factors, the most important of which is probably a dearth of information on anti-counterfeiting measures in Nigeria. Intellectual property rights owners cannot afford to neglect Nigeria because if they do, they will be forced in due course to fight an inferno, with probably costly consequences.

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