

THE ANTI-COUNTERFEIT NEWSLETTER

— Eighth Edition - March 2020 —

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Editorial Team
Tom Muteti
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ACA FETED at the 2019 @FiReAward!



From R to L Mr. Hassan Kidzuga Manger internal Audit, Fridah Kaberia Deputy Director Corporate Service, Mr. Elema Halake The Executive Director and Rephah Kitavi the Manger Finance receiving the trophy

Nairobi.

This year's Gala Fire Award dinner held at the Nairobi's Carnivore open Grounds on the 8TH Nov, 2019, the authority won the second runners-up award for excellence in applying International Public Sector Accounting Standards (IPSAS) accrual reporting.

The theme for the 2019 year FiRe Award "Enhancing corporate value through excellence in financial reporting for cross-border trade and

investment facilitation in East Africa and beyond" resonated well with the mandate of the authority. The Executive Director Mr. Elema Halake led a team of senior management team to receive the award.

In his address to staff while emphasizing the team spirit at the Authority, Mr. Halake said. "We appreciate the team work and hard work you have put in this past year. Not just by winning the trophy but the

individual efforts you put in behind the scene.

The Award is aimed at promoting integrated reporting through enhancing accountability, transparency and integrity in compliance with appropriate financial reporting framework and other disclosures on Governance, social and environmental reporting by private, public and other entities domiciled in East Africa.

Foreword from the Executive Director



Greetings. We welcome you to the 8th Edition of the Anti-Counterfeit Newsletter amid a delay which is highly regretted. We have a new look and online functionality, and going forward we will have issue oriented publications aligned with emerging issues. This will allow for more in-

Some of you might have attended one of our many Conferences held throughout the country and can attest to their level of quality and usefulness. In addition, the half-day seminars offered to County Security committees, we will expand to include the business community and

counterfeits networks across the country. In the next edition, readers will be treated to an in-depth analysis of the first national survey in Kenya on the extent and magnitude of illicit trade that will also incorporate a consumer survey on illicit trade. Don't miss it as the study is at the

“ All hands are on the deck towards implementation of the National Action plan against illicit trade ”

depth news and stories regarding promotion and protection IP in Kenya.

So what are our plans at the Anti-Counterfeit Authority? First and foremost, we will continue providing high-impact outreach and education in line with the National Action Plan against illicit Trade. We will continue with the County Security Sensitization forums and training at all border points across the country. We are proud to be at the forefront of implementing the multi-Agency Outreach Programs.

other stakeholders around the country to give them opportunities to attend these valuable seminars.

Secondly, all hands are on the deck towards implementation of the National Action plan against illicit trade. We will continue to enforce the law through intelligence led investigations and criminal. We are now working on a whole-government approach and we would like to call upon the private sector to join us in a whole society approach to wipe-out illicit trade and

validation stage. Lastly, I want to acknowledge the support from all of you and in a few days to come, I hope to see you at one of our events. Remember, you can always contact us or get updates from us through our online channels @ACAKenya for both Facebook and TWITTER.

Enjoy the reading.

Elema Halake
Executive Director
Anti- Counterfeit Authority

Authority Enlists Institute of Human Resource Management IHRM as Change Management Consultants.



Inaugural meeting between management of ACA and the IHRM Consultants

Change is a major part of our lives, whether it is change in the private sector or in the public sector. As a Public institution, the Authority recognizes this inevitability and has engaged consultants from the Institute of Human Resource Management towards implementation of the process.

Speaking to staff during the inaugural meeting with the IHRM consultants he said [that we still know little about when and how change will happen but we find even our personal lives changing and so do organizations.

The consultant terms of reference will involve a six month period of engagement towards preparing, equipping, and supporting ACA staff to successfully adopt change in order to deliver greater service delivery.

ACA in Partnership with US Government towards Enhanced IP Enforcement

ACA Deputy Director Enforcement and legal Services Mr. Johnson Adera led a team from the Authority in a meeting with visiting US Government representatives discuss opportunities and areas of collaboration in IP Enforcement between the two countries.

The US team was led by Ms. Janet Mwangi the Commercial Affairs Specialist based in Nairobi and included Mr. A. Hammer from U.S. International Trade Commission and Ms. K. Hiner from the same organization. Mr. Hammer said the US Government

was keen on establishing partnerships with key trading partners towards addressing specific emerging challenges in the area of IP.

Corporate News

He noted that US businesses were equally affected by counterfeit like many other countries globally.

This is a follow up meeting following bilateral level agreements between the two countries where the US Government agreed to provide technical expertise to government agencies in order to spur trade between Kenya and the US.



Research underway for first base-line survey 'National Baseline Survey on Extent of Counterfeit & other Forms of Illicit trade in Kenya

This is the first national survey in Kenya that will determine the extent and magnitude of illicit trade and will also incorporate a consumer survey on illicit trade. The baseline information will be used in the measurement of future trends in illicit trade a growing phenomenon that is threatening consumers and economic systems. The survey is being done by Integrated Development Consultants Ltd and a project by the Trade Mark East Africa (TMEA)

Kenya Country Program through funding from the Department for International Development of the United Kingdom government. During validation workshop meant for Intellectual Property Rights stakeholder, Mr. Elijah Rutoh the ACA Research and Policy Manager confirmed that initial findings from the survey correlated with the growing trend both in figures reported in media and increased number of seizure figures from different sources.

He said that 'Illicit trade and Counterfeiting has eaten into the formal trade and will have serious consequences for the manufacturing sector as well as consumers.

There is therefore a policy justification for prioritization of the war against counterfeits and illicit trade in order to achieve the Big 4 Agenda.



Participants during a validation workshop at a Hotel in the outskirts of Nairobi

Product Authentication Training

ACA has held five brand authentication training in Nairobi and Mombasa branches with a number of stakeholders in a period of three months from September to December 2019. The target groups are enforcement inspectors and public awareness of-ficers.

Notable partners are the Samsung Mobile phones company led by their regional brand protection agency.

The Managing Director of the Anti-Illicit Trade Agency Mr. Peter Mutula who led the Samsung training programs in Nairobi and Mombasa welcomed the continued partnership with ACA saying they have seen increased seizures of counterfeit phones in the country since last year when the training programs commenced.

Similar sentiments were expressed by Mr. from Spoons & Fischer a South African Law firm. The firm specializes in IP Law and brand protection and enforcement for a number

The Brand Identification Training was very well received by the attendees

of global leading brands like Puma, Gucci, Adidas and Gillett among others.

They did training for Multi-Agency Anti-Illicit team of including the Kenya Revenue Authority, the

Kenya Bureau of Standards, Pharmacy and Poisons Board among others at the Water Plaza Amphitheater of the ACA Kenya Headquarters.

The training sessions are tailored to be interactive, with the participants raising various points and requesting assistance on brand features and industrial designs. The Brand Identification Training was very well received by the attendees and numerous additional requests have been made by the ACA to conduct further trainings of this nature.

ACA welcomes the Intellectual Property rights owners or their agents to partner with the authority towards brand feature training to ease investigations in infringing products.



Mr., Peter Mutual the Managing Director Anti-Illicit Trade Agency during one the training classes

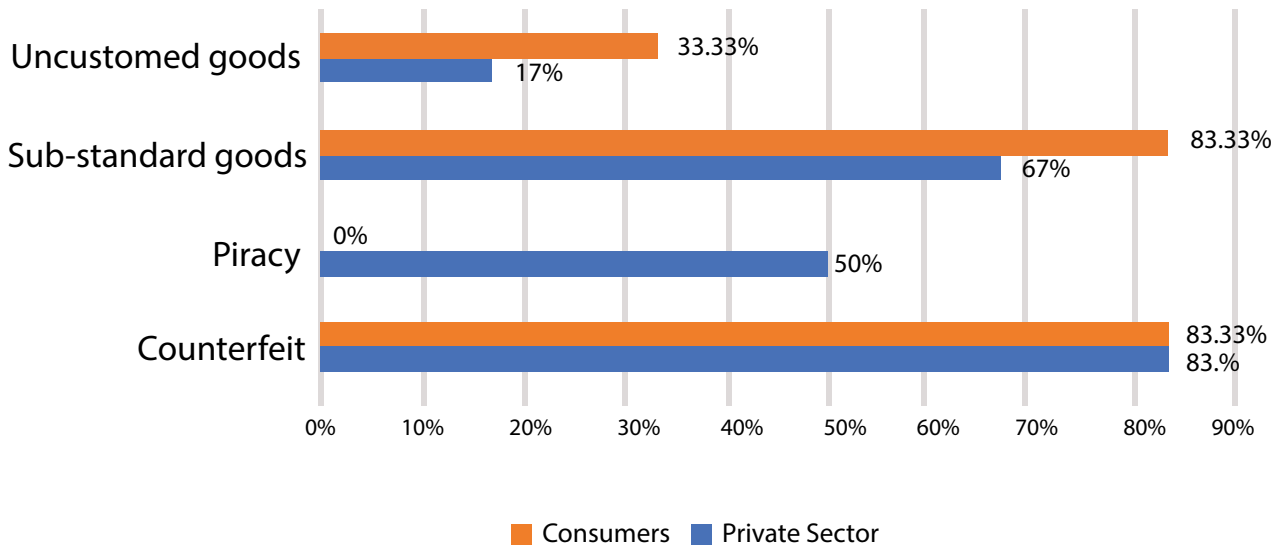


Group Photo of participants of the Spoons and Fisher Product Authentication training to multi-agency officers

Snap Shot

1. Reported complaints

Forms of illicit trade against which consumers and private sector reported complaints to Government Agencies (% share of Government agencies who indicated having received the complaints against the specific form of illicit trade)



2. Number of seizures of domestic goods

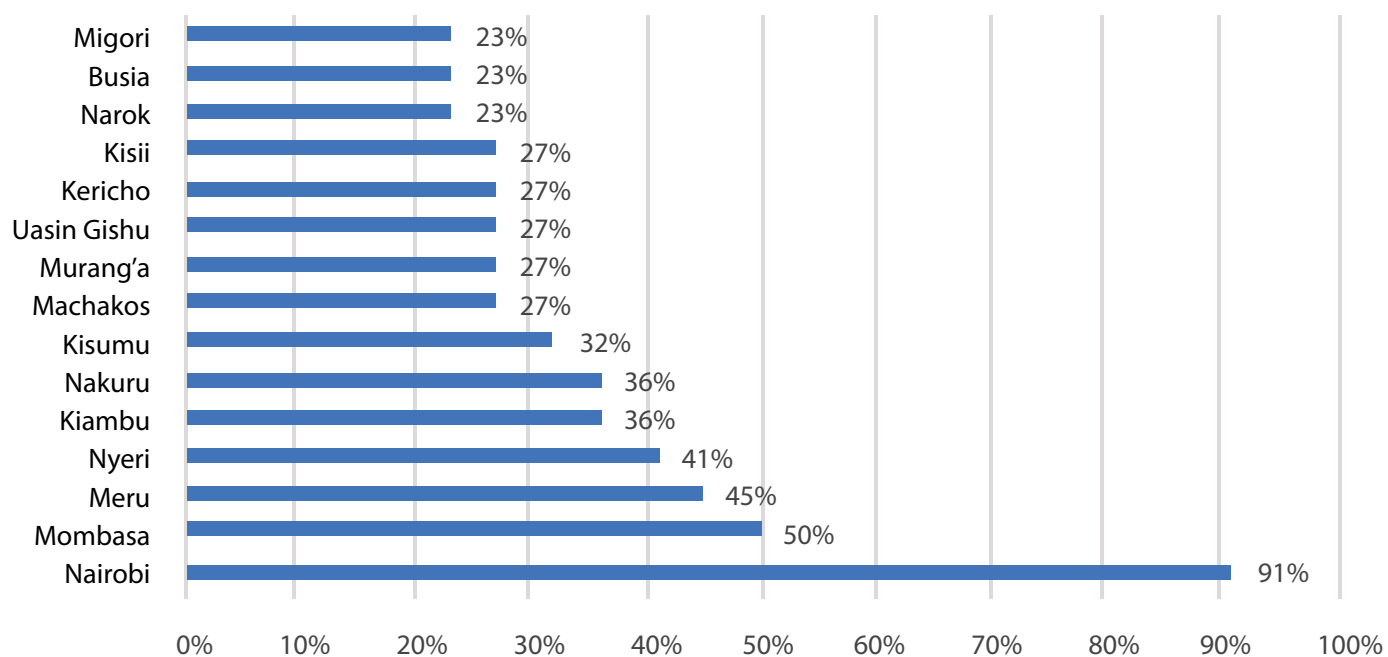
Form of Illicit Trade	2016	2017	2018	Total (2016-2018)	% share
Counterfeit	48	42	43	133	23%
Piracy	147	102	76	325	56%
Sub-standard goods	20	23	58	101	17%
Uncustomed goods	0	0	0	0	0%
Restricted goods	1	9	10	20	3%
Total	216	176	187	579	100%

3. Firms' sales losses as a result of various forms of illicit trade (Figures KES)

	2016	2017	2018
Lost Sales as a result of counterfeit (in KES)	8,308,800,000	1,850,000,000	1,983,300,016
Lost Sales as a result of counterfeit as a % total sales	28.75%	35.67%	29.05%
Sales Loss as a Result of illicit trade in Uncustomed Goods (KES)	7,587,300,000	888,000,000	738,800,016
Sales Loss as a Result of illicit trade in Restricted Goods (KES)	0	0	1,000,000
Sales Loss as a Result of illicit trade in Unexcisable Goods (KES)	7,500,300,000	800,300,000	650,300,016
Total	23,396,400,000	3,538,300,000	3,373,400,048

4. Hotspot Counterfeit Counties

Counterfeit Hot Spot Counties (Counties where reported firms sales loss as a result of counterfeit products was above national average of 18%) - Figures are % share in total firms which indicated having lost sales as a result of their counterfeited pr





ACA holds a Judges Workshop on IP in Partnership International Trademark Association

Nairobi October 29 - 30 2019.

The Anti-Counterfeit Authority together with the INTA held a workshop for judges and magistrates on intellectual property rights in Nairobi.

The highly successful event, sponsored by the International Development of Law Organization (IDLO), and supported by the Kenyan Judicial Training Institute (JTI) provided an overview of the basics of

intellectual property (IP) rights and proceedings, including such issues as nontraditional marks, bad-faith filings, and the dangers and harmful effects of counterfeiting. Speakers included INTA members, ACA officials, the Law Society of Kenya (LSK), and the Industrial Property Tribunal of Kenya (IPT).

This is an ongoing project whose objective is to sensitize judiciary staff on emerging issues in protection of Intellectual property across the

country. Representatives from the IDLO said they will work with international and local trainers to ensure that the training is adapted to the local context.

In order to increase foreign direct investments and protect innovation in the country, there is need to have a strong regime of intellectual property (IP) law. In recent years Kenya has focused on building and implementing a policy for attracting foreign investment.

Illegal Water Refilling Plant Shut Down

ACA Inspectors led a multi-agency team to shut down an illegal water manufacturing plant in Embakasi, Nairobi and seized more than 1,000 units of bottled water and a pickup truck. Two hundred and twenty pieces of five-litre bottled water and 792 pieces of 500 millilitre bottled

water had already been loaded on to the waiting pickup truck outside the premises ready for the market when ACA officers arrived. Twenty pieces of five-litre bottled water were still within the premises. The officials were working on a tip off from members of the public.

The director of the company was summoned for further investigations and subsequent prosecution in court for manufacturing of counterfeit products among other charges. The plant, which is located in a residential area within Embakasi, was sealed off for manufacturing water.



Bottling equipment and packaged counterfeit products ready for the market that was seized by ACA inspectors

ACA Inspectors impounds counterfeit textbooks a consignment of valued Sh.20 million at the Namanga Border Post

In one of the largest cross border trade enforcement operations, our Inspectors at the Namanga Border point nabbed counterfeit textbooks bearing names of Kenyan Publishers meant for the Kenyan market.

The ACA Executive Director, Elema Halake who led the verification process said the goods which were on transit into the Kenyan market from Tanzania and included: 8,736 copies of *The Pearl*, published by New Longman Literature, 6720 copies

of *The Inheritance*, published by Longhorn, 16,200 copies of *A Doll's House*, published by the East Africa Educational Publisher and 4,800 copies of *Memories We Lost*, published by Moran Publishers.

The counterfeit textbooks according to the publishers have spelling mistakes and missing pages, incorrect information and jeopardize the young reader's grasp of the subject matter. The seized goods were kept at the One-Stop-Border post Depots

for court processing. They are suspected to have been shipped through the Dar es Salaam port and transported by buses and trucks to Namanga on their way to NAIROBI. Mr. Halake said the total value of the seized counterfeit goods was Sh.22 million adding that the agency had put in place measures to ensure that counterfeit goods are seized before they enter the market. He added that the government was committed to ensuring that illicit trade through counterfeit and contraband goods is eliminated.

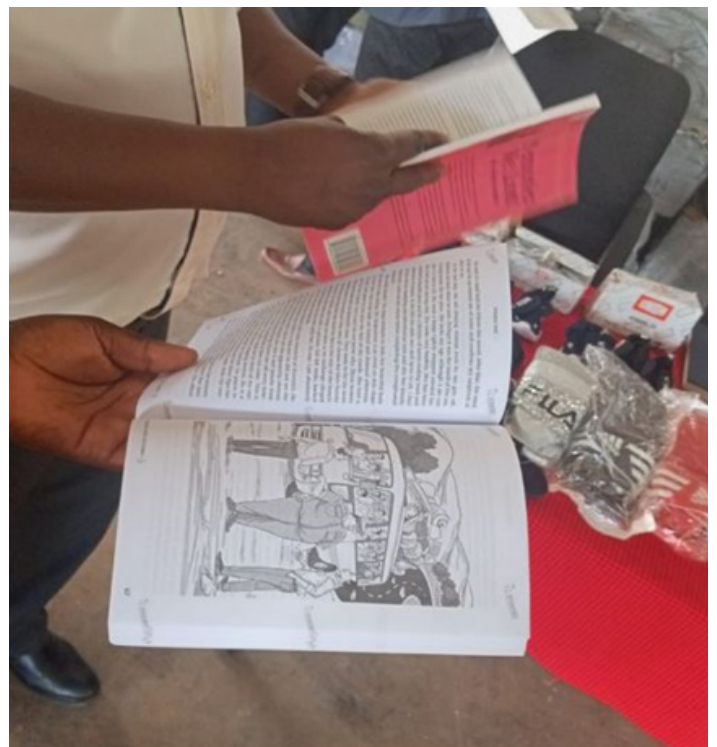
Enforcement News

The Kenya Publishers Association, Mr. James Odhiambo revealed that cartels involved in publishing of counterfeit text books have upped their game by relocating to neighbouring countries where they print the books and sneak them back into the country.

Mr. Odhiambo urged parents to be on the lookout when purchasing textbooks and only buy books authorized by the Kenya Institute of Curriculum Development (KICD). He said that parents should be wary of cheap textbooks sold in nondescript shops that have loose pages and poor printing.



2nd Left Executive Director Elema Halake leads other government officers in verification of counterfeit books at the Kenya Tanzania Namanga Border



Counterfeit books nabbed at the border

KSH 4.9 Million Counterfeit Goods Destroyed in Mombasa, Kenya

Another Success in the Fight against Counterfeiting

Mombasa, 13th, September 2019. Sustaining its gains in intellectual property rights enforcement, thousands of counterfeit goods were destroyed this morning by the Anti-Counterfeit Authority in the coastal city of Mombasa Kenya. This is one of the one of its biggest condemnations of confiscated smuggled products this year in the area.

The Chair of the Board of the Anti-Counterfeit Authority, Ms. Flora Mutahi said the condemned goods worth at least Ksh 4.9 M consisted of various items ranging from fast moving consumer goods like mobile phones, electrical goods, clothing, cosmetics and apparel and stationery, which were replicas of popular local and international brands. This is in violation of the Anti-Counterfeit Act 2008 law of Kenya.

Ms. Mutahi added that “this is proof of the Authority’s seriousness to rid the local market of counterfeit products” She expressed confidence that the series of high-profile seizures being carried out by the Authority would go a long way in planting the seed of fear and uncertainty in the hearts and minds of counterfeiters.

“We now have a road map to implement through National Action Plan against illicit trade. As a board, are at front to make sure this plan is implemented. It is a dynamic plan that incorporates the private sectors to assist in law enforcement and consumer awareness programs to cut the demand side of counterfeiting.

By destroying these products the Authority want to express the its commitment in protection of Intellectual Property Rights through the legal and institutional frameworks

to fight counterfeits to encourage investors. With increased investors, Kenya will definitely have a strong growing economy, employment and development.

Meanwhile the Authority is raising a red flag on storage of goods suspected of infringing intellectual property (IP) rights, and their sound disposal, once the infringement has been confirmed. Disposal process involves costs and represents major logistical challenges to IP enforcement. There are the costs associated with collecting, transporting, cataloging, storing and finally, destroying large quantities of counterfeit goods.

We are calling out to stakeholders especially the brand owners to share knowledge, offer assistance, and collaborate with us to achieve an environmentally friendly disposal and destruction.



Continuation of County Security Committee Sensitization Forums in Busia, Meru and Mombasa

Towards full implementation of the National Action Plan against Illicit trade, our Public Education and Awareness team have continued the nationwide series of sensitization to County Security Committees in Meru and Mombasa Counties.

The sensitization events target all county security chiefs including the National Government Administrative Officers, Kenya Police Service Officers, County governments in a bid to fight trade in counterfeits and

illicit trade across the country.

Speaking during the launch of the sensitization forums in September 2019 in Nairobi, the Deputy Head of Public Service, Mr. Wanyama Muisambo said "Fighting illicit economy requires a range of solutions from partnerships, technology to changes in public policy.

We are engaging county securities committees because they have grassroots representation to enforce

the law and create public awareness to our consumers".

These partnerships are part of the deliverables of the National Action Plan for combating Illicit Trade in Kenya that was launched in June this year.

The Action Plan lays down the levels of engagement and steps that be taken to reduce the illicit trade at the county level.

1. Meru County sensitization forum



Meru County Chief Officer Trade Mr. Denson Mbuui addressing the media at the event

Speaking in Meru County sensitization forum, the Anti-Counterfeit Authority (ACA) Chief Executive Mr. Elema Halake said the proliferation of counterfeit goods is threatening realization of the Big Four Agenda. Agricultural inputs, electronics and

foodstuffs are the most affected goods, as greedy counterfeiters take advantage of lax enforcement of regulations to distribute fakes in the country. He said counterfeit agricultural inputs that include fertiliser and pesticides remain a threat to

food security." Meru is a very strategic area for us. The production of tea and milk and other agricultural products is negatively affected by counterfeit seeds, fertilisers, pesticides and other inputs," said Halake.

2. Mombasa County Security



Group Photo of the Mombasa County Security sensitization participants at the Kenya School of Government Mombasa

At a highly attended event the Mombasa county security committee was held at the Kenya School Government premises in Kizigo. This was the fourth County Security meeting after Nairobi, Busia and Meru. Mombasa county was identified as a key border

point as some of the major hotspots that unscrupulous dealers use to sneak goods into the country. "While we agree some of the counterfeits are also manufactured in the county, a large portion of it is imported and passes through the port here,"

said Halake said. Mr. Halake said with Kenya occupying a strategic trading position because of the port in Mombasa and international airports, it was vulnerable to those who deal in illicit trade.

3. Busia County Security Sensitization Forum

In continuation of the County Security sensitization on Illicit Trade, the agency partnered with the Kenya Association of Manufacturers (KAM) to hold the western Kenya circuit that was held in Busia Town.

Busia Town was the choice of event being the headquarters of the Busia County and key border towns with neighboring Uganda were a lot of cross border trade takes place between the two countries. The forum was graced by the County Commissioner for Busia, Mr Jacob Narengo and involved all county security chiefs from western Kenya. Mr. Narengo emphasized the need for collaboration by all government agencies in the fight against illicit trade saying "No single government agency can effectively enforce

anti-counterfeiting measures within and across national boundaries. The fight against illicit trade is a collaborative effort amongst all stakeholders. Collaboration will increase our gains in this fight as we work towards growing our economies and having a safe, healthy population". He said that the County had dedicated Thursdays for illicit trade operations were security chiefs conduct impromptu checks in their towns to check for counterfeits and illicitly traded goods. The KAM Chief Executive, Ms Phyllis Wakiaga in her speech appreciated government efforts in the war against illicit and called for increased collaboration within and the private sector. She noted that "Trade in counterfeits was threatening the growth of the manufacturing sector and realization

of the Big 4 Agenda by the government. Ms Wakiaga assured of KAM support to both National and County Governments towards eradicating illicit trade.

The ACA team was led by Dr John Akoten the Research, Awareness, Policy and Quality Assurance Deputy Director. He assured participants of the government commitment against illicit trade especially with the coming up with the National Action plan against Counterfeits and illicit trade. "The country has laid down the needed plans, everyone has a role to play, what is remaining now is full implementation since we can't leave our country to unscrupulous traders. We must all stand to be counted and say no to counterfeits. Said Dr. Akoten.



KAM Chief Executive, Ms Phyllis Wakiaga making her speech at the Kenya Uganda Busia Border



Participants at the Busia Border stakeholder conference



Busia County Commissioner Mr Jacob Narengo makes his speech



Busia County Security sensitization Group Photo

Crop life Kenya Ltd in Joint Sponsorship with ACA in Awareness Programs

Over the past five years ACA and CropLife Kenya Ltd have had a series of joint sponsorship of anti-counterfeiting awareness program across the country.

Their efforts have seen greater reach out to farmer communities in Meru, Malaba, Taveta Loitoktol and majority of the farming communities across the country. Farmers are educated on the dangers of using counterfeit agro-inputs and the need to respect intellectual property (IP) protection.

The programs have led to several positive outcomes including increased enforcement actions across the country through farmer reporting of counterfeit products to the authorities.

The Anti-Counterfeit Authority Manager for Education and Public Awareness and also the Coordinator of the Multi- Agency against Illicit Trade and Outreach [MAAITO] Mrs. Agnes Karingu praised Croplife Kenya Ltd for the continued support.

In her presentation in Malaba town Mrs. Karingu said.

“The Government is working in a coordinated way not only in enforcement but in creating much needed consumer awareness.

We welcome the gesture by Crop Life Kenya Ltd for continued sponsorship of these events and look forward to working with other private sector organization to fight counterfeits.



Dr John Akoten the Research, Awareness, Policy and Quality Assurance Deputy Director explains salient features of a genuine product at the Malaba Event



Group photo at the Taveta Border Agro Chemical Association event



ACA Manager for Education and Public Awareness and also the Coordinator of the Multi- Agency against Illicit Trade and Outreach [MAAITO] Mrs. Agnes Karingu hands over a copy of the National Anti-illicit trade Plan to the Taita Taveta County Chief Officer for Agriculture Mr. Boniface Mwavula in Taveta Town.

The Anti-Counterfeit Authority Operational Overlap in Protection of Intellectual Property Rights in Goods and Services in Kenya

By **Perpetua Mwangi**

Head of the Intellectual Property Division at Simba and Simba Advocates

The fact is that there is a market for counterfeit products that has contributed to the expansion of this outlawed industry.

More often than not, consumers are not able to access legitimate brands because on one hand, they are misled by counterfeiters and on the other hand, legitimate brands are outside their means hence consumers settle for versions of the brands they desire.

In fact, the market for counterfeit products is vast and readily accessible, occasioning unfair competition.

During past [Jamhuri](#) Day Celebrations, the Head of State issued an executive order to investigate intellectual property (IP) infringement and destroy counterfeits on sight. He reiterated that counterfeits are a major impediment to the growth of the manufacturing sector, which is the first pillar among the [‘Big Four’ Agenda](#).

This kind of political goodwill reinforces the legislative commitment in addressing intellectual property rights (IPRs) infringement.

With the explosion of technology, counterfeiters are benefiting from the digital space. Whilst, it is a logistical nightmare for law enforcement and, for brand owners seeking to protect and enforce their IP,

reputation and revenue streams.

Introduction

On 20th November 2019, Justice John M. Mativo of the High Court’s Judicial Review Division, delivered a judgment in Republic V. Anti-Counterfeit Agency Ex-Parte Caroline Mangala T/A Hair Works Saloon.^[1]

The sum effect of the judgment is that the common law right of passing off is a form of infringement of IPRs in goods and services that amounts to counterfeiting under the Anti-Counterfeit Act.

The Applicant, Caroline Mangala, a Kenyan business lady operating a beauty shop called Hair Works Saloon (sic), sought Judicial Review Orders against the Anti-Counterfeit Authority, whose officers seized beauty products by the brand Makari De Suisse on the basis that they were counterfeit.

The crux of her application was that the seizure was unfair, illegal and tainted by bad faith considering that she had submitted samples of the same products to the Kenya Bureau of Standards (KEBS) to ascertain whether they were counterfeit or not, to which KEBS confirmed the product being of acceptable standard.

The application occasioned chance for the court to address intellectual

property issues as below.

1. IP Considerations in Anti-Counterfeit Regulations

JO Global Venture Limited allegedly agents of M/s Victoria Albi Incorporated and alleged owners of the trademark Makari De Suisse filed a complaint with the **Anti-Counterfeit Authority (ACA)** alleging trademark infringement. As a general rule, for one to pursue complaints in IP Regulations, registration is a key starting point on issues of locus. In fact, Section 5 of the Trade Marks’ Act precludes parties from seeking redress for a trademark violation, unless that mark is registered.

The Applicant argued that the Complainant was not a registered owner of the mark Makari De Suisse in Kenya under the provisions of the Trade Marks’ Act, even though an application had been lodged and still pending examination at the Registrar of Trade Marks. The Applicant’s main argument was that the Complainant did not have a duly registered trade mark in existence capable of laying a basis to lodge a complaint for infringement.

Among other legal issues, the Court considered the correlation between counterfeiting and standardization of goods. Though standardization of products is a mandate of KEBS, it does not oust the mandate of ACA in curbing counterfeiting.

The Court agreed that there are times when goods will be substandard but not counterfeit, or counterfeit but not substandard or both counterfeit and substandard. [2]

In **PAO & 2 Others v Attorney General** [3] the Court held that the test as to whether goods are counterfeit lies in Section 2 of the Anti-Counterfeit.

2. Presumption of IPR Ownership

Section 26(5) of the Anti-Counterfeit Act, provides that where the subsistence of IPRs in respect of suspected counterfeit goods or the title or interest in IPRs is in issue, the complainant shall be presumed to be the owner of the copyright or the related right, until the contrary is proved.

Therefore, an interpretation of the foregoing provision reveals that to file a complaint at ACA on the basis of IP rights violation; one does not need to prove registration of the same mark. This is unlike the requirement to prove registration under Section 5 of the Trademarks Act.

This means that the ACA in dealing with counterfeiting also enforces protection of IPRs, which is an overlap to the provisions under the Trade Marks' Act.

Essentially, counterfeiting includes making any goods that are imitations of protected goods without the authority of the owner of the IPR.

3. Fate of unregistered IPRs

As a rule of thumb, there is need for every IP owner to take necessary steps to ensure that their rights are legally enforceable.

Registration offers one way of proving the existence and ownership of the rights at any one given time. Failure to register IPRs often leaves room for infringement and consequently, unnecessary and lengthy litigation.

That notwithstanding, there is a doctrine of "common law Trademarks", as held in **Capital Estate and General Agencies (Pty) Ltd & others v Holiday Inns Inc. & others**. [4] This doctrine is to the effect that, the fact that in a particular case there is no protection by way of patent, copyright or registered design, does not license a trader to carry on his business in unfair competition with rivals.

Therefore, though subject to several disputes and arguments, one cannot purport to unfairly utilize another's intellectual property rights on the basis that they have not been registered.

The common law tort of passing off can be used to enforce unregistered [trademark](#) rights.

One only needs to satisfy the "Classic Trinity-reputation and goodwill, misrepresentation, and damages" as established in **Reckitt & Colman Ltd v Borden Inc. (Jif Lemon case)** [5].

Conclusion

The effect of the recent judgment is that there is now a mixed approach in enforcement of IPRs.

A quick glance at the mood set in the judgment reveals the possibility of multiagency regulation and coordination in enforcement of IPRs.

The ACA and KIPI can collaborate to ensure that no one benefits from other people's IPRs unfairly.

Protection of IPRs is not only guaranteed by mainstream Intellectual Property Regulation Instruments like the Trade Marks' Act but also the Anti-Counterfeit laws in Kenya as interpreted by Justice Mativo.

The Anti-Counterfeit Authority has a mandate to ensure protection of IPRs.

The mandate is exercised whether the IPR is registered or not owing to the presumption of ownership by the complainant.

Once the presumption is questioned, there is an avenue for separate proceedings, either before the Courts or before the Registrar of Trade Marks' to make a determination as to ownership.

Reposted from [CIPIT](#) in [Guest Post, Intellectual Property](#)

