



ANTI-COUNTERFEIT NEWSLETTER

Ninth Edition-2020



FINDINGS OF THE NATIONAL BASELINE SURVEY ON COUNTERFEIT AND OTHER FORMS OF ILLICIT TRADE IN KENYA, 2020

The Anti Counterfeit Authority undertook a National Baseline Survey on Counterfeit and other Forms of Illicit Trade in Kenya in partnership with TradeMark East Africa (TMEA) through funding from the Department for International Development (DFID). The study was achieved through collaborative efforts of several players in the public, private and development sectors, which are supportive of the fight against illicit trade in Kenya. The study highlights the extent (magnitude, level and prevalence) of counterfeiting and other forms of illicit trade in Kenya and proposes key recommendations for stakeholders' consideration. According to

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VISION

A Counterfeit-Free Kenya.

MISSION

Prohibit Counterfeiting through Promotion and Enforcement of Intellectual Property Rights

CORE VALUES

Diligence, Integrity, Vigilance

FOREWORD

Findings of the National Baseline survey on counterfeiting and illicit trade are out: Is it time to review our approach.



Mr. Elema Halake SS

Executive Director, Anti-Counterfeit Authority

As we had promised in the last edition of the Anti-Counterfeit Newsletter, this 9th edition is packaged with findings of the National Baseline Survey on the extent of counterfeit and other forms of illicit trade in Kenya.

The results are as a result of yet another successful partnership between the ACA and stakeholders specifically our collaboration with TradeMark East Africa (TMEA) through funding from the Department for International Development (DFID). The survey commissioned last year provides a valuable snapshot into the true extent of counterfeit and illicit trade on economic growth in Kenya. We are availing the

first findings in Kenya of this unethical activity that cause a wide range of economic, social, and environmental damage.

The findings conclude that though faced with a daunting task, there is significant success in this war against illicit trade especially with the ongoing implementation of the National Action Plan against Illicit trade in the country. It further demonstrates that collaboration is a key factor in this respect. I would like to extend my sincere appreciation to all government agencies and consumer organizations who were involved in compiling the findings and other contributors for the information provided

to the consultants to make this Report possible. I encourage all enforcement agencies and other stakeholders to continue inputting their seizure information into the National Illicit Trade Observatory (NITO), a tool that will enable monitoring of illicit trade in Kenya. The more seizures recorded the better and more thorough the data that will be used for better decision making. I hope that this baseline survey will prove interesting and useful reading for all policy makers and all interested stakeholders in making daily information-based decision making in combating illicit trade on the front line. Finally, although most of our public awareness activities and enforcement efforts have been affected by COVID 19 Pandemic during the reporting period, we have interesting stories over the same especially those targeting seizures of counterfeiters capitalizing on this period.

We wish you a **#SafeStay** and **#Covid19** pandemic-free season. Enjoy the reading and in case of any feedback or inquiries, you can reach us through our social media feeds **@ACAKenya** for both Twitter and FACEBOOK or email us at info@aca.go.ke.

Mr. Elema Halake SS

**Executive Director,
Anti-Counterfeit Authority.**

Working seamlessly during COVID 19 pandemic



In response to the global coronavirus pandemic, the Anti-Counterfeit Authority like most institutions underwent a crash course to introduce remote working environment during Covid-19 pandemic. The authority has taken steps and implemented a range of measures to mitigate risk, protect employees and clients while continuing to execute its mandate in the fight against counterfeit goods.

The steps implemented in all our offices country-wide are in line with the Ministry of Health and other Government directives to manage the risks presented by COVID-19 while ensuring a seamless delivery of public service during this period. The Executive director Mr. Elema

Halake in a mail addressed to all staff stated 'we will facilitate social distancing at workplace and will have employees work remotely from home and put in place measures to respond to the rapidly evolving situation.' ACA has taken a number of precautionary steps, including instituting telephone conferencing for most meetings and by adopting technologies and modes of working to minimize personal contact during this critical period. Video and telephone conferencing calls have gone from being a suboptimal alternative to be the new normal way we communicate. These measures continue to be adjusted and updated on an ongoing basis in response to new developments and in line

with government directives. At the same time, our offices at all our branches remain opened and would continue to deliver on ACA mandate especially on enforcement matters with greater emphasis placed on laying complaints on-line. The Authority has put in place sanitation measures by having sanitizers and temperature-guns at all entry points at our offices with employees and visitors tasked to wear facemasks wherever possible.

Whether observing social distancing, complying with lockdowns and working from home, employees have been assigned duties and are expected to put in a full workday and are evaluated on agreed deliverables.

ACA CORPORATE SOCIAL RESPONSIBILITY

Donation of 3000 Facemasks to Prison Staff to Combat Covid-19 Pandemic

29TH JUNE 2020, NAIROBI



“We remain committed to being a good corporate citizen, giving back is part of our strategy as an organization and as individuals. Going forward especially during this pandemic and throughout the year, we will find areas of partnership with this facility in the spirit of good neighborliness and ensure that that we build a sustainable relationship to assist in areas of need”

With the rising spread of the pandemic COVID-19 in Kenya and globally, the Anti-Counterfeit Authority through Corporate Social Responsibility (CSR) Committee today visited Nairobi’s Industrial Area Prison facility and donated 3000 pieces of facemasks to prison administrators to ensure protection of staff as well as prisoners against coronavirus. The choice of the correctional facility was necessitated by the high risk of contracting the virus due to the high number of visitors as well as numbers of confined people. The Acting

Executive Director at the Authority who led the ACA team M/s Fridah Kaberia noted that the Authority will continue to invest in sustainable Corporate Social Responsibility programs that support the vulnerable in our societies. “We remain committed to being a good corporate citizen, giving back is part of our strategy as an organization and as individuals.

Going forward especially during this pandemic and throughout the year, we will find areas of partnership with this facility in the spirit of good neighborliness

and ensure that that we build a sustainable relationship to assist in areas of need”. She stated. Addressing the ceremony, the Officer in charge, Stephen Waithaka thanked ACA for the timely gesture saying that they receive people from the whole of Nairobi and neighboring counties putting the facility community at high risk of getting the virus and other communicable diseases. He said his facility would appreciate future engagement with ACA being close neighbors towards improving the welfare of the prison.

RESEARCH

CONTINUING FROM COVER PAGE.....

Findings of the National Baseline survey on Counterfeit and other Forms of Illicit trade in Kenya, 2020

the study conducted between October 2019 and February 2020, the Government revenue lost in 2018 stood at Kes 102.99 billion up from Kes 101.23 billion in 2017. From the sixteen (16) sectors of the economy that the study concentrated

on, building, mining and construction was heavily affected by counterfeiting with a share of 23.37% in value of total illicit trade, followed by energy, electrical and electronics with a share of 14.67% in 2018. The sector with the most government

revenue loss was food, beverage and non-alcoholic drinks with a share of 23.19%, followed by textile and apparel at 20.09%.

Thirty (30) percent of the firms were aware that their products were being counterfeited and



Chief Guest; Cabinet Assistant Secretary Mr. Lawrence Karanja Ministry of Industrialization, Trade and Enterprise Development,(second left) receiving the dummy copy of the survey from the Chair of ACA Board Mrs. Florah Mutahi. Looking on from right is the CEO Kenya Association of Manufacturers M/s Phyllis Wakiaga and Mr. Wanyama Musiambo,(right) the coordinator of the Inter-Agency Enforcement Team among other guests

sold in the market, whereas 56.4% of the sampled firms were not aware that their products are being counterfeited and sold in the market. Between 2016 and 2018, 7,484 jobs were lost in Kenya due to illicit trade with counterfeiting

accounting for 32.59% of the jobs lost. The study also cites piracy as a critical form of illicit trade. According to the findings, the loss of sales as a result of pirated products stood at KES 2.2 billion over the period 2016-2018. Although the

trend depicts marginal decline between 2017 and 2018, the loss as a result of total sales is quite high ranging between 37.69% and 42.14%, which is a clear indication of how piracy is wiping profitability of the affected firms and individuals.

From the survey, the total volume of illicit trade in Kenya stood at KES 726 billion in 2017 and increased to KES 826 billion in 2018. The significance of this level of illicit trade is illustrated by its share in GDP, which in 2017 and 2018 was 8.9% and 9.3% respectively. It was also established that the Kenya lost KES 153.1 billion in government

revenue to illicit trade in 2018 which was an increase from 129.72 billion in 2017. The number of jobs lost as a result of illicit trade stood at 44,198 in 2018. The total reported sales losses stood at KES 89 billion and the investment opportunity lost as a result of illicit trade was KES 123 billion in 2018. From the consumer survey, the level of

public awareness on matters of illicit trade stood at 64.14% with that of counterfeiting at 66% as at 2019.

With regards to hotspot counterfeit counties, Nairobi and Mombasa were the leading with 91% and 50% respectively while Migori, Busia and Narok were the least with 23%.



Chief Guest; Cabinet Assistant Secretary Mr. Lawrence Karanja Ministry of Industrialization, Trade and Enterprise Development speaking at the event

ENFORCEMENT ROUND UP

Anti-Counterfeit Authority destroyed goods worth Ksh 27 million in Athi River

4TH JUNE 2020, ATHI-RIVER



In the fight to curb illegal goods in the country, the Authority together with the Multi-agency enforcement team destroyed counterfeit goods worth approximately Ksh 27 million in Athi River, Machakos County, as they honored World Anti-Counterfeit Day. The Authority worked closely with enforcement teams to apprehend illegal goods, through a thorough exercise. The initiative went a long way to contribute to the National Action Plan against counterfeiting and illicit trade in the country.

The counterfeit goods comprised many assorted items ranging from fast-moving consumer goods like clothing, footwear, alcohol, electrical goods, and apparel among others, which were replicas of the popular local and international brand.

Mrs. Flora Mutai-Chair of the Board ACA at the destruction site.

According to the Authority's Executive Director, Elema Halake, the destruction made a critical step in the continuous effort of fighting counterfeit products in the country. It underscored ACA's serious commitment to rid the local markets of fake brands that are not fit for human consumption. Speaking at the event, the Cabinet Secretary, Ministry of Industry, Trade and Cooperatives, Ms.

Betty Maina said the Government was daily fighting the war on illicit trade and counterfeit products as it has a big hit in genuine economic activity, contributes to reduced tax revenue, impacts on foreign direct investment prospects, and contributes to serious health risks.



Mr. Wanyama Musiambo-The Coordinator Inter Agency Enforcement Team Against Illicit Trade, speaking at the event.

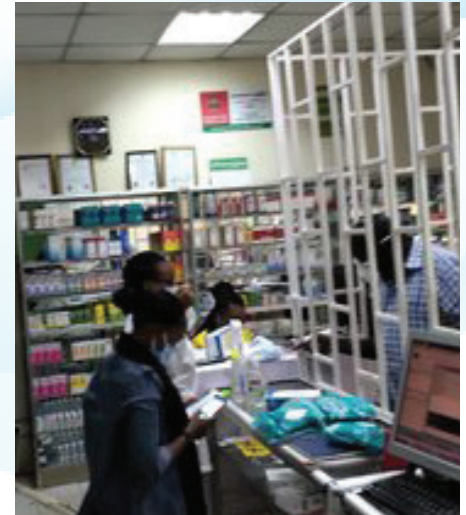
ACA Inspectors Arrest Three Suspects for selling counterfeit Face Masks in a Nairobi Chemist

8TH JUNE 2020, NAIROBI

Following a public tip-off through ACA social media handles, ACA inspectors arrested three people for selling counterfeit face masks to buyers in a famous Chemist along Koinange Street Nairobi. The seized items included 2000 pieces of 3M N95 facemasks and several bottles of Sanitizers of approximate value of Ksh 1.5M. 3M Company is a fortune 500 company and would never spell their brand name wrongly

“The suspects took advantage of the pandemic by pretending to sell cheap face masks. We got alert through ACA Kenya Twitter handle and acted on

it”, The Chief Inspector Adan Bulle told news reporters at the scene. He said counterfeit sellers have lower prices to convince buyers. The suspects are to be charged with the Anti-Counterfeit Act 2008 for offering for sell counterfeit goods as well compounded charges under the Pharmacy and Poisons Board act. Once convicted, the suspects will pay a minimum fine of three times the value of goods seized and may face a maximum jail sentence of three years in prison. Meanwhile, ACA Chief Communication officer Mr. Tom Muteti lauded members of public for using social media



channels to raise complaints to the authority. He assured them of prompt responses as such information helps the Authority to build on their intelligence.

Anti-Counterfeit Authority Nabs Counterfeit Masks at Namanga, Kajiado County

As COVID-19 (coronavirus) continues to wreak havoc around the world, fraudsters take advantage of the situation to profit from the high market demand for personal protective products. As part of the Authority’s commitment to ensure that people do not take advantage of the situation to produce and sell contraband items, we raided and nabbed 291 pieces of counterfeit face masks worth Kshs 500,000 in Namanga town, Kajiado County.



The raid came at a time when the country had many Kenyans shopping for items to keep their families safe following the presidential directive and the ministry of health officials. We worked closely with our law enforcement agencies to nab even more culprits as we will not condone such illegal activity in our quest to make Kenya a counterfeit-free country. We are monitoring various places to shield Kenyans from purchasing fake masks and sanitizers as Kenyans work to flatten the

curve by preventing the spread of COVID-19. The Authority reassures members of the public that it remains vigilant to detect and seize any counterfeit facemasks and sanitizers. Also reminding Kenyans that it is a criminal offense to deal in counterfeit goods as it is punishable by law. Counterfeit goods cause a risk to the health and safety of Kenyans thus the need for vigilance at this time when many Kenyans seek to keep safe, social distance and stop the spread of the virus.



Counterfeit Expired cooking oil seized in Mombasa

ACA Inspectors in a multi-agency operation involving Kenya Police, public health, Kenya Revenue Authority, Kenya Bureau of Standards, seized 251,300 litres of counterfeit Expired cooking oil at Denco Godowns in Changamwe Mombasa. The cooking oil worth approximately Ksh 3 Million which was manufactured on December 18, 2017, and expired on December 18, 2018, according to details; was to be repackaged for sale to the

unsuspecting public with new expiry dates and trademarks. Officers sized the exhibits and arrested a 50-year-old woman to be arraigned in court for acts of counterfeiting, selling substandard goods among other charges once processed.

ACA Coast Regional Inspector Yusuf Osman who was at the scene said "it was an intelligence-led spot operation, we found people illegally refilling damaged and expired

oil in containers of known brands and relabeling for resale and arrested the lady owner,"

The arrests followed in the wake of a countrywide crackdown on contraband, counterfeit, and substandard goods by multi-agency teams coordinated by the Deputy Head of Public Service Mr. Wanyama Musiambo who has maintained that the war on illicit goods would continue until all the illegal dealerships are wiped out.



PUBLIC AWARENESS AND TRAINING

Kenya Marks World Anti-Counterfeit Day 2020 with Launch of First National Baseline Survey on the Extent of Counterfeiting and Illicit Trade in Kenya

10TH JUNE 2020, NAIROBI

The Anti-Counterfeit Authority led Kenyans commemorating this year's WACD, in a number of ways. The event was preceded by the destruction of goods worth Ksh. 27 million (approximately US\$270,000 at the ENVIRO-Safe EPZA grounds in Athi River on 3 June 2020. The counterfeit goods consisted of a range of items including fast moving consumer items and electronics marking a significant step in the continuous fight against trade in counterfeits and the protection of citizens against the harmful effects of counterfeits. The peak of the commemorations was the memorable launch the National

Baseline Survey on 10 June 2020 at the Kenya International Conference Centre Nairobi. The study was done in partnership with TradeMark East Africa (TMEA) through funding from the Department for International Development (DFID). The study highlights the extent (magnitude, level and prevalence) of counterfeiting and other forms of illicit trade in Kenya and proposes key recommendations for stakeholders' consideration. Due to the COVID 19 pandemic the celebration mandated limited physical participation to minimize exposure to the virus. It was however zoomed to signed

online guests and streamed live on ACA social media pages and some National TV stations.

Speaking at the event the Executive Director of the Anti-Counterfeit Authority Mr Elema Halake cautioned Kenyans on the upsurge of sale of illicit goods saying ' I urge Kenyans to beware of illicit goods when purchasing products in retail outlets. Additionally, we call upon the public and private sector especially Kenya Association of Manufacturers to continue working closely with us as we battle this economic threat."



The Industrial Area Prison Officer in charge, Mr. Stephen Waithaka, welcomes the ACA CSR team led by M/s Fridah Kaberia, the ACA deputy director corporate services.



From left, Mrs. flora Mutai-Chair of The Board of ACA, Mr. Elema Halake-ACA Executive Director, Mr. Wanyama Musiambo-The Coordinator Inter Agency Enforcement Team Against Illicit Trade, Dr. Chris Kiptoo-Principal Secretary State Department of Trade.

National Illicit Trade Observatory (NITO)

The launch of the baseline survey report coincides with the unveiling of the National Illicit Trade Observatory (NITO), a tool that will enable monitoring of illicit trade in

Kenya. Capitalising on its partnership with TMEA through funding from DFID, ACA has established the observatory to complement and enhance efforts of the Multi-Agency Team on Illicit Trade established by the President, to eliminate unfair trade competition in Kenya. The observatory tracks six types of illicit trade: counterfeit, piracy, substandard goods, uncustomed goods, restricted

goods, and unexercised goods. "The observatory is designed to be a data management and reporting tool where enforcement agencies will report seized goods (both from domestic and import markets), while the private sector shall be able to anonymously report on counterfeited products affecting their market share as well as their impact," said Ahmed Farah, TMEA's Kenya Country

Programme Director. World Anti-Counterfeiting Day 2020 is now in its twenty second year and was established in 1998 by the Global Anti-Counterfeiting Group (GACG) to enable the organization of local, national and regional events under the umbrella of an international campaign which could focus on the particular problems of counterfeiting and piracy in the countries or regions involved.

ACA in Collaboration with US Embassy Nairobi Holds Second Judges Forum on Intellectual Property

Voi, Feb, 2020. ACA held its second Judges and magistrate's forum drawn from Coast and southern Kenya in Voi, Taita Taveta County to chart a course towards increased respect for intellectual property (IP) and a better understanding of contemporary IP Protection



Group Photo with Chief Guest; Cabinet Assistant Secretary Mr. Lawrence Karanja Ministry of Industrialization, Trade and Enterprise Development, (center) with members of the Judiciary

in Kenya. The interactive forum sandwiched training courses covering a range of IP enforcement issues to strengthen law enforcement cooperation.

The objectives the meeting was to enlighten participants on contemporary IP protection as well as Identifying gaps in IP protection by sharing best practices with the US counterparts. The conference is

co-organized by US Embassy in Nairobi and the Kenya Judiciary Training School with participants from the US Customs and Border control.

In remarks for the forum, the Executive Director Anti-Counterfeit Authority Mr. Elema Halake said: "The objectives of this forum are fully aligned with the current government priorities in Kenya. Promotion

of Intellectual Property rights plays a key role in stimulating innovation and creativity and thus promoting the manufacturing agenda under the Big 4 Agenda as well promoting fair trade. Bringing understanding of current IP issues to our Judiciary colleagues would greatly contribute to the desired economic development of this Nation." Mr. Harrison Koech, the US Embassy Nairobi

Program Manager of the USAID funded project said: "International cooperation is vital in promoting respect at the national and local levels. That's why the US Embassy is proud to co-host this forum to fight illicit trade and counterfeiting.

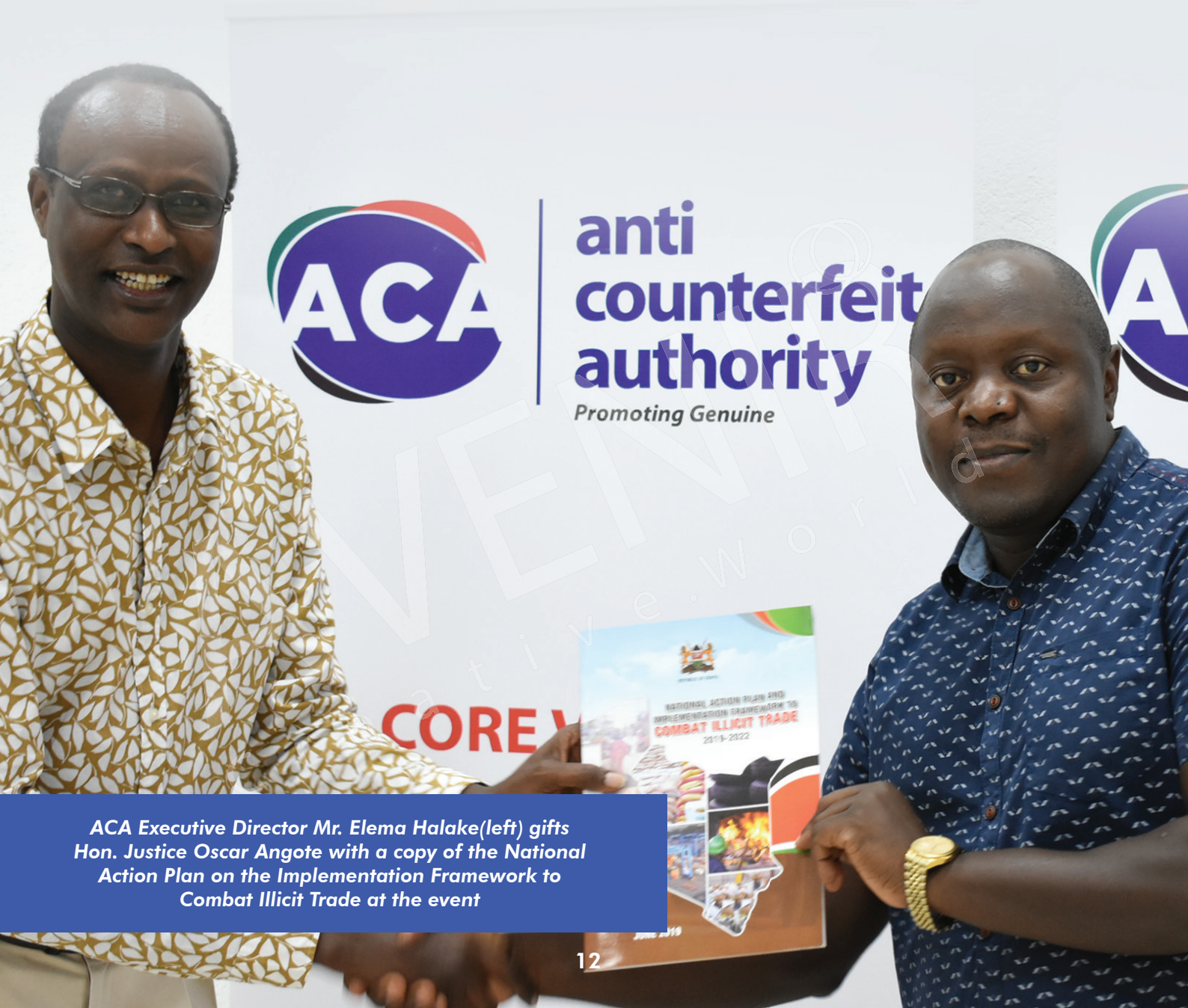
This conference is an ideal opportunity to share our experiences in order to deal with current challenges to adequately and effectively protect and enforce IP rights."

Mr. who represented the Principle Secretary; State Department of Trade said that "illicit markets continue to grow, generating millions in profits for the criminal groups which endanger the health and safety of citizens worldwide.

It is only through a coordinated and global effort, involving all stakeholders from both the public and private sectors that we can hope to stop this potentially lethal tide. This conference

is an excellent opportunity to forge such partnerships and jointly address and combat the problem of counterfeiting and piracy."

Discussions centered on a broad spectrum of topics linked to the overarching theme—from the economic value of IP and its public interest rationale to specific challenges facing different actors involved in IP enforcement and options for their effective handling.



ACA Executive Director Mr. Elema Halake(left) gifts Hon. Justice Oscar Angote with a copy of the National Action Plan on the Implementation Framework to Combat Illicit Trade at the event

PICTORIAL



Signing of ACA performance contract for the financial year 2020-2021 with Betty Maina(center)- Cabinet Secretary, Ministry of Industrialization, Trade and Enterprise Development, Flora Mutai(left)-Chair of The Board of ACA, together with other board members and management of ACA.



Welcoming and gifting the newly appointed Cabinet Secretary, Ministry of Industrialization, Trade and Enterprise Development-Betty Maina (second left) by Mrs. Flora Mutai(second right)-Chair of the Board ACA. Looking on, is Cabinet Assistant Secretary-Mr. Lawrence Karanja(left) and Executive Director ACA-Mr. Elema Halake(right).

GUEST COLUMN

Fight COVID-19 with genuine products



Mrs. Florah Mutahi

Chair, Anti-Counterfeit Authority Board

Kenya like the global community is facing unprecedented times following the global spread of the novel coronavirus (COVID-19) that was declared a pandemic by the World Health Organization's (WHO) on March 11, 2020.

Among the general public, there are increasing concerns about contracting the virus and looming shortages of consumer goods due to targeted lockdown. It is worrisome to report that this COVID 19 era has set ideal conditions for criminals to capitalize on people's fears by offering for sale counterfeit healthcare and sanitary products. There is a risk that counterfeiters have capitalized on the shortages in the supply

of some goods to provide counterfeit alternatives both on- and offline.

Along with the surge of demand in medical products used to combat COVID-19, counterfeit medical products also came in an uptick spark. Counterfeit facemasks, substandard hand sanitizers, and unauthorized antiviral medication were some of the counterfeit products seized by law enforcement authorities in different parts of the world. Suddenly, criminals came shamelessly cashing in on the COVID-19 pandemic. This is immoral and unacceptable: Kenyans have right to stop these criminal activities from happening especially during this time of public health crisis.

Suddenly, criminals came shamelessly cashing in on the COVID-19 pandemic. This is immoral and unacceptable: Kenyans have right to stop these criminal activities from happening especially during this time of public health crisis

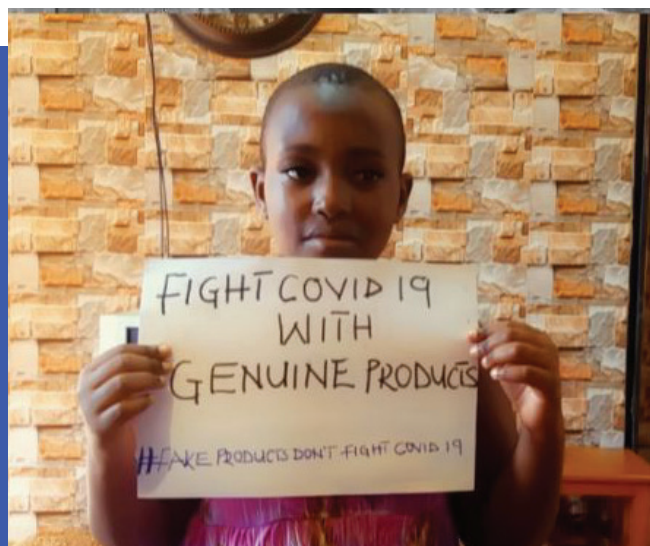
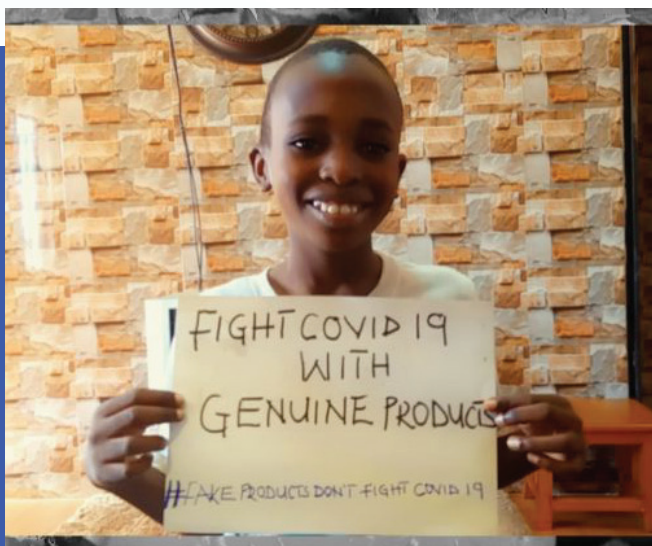
These unscrupulous people are exploiting the fear and anxieties of citizens, to sell alternative products that are not effective to protect from or treat the COVID-19 infection.

In less than three months into the period COVID-19, tangible results are already visible, figures from the Anti-counterfeit Authority on recent seizures of counterfeit and substandard sanitizers confirm that over KSH 25 Million of counterfeit healthcare and sanitary products have been seized since in April 2020. The seizures attributed to multi-agency operations have been carried out across the country with the hotspots being border towns of Namanga and Busia and includes Nairobi and Nakuru among other commercial centers. Among the COVID 19 pandemic related products there are approximately

10 000 counterfeit surgical masks making them the most commonly counterfeited product. These emerging acts reveals are only a tip of the iceberg regarding this new trend in counterfeiting. In the pharmaceutical industry, substandard drugs made from poor quality raw materials or mislabeled ingredients create serious risks for consumers, including adverse drug reactions, permanent injury or even death. Other unsafe products include sanitizers may contain lead, Alcoholic beverages that cause

blindness or death, smartphones with counterfeit batteries that overheat, computers with fake components, and counterfeit motor vehicle spare parts that are defective and may cause accidents among others. While the government agencies may have made great efforts towards preventive measures to deal with COVID- 19, the upsurge in demand of these products could lead to counterfeiters to take advantage of this unique opportunity.

We must admit that counterfeiting is a resilient trade. It does not respect crises even a global pandemic like COVID 19. Worse, by shifting to medical products, the risk brought about by the illicit trade could directly damage the health of the populace in a magnitude we never have seen before. It is a war that must be fought from all fronts by all stakeholders.



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