

# Counterfeit goods

## Trading Standards information

[www.southwark.gov.uk](http://www.southwark.gov.uk)

### 1. Introduction

It is the duty of this Service to enforce the legislation relating to counterfeit goods.

Increasingly we are finding inferior, illegally copied and often unsafe goods, on sale to the public. These have been produced or imported by unscrupulous businesses or individuals who capitalise on well known company names and brands, or the original work of others.

The practice of 'counterfeiting' has serious adverse effects on traders selling genuine goods. It is also prejudicial to companies and individuals whose names are illegally applied to goods or who own the brands or the legal right to reproduce original works.

The production, distribution and supply of counterfeit products is viewed seriously and we work closely with, and receive information from, many organisations representing legitimate trade interests. This results in the seizure of large quantities of counterfeit goods annually.

### 2. What products are affected?

There is an ever increasing range of products which are being illegally copied, including:

<ul style="list-style-type: none"> <li>▪ designer labelled clothing and accessories</li> </ul>	<ul style="list-style-type: none"> <li>▪ sportswear and equipment and merchandise</li> </ul>	<ul style="list-style-type: none"> <li>▪ perfume and cosmetics, belts and bags</li> </ul>
<ul style="list-style-type: none"> <li>▪ mobile phone covers, accessories and parts</li> </ul>	<ul style="list-style-type: none"> <li>▪ watches and jewellery, works of art</li> </ul>	<ul style="list-style-type: none"> <li>▪ alcoholic drinks and cigarettes</li> </ul>
<ul style="list-style-type: none"> <li>▪ computer parts and software' such as games and business programs.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Washing and cleaning products</li> </ul>	<ul style="list-style-type: none"> <li>▪ chart topping film and music on CD and DVD or MP3 files;</li> </ul>
<ul style="list-style-type: none"> <li>▪ Drugs</li> </ul>	<ul style="list-style-type: none"> <li>▪ Components and spares</li> </ul>	<ul style="list-style-type: none"> <li>▪ Food</li> </ul>

### 3. How does the law control the problem?

The law creates a number of criminal offences contained in Trade Marks Act and Copyright Act. There are remedies that brand owners can take via the civil courts.

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The sale of goods and services is also subject to The Consumer Protection from Unfair Trading Regulations 2008 (these replaced most of the Trade Descriptions Act 1968).

The regulations will apply to any business which supplies goods or services to consumers and prohibits unfair commercial practices.

Any description of goods that you sell must be accurate and any indication (including a trade mark) which a person is likely to think applies to the goods and therefore implying authenticity of origin from, or quality of, the manufacturer or producer must be genuine.

A *trade mark* is used to indicate a connection between goods and a person/company having the right to use the mark - many famous household brand names are trademarks, and may be a logo, name, word or signature.

*Copyright* is a property right whereby a person assumes rights to original literary (including computer programs), dramatic, musical or artistic works (including graphic works such as paintings, cartoon characters, drawings or diagrams) sound recordings and films.

**It is illegal to;**

- apply another persons registered trade mark , or something resembling a trade mark, to goods or packaging,
- infringe copyright by copying a copyright work without the authorisation or licence of the trade mark or copyright owner,
- apply any other indication to goods or packaging likely to mislead as to the identity of the manufacturer or producer.

An offence under copyright legislation can be committed by the very act of copying, even if no statement as to authenticity is made.

**4. Who is liable for these offences?**

In general criminal offences under the legislation cover all stages - from persons involved in manufacture and distribution to the retail supply of offending items.

Copyright legislation specifically prohibits;

- importation of infringement copies and manufacture and/or possession of articles used in their production (for example equipment, printing plates, etc)

Trade Marks legislation specifically prohibits;

- Illegal application of trade marks to packaging and labelling materials, and the use and/or possession of such materials (including advertising).

The Consumer Protection from Unfair Trading Regulations 2008 covers virtually any possibility where a mark, packaging, description, etc. is likely to refer to goods and constitutes a misleading action or omission.

Importation, manufacture and distribution offences are regarded most seriously by Trading Standards Departments and the Courts.

Retailers, even if they acquired offending goods innocently, may still be prosecuted for exposing for sale or hire, or selling or hiring such goods if they cannot show that they behaved responsibly.

## 5. How can I avoid problems?

Retailers, particularly market traders, will often have their stocks of "counterfeit" goods seized by Trading Standards Departments and be unable, or unwilling, to identify their supplier.

This will invariably result in the retailer being prosecuted and the supplier network left untouched.

Trading Standards Departments and the Courts will need to be convinced that, at the time of buying his stocks, the retailer took reasonable steps to satisfy himself that they were genuine.

The best way to be able to show this is only to purchase goods of the type likely to be counterfeit, or any goods bearing famous names, from authorised wholesalers and distributors.

In particular;

- Only purchase these goods from conventional sources: don't buy from 'a man in the pub', or car park, whose full name you don't know, whom you have never met before and who you are unable to contact again.
- Wherever you buy, always get an itemised and dated receipt; don't risk it if the seller will not give you one bearing his name and address and be prepared to endorse it to the effect that the specified goods are genuine.
- Don't buy if they are too cheap for famous named products; be wary if you are told they are 'seconds' or 'rejects' or 'lookalikes'.

## 6. What should I look out for?

An examination of the goods and packaging will often give you an indication as to whether they are genuine. In general, the quality of materials used, packaging and printing will be inferior for counterfeit goods.

In particular be suspicious of;

- CDs with poor quality inlay cards, no artist's name or other labelling on the actual discs and no security devices such as holograms. CDs that are not silver underside are likely to be copies.
- DVDs of recent or forthcoming cinema releases with poor quality labels and no British Age Classification markings.
- Perfumes with low quality wrappings, or none at all, poor printing on bottles and no batch codes.
- Clothing having no branded neck labels, no swing tickets, poor quality printing or embroidery of logos, inconsistency of colours.
- Designer name bags and purses at much lower prices than the genuine article.
- CD software with handwritten labels or no labels.

## 7. What about disclaimers?

In the past some traders, who were knowingly selling counterfeit goods, tried to use disclaimer notices to avoid liability. The law concerning disclaimers is complex and does not apply to trade marks and copyright legislation. In essence counterfeit goods **cannot** legitimately be sold.

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## 8. What happens if counterfeit goods are found?

It is the responsibility of the trader to take all reasonable precautions to avoid having counterfeit products for sale on his premises.

Contravention may result in prosecution for offences under the Consumer Protection from Unfair Trading Regulations 2008, Trade Marks Act or Copyright, Design and Patents Act. Fines can be imposed in the Magistrates' Court and/or imprisonment for up to six months. Unlimited fines may also be imposed by the Crown Court with up to ten years imprisonment for Trade Marks offences.

- Forfeiture and destruction of all goods seized may be ordered by the Courts.
- Fraud Act - in appropriate cases prosecution for fraud may be appropriate.
- Under copyright legislation a copyright owner may also sue for damages in the civil courts.
- Proceeds of crime – assets acquired from criminal activity can be confiscated by the courts.

Enforcers may take civil enforcement action in respect of a breach of the Consumer Protection from Unfair Trading Regulations 2008 under Part 8 of the Enterprise Act 2002. This can be done by applying to a court for an enforcement order and a breach of any order could lead to up to two years imprisonment and/or an unlimited fine.

The Consumer Protection from Unfair Trading Regulations 2008 also contains criminal offences, which can be prosecuted by the Office of Fair Trading (OFT) or Trading Standards. The penalties are on summary conviction, a fine or in the Crown court an unlimited fine or imprisonment for up to two years, or both.

If you are offered goods of any description, which you suspect as being counterfeit, you may pass any information about the seller to the Trading Standards Service in confidence, or anonymously if you wish. Any information will be of use; names, addresses, telephone numbers, vehicle types and registration numbers. You can also use Crimestoppers to report it



## 9. Further information

If you require further assistance on these requirements, or would like additional information leaflets, please contact us at the address given.