HOW TO STAY IP LEGAL

ADVICE FOR MARKETS

By Gavin Terry

Intellectual property (IP) includes trade marks, copyright, designs and patents, which are the legally protected property of their owner. Market traders and operators can face serious legal penalties if you allow the sale of counterfeit or pirate goods. The following information will help you to stay on the right side of the law. It is not intended to be a comprehensive summary of all aspects of the law and, as always, you should take specific legal advice where necessary. Your local trading standards office will be happy to help free of charge. To find your nearest trading standards office, visit *www.tsi.org.uk*.

Here are some very simple steps that will help you stay within the law. . .

Know the Law

If you are involved in any aspect of the sale of trade marked goods, designer brands or copyright materials (such as music, films, computer games and software) you should have a basic knowledge of trade mark and copyright law before you start selling them or allow them to be sold by others at your location. The summary overleaf will assist. You don't have to be a legal expert but it will help if you know the laws that apply and the penalties if you break them.

Beware the 'Man in a Van'

As a trader, you should carry out checks to prove that your stock is being supplied by legitimate suppliers. You should be able to confirm the identity of the person from whom you bought the goods – it will do you no favours if, when challenged about the legitimacy of your stock, your only answer is that you bought it from 'a man in a van'.

Market operators should ensure that you record the identity, including vehicle registration, of all traders, including casual traders.

Have a Paper Trail

Traders should make sure that you keep receipts and invoices for all the stock you are selling. Genuine goods are unlikely to be sold 'cash-in-hand'.

IGNORANCE IS NO DEFENCE

Some counterfeit goods can be very good copies, making it difficult to know whether they are genuine or not. But remember, you are responsible for taking reasonable precautions to confirm that the items you are selling, or which are being sold at your market, are genuine.

Remember the 4 Ps

- ***Place*** - Certain items, for example high value, luxury goods, are unlikely to be sold legitimately on market stalls. They are generally only sold at exclusive, authorised outlets. If you are offered these to sell on a market – or see them on sale at a market or car boot fair that you are operating – then be suspicious.

- ***Price*** - If the price of goods seems too good to be true, then the goods may well be fake.

- ***Packaging*** – If a variety of different brands are offered in the same packaging – e.g. a standard cellophane wrapper – that should set alarm bells ringing. Also, look out for spelling mistakes on the packaging.

- ***Product*** – If the quality of a product is dubious, you should beware. Likewise, if a batch of standard, low-value items, such as basic t-shirts, has simply been over-printed with a range of different brand logos, they are likely to be cheap copies that have been churned out in an unauthorised factory.

If in Doubt . . .

If you suspect that products may be counterfeit, you should remove them from sale and/or raise your concerns with trading standards. They will be able to check with the brand owner or copyright holder to confirm whether the goods are genuine or fake and the legitimacy of the wholesaler supplying them.

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Working Together for Fake-Free Markets

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The Law

- **Trade Marks Act 1994** – If you sell, offer to sell or have in your possession, any counterfeit goods, then you will be committing a criminal offence if those items have registered trade marks applied to them without the consent of the registered trade mark owner. You must check that the goods you are selling are not counterfeit. A breach of this Act could result in an unlimited fine and up to ten years' imprisonment. You can check to see if a trade mark is registered by using the following web site www.ipo.gov.uk

- **Copyright, Designs and Patents Act 1988** –This Act creates criminal offences in relation to making or dealing with articles which have been copied without the permission of the copyright owner. The Act also creates criminal offences in relation to illicit recordings of music. A breach of this Act could result in an unlimited fine and up to ten years' imprisonment. You can find out more about copyright at the following website www.copyrighthub.co.uk

- **Registered Designs Act 1949** – This Act creates criminal offences in relation to the intentional copying of a product which is protected as a registered design. It is also an offence to knowingly deal in products which are copies of registered designs. Dealing includes selling, offering, putting on a market or stocking an infringing product. A breach of this Act could result in an unlimited fine and up to ten years' imprisonment. You can check to see if a product is protected as a registered design by using the following website www.ipo.gov.uk

- **Digital Markets, Competition and Consumers Act 2024 (DMCCA)** – These Regulations ban traders from using unfair trading practices towards consumers, using unfair or misleading business practices, leaving out important information and aggressive sales techniques. The Regulations include a general ban on conduct that falls below a level expected by the average consumer. The sale of counterfeit or pirated products could lead to a prosecution under these regulations, which could result in a fine and/or imprisonment.

- **Product Safety Regulations**
  Counterfeit goods are rarely tested to comply with safety regulations and may, therefore, be hazardous to consumers. Anyone selling unsafe goods, may be in breach of General Product Safety Regulations 2005; Toys (Safety) Regulations 1995; Cosmetics Products (Safety) Regulations 2008; Nightwear (Safety) Regulations 1985; The Furniture and Furnishings (Fire) (Safety) Regulations 1988. Breaching these regulations could result in substantial fines and imprisonment.

- **Video Recordings Act 2010** – Videos or DVDs that you sell or offer to sell must be classified and labelled with an appropriate classification mark, unless specifically exempt. The sale of unclassified, or falsely classified films, could result in a fine of up to £20,000.

- **The Enterprise Act 2002** – This Act is designed to tackle those traders who breach consumer protection laws. Under the Enterprise Act, trading standards can apply to the county court for an enforcement order. This means the court will order a person to stop acting in a way that is detrimental to consumers. Examples where Enterprise Act action could be taken is where a person is selling counterfeit goods, mis-described or faulty goods. If a court order is breached, then the person against whom the order has been sought will be in contempt of court and can be fined and/or receive up to two years' imprisonment.

- **Aiding and Abetting** – Any market trader or operator who knowingly allows the sale of counterfeit goods at a market or car boot sale may also be liable for aiding and abetting the sale of those counterfeit goods and may be charged with an offence along with the seller of those illegal goods.

- **The Proceeds of Crime Act 2002** – This Act enables the courts to recover the proceeds of crime. If you are involved in the sale or supply of counterfeit or copyright infringing goods, you may face having your assets taken away from you. Courts can order the confiscation of cash, savings, vehicles and property.

- **Money Laundering** – The offence of money laundering can include receiving money in payment for counterfeit goods and can also include accepting some of the proceeds of the sale of counterfeit goods as payment for the rent of a stall at a market or car boot sale. Any traders selling counterfeit goods should be told to leave a market and no rent or payment should be accepted in order to avoid any potential liability.