

BRAND
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Impact of Illicit trade

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What is a counterfeit or 'fake'?

Counterfeit products are fake replicas of the real product. People buy fakes for various reasons. The market for counterfeit and pirated products has two sub-markets: the primary market where consumers have been deceived – they believe they have purchased genuine goods but they have not. The products are often sub-standard and carry health and safety risks that range from mild to life-threatening. The secondary sub-market, contains consumers who actively look for what they believe to be bargains and knowingly buy counterfeit and pirated goods – but they don't care if these are real.

The Kenya Anti Counterfeit Act 13 of 2008, Subsection 32 (a-g): "It is an offense for one to have in his possession or control in the course of trade, any counterfeit goods; manufacture, produce or make in the course of trade, any counterfeit goods; sell, hire out, barter or exchange, or offer or expose for; expose or exhibit for the purposes of trade any counterfeit goods; distribute counterfeit goods for purposes of trade or any other purpose; import into, transit through, trans-ship within or export from Kenya, except for private and domestic use of the importer or exporter as the case may be, any counterfeit goods; and in any other manner, dispose of any counterfeit goods in the course of trade".

What do we mean by a rogue refill? This is when a counterfeiter fills a container with cheap/harmful products with a view to pass it off as the genuine product. Frequently refilled products include beverages, gas cylinders, pesticides, cosmetics and many more.

Are grey products real? They are legal and genuine; but imported and sold unofficially – this means outside authorized manufacturers channels. Where does it leave consumers and why is this wrong?

Well, in some cases, there could be trademark infringement, undeclared tax and infringing goods are taken away. Also consumers buying through unofficial channels will miss out on important features, offers, accessories, models and warranties that might be localized. The other problem is that criminals will often seek to pass off counterfeit goods as grey market.

Some products are counterfeited or pirated more frequently than others, and definitely counterfeiting and piracy are more common in certain parts of the world than others. Expensive goods such as luxury watches, alcohol and cigarettes, electronics (phones and laptops), chocolates, among others, are the most susceptible to this.

What is piracy? Piracy is the act of illegally using, copying or distributing copyrighted material that does not belong to you – or which legal rights have not been transferred to you. Examples of copyrighted materials include:

- (a) literary works - such as plays, text books, dictionaries, etc.
- (b) musical works;
- (c) artistic works; paintings, sculptures, etc.
- (d) audio-visual works;
- (e) sound recordings; and
- (f) broadcasts.
- (g) computer programs

What is contraband? Contraband collectively refers to fakes, pirated works, rogue refills and grey products, including products which are imported or exported illegally - either in defiance of a total ban or without payment of duty.

Illicit trade around the world

Counterfeit and pirated products are being produced and consumed in virtually all economies. The OECD, by 2016, estimated that trading in fake goods was at 3.3% of world trade¹, or US\$ 509 billion. This is based on valuation of customs seizures of fake goods around the world; the figure is therefore much higher now (as early as 2009, it was stated in the the East African Community policy on anti-counterfeiting, anti-piracy and other intellectual property rights violations, that counterfeit products result in losses to genuine companies globally of up to US\$ 630 billion annually)². Illicit trade therefore remains a mass challenge for brands aiming to legitimately penetrate the African markets and grow their market share and profits. Although anti-counterfeit laws and measures are gaining traction, the pandemic of corruption remains a big part of the problem. Further, counterfeits help fund criminal gangs, organized crime, and even terrorism.

Globally, the trade in counterfeit pharmaceuticals is worth up to \$200bn (£150bn) annually. The World Health Organization (WHO) says 42% of all fake medicines reported to them between 2013 and 2017 were from Africa;³ Africa is therefore among the regions most affected.

So, in the ‘race’ to stand out and break from the ad clutter; companies have stepped up in their information technology game to break through the clutter of thousands of ads their consumers encounter on a daily basis. Technology is seen as the key to personalize engagement at a mass scale. To do this, information technology must demonstrate at least one... if not all of the following 1) show that expenses will reduce dramatically, 2) that revenues will be increased and 3) that new customers will be realized.

In Kenya

In research commissioned in 2006 by the European Commission, a task force on performance of Eveready batteries in Kenya indicated that trading in counterfeit goods was more profitable and with less risks than drug trafficking⁴. The OECD reported in 2008 that the East Africa Community was losing close to usd 500m in tax revenue annually due to counterfeiting.

Though no rigorous quantitative analysis has been done (due to various methodology challenges), counterfeited goods may account close to 40% of the trade in Kenya – with some of the most counterfeited goods being drugs, automotive parts, textiles, tires, soaps and detergents, among others.

¹ https://www.oecd-ilibrary.org/trade/trends-in-trade-in-counterfeit-and-pirated-goods_g2g9f533-en

² The East African Community (2009) policy on anti-counterfeiting, anti-piracy and other intellectual property rights violations

³ <https://apps.who.int/iris/bitstream/handle/10665/326708/9789241513425-eng.pdf?ua=1>

⁴ Eveready East Africa Prospectus, 2006