

SA's battle against fake goods

By [Mohamed Khader](#)

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Counterfeit goods are an ongoing and pervasive threat to our economy. As the festive season approaches, the sale of fake goods increases, casting a shadow over legitimate businesses, striving to survive in difficult market conditions. The illicit trade of knock-offs not only stifles the growth of authentic enterprises but corrodes legal and commercial systems, and disrupts conditions for a healthy market.



Image source: Allan Swart – [123RF.com](#)

With the busiest shopping season of the year upon us, consumers are going to be lured by fake products, unwittingly or consciously buying counterfeit goods. The typical counterfeit items filtering into the marketplace are clothing, footwear, accessories, and other fashion items.

These counterfeit goods are often sold at significantly lower prices compared to the genuine products, making them appealing to consumers looking to save money during the holiday shopping season. While the exact list of most counterfeited items can vary from year to year and across different regions, several categories of goods tend to be counterfeited frequently.

The fight against counterfeit goods has already escalated, with joint operations zeroing in on notorious hubs of counterfeit sales in Johannesburg. On 21 October 2023, as part of the Gauteng Operation Safer Festive Season, authorities made a bold statement by destroying a massive cache of counterfeit goods. These coordinated efforts showcase a firm stance against counterfeit trade, albeit with a recognition that the battle is far from won.

The issue of counterfeit trade is not a novelty in South Africa. Recent police operations have thrown this challenge back into the limelight, illuminating the extent and intricacy of the counterfeit conundrum. The situation is grave and there is a dire need to staunch the flow of counterfeit goods at the country's ports of entry.

The economic impact

The counterfeit market, an emblem of illicit trade, plagues South Africa's economic landscape. A report from October 2011 estimated that the counterfeit industry in South Africa was valued at a staggering [R362 billion](#). This nefarious trade not only

siphons off substantial revenue from legitimate businesses but also poses as a [significant deterrent](#) for bona fide enterprises contemplating a venture into the South African market.

The ramifications [extend](#) beyond mere economic figures; the counterfeit trade in South Africa is linked to organised crime, providing a fertile ground for malevolent activities, including drug trafficking and terrorism.

The legal consequences of counterfeit goods

Legal consequences and remedies are available to counter the complex counterfeits market. The cornerstone of the legal framework is the [Counterfeit Goods Act, 1997](#) (Act No. 37 of 1997), which aims to protect intellectual property rights, prohibit the trade of counterfeit goods, and prescribes stringent penalties for offenders.

Under this law, individuals found guilty of dealing in counterfeit goods face severe repercussions. A first-time offender could be met with a fine of up to R5,000 per counterfeit item or imprisonment for up to three years. Repeat offenders face even harsher penalties, with fines doubling to R10,000 per item or a prison sentence extending up to five years.

Moreover, the Medicines and Related Substances Act 101 of 1965 dovetails with the Counterfeit Goods Act to prescribe penalties for counterfeiters, underscoring the government's resolve to purge the market of counterfeit pharmaceuticals, a menace that poses grave risks to public health.

Furthermore, the legal framework [empowers](#) the South African Revenue Service (Sars) officials to detain any goods upon importation into South Africa under section 113A of the Customs and Excise Act, 1964, to ascertain their authenticity. This provision is a step towards thwarting the influx of counterfeit goods right at the country's gates.

Unveiling the counterfeit veil

Recent enforcement actions have cast a spotlight on the counterfeit goods market in Johannesburg. Joint operations led to raids of notorious counterfeit havens, detaining counterfeit goods worth over R3 billion in Gauteng alone, marked a significant stride in clamping down on this illicit trade.

However, these actions merely skim the surface of a much deeper issue. The solution, as he envisions, lies in staunching the flow of counterfeit goods at the ports of entry and continuous enforcement in the key trading areas within the South African marketplace. This notion echoes the broader sentiment within the legal and business communities, emphasising a proactive approach towards curbing the counterfeit menace.

Towards a counterfeit-free marketplace

The journey towards a counterfeit-free marketplace is fraught with challenges. Yet, the recent enforcement actions, coupled with a robust legal framework, provide a glimmer of hope. The onus now lies on a collective endeavour, encompassing law enforcement agencies, legal entities, and the community at large, to foster a culture of authenticity and legal compliance.

South Africa stands at a crossroads. The path chosen today will significantly impact the nation's economic status, legal frameworks, and social welfare in the ensuing years.

Symbiotic enforcement

The recent joint operations in Johannesburg exemplify the synergy between legal frameworks and on-the-ground enforcement. These operations, which led to the confiscation of counterfeit goods worth billions and subsequent destruction, are a testament to the effectiveness of a symbiotic enforcement strategy.

However, as the swath of counterfeit goods continues to pervade the market, there's an impetus for a more holistic approach, intertwining community awareness, legal advocacy, and relentless enforcement.

Nurturing an authentic marketplace

The duty to combat counterfeiting extends beyond the legal and enforcement realms.

Community awareness and engagement are pivotal in nurturing an environment where authentic businesses can flourish unfettered by the shackles of the counterfeit trade. Public awareness campaigns, education on the detrimental impact of counterfeit goods, and fostering a culture of reporting are instrumental in this endeavour.

Law firms and IP experts also assume a crucial role by providing legal protection to genuine businesses and championing the cause of an authentic marketplace, free from counterfeit goods. Their knowledge and commitment are essential contributions to the ongoing effort to establish a clear and trustworthy business environment.

The counterfeit conundrum is complex, consisting of legal, economic, and social challenges. With a robust legal framework and a resolve to enforce, South Africa is poised to turn the tide against the counterfeit trade, heralding a new era of economic prosperity and legal integrity.

Through a collective endeavour, the vision of a counterfeit-free marketplace is not just a pipe dream, but a foreseeable reality, setting a precedent not only for South Africa, but for the global marketplace.

ABOUT THE AUTHOR

Mohamed Khader is a partner at Spoor & Fisher, specialising in anti-counterfeit law, discusses the legal implications of the fight against counterfeit goods.

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