



**anti
counterfeit
agency**

educate, enforce, eliminate

ISSUE NO. 001



Dr. John Akoten, Acting Executive Director

Dear Readers & Colleagues

Welcome to the first edition of the Anti-Counterfeit Agency newsletter, a quarterly newsletter that through its periodic disbursement, will be the intellectual property (IP) protection resource center in the country.

There are many reasons to share our news with you, but two key objectives stand out that we hope to achieve with our publications: 1) to better serve and more deeply connect with our stakeholders and 2) to further our awareness efforts to a broader audience about our efforts in the fight against counterfeits in the country.

By addressing these objectives, we want to reach out to government Agencies,

Policy makers, manufacturers, Investors, proprietors of Small and Medium Enterprises, academics, including graduate students doing research in intellectual property, the fourth estate, development partners and others who interact with issues of intellectual property rights in the country.

Each edition of our newsletter will align with the Agency's core mission which is to make the country a counterfeit free zone. We will offer readers news touching on our enforcement actions, updates on court cases, access to surveys and studies by the agency on IP issues, and upcoming awareness and networking opportunities. We will carefully monitor our editorial norms, and safeguard against libelous awareness and articles that may be injurious to brands of our stakeholders especially the manufacturers.

We endeavor to ensure you are up-to-date on the most current counterfeit issues and advise on mitigation strategies and techniques. Knowing your time is precious, we plan to reach out only four times a year with top-line news on counterfeits that we think will be of great interest.

As the newsletter matures, we plan to include articles from guest writers from among our stakeholders to share their experiences and expertise. We also call upon all our stakeholders to subscribe to our free editions and automatically become (Anti-Counterfeit Agency) ACA contacts. This will give you full information access rights upon request to the office or through the social media. We encourage you to interact with us in twitter and Facebook.

We want to hear from YOU. A lot can happen in three months. As I previously stated, this newsletter will be distributed quarterly so for immediate access to many of the issues and if interested in being a guest contributor or have suggestions or ideas to make this publication more beneficial, please contact us through info@aca.go.ke. All feedback is welcome.

Sincerely

**Dr. John Akoten PhD
Acting Executive Director**

WHY THE ANTI-COUNTERFEIT AGENCY (ACA)?

Industrialization and improving trade are some of the priority areas in Kenya's Vision 2030, Medium Term Plan (MTP) II (2013-17) and Sector Performance Standards. Creating a level-playing field in business is crucial in the realization of these. The roadmap to the realization of Vision 2030 is enhanced by combating counterfeiting in the country as it improves the ease of doing business. The Anti-Counterfeit Agency plays a vital role in taking appropriate measures to combat counterfeiting or infringement of intellectual property rights. This translates to enhanced industrialization and trade, foreign direct investments as well as domestic investments which are critical for economic growth and social well-being of the community.

ACA deals with counterfeiting from two perspectives i.e. the demand and supply of counterfeits in the market. To curtail the demand for counterfeit goods, the Agency continually creates awareness to the public on the value for genuine and the effects and of counterfeiting. The awareness programs are either in open forums for the general public such as the ASK shows while others target specific audience such as government agencies and the business fraternity. Curtailing the supply of counterfeit goods as addressed at the ACA is through enforcement of the relevant provisions of legislations and regulations.

Collaboration with relevant enforcement agencies is crucial in driving the mandate of the Agency and these include the local and international bodies. These agencies partner with ACA in intelligence sharing, investigations and prosecutions. Partnership with private sector is also important since counterfeiting involves infringement of IPR which is 'private property'. Collaborations with the private sector are mainly on the intelligence and information sharing platforms, capacity building and in prosecutions where their personnel provide expert witnesses in courts of law.

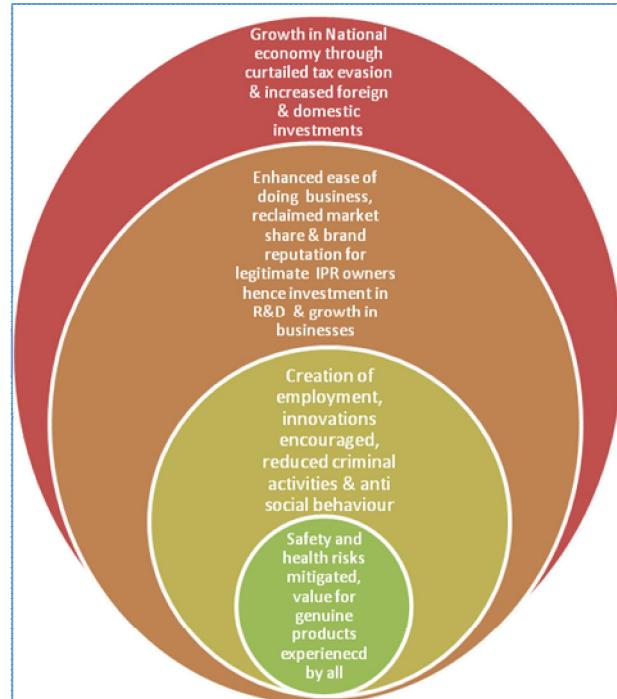
Mandate of the Agency at a glance:

ACA's mandate as derived from the Anti-Counterfeit Act, 2008 is summarily to:

- Enlighten and inform the public on matters relating to counterfeiting
- Combat counterfeiting, trade and other dealings in counterfeit goods in Kenya in accordance with the Anti-Counterfeit Act No.13 of 2008 or under any other written law
- Devise and promote training programs to combat counterfeiting
- Co-ordinate with national, regional or international organizations involved in combating counterfeiting
- Carry out any other functions prescribed for it under any of the provisions of the Act or under any other written law and

- Perform any other duty that may directly or indirectly contribute to the attainment of the foregoing.

Why combat counterfeiting?



The above chart shows the main reasons why it is important to combat counterfeiting. By combating counterfeiting, we mitigate against safety and health risks, create employment and encourage innovation, enhance the ease of doing business and finally facilitate the growth of the economy.

SERVICES OFFERED BY ACA

To ensure quality service provision, ACA has three departments; Enforcement & Legal Services, Research & Awareness; and Finance, Human Resource & Administration. While the core mandate is driven by the first two, the latter is fundamental in ensuring smooth facilitation of the operations such as investigations, seizures, attendance to court matters, among others. To enhance service to our publics, the Agency has embarked on the development of a new strategic Plan, as the first one covering the period 2011-2016 comes to conclusion and also in ISO 9001:2008 certification; both of which are at an advanced stage. All the departments are working closely together towards the achievement of these two important milestones.

ENFORCEMENT ACTIVITIES

The enforcement department is the '*backbone of the Agency*' and thus bears the core role of enforcing the Anti-Counterfeit Act, 2008. This is achieved through enforcement activities which include handling of complaints on infringement of intellectual property rights, investigations, seizures, prosecutions and subsequently destruction of counterfeited goods.

Raids and seizures

Goods are seized from different suspects who are involved in counterfeiting. The goods that ACA has handled to date are estimated to be worth **Ksh 1 Billion**. Counterfeit goods that ACA has dealt with include; Toners and cartridges, Liquid Petroleum Gas, Oils and Lubricants, clothing, shoes, detergents, sanitary pads, Mobile phone handsets, paints, electrical products, instant showers, electric cables, mobile phones and their accessories among others. Over the years cases on seized goods have been concluded leading to their destruction on court order.

Below is a summary on seizures conducted July-December 2015:

Goods seized from July 2015 to date	Estimate Value of Goods seized (KSh.)
Mobile Phones	50,000,000.00
Piano Writing Materials	500,000.00
Iron Sheets	19,000.00
Toners	1,400,000.00
Computer Accessories	2,140,000.00
Musical Instruments	7,000,000.00
Shoes	4,000,000.00
Locks	77,000.00
Paints	250,000.00
Engine Oil	115,000.00
Gas	160,000.00
Cold Patch	1,200,000.00
Rice	810,000.00
Sugar	3,500,000.00
Textiles	1,900,000.00
Deodorant Roll On	2,000,000.00
Total	75,071,000.00

Regional Offices

The Agency prides in the opening of new offices to serve the greater part of the country. Over the years ACA has been running on a very low capacity of enforcement officers and the nationwide reach has been a challenge with only the head office, Nairobi and a branch in Mombasa. In November this year, ACA opened offices in Eldoret and Kisumu, which also caters for the Busia and Malaba border Plans are

underway to get closer to the various entry and border points for the country whose porosity contributes highly for counterfeits to flood the markets.

Destruction of counterfeit goods



Ministry of Industrialization and Enterprise Development Cabinet Secretary Adan Mohammed burning counterfeits at EPZ-Athi River

The destruction of the seized counterfeit goods is a culmination of a series of enforcement activities that include investigations, seizures and prosecutions. Destruction may arise from court orders or voluntary forfeitures of counterfeit goods.

The Anti-Counterfeit Act, 2008 provides for destruction of counterfeit goods in various circumstances. It states in Section 28 that, ‘the court may order that goods seized in connection with an offence can be forfeited to the government for destruction’. Section 28(4) states that “*where a person charged with an offence under this Act absconds and does not appear in court or where counterfeit goods are seized but are not claimed, an inspector may apply to have the counterfeit goods forfeited to the state for destruction.*”



Left: The breaking of seal for the container of counterfeit cigarettes, Right: contents of the container confirmed before burning on the World Anti-Counterfeit Day marked on 26th June, 2015 in Mombasa.

The most recent destruction conducted by ACA was in June 2015 and involved cigarettes bearing the trademark Bringi worth Kshs 54 million. The Cigarettes were seized at the Kilindini port in Mombasa on transit from China to other parts of Africa. The Anti-Counterfeit Act states in Section 32(f) “*It shall be an offence for any person to import into, transit through, tranship within or export from Kenya, except for private and domestic use of the importer or exporter as the case may be, any counterfeit goods*”. The Act is unique in that it criminalizes transiting goods through the country.

Since inception of ACA, the volume of assorted seized counterfeit goods destroyed amounts to a value worth of **Ksh 328,844,976**. Currently, the Agency still has volumes of goods in the counterfeit goods depots whose cases are ongoing and are yet to be determined by the courts. The bulk of the goods destroyed in the last one year were toners & cartridges. The biggest consignment of assorted goods destroyed in November 2014 totaling to **Ksh 272,844,976** being an accumulation over the years. Other goods included instant showers, paint, baby diapers, sugar, mobile phones and their accessories, among others.

It is planned that there will be destruction activities every quarter of the year, to prevent accumulation in the stores and lower storage risks and costs. All destructions conducted are carefully planned to be in compliance with the expectations of the environmental statutes.



RESEARCH & AWARENESS

The Research & Awareness department is one of the core arms of the Agency mandated to conduct research to inform policy issues related to counterfeiting in order to guide the operations of the Agency as well as to enlighten and inform the public on matters relating to counterfeiting. One of the biggest questions that arise is the magnitude of counterfeiting in Kenya, but the country is yet to get accurate statistics on counterfeiting. The research personnel are now conducting market intelligence and nationwide surveys to enhance information for the enforcement and awareness branches.

An informed citizenry is an empowered one and makes informed decisions. The Agency is endeavors to enlighten and inform the public on matters of counterfeiting. This is achieved through forums for targeted audience such as government agencies, IPR owners' forums and public outreach through organized forums and the media.

Educating all stakeholders is crucial in addressing both the supply and demand of counterfeits in Kenya and it is achieved through the awareness Division.

The Agency has organized and participated in various forums targeting different audiences. Some of these were held in collaboration with either or both the government agencies and the private sector. These include among others:

- i) Participation in exhibitions at Institutions of higher learning such as Strathmore and Jomo Kenyatta University of Agriculture and Technology
- ii) Public forums such as the Mombasa and Nairobi Trade Fairs. These have also been held in collaboration with Prime Com Expo at Nakuru and Eldoret where the main audience was the farming community. It is worth noting that farming inputs such seeds, pesticides, and fertilizers are targets for counterfeiting especially during the peak planting seasons.
- iii) In collaboration with other agencies, e.g. Energy Regulatory Commission (ERC), Kenya Association of Manufacturers(KAM) and National Council on Administration of Justice(NCAJ) the agency has participated in training of various categories of

audiences such as the police, officers of the judiciary and public prosecutions among other government officers; as well as the private sector.

- iv) ACA pioneered county sensitization this year in the Turkana County conference and exhibitions forum. It is observed that some areas have been branded by counterfeiters as too far for reach, thus have become a haven for counterfeits. ACA is therefore out to reach such through its awareness campaigns and enforcement activities.

COUNTERFEITING IS A FORM OF ILLICIT TRADE

ACA JOINS OTHER GOVERNMENT AGENCIES IN FIGHTING ILLICIT TRADE

The manual 'Enforcement Manual to Combat Illicit Trade in Kenya' is now available for all enforcement agencies in Kenya. ACA is proud to have been part of the manual development & subsequently, the training on the same. Launched by the Chief Justice Dr (Hon) Willy Mutunga last year, the manual consolidates the various statutes governing illicit trade in Kenya.

It is imperative that illicit trade is tackled, if Kenya is to see positive development in many of its sectors. Counterfeiting is a major form of illicit trade. The propagators of the various types of illicit trade are found to be linked in one way or another. All forms of illicit trade are in contravention of either a single or multiple statutes of the country and in many cases, international statutes to which Kenya is a signatory. With the intertwined nature of the various forms of illicit trade and the emerging technological advancement it has become more crucial than ever before that the existing Government Agencies work together.

The development of the Manual stemmed from an understanding and strong consensus among a variety of stakeholders, that illicit trade, due to its far reaching negative impacts cannot be ignored. The Manual serves as a source of information to guide stakeholders on handling crime of illicit trade and further strengthens efforts being made towards combating illicit trade in Kenya. The manual is a result of combined efforts of many government agencies spearheaded by the National Council on the Administration of Justice (NCAJ) and Kenya Association of Manufacturers (KAM) while ACA,

through the Ag ED Dr John Akoten was a core member of the developing team.

The Manual is presented as a practical approach to curbing the crime and is expected to go a long way in increasing the knowledge, efficiency and success of those charged with the duty to prosecute such crimes and check the prevalence of illicit trade crimes.

The Manual is intended for use by public agencies including investigators, administrators, prosecutors and judicial officers in exercising their respective duties in response to the eradication and punishment of trade in illicit goods. It provides a quick guide in handling illicit trade crimes in the execution of duties by the officers.

Training of Trainers on the manual

The launch of the manual and the training roll out programme was conducted at the Busia Border point early in 2015, presided on by the Chief Justice Hon Mutunga. A series of training of trainer's sessions on the manual have been conducted most recent being the Nairobi forum held on 17th to 19th November 2015.



Participants were drawn from Nairobi and Central Regions attracting over 100 participants. Shortly before this, the lake region forum was held at St. Johns Manor - Le

Savanna Country Lodge and Hotel in Kisumu. The training has been conducted country wide in 6 regional blocks - Coast, North & Upper Eastern, Rift Valley, Lower Eastern, Nyanza & Western, Nairobi & Central regions; where officers from various Counties would

congregate and an estimate of 700 officers have been trained.

The first round of events was concluded with a CEOs dinner and issuing of certificates for the trainees. The function was presided on by the Chief Justice of Kenya Hon. (Dr) Willy Mutunga and the Director of Public Prosecutions Hon. Keriako Tobiko and also attended by other dignitaries including KAM CEO also a board member at ACA Ms Phyllis Wakiaga. The training team was drawn from the various organizations such as the National Council on Administration of Justice (NCAJ), Office of the Director Public Prosecutions (ODPP) National Police Service, and Kenya Revenue Authority, among others. ACA was represented by the Ag DDR&A, Mrs. Agnes Karingu.



Participants at the Training for Enforcement officers held at the Kisumu Le Savannah Hotel, 4th to 6th

Handling Public Complaints

ACA is committed to resolving all public concerns and complaints in circumstances, which it believes shows malpractice like misuse of public office, corruption and unethical conduct, breach of integrity, injustice, courtesy, incompetence, inefficiency or ineptitude. All complaints can be reported to the Chairperson of the Public Complaints Committee through the following mechanisms:

- ✓ Drop off at Public complaints box at the Agency
- ✓ Hotline 0202280111
- ✓ Email : complaints@aca.go.ke

UPCOMING EVENTS 2016



ACA Ag. ED, Dr.John Akoten & Samsung EA Vice President Robert Ngeru address a press conference at the ACA boardroom on the seizure of counterfeit mobile phones worth Kshs 50 Million.



Top: Seized counterfeit cooking oil being offloaded at the ACA Depot. Bottom: Seized counterfeit sugar being loaded.

Enforcement:

- Enhancing its capacity through engagement of more inspectors and opening more regional offices especially in the inland container Depots and airports.
- Training of the new inspectors
- Enhance stakeholder collaborations and feedback mechanisms to improve its operations.

Awareness

- Kisumu County Forum for County & National Government officers and the IPR owners, at the Kisumu Hotel on 20th January, 2016
- Uasin Gishu County forum in February
- West Pokot County forum in March
- Interactive forum with IPR owners
- Release Periodical E-newsletters
- Reach out to police training colleges for collaboration in sensitization on counterfeiting

Research

- Conduct nationwide survey and market intelligence and disseminate the findings to the publics.



ACA participating in high traffic road-shows in Coast & Mt. Kenya & regions sponsored by the US EMBASSY, and Rift-valley region in partnership with Q-FM radio station.

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Vision

A global leader in combating counterfeiting

Mission

To combat counterfeiting and prohibit trade in counterfeit goods through training, research, consumer awareness and co-ordination with national, regional and international organizations in the effective enforcement of intellectual property rights

Core Values

- ◆ Integrity
- ◆ Professionalism
- ◆ Teamwork & commitment
- ◆ Customer focus
- ◆ Corporate social responsibility

