

Extraordinary



National Assembly Journal

No. 10

Abuja - 16th March, 2016

Vol. 13

CONTENTS

INDEX TO LEGISLATIVE INSTRUMENTS

<i>Bill No.</i>	<i>Long Title</i>	<i>Page</i>
SB. 117	A Bill for an Act to Introduce measures aimed against the trade in counterfeit goods so as to further protect owners of trademarks and copyright under against the unlawful application, to goods, of the subject matter of their respective intellectual property rights and against the release of goods of that nature (called "counterfeit goods") into the channels of commerce and for other matters connected therewith	C 771 - 803

Printed and Published by the National Assembly Press, Abuja, Nigeria
NASSP 10/163/2016/900

Subscribers who wish to obtain the Journal after 1st January should apply to the Clerk, National Assembly, Abuja for amended Subscriptions.

A BILL

FOR

AN ACT TO INTRODUCE MEASURES AIMED AGAINST THE TRADE IN COUNTERFEIT GOODS SO AS TO FURTHER PROTECT OWNERS OF TRADEMARKS AND COPYRIGHT UNDER AGAINST THE UNLAWFUL APPLICATION, TO GOODS, OF THE SUBJECT MATTER OF THEIR RESPECTIVE INTELLECTUAL PROPERTY RIGHTS AND AGAINST THE RELEASE OF GOODS OF THAT NATURE (CALLED "COUNTERFEIT GOODS") INTO THE CHANNELS OF COMMERCE AND FOR OTHER MATTERS CONNECTED THEREWITH

Sponsored by Senator Isah Himan Missau

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria, as follows-

1 1.-(1) In this Act, unless the context otherwise requires: Interpretations

2 "act of dealing in counterfeit goods" means any actor conduct referred to in
3 section 2(1); (iii);

4 "apply to", with reference to any goods, means use upon or in physical or
5 other relation to any goods, and, unless clearly inappropriate, includes to
6 embody or incorporate in any goods;

7 "Complainant" means a person who, in terms of section 3(1), is entitled to
8 lay a complaint contemplated in that section and who has laid such a
9 complaint; "counterfeiting"-

10 (a) means, without the authority of the owner of any intellectual
11 property right subsisting in Nigeria in respect of protected goods, the
12 manufacturing, producing or making, whether in the Republic or elsewhere,
13 of any goods whereby those protected goods are imitated in such manner
14 and to such a degree that those other goods are substantially identical copies
15 of the protected goods;

16 (b) means, without the authority of the owner of any intellectual

1 property right subsisting in Nigeria in respect of protected goods,
2 manufacturing, producing or making, or applying to goods, whether in Nigeria
3 or elsewhere, the subject matter of that intellectual property right, or a
4 colourable imitation hereof so that the other goods are calculated to be
5 confused with or to be taken as being the protected goods of the said owner or
6 goods manufactured, produced or made under his or her licence; or

7 (c) where, by a notice under the Merchandise Marks Act, the use of a
8 particular mark in relation to goods, except such use by a person specified in
9 the notice, has been prohibited, means, without the authority of the specified
10 person, making or applying that mark to goods, whether in Nigeria or
11 elsewhere. However, the relevant act of counterfeiting must also have
12 infringed the intellectual property right in question; "counterfeit goods" means
13 goods that are the result of counterfeiting, and includes any means used for
14 purposes of counterfeiting; "counterfeit goods depot" means a place
15 designated under section 23 to be a counterfeit goods depot, and includes any
16 place deemed by section 7(1)(c) to be a counterfeit goods depot; "document"
17 includes a tape recording, a photograph and any electronic or magnetic or other
18 medium on, in, or by means or by way of which, images, sound, data or
19 information may be stored, and "documentary" will be construed accordingly;
20 "exporter" includes any person who, at the relevant time:

21 (a) is the owner or is in control or possession of any goods exported or
22 to be exported from Nigeria;

23 (b) Carries the risk for any goods so exported or to be so exported;

24 (c) represents that or acts as if he or she is the exporter or owner of any
25 goods so exported or to be so exported;

26 (d) actually" takes or attempts to take any goods from Nigeria;

27 (e) has a beneficial interest, in any manner or of any nature
28 whatsoever, in any goods so exported or to be so exported;

29 (f) acts on behalf of any person referred to in paragraph (a), (b), (c),

30 (d) or (e) and. in relation to imported goods destined for exportation from

1 Nigeria, includes the manufacturer, producer, maker, supplier or shipper of
2 those goods or any person inside or outside the Nigeria representing or
3 acting on behalf of such a manufacturer, producer, maker, supplier or
4 shipper. "Export" and "exportation" will be construed in accordance with
5 the preceding provisions of these interpretations; "importer" includes any
6 person who at the relevant time; (a) is the owner or is in control or possession
7 of any goods imported or to be imported into the Republic;

8 (b) carries the risk for any goods so imported or to be so imported;

9 (c) represents that or acts as if he or she is the importer or owner of any goods
10 so imported or to be so imported;

11 (d) actually brings or attempts to bring any goods into the
12 Republic;

13 (e) has a beneficial interest, in any manner or of any nature
14 whatsoever, in any goods so imported or to be so imported; acts on behalf of
15 any person referred to in paragraph (a), (b), (c), (d) or (e) and "import" and
16 "importation" will be construed accordingly; "inspector" means any person
17 who under or by virtue of section 22 has been appointed as or designated to
18 be an inspector for the purposes of this Act, as well as: (a) any police officer
19 holding the rank of sergeant or a higher rank; (b) the Comptroller General of
20 Customs and any official contemplated in section 15(9), in performing their
21 functions in the circumstances contemplated in section 15(4);

22 "intellectual property right":

23 (a) means the rights in respect of a trade mark conferred by the
24 Trade Marks Act;

25 (b) means the copyright in any work in terms of the Copyright Act,;

26 "Minister" means the Minister of Trade and Investment "Owner", in relation
27 to an intellectual property right, includes a person who has the capacity in
28 law to enforce the intellectual property right in his or her own name;
29 "package" or "packaging" means any container, wrapping or outer cover and
30 the contents thereof, or any bundle or single piece in the case of unpacked

- 1 goods, and, when used as a verb, has a corresponding meaning;
- 2 "prescribed" means prescribed by regulation under this Act; "protected goods"
- 3 means-
- 4 (a) goods featuring, bearing, embodying or incorporating the subject
- 5 matter of an intellectual property right with the authority of the owner of that
- 6 intellectual property right, or goods to which that subject matter has been
- 7 applied by that owner or with his or her authority;
- 8 (b) any particular class or kind of goods which, in law, may feature,
- 9 bear, embody or incorporate the subject matter of an intellectual property right
- 10 only with the authority of the owner of that intellectual property right, or to
- 11 which that subject matter may in law be applied, only by that owner or with his
- 12 or her authority, but which has not yet been manufactured, produced or made,
- 13 or to which that subject matter has not yet been applied, with the authority of or
- 14 by that owner (whichever is applicable);
- 15 "this Act" includes any regulation made under this Act;
- 16 "tools" includes machinery; and "vehicle" includes any motor car, van, truck,
- 17 trailer, caravan, cart, barrow, train, aircraft, ship, boat or other vessel, and any
- 18 other vehicle, craft or means of conveyance of any kind whatsoever, whether
- 19 self-propelled or not, as well as any pack animal. Without derogating from the
- 20 meanings of the words "place", "premises" and "vehicle". and unless clearly
- 21 inappropriate, any reference in this Act-
- 22 (a) to any place or premises, must be construed as a reference also to
- 23 any freight container, irrespective of its size, at, on or in the place or premises;
- 24 (b) to any vehicle, must be construed as a reference also to such a
- 25 freight container on or in the vehicle.
- 26 **2.-(1)** Goods that are counterfeit goods may not-
- 27 (a) be in the possession or under the 'control of any person in the
- 28 course of business for the purpose of dealing in those goods;
- 29 (b) be manufactured, produced or made except for the private and

1 domestic use of the person by whom the goods were manufactured,
2 produced or made;

3 (c) be sold, hired out, bartered or exchanged, or be offered or
4 exposed for sale hiring out, barter or exchange;

5 (d) be exhibited in public for purposes of trade;

6 (e) be distributed-

7 (i) for purposes of trade; or

8 (ii) for any other purpose to such an extent that the owner of an
9 intellectual property right in respect of any particular protected goods
10 suffers prejudice;

11 (f) be imported into or through or exported from or through Nigeria
12 except if so imported or exported for the private and domestic use of the
13 importer or exporter, respectively;

14 (g) in any other manner be disposed of in the course of trade.

15 (2) A person who performs or engages in any actor conduct
16 prohibited by subsection (1). will be guilty of an offence if-

17 (a) at the time of the actor conduct, the person knew or had reason
18 to suspect that the goods to which the act or conduct relates, were counterfeit
19 goods; or

20 (b) the person failed to take all reasonable steps in order to avoid
21 any act or conduct of the nature contemplated in subsection (1) from being
22 performed or engaged in with reference to the counterfeit goods.

23 3.-(1) Any person who has an interest in protected goods, whether
24 as the owner or licensee of an intellectual property right in respect of the
25 protected goods or as an importer, exporter or distributor thereof (including
26 the duly authorised agent or representative of any such person), who
27 reasonably suspects that an offence referred to in section 2(2) has been or is
28 being committed or is likely to be committed by any person, may lay a
29 complaint to that effect with any inspector.

Laying a
complaint

30 (2) (a) The complainant must furnish information and particulars,

1 to the satisfaction of the inspector, to the effect that the goods with reference to
2 which that offence has been or is being or is likely to be committed, *prima facie*
3 are counterfeit goods.

4 (b) For the purposes of paragraph (a), the complainant may furnish to
5 the inspector a specimen of the alleged counterfeit goods, or, if not reasonably
6 possible, sufficient information and particulars from which the essential
7 physical and any other distinctive features, elements and characteristics of the
8 alleged counterfeit goods may be ascertained. and sufficient information and
9 particulars as to the subsistence and extent of the intellectual property right, the
10 subject matter of which allegedly has been applied to the goods alleged to be
11 counterfeit goods, and as to the complainant's title to or interest in that right.
12 and, where the alleged counterfeit goods are calculated to infringe an
13 intellectual property right that subsists in respect of or has been applied to
14 protected goods contemplated in paragraph (u) of the definition of "protected
15 goods" in section 1 (1) also a specimen of the relevant protected goods.

16 (3) In relation to a complaint that has been laid, an inspector must take
17 appropriate steps in terms of and subject to section 4(1), if reasonably satisfied-

18 (a) that the person having laid the complaint, *prima facie* is a person
19 who, in terms of subsection (1), is entitled to do so; and

20 (b) that-

21 (i) the goods claimed to be protected goods, *prima facie* are protected
22 goods; and

23 (ii) the intellectual property right, the subject matter of which is
24 alleged to have (c) that the suspicion on which the complaint is based, appears
25 to be reasonable in the circumstances.

26 (4) The preceding provisions of this section do not preclude an
27 inspector from taking any appropriate steps in terms of section 4(1) on his or
28 her own initiative in relation to any act or conduct believed or suspected to be
29 an act of dealing in counterfeit goods, provided the requirements of that section
30 are met.

1 4.-(1) If, Pursuant to any complaint laid with an inspector or on the
2 strength of any other information at his or her disposal. the inspector has
3 reasonable -grounds to suspect that an offence contemplated in section 2(2)
4 has been or is being committed or is likely to be committed, or to believe that
5 an act of dealing in counterfeit goods has taken or is taking place or is likely
6 to take place, he or she has the power, in accordance with paragraphs (a) to
7 (f) of section 5(1)-

Inspector's powers
in relation to
counterfeit goods

8 (a) to enter upon or enter any place, premises or vehicle in order to
9 inspect any relevant goods and seize any suspected counterfeit goods, and
10 may seize any suspected counterfeit goods found and cause them to be
11 detained in accordance with this Act, and, where applicable, remove the
12 suspected counterfeit goods for the purposes of detention;

13 (b) to collector obtain evidence relating to the suspected
14 counterfeit goods or the relevant act of dealing in counterfeit goods;

15 (c) to conduct at, on or in such place, premises or vehicle whatever
16 search maybe reasonably necessary for the purposes of paragraph (a) or (b)
17 (including the search of a person); and

18 (d) to take whatever steps may be reasonably necessary in order to
19 terminate the relevant act of dealing in counterfeit goods.

20 (2) Subject to section 5(2), the powers conferred on an inspector by
21 subsection (1) may be exercised only on the authority of a warrant issued
22 under section 6, and may be exercised wherever the suspected act of dealing
23 in counterfeit goods has taken or is taking place or is likely to take place or is
24 suspected on reasonable grounds to have taken place or to be taking place.

25 5.-(1) An inspector acting on the authority of and in accordance
26 with a warrant issued under section 6, may at any reasonable time-

Extent of Inspector's
powers in relation
to counterfeit goods

27 (a) enter upon or enter, and inspect, any place, premises or vehicle
28 at, on or in which goods that are reasonably suspected of being counterfeit
29 goods, are to be found or on reasonable grounds are suspected to be or to be
30 manufactured, produced or made, and search such place, premises or

1 vehicle and any person thereat, thereon or therein, for such goods and for any
2 other evidence of the alleged or suspected act of dealing in counterfeit goods.
3 For the purposes of entering, inspecting and searching such a vehicle, an
4 inspector who is a police officer or who is assisted by a police official may stop
5 the vehicle, if necessary by force, wherever found, including on any public
6 road or at any other public place;

7 (b) take the steps that may be reasonably necessary to terminate the
8 manufacturing, production or making of counterfeit goods, or any other act of
9 dealing in counterfeit goods being performed, at, on or in such place, premises
10 or vehicle, and to prevent the recurrence of any such act in future. Those steps
11 may include any of the steps contemplated in paragraphs (c), (d) and (e) but do
12 not include the destruction or alienation of the relevant goods unless authorised
13 by the court in terms of this Act;

14 (c) seize and detain, and, where applicable, remove for detention all
15 the goods in question found at, on or in such place, premises or vehicle;

16 (d) seal or seal off any place, premises or vehicle at, on or in which-

17 (i) the goods in question are found, or are manufactured, produced or
18 made, either wholly or in part;

19 (ii) any trade mark, or any exclusive mark contemplated in paragraph
20 (c) of the definition of "counterfeiting" in section 1 (1), or any work which is
21 the subject matter of copyright, is applied to those goods;

22 (iii) the packaging for those goods is prepared;

23 (iv) the packaging of those goods is undertaken;

24 (e) seize and detain, and, where applicable, remove for detention, any
25 tools which may be used in the manufacturing, production, making or
26 packaging of those goods or applying a trade mark or that exclusive mark or
27 such a work to them; and.

28 (f) if he or she reasonably suspects that a person at, on or in such place,
29 premises or vehicle may furnish any information with reference to any act of
30 dealing in counterfeit goods-

- 1 (i) question that person and take down a statement from him or her;
- 2 (ii) demand and procure from that person any book, document,
3 article, item or object which in any way may be relevant to the nature,
4 quantity, location, source or destination of the goods in question, or the
5 identity and address of anyone involved or ostensibly involved as a supplier,
6 manufacturer, producer, maker, distributor, wholesaler, retailer, importer,
7 exporter or forwarding agent of, or other dealer in, the goods in question.
- 8 (2) Subject to subsection (3), an inspector may, during the day,
9 without a warrant enter upon or enter any place, premises or vehicle after
10 having identified himself or herself and in accordance with paragraphs (a) to
11 f subsection (1), exercise the powers of seizure, removal, detention,
12 collecting evidence and search contemplated in section 4(1)(a), (b) and (c)
13 (except the power to search any person), as well as the power to take the
14 steps contemplated in section 4(1)(d), if:
- 15 (a) the person who is competent to consent to the entry and to such
16 search, seizure, removal and detention, gives that consent; or
- 17 (b) the inspector on reasonable ground believes that-
- 18 (i) the required warrant will be issued to him or her in terms of
19 section 6 if he or she were to apply for the warrant; and
- 20 (ii) the delay that would ensue by first obtaining the warrant would
21 defeat the object or purpose of the entry, search, seizure, removal, detention,
22 collection of evidence and other steps.
- 23 (3) Subsection (2)(b) does not serve as authority for, and may not
24 be applied for the purposes of, entering and searching any private dwelling,
25 nor for conducting such seizure and removal, the collection of evidence and
26 the taking of the said other steps therein.
- 27 (4) Notwithstanding the provisions of subsections (1) and (2): (a)
28 any steps taken by an inspector in accordance with paragraph (a), (b), (c) or
29 (d) of subsection (1), or like steps taken by him or her by virtue of subsection
30 (2). will cease to have any legal effect whatsoever unless the court confirms

1 such steps, either finally or on the application of the inspector or the relevant
2 complainant (where applicable) brought within 10 court days of the day on
3 which those steps had been taken;

4 (b) no answer given or statement made by any person to an inspector
5 exercising his or her powers in terms of paragraph U)(i) of subsection (1) or
6 given or made to any inspector exercising like powers by virtue of subsection
7 (2), will, if seeing incriminating, be admissible as evidence against that person
8 in criminal proceedings instituted in any court against him or her, except in
9 criminal proceedings where that person is tried for an offence contemplated in
10 section 18(d)(ii), and then only to the extent that such answer or statement is
11 relevant to prove the offence charged.

12 (5) The provisions of section 6(4) regarding the manner in which a
13 search must be conducted, and section 6(5) (b), (6), (7), (8) and (9), will apply
14 *mutatis mutandis* to an inspector acting by virtue of subsection (2) of this
15 section.

Provisions relating
to issue and
execution of warrant

16 **6.-(1)** The warrant contemplated in section 4(2) read with section 5(1)
17 will be issued in chambers by any judge of the High Court or by a magistrate
18 who has jurisdiction in the area where the relevant suspected act of dealing in
19 counterfeit goods is alleged to have taken or to be taking place or is likely to
20 take place, and will be issued only if it appears to the judge or magistrate from
21 information on oath or affirmation that there are reasonable grounds for
22 believing that an act of dealing in counterfeit goods has taken or is taking place
23 or is likely to take place, and the inspector seeking the warrant may be asked to
24 specify which of the powers contemplated in section 4(1) is or are likely to be
25 exercised.

26 (2) A warrant in terms of this section maybe issued either with
27 reference to only one separate suspected act of dealing in counterfeit goods or
28 with reference to any number of such acts, whether any such act involves only
29 one alleged offender or any number of alleged offenders, and irrespective of
30 whether such offender or number of offenders is identified specifically by

1 name or by reference to any particular place or circumstances, and any point
2 in time.

3 (3) A warrant in terms of this section may be issued on any day and
4 will be in-

5 (a) it has been executed; or

6 (b) it is cancelled by the judge or magistrate who issued it, or, if not
7 available, by any other judge, or by any other magistrate with like authority
8 (as the case may be);

9 (c) the expiry of three months from the day of its issue; or

10 (d) the purpose for which the warrant was issued, no longer exists,
11 whichever.

12 (4) A warrant issued in terms of this section may be executed by day
13 only, unless the person who has issued the warrant has authorised the
14 execution thereof by night at times which must be reasonable, and the entry
15 upon or into and search of any place, premises or vehicle specified in the
16 warrant, and the search of any person thereat, thereon or therein must be
17 conducted with strict regard to decency and order, including:

18 (a) a person's right to, respect for and protection of his or her
19 dignity;

20 (b) the right of a person to freedom and security of his or her
21 person; and

22 (c) the right of a person to his or her personal privacy.

23 (5) An inspector executing a warrant in terms of this section must
24 immediately before commencing with the execution thereof-

25 (a) identify himself or herself to the person in control of the place,
26 premises or vehicle to be entered upon or entered, if that person is present.
27 and hand to that person a copy of the warrant, or, if that person is not present
28 affix a copy of the warrant to a prominent spot at on or to the place, premises
29 or vehicle;

30 (b) furnish that person at his or her request with particulars

1 regarding the inspector's authority to execute such a warrant. For that purpose
2 an inspector may be requested to produce the certificate issued in respect of
3 him or hereunder section 22(3).

4 (6) An inspector who on the authority of a warrant issued in terms of
5 subsection (1) may enter upon or enter, and search, any place, premises or
6 vehicle and search any person thereat, thereon or therein, may use such force as
7 may be reasonably necessary to overcome any resistance to the entry and
8 search.

9 (7) An inspector may enter upon or enter, and search, any place,
10 premises or vehicle, and may search any person thereat, thereon or therein,
11 only if he or she audibly has first demanded access thereto and has notified the
12 purpose of the entry, unless the inspector on reasonable grounds is of the
13 opinion that any goods, document, article or item may be destroyed or be lost if
14 access is first demanded and that purpose notified.

15 (8) If during the execution of a warrant in terms of this section, a
16 person claims that any goods, document, article or item found at on or in the
17 place premises or vehicle in question contains privileged information and
18 refuses the inspection or removal thereof, the inspector executing the warrant,
19 if of the opinion that the goods, document, article or item may be relevant to
20 and necessary for the investigation of any complaint or any alleged or
21 suspected act of dealing in counterfeit goods, must request the registrar of the
22 High Court having jurisdiction, or that registrar's deputy, to seize and remove
23 such goods document, article or item for safe custody until the court has made a
24 ruling on the question whether or not the information in question is privileged.

25 (9) In undertaking any search for and inspection and seizure of
26 suspected counterfeit goods an inspector may be assisted by the complainant
27 (if any) or any other knowledgeable person in identifying goods as suspected
28 counterfeit goods.

Duties of
inspector following
seizure of goods

29 7.-(1) An inspector who, in exercising his or her powers in terms of
30 section 4(1), has seized any suspected counterfeit goods, must-

1 (a) Forthwith seal, clearly identify and categorise these goods and
2 prepare, in quadruplicate, an inventory of them and cause the person from
3 whom those goods were seized to check the inventory for correctness, and, if
4 correct, cause that person to make a certificate to that effect under his or her
5 signature on each original of that inventory. If the seized goods are removed
6 in terms of paragraph (c), the inspector must endorse that fact under his or
7 her signature on every original of that inventory, in which case that
8 inventory will also serve as a receipt;

9 (b) furnish one of the originals of the inventory to the person from
10 whom the goods were seized and another to the complainant (if any) within
11 72 hours after the seizure;

12 (c) as soon as possible remove the goods, if transportable, to a
13 counterfeit goods depot for safe storage, or, if not capable of being removed
14 or transported, declare the goods to have been seized, and seal off or seal and
15 lockup those goods or place them under guard at the place where they were
16 found, and thereupon that place will be deemed to be a counterfeit goods
17 depot and

18 (d) by written notice inform the following persons of the action
19 taken by the inspector in terms of section 4(1) and of the address of the
20 counterfeit goods depot where the seized goods are kept-

21 (i) The person from whom those goods were seized; and

22 (ii) also-

23 (a) the complainant, where the inspector exercised his or her
24 powers in terms of section 4(1) pursuant to a complaint laid in terms of
25 section 3(1); or

26 (b) any person who, in relation to those goods, qualifies in terms of
27 section 3(1) to be a complainant, but who had not yet so laid a complaint at
28 the time when the inspector exercised those powers on his or her own
29 initiative as contemplated in section 3(4).

30 (2) In any notice in terms of subsection (J)(d) that is issued-

1 (a) to the complainant, the complainant must be notified of his or her
2 right by virtue of section 9(1 (a) to lay a criminal charge, not later than three
3 days after the date of the notice, against the person from whom those goods
4 were seized (hereafter called the suspect);

5 (b) to a person qualifying to be a complainant, as contemplated in
6 paragraph (d) (ii)(bb) of subsection (1), the inspector must invite that person
7 (hereafter called the prospective complainant) to lay a complaint with him or
8 her, and lay with the Police a criminal charge, not later than three days after the
9 date of the notice, against the suspect for having performed an act of dealing in
10 counterfeit goods that is an offence in terms of section 2(2).

11 (3) An inspector may demand from a complainant to disclose any
12 information which may be relevant to the action that has been taken.

13 (4) (a) Any person prejudiced by a seizure of goods in terms of section
14 4(1), may at any time apply to the court on notice of motion for a determination
15 that the seized goods are not counterfeit goods and for an order that they be
16 returned to him or her.

17 (b) The court may grant or refuse the relief applied for and make such
18 order as it deems just and appropriate in the circumstances, including an order
19 as to the payment of damages and costs, if applicable. (c) If deemed just and
20 appropriate in the circumstances by a court that has refused the order sought. it
21 may order, where those goods have been seized pursuant to a complaint laid in
22 terms of section 3(1), that the complainant furnishes security to the applicant in
23 respect of those goods in an amount and manner determined by the court.

Storage of seized
goods, and access
thereto

24 **8.**-(1) Goods that have been seized in terms of section 4(1) must be
25 stored and kept in safe custody at a counterfeit goods depot until the person in
26 charge of the depot-

27 (a) is ordered by a competent court in terms of this Act to return
28 release, destroy or otherwise dispose of those goods as specified in the order; or

29 (b) is directed by the inspector concerned, in the circumstances
30 provided for in subsection (1)(b) or (2)(u), (b) or (c) of section 9, to release

1 those goods to the suspect.

2 (2) Goods seized in terms of section 4(1) will be available for
3 inspection by the complainant, or, as the case may be, prospective
4 complainant (if any) the suspect and any other interested person at the
5 counterfeit goods depot on any working day during normal office hours.

6 (3) The person in charge of the counterfeit goods depot, on the
7 request of the complainant or prospective complainant (as the case may be)
8 or the suspect, must make the relevant seized goods available for testing or
9 analysis by or on behalf of any such complainant or the suspect if the person
10 so in charge, having taken into account the nature of such seized goods, the
11 nature of the tests or analyses to be conducted and the competence and
12 suitability of the person by whom the tests or analyses are to be conducted is
13 satisfied that a request in that regard is reasonable.

14 (4) The person in charge of a counterfeit goods depot who is not
15 willing to allow seized goods under his or her custody to be made available
16 to the suspect for testing or analysis by any person or by a particular person,
17 must forthwith refer the matter to the complainant or prospective
18 complainant (as the case may be) who must either confirm or reverse that
19 decision within 48 hours.

20 (5) (a) Where any such complainant has confirmed the decision not
21 to allow the seized goods to be made available to the suspect for testing or
22 analysis, that decision must be conveyed in writing to the suspect who may
23 apply to the court for an order rescinding the decision and allowing those
24 goods to be made so available;

25 (b) The court will grant the application if it finds the decision to be
26 unreasonable in the circumstances.

27 **9.-(1)** (a) Where suspected counterfeit goods have been seized by
28 an inspector in terms of section 4(1), the complainant or prospective
29 complainant (as the case may be), if he or she wishes to lay a criminal charge
30 against the suspect with the police for having committed an offence referred

Seized goods to be
released if criminal
investigation or
criminal or civil
proceedings not
contemplated
suspect

1 to in section 2) and request that a criminal investigation into the matter be
2 undertaken, must do so not later than three days after the date of the notice
3 referred to in section 7(2).

4 (b) If upon the expiry of that three day period, a criminal charge has
5 not so been laid, the relevant seized goods must be released to the suspect
6 subject to subsection(2).

7 (2) Subject to subsection (3) goods seized in terms of section 4(1)
8 must be released to the suspect also-

9 (a) (i) if the State fails within 10 working days after the date of the
10 notice given to the suspect in terms of paragraph (d)(i) of section 7(1) to inform
11 the suspect by further written notice, of its intention to institute a criminal
12 prosecution against him or her for having committed an offence referred to in
13 section 2(2); and (iii) if any person to whom notice has been given in terms of
14 paragraph (d)(ii) of section 7(1) fails within 10 working days after the date of
15 that notice to inform the suspect, by further written notice, of the person's
16 intention to institute against the suspect civil proceedings founded on an act of
17 dealing in counterfeit goods on the part of the suspect;

18 (b) in any case where the State or that person has so given further
19 notice, if that criminal prosecution or those civil proceedings (as the case may
20 be) is or are not instituted within 10 court days after the date of the relevant
21 further notice; or

22 (c) if the complainant in writing has instructed the inspector to release
23 those goods to the suspect. However, such an instruction may not be given and
24 the relevant seized goods may not be so released at any time after a criminal
25 prosecution involving those goods has been instituted against the suspect; or

26 (d) upon the order of a competent court.

27 (3) (a) For the purpose of effecting the release of goods in terms of
28 subsection (1)(b) or (2) (a), (b) or (c), the inspector who had seized those goods
29 in terms of section 4(1) must issue a notice to the person in charge of the
30 counterfeit goods depot where those goods are detained, directing that the

1 relevant goods, as specified in the copy of the inventory attached to that
2 notice, be released to the person specified therein, and at the same time cause
3 a copy of that notice to be served on the suspect and on the complainant.

4 (b) The person in control of counterfeit goods depot to whom a
5 notice has been issued in accordance with the provisions of paragraph (a),
6 must release the relevant goods in accordance with that notice, on the fourth
7 day after the date of that notice, unless a competent court has ordered
8 otherwise.

9 **10.**-(1) without derogating from the powers of a court in any civil
10 or criminal proceedings relating to counterfeit goods, such a court may
11 order-

Other orders that
may be issued by
court

12 (a) that the goods in question, where they have been found to be
13 counterfeit goods, be delivered up to the owner of the intellectual property
14 right the subject matter of which has been unlawfully applied to those goods,
15 or up to any complainant deriving his or her title from that owner,
16 irrespective of the outcome of the proceedings;

17 (b) that those goods be released to any person specified in the
18 order;

19 (c) that the complainant pays damages, in an amount determined
20 by the court to the person from whom those goods were seized and pays that
21 person's costs;

22 (d) that the accused or the defendant or respondent (as the case may
23 be) discloses the source from which those goods, if found to be counterfeit
24 goods, have been obtained, as well as the identity of the persons involved or
25 ostensibly involved in the importation, exportation, manufacture,
26 production or making, and the distribution, of the counterfeit goods and in
27 the channels of distribution of those goods;

28 (e) If a Court in any civil or criminal proceedings has ordered the
29 delivery up to any person of goods found to be counterfeit goods derived
30 from any process of counterfeiting contemplated in paragraph (b) or (c) of

1 the definition of "counterfeiting" in section 1(1) then, notwithstanding the
2 provisions of any law, those goods-

3 (a) may not be released into the channels of commerce upon the mere
4 removal of the subject matter of the intellectual property right that was
5 unlawfully applied to those goods;

6 (b) if imported, may not be exported in an unaltered state, unless the
7 court on good cause shown, has ordered otherwise.

Court may
authorise search
and attachment
pending institution
of civil proceedings,
to present evidence
relevant to
infringement of
intellectual
property right, etc.

8 **11.**-(1) The owner of intellectual property right who is aware or has
9 reasonable grounds to believe that an act of dealing in counterfeit goods has
10 taken or is taking place or is likely to take place, may, without prejudice to any
11 other remedy that he or she may have in law, apply ex parte to a judge in
12 chambers for an order-

13 (a) directing the sheriff or another person designated by the court
14 (hereafter referred to as a designated person) to enter upon or enter any
15 specified place or premises accompanied by such other persons as the court
16 may specify (if any) and there to search for, and, if found, seize and remove
17 such documents records or other material as the court may specify and any such
18 goods, alleged to be counterfeit goods, as maybe so specified (hereafter
19 referred to as subject goods), that are at, on or in such place or premises, and to
20 attach such documents, records, material and goods;

21 (b) directing the respondent to point out to the sheriff or designated
22 person all subject goods and to disclose and make available to him or her all
23 documents and material that are relevant in order to determine whether the
24 subject goods in question are counterfeit goods or are relevant to any
25 transactions or dealings in counterfeit goods at, on or in the relevant place or
26 premises or elsewhere, and to permit the sheriff or designated person to attach
27 such subject goods, as well as such documents and material (hereafter jointly
28 referred to as ancillary materials) and remove them for detention in safe
29 custody;

30 (c) restraining the respondent from-

1 (i) interfering with the state of the subject goods or ancillary
2 materials during the search, seizure, attachment or removal;

3 (ii) carrying out or continuing with the act of dealing in counterfeit
4 goods that gave rise to the application;

5 (d) granting such further or alternative relief as the court considers
6 appropriate.

7 (2) An application in terms of subsection (1) will be heard in
8 camera unless the court is satisfied that the attendance of the proceedings by
9 members of the public or any class or group of such members will not cause
10 the applicant to suffer any prejudice or to be prejudiced when seeking to
11 protect or enforce his or her relevant intellectual property right and that such
12 attendance, should the court order the relief sought, will not impair or detract
13 from the efficacy of the order or the execution thereof.

14 (3) The court will not grant an application brought in terms of
15 subsection (1) unless it considers that the applicant has a prima facie claim
16 against the respondent for the infringement of an intellectual property right
17 and that-

18 (a) the applicant's right to discovery of documents in any
19 proceedings to be instituted by him or her is likely to be frustrated, either by
20 reason of the nature of the suspected counterfeit goods in relation to which
21 the application is made or due to other circumstances; or

22 (b) should the normal court procedure be followed or
23 implemented, the goods relevant to the issues in those proceedings, or
24 evidence in connection with transactions or dealings with the latter goods,
25 are likely to be destroyed or to be so altered or placed or be otherwise
26 disposed of in such manner as to effectively preclude the applicant from
27 having access to the relevant goods.

28 (4) A court hearing an application so brought, may order that the
29 relief applied for, be granted subject to the terms and conditions specified in
30 the order. or that relief be refused, or may make any other order that it deems

1 just and appropriate in the circumstances. (5) For the purposes of subsection
2 (4), the court may-

3 (a) order that the designated person may rely upon the assistance of
4 knowledgeable persons, specified in the order, in identifying the subject goods
5 and ancillary materials;

6 (b) order the applicant to furnish security to the respondent in an
7 appropriate amount equal to a specified percentage of the value of the goods
8 attached;

9 (c) issue an order restraining the respondent from infringing the
10 applicant's intellectual property right;

11 (d) issue a rule calling upon the respondent to show cause before or on
12 a specified day (which must fall on a date within 20 court days of the granting
13 of the rule) why an interdict restraining the respondent from infringing the
14 applicant's intellectual property right and any order granting the applicant
15 further relief, including an order directing the delivery of the subject goods up
16 to the applicant, should not be granted or confirmed,

17 (e) order that the applicant, should he or she wish to institute
18 proceedings against the respondent for the infringement of the applicant's
19 intellectual property right, must do so not later than the date specified in the
20 order.

21 (6) If the court has not made an order in terms of subsection (5)(e), an
22 applicant who wishes to institute the proceedings contemplated in that
23 subsection must do so within 20 court days of the date of the order made in
24 terms of subsection (4) and whereby his or her application was granted.

Provisions relating
to execution of
court order
authorizing search
for counterfeits
goods and evidence
relevant thereto

25 **12.-(1)** When the court in terms of section 11(4) has issued an order
26 authorizing a search of any place or premises, the respondent will be entitled to
27 have his or her attorney present during the search and further execution of the
28 order at on or in such place or premises, if the presence of that attorney can be
29 secured with due speed after the designated person has arrived at the place or
30 premises with a view to conducting that search and further executing that order.

1 (2) The designated person, for the purpose of conducting the
2 search, must be accompanied by the applicant's attorney who, after service,
3 at the place or premises where the search is to be conducted, of a copy of the
4 application and order on the respondent, or, if the respondent is not present,
5 on a responsible person ostensibly in control of such place or premises, must
6 explain the terms of the order to the respondent or that person and inform
7 him or her that the respondent is entitled to have his or her attorney present
8 during the execution of the order provided the presence of the respondent's
9 attorney is secured with due speed.

10 (3) The sheriff or designated person conducting the search must-

11 (a) prepare an inventory of the subject goods and ancillary
12 materials attached by him or her on the authority of an order in terms of
13 section 11 (4) and furnish a copy of the inventory to the applicant and to the
14 respondent;

15 (b) allow the parties to peruse the ancillary materials that have been
16 so attached and to make copies thereof or excerpts therefrom; and

17 (c) allow the parties to inspect the subject goods and to have those
18 goods tested or analysed on their behalf.

19 (4) When a search authorised by an order in terms of section 11 (4)
20 has been completed the applicant's attorney must, without delay-

21 (a) make a statement under oath or affirmation in-which he or she
22 reports fully on the conducting of the search and on any other steps taken by
23 him or her in relation to or pursuant to the search with a view to complying
24 with the requirements of that order or an order in terms of section 11 (5) and
25 the requirements imposed by this section, and, where any subject goods or
26 ancillary materials have been attached on the authority of an order in terms
27 of section 11 (4), annex to that statement a copy of the inventory prepared in
28 relation to the relevant subject goods and ancillary materials in compliance
29 with subsection (3) of this section;

30 (b) cause the original of that statement, together with its annex. to

1 be filed in the office of the registrar of the court in question and cause a certified
2 copy thereof to be served on the respondent.

Court may order
unsuccessful claimant
in proceedings for
infringement of
intellectual
property right to
pay compensation

3 **13.**-(1) Where in any proceedings the claim of a person (hereafter
4 called the erstwhile applicant) in respect of an infringement of his or her
5 intellectual property right is dismissed the court may order the erstwhile
6 applicant to pay appropriate compensation to the erstwhile respondent for any
7 injury or prejudice caused to or suffered by him or her in consequence of any
8 measures and steps taken in terms of section 11 or 12 on the authority of an
9 order contemplated in section 11.

10 (2) For the purposes of subsection (1) and section 14:

11 (a) "erstwhile applicant" means the owner of an intellectual property
12 right who was the successful applicant in any ex parte application brought in
13 terms of section 11 (1); and

14 (b) "erstwhile respondent" means the person against or in relation to
15 whom relief was sought pursuant to that application.

Court may order
release of attached
subject goods and
ancillary materials
in certain
circumstances

16 **14.** If an erstwhile applicant does not, before the date specified in an
17 order contemplated in section 11 (5)(e) or within the period referred to in
18 section 11 (6), whichever is applicable, institute proceedings against the
19 erstwhile respondent for the infringement of the erstwhile applicant's
20 intellectual property right, or if, in the case where those proceedings have been
21 so instituted, the erstwhile applicant's claim has been dismissed by the court,
22 the court, on the application of the erstwhile respondent or any other interested
23 person claiming to be entitled to the subject goods and ancillary materials may
24 order that such goods and materials be released, respectively, to the erstwhile
25 respondent or to such interested person who has proved his or her entitlement
26 thereto.

Customs authorities'
powers in relation to
counterfeit goods
being imported into
Nigeria

27 **15.**-(1) The owner of an intellectual property right may apply to the
28 Comptroller General of Customs (hereafter called the Comptroller), to seize
29 and detain all goods-

30 (a) which are counterfeit goods featuring, bearing, embodying or

1 incorporating the subject matter of that intellectual property right or to
2 which the subject matter of that right has been applied;

3 (b) and which are imported into or enter Nigeria during the period
4 specified in the application. However, that period may not extend beyond
5 the last day of the period for which that intellectual property right subsists.

6 (2) For the purposes of subsection (1), the applicant may furnish to
7 the Comptroller a specimen of the goods that are protected goods of the
8 nature contemplated in paragraph (a) of the definition of "protected goods"
9 in section 1 (1) (if any) and to which the subject matter of his or her relevant
10 intellectual property right relates and sufficient information and particulars
11 as to the subsistence and extent of that intellectual property right and as to
12 his or her title to that right.

13 (3) The Comptroller must consider and deal with an application in
14 terms of subsection (1) without delay, and must grant the application if
15 satisfied on reasonable grounds-

16 (a) that the goods claimed to be protected goods, are *prima facie*
17 protected goods;

18 (b) that the intellectual property right, the subject matter of which
19 relates to the protected goods, *prima facie* subsists; and

20 (c) that the applicant *prima facie* is the owner of that intellectual
21 property right.

22 (4) When an application made in terms of subsection (1) has been
23 granted and notice thereof given in terms of subsection (5), all goods that are
24 counterfeit goods of the type with reference to which that application was
25 made (hereafter called the stipulated goods) or suspected on reasonable
26 grounds to be stipulated goods, and imported into or entering Nigeria from
27 time to time during the period determined by the Comptroller (which may
28 be shorter than the period applied for), may be seized and detained by the
29 customs authorities in performing their functions subject to the provisions
30 of subsections (6) and (7) of this section.

1 (5) The Comptroller, by written notice (issued within a reasonable
2 time after having decided the application) must notify the applicant whether
3 the application has been granted or refused, and-

4 (a) if granted, state the period during which any stipulated goods
5 being imported into or entering Nigeria will be made subject to seizure and
6 become subject to detention under subsection (4); (b) if refused, state the
7 reasons for the refusal.

8 (6) For the purposes of acting under subsection (4) in relation to goods
9 that are stipulated goods or suspected on reasonable grounds to be stipulated
10 goods-

11 (a) any member of the customs authorities will act *mutatis mutandis*
12 as if he or she were an inspector who, in connection with counterfeit goods or
13 alleged or suspected counterfeit goods, were exercising the powers
14 contemplated in section 4(1) on own initiative in terms of section 3(4);

15 (b) the following provisions of this Act will apply *mutatis mutandis* in
16 relation to any member of the customs authorities, namely-

17 (i) the provisions in accordance with or subject to which the powers
18 contemplated in section 4(1) may be exercised by an inspector so acting on own
19 initiative;

20 (ii) the provisions by which any other power or any right function,
21 duty, obligation, exemption, indemnity or liability is conferred or imposed on
22 an inspector so acting However, the Minister, at the request of the Minister of
23 Finance acting on the recommendation of the Commissioner, may by notice in
24 the Gazette exempt the members of the customs authorities from any of the
25 provisions made applicable by this paragraph if satisfied that there are suitable
26 and appropriate alternative arrangements made by or under the Customs and
27 Excise Act, that cover the purpose of the provision from which exemption is
28 sought.

29 (7) The customs authorities will not be obliged to act in terms of
30 subsection (4) unless the owner of the intellectual property right, the subject

1 matter of which is alleged to be featured or borne by or incorporated or
2 embodied in or to have been applied to stipulated goods, furnishes to the
3 Comptroller security in the manner and amount that the Comptroller may
4 require to indemnify the customs authorities and their members against any
5 liability that may be incurred pursuant to the seizure and detention of goods
6 or anything done in relation to goods when acting or purportedly acting
7 under this section and to cover any expenses that may be incurred in
8 effecting the seizure and detention of the goods.

9 (8) The provisions of this Act will not be construed so as to render
10 the customs authorities or any of their members liable for:

11 (a) any failure to detector seize stipulated goods;

12 (b) the inadvertent release of any such goods; or

13 (c) any action taken in good faith in respect of such goods.

14 **16.**-(1) Subject to section 5(4)(b), any statement taken down or
15 other documentary evidence procured by an inspector in the course of
16 exercising any power in terms of section 4(1) may be made available to a
17 complainant at his or her request. The complainant may make copies of or
18 extracts from any such statement or documentary evidence and must return
19 the original statement or document to the inspector.

Evidence and
presumption

20 (2) An inspector may be called as a witness by any party to civil or
21 criminal proceedings concerning counterfeit goods. or by the court,
22 whenever the inspector conduct the exercise or performance of his or her
23 powers or duties in terms of section 4(1), 5.6, 7 or 9 or the nature of the
24 circumstances in or activities with reference to which those powers or duties
25 were exercised or performed, is in issue or relevant in those proceedings.

26 (3) In any civil proceedings concerning an act of dealing in
27 counterfeit goods by any person, it will be permissible, if relevant, to present
28 evidence about that person's conviction on account of an offence founded on
29 the same act of dealing in counterfeit goods.

30 (4) (a) A statement in the prescribed form, made under oath or

1 affirmation by an inspector, to the effect that the goods specified under his or
2 her signature in the inventory attached to that statement, are goods seized by
3 him or her from a specified person at a specified place and on a specified date,
4 will, upon production to the court, be admissible in evidence and be sufficient
5 proof of the facts stated therein in any civil or criminal proceedings concerning
6 counterfeit goods or any act of dealing therein, if relevant to those proceedings
7 and if the inventory has been prepared by the inspector, and has been certified
8 to be correct, as required by section 7(1)(a).

9 (b) If a statement has been produced and handed in as evidence in
10 terms of paragraph (a), the court, in its discretion and notwithstanding the
11 provisions of that paragraph, may order that the inspector who made that
12 statement be directed or subpoenaed to appear before the court to give oral
13 evidence concerning any matter mentioned or dealt within that statement.

14 (5) Where the subsistence of an intellectual property right in respect
15 of protected goods or any person's title to or interest in such intellectual
16 property right is in issue in any civil or criminal proceedings concerning
17 counterfeit goods, the subsistence of, title to or interest in such intellectual
18 property right, where it is alleged-

19 (a) to encompass the rights in respect of a trade mark as contemplated
20 in paragraph (a) of the definition of "intellectual property right" in section 1 (1),
21 may be proved in accordance with the provisions of sections 49,50 and 51 of
22 the Trade Marks Act,

23 (b) To be copyright in a work, maybe proved in accordance with the
24 provisions of section 26(1 2) of the Copyright Act, which provisions will apply
25 *mutatis mutandis*;

26 (c) to be the exclusive right to use a particular mark may be proved by
27 producing to the court a copy of the Gazette in which that notice was published,
28 accompanied by a statement under oath or affirmation made by the Minister or
29 any officer designated by the Minister, which is to the effect that such notice
30 has not been withdrawn or amended in its essence. However the provisions of

1 this subsection will not be construed so as to detract from the power of the
2 court, in relation to any such matter or any aspect thereof-

3 (i) to require oral evidence to be given;

4 (ii) in the case of a High Court, to order that the evidence of a
5 person who resides or is for the time being outside the area of jurisdiction of
6 that Court, be taken by means of interrogatories.

7 (6) Where any person who conducts business in protected goods
8 featuring, bearing, incorporating or embodying the subject matter of a
9 particular intellectual property right is proved to have been found in
10 possession of suspected counterfeit goods to which the subject matter of the
11 same intellectual property right has been applied-

12 (a) it will, in any civil proceedings concerning an act of dealing in
13 counterfeit goods founded on that person's possession of the suspected
14 counterfeit goods, be presumed, until the contrary is proved, that such
15 person was in possession of the latter goods for the purpose of dealing
16 therein if the quantity of those goods is more than that which, in the
17 circumstances, reasonably may be required for his or her private and
18 domestic use;

19 (b) the same presumption will, in any criminal proceedings arising
20 from that person's possession of the suspected counterfeit goods, apply
21 *mutatis mutandis* unless credible evidence in rebuttal of the fact presumed,
22 is tendered.

23 17.-(1) any person suffering damage or loss caused by the
24 wrongful seizure, removal or detention of goods alleged to be counterfeit
25 goods, or by any action contemplated in 5 section 7(1) (a), (b) or (c) or (2)
26 wrongfully taken by an inspector with reliance on that section read with
27 section 4(1), or caused during or pursuant to the seizure, removal or
28 detention of such goods in terms of this Act, will be entitled to claim
29 compensation for that damage or loss which claim, subject to subsection (2),
30 will be against the complainant and not against the State, the inspector or the

Liability for
damage or loss
arising pursuant
to application of
Act

1 person in charge of the 10 counterfeit goods depot where those goods are or
2 were detained.

3 (2) The State or such inspector or the person in charge of the relevant
4 counterfeit goods depot as the case may be, will be liable in respect of a claim
5 contemplated in subsection (1) only if:

6 (a) in the seizure or removal of the alleged counterfeit goods, the
7 inspector, or, in the detention and storage of those goods, that person so in
8 charge or the inspector (depending on the circumstances), has been grossly
9 negligent; or

10 (b) the inspector or that person so in charge (as the case may be), in the
11 seizure, removal, detention or storage of those goods, acted in bad faith.

12 (3) Any reference in paragraphs (a) and (b) of subsection (2) to an
13 inspector or to a person in charge of a counterfeit goods depot (however
14 expressed) will be construed so as to include any person acting on the
15 instruction or under the supervision of the inspector or the person so in charge,
16 as the case may be.

Miscellaneous
offences

17 **18.** A person will be guilty of an offence-

18 (a) upon failing to comply with any request, direction, demand or
19 order made or given by an inspector in accordance with the provisions of this
20 Act;

21 (b) when obstructing or hindering an inspector in performing his or
22 her functions under this Act;

23 (c) if that person, without the necessary authority, breaks, damages or
24 tampers with a seal applied by an inspector in terms of this Act or removes any
25 goods, documents, articles, items, objects or things sealed or sealed-off by an
26 inspector or detained or stored at a counterfeit goods depot in terms of this Act;

27 (d) when, if asked in terms of section 5(1) for information or an
28 explanation relating to a matter within the knowledge of that person, he or she-

29 (i) refuses or fails to give that information or explanation; or

30 (ii) gives information or an explanation knowing it to be false or

1 misleading.

2 **19.**-(1) Any person convicted of an offence referred to in section
3 2(2), will be Punishable:

Penalties

4 (a) in the case of a first conviction, with a fine, in respect of each
5 article or item involved in the particular act of dealing in counterfeit goods to
6 which the offence relates, that may not exceed N5,000,00 per article or item,
7 or with imprisonment for a period that may not exceed three years, or with
8 both such a fine and such term of imprisonment;

9 (b) in the case of a second or any subsequent conviction, with a
10 fine, in respect of each such article or item, that may not exceed N10 000,00
11 per article or item, or with imprisonment for a period that may not exceed
12 five years, or with both such a fine and such term of imprisonment.

13 (2) Any person convicted of an offence referred to in section 18,
14 will be punishable with a fine or imprisonment for a period that may not
15 exceed six months.

16 (3) (a) A court that has convicted a person of an offence
17 contemplated in section 2 (2) must when considering which penalty to
18 impose, amongst others take into account any risk to human or animal life,
19 health or safety or danger to property (whether movable or immovable) that
20 may arise from the presence or use of the counterfeit goods in question.

21 (b) Without detracting from the discretion that a court in criminal
22 proceedings has with regard to sentencing, a court that has convicted any
23 person of an offence referred to in section 2 (2) may take into account, in
24 mitigation of sentence, any evidence to the effect that such person, fully,
25 truthfully and to the best of his or her ability had disclosed to an inspector
26 who acted against him or her in terms of section 4(1) or to a member of the
27 Police Force who investigated that offence, all information and particulars
28 available to that person in relation to anyone or more, or all, of the following
29 matters (whichever may have been applicable in the circumstances)-

30 (i) the source from which the counterfeit goods involved in the

1 commission of the offence, were obtained;

2 (ii) tie identity of the persons involved in the importation, exportation,
3 manufacture, production or making of those counterfeit goods;

4 (iii) the identity and if reasonably demanded, the addresses or
5 whereabouts of the persons involved in the distribution of those goods;

6 (iv) the channels for the distribution of those goods.

7 (4) (a) The Minister may from time to time by notice in the Gazette
8 increase the amounts of the fines mentioned in paragraphs (a) and (b) of
9 subsection (1);

10 (b) That notice must be laid on the table in the National Assembly, for
11 its consideration and approval, within 14 days after the date on which it is
12 published in the Gazette, if the National Assembly is then in session, or, if it is
13 not then in session, within 14 days of the commencement of its next session.

14 **20.**-(1) Subject to section 10, the court having convicted a person of
15 an offence contemplated in section 2(2) may declare the counterfeit goods in
16 question to be forfeited to the State or order that those goods and their
17 packaging, and, where applicable any tools that were used by or on behalf of
18 the convicted person for the manufacturing production or making of those or
19 any other counterfeit goods or for the unlawful application to goods of the
20 subject matter of any intellectual property right, be destroyed.

21 (2) Any person who submits any counterfeit goods purchased by him
22 or her (hereafter called the aggrieved person), to an inspector, together with
23 proof of the price that was paid for those goods, will be entitled to receive
24 payment of a sum of money equivalent to three times the amount of that paid, in
25 the following circumstances-

26 (a) The person who had sold those counterfeit goods must have been
27 convicted of an offence referred to in section 2(2) founded on the sale of those
28 goods. Alternatively, an order, against the seller, must have been made in terms
29 of section 10(1)(a) directing that those goods be delivered up to the owner of
30 the intellectual property right, the subject matter of which was unlawfully

Orders permissible
following
conviction of person
of offence
contemplated in
section 2(2)

1 applied to those goods, or up to a complainant deriving his or her title from
2 that owner;

3 (b) The aggrieved person must have co-operated fully in the
4 prosecution of the seller for that offence;

5 (c) when the court having so convicted the seller of those goods
6 or having made an order in terms of section 10(1)(a), has also issued an
7 order awarding sum of money to the aggrieved person and directing the
8 seller to pay that award. However, the court must make the latter order if
9 satisfied that the requirements of paragraphs (a) and (b) have been met.

10 (3) The provisions of subsection (2) will apply and be applied,
11 *mutatis mutandis*, in relation to and for the benefit of any person who,
12 otherwise than by way of a transaction of purchase and sale, has acquired,
13 in consideration for value given by him or her, goods that are counterfeit
14 goods.

15 **21.** Subject to the Constitution of the Federal Republic of
16 Nigeria, 1999 (as amended 2010), and the Criminal Procedure Act, the
17 provisions of this Act will not detract from a person's civil or criminal
18 liability, in terms of any other law, on account of his or her infringement of
19 any intellectual property right and from the capacity or competence in
20 terms of any law to institute civil or criminal proceedings in respect of
21 such infringement.

Civil or criminal
liability under other
laws and institution
of civil or criminal
proceedings there
under not affected
by this Act

22 **22.**-(1) the Minister may appoint any fit and proper person as an
23 inspector for the purposes of this Act.

Minister's power
to appoint or
designate inspectors

24 (2) (a) The Minister, by notice in the Gazette, may designate any
25 specified class or category of persons to be inspectors for the purposes of
26 this Act;

27 (b) The Minister, in a like manner, may amend or withdraw such a
28 notice at any time.

29 (3) The Minister or any official acting under the authority of the
30 Minister, must issue to each of the inspectors contemplated in this section

	1	a certificate in the prescribed form stating that the person in whose name it has
	2	been issued has been appointed or designated an inspector (as the case may be)
	3	in terms of or by virtue of this Act.
Minister's powers regarding counterfeit goods depots	4	23. -(1) The Minister, by notice in the Gazette, may from time to time
	5	designate any place defined in the notice to be a counterfeit goods depot for the
	6	purposes of this Act, and may in a like manner amend or withdraw such a notice
	7	at any time.
	8	(2) The Minister must in respect of a counterfeit goods depot appoint
	9	any fit and proper person as the person in charge of the counterfeit goods depot.
Regulations	10	24. The Minister may make regulations not inconsistent with the
	11	provisions of this Act-
	12	(a) in relation to any matter which, in terms of this Act, may or must be
	13	prescribed;
	14	(b) prescribing any inventory to be prepared or made in terms of this
	15	Act;
	16	(c) that may be necessary or expedient for the proper and effective
	17	control, management and administration of a counterfeit goods depot and the
	18	proper care of the goods detained therein;
	19	(d) in relation to the manner or form in which any application (other
	20	than any application to a court of law) is to be made in terms of this Act, and may
	21	prescribe forms for that purpose; and
	22	(e) in relation to any other administrative or procedural matters that
	23	may be necessary or expedient for the proper and effective administration of
	24	this Act.
Short Title	25	25. This Bill may be cited as the Counterfeit Goods Bill, 2016.

EXPLANATORY MEMORANDUM

This Bill seeks to introduce measures aimed against the trade in counterfeit goods so as to further protect owners of trademarks, copyright and certain marks under the Patent Act against the unlawful application, to goods, of the subject matter of their respective intellectual property rights and against the release of goods of that nature (called "counterfeit goods") into the channels of commerce for that purpose to prohibit certain acts in relation to counterfeit goods as well as the possession of counterfeit goods in certain circumstances to create offences in that regard and prescribe penalties in relation thereto.