

New draft Anti-Counterfeit Law in the UAE



By Rob Deans and Harriet Balloch

Brand owners are welcoming a new draft law (the Law) aimed at combating commercial fraud and counterfeit goods in the United Arab Emirates. The Law is still in draft form but was endorsed at a Cabinet meeting on January 13th, 2013, chaired by His Highness Sheikh Mohammed bin Rashid Al Maktoum, the UAE Vice President and Prime Minister and the Ruler of Dubai.

Benefits for brand owners

Currently brand owners have various options for taking action against counterfeit goods in the UAE. Many brand owners rely on the UAE Commercial Fraud Law (Federal Law No. 4 of 1979) and its Regulations (Ministerial Decision No. 26 of 1984) as these enable quick and cost effective action to be taken through administrative authorities.

The proposed Law will repeal the Commercial Fraud Law and will impose tougher sanctions by way of increased penalties and by providing the administrative authorities with additional powers to combat infringing activity.

The draft Law contains several provisions which brand owners will be pleased to see introduced into UAE law, including provisions which would:

Establish a single body with the role of combating dealings in counterfeit goods across all emirates in the UAE – Under the proposed Law, a Higher Committee will be formed at a national level, with Sub-Committees operating at an emirate level. It is hoped that this will result in a more ‘joined up’ approach than the current regime in which each emirate operates its own independent enforcement authority.

Impose criminal penalties of imprisonment for up to two years and fines of up to AED 250,000 (US\$68,000) for dealing in counterfeit goods, increasing to AED 1,000,000 (US\$272,000) for pharmaceutical and food products – This is good news given that the current level of fines imposed for dealing in counterfeit products is so low that it does not act as any form of deterrent.

Require importers of counterfeit goods to pay the cost of destroying and disposing of the goods – Currently, destruction costs are borne by either the authorities or the brand owner. It is therefore a positive step for these costs to be borne by importers, although this may be of little value in practice if the importer cannot be identified or traced.

Provide the authorities with the right to compel traders to disclose information and documents relating to counterfeit goods – Under the current

regime it is rare for the enforcement authorities to seize any records relating to infringing activity, with the result being that information as to the network and scale of the infringing activity is not revealed.

The inclusion of the power for the authorities to obtain disclosure of this information should encourage the authorities not only to seize counterfeit goods but also to obtain information as to the source of the goods and the scale of the infringing activity.

Potential concerns

There are, however, some important concerns, in that the draft Law: **Empowers the authorities to return counterfeit goods to their country of origin** – This approach is a serious concern as it may result in counterfeit goods being moved to another jurisdiction, which would either displace the problem or result in the goods going back on the market if they cannot be traced after re-exportation.

By providing the authorities with the power to re-export counterfeit goods, the draft Law appears to legitimise a practice which would contravene the UAE’s obligations under TRIPs, which prohibits the re-exportation of counterfeit goods in an unaltered state, other than in exceptional circumstances. It is therefore hoped that this provision will be amended before the draft Law is implemented.

Restricts the impact of the draft Law to identical goods only (not look-alikes) and allows action to be taken on the basis of registered rights only – The current Commercial Fraud Law applies to both identical and lookalike goods, and to registered and unregistered rights. Accordingly, unless the scope of the draft Law is expanded, it will significantly restrict the ability of brand owners to protect their rights.

Conclusion

Despite the potential concerns, this Law represents a positive and welcomed initiative by the UAE government to clamp down on counterfeit goods.

Brand owners will watch with interest to see whether the Law will be amended after consultation and how the implemented version of the Law will sit with the draft regulations, which are likely to provide details of how complaints can be made by consumers and/or brand owners to the committee.

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