

COMMUNIQUE ON

NATIONAL DIALOGUE ON COUNTERFEIT PRODUCTS

THEME:

***PROTECTING THE CONSUMER AGAINST COUNTERFEIT PRODUCTS
THROUGH INTER-AGENCY AND SUB REGIONAL COLLABORATION***

July 21-23, 2008

Venue: Alisa Hotel, North Ridge Accra, Ghana.

ORGANISED BY

***The Food & Drugs Board, in collaboration with the Institute of Packaging Ghana, and
the Coalition Against Counterfeit and Illicit Trade –Ghana under the auspices of the
EU/ACP Business Climate Facility***

1.0 PREAMBLE:

The trade in counterfeit and pirated products has become a problem of enormous proportions in the global marketplace, and Ghana has not been spared. The Singapore Centre for Political Violence and Terrorism Research estimates that the global trade in counterfeit goods is estimated at approximately 650 billion US dollars annually, compared to the global narcotics trade of 322 billion US dollars¹. The OECD puts this number lower at about 200 billion US dollars in 2005 excluding domestic market and internet sales – still larger than the GDPs of 150 national economies and affecting nearly all product sectors². The EU Anti-Counterfeiting project in Ghana also show that the financial cost to Ghana of counterfeiting is about \$200 million annually, not counting the human cost.

Why are criminal organizations increasingly involved? And why are counterfeit products becoming so sophisticated? They used to be only harmless trinkets in the local marketplace, and now it seems like they are everywhere. From fake I-Pods to toothpaste and pharmaceuticals, the offerings seem limitless. The answer is profitability compared to risk. Interpol has cited estimates that for every one euro invested in counterfeiting there is a 10 euro profit. That's a 1000% profit rate on the manufacture of fakes³.

Consumers are generally affected by two kinds of fake goods. Those that they know are fake but choose to buy anyway, and those that they unknowingly buy, thinking that they are real. This is wherein heightened consumer vigilance must come in. While companies take action to patrol markets, they cannot catch everything. They rely on customers to “know their products” and report fakes when they are spotted or suspected.

The art of copying, packaging and labelling has become so sophisticated that it is difficult to tell fake from genuine product unless looking carefully. And far from only being sold on some shady street corner, counterfeit and pirated goods have started to find their way onto regular distribution systems, and onto the local shop shelf, right next to the genuine article. They slip through the system, bypassing standards and safety testing procedures and present serious health and safety hazards.

Aside from the obvious public health dangers, counterfeiting and piracy causes deeper economic effects. From job loss to crowding out of legitimate manufacturers, a dulling of incentives to invest and innovate can result in fewer products from all sectors – from watch makers to software engineers, from pharmaceuticals researchers to singers and artists. Our lives and economies are enriched by the contributions of those with creative capital, and we will all loose out if those people can no longer afford to invest in their creative inspirations.

2.0 ORGANISATION OF THE NATIONAL DIALOGUE

Acknowledging worldwide counterfeiting and piracy trends and the growing impact on Ghanaian economy and society, the Food and Drugs Board, the Institute of Packaging, Ghana and the Business Coalition Against Counterfeit and Illicit Trade, Ghana (CACIT, Ghana), with the support of CP/EU BIZCLIM FACILITY and the Association of Representatives of Ethical Pharmaceutical Industries and other local institutions organized a national dialogue to:

- Identify what the issues and challenges were;
- What the legal and regulatory framework is;
- What the impact of these issues and challenges are on the government, consumers, private sector and society at large;
- Concrete plans and recommendations on the way forward.

The meeting identified the following key issues and challenges:

- A lack of collaboration between:
 - the regulatory agencies,
 - private sector and the regulatory authorities and
 - private sector, consumers and regulatory authorities
 - ECOWAS countries.
- Lack of a comprehensive and punitive legal and regulatory environment which included inter alia the fact that:
 - Laws are not harmonized enough to facilitate prosecution
 - Penalties in the laws are not prohibitive enough
 - Authorities are not adequately empowered to enforce the laws.
- Lack of consumer awareness on counterfeit issues.
- Lack of technology:
 - to produce packaging that cannot be counterfeited; or
 - that aids the easy detection and identification of counterfeits to be identified.
- Lack of enforcement of the existing laws and prosecution of counterfeit cases.

The meeting indicated that the consequences of not tackling counterfeit issues aggressively are likely to include inter alia:

- Reduced investment in the country due to a perception that their products and brands will not be adequately protected;
- The country becoming a dumping ground for counterfeit products;
- Unemployment due to declines in the profit and income of manufacturing companies which would then lead to such companies downsizing or folding up;
- Loss of confidence and tarnishing of the reputation of companies whose products have been counterfeited;
- Loss of revenue to private sector and the government;
- Reduced investment by private sector in innovation;
- The undermining of National Security and judicial systems;

- Loss of confidence in the health delivery system, increased national disease burdens, and the proliferation of harder to treat diseases, with the attendant increase in unnecessary deaths and budgetary allocations to healthcare.
- Increases in road and other accidents in the home and field due to counterfeit spare parts, appliances, building components and electrical gadgets.

Recognising the seriousness of the problem, the meeting proposed the following recommendations.

RECOMMENDATIONS RELATED TO NATIONAL STRATEGY FOR EFFECTIVE POLICING AND REGULATIONS OF COUNTERFEITS.

A task force comprising representatives from government, industry, trade associations and consumers should be established with a permanent secretariat and four recommended sub-committees to deal with issues arising: primarily legislation & regulation, public education & awareness creation, information & intelligence gathering, and human resource and capacity development. This national anti-counterfeiting taskforce should derive its powers from the Presidency by executive and legislative instruments, and should be formed with the main objectives of achieving inter-agency coordination, setting strategic directions for the anti-counterfeiting effort, and promoting agency effectiveness. It was stressed that said Taskforce should not encroach on the mandates of existing departments and agencies. The task force should work with BCACIT whose representatives should be nominated from the aforementioned stakeholders. The proposed course of action should occur within a month. A permanent secretariat of this Taskforce should be set up within 2months and the task force itself should be fully operational and empowered within 3months. The Food & Drugs Board is expected to provide a measure of leadership to the enabling process.

RECOMMENDATIONS RELATED TO COLLABORATION.

There should be a network established within the regulatory authorities and each authority should nominate somebody to act as the focal point for the said authority. There should also be external collaboration with authorities within the sub region and a focal person nominated from Ghana to act as the liaison. The network should be form in 3months and the collaboration on-going. The operational activities of the network should be coordinated by the aforementioned Taskforce.

RECOMMENDATIONS RELATED TO THE LEGAL AND REGULATORY REGIME

The relevant sections of existing laws and acts on counterfeiting and piracy should be consolidated into an anti counterfeit/piracy legal and regulatory framework to cover all product categories. The new legal and regulatory framework should have graded punitive measures to recognise different levels of offence. It was also recommended that this legislation be extended to cover the ECOWAS sub-region. This should be initiated by a committee of the national anti counterfeiting task force in collaboration with the Registrar General's Department and should be coordinated by the attorney General's Office based on sector holder recommendations. It is envisaged that the law reform commission would be able to provide support. Sector holder views will be solicited from industry, consumers, and government. Consultation should be done within 3 months. Petitioning of the law reform commission will be within 6 months and the new law should be enacted within 12months.

RECOMMENDATIONS RELATED TO CONSUMER AWARENESS AND EDUCATION

There should be awareness creation and increased vigilance and surveillance in the market place. There should also be mechanisms put in place for reporting counterfeit issues, as well as for the provision of feedback to consumers on reported counterfeit cases. These mechanisms should be put in place by BCACIT, consumer associations, trade associations, the private sector and the regulatory agencies. The media and telecommunication companies should be involved in the awareness creation programmes. The communiqué from this meeting should be disseminated immediately to the public and awareness building should be an on-going exercise.

RECOMMENDATIONS RELATED TO THE NEED FOR EFFECTIVE TECHNOLOGY.

Industry, government and regulators should identify and promote the adoption of technologies to identify and authenticate the genuineness of products. There should also be an increase in the use of security features on products. The types of technology to be used should be identified within 3 months. Sourcing for proposals should be done within 6 months. The piloting of identified technologies should be done within 9 months and the implementation and deployment of the adopted technology should occur within 12 months.

CONCLUSIONS AND RECOMMENDATIONS

We the stakeholders in the fight against counterfeits coming from both the private and government sectors, having participated in the discussions of problems and solutions related to counterfeits in Ghana, now do hereby resolve to carry forth the recommendations adopted during the proceedings of the 1st National Dialogue on Counterfeit Products, as herein enunciated in this Communique.