

EDITORIAL

IP Highlights is the first edition of "SADER & Associates" newsletter, dedicated to the spread of knowledge regarding intellectual property rights, as well as facilitating access to the latest relevant local & international news regarding all IP related issues.

This spread of knowledge is crucial to the fight against IP related crimes, which are increasing and ravaging our society, hindering our economic development and fostering organized crime.

ISSUE CONTENTS

P.2 - 30 Million LBP: Compensation for the Imitation of Perfume Trademarks

P.3 - The Latest Measures Against: Counterfeit Medication & food products, as well as Software Piracy

P.4- Investigation: The Incrimination of the Silent Killer: Raising the Sentence on crimes regarding counterfeit Medication from Misdemeanor to Felony

P. 11- Recommendations from the Conference on "The Impact of the Protection of Trademarks on the Economic Growth in Light of the Madrid Regulations"

P.12 - 375 Billion USD for the Top 10 Global Brands in 2009

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Stop dealing with counterfeit

Beirut Mega Raid



The Cyber Crime and Intellectual Property Protection Bureau raiding a warehouse



The counterfeited products

October 7, 2010 - One of the Biggest Raids in Beirut's history took place, where more than half a million of counterfeited products were confiscated. The Cyber Crime and Intellectual Property Protection Bureau in the Judiciary Police raided in Borj El Barajne three warehouses and a large distribution store where it confiscated tons of different kinds of imitated goods holding renowned trademarks, mainly: Cosmetics, shampoos, toothpastes, children toothbrushes, detergents, in addition to machines used in the imitation process, in bottling alcoholic beverages and in sealing detergents. Three persons were arrested, and the warehouses and the store were sealed.

The Incrimination of the Silent Killer

In a precedent in the Arab world, the Lebanese Parliament amended article 92 of Law No. 367/1994, regarding the practice of pharmacy in Lebanon, by tightening sanctions against perpetrators of acts of trade dealing with counterfeit drugs, contraband, expired, unregistered, or prohibited products. Therefore, Sader devoted, in the first issue of IP Lebanon Highlights, an investigation regarding counterfeit medicine. Counterfeit medication currently encompasses over 10% of the international medications market, and 30% of the markets in the developing countries. (P.4)

30 Millions LBP: Compensation for the Imitation of Perfumes Trademarks

The Criminal Court of Appeal in Mount Lebanon - Third Chamber, presided by Judge Elias Khoury, upheld the decision of the criminal single judge in Baabda Ala'a El Khatib in the case of imitation of perfumes trademarks, and increased the damages to be awarded to LBP 30,000,000. It also ratified the first instance decision which deemed that the confiscated goods prove the intent of the defendants to imitate the distinct marks of the plaintiff companies, to deceive the purchaser and thus attract customers. (P.2)



The Decision of the Criminal Single Judge in Baabda

The Appellate Public Prosecution of Mount Lebanon has filed before the criminal single judge in Baabda an action against three persons to be tried as per Articles 702, 703, 704 and 714 - Penal Law, based on a complaint submitted by three perfume producing companies. The plaintiff requested that the defendants pay the damages amounting to LBP 30,000,000, while the defendants assured that they had no knowledge they were breaching the law, and that their actions were not deceitful to the purchasers since the bottling occurred in front of them.

The Criminal Single Judge in Baabda: "The evidence confirmed the validity of the allegations against them, mainly the crimes of imitation and unfair competition."

Each of the defendants were charged with the imitation of the distinct marks of the plaintiff, the placing of such marks on empty perfume bottles in their store and the filling of said bottles with the contents of gallons of perfumes similar to the perfumes produced by the plaintiff companies, and such in order to deceive the purchaser and attract customers.

The court deemed «the information, be it the evidence or conclusion, in addition to all proven facts in the file, namely the allegation that the

defendants were aware of the illegality of their actions, confirm the validity of the allegations against them, mainly the crimes of imitation and unfair competition.»

Therefore, the court ordered:

- To drop the suit against the three defendants for the crimes set forth in Articles 703 and 704 - Penal Law.
- To convict each of the defendants for the crime set forth in Article 702 - Penal Law, and to fine them with the sum of LBP 600,000; to convict each of the defendants for the crime set forth in Article 714 - Penal Law, and to fine them with the sum of LBP 300,000; to merge the penalties, and to inflict upon each of them the first penalty, being the severer one; to imprison whoever fails to pay the penalty, the sentence being one day of imprisonment for every LBP 10,000.
- To impose upon each of the defendants the obligation to pay the sum of LBP 4,500,000 to the plaintiff as compensation for the damages caused thereto, provided that such compensation is divided equally among the companies.

Decision of the Criminal Court of Appeal in Mount Lebanon - Third Chamber

The defendants filed an appeal on 6/2/2010 against the public right and the plaintiff companies, and against the decision issued by the criminal single judge in Baabda on 28/1/2010, and requested to be acquitted from the crimes attributed thereto; to cease the pursuits against them; to cancel the compensation and to lower the fine.

The plaintiff companies appealed in 12/2/2010 the Court's decision to accept the appeal of the defendants, and requested that it be repealed since it breaches Article 98 - Penal Law, and Article 116 - Law no. 2385/24 and the court neglected to order the confiscation and destruction of the found goods, and that it be repealed in regard to the amount of the ad-

judged compensation, and that said compensation be raised to the sum of LBP 100,000,000.

The court based its opinion on the facts of the lawsuit, the report of the Intellectual Property Protection Bureau which had raided the stores and warehouses, and concluded that the confiscated goods prove the intent of the defendants to imitate the distinct marks of the plaintiff companies, deceive the purchaser and to attract customers. Therefore, the appealed decision must be upheld and the appeal of the defendants rejected.

As for the appeal of the plaintiff companies, the court deemed that the decision of the court of first instance did not impose the sentences set forth in Article 98 - Penal Law and Article 116 - Law no. 2385/24, which necessitates the repeal of such decision in this regard, and the ruling to destroy the confiscated goods. The court stressed the necessity that the compensation for the damage be equal to the damage caused to the plaintiff.

The Criminal Court of Appeal in Mount Lebanon: "The confiscated goods prove the intent of the defendants to imitate the distinct marks of the plaintiff companies, to deceive the purchaser and to attract customers."

Therefore, the court ordered:

- To uphold the appealed decision with respect to the conviction of the defendants with the crimes set forth in Articles 702 and 714 - Penal Law; to uphold the adjudged penalty; and to reject the three appeals submitted by the defendants.
- To repeal the appealed judgment since it did not order the confiscation and destruction of the goods, and to re-order the confiscation and destruction of the goods with the knowledge of the Intellectual Property Protection Bureau.
- To impose upon the defendants the obligation to pay damages amounting to LBP 10,000,000 each to the plaintiff companies, provided that it is distributed equally among them.

The Latest in Measures Against...

Counterfeit Medications

The discontinuation of 38 Zein Al Atat Products

February 2, 2011 - The Ministry of Economy and Commerce ordered that 38 Zein Al Atat product be discontinued for several reasons, namely: the use of incorrect medical allegations that are misleading to the consumer, the discovery of dangerous and harmful chemicals, the absence of any effective material in the products... Saudi and Emirati authorities have already ceased the circulation of such products.

The Apprehension of an Unlicensed Medication Factory

February 24, 2010 - Customs apprehended an unlicensed medication factory which the Ministry of Health had no knowledge of, and confiscated a large quantity of counterfeit and smuggled medication whose quality is not guaranteed as well as medical products and raw materials used in the production of medication. Such operation was described by Customs as "the first of its kind in Lebanon".

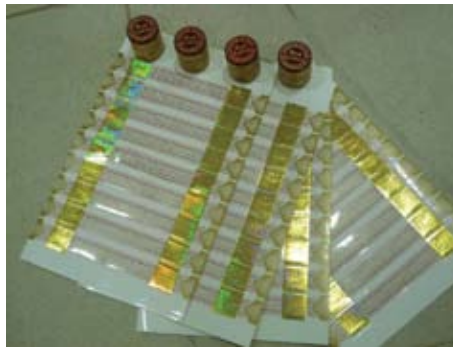
Bad Foodstuff

The Falsification of Expiry Dates of Foodstuff and the Release of Detainees

Al Akhbar, January 17, 2011 - In May 2010, the Consumer Protection Bureau has discovered the falsification of the dates of expired cans, in a pickles and canned food factory in Bekaa. Such cans, amounting to 35,000, as well as the falsification stamps were confiscated. Despite the confession of the detainees to having falsified the dates upon the request of the owner of the factory, who purchases such expired products from wholesale traders in Jal

El Dib, they were released on bail amounting to LBP 1,000,000 each, and their offense was deemed a misdemeanor "since the intention to counterfeit and harm the lives of consumers was not proven".

Customs Confiscates Imitated and Bad Foodstuff and Consumer Products



September 23, 2010 - The Customs confiscated a large quantity of bad and counterfeit foodstuff and consumer products ready to be distributed into the market, after having raided two warehouses in Dohat El Hoss and Aitat. The quantity of confiscated goods was very large and constituted of: tomato paste, pasta, vermicelli, chicken stock cubes, sanitary napkins, and detergents, some of which were expired and the others of bad quality. Such products were ready for bottling, canning or packaging, or already holding wrappers with known local and international trademarks.

Customs Discover a Factory and Two Warehouse for Bottling Imitated Alcoholic Beverages

July 13, 2010 - Customs raided a factory bottling imitated alcoholic beverages and two warehouses for the storage of such bottles in Awkar. The division has found cardboard boxes containing a certain quantity of glass bottles filled with imitated whiskey and vodka and holding famous trademarks, as well as plastic gallons and tanks containing imitated alcoholic beverage, and a large quantity of stickers and plugs of different marks

with clichés for their printing.

Software Piracy

The Confiscation of More than 2,000 Pirated CDs

November 26, 2010 - The Cyber Crime and Intellectual Property Protection Bureau raided in Saida numerous commercial institutions suspected to have violated copyrights, and confiscated more than 2,000 CDs containing pirated software. This initiative taken by the Bureau was triggered by a complaint submitted by Microsoft, after several complaints from its clients about problems they encounter when they tried to use certain software that turned out to be pirated and containing viruses jeopardizing some of these clients and exposing them to security breaches.

PC Software Piracy Decreases by 2% in Lebanon

May 24, 2010 - The piracy of PC software has decreased by 2% in the Lebanese markets, therefore reaching 72% according to the international study on "PC Software Piracy - 2009" issued by "Business Software Alliance" (BSA). The commercial value of the losses caused by the use of such unlicensed software in Lebanon reached USD 46,000,000. Nonetheless, Lebanon is not close to the international rate of PC software piracy which increased from 41% to 43%.



The Incrimination of the Silent Killer Raising the Sentence of Imitation of Medications from Misdemeanor to Felony

It is a silent killer distributed by criminals. It is the counterfeit medication, taking over 10% of the international medications market, and 30% of the markets in the developing countries. How is Lebanon fighting this silent killer? The entire world is haunted by horror stories about its effects, taken aback by the scenes of cellars where these medications are produced, and sickened by the black bags circulating them. How is the State responding to all that? What is the responsibility of the pharmacists and the role of the citizens vis-à-vis the jeopardizing of their health?

In a stormy December night, Sami arrived to the Emergency Room in one of Beirut's Hospitals. He was sweating and suffocating. Minutes later, Sami slipped into a coma. Hours passed by and Sami did not wake up. After a few days, he passed away! He was diabetic. That day, he had his usual insulin shot; however, the sugar level kept getting higher until it exceeded 510. It turned out that the insulin shot only contained water. The fake shot was purchased by the pharmacy from a peddler with a black bag. Sami passed away at the age of 33, leaving behind three kids and a wife... Since 1999, none of the persons involved in the killer shot were prosecuted.

In New York in 2002, after a liver transplant, Tim Fagen had to take weekly shots to increase his depleted red blood cells. However, after each shot, he would have severe spasms that went on for days. These pains were no side effects of the injection, and were not caused by the refusal of the medication... they were the result of an imitated medication. Only after a call from the pharmacist Fagen found out that his shots were imitated. The pharmacist informed him that this medication was on the list of imitated medications distributed in the market, published by the Department of Health. Fagen did not purchase these injections from a small pharmacy; the pharmacy was one of the biggest chains in the USA (having 5400 branches all over the

country). Fagen filed a lawsuit against the manufacturer, the distributor and the pharmacy, but still does not know how these shots came to his possession¹.

Silent Killer Distributed by Criminals

Counterfeit medication is usually imitated from the outside, thus making it difficult to differentiate it from the genuine medication. However, what's contained is no medication at all, it is a silent killer distributed by criminals. Its effect vary depending on the condition of the victim: high blood pressure, stroke, high levels of blood sugar, coma, hemiplegia, paralysis... even death. This silent killer is able to perpetrate the perfect crime... its traces disappear in the body of the victim.

As per the World Health Organization, 10% of the international medication market consist of counterfeit medications whose value exceeds USD 35 billion. So how is Lebanon dealing with this international problem?

World Health Organization Counterfeit Medications Occupy:

- 50% of the medications sold online.
- 30% of the medications market in developing countries.
- 10% of the international medications market.
- 5% of the size of the international trade.
- 1% of the medications market in developed countries.

The Counterfeiter of Medications is... a Killer!

The Parliament has recently amended Article 92 of the Law on the Regulation of the Pharmaceutical Profession, aggravating the sentence imposed on any sale, manufacture, import and distribution of counterfeit, smuggled, expired, unregistered medications or whose circulation is prohibited.

The old law set forth a sentence that varied between imprisonment for one to three years and/or a fine amounting to LBP 10 to 50 million. The amended law imposed imprisonment for five years at least, and a fine amounting to LBP 100 to 150 million. Attorney Rany Sader, specialized in the intellectual property protection field, dubbed the amendment «a great achievement» since it upgrades the section from misdemeanor to felony, and treats the perpetrator as a criminal not a mere violator of the Law. Sader adds: «The most prominent point in the amendment is that the court has no longer the ability to choose between the fine and imprisonment; it is from now on bound to sentence to both sanctions.» He hoped that the courts apply the amendment in a strict manner.

Ziad Nassour, the President of the Syndicate of Pharmacists, linked the issuance of the amendment to the worldwide efforts exerted in view of the issuance of similar laws, pur-



suant to the recommendations of the World Health Organization. He revealed that the Arab Pharmacists Union has convened recently to set a strategy whereby the sanction inflicted upon whoever deals with the imitated medications market is standardized, and such in order to dismantle the smuggling networks moving from one country to another, fleeing the legal sentence for such offense.

Armand Phares, the president of the Lebanese Pharmaceutical Importers Association, considers that the amendment focused on the liability of the pharmacist who is responsible for the quality of the medication after its receipt from the warehouse or distributor. He said: «The pharmacist has its esteemed position in the society as per the legal and moral rules. Should the pharmacist fail to abide by these rules, this amendment prohibits them from practicing the pharmaceutical profession for life.» Dr. Ismail Succaria, former deputy, long tormented by the dire efforts to combat counterfeit medication in Lebanon, said: «the proof

of the pudding is in the eating. We have many laws; however their application is hindered by the interference of politicians to stop the investigation. Politics have always played a role in the discontinuation of investigations with persons responsible for the counterfeit of medications.»

Beyond a Mafia... It is a Regime Crisis

After having submitted 51 inquiries to the Government, and requested 11 interrogations, Succaria regrets that “nothing materialized, even though the reports of the central investigation confirmed what I had already revealed.” In his book “Pharmaceuticals... Regime Crisis or Mafia Meddling?”, Succaria reveals dreadful facts regarding the Lebanese medication market, under the non-feasance of the investigation and control authorities, and reminded of the issuance of the Decision no. 2467/95 cancelling the condition of governmental control over the manufacture, analysis, import, export and distribution of vaccines, serums and blood derivatives, and exempting statutory medications from compulsive analysis prior to their receipt from Customs².

Succaria published selected paragraphs from the memorandum of the State Council no. 538/2003-2004, revealing the entry of medication to the local market based on

invoices that include: unregistered medications with no price, medication with no known expiry date, production and ratification from the country of origin³. The report also reveals the failure to apply the provisions of the Law on the Regulation of the Pharmaceutical Profession to warehouses and pharmacies where unregistered medications were found, and pharmacies refusing to deliver copies of the purchase and import invoices.

The report also unveils selections from the pharmaceutical inspection minutes, namely the inspection of a pharmacy where medication with no stamp and no price were found (1995), the existence in a warehouse of medication carrying neither the date of production, the lot number nor the expiry date (1997), the existence in the market of medication coming from a certain warehouse carrying neither the price, the name of the importer, nor the registration number (1998), the statement of a pharmacist, upon his interrogation regarding the purchase invoice of certain products, that he was not aware that the circulation of these products was forbidden in Lebanon, and that he purchased these products from a passer-by (1999). It is noteworthy that none of these medications were confiscated, and none of the infringers were prosecuted⁴.

US Secretary of Health (2003):
Counterfeit Medications
1% of the US Market
=
15 billion dollars per year



In this context, Succaria recalls the televised confession of a former member of the Central Inspection Board that the medications file has a political aspect and pressure was exerted for its cover-up⁵; and laughed when asked about the party protecting the medications mafia in Lebanon before answering: «this matter is beyond a mafia, an organization, or a group of people... it is a matter of regime crisis.»



Horror Stories from Around the World

- The Niger (1995): Thousands were killed from counterfeit vaccines for meningitis.
- Haiti (1996): Hundred of children died from counterfeit cough dugs containing antifreeze products used for cars.
- China (1997): Veterinary drugs are re-packaged for human use in China.
- Southeast Asia (1999): One third of malaria drugs are counterfeit.
- China (2001): 192,000 persons died from counterfeit drugs containing toxic substances or void of any effective ones (Official Chinese Channel)

An official in a medication import company revealed that these companies notified the Ministry of Health of the existence of counterfeit medication in the market, but did not know the results of the investigation. He added «The Ministry of Health asked us about the batch number of medications suspected to be counterfeited, but did not deliver to us the boxes to carry out the necessary tests. The Ministry always kept the boxes for investigation and judicial procedures purposes.»

The president of the Lebanese Pharmaceutical Importers Association unveils the subscription of 40 medication import companies in the Association, whereas there are 30 other non-affiliated companies. Phares confirms that the Association guarantees the abidance of all subscribed companies by the legal

standards, but is not liable for the activities of the other companies. On the other hand, he assures that all companies are managed by full-time pharmacists, duly registered in the Syndicate of Pharmacists, and are therefore bound to abide by the Law on the Regulation of the Pharmaceutical Profession, under penalty of legal prosecution. Nassour confirms in this context that the current situation has ameliorated since the judicial system is cooperating in a satisfactory and swift manner with the prosecution of any person dealing with counterfeit medication.

Borders Control, Prosecution and Coordination... Safety Procedures

Customs has lately discovered three factories for medication packaging, and another producing medication without a license. It appeared to the Pharmaceutical Investigation Bureau that the confiscated medication are in the list of counterfeit and smuggled medications, and their quality is therefore not guaranteed. This operation is considered the first of its kind in Lebanon. However, the official in the medication company confirms that Lebanon is not deemed a country producing counterfeit medication as other producing countries.

Lebanon receives counterfeit medication from abroad, thus customs must play a crucial role and be the defender of people's health. The official pinpointed the recent coop-

eration of the customs by training its inspectors and sending them to conferences. Nevertheless, it is impossible to control the borders completely; therefore, counterfeit medication must be combated in the local markets.

The vice-president of security in an international medication company assured that companies in developing countries usually carry out themselves all pursuits upon the absence of the State¹. In Lebanon, however, and as per the official in the medication company, companies failed to effectively pursue counterfeit medication, since they assume that nothing will change, no matter how much they will try. Nonetheless, and after the companies started to cooperate with State departments, and their staff started to take action, the spread of counterfeit medication diminished. The official stated: "The kinds that were the focal point of the pursuit diminished by 50%. However, the counterfeit mafia easily switch to another medication, therefore all types of imitated medication must be equally pursued."

The President of the Syndicate of Pharmacists confirmed that the promotion of counterfeit medication became much more difficult than before, thanks to the legal amendment. Nassour assures that "these operations are extremely dangerous nowadays, and I don't think that anyone dares anymore to carry a bag and move from one

area to another to sell killing medication. We don't find the same items that we used to find. It is true that we cannot pretend that the market is clean, since it is possible that they may have hid quantities and burned others as has happened a few days ago in an area in the Bekaa."

Black Bags, a White Van... and Spider Webs

The method of promoting of imitated medication differs from one dealer to another. Some carry a black bag and stand on the sidewalk, others park a white van on the road. «As if they are selling narcotics, and the latest trend is the delivery of the medication», as described by Dr. Succaria, who adds that «none of the accredited sources of sale and distribution of medications, be it pharmacies, dispensaries and even hospitals dodged the spread of counterfeit medication. These medication are sold in retail without their packages where the source and expiry are mentioned.»

The trade of counterfeit medication is extremely organized by international networks similar to the major transnational companies, which makes the pursuit even harder. For instance, the pursuit of 800 medication boxes for the treatment of anemia in Kentucky in 2001 resulted in the confiscation of a meager 10%, while the profits of the criminals exceeded USD 46 million⁷. The case of Haiti (1996) exposed the involvement of Haitian, Chinese, German and Dutch companies in the manufacture of cough medication killing hundreds of children, however the investigation did not reveal the location where these medications were manufactured⁸.

As I they were spider webs! In 2002, large quantities of counterfeit Viagra manufactured by China through intermediate companies

in China, India, and the USA for dealers through the internet in Colorado and Nevada. The medication made it to the USA hidden in amplifiers and toys, and found their way to the consumer through emails. One of the dealers confessed to the distribution of millions of boxes monthly. A batch of 1800 boxes manufactured in China, but codified as they are manufactured in India and Pakistan by virtue of a license from transnational

companies, show the participation of ten imitation factories in five different locations, and five other factories for packaging⁹.

Medications for Incurable Diseases and Most Commonly Used Are the Most Likely to be Counterfeit

Medications most likely to be imitated are the medications for incurable illnesses and the most commonly used medications. As per Nassour, the most targeted medications are heart, blood pressure, blood circulation and cancer medications, which are at the same time the medications which have the most dangerous effects, adding to them the hormonal and gynecological medications, antibiotics, sedatives, sexual stimulators, vitamins and steroids.

The discovered counterfeit medications unveil numerous types of imitation, as per the official in the medication company. These imitated medications contain no active substances such as water, sugar, dirt and powder, others contain toxic substances such as acid, paint and cement, while others contain a small portion of the active substance, which is much less than the required quantity, such as the counterfeit batch of Aids medications found in 2001 which contained one milligram instead of 6. Additionally, there are also medications that contain the active substances of other medications.

And then there's the parallel trade, which consists of stocks of excess medications from the main manufacturer, or from factories holding a license from the mother company during additional working hours. These medications contain the correct amount of active substance, but, for smuggling purposes, are preserved in conditions that do not take the public health into consideration which jeopardize the quality and spoil the active substance.





In this context, a manager of an international medications company based in Europe said the following:

We have no idea how these medications were preserved and distributed, or who purchased them. Therefore, we cannot be held responsible for any side effects caused by the use of these medications.^{10»}

A Room under the Stairs or a Legal Factory

The manufacturing locations usually vary between small domestic

workshops and licensed factories working overtime for low income¹¹. Nassour reveals that the Lebanese customs recently discovered in a residential apartment in Awkar a workshop where steroids were being imitated through the use of small compression machines, baby powder and sugar.

A factory for the imitation of sexual stimulants was discovered in Dubai. It contained a cement mixer surrounded by white powder and bottles. During the day, the mixer must have been used to fortify a wall in some building, while at night, it mixed the dust of active substance, white powder, sugar and water to imitate one of the most renowned sexual stimulants in the world, and the most commonly used in the UAE. One of the major counterfeiters of this medication, after being apprehended in London and sentenced to imprisonment for five years, admitted that his factory produced 500,000 pills per day¹².

According to the president of the Lebanese Pharmaceutical Importers Association, this is an illegal

business. Unlicensed parties registered in neither the social security, the ministry of health nor the ministry of finance evade taxes, exploit the names of trustworthy companies and manipulate local markets, the national economy, the international trade and most importantly people. As long as they do not pay the cost of the intellectual property, they easily switch from one product to another, mix active substances and counterfeit ones in the same batch in order to benefit from the commercial facilities granted to the genuine product¹³.

The Pharmacist... The Consumer's Guarantee

The official at the medications company assures that «any purchase deal with other than the approved agent, for prices that are lower than the approved ones, or without an invoice must lead you to suspect the genuineness of the medication.» In all cases, the pharmacist is responsible for the verification of the quality and effectiveness of the medication, according to the president of the Syndicate





of Pharmacists, who requests that the country protect the profession of pharmacy against the trade in people's health «in order to avoid dire outcomes. There are outsiders to the profession, and there are a lot of temptations, and a lot of attempts to introduce these counterfeit medications to the commercial speculation market.»

In his turn Nassour states that “we stand today before a new trend, before counterfeit medication that are identical to the genuine ones, and therefore cannot be easily discovered.” However, the genuine medication carries the distinct mark, i.e. the hologram and the security label, the registration number in the ministry of health, and the lot number. Efforts are currently underway to add a barcode and an alphanumeric code on each box, which renders the imitation impossible.

It is true that the pharmacist is the consumer's guarantee, but the latter must be responsible for his own health as well. «Some are tempted by the low price, and take the bait»,

Succaria warns; «We must doubt every medication box whose price is different than the one approved in the market, since every unordinary thing contains unordinary components.» The most precious thing is people's health, and people must overcome their shyness and political and social considerations, raise their voices and report whoever is manipulating their health and wealth in an impudent and cruel manner.

Endnotes:

1. Tim Phillips, “Knockoff: The deadly trade in counterfeit goods”, Kogan Page, London, 2006, p.187
2. Dr. Ismail Succaria, «Pharmaceutics... Regime Crisis or Mafia Meddling?», Al Farabi, Beirut, 2010, pp. 296-297.
3. Succaria, pp. 315-316.
4. Succaria, pp. 320-321.
5. Succaria, pp. 312-313.
6. Phillips, p.191
7. Phillips, p.190
8. Moises Naim, “Illicit: How smugglers, traffickers and copycats are hijacking the global economy”, William Heinemann, London, 2005, p. 124
9. Naim, p.124
10. Phillips, p.195
11. Naim, p. 124
12. Phillips, p. 202-203
13. Naim, p. 2

LBP 40 Million... The Profit from Sales of Counterfeit Medication Boxes

The single judge examining criminal lawsuits in Jbeil issued a judgment in presentia on 21/7/2009 against a pharmacist for the offense of Article 92 of the Law no. 367/94, and fined him the sum of LBP 10,000,000.

In the facts, it appears that a medication box for sexual dysfunction containing 30 counterfeit pills was found in the pharmacy of the defendant. The defendant admitted that he had bought the box from a person who came to his pharmacy four months ago for the price of USD 100, despite having the knowledge that the actual price of the medication box is higher than the price he paid.

Therefore, the court deemed that the price paid by the defendant serves as complete evidence that the latter had knowledge of the fact that the medication is counterfeit. The court also deemed that fact of keeping the medication in the pharmacy for a period of four months without actually having used any pill constitutes as evidence of the inaccuracy of the statement of the defendant that the medication was for personal use.

The company producing this medication waived its right after settlement with the defendant in return for USD 20,000.

CONFERENCES

The Conference on “The Impact of the Protection of Trademarks on Economic Growth, in Light of Madrid Regulations”, for the Aggravation of Penalties for Crimes against the Intellectual Property”.

On April 29 & 30, the international scientific conference entitled “The Impact of the Protection of Trademarks on the Economic Growth in Light of Madrid Regulations” was held in Beirut, under the sponsorship of the Minister of Economy and Trade his excellency Mr. Mohammed Al Safadi, and in cooperation with the American Academy of Technology and Business, and the International Chamber of Commerce-Lebanon, and the Association of Lebanese Industrialists.

Attorney Rany Sader gave a lecture entitled “Imitation and Piracy... Troublesome Situation”. Sader attributed the spread of the phenomenon of imitation in Lebanon to the tolerance of the society which does not see imitation as a crime, the le-



niency of the Lebanese judiciary since it considers the imitation offense to be a misdemeanor instead of a felony, and the spread of technology and ease of communication which opened doors for the market and facilitated the imitation.

On the one hand, the consumer desires to possess goods holding famous trademarks at cheap prices, and on the other hand, the trader yields major gains by, exploiting the fame of the trademark of third parties and the trust granted to such trademark by the consumer, producing cheap goods due to cheap labor and cheap raw material, tax evasion and the refusal to abide by the rules of public health. Sader revealed that the trade in imitated goods exceeds USD 500 billion per year, and highlighted the tight relation between the imitation and piracy on the one hand, and money laundering operations and organized crimes on the other.

Sader explained the economic outcomes of the imitation to the private and public sectors. Colossal losses in national revenues were registered in the public sector due to the evasion by imitators of taxes and fees, namely VAT and customs charges, in addition to the neglect to pay Social Security fees. On the other hand, corporations of the private sectors endure loss of market share due to the unfair competition, in addition to the moral damage caused to the imitated trademark on one hand, and to the owners of said trademark on the other. Sader noted that imitation also has a dire effect on investments and national industries.

In the midst of his talk about the social outcomes of imitation and

piracy, Sader pointed out that persons operating in this sector have no social security, that the consumer of imitated goods enjoys neither protection nor after-sale service, and said: “The price paid by the consumer is not cheap compared to the low quality of the consumed product.” He also drew the attention to the ecological damages caused by the use of imitated goods, and warned against the health and social protection effects caused by their use. Sader also unveiled the exploitation of funds resulting from the trade of imitated goods in illegal businesses not subject to any professional restrictions, including terrorism and corruption.

5% of the world trade in medication are imitated.

20% of the sale of clothes in Europe are imitated.

50% of the sale of cigarettes in Sweden are imitated.

190 billion cigarettes are imitated yearly by China.

520,000 plane parts are produced yearly.

Sader discussed the conditions and elements of imitation in Lebanon, and noticed the existence of an overall similarity between the two trademarks, and not only identical copying by one mark of another, and advised to take into account the similarities and not the minute differences.

He added that it is possible to take a main element from a certain duly registered trademark, and add to it or merge with it another part from another trademark, even if such part is minor. As for the moral ele-

ments, the concept of imitation relies on the occurrence of confusion and mix-up in the mind of the consumer who loses the ability to differentiate between the goods due to the existence of the same visual and/or auditory and/or graphical effects in both trademarks. Add to that the benefit of the imitator from the fame of the genuine mark, and the belief of the consumer that the good sold under a certain name is manufactured by another mark.

Sader stressed the necessity to condemn imitation, regardless of the deceit, ill-faith, rigor of the courts, establishment of specialized courts, and the cooperation of authorities responsible in combating the manufacture, export, import, distribution and sale, namely the Ministry of Economy and Commerce, the Internal Security Forces, the Lebanese Customs and State Security.

Recommendations of the Conference on «The Impact of the Protection of Trademarks on the Economic Growth in Light of Madrid Regulations»

- 1.The call by the Arab Industrial Development and Mining Organization to set an Arab convention on the industrial property, in order to guarantee the registration of trademarks in all Arab countries upon the registration thereof by any citizen in any Arab country.
- 2.The call upon the Arab countries to cooperate in a tight manner in order to create a unified Arab stance in the face of any infringements against intellectual property rights on the internet and in order to combat piracy.
- 3.The drawing of contracts of exploitation of the financial rights of the author and owners of neighboring rights and the drawing of sample contracts, in order to facilitate matters for inventors and to care for their legal rights.
- 4.The establishment of specialized courts to settle conflicts related to the intellectual property, in order to guarantee the swift settlement of such conflicts by qualified judges, and entrust the objection, deletion and cancelation to an independent committee within the national security circuits.
- 5.The establishment of an Arab arbitration center before the Arab League to settle intellectual property conflicts as applied by WIPO.
- 6.The continuous rehabilitation and training of persons concerned with inventions and dealing with different fields of intellectual property in order to cope with the new trends and facilitate the circulation of doctrinal and judicial jurisprudences through the establishment of an interactive database.
- 7.The creation of an Arabic and international mechanism to guarantee the copyrights by controlling the disposal of the original copy of the works, regardless of the location of such disposal, therefore guaranteeing the payment to the author of the percentage legally due thereto.
- 8.The periodical review of the national financial sentences imposed on the infringement of intellectual property rights to cope with the inflation and to achieve public and private deterrence.
- 9.The call upon the Arabic legislator to strengthen sentences imposed on the crime of infringement of intellectual property rights related to the health of the consumer, namely in the fields of foodstuff and medication.
- 10.The implementation of the Arab League Convention to execute the national judicial judgments, thus guaranteeing the pursuit of the infringer of the intellectual property without the need to issue separate judicial judgments from each Arab country.



EVEN THE CLOSEST THINGS TO YOU MIGHT BE FAKE



WIPO National Workshop on Intellectual Property Rights Enforcement

Beirut: On December 9 and 10, 2010 The World Intellectual Property Organization (WIPO) in cooperation with the Ministry of Economy and Trade of the Republic of Lebanon organized the WIPO NATIONAL WORKSHOP ON INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT.

After a welcome addressed by The Representative of The Ministry of Economy and Trade and the Representative of WIPO, eight themes were

developed with several speakers from around the world

Theme one covered an Overview of the Intellectual Property System. Then theme two covered Counterfeiting and Global Warming in a Flat World. Following that, the debated centered on the Accounting for Socio-Economic and Technological Circumstances in IP Enforcement. At the end of the first day the local speaker talked about the Enforcement of the Lebanese IP Law and opened the floor to questions.

The second day started with an introduction on How to effectively tackle counterfeiting in the Internet Era. The following theme was about Balancing the Need for Effective Enforcement and the Imperatives of Facilitating Legitimate Trade. Theme seven covered IP Enforcement and Border Measures. The final theme discussed Piracy and Counterfeiting and its Impact on the Lebanese Economy.

Finally, in the closing ceremony projects of workshops were announced, especially regarding IP in the pharmaceuticals domain.

For Your Info...

The First 10 Trademarks in the World in 2009 Are Worth... USD 375 Billion

The US Coca Cola Company came first in the international categorization of the best trademarks in the world, with a value of USD 68.7 billion, according to the categorization carried out by Interbrand last year.

According to Interbrand, the value of the first 10 trademarks in the

world reached around USD 375 billion, and varied between software companies, foodstuff, car parts, and entertainment.



Beware of the Damages Caused by Imitated Jewelry!

New research in Germany proved the possibility of allergic reactions against cheap or fake jewelry. Wearing earrings made of metal may cause swelling or a painful red pimple. Even metal coins, belt buckles and mobile phones may have the same effect when they come in contact with the skin. In fact, these materials contain nickel, which is the major cause of all kinds of skin allergies in the industrial world.

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