



**COMMUNITIES AND LOCAL GOVERNMENT SELECT
COMMITTEE INQUIRY INTO TRADITIONAL RETAIL MARKETS**

**RESPONSE FROM
THE ALLIANCE AGAINST INTELLECTUAL PROPERTY THEFT**

January 2009

ABOUT THE ALLIANCE AGAINST IP THEFT

Established in 1998, the Alliance Against Intellectual Property (IP) Theft is a UK-based coalition of 21 trade associations and enforcement organisations with an interest in ensuring intellectual property rights receive the protection they need and deserve. With a combined turnover of over £250 billion, our members include representatives of the audiovisual, music, games and business software, and sports industries, branded manufactured goods, publishers, retailers and designers.

The Alliance is concerned with ensuring that intellectual property rights are valued in the UK and that a robust, efficient legislative and regulatory regime exists, which enables these rights to be properly protected. Our members work closely with trading standards and local police forces to reduce the harm caused by intellectual property crime in local communities and to ensure that legitimate businesses and traders are able to operate fairly.

We work closely with the Department for Innovation, Universities and Skills and the Intellectual Property Office to raise awareness of the harm caused by IP theft. We, and many of our members, are also participants in the IP Crime Group, which facilitates cross departmental dialogue and joint working amongst the relevant enforcement bodies and organisations.

INTRODUCTION

Traditional markets play a valuable part in the consumer shopping experience, providing for many an environment where they can purchase goods more cheaply than those for sale in retail shops. Visits to such markets can also provide an outing for the whole family, in the belief that they offer a safe shopping environment.

The Alliance is very concerned, however, about the amount of counterfeit and pirated product that is available at markets up and down the country and appreciates the opportunity to draw the Committee's attention to this, and to the harm it causes.

We recognise that the inquiry is designed to consider mainly the operation and the social / economic effects of traditional retail markets, and that car boot sales have been deemed to be outside the scope of this inquiry, and we understand why such a distinction has been made. However, we respectfully draw the committee's attention to the fact that the same problems regarding the sale of fake and counterfeit goods, and the harm this activity causes, are equally to be found in traditional retail markets (be they covered or uncovered), occasional and seasonal markets and car boot sales and trade fairs (e.g. computer, watch and book fairs).

WHY GREATER REGULATION IS NEEDED

Markets (which include occasional sales, non-chartered markets and car boot sales), are not uniformly regulated and therefore offer easy opportunities for those who wish to trade illegally. Markets are infiltrated by racketeers and criminal gangs for whom intellectual property (IP) crime is just one in a portfolio of illegal activities that makes up a criminal lifestyle. At present, the trade in counterfeit and pirated goods represents a high return and very low risk and markets – be they occasional, fixed or permanent – are the venues of choice.

There is increasing evidence of children being used to front up market stalls in order to protect the counterfeiters, and of violence and intimidation in the enforcement of traders' patches. The link between the trade in counterfeit goods and organised crime such as people smuggling and the drugs trade is also well-established.

The extent of the problem was acknowledged in the Gowers Review of 2006, which recommended that the Government consult on measures to tighten the regulation of occasional sales and markets by the end of 2007. This timetable has slipped and the delay is doing real damage to legitimate businesses and helping to line the pockets of serious organised criminals, so there is a need for urgent action.

Alliance members have been working with local authorities to encourage the implementation of codes of practice to introduce measures to clean up markets but the implementation of these has been patchy and criminals move from areas of vigilance to set up where there is little personal risk from local enforcement. The Alliance and the Trading Standards Institute are therefore united in pressing for commonsense light touch regulation of such markets in order to stop them being used for criminal activities. This would protect the public from the risk of purchasing fake, substandard goods, and protect local businesses from unfair competition from illegal traders, whose activities undermine local communities and defraud the Exchequer (by not paying taxes, including VAT).

THE THREAT

Harm to consumers

Unregulated markets of any kind expose consumers to a risk of real harm which they would not encounter in other retail environments. The Anti-Counterfeiting Group, an Alliance member, reports a wide range of potentially harmful products found, by their brand owner members, for sale at markets. Specific examples include:

- flammable children's clothing,
- fake household cleaning products,
- fake mobile phones and accessories,
- counterfeit perfume,
- fake alcohol and cigarettes containing noxious and harmful substances,
- fake appliance batteries which have exploded under testing conditions,
- fake electric drills,
- fake disposable razors that have caused extensive skin damage,
- other fake personal care products (skin creams, soaps etc).

It goes without saying that the safety of counterfeit electrical goods and children's toys cannot be guaranteed, but add to this the number of DVDs, CDs, computer games and software, and books on sale in such markets, and it can be appreciated just how much damage is caused to legitimate local retailers and business.

Harm to communities

The link between the trade in fake goods and other serious organised crime, such as people smuggling, hard core pornography, drugs and the use of offensive weapons, is becoming increasingly clear. The harm caused by IP crime is now recognised by crime prevention and enforcement bodies such as the Serious Organised Crime Agency. IP crime is one of SOCA's priorities, and addressing counterfeiting and piracy has been identified as one of the five national priorities for local regulatory services following the Rogers Review.

Harm to businesses and the economy

This multi-billion pound trade hits UK industry at all levels - from large corporations through to local traders. The collapse of three major British video store chains, Choices UK, Global and Apollo Video Film hire, with the loss of over 500 outlets and many jobs, was partly attributed to the piracy of DVD/film product. The impact of this closure was felt not just in economic terms but also through the damage it has done to the vitality of high streets and the lack of legal outlets for video across the country, which have been replaced by illegal street sales. The TECHNOPSIS Study¹, quoted in the IP Crime Report 2007 demonstrates that 23% of Small and Medium Sized Enterprises have had their business significantly affected by IP crime. Since the Government has acknowledged the need for regulation of markets it is regrettable that lack of action by DBERR is adding to the burden faced by nearly a quarter of the UK's most vulnerable businesses.

In addition, the Exchequer is losing out on valuable tax revenue because of non-payment of VAT, corporation tax and other business rates by IP criminals who are instead making vast profits from the illegal trade in fakes.

SOME EXAMPLES OF PROBLEMS AT MARKETS

Dagenham Market, London

In the week before Christmas 2007, a huge haul of fake 'designer' clothing worth more than £150,000 was seized in a raid on Dagenham Market.

Barking & Dagenham Council's trading standards team led the raid, supported by the police and street wardens, targeting two stalls suspected of selling counterfeit brands, and removed 10,000 items of clothing. Several test purchases had previously been made from the stalls and both stallholders had already received warning letters regarding the sale of fake goods.

¹ TECHNOPSIS Study: "Effects of counterfeiting on EU SMEs and a review of various public and private IPR enforcement initiatives and resources."

Grey Mare Lane Market, Manchester

This market is a perennial problem for many Alliance members, resulting in FACT arresting 11 people during 2008 and over 17,000 counterfeit DVDs being seized. Quantities of counterfeit cigarettes were also found. The results of 10 prosecutions are still pending. It is estimated that at least 25% of the stalls are selling counterfeit goods.

Nine Elms Market, Vauxhall

Nine Elms is a serious problem for law enforcement with trading standards no longer investigating without police support. 40-45% of stalls are selling all manner of counterfeit goods including DVDs, clothing, toiletries, tools and batteries; the danger such goods pose to consumers from these products is clear.

Brownhills Market, West Midlands

Industry, trading standards and the police work jointly in an attempt to ensure Brownhills Market is a safe place for consumers and legitimate traders. However, nine people have been arrested over the past year and over 23,000 counterfeit DVDs seized. One of the people arrested tried to resist and ended up assaulting one of the police officers. He was also arrested for this offence. FACT estimate up to 30% of the stalls at this market are involved in the sale of counterfeit goods.

Bank Holiday Market, Warwickshire

On 24th March 2008 officers from Warwickshire Trading Standards and Police Services attended a Bank Holiday Market in Warwickshire. Whilst there, they identified a stall selling counterfeit clothing, razors and DVDs. The 4 stallholders were arrested.

SCALE OF THE PROBLEM

- A 2005 report (Fake Nation) co-funded by the government and industry into consumer usage and attitudes towards counterfeits and fakes revealed that roughly 25% of all purchases take place at such markets.
- Research by the audio-visual industry conducted by IPSOS shows that 33% of buyers of counterfeit DVDs purchase them at car boot sales and markets.
- In addition, 1 in 3 counterfeit DVDs are sold at car boot sales and markets.
- Similar research conducted by IPSOS for the music industry shows that 29% of counterfeit CDs bought come from car boot sales or markets.
- An independent survey by Ledbury Research in January 07 shows that markets and car boot sales remain the prevalent source of counterfeit clothing and footwear, with two-thirds of respondents who purchase such goods doing so from market stalls.
- This research also found that criminals are receiving £750 million each year from the sale of such fake clothes and shoes at markets alone representing the sale of 33 million fake items.

Ledbury's research also shows that fake clothing and footwear alone cost local shops, traders and manufacturers nearly £3.5 billion a year in lost UK sales.

EXAMPLES OF LINKS WITH ASSOCIATED CRIMINAL ACTIVITY (COURTESY OF FACT)

Youth Exploitation

Location: Glasgow

A group of youths, all aged under 16, were arrested as they tried to covertly sell counterfeit DVDs at a well-known market. Surveillance had revealed that the youths were operating under the control of a recidivist DVD seller who was using the youths to sell the product. The ringleader was subsequently arrested.

The use of children in the sale of counterfeit DVDs highlights how easy it is for minors to become involved in criminal activity. The use of children also demonstrates how lifelong criminals exploit minors in order to cover up their own financial greed and attempt to distance themselves from being caught.

Benefit Fraud

Location: North West of England

Barry Powell and Mark Quincey, who ran a well-organised counterfeiting operation in the North-West of England were imprisoned for 12 and 15 months respectively for their role in a six-month scam that also involved an extensive benefit fraud. His Honour Judge Morrow QC also handed down a 9-month prison sentence to fellow ringleader Sarah Haynes. They operated this illegal business from their homes, supplying local markets and car boot fairs, generating in excess of £40,000 in criminal proceeds during its 6-month operation. The defendants had also claimed a total of £20,000 illegally in state benefits. The convicted may now lose all their assets under the Proceeds of Crime Act. These defendants were arrested along with 21 others as part of a massive police operation involving 135 officers, and coordinated with UK record industry body the BPI, FACT, games industry enforcement body ELSPA and the Department for Work and Pensions.

Drugs

Location: Deptford, London

A search warrant was executed at a flat in Deptford, London. The warrant had been obtained by the Metropolitan Police, also present were Lewisham Trading Standards, Borders & Immigration Agency, and FACT personnel. The flat contained a DVD factory consisting of multiple DVD burning units, printers, a large quantity of printing ink, 6,600 blank media discs, 7,600 counterfeit DVDs and false identity documents. An illegal unregistered dental practice was also found to be set up by one of the occupants operating from the living room of the premises. From this, drugs including cocaine-derived dental anaesthetic and arsenic tinctures were seized. One man was subsequently arrested and cautioned under the Dentists Act 1984.

People smuggling

Location: Lancaster, Lancashire

On the 5th February 2004 21 Chinese illegal immigrants tragically lost their lives whilst picking cockles in Morecambe Bay near Lancaster. Investigations by Lancashire Constabulary led the Police to addresses in the Merseyside area. Upon searching the homes Police found over 4000 counterfeit DVDs and computers containing counterfeit material. The two men were arrested for the involvement in the death of the Chinese cockle pickers and named as Lin Liang Ren and Lin Mu Yong.

On the 28th March 2006 Lin Liang Ren was charged with 21 counts of manslaughter, perverting the Course of Justice and manufacturing of false work permits. Ren was sentenced to 14 years imprisonment. Due to the severity of Ren's involvement with the death of cockle pickers the Crown Prosecutor decided that Ren would not be charged with trade mark offences.

Lin Mu Yong was charged with Assisting and Facilitation Illegal immigration and perverting the Course of Justice. Yong was sentenced to 5 years imprisonment. Yong also pleaded guilty to 11 offences under the Trade Marks Act of 1994 and was further sentenced to 9 months imprisonment.

Dangerous weapons

Location: Sunderland, Tyne & Wear

A male was stopped by Northumbria Police for appearing to be driving without valid insurance for his vehicle. When told the vehicle would be searched the male advised there was a knife under the driver's seat. A search revealed this to be a 7" kitchen knife. The male was arrested and a subsequent search under PACE of his home address revealed a large quantity of counterfeit DVDs.

WHAT THE ALLIANCE WOULD LIKE TO SEE

1. Civil and criminal liabilities on market organisers who knowingly allow the sale of counterfeit or pirated goods on their land, for example from market stalls or car boot sales. There are already several precedents for holding them liable - aiding and abetting, and money-laundering (in the full knowledge that the profits are from illegal sales of fakes) have both been established as a basis for prosecution in recent years.² It would therefore be difficult to argue against, providing the measure allowed for the owners and organisers first to be given adequate warning through an enforcement notice that illegal sales or activities are taking place at the occasional sale.

2. The introduction of national light touch regulation which would include such measures as:

- Requiring the market organiser to notify the local authority notified 21 days in advance
- Requiring that the organiser collect basic information on the day of all traders operating at the market – could include name, address, vehicle registration.

² *Northern Promotions 2005; Wendy Fair Markets 2007*

- Requiring that the adult responsible for renting the stall remains within the precincts of the sale while trading was taking place. The Alliance has growing evidence of illegal traders using children to sell fake products in order to escape prosecution.
- A standard clause in local authority licence agreements whereby a licence would be revoked if counterfeit or pirated products were continually sold.
- A National Licence Database for all authorities to access which would alert them to people applying for a licence in one authority who had had a previous one revoked by another. This might go some way to addressing the continuing problem of displacement.

ALLIANCE MEMBERS

Anti-Counterfeiting Group
Authors' Licensing and Collecting Society
British Brands Group
BPI (British Recorded Music Industry)
British Video Association
Business Software Alliance
Cinema Exhibitors Association
Copyright Licensing Agency
Design and Artists Copyright Society
Entertainment and Leisure Software Publishers Association
Entertainment Retailers Association
Federation Against Copyright Theft
Federation Against Software Theft
Film Distributors Association
Institute of Trade Mark Attorneys
Motion Picture Association
Premier League
Publishers Licensing Society

Associate members:

Anti-Copying in Design
British Jewellery, Giftware & Finishing Federation
Video Standards Council

CONTACT:

Susie Winter
Director General
020 7803 1324
susie@allianceagainstiptheft.co.uk