

Bill C-56 / COMBATING COUNTERFEIT PRODUCTS ACT

The extent of the problem is the subject of some debate. I have read that counterfeiting accounts for one tenth of the world's economy. On the other hand I have also read that data on counterfeiting has been "regularly debunked as inaccurate and overstated".'

Whatever the truth – it is undeniable that this is an on-going, undesirable activity.

In that regard, Canada is very much a trade-focused country. It imports many goods. Thus its customs officials, by their very nature, have always been involved in the identification and interception of incoming and outgoing shipments of counterfeit products.

In terms of trade-marks and counterfeit goods:

1. There is currently no process for registering trade-marks with the border authorities.
2. The Criminal Code creates some trade-mark related offences, but these provisions are out-dated and rarely used.
3. As a trade-mark owner, if you are aware of a shipment of goods that has not arrived in Canada yet, or if the goods have arrived in Canada, but not cleared customs, steps can be taken to prevent their entry.
4. If the goods have already cleared customs, then the normal routes are your recourse, namely, trade-mark infringement; passing-off and Anton Piller Orders in appropriate circumstances.

In March 2013, the government introduced Bill C-56 – with the stated objective to strengthen, inter alia, trade-mark rights and to curtail commercial activity involving counterfeit trade-marked goods.

The Bill would increase the border officials' authority to detain counterfeited goods. It would also allow trade-marks owners to "make a request for assistance" with the Border authorities. It introduces criminal offence provisions relating to the manufacturing, importation, sale or distribution on a commercial scale of goods.

Additionally, the Bill includes changes to the Trade-marks Act including:

1. Use of the term "sign" which arguably could include anything that functions as a trade-mark.
2. The possibility to divide applications.
3. Further simplification of the Opposition process.

CRITICISMS OF THE BILL

1. Border guards will be serving as IP experts without immediate Court oversight.
2. We shall be entering into increased criminalization in the trade-mark area.
3. The Bill is a back-handed way of having Canada comply with ACTA (Anti-Counterfeiting Trade Agreement).

The content of the Regulations will be crucial, as such will give working effect to the legislation.

Combating Counterfeit Products Act

BILL C-56

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$$y_0 = \frac{g(x+h) - g(x)}{(x+h) - x} = \frac{g(x+h) - g(x)}{h}$$

$$\lim_{h \rightarrow 0} \frac{g(x+h) - g(x)}{h} = \lim_{h \rightarrow 0} \frac{2xh + h^2}{h(x+h)}$$

The Problem

$$= \frac{y_1 - y_0}{x_1 - x_0}$$

What's the problem with counterfeit goods?

- Health and safety risks to consumers
- Negative economic impact
- Links to criminal organizations

The problem is not adequately addressed because of:

- Ineffective criminal and civil remedies
- A lack of border control measures

Bill C-56

On March 1, 2013, the Canadian government introduced Bill C-56, the *Combating Counterfeit Products Act* to address the problem

The stated objectives are to strengthen the enforcement of copyright and trade-mark rights and to curtail commercial activity involving infringing copies and counterfeit trade-marked goods

This Bill proposes to:

1. amend the *Trade-marks Act*
2. amend the *Copyright Act* and
3. expand enforcement powers and remedies related to counterfeit goods