

Anti-counterfeiting: holding landlords liable for the crimes of their tenants



By [Steven Yeates](#)

24 Jun 2014

The war on counterfeiting takes place on many levels, not all of them successful. However, there is another frontier where anti-counterfeiting can potentially be very effective - and that is by holding landlords liable for the crimes of their tenants.



© Gebi - za.fotolia.com

In South Africa - thanks to the Counterfeit Goods Act - any person who is involved in dealing in counterfeit goods, or who aids and abets other persons to do so, can be held liable. Landlords and clearing agents are examples of persons who, knowingly or not, facilitate or enable other persons to deal in counterfeit goods. Owners of flea markets and storage facilities are particularly at risk.

Landlords and clearing agents do not have the luxury of anonymity

Counterfeiters often import, or trade in counterfeit goods under false identities. They also do not have easily traceable assets. This makes taking effective criminal or civil action against such persons very difficult. However, landlords and clearing agents do not have the same luxury of anonymity as their clients. As a result, instituting action against, for example, a landlord, is a far more attractive proposition. Making landlords aware of their obligations and the liability they could face should they chose to shirk such obligations, would definitely put a dampener on the illegal activity of their tenants. The same applies to clearing agents. Without a doubt, if the legislation is strictly enforced, a landlord would, in my opinion, far rather evict a tenant than lose his building or his business, or worse still face criminal charges.

One of the ways we're advocating a proactive approach by landlord's is for them to provide in their lease agreements that any person found to be dealing in counterfeit goods will be evicted. We also want them to actively enforce such provisions and to react positively when informed of the illegal activities of their tenants. Clearing agents should also take care to steer clear of suspicious importers, to insist on written instructions to clear goods and to refuse to import goods for importers who have previously been found to deal in counterfeit goods.

Success stories

The inroads made against, for example, landlords harbouring sellers of counterfeit goods have been extremely successful elsewhere in the world.

In the US and Europe, some of the larger luxury goods manufacturers are successfully using landlord liability to frustrate the free trade in counterfeit goods. In 2005 in the heart of New York's infamous Canal Street, where fakes are a dime a dozen, luxury brand owner Louis Vuitton - with the help of the city - launched a suit against a landlord who had harboured tenants selling counterfeit goods and won. The outcome was that several lessees were evicted, the buildings were monitored on an ongoing basis, signage was put up warning tenants against dealing in counterfeit goods and the landlord included an immediate termination due to counterfeiting clause in his lease agreements. The result has been a significant decrease in counterfeiting in the area.

Landlords and clearing agents can no longer ignore the fact that dealing with counterfeiters is risky business. Landlords and clearing agents would be well advised to actively take steps to avoid dealing with persons who deal in counterfeit goods. It is no different to dealing with drug dealers, or persons who sell stolen goods. Not only is it morally reprehensible, it is aiding and abetting a criminal act, which no self-respecting company should knowingly do.

ABOUT STEVEN YEATES

Steven Yeates is a partner in the Trade Mark Litigation Department and is currently one of three partners heading up the anti-counterfeiting team. He is a qualified attorney and trade mark practitioner with 12 years' experience. He holds BCom and LLB degrees from the University of Johannesburg and specialises in trademark litigation, particularly relating to anti-counterfeiting.

» Anti-counterfeiting: holding landlords liable for the crimes of their tenants - 24 Jun 2014

[View my profile and articles...](#)

For more, visit: <https://www.bizcommunity.com>