

## INTELLECTUAL PROPERTY

**THE FIGHT AGAINST COUNTERFEIT PRODUCTS IN CANADA JUST GOT EASIER***by Eric D. Lavers*

Canada's new *Combating Counterfeit Products Act* officially took effect on January 1, 2015. As part of the ongoing overhaul of Canada's much neglected intellectual property regime, this new tool for content and brand proprietors in the fight against would-be counterfeiters should be viewed as a positive and welcome development.

At the heart of the new laws is a beefed up effort to control counterfeiting at the border. Going forward, border officials will be authorized (previously they weren't) to voluntarily seize and detain suspected counterfeit goods without fear of repercussion. Simultaneously, the owners of Canadian copyright and trademark registrations will be able, under a "Request for Assistance" procedure, to direct the efforts of border officials by supplying them with advance information related to suspected counterfeiting of their goods.

Expanded definitions of copyright and trademark infringement will also give owners a wider array of options for enforcing their rights against others. Most significantly, in addition to the unauthorized sale, distribution or advertisement of goods or services protected by a registered trade-mark, it will also now be an infringement to manufacture, possess, import, or export protected goods for the purpose of sale or distribution. The same will hold true in certain circumstances for those activities undertaken with respect to labels and packaging for protected goods (as opposed to the goods themselves).

A final important change introduced by the *Combating Counterfeit Products Act* is the creation of new criminal offences of copyright and trademark infringement. These new criminal offences will cover acts of copyright and trademark infringement undertaken "knowingly" by a person – in other words, deliberately. The punishment for serious cases of criminal infringement will include a fine of up to \$1 million and/or a 5 year jail sentence. Less serious offenses will carry a \$25,000 fine and/or up to 6 months in prison.

If utilized effectively by brand and content owners, these new laws are sure to make a difference in the ongoing fight against counterfeiting.

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