

KENYA – Understanding the Anti-Counterfeit Agency

The Anti-Counterfeit Agency of Kenya is established under section 3 of the Anti-Counterfeit Act, 2008. Headquartered in Nairobi and under the Ministry of Industrialization, the functions of the nascent statutory body are to:-

- a) Enlighten and inform the public on matters relating to counterfeiting
- b) Combat counterfeiting, trade and other dealings in counterfeit goods in Kenya in accordance with the Act
- c) Devise and promote training programmes on combating counterfeiting
- d) Co-ordinate with national, regional or international organizations involved in combating counterfeiting
- e) Carry out any other functions prescribed for it under any of the provisions of the Act or under any other written law
- f) Perform any other duty that may directly or indirectly contribute to the attainment of the foregoing.

The management of the Agency vests in the Board headed by a chairman appointed by the Minister. The day-to-day functions of the Agency are undertaken by staff headed by the Executive Director. These are appointed by the Board.

Part IV of the Act deals with Inspection. For example, section 22 deals with appointment of inspectors, while section 23 deals with powers of inspectors. Under section 23(1) (a):-

“an inspector may enter upon and inspect any place, premises or vehicle at or in which goods that are reasonably suspected of being counterfeit goods are to be found, or on reasonable grounds are suspected to be manufactured, produced or made, and search such place, premises or vehicle and any person found in such place, premises or vehicle, for such goods, and for purposes of entering inspecting and searching such a vehicle, an inspector may stop the vehicle, wherever found, including on any public road or any public place”.

The Anti-Counterfeit Regulations, 2010 were gazetted vide Kenya Gazette supplement No. 52 dated 20th August 2010. These Regulations are in force.

There have been challenges lodged in the High Court recently by way of Judicial Review directed at the Agency. These cases, mainly challenging the Agency’s powers, are still pending before court.

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