

NEW RULES CLAMP DOWN ON IPR INFRINGERS



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Consolidated Act No. 1404, which came into force on January 1, 2009, is designed to stop or reduce the growing level of illegal activity such as piracy, counterfeiting and parallel importing into Denmark.

This change to Danish legislation was based on a report published in March 2008 by the Danish Government. The report concluded that one of the most important reasons for the rise in counterfeiting and piracy is the low levels of sanctions, which are not proportional to the prospect of rather high profits.

To discourage offenders from infringing intellectual property rights, the recommendations of the governmental report have now been implemented in the Consolidated Act No. 1404. The most important elements of this are:

- Both intentional and gross negligent violations can be punished by fines
- The penalties for intentionally counterfeiting under aggravating circumstances that infringe legislation concerning trademarks, designs, patents and utility models have been increased to one and a half years' imprisonment unless longer penalties are prescribed pursuant to the Penal Code §299b. Aggravating circumstances exist if the infringement is made with the object of obtaining a considerable and manifest illegal profit
- The maximum penalty for particularly serious offences of counterfeiting has been increased to six years' imprisonment
- The fine level has been increased for companies that engage in serious counterfeiting
- If public interests are at stake, public prosecution can take place in all cases of counterfeiting and piracy.

The Central Customs and Tax Administration performs routine inspections of companies on the basis of tax and levy regulations, looks for counterfeit products, and performs spot controls at the border. If potential counterfeit products are discovered, it contacts the intellectual property rights (IPR) owner, and if the counterfeited goods are of a certain quantity, quality or nature—for example, counterfeit medicines—the police are also contacted.

On February 12, 2009, the Task Force Trademark Counterfeit department of the Central Customs and Tax Administration announced the result of its counterfeit efforts in 2008. In 2008, the Task Force dealt with 719 cases of trademark counterfeiting and piracy relating to nine million copies, with a value of Dkr125 million (\$22 million). In comparison, in 2007, the Task Force treated only 346 cases, with a value of Dkr84 million (\$15 million).

“TO DISCOURAGE OFFENDERS FROM INFRINGING INTELLECTUAL PROPERTY RIGHTS, THE RECOMMENDATIONS OF A GOVERNMENTAL REPORT HAVE NOW BEEN IMPLEMENTED IN THE CONSOLIDATED ACT NO. 1404.”

The intensive efforts of the Task Force are illustrated below:

On January 26, 2009, the Supreme Court awarded Dkr100,000 in compensation to Burberry, as the owner of the well-known ‘check-pattern’ trademark. The infringer admitted violation of the trademark by importing and selling approximately 17,000 copied purses at Dkr20 each through a Nordic retail chain. The recommended retail price for the original very exclusive purse is about Dkr2,000 each.

The Supreme Court took the view that the target groups of the cheap and the expensive purses were so different that it was unlikely that the cheap purse would substitute sales of the exclusive purses. Nor did the trademark owner provide evidence of consequential loss or assert negligence. The Supreme Court awarded unliquidated damages of Dkr100,000 to the trademark owner, partly for the disturbance of market conditions and partly for profit from the sale of the purses of Dkr340,000, a sum that the infringer did not contest.

On December 17, 2008, a Danish City Court sentenced a person to 10 months in prison for extensive violation of several companies' copyrights and trademarks in relation to trading soft toys in the period from January 2004 to May 2006. A profit of Dkr264,000 and several thousand soft toys were seized, and the firm was fined Dkr200,000. The prosecutor has lodged an appeal to the Western Division of the Danish High Court, and the case will be one of the first large cases to be decided under the new law.

Updated information (in Danish only) about the Task Force's work and efforts, as well as the above-mentioned cases, can be found at: www.stoppiraterne.dk

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