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Commercial Counterfeiting Policy

BACKGROUND INFORMATION				
Document Purpose	Policy Guidance			
Author	John Seale			
Last Review and Publication Date	May 2012			
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Subject	Counterfeiting			
Reference and Version	V01.02			
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Name of Lead Officer undertaking Assessments				
Action Plan with Recommendations Produced	No			
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Corporate Priorities	Levels of Impact			
	High	Medium	Low	None
All people in North East Lincolnshire benefit from a strong economy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
All children, young people and adults learn and are ready for work	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
All people in North East Lincolnshire enjoy good health and wellbeing	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Document History			
Date	Amendments made	By Whom (name/job title)	Stakeholders Approval (Name, Job title / Organisation)
31 Aug 2006	Written	John Seale	Trading Standards
1 May 2012	Published	Jane Tomlinson	Trading Standards
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Contents

- Introduction and Context
- Aims
- Objectives
- Guidelines

Council Plan Priority Supported

All people in North East Lincolnshire benefit from a strong economy

Introduction and Context

The 1994 Trade Marks Act consolidated existing legislation and imposed an statutory enforcement duty on every weights and measures authority. This now sits alongside the Trade Descriptions Act (statutory) and the Copyright, Designs and Patents Act (discretionary).

Commercial counterfeiting is a persistent and growing problem for all Trading Standards services. From the historic first trade mark for Bass beer, counterfeiting has grown into a hi-tech, multi-billion dollar international industry that has recently held its own industry awards ceremony in Mexico. From the first introduction of bootleg cassettes to computer re-writers and foreign-based web-sites the law breaking now offers problems on an immense level.

Aims

The size of the local problem is such that it could command the entire resources of the Fair Trading Team. A policy is therefore required to balance objectives, strategy and cost.

Whilst counterfeiting may not be perceived as a high priority, the authority's duty also covers the protection of trademark holders and local retailers. This service is receipt of regular complaints from both. Local retailers complain that it is hard to sell genuine products in the face of competition from counterfeiters.

Our agreed approach is:

Targeted disruption - As adopted by Customs and Excise in the pursuit of smugglers, this objective accepts the inefficiencies of trying to stop all activities and drawn out prosecutions and aims to disrupt distribution and target the worst offenders.

Objectives

Targeted Action:

- **Shops**
Relatively few problems; deal with during inspection or upon complaint.
- **Market Stalls & Car Boot Sales**
Major outlets; frequent & irregular visits (including weekends) to disrupt sales. Seizure of goods as main weapon to avoid drawn out prosecutions and allow repeat action.
- **Selling in the work place & in schools**
Major outlet; difficult to enforce - Write to proprietors/ head teachers explaining possible consequences and requesting internal investigation.
- **Selling / manufacturing from home**
Major problem, extensive surveillance required to locate goods and secure entry warrant. One trader to be targeted at a time. Priorities to be selected.

Targeted Traders:

- First time & minor offenders to be dealt with forfeiture of goods. Prosecutions to be reserved for serious or problem offenders.

Trade Mark Holder Assistance.

- Trade mark holders to be approached for assistance and appropriate levels of support; (such as prompt turnaround on statements & surveillance). Priorities to follow the level of support received.

Available Sanctions

- **Advice and/or Warning**
Advice or warning upon first offence can be both proportionate and provide tangible justification for future legal action.
- **Seizure: - surrender or forfeit**
Confiscation of merchandise can offer a swift conclusion, an instant financial penalty and evidence of previous wrongdoing. Officers are not tied up in court proceedings and can quickly repeat the exercise.
- **Formal Caution**
In conjunction with seizure combines the instant penalty with a formal admission of guilt, again without recourse to costly court proceedings.
- **Arrest**

Trade Marks offences are arrestable, though this sanction is generally reserved for difficult traders.

- Prosecution

Prosecution is complicated, costly and never certain of success. This is reserved for repeat and serious offenders.