

Pirated goods – risks for everyone involved

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Introduction

Trading in pirated and counterfeit goods is widespread in many countries, including Greece. All relevant reports from the competent authorities show that the production of and trade in such goods entail significant economic losses, depriving revenue from the state and employment sector.

The definition of 'pirated goods' covers items such as clothing, footwear, toys and collectibles which infringe the IP rights (eg, trademarks, designs and copyrights) of third parties and which have been or are being produced and sold on the market without a licence or the rights holder's authorisation.

Financial gains

Trading in pirated goods seems particularly attractive not only to the professionals involved (eg, producers, manufacturers, wholesalers and retailers), but also to final consumers – the extent of illicit trade in Greece proves this point. This is explained by the fact that:

- for professionals, pirated goods usually provide a wider profit margin compared with original goods; and
- for consumers, pirated goods are usually cheaper.

The wider profit margins associated with pirated goods are a result of manufacturers not paying for the rights that they use (eg, trademarks, designs, copyrights and personality rights) and the goods being (in principle) of lower quality compared with original goods, both in terms of quality and safety. The testing and suitability of goods are of major importance, especially if the target consumers are children.

Penalties

Trading in pirated goods entails significant civil and penal sanctions for everyone involved. Under Greek law, liability lies not only with the producers, but also with anyone possessing, exploiting, selling, distributing or making available such products to consumers.

More specifically, the Trademark Law and the Copyright Law set out significant penalties (eg, long-term imprisonment) and high fines for anyone using, exploiting, putting on the market, selling, distributing or possessing with the intent to distribute to the public products infringing the trademarks and copyrights of third parties.

Therefore, anyone selling and making available to the public such illegal and unlicensed products is liable to the relevant penalties. This also applies to wholesalers and retailers. In certain circumstances, the above actions could be considered felonies – especially under the Copyright Law – which carry five to 20 years' incarceration for convicted offenders and even higher monetary penalties of up to €60,000.

Besides the penalties set out in the Trademark Law and the Copyright Law, offenders may also be deemed to have committed crimes such as forgery, the use of forged documents, fraud and the acceptance of products originating from illegal acts, which in turn entail their own penalties (eg, imprisonment or even incarceration).

Further, holders of IP rights that are being infringed might request significant compensation in the form of material and moral damages. Therefore, anyone involved in trading in pirated products (eg,

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producers, manufacturers and traders) may be obliged to pay significant damages to rights holders.

Moreover, the competent authorities may impose fines on persons involved in trading in pirated products, while the authorities acting against illegal trading (eg, the Financial and Economic Crime Unit and the Hellenic Police) may perform raids in any establishment (eg, shops and warehouses) in which such products are being kept, to seize and destroy said products and also to file penal complaints to the competent prosecuting authorities requesting the punishment of the offenders.

Protected rights

As a result, wholesale or retail traders should examine products that are offered by their suppliers to determine whether such products are original before selling them. Although this sounds difficult, in truth is easier than it seems. For example, traders should check whether products bear an 'identity' – namely, whether they indicate their producer, manufacturer, importer or distributor in Greece. Traders should also check whether their products bear any indications of originality such as holograms, symbols or codes.

Apart from the above, if a product bears a trademark, the trader must try to identify the holder of the trademark and, if they find that the trademark belongs to a third party, they must ask their supplier to clarify whether there is a licence for its legitimate use.

Most trademarks used in pirated products are well known – especially among traders, who are often professionals in the relevant field – which makes identifying rights holders fairly easy (eg, by performing an internet search).

Further, if products bear well-known characters or figures (eg, Mickey Mouse or the Teenage Mutant Ninja Turtles), emblems (eg, football team logos) or any other element (eg, schedules or photographs) protected under the Copyright Law, the trader should ask their supplier for information as to how they obtained the rights to exploit and put such products on the market and request their supplier to show the relevant documents (eg, licence agreements) which prove that they have the right to use and exploit such rights.

The common argument raised by traders before the courts is that they were unaware or were not in a position to know that a product was pirated or counterfeit. However, this position does not in principle release them from their liability, given that, especially when it comes to copyright infringement, the Supreme Court has ruled that anyone wishing to exploit said rights must employ due diligence to identify the actual holder thereof and ensure that they obtain the necessary licence therefrom.

Further, traders must check all relevant documents (eg, assignment of rights) concluded between the initial holder up to the alleged holder of such rights in order to determine that the use and exploitation of these rights is legitimate and authorised.

The Supreme Court has repeatedly ruled that the intent of the copyright infringer always applies in cases where the exploiting party (eg, a trader) has not acquired the necessary licence from the copyright holder, either directly or through consecutive agreements. In simple terms, the courts rule that an infringer's intent cannot be excluded where the rights holder has not provided authorisation for this specific type of exploitation – namely, for the incorporation of the rights in the specific product.

In many cases, the courts reject traders' arguments about their total ignorance or inability to know that a product was pirated or counterfeit, considering that traders, being professionals of the relevant field, have the ability and experience to understand whether a product is original and to distinguish pirated products from originals, which in many cases co-exist on the same shelf.

Another argument frequently raised by traders before the courts is that they purchased the goods by virtue of legitimate invoices, but this argument also does not release them from their liabilities for the violation of IP rights.

Finally, trading in pirated products usually means that additional fiscal and market law infringements are also being committed (eg, tax evasion), which entail their own penalties (eg, fines, imprisonment).

Comment

Trading in pirated and counterfeit goods is clearly a high-risk activity and entails significant dangers for all professionals involved. At first glance, it seems like a profitable business; however, the truth is that liable traders may face significant financial penalties and penal sanctions. The enticement of wider profit margins is therefore no excuse to sell counterfeit products and traders should abstain from selling products without first checking their legitimacy.

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