

THE INVESTIGATOR

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About Us

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Our integrated team of investigators and support services ensure that the investigations are conducted in a timely fashion with leading edge techniques.

BCSI is considered the platinum standard of the industry based on the quality and the wide spectrum of its services as well as the expertise of the investigators.

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Legalities

As mentioned in the previous newsletter, trademark owners are having difficulties proving trademark and copyright claims in court against these grey market goods importers. The difficulty surrounding the importation of goods is that if it infringes on their copyright law or trademark rights if an unauthorized seller is purchasing the goods from an authorized seller overseas and selling them in the domestic market which then forces the trademark to compete against itself.

There are many arguments that companies can make in court. Courts have put the responsibility on the actual trademark owners to prove that their product is in fact "materially different" than the products being brought into the country, if this can be proven true, they have a legitimate claim.



The Laws

Trademark owners are also able to utilize sections 19 and 22 of Trademark Act of Canada. Section 19 states that the trademark owner of any good or service has the exclusive right to the use throughout Canada of the trade-mark in respect of those goods or services. Section 22 of the Trademark Act of Canada states that the trademark registered by a company or person cannot be used in a manner that is likely to have the effect of depreciating the value of the goodwill. Both of these sections require that the trademark owner show a distinct difference in the products being imported and the domestic. In addition to Section 22, the trademark owner must demonstrate market evidence of the depreciation. [Copyright](#) law is another remedy that trademark owners have been able to use. An owner of a copyright may successfully stop the importation of authentically manufactured goods if they can prove provisions in the copyright act have been violated.



Section 27(2) of the copyright act provides remedy for trademark owners by making it an infringement for anyone to import a copy of a good that the person should have known infringes copyright or if the imported product were made in Canada, would infringe on that copyright. For example, products may be labelled with different warnings for different parts of the world, this would make the products being imported by unauthorized sellers different from those being produced in the domestic market thus potentially allowing that copyright owner to file a claim.

We Can Help

There is much more legally that trademark owners can do to stop these grey market goods from taking a piece of the market. It becomes a matter of collecting the right evidence to be able to present to a judge and win a judgement. This is where we, as private investigators may be able to [assist](#) and will be explained in next weeks newsletter.