

**A LEGAL ANALYSIS ON THE EFFECTIVENESS OF
ENFORCEMENT OF TRADE DESCRIPTION ACT 2011 IN
RELATION TO OPEN TRADE OF COUNTERFEIT PRODUCTS**

By

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ABSTRACT

Trade of counterfeit products in Malaysia is practiced openly. This is proven by existence of Petaling Street, Batu Feringgi Night market, Uptowns and night markets all over this country. In those places, counterfeit products are openly exhibited for sale.

This research aimed to analyze the effectiveness of enforcement of Trade Description Act 2011 in relation to open trade of counterfeit products in Malaysia by identifying the problems relating to the enforcement of law and recommend relevant suggestions to improve the current methods of enforcement.

Firstly, this paper discussed the meaning of trademark and its application of law in Malaysia. Then, we discussed the provisions of law of criminal prosecution under Trade Description Act 2011. To frame the issues of enforcement, this paper discussed 1) The role of Ministry of Domestic Trade, Co-Operatives and Consumerism (MDTCC) and 2) The Border Measures enforcement under Trade Marks (Amendment) Act 2000 Part XIVA (Section 70C to 70P) which the power to enforce was conferred to Royal Malaysian Customs. Interviews with officers from Royal Malaysian Customs and Ministry of Domestic Trade, Co-operatives and Consumerism have become main sources as to identify the problems with enforcement to combat trade of counterfeit products. Interview with a seller or counterfeiter is conducted to give better understanding of how counterfeiting business is being operated in this country.

The identifications and analysis of problems faced by enforcement bodies will help the efforts to improve current enforcement of Trade Description Act 2011.

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CHAPTER 1

INTRODUCTION

1.1 Research Background

Malaysia is notorious for open activities of trading in counterfeit products or mostly known as fake products. Sellers openly sell such counterfeit products in various places such as Petaling Street, Uptown Night markets in Klang Valley, Batu Feringgi Night Market and Night Markets all over Malaysia. The existence of such places questions the effectiveness of enforcement in laws to curtail counterfeiting products from being sold in Malaysia openly. In simple language, "counterfeit" means to illegally imitate something and it is in exact imitation of something valuable with intention to deceive or defraud.

In Intellectual Property (IP) discussions, combating counterfeit products so as to protect the trade mark has been one of most talked issues for past decades. The issue is very relevant in present times when many countries are moving towards globalisation. The issue of IP is not taken lightly by the Malaysian government and stringent enforcement measures and seizures have been implemented by Ministry of Domestic Trade, Co-Operatives and Consumerism (MDTCC) to eradicate the infringement of Intellectual Property Rights (IPRs). Historically, Malaysia's legal system originates from the English common law and consequently, the evolution of the IP laws in Malaysia is similar to the English common law.

Malaysia's legal IP infrastructure has been aggressively enhanced through legal reform and government enforcement initiatives in an effort to quash the perception that Malaysia is a hotbed for counterfeiting. Currently, the laws for IP protection specifically for trade mark in Malaysia include:

- Trade Description Act 2011(Amended in October 2011)
- Trade Marks Act 1976
- Penal Code
- Law of Tort