

# Deacons Bitesize IP

## Intellectual Property

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### Do your customers know to spot fakes?

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#### Did you know?

A seller of counterfeit goods can be acquitted of criminal charges if it can be established that they had no reasonable way to find out whether the goods were genuine or counterfeit.

Under the Trade Descriptions Ordinance (Cap. 362), it is an offence to sell goods bearing forged trade marks. However, if a defendant submits sufficient evidence to raise an issue that they did not know, had no reason to suspect, and could not with reasonable diligence have ascertained that a forged trade mark had been applied to the goods, they will be entitled to be acquitted unless the prosecution can prove otherwise beyond a reasonable doubt.

#### Why does this matter to you?

Many brand owners invest heavily in security measures to check the authenticity of their products. It is common to keep their anti-counterfeiting measures under wraps to avoid teaching counterfeiters how to make better fakes, and to find ways to circumvent the technologies. However, playing your cards too close to your chest may have unintended consequences when it comes to criminal enforcement against counterfeits. Transparency can be necessary to allow legitimate customers and sellers to authenticate the products. If the public has no reasonable way of finding out whether a product is real or fake, a counterfeit seller may be able to rely on this as a defence to a criminal charge. A solution may be to use a combination of overt and invisible authentication features. Striking the appropriate balance between secrecy and transparency in anti-counterfeiting is a complex task and requires consideration of many factors.

Our Intellectual Property team has substantial experience in advising brand owners on their anti-counterfeiting programs, including assisting the Hong Kong Customs & Excise Department in criminal enforcement and investigations. Please reach out to us for more information.

### Want to know more?

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