

UNITED ARAB EMIRATES

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UAE Anti-Commercial Fraud Law passes through Federal National Council



By Rob Deans and Harriet Balloch

On March 4th, 2014, a new law aimed at combating counterfeit goods and other forms of commercial fraud passed through the UAE's Federal National Council (FNC).

The draft Anti-Commercial Fraud Law was first introduced in early 2013 and, although it contains a number of positive new measures, there are a number of provisions which have given rise to cause for concern. The passage of the draft Law through the FNC brings the draft Law one step closer to being enacted.

Some positive news for brand owners

There is currently limited information as to the extent to which the draft Anti-Commercial Fraud Law has been amended during its passage through the FNC. However, it appears that the draft Law, as approved by the FNC, is likely to include the following positive provisions for brand owners:

- The establishment of a single body with the role of combating trade in counterfeit goods across all emirates in the UAE.
- Increased penalties for dealing in counterfeit goods.
- The cost of the destruction of counterfeit goods being paid by the importer of counterfeit goods.
- An obligation on infringers to disclose to the authorities all information and documents relating to their dealings in counterfeit goods.
- A prohibition on the possession of counterfeit goods.
- Confirmation that the draft Law applies to infringers operating within the UAE's free zones.

Areas of concern

However, there are also areas of concern for brand owners arising from an early draft of the Anti-Commercial Fraud Law which may not have been addressed by the FNC. These include:

Legitimising the practice of re-exporting counterfeit goods, rather than seizing and destroying them – The single biggest concern for brand owners with the draft Anti-Commercial Fraud Law is a provi-

sion which empowers the authorities to require importers to return counterfeit goods to their country of origin.

This provision appears to have been untouched as the draft Law passed through the FNC, and it remains a major concern for brand owners, in that counterfeit goods may be re-exported from the UAE and find their way back onto the market.

The extent to which the draft Anti-Commercial Fraud Law covers lookalike goods, in addition to those bearing a trade mark which is identical to a registered mark – An early draft of the Law restricted many of its key provisions to the unauthorised use of identical trade marks, but not goods bearing confusingly similar marks and other forms of lookalikes. It is unclear at this stage the extent to which the draft Law may have been amended to extend its scope to lookalikes.

Low penalties for dealing in counterfeit goods – Although in some limited cases a penalty of a US\$270,000 fine plus two years imprisonment may be imposed, in many cases involving counterfeit goods, the maximum punishment appears to be limited to a maximum of a tenth of this amount, US\$27,000 plus one year imprisonment, regardless of the quantities of counterfeit goods involved. This was the position in an early draft of the Anti-Commercial Fraud Law, and it remains to be seen whether this provision has been amended to allow for penalties with a higher deterrent value to be imposed.

Next steps – Finalisation and enactment of the draft Law

In order to be enacted, the draft Anti-Commercial Fraud Law has to be signed into law by the UAE President His Highness Sheikh Khalifa Bin Zayed Al Nahyan and published in the UAE Official Gazette. Before this, the draft Law should pass back to Ministerial level where further amendments may be introduced.

Accordingly, although current reports indicate that the draft Law will come into force within the next six months, it is possible that this process may be delayed, particularly if further changes are made to the draft Law.

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