

**THE SENATE**

**FEDERAL REPUBLIC OF NIGERIA**  
Committee on Trade & Investment  
**NATIONAL ASSEMBLY COMPLEX**  
Three Arms Zone, P.M.B. 141, Garki Abuja, Nigeria

Our Ref:.....

Date: **July 20, 2017**.....

Your Ref:.....

**REPORT ON**

**A BILL FOR AN ACT TO INTRODUCE MEASURES AGAINST THE TRADE IN COUNTERFEIT GOODS SO AS TO FURTHER PROTECT OWNERS OF TRADEMARKS AND COPYRIGHT AGAINST THE UNLAWFUL APPLICATION; TO GOODS, OF THE SUBJECT MATTER OF THEIR RESPECTIVE INTELLECTUAL PROPERTY RIGHTS AND THE RELEASE OF GOODS OF THAT NATURE INTO THE CHANNELS OF COMMERCE AND FOR RELATED MATTERS COUNTERFEIT GOOD 2017 BILL (SB. 117)**

## **1.0 Introduction**

The Senate President,  
Distinguished Senators,

You may recall that this Bill was introduced and the first reading was taken on 28<sup>th</sup> October, 2015.

The Bill was read the second time on the 16<sup>th</sup> March, 2016 and referred to the Senate Committee on Trade and Investment for further legislative action. This important bill was sponsored by Senator Isa Hamma Misau (Bauchi Central). The bill when passed will help in the "easy of doing business" in Nigeria which will enhance economic growth. The bill has twenty five clauses only.

## **2.0 Secretariat**

1. Emmanuel Odo (JP) - Committee Clerk

## **3.0 Methodology**

The Committee adopted the following methodology in the course of its assignment:

1. Received memoranda from members of the public, National Agency for Food and Drug Administration and Control (NAFDAC), Federal Ministry of Industry, Trade and Investment, Civil Society Organization, Manufacturers Association of Nigeria (MAN) and other relevant stakeholders.
2. Conducted a Public Hearing which was well attended, by the relevant stakeholders (on 13<sup>th</sup>, December, 2016)
3. Considered the Bill Clause by Clause during its meetings;
4. Considered contributions by Distinguished Senators at the Second Reading of the Bill; and

5. The Committee engaged the services of a Consultant during the work of the Bill.

#### **4.0 Overview/Objective of the Bill**

1. The Counterfeit Goods Bill seeks to introduce measures aimed at checking trade in counterfeit goods so as to further protect owners of Trademarks, Copyright and certain marks under the Patent Act. The Bill also prohibits certain acts in relation to counterfeit goods, as well as the possession of counterfeit goods in certain circumstances. It also creates and prescribes penalties in relation to counterfeit.
2. This Bill further seeks to introduce measures to further protect owners of trademarks against counterfeit of their goods; protect consumers from dangerous counterfeit goods; and ensure that appropriate revenue accrues to government from trademark owners of goods.
3. Nigeria has become major destination for counterfeited and pirated goods. According to reports, products often counterfeit and pirate include currencies, apparel, consumer electronics, automotive parts, pharmaceuticals, foods and drinks, and chemicals.
4. Whereas the National Agency for Food and Drug Administration (NAFDAC) was set up to check the potential danger posed by counterfeit food, drink and pharmaceuticals, while other products are left unprotected.
5. Counterfeit goods are unauthorized or illegally manufactured, reproduced, altered or distributed goods. It is also associated with abuse of recognized intellectual property rights; such as trademark, patent, design or copyright in goods. Counterfeit goods are on the increase globally.
6. It is reported that the largest suppliers of counterfeit goods in Africa is China, Korea and Taiwan. Nigeria has not only become a major consumer of cheap counterfeit goods but also has become both a target destination and significant transit route to other West African countries.

## 5.0 Recommendation

Mr. President, distinguished colleagues, find attached the Committee's recommendation for your consideration and approval, please.

## 6.0 Find attached details for your consideration and approval

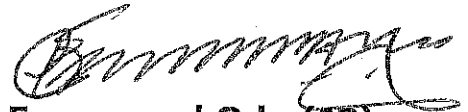
## 7.0 Conclusion

The Committee led by Distinguished Senator Fatimat O. Raji Rasaki would like to use this medium to thank the Senate for giving the members the opportunity to serve.

Thank you. I so present.

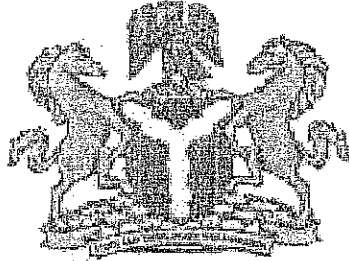


**Senator Fatimat O. Raji Rasaki**  
Chairman



**Emmanuel Odo (JP)**  
Committee Clerk

## SIGNATURE PAGE



### SENATE COMMITTEE ON TRADE AND INVESTMENT MEMBERS

S/NO	NAME	POSITION	SIGNATURE
1.	Sen. Fatimat O. Raji Rasaki	Chairman	
2.	Sen. Mohammed Sabo	Vice Chairman	
3.	Sen. Boroffice Robert Ajayi	Member	
4.	Sen. Efiiong Nelson	Member	
5.	Sen. Suleiman Hunkuyi Othman	Member	
6.	Sen. Yusuf A. Yusuf	Member	
7.	Sen. Baba Kaka Garbai	Member	
8.	Sen. Hope Uzodinma	Member	

L.A.I.D: 27-7-17

## COUNTERFEIT GOODS BILL, 2016

CLAUSES	PROVISION OF THE BILL	COMMITTEE RECOMENDATION	REMARK
TITLE	<p>A BILL FOR AN ACT TO INTRODUCE MEASURES AIMED AGAINST THE TRADE IN COUNTERFEIT GOODS SO AS TO FURTHER PROTECT OWNERS OF TRADEMARKS AND COPYRIGHT UNDER AGAINST THE UNLAWFUL APPLICATION, TO GOODS, OF THE SUBJECT MATTER OF THEIR RESPECTIVE INTELLECTUAL PROPERTY RIGHTS AND AGAINST THE RELEASE OF GOODS OF THAT NATURE (CALLED "COUNTERFEIT GOODS") INTO THE CHANNELS OF COMMERCE AND FOR OTHER MATTERS CONNECTED THEREWITH</p>	<p>A BILL FOR AN ACT TO INTRODUCE MEASURES <del>AIMED</del> AGAINST THE TRADE IN COUNTERFEIT GOODS <del>SO AS</del> TO FURTHER PROTECT OWNERS OF TRADEMARKS AND COPYRIGHT AGAINST THE UNLAWFUL APPLICATION, <i>IN RELATION</i> TO GOODS, OF THE SUBJECT MATTER OF THEIR RESPECTIVE INTELLECTUAL PROPERTY RIGHTS AND <del>AGAINST</del> THE RELEASE OF GOODS OF THAT NATURE (<del>CALLED "COUNTERFEIT GOODS"</del>) INTO THE CHANNELS OF COMMERCE; AND FOR <del>OTHER MATTERS CONNECTED THEREWITH</del> RELATED MATTERS</p>	
	<p>BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria, as follows-</p>	<p><del>BE IT</del> ENACTED by the National Assembly of the Federal Republic of Nigeria -</p>	
1	<p><b>Interpretations</b></p>	<p><b>Moved to the Later Part of the Bill</b></p>	
	<p>1.-(1) In this Act, unless the context otherwise requires:  "act of dealing in counterfeit goods" means any actor conduct referred to in section 2(1); (iii);  "apply to", with reference to any goods, means use upon or in physical or other relation to any goods, and, unless clearly inappropriate, includes to embody or</p>		<p>Interpretation becomes Clause 24.</p>

	<p>incorporate in any goods;</p> <p>"Complainant" means a person who, in terms of section 3(1), is entitled to lay a complaint contemplated in that section and who has laid such a complaint;</p> <p>"counterfeiting"-</p> <p>(a) means, without the authority of the owner of any intellectual property right subsisting in Nigeria in respect of protected goods, the manufacturing, producing or making, whether in the Republic or elsewhere, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are substantially identical copies of the protected goods;</p> <p>(b) means, without the authority of the owner of any intellectual property right subsisting in Nigeria in respect of protected goods, manufacturing, producing or making, or applying to goods, whether in Nigeria or elsewhere, the subject matter of that intellectual property right, or a colourable imitation hereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said owner or goods manufactured, produced or made under his or her licence; or</p> <p>(c) where, by a notice under the</p>		
--	---	--	--

Merchandise Marks Act, the use of a particular mark in relation to goods, except such use by a person specified in the notice, has been prohibited, means, without the authority of the specified person, making or applying that mark to goods, whether in Nigeria or elsewhere. However, the relevant act of counterfeiting must also have infringed the intellectual property right in question; "counterfeit goods" means goods that are the result of counterfeiting, and includes any means used for purposes of counterfeiting; "counterfeit goods depot" means a place designated under section 23 to be a counterfeit goods depot, and includes any place deemed by section 7(1)(c) to be a counterfeit goods depot; "document" includes a tape recording, a photograph and any electronic or magnetic or other medium on, in, or by means or by way of which, images, sound, data or information may be stored, and "documentary" will be construed accordingly; "exporter" includes any person who, at the relevant time:

- (a) is the owner or is in control or possession of any goods exported or to be exported from Nigeria;
- (b) Carries the risk for any goods so exported



	<p>or to be so exported;</p> <p>(c) represents that or acts as if he or she is the exporter or owner of any goods so exported or to be so exported;</p> <p>(d) actually" takes or attempts to take any goods from Nigeria;</p> <p>(e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so exported or to be so exported;</p> <p>(f) acts on behalf of any person referred to in paragraph (a ), (b), (c), (d) or (e) and. in relation to imported goods destined for exportation from Nigeria, includes the manufacturer, producer, maker, supplier or shipper of those goods or any person inside or outside the Nigeria representing or acting on behalf of such a manufacturer, producer, maker, supplier or shipper. "Export" and "exportation" will be construed in accordance with the preceding provisions of these interpretations; "importer" includes any person who at the relevant time; (a)'is the owner or is in control or possession of any goods imported or to be imported into the Republic;</p> <p>(b) carries the risk for any goods so imported or to be so imported;</p> <p>(c) represents that or acts as if he or she is the importer or owner of any goods so</p>		
--	---	--	--

<p>imported or to be so imported;</p> <p>(d) actually brings or attempts to bring any goods into the Republic;</p> <p>(e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so imported or to be so imported; acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e) and "import" and "importation" will be construed accordingly;</p> <p>"inspector" means any person who under or by virtue of section 22 has been appointed as or designated to be an inspector for the purposes of this Act, as well as: (a) any police officer holding the rank of sergeant or a higher rank; (b) the Comptroller General of Customs and any official contemplated in section 15(9), in performing their functions in the circumstances contemplated in section 15(4); "intellectual property right" (a) means the rights in respect of a trade mark conferred by the Trade Marks Act (b) means the copyright in any work in terms of the Copyright Act; "Minister" means the Minister of Trade and Investment "Owner", in relation to an intellectual property right, includes a person who has the capacity in law to enforce the intellectual property right in his or her own name; "package" or "packaging" means any container, wrapping</p>		
---	--	--

<p>or outer cover and the contents thereof, or any bundle or single piece in the case of unpacked goods,</p> <p>and, when used as a verb, has a corresponding meaning; "prescribed" means prescribed by regulation under this Act; "protected goods" means-</p> <p>(a) goods featuring, bearing, embodying or incorporating the subject matter of an intellectual property right with the authority of the owner of that intellectual property right, or goods to which that subject matter has been applied by that owner or with his or her authority;</p> <p>(b) any particular class or kind of goods which, in law, may feature, bear, embody or incorporate the subject matter of an intellectual property right only with the authority of the owner of that intellectual property right, or to which that subject matter may in law be applied, only by that owner or with his or her authority, but which has not yet been manufactured, produced or made, or to which that subject matter has not yet been applied, with the authority of or by that owner (whichever is applicable); "this Act" includes any regulation made under this Act; "tools" includes machinery; and "vehicle" includes any motor car, van, truck,</p>		
---	--	--

	<p>trailer, caravan, cart, barrow, train, aircraft, ship, boat or other vessel, and any other vehicle, craft or means of conveyance of any kind whatsoever, whether self-propelled or not, as well as any pack animal. Without derogating from the meanings of the words "place", "premises" and "vehicle". and unless clearly inappropriate, any reference in this Act-</p> <p>(a) to any place or premises, must be construed as a reference also to any freight container, irrespective of its size, at, on or in the place or premises;</p> <p>(b) to any vehicle, must be construed as a reference also to such a freight container on or in the vehicle.</p>		
2	<b>Dealing in Counterfeit Goods Prohibited and an Offence</b>	<b>Dealing in Counterfeit Goods Prohibited and an Offence</b>	
	2.-(1) Goods that are counterfeit goods <u>may</u> not-	1.-(1) Goods that are counterfeit <i>shall</i> not-	
	(a) be in the possession or under the control of any person in the course of business for the purpose of dealing in those goods;	(a) be in the possession or under the control of any person in the course of business for the purpose of dealing in those goods;	
	(b) be manufactured, produced or made except for the private and domestic use of the person by whom the goods were manufactured, produced or made;	<b>(b) Retained</b>	
	(c) be sold, hired out, bartered or exchanged,	<b>(c) Retained</b>	

	or be offered or exposed for sale hiring out, barter or exchange;		
	(d) be exhibited in public for purposes of trade;	<b>(d) Retained</b>	
	(e) be distributed- (i) for purposes of trade; or (ii) for any other purpose to such an extent that the owner of an intellectual property right in respect of any particular protected goods suffers prejudice;	(e) be distributed for- (i) the purposes of trade, or (ii) any other purpose to such an extent that the owner of an intellectual property right in respect of any particular protected goods suffers prejudice;	
	(f) be imported into or through or exported from or through Nigeria except if so imported or exported for the private and domestic use of the importer or exporter, respectively;	(f) be imported into or through or exported from or through Nigeria except, if so imported or exported, for the private and domestic use of the importer or exporter, respectively; and	
	(g) in any other manner be disposed of in the course of trade.	<b>(g) Retained</b>	
	(2) A person who performs or engages in any act or conduct prohibited by <u>subsection (1)</u> . will be guilty of an offence if-	(2) A person who performs or engages in any act or conduct prohibited by <i>sub-clause (1) of this clause</i> commits an offence if-	
	(a) at the time of the actor conduct, the person knew or had reason to suspect that the goods to which the act or conduct relates, were counterfeit goods; or	<b>(a) Retained</b>	
	(b) the person failed to take all reasonable steps in order to avoid any act or conduct of the nature <u>contemplated in subsection (1)</u> from being performed or engaged in with reference to the counterfeit goods.	(b) a person failed to take all reasonable steps to avoid any act or conduct of the nature <i>under sub-clause (1) of this clause</i> from being performed or engaged in with reference to the counterfeit goods.	

3.	<b>Laying a Complaint</b>	<b>Laying a Complaint</b>	
	<p>3.-(1) Any person who has an interest in protected goods, whether as the owner or licensee of an intellectual property right in respect of the protected goods or as an importer, exporter or distributor thereof (including the duly authorised agent or representative of any such person), who reasonably suspects that an offence referred to in section 2(2) has been or is being committed or is likely to be committed by any person, may lay a complaint to that effect with any inspector.</p>	<p>2.-(1) A person who-</p> <p>(a) has an interest in protected goods, whether as the owner or licensee of an intellectual property right in respect of the protected goods or as an importer, exporter or distributor thereof (including the duly authorised agent or representative of any such person), and</p> <p>(b) reasonably suspects that an offence referred to in clause 2(2) has been or is being committed or is likely to be committed by a person, may lay a complaint to that effect with any inspector.</p>	
	<p>(2) (a) The complainant must furnish information and particulars, to the satisfaction of the inspector, to the effect that the goods with reference to which that offence has been or is being or is likely to be committed, prima facie <u>are</u> counterfeit goods.</p> <p>(b) For the purposes of paragraph (a), the complainant may furnish to the inspector a specimen of the alleged counterfeit goods, or, if not reasonably possible, sufficient information and particulars from which the essential physical and any other distinctive</p>	<p>(2) The complainant shall furnish information and particulars, to the satisfaction of the inspector, that the goods with reference to which that offence has been or is being or is likely to be committed are prima facie <del>are</del> counterfeit goods.</p>	

	<p>features, elements and characteristics of the alleged counterfeit goods may be ascertained. and sufficient information and particulars as to the subsistence and extent of the intellectual property right, the subject matter of which allegedly has been applied to the goods alleged to be counterfeit goods, and as to the complainant's title to or interest in that right. and, where the alleged counterfeit goods are calculated to infringe an intellectual property right that subsists in respect of or has been applied to protected goods contemplated in paragraph (u) of the definition of "protected goods" in section 1 (1) also a specimen of the relevant protected goods.</p>		
	<p>(3) In relation to a complaint that has been laid, an inspector must take appropriate steps in terms of and subject to section 4(1), if reasonably satisfied-</p> <p>(a) that the person having laid the complaint, <i>prima facie</i> is a person who, in terms of subsection (1), is entitled to do so; and</p> <p>(b) that-</p> <p>(i) the goods claimed to be protected goods, <i>prima facie</i> are protected goods; and (ii) the intellectual property right, the subject matter of which is alleged to have ( c) that</p>	<p>(3) For the purposes of clause 2 (2) of this clause, the complainant may furnish to the inspector-</p> <p>(a) a specimen of the alleged counterfeit goods;</p> <p>(b) sufficient information and particulars from which the essential physical and other distinctive features or elements;</p> <p>(c) sufficient information and particulars as to the subsistence and extent of the intellectual property right, the subject matter of which allegedly has been applied to the goods alleged to be counterfeit goods;</p>	

	<p>the suspicion on which the complaint is based, appears to be reasonable in the circumstances.</p>	<p>(d) the complainant's title to or interest in that right where the alleged counterfeit goods are calculated to infringe an intellectual property right that subsists in respect of or has been applied to protected goods; and  (e) a specimen of the relevant protected goods.</p>	
	<p>(4) The preceding provisions of this section do not preclude an inspector from taking any appropriate steps in terms of section 4(1) on his or her own initiative in relation to any act or conduct believed or suspected to be an act of dealing in counterfeit goods, provided the requirements of that section are met.</p>	<p>(4) Where a complaint has been laid, an inspector shall take appropriate steps under clause 4 (1) of this Bill if the inspector is satisfied-</p> <p>(a) that the person having laid the complaint is a person who, under sub-clause (1) of this clause, is entitled to do so; and  (b) that-</p> <p>(i) the goods claimed to be protected goods are in fact protected goods; and  (ii) the intellectual property right, the subject matter of which is alleged to have been infringed upon, and the suspicion on which the complaint is based, appear to be reasonable in the circumstances.</p>	
		<p>(5) The provisions of this clause do not preclude an inspector from taking any appropriate steps, under clause 4 (1) of this Bill, on his or her own initiative in relation to any act or conduct believed or suspected to be an act of dealing in counterfeit goods, provided the requirements of that section are met.</p>	



4	Inspector's Powers in Relation to Counterfeit Goods	Inspector's Powers in Relation to Counterfeit Goods	
	4.-(1) <u>If</u> , Pursuant to any complaint laid with an inspector or on the strength of any other information at his or her disposal, the inspector has reasonable grounds to suspect that an offence contemplated in section 2(2) has been or is being committed or is likely to be committed, or to believe that an act of dealing in counterfeit goods has taken or is taking place or is likely to take place, he or she has the power, in accordance with paragraphs (a) to (f) of section 5(1)-	3.-(1) <i>Where a complaint has been laid with an inspector or on the strength of any other information at his or her disposal, the inspector has reasonable grounds to suspect that an offence under clause 2 (2) of this Bill, has been or is being or is likely to be committed, or that an act of dealing in counterfeit goods has taken or is taking or is likely to take place, he or she has the power under clause 5 (1) (a) - (f) of this Bill to-</i>	
	(a) <u>to</u> enter upon or enter any place, premises or vehicle in order to inspect any relevant goods and seize any suspected counterfeit goods, and may seize any suspected counterfeit goods found and cause them to be detained in accordance with this Act, and, where applicable, remove the suspected counterfeit goods for the purposes of detention;	(a) <del>to</del> enter upon or enter any place, premises or vehicle in order to inspect any relevant goods and seize any suspected counterfeit goods, and may seize any suspected counterfeit goods found and cause them to be detained in accordance with this Bill, and, where applicable, remove the suspected counterfeit goods for the purposes of detention;	
	(b) <u>to</u> collector obtain evidence relating to the suspected counterfeit goods or the relevant act of dealing in counterfeit goods;	(b) <del>to</del> collect or obtain evidence relating to the suspected counterfeit goods or the relevant act of dealing in counterfeit goods;	
	(c) <u>to</u> conduct at, on or in such place, premises or vehicle whatever search maybe reasonably necessary for the purposes of paragraph (a) or (b) (including the search of a	(c) <del>to</del> conduct at, on or in such place, premises or vehicle whatever search may be reasonably necessary for the purposes of paragraph (a) or (b) of this sub-clause	

	person); and	(including the search of a person); and	
	(d) <u>to</u> take whatever steps may be reasonably necessary in order to terminate the relevant act of dealing in counterfeit goods	(d) <del>to</del> take whatever steps may be reasonably necessary in order to terminate the relevant act of dealing in counterfeit goods.	
	(2) Subject to <u>section</u> 5(2), the powers conferred on an inspector by subsection (1) may be exercised only on the authority of a warrant issued under section 6, and may be exercised wherever the suspected act of dealing in counterfeit goods has taken or is taking place or is likely to take place or is suspected on reasonable grounds to have taken place or to be taking place.	(2) Subject to <i>clause</i> 5 (2) of this Bill, the powers conferred on an inspector under sub-clause (1) of this clause may be exercised only on the authority of a warrant issued under clause 6 of this Bill, and may be exercised wherever the suspected act of dealing in counterfeit goods has taken or is taking or is likely to take place or is suspected on reasonable grounds to have taken place or to be taking place.	
<b>5</b>	<b>Extent of Inspector's Powers in Relation to Counterfeit Goods</b>	<b>Extent of Inspector's Powers in Relation to Counterfeit Goods</b>	
	5.-(1) An inspector acting on the authority of and in accordance with a warrant issued under <u>section</u> 6, may at any reasonable time-	4.-(1) An inspector, acting on the authority of, and in accordance with, a warrant issued under <i>clause</i> 6 of this Bill, may at any reasonable time-	
	(a) enter upon or enter, and inspect, any place, premises or vehicle at, on or in which goods that are reasonably suspected of being counterfeit goods, are to be found or on reasonable grounds are suspected to be <u>or to be</u> manufactured, produced or made, and search <u>such</u> place, premises or vehicle and any person thereat, thereon or therein, for	(a) enter upon or enter and inspect any place, premises or vehicle at, on or in which goods that are reasonably suspected <b>to be</b> counterfeit goods, are to be found or on reasonable grounds are suspected to be or <del>to be</del> manufactured, produced or made, and search <del>such</del> <b>that</b> place, premises or vehicle and any person thereat, thereon or therein,	

	<p>such goods and for any other evidence of the alleged or suspected act of dealing in counterfeit goods. <u>For the purposes of entering, inspecting and searching such a vehicle, an inspector who is a police officer or who is assisted by a police official may stop the vehicle, if necessary by force, wherever found, including on any public road or at any other public place;</u></p>	<p>for such goods and for any other evidence of the alleged or suspected act of dealing in counterfeit goods <b><i>and, if necessary, by force wherever found, including on any public road or at any other public place;</i></b></p>	
	<p>(b) take the steps that may be reasonably necessary to terminate the manufacturing, production or making of counterfeit goods, or any other act of dealing in counterfeit goods being performed, at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future. Those steps may include any of the steps contemplated in <u>paragraphs (c), (d) and (e)</u> but do not include the destruction or alienation of the relevant goods unless authorised by the court in terms of this Act;</p>	<p>(b) take the steps that may be reasonably necessary to terminate the manufacturing, production or making of counterfeit goods, or any other act of dealing in counterfeit goods being performed, at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future and those steps may include any of the steps <b><i>specified under sub-clause 1 (c) – (e) of this clause</i></b>, but do not include the destruction or alienation of the relevant goods unless authorized by the court under this <i>Bill</i>;</p>	
	<p>(c) seize <u>and</u> detain, and, where applicable, remove for detention all the goods in question found at, on or in such place, premises or vehicle;</p>	<p>(c) seize, <del>and</del> detain and, where applicable, remove for detention all the goods in question found at, on or in such place, premises or vehicle;</p>	
	<p>(d) seal or seal off any place, premises or vehicle at, on or in which- (i) the goods in question are found. or are manufactured, produced or made, either</p>	<p>(d) seal or seal off any place, premises or vehicle at, on or in which- (i) the goods in question are found or are manufactured, produced or made, either</p>	<p><b>(iv) Retained</b></p>

	<p>wholly or in part;  (ii) any trade mark, or any exclusive mark contemplated in paragraph (c) of the definition of "counterfeiting" in section 1 (1), or any work which is the subject matter of copyright, is applied to those goods;  (iii) the packaging for those goods is prepared;  (iv) the packaging of those goods is undertaken;</p>	<p>wholly or in part,  (ii) any trade mark or exclusive mark as defined in clause 24 of this Bill, or any work which is the subject matter of copyright, is applied to those goods,  (iii) the packaging for those goods is prepared, and  (iv) the packaging of those goods is undertaken;</p>	
	<p>(e) seize and detain, and, where applicable, remove for detention. any tools which may be used in the manufacturing, production, making or packaging of those goods or applying a trade mark or that exclusive mark or such a work to them; and.</p>	<p><b>(e) Retained</b></p>	
	<p>(f) if he or she reasonably suspects that a person at, on or in such place, premises or vehicle may furnish any information with reference to any act of dealing in counterfeit goods-</p>	<p><b>(f) Retained</b></p>	
	<p>(i) question that person and take down a statement from him or her;</p>	<p>(i) question that person and take down a statement from him or her, <i>or</i></p>	
	<p>(ii) demand and procure from that person any book, document, article, item or object which in any way may be relevant to the nature, quantity, location, source or destination of the goods in question, or the identity and address of anyone involved or</p>	<p><b>(ii) Retained</b></p>	

	ostensibly involved as a supplier, manufacturer, producer, maker, distributor, wholesaler, retailer, importer, exporter or forwarding agent of, or other dealer in, the goods in question.		
	(2) Subject to <u>subsection (3)</u> , an inspector may, during the day, without a warrant enter upon or enter any place, premises or vehicle after having identified himself or herself <u>and in accordance with paragraphs (a) to f subsection (1)</u> , exercise the powers of seizure, removal, detention, collecting evidence and search contemplated in <u>section 4(1)(a), (b) and (c)</u> (except the power to search any person), as well as the power to take the steps contemplated in section 4(1)(d), if:	(2) Subject to <i>sub-clause (3)</i> of this clause, an inspector may, during the day without a warrant, enter upon or enter any place, premises or vehicle after having identified himself or herself and <i>may, under sub-clause (1) (a) - (f) of this clause</i> , exercise the powers of seizure, removal, detention, collecting evidence and search under <i>clause 3 (1) (a) - (d) of this Bill, if the-</i>	
	(a) the person who is competent to consent to the entry and to such search, seizure, removal and detention, gives that consent; or	<b>(a) Retained</b>	
	(b) the inspector on reasonable ground believes that- (i) the required warrant will be issued to him or her in terms of <u>section 6</u> if he or she were to apply for the warrant; and	(b) inspector, on reasonable ground, believes that <i>the-</i> (i) required warrant will be issued to him or her under <i>clause 5 of this Bill</i> , if he or she were to apply for the warrant, and	
	(ii) the delay that would ensue by first obtaining the warrant would defeat the object or purpose of the entry, search,	<b>(ii) Retained</b>	

	seizure, removal, detention, collection of evidence and other steps.		
	(3) <u>Subsection (2)(b)</u> does not serve as authority for, and may not be applied for the purposes of, entering and searching any private dwelling, <u>nor</u> for conducting such seizure and removal, the collection of evidence and the taking of the said other steps therein.	(3) <i>Sub-clause (2) (b)</i> of this clause does not serve as authority for, and may not be applied for, the purpose of entering and searching any private dwelling, <i>or</i> for conducting such seizure and removal, the collection of evidence and the taking of the said other steps therein.	
	(4) Notwithstanding the provisions of <u>subsections (1) and (2)</u> :	(4) Notwithstanding the provisions of <i>sub-clauses (1) and (2)</i> of this clause-	
	(a) any steps taken by an inspector in accordance with <u>paragraph (a), (b), (c) or (d) of subsection (1), or like steps taken by him or her by virtue of subsection (2).</u> <u>will</u> cease to have any legal effect <u>whatsoever</u> unless the court confirms such steps, either finally or on the application of the inspector or the relevant complainant (where applicable) brought within 10 court days of the day on which those steps had been taken;	(a) any step taken by an inspector under <i>sub-clause 1 (a) – (d) of this clause or other steps taken by him or her under sub-clause (2) of this clause, shall</i> cease to have any legal effect <del>whatsoever</del> unless the court confirms such steps, either finally or on the application of the inspector or the relevant complainant (where applicable) brought within 10 court days from the day on which those steps had been taken;	
	(b) no answer given or statement made by any person to an inspector exercising his or her powers in terms of <u>paragraph U)(i) of subsection (1)</u> or given or made to any inspector exercising like powers by virtue of <u>subsection (2), will</u> , if self-incriminating, be admissible as evidence against that person in criminal proceedings instituted in any court	(b) no answer given or statement made by any person to an inspector exercising his or her powers under <i>sub-clause (1) of this clause or given or made to any inspector exercising the same powers under sub-clause (2) of this clause shall</i> , if it is self-incriminating, be admissible as evidence against that person in criminal proceedings instituted in any court	

	against him or her, except in criminal proceedings where that person is tried for an offence contemplated in <u>section 18(d)(ii)</u> , and then only to the extent that such answer or statement is relevant to prove the offence charged.	against him or her, except in criminal proceedings- (i) where that person is tried for an offence contemplated in <i>section 17(d)(ii)</i> , and (ii) to the extent that such answer or statement is relevant to prove the offence charged.	
	(5) The provisions of <u>section 6(4)</u> regarding the manner in which a search must be conducted. and section 6(5) (b), (6), (7), (8) and (9), will apply <i>mutatis mutandis</i> to an inspector acting by virtue of subsection (2) of this section.	(5) The provisions of <i>clauses 5 (4) (b) and (6) - (9)</i> of this Bill regarding the manner in which a search must be conducted, shall apply <i>mutatis mutandis</i> to an inspector acting under sub-clause (2) of this clause.	
<b>6.</b>	<b>Provisions Relating to Issue and Execution of Warrant</b>	<b>Issue and Execution of Warrant</b>	
	6.-(1) The warrant contemplated in <u>section 4(2)</u> read with <u>section 5(1)</u> will be issued in chambers by any judge of the High Court or by a magistrate who has jurisdiction in the area where the relevant suspected act of dealing in counterfeit goods is alleged to have taken or to be taking place or is likely to take place, and will be issued only if it appears to the judge or magistrate from information on oath or affirmation that there are reasonable grounds for believing that an act of dealing in counterfeit goods has taken or is taking place or is likely to take place, and the inspector seeking the warrant may	5.-(1) The warrant contemplated under <i>clauses 3 (2) and 4 (1)</i> of this Bill shall be issued in chambers by any judge of the High Court or by a magistrate who has jurisdiction in the area where the relevant suspected act of dealing in counterfeit goods is alleged to have taken or to be taking place or is likely to take place, and shall be issued only if it appears to the judge or magistrate from information on oath or affirmation that there are reasonable grounds for believing that an act of dealing in counterfeit goods has taken or is taking place or is likely to take place,	

	be asked to specify which of the powers contemplated in <u>section 4(1)</u> is or are likely to be exercised.	and the inspector seeking the warrant may be asked to specify which of the powers under <i>clause 3 (1)</i> of this Bill is likely to be exercised.	
	(2) A warrant in terms of this <u>section</u> maybe issued either with reference to only one separate suspected act of dealing in counterfeit goods or with reference to any number of such acts, whether any such act involves only one alleged offender or any number of alleged offenders, and irrespective of whether such offender or number of offenders is identified specifically by name or by reference to any particular place or circumstances, and any point in time.	(2) A warrant under this <i>clause</i> may be issued either with reference to only one separate suspected act of dealing in counterfeit goods or with reference to any number of such acts, whether such act involves only one alleged offender or any number of alleged offenders, and irrespective of whether such offender or number of offenders is identified specifically by name or by reference to any particular place or circumstance, and any point in time.	
	(3) A warrant in terms of this <u>section</u> may be issued on any day and will be in-	(3) A warrant under this <i>clause</i> may be issued on any day and shall be in force until-	
	(a) it has been executed; or	(a) it has been executed;	
	(b) it is cancelled by the judge or magistrate who issued it, or, if not available, by any other judge, or by any other magistrate with like authority (as the case may be);	<b>(b) Retained</b>	
	(c) the expiry of three months from the day of its issue; or	<b>(c) Retained</b>	
	(d) the purpose for which the warrant was issued, no longer exists, whichever	(d) the purpose for which the warrant was issued, no longer exists, whichever <b><i>occurs first.</i></b>	
	(4) A warrant issued in terms of this <u>section</u> maybe executed by day only, unless the	(4) A warrant issued under this <i>clause</i> may be executed by day only, unless the person who	



	person who has issued the warrant has authorised the execution thereof by night at times which must be reasonable, and the entry upon or into and search of any place, premises or vehicle specified in the warrant, and the search of any person thereat, thereon or therein must be conducted with strict regard to decency and order, including:	has issued the warrant has authorised the execution thereof by night at times which shall be reasonable, and the entry upon or into and search of any place, premises or vehicle specified in the warrant, and the search of any person thereat, thereon or therein shall be conducted with strict regard to decency and order, including-	
	(a) a person's right to, respect for and protection of his or her dignity;	<b>(a) Retained</b>	
	(b) the right of a person to freedom and security of his or her person; and	<b>(b) Retained</b>	
	(c) the right of a person to his or her personal privacy	<b>(c) Retained</b>	
	(5) An inspector executing a warrant in terms of this <u>section</u> must immediately before commencing with the execution thereof-	(5) An inspector executing a warrant <i>under this clause shall</i> , immediately before commencing with the execution thereof-	
	(a) identify himself or herself to the person in control of the place, premises or vehicle to be entered upon or entered, if that person is present and hand to that person a copy of the warrant, or, if that person is not present affix a copy of the warrant to a prominent spot at on or to the place, premises or vehicle;	(a) identify himself or herself to the person in control of the place, premises or vehicle to be entered upon or entered, if that person is present and hand to that person a copy of the warrant, or, if that person is not present, affix a copy of the warrant to a prominent spot at, on or to the place, premises or vehicle; and	
	(b) furnish that person at his or her request with particulars regarding the inspector's authority to execute such a warrant. For that purpose an inspector may be requested to	(b) furnish that person at his or her request with particulars regarding the inspector's authority to execute such warrant and an inspector may be requested to produce the	

	produce the certificate issued in respect of him or hereunder <u>section 22(3)</u> .	certificate issued to him or her under <i>clause 21 (4)</i>	
	(6) An inspector who on the authority of a warrant issued in terms of <u>subsection (1)</u> may enter upon or enter, and search, any place, premises or vehicle and search any person thereat, thereon or therein, may use such force as may be reasonably necessary to overcome any resistance to the entry and search.	(6) An inspector, on the authority of a warrant issued under <i>sub-clause (1) of this Bill</i> , may – (a) enter upon or enter, and search, any place, premises or vehicle and search any person thereat, thereon or therein; and	
		(b) use such force as may be reasonably necessary to overcome any resistance to the entry and search.	
	(7) An inspector may enter upon or enter, and search, any place, premises or vehicle, and may search any person thereat, thereon or therein, only if he or she audibly has first demanded access thereto and has notified the purpose of the entry, unless the inspector on reasonable grounds is of the opinion that any goods, document, article or item may be destroyed or be lost if access is first demanded and that purpose notified.	<b>(7) Retained</b>	
	(8) If during the execution of a warrant in terms of this section, a person claims that any goods, document, article or item found at on or in the place premises or vehicle in question contains privileged information and refuses the inspection or removal thereof,	<b>(8) Retained</b>	

	the inspector executing the warrant, if of the opinion that the goods, document, article or item may be relevant to and necessary for the investigation of any complaint or any alleged or suspected act of dealing in counterfeit goods, must request the registrar of the High Court having jurisdiction, or that registrar's deputy, to seize and remove such goods document, article or item for safe custody until the court has made a ruling on the question whether or not the information in question is privileged.		
	(9) In undertaking any search for and inspection and seizure of suspected counterfeit goods an inspector may be assisted by the complainant (if any) or any other knowledgeable person in identifying goods as suspected counterfeit goods.	<b>(9) Retained</b>	
<b>7</b>	<b>Duties of Inspector following Seizure of Goods</b>	<b>Duties of Inspector following Seizure of Goods</b>	
	<b>7.-(1)</b> An inspector who, in exercising his or her powers in terms of section 4(1), has seized any suspected counterfeit goods, <u>must-</u>	<b>6.-(1)</b> An inspector who, in exercising his or her powers under clause 3 (1) of this Bill, has seized any suspected counterfeit goods, <b>shall-</b>	
	(a) Forthwith seal, clearly identify and categorise these goods and prepare, in quadruplicate, an inventory of them and cause the person from whom those goods	(a) immediately seal, clearly identify and categorise these goods and prepare, in quadruplicate, an inventory of them and cause the person from whom those goods were	

	<p>were seized to check the inventory for correctness, and, if correct, cause that person to make a certificate to that effect under his or her signature on each original of that inventory. <u>If the seized goods are removed in terms of paragraph (c), the inspector must endorse that fact under his or her signature on every original of that inventory, in which case that inventory will also serve as a receipt</u></p>	<p>seized to check the inventory for correctness, and if correct, cause that person to make a certificate to that effect under his or her signature on each original of that inventory; <del>if the seized goods are removed in terms of paragraph (c), the inspector must endorse that fact under his or her signature on every original of that inventory, in which case that inventory will also serve as a receipt</del></p>	
	<p>(b) furnish one of the originals of the inventory to the person from whom the goods were seized and another to the complainant (if any) within 72 hours after the seizure;</p>	<p>(b) where the seized goods are removed following the provision of sub-clause (1) (d) of this clause, endorse that fact under his or her signature on every original of that inventory, in which case that inventory will also serve as a receipt;</p>	
	<p>(c) as soon as possible remove the goods, if transportable, to a counterfeit goods depot for safe storage, or, if not capable of being removed or transported, declare the goods to have been seized, and seal off or seal and lockup those goods or place them under guard at the place where they were found, and thereupon that place will be deemed to be a counterfeit goods depot and</p>	<p>(c) furnish one of the originals of the inventory to the person from whom the goods were seized and another to the complainant (if any) within 72 hours after the seizure;</p>	
		<p>(d) as soon as possible, remove the goods, if transportable, to a counterfeit goods depot for safe storage or, if not capable of being removed or transported, declare the goods to</p>	

		have been seized, and seal off or seal and lockup those goods or place them under guard at the place where they were found, and thereupon that place will be deemed to be a counterfeit goods depot and	
	(d) by written notice inform the following persons of the action taken by the inspector in terms of <u>section 4(1)</u> and of the address of the counterfeit goods depot where the seized goods are kept-	(e) by written notice, inform the person from whom those goods were seized and the complainant under <i>clause 2 (1)</i> of this Bill, where the inspector exercise his powers under clause 3 (1) of this Bill and of the address of the counterfeit goods depot where the seized goods are kept-	
	(i) The person from whom those goods were seized; <u>and</u>	(i) the person from whom those goods were seized; <del>and</del>	
	(ii) also- (a) the complainant, where the inspector exercised his or her powers in terms of section 4(1) pursuant to a complaint laid in terms of section 3(1); or	(ii) the complainant, where the inspector exercised his or her powers under clause 2 (1) pursuant to a complaint laid under clause 3(1); or	
	(b) any person who, in relation to those goods, qualifies in terms of <u>section 3(1)</u> to be a complainant, but who had not yet so laid a complaint at the time when the inspector exercised those powers on his or her own initiative as contemplated in section 3(4).	(iii) any person who, in relation to those goods, qualifies under <i>clause 3 (1)</i> to be a complainant, but who had not yet so laid a complaint at the time when the inspector exercised those powers on his or her own initiative as contemplated in clause 3(4).	
	(2) In any notice in terms of <u>subsection (J)(d)</u> that is issued-	(2) In any notice under <i>paragraph (d)</i> of this <i>sub-clause</i> that is issued <b>to-</b>	
	(a) to the complainant, the complainant <u>must</u> be notified of his or her right by virtue	(a) the complainant, the complainant <b>shall</b> be notified of his or her right under <i>clause 8 (1)</i>	

	of <u>section 9(1 (a))</u> to lay a criminal charge, not later than <u>three</u> days after the date of the notice, against the person from whom those goods were seized ( <u>hereafter called the suspect</u> );	(a) of this Bill, to lay a criminal charge, not later than <b>3</b> days after the date of the notice, against the person from whom those goods were seized ( <i>in this Bill referred to as "the suspect"</i> ); <b>and</b>	
	(b) to a person qualifying to be a complainant, as contemplated in <u>paragraph (d) (ii)(bb)</u> of <u>subsection (1)</u> , the inspector must invite that person ( <u>hereafter called the prospective complainant</u> ) to lay a complaint with him or her, and lay with the Police a criminal charge, not later than three days after the date of the notice, against the suspect for having performed an act of dealing in counterfeit goods that is an offence in terms of <u>section 2(2)</u> .	(b) a person qualifying to be a complainant, as contemplated in <i>sub-clause (1) (d) (ii)</i> of <b>this clause</b> , the inspector shall invite that person ( <i>in this Bill referred to as "the prospective complainant"</i> ) to lay a complaint with him or her, and lay with the Police a criminal charge, not later than three days after the date of the notice, against the suspect for having performed an act of dealing in counterfeit goods that is an offence <b>under clause 2 (2) of this Bill</b> .	
	(3) An inspector may demand from a complainant to disclose any information which may be relevant to the action that has been taken.	<b>(3) Retained</b>	
	(4) (a) Any person prejudiced by a seizure of goods <u>in terms of section 4(1)</u> , may at any time apply to the court on notice of motion for a determination that the seized goods are not counterfeit goods and for an order that they be returned to him or her.	(4) A person prejudiced by a seizure of goods <b>under clause 3 (1)</b> of this Bill, may at any time apply to the court on notice of motion for a determination that the seized goods are not counterfeit goods and for an order that they be returned to him or her.	
	(5) The court may grant or refuse the relief applied for and make such order as it deems just and appropriate in the circumstances;	<b>(5) Retained</b>	

	including an order as to the payment of damages and costs, if applicable.		
	(c) If deemed just and appropriate in the circumstances by a court that has refused the order sought. it may order, where those goods have been seized pursuant to a complaint laid in terms of <u>section 3(1)</u> , that the complainant furnishes security to the applicant in respect of those goods in an amount and manner determined by the court.	(6) A court may, where appropriate refuse the order sought and may, where those goods have been seized pursuant to a complaint laid under <i>clause 2 (1) of this Bill</i> , order that the complainant furnish security to the applicant in respect of those goods in an amount and manner determined by the court.	
8	<b>Storage of Seized Goods, and Access Thereto</b>	<b>Storage of Seized Goods, and Access Thereto</b>	
	8.-(1) Goods that have been seized <u>in terms of section 4(1) must</u> be stored and kept in safe custody at a counterfeit goods depot until the person in charge of the depot- (a) is ordered by a competent court in terms of this <u>Act</u> to return release, destroy or otherwise dispose of those goods as specified in the order; or	7.-(1) Goods that have been seized <b>under clause 3 (1) of this Bill, shall</b> be stored and kept in safe custody at a counterfeit goods depot until the person in charge of the depot- (a) is ordered by a competent court under this <b>Bill</b> to return, release, destroy or otherwise dispose of those goods as specified in the order; or	
	(b) is directed by the inspector concerned, in the circumstances provided <u>for in subsection (1)(b) or (2)(u), (b) or (c) of section 9</u> , to release those goods to the suspect.	(b) is directed by the inspector concerned, in the circumstances provided <b>under clause 8 (1) (b), (3) (b) or (c) of this Bill</b> , to release those goods to the suspect.	
	(2) Goods seized <u>in terms of section 4(1) will</u> be available for inspection by the complainant, or, as the case may be,	(2) Goods seized <b>under clause 3 (1) of this Bill, shall</b> be available for inspection by the complainant or, as the case may be,	

	prospective complainant (if any) the suspect and any other interested person at the counterfeit goods depot on any working day during normal office hours.	prospective complainant (if any), the suspect or any other interested person at the counterfeit goods depot on any working day during normal office hours.	
	(3) The person in charge of the counterfeit goods depot, on the request of the complainant or prospective complainant (as the case may be) or the suspect, must make the relevant seized goods available for testing or analysis by or on behalf of any such complainant or the suspect if the person so in charge, having taken into account the nature of such seized goods, the nature of the tests or analyses to be conducted and the competence and suitability of the person by whom the tests or analyses are to be conducted is satisfied that a request in that regard is reasonable.	(3) The person in charge of the counterfeit goods depot, on the request of the complainant or prospective complainant (as the case may be) or the suspect, shall make the relevant seized goods available for testing or analysis by, or on behalf of, any such complainant or the suspect if the person in charge, having taken into account the nature of such seized goods, the nature of the tests or analyses to be conducted and the competence and suitability of the person by whom the tests or analyses are to be conducted is satisfied that a request in that regard is reasonable.	
	(4) The person in charge of a counterfeit goods depot who is not willing to allow seized goods under his or her custody to be made available to the suspect for testing or analysis by any person or by a particular person, must forthwith refer the matter to the complainant or prospective complainant (as the case may be) who must either confirm or reverse that decision within 48 hours.	(4) The person in charge of a counterfeit goods depot who is not willing to allow seized goods under his or her custody to be made available to the suspect for testing or analysis by any person or by a particular person, shall refer the matter to the complainant or prospective complainant (as the case may be) who shall either confirm or reverse that decision within 48 hours.	
	(5) (a) Where any such complainant has	(5) Where a complainant has confirmed the	



	confirmed the decision not to allow the seized goods to be made available to the suspect for testing or analysis, that decision must be conveyed in writing to the suspect who may apply to the court for an order rescinding the decision and allowing those goods to be made so available.	decision not to allow the seized goods to be made available to the suspect for testing or analysis, that decision must be conveyed in writing to the suspect who may apply to the court for an order rescinding the decision and allowing those goods to be made so available.	
	(6) The court will grant the application if it finds the decision to be unreasonable in the circumstances.	<b>(6) Retained</b>	
<b>9.</b>	<b><u>Seized Goods to be Released if Criminal Investigation or Criminal or Civil Proceedings not Contemplated against Suspect</u></b>	<b>Release of Seized Goods</b>	
	9.-(1) (a) Where suspected counterfeit goods have been seized by an inspector in terms of <u>section 4(1)</u> , the complainant or prospective complainant (as the case may be), if he or she wishes to lay a criminal charge against the suspect with the police for having committed an offence referred to in section 2) and request that a criminal investigation into the matter be undertaken, must do so not later than <u>three</u> days after the date of the notice referred to in <u>section 7(2)</u> .	8.-(1) Where suspected counterfeit goods have been seized by an inspector under <i>clause 3 (1)</i> of this Bill, the complainant or prospective complainant who wishes to lay a criminal charge against the suspect with the police for having committed an offence referred to in clause 1 of this Bill and requests that a criminal investigation into the matter be undertaken, shall do so not later than <b>3</b> days after the date of the notice referred to in <i>clause 6 (2) of this Bill</i> ; and	
	(b) If upon the expiry of that three day period, a criminal charge has not so been laid, the relevant seized goods must be	(2) If, upon the expiry of the three day period, a criminal charge has not so been laid, the relevant seized goods shall be released to the	

	released to the suspect subject to <u>subsection(2)</u> .	suspect subject to <i>sub-clause (3) of this clause</i> .	
	(2) Subject to <u>subsection (3)</u> goods seized in terms of <u>section 4(1)</u> must be released to the suspect also-	(3) Subject to <i>sub-clause (4) of this clause</i> , goods seized under <i>clause 4(1) of this Bill</i> shall be released to the suspect -	
	(a) (i) if the <u>State</u> fails within 10 working days after the date of the notice given to the suspect in terms of <u>paragraph (d)(i) of section 7(1)</u> to inform the suspect by further written notice. of its intention to institute a criminal prosecution against him or her for having committed an offence referred to in <u>section 2(2)</u> ; and (iii) if any person to whom notice has been given in terms of <u>paragraph (d)(ii) of section 7(1)</u> fails within 10 working days after the date of that notice to inform the suspect, by further written notice, of the <u>person's intention to institute against the suspect civil proceedings founded on an act of dealing in counterfeit goods on the part of the suspect;</u>	(a) if the <b>Government</b> fails, within 10 working days after the date of the notice given to the suspect under <i>clause 6 (1) (e) (i) of this Bill</i> , to inform the suspect by further written notice of its intention to institute a criminal prosecution against him or her for having committed an offence referred to in <i>clause 2 (2) of this Bill</i> ;	
		(b) if any person to whom notice has been given under <i>clause 6 (1) (e) (ii) of this Bill</i> fails within 10 working days after the date of that notice to inform the suspect, by further written notice, of the person's intention to institute against the suspect civil proceedings founded on an act of dealing in counterfeit goods on the part of the suspect;	

	<p>(b) in any case where the <u>State</u> or that person has so given further notice, if that criminal prosecution or those civil proceedings (as the case may be) is or are not instituted within 10 court days after the date of the relevant further notice; or</p>	<p>(c) in any case where the <i>Government</i> or that person has given further notice, if that criminal prosecution or those civil proceedings (as the case may be) is or are not instituted within 10 court days after the date of the relevant further notice; or</p>	
	<p>(c) if the complainant <u>in writing</u> has instructed the inspector to release those goods to the suspect. However, such an instruction may not be given and the relevant seized goods may not be so released at any time after a criminal prosecution involving those goods has been instituted against the suspect; or</p>	<p>(d) if the complainant <del>in writing</del> has instructed the inspector in writing to release those goods to the suspect and such an instruction may not be given and the relevant seized goods may not be so released at any time after a criminal prosecution involving those goods has been instituted against the suspect; or</p>	
	<p>(3) (a) For the purpose of effecting the release of goods <u>in terms of subsection (1)(b) or (2) (a), (b) or (c)</u>, the inspector who had seized those goods <u>in terms of section 4(1)</u> <u>must</u> issue a notice to the person in charge of the counterfeit goods depot where those goods are detained, directing that the relevant goods, as specified in the copy of the inventory attached to that notice, be released to the person specified therein, and at the same time cause a copy of that notice to be served on the suspect and on the complainant.</p>	<p>(4) For the purpose of effecting the release of goods <i>under sub-clause (2) or (3) (a) of this clause, (c) or (d)</i>, the inspector who had seized those goods <i>under sub-clause 4(1)</i> <b>shall</b> issue a notice to the person in charge of the counterfeit goods depot where those goods are detained, directing that the relevant goods, as specified in the copy of the inventory attached to that notice, be released to the person specified therein, and, at the same time, cause a copy of that notice to be served on the suspect and on the complainant.</p>	
	<p>(4) The person in control of counterfeit goods depot to whom a notice has been</p>	<p>(5) The person in control of counterfeit goods depot to whom a notice has been issued in</p>	

	issued in accordance with the provisions of <u>paragraph (a)</u> , <u>must</u> release the relevant goods in accordance with that notice, on the fourth day after the date of that notice, unless a competent court has ordered otherwise.	accordance with the provisions of <i>sub-clause (3) (a) of this clause</i> , <b>shall</b> release the relevant goods in accordance with that notice, on the fourth day after the date of that notice, unless a competent court has ordered otherwise.	
	(d) upon the order of a competent court.		
<b>10</b>	<b>Other Orders that may be Issued by Court</b>	<b>Other Orders that may be Issued by Court</b>	
	<b>10.-(1)</b> without derogating from the powers of a court in any civil or criminal proceedings relating to counterfeit goods, such a court may order-	<b>9.-(1)</b> Without derogating from the powers of a court in any civil or criminal proceeding relating to counterfeit goods, such a court may order <b>that</b> -	
	(a) <u>that</u> the goods in question, where they have been found to be counterfeit goods, be delivered up to the owner of the intellectual property right the subject matter of which has been unlawfully applied to those goods, or up to any complainant deriving his or her title from that owner, irrespective of the outcome of the proceedings;	(a) <del>that</del> the goods in question, where they have been found to be counterfeit goods, be delivered up to the owner of the intellectual property right the subject matter of which has been unlawfully applied to those goods, or up to any complainant deriving his or her title from that owner, irrespective of the outcome of the proceedings;	
	(b) <u>that</u> those goods be released to any person specified in the order;	(b) <del>that</del> those goods be released to any person specified in the order;	
	(c) <u>that</u> the complainant pays damages, in an amount determined by the court to the person from whom those goods were seized and pays that person's costs;	(c) <del>that</del> the complainant pays damages, in an amount determined by the court to the person from whom those goods were seized and pays that person's costs	
	(d) <u>that</u> the accused or the defendant or respondent (as the case may be) discloses	(d) <del>that</del> the accused or the defendant or respondent (as the case may be) discloses the	

	the source from which those goods, if found to be counterfeit goods, have been obtained, as well as the identity of the persons involved or ostensibly involved in the importation, exportation, manufacture, production or making, and the distribution, of the counterfeit goods and in the channels of distribution of those goods.	source from which those goods, if found to be counterfeit goods, have been obtained, as well as the identity of the persons involved or ostensibly involved in the importation, exportation, manufacture, production or making, and the distribution, of the counterfeit goods and in the channels of distribution of those goods.	
	(2) If a Court in any civil or criminal proceedings has ordered the delivery up to any person of goods found to be counterfeit goods derived from any process of counterfeiting <u>contemplated in paragraph (b) or (c) of the definition of "counterfeiting" in section 1(1)</u> then, notwithstanding the provisions of any law, those goods-	(2) If a court, in any civil or criminal proceeding, has ordered the delivery up to any person of goods found to be counterfeit goods derived from any process of counterfeiting <i>as defined in clause 24 of this Bill</i> , then, notwithstanding the provisions of any law, those goods-	
	(a) may not be released into the channels of commerce upon the mere removal of the subject matter of the intellectual property right that was unlawfully applied to those goods;	<b>(a) Retained</b>	
	(b) if imported, may not be exported in an unaltered state, unless the court on good cause shown, has ordered otherwise.	<b>(b) Retained</b>	
11.	<u>Court may Authorize Search and Attachment Pending Institution of Civil Proceedings, to Present Evidence Relevant to Infringement of Intellectual Property Right, etc.</u>	<b>Search and Attachment may be Authorized</b>	

	<p>11.-(1) The owner of intellectual property right who is aware or has reasonable grounds to believe that an act of dealing in counterfeit goods has taken or is taking place or is likely to take place, may, without prejudice to any other remedy that he or she may have in law, apply <i>ex parte</i> to a judge in chambers for an order-</p>	<p>10.-(1) The owner of intellectual property right who is aware or has reasonable grounds to believe that an act of dealing in counterfeit goods has taken or is taking place or is likely to take place may, without prejudice to any other remedy that he or she may have in law, apply <i>ex parte</i> to a judge in chambers for an order-</p>	
	<p>(a) directing the sheriff or another person designated by the court (<u>hereafter referred to as a designated person</u>) to enter upon or enter any specified place or premises accompanied by such other persons as the court may specify (if any) and there to search for, and, if found, seize and remove such documents records or other material as the court may specify and any such goods, alleged to be counterfeit goods, as maybe so specified (<u>hereafter referred to as subject goods</u>), that are at, on or in such place or premises, and to attach such documents, records, material and goods;</p>	<p>(a) directing the sheriff or another person designated by the court (<i>in this Bill referred to as "the designated person"</i>) to enter upon or enter any specified place or premises accompanied by such other persons as the court may specify (if any) and search for and, if found, seize and remove such documents records or other material as the court may specify and any such goods, alleged to be counterfeit goods, as may be so specified (<i>in this Bill referred to as "the subject goods"</i>), that are at, on or in such place or premises, and to attach such documents, records, material and goods;</p>	
	<p>(b) directing the respondent to point out to the sheriff or designated person all subject goods and to disclose and make available to him or her all documents and material that are relevant in order to determine whether the subject goods in question are counterfeit goods or are relevant to any transactions or</p>	<p>(b) directing the respondent to point out to the sheriff or designated person all subject goods and to disclose and make available to him or her all documents and material that are relevant in order to determine whether the subject goods in question are counterfeit goods or are relevant to any transaction or</p>	

	dealings in counterfeit goods at, on or in the relevant place or premises or elsewhere, and to permit the sheriff or designated person to attach such subject goods, as well as such documents and material ( <u>hereafter jointly referred to as ancillary materials</u> ) and remove them for detention in safe custody;	dealings in counterfeit goods at, on or in the relevant place or premises or elsewhere, and to permit the sheriff or designated person to attach such subject goods, as well as such documents and material ( <i>in this Bill referred to as "the ancillary materials"</i> ) and remove them for detention in safe custody;	
	(c) restraining the respondent from-	<b>(c) Retained</b>	
	(i) interfering with the state of the subject goods or ancillary materials during the search, seizure, attachment or removal;	<b>(i) Retained</b>	
	(ii) carrying out or continuing with the act of dealing in counterfeit goods that gave rise to the application;	<b>(ii) Retained</b>	
	(d) granting such further or alternative relief as the court considers appropriate.	<b>(d) Retained</b>	
	(2) An application in terms of <u>subsection (1)</u> will be heard in camera unless the court is satisfied that the attendance of the proceedings by members of the public or any class or group of such members will not cause the applicant to suffer any prejudice or to be prejudiced when seeking to protect or enforce his or her relevant intellectual property right and that such attendance, should the court order the relief sought, will not impair or detract from the efficacy of the order or the execution thereof.	(2) An application under <i>sub-clause (1) of this clause</i> , shall be heard in camera unless the court is satisfied that the attendance of the proceedings by members of the public or any class or group of such members will not cause the applicant to suffer any prejudice or to be prejudiced when seeking to protect or enforce his or her relevant intellectual property right and that such attendance, should the court order the relief sought, will not impair or detract from the efficacy of the order or the execution thereof.	
	(3) The court will not grant an application	(3) The court shall not grant an application	

	brought in terms of <u>subsection (1)</u> unless it considers that the applicant has a prima facie claim against the respondent for the infringement of an intellectual property right and that-	brought under <i>sub-clause (1) of this clause</i> , unless it considers that the applicant has a prima facie claim against the respondent for the infringement of an intellectual property right and that-	
	(a) the applicant's right to discovery of documents in any proceedings to be instituted by him or her is likely to be frustrated, either by reason of the nature of the suspected counterfeit goods in relation to which the application is made or due to other circumstances; or	<b>(a) Retained</b>	
	(b) should the normal court procedure be followed or implemented, the goods relevant to the issues in those proceedings, or evidence in connection with transactions or dealings with the latter goods, are likely to be destroyed or to be so altered or placed or be otherwise disposed of in such manner as to effectively preclude the applicant from having access to the relevant goods.	(b) should the normal court procedure be followed or implemented, the goods relevant to the issues in those proceedings, or evidence in connection with transactions or dealings with the latter goods, are likely to be destroyed or to be so altered or placed or be otherwise disposed of in such manner as to effectively preclude the applicant from having access to the relevant goods.	
	(4) A court hearing an application so brought, may order that the relief applied for, be granted subject to the terms and conditions specified in the order. or that relief be refused, or may make any other order that it deems just and appropriate in the circumstances.	(4) A court hearing an application so brought may -	
		(a) order that the relief applied for be granted	



		subject to the terms and conditions specified in the order;	
		(b) order that the relief be refused; or	
		(c) make any other order that it deems just and appropriate in the circumstances.	
	(5) For the purposes of <u>subsection (4)</u> , the court may-	(5) For the purposes of <i>sub-clause (4) of this clause</i> , the court may-	
	(a) order that the designated person may rely upon the assistance of knowledgeable persons, specified in the order, in identifying the subject goods and ancillary materials;	<b>(a) Retained</b>	
	(b) order the applicant to furnish security to the respondent in an appropriate amount equal to a specified percentage of the value of the goods attached;	<b>(b) Retained</b>	
	(c) issue an order restraining the respondent from infringing the applicant's intellectual property right;	<b>(c) Retained</b>	
	(d) issue a rule calling upon the respondent to show cause before or on a specified day (which must fall on a date within 20 court days of the granting of the rule) why an interdict restraining the respondent from infringing the applicant's intellectual property right and any order granting the applicant further relief, including an order directing the delivery of the subject goods up to the applicant, should not be granted or confirmed; or	<b>(d) Retained</b>	

	(e) order that the applicant, should he or she wish to institute proceedings against the respondent for the infringement of the applicant's intellectual property right, <u>must</u> do so not later than the date specified in the order.	(e) order that the applicant, should he or she wish to institute proceedings against the respondent for the infringement of the applicant's intellectual property right, <b>shall</b> do so not later than the date specified in the order.	
	(6) If the court has not made an order <u>in terms of subsection (5)(e)</u> , an applicant who wishes to institute the proceedings contemplated in that subsection must do so within 20 court days of the date of the order made in terms of <u>subsection (4) and whereby</u> his or her application was granted.	(6) If the court has not made an order <b>under sub-clause (5) (e) of this clause</b> , an applicant who wishes to institute the proceedings contemplated in that sub-clause shall do so within 20 court days of the date of the order made <b>under sub-clause (4) of this clause and where</b> his or her application was granted.	
<b>12.</b>	<b><u>Provisions Relating to Execution of Court Order Authorizing Search for Counterfeit Goods and Evidence Relevant Thereto</u></b>	<b>Execution of Court Order</b>	
	<b>12.</b> -(1) When the court in terms of <u>section 11(4)</u> has issued an order authorizing a search of any place or premises, the respondent will be entitled to have his or her attorney present during the search and further execution of the order at on or in such place or premises, if the presence of that attorney can be secured with due speed after the designated person has arrived at the place or premises with a view to conducting that search and further executing that order.	<b>11.</b> -(1) When the court under <i>clause 10 (4) of this Bill</i> has issued an order authorizing a search of any place or premises, the respondent is entitled to have his or her attorney present during the search and further execution of the order at, on or in such place or premises, if the presence of that attorney can be secured with due speed after the designated person has arrived at the place or premises with a view to conducting that search and further executing that order.	
	(2) The designated person, for the purpose	<b>(2) Retained</b>	

	<p>of conducting the search, must be accompanied by the applicant's attorney who, after service, at the place or premises where the search is to be conducted, of a copy of the application and order on the respondent, or, if the respondent is not present, on a responsible person ostensibly in control of such place or premises, must explain the terms of the order to the respondent or that person and inform him or her that the respondent is entitled to have his or her attorney present during the execution of the order provided the presence of the respondent's attorney is secured with due speed.</p>		
	<p>(3) The sheriff or designated person conducting the search must-</p>	<p>(3) The sheriff or designated person conducting the search shall-</p>	
	<p>(a) prepare an inventory of the subject goods and ancillary materials attached by him or her on the authority of an order <u>in terms of section 11 (4)</u> and furnish a copy of the inventory to the applicant and to the respondent;</p>	<p>(a) prepare an inventory of the subject goods and ancillary materials attached by him or her on the authority of an order <i>under clause 10 (4)</i> and furnish a copy of the inventory to the applicant and respondent;</p>	
	<p>(b) allow the parties to peruse the ancillary materials that have been so attached and to make copies thereof or excerpts therefrom; and</p>	<p><b>(b) Retained</b></p>	
	<p>(c) allow the parties to inspect the subject goods and to have those goods tested or</p>	<p><b>(c) Retained</b></p>	

	analysed on their behalf.		
	(4) When a search authorised by an order <u>in terms of section 11 (4)</u> has been completed the applicant's attorney must, without delay-	(4) When a search authorised by an order <i>under clause 10 (4)</i> has been completed, the applicant's attorney shall, without delay-	
	(a) make a statement under oath or affirmation in-which he or she reports fully on the conducting of the search and on any other steps taken by him or her in relation to or pursuant to the search with a view to complying with the requirements of that order or an order <u>in terms of section 11 (5)</u> and the requirements imposed by this section, and, where any subject goods or ancillary materials have been attached on the authority of an order <u>in terms of section 11 (4)</u> , annex to that statement a copy of the inventory prepared in relation to the relevant subject goods and ancillary materials in compliance with <u>subsection (3) of this section</u> ;	(a) make a statement under oath or affirmation in which he or she reports fully on the conducting of the search and on any other step taken by him or her in relation to or pursuant to the search with a view to complying with the requirements of that order or an order <i>under clause 10 (5)</i> and the requirements imposed by this clause, and, where any subject goods or ancillary materials have been attached on the authority of an order <i>under clause 10 (4)</i> , and annex to that statement a copy of the inventory prepared in relation to the relevant subject goods and ancillary materials in compliance with <i>sub-clause (3) of this clause</i> ;	
	(b) cause the original of that statement, together with its annex to be filed in the office of the registrar of the court in question and cause a certified copy thereof to be served on the respondent	<b>Retained</b>	
13	<b><u>Court may Order Unsuccessful Claimant in Proceedings for Infringement of Intellectual Property Right to Pay Compensation</u></b>	<b>Order to Pay Compensation</b>	

	<p><b>13.-(1)</b> Where in any proceedings the claim of a person (<u>hereafter called the erstwhile applicant</u>) in respect of an infringement of his or her intellectual property right is dismissed the court may order the <u>erstwhile applicant</u> to pay appropriate compensation to the erstwhile respondent for any injury or prejudice caused to or suffered by him or her in consequence of any measures and steps taken <u>in terms of section 11 or 12</u> on the authority of an order contemplated in <u>section 11. and</u></p>	<p><b>12.-(1)</b> Where in any proceeding the claim of a person (<i>in this Bill referred to as "the ex-applicant"</i>) in respect of an infringement of his or her intellectual property right is dismissed, the court may order the <i>ex-applicant</i> to pay appropriate compensation to the ex-respondent for any injury or prejudice caused to or suffered by him or her in consequence of any measure and <i>step taken under clause 10 or 11 of this Bill</i> on the authority of an order contemplated in <i>clause 10 of this Bill</i>; and</p>	
	<p>(2) For the purposes of <u>subsection (1) and section 14</u>:</p> <p>(a) "<u>erstwhile applicant</u>" means the owner of an intellectual property right who was the successful applicant in any <i>ex parte</i> application brought <u>in terms of section 11(1)</u>; and</p>	<p>(2) For the purposes of <i>sub-clause (1) of this clause and clause 13 of this Bill</i>-</p> <p>(a) "<b>ex-applicant</b>" means the owner of an intellectual property right who was the successful applicant in any <i>ex parte</i> application brought <i>under clause 10 (1) of this Bill</i>; and</p>	
	<p>(b) "<u>erstwhile respondent</u>" means the person against or in relation to whom relief was sought pursuant to that application.</p>	<p>(b) "<i>ex- respondent</i>" means the person against or in relation to whom relief was sought pursuant to that application.</p>	
14	<p><b><u>Court may Order Release of attached Subject Goods and Ancillary Materials in certain Circumstances</u></b></p>	<p><b>Release of attached Subject Goods and Ancillary Materials in Certain Circumstances</b></p>	
	<p><b>14.</b> If an <u>erstwhile applicant</u> does not, before the date specified in an order contemplated in <u>section 11 (5)( e)</u> or within the period</p>	<p><b>13.</b> If an <i>ex-applicant</i> does not, before the date specified in an order <i>under clause 10(5)( e) of this Bill</i> or within the period referred to in</p>	

	referred to <u>in section 11 (6)</u> , whichever is applicable, institute proceedings against the <u>erstwhile respondent</u> for the infringement of the <u>erstwhile applicant's</u> intellectual property right, or if, in the case where those proceedings have been so instituted, the <u>erstwhile applicant's</u> claim has been dismissed by the court, the court, on the application of the <u>erstwhile respondent</u> or any other interested person claiming to be entitled to the subject goods and ancillary materials may order that such goods and materials be released, respectively, to the <u>erstwhile respondent</u> or to such interested person who has proved his or her entitlement thereto.	<i>clause 10(6) of this Bill</i> , whichever is applicable, institute proceedings against the <i>ex-respondent</i> for the infringement of the <i>ex-applicant's</i> intellectual property right or if, in the case where those proceedings have been so instituted, the <i>ex-applicant's</i> claim has been dismissed by the court, the court, on the application of the <i>ex-respondent</i> or any other interested person claiming to be entitled to the subject goods and ancillary materials may order that such goods and materials be released, respectively, to the <i>ex-respondent</i> or to such interested person who has proved his or her entitlement.	
15	<b>Customs Authorities' Powers in Relation to Counterfeit Goods <u>being Imported into Nigeria</u></b>	<b>Customs Authorities' Powers on Counterfeit Goods <del>being Imported into Nigeria</del></b>	
	<b>15.</b> -(1) The owner of an intellectual property right may apply to the Comptroller General of Customs ( <u>hereafter called the Comptroller</u> ), to seize and detain all goods-	<b>14.</b> -(1) The owner of an intellectual property right may apply to the Comptroller-General of Customs ( <i>in this Bill referred to "the Comptroller"</i> ) to seize and detain all goods which are -	
	(a) <u>which are</u> counterfeit goods featuring, bearing, embodying or incorporating the subject matter of that intellectual property right or to which the subject matter of that	(a) <del>which are</del> counterfeit goods featuring, bearing, embodying or incorporating the subject matter of that intellectual property right or to which the subject matter of that	

	right has been applied;	right has been applied; and	
	(b) and which are imported into or enter Nigeria during the period specified in the application. However, that period may not extend beyond the last day of the period for which that intellectual property right subsists.	(b) imported into or enter Nigeria during the period specified in the application and that period may not extend beyond the last day of the period for which that intellectual property right subsists.	
	(2) For the purposes of <u>subsection (1)</u> , the applicant may furnish to the Comptroller a specimen of the goods that are protected goods of the nature contemplated in <u>paragraph (a)</u> of the definition of "protected goods" in <u>section 1 (1) (if any)</u> and to which the subject matter of his or her relevant intellectual property right relates and sufficient information and particulars as to the subsistence and extent of that intellectual property right and as to his or her title to that right.	(2) For the purpose of <i>sub-clause (1) of this clause</i> , the applicant may furnish to the Comptroller a specimen of the goods that are protected goods as defined under <i>clause 24 of this Bill</i> and to which the subject matter of his or her relevant intellectual property right relates and sufficient information and particulars as to the subsistence and extent of that intellectual property right and as to his or her title to that right.	
	(3) The Comptroller must consider and deal with an application <u>in terms of subsection (1)</u> without delay, and must grant the application if satisfied on reasonable grounds-	(3) The Comptroller shall consider and deal with an application <i>under sub-clause (1) of this clause</i> , without delay, and shall grant the application if satisfied on reasonable grounds that the-	
	(a) <u>that the goods</u> claimed to be protected goods, are <i>prima facie</i> protected goods;	(a) <del>that the</del> goods claimed to be protected goods, are <i>prima facie</i> protected goods;	
	(b) <u>that the intellectual property right</u> , the subject matter of which relates to the protected goods, <i>prima facie</i> subsists; and	(b) <del>that the</del> intellectual property right, the subject matter of which relates to the protected goods, <i>prima facie</i> subsists; and	

	(c) <u>that the applicant prima facie is the owner of that intellectual property right.</u>	(c) <del>that the</del> applicant <i>prima facie</i> is the owner of that intellectual property right.	
	(4) When an application made <u>in terms of subsection (1)</u> has been granted and notice thereof given <u>in terms of subsection (5)</u> , all goods that are counterfeit goods of the type with reference to which that application was made ( <u>hereafter called the stipulated goods</u> ) or suspected on reasonable grounds to be stipulated goods, and imported into or entering Nigeria from time to time during the period determined by the Comptroller (which may be shorter than the period applied for), may be seized and detained by the customs authorities in performing their functions subject to the provisions of <u>subsections (6) and (7) of this section.</u>	(4) When an application made <i>under sub-clause (1) of this clause</i> has been granted and notice thereof given <i>under sub-clause (5) of this clause</i> , all goods that are counterfeit goods of the type with reference to which that application was made ( <i>in this Bill referred to as "the stipulated goods"</i> ) or suspected on reasonable grounds to be stipulated goods, and imported into or entering Nigeria from time to time during the period determined by the Comptroller (which may be shorter than the period applied for), may be seized and detained by the customs authorities in performing their functions subject to the provisions of <i>sub-clauses (6) and (7) of this clause.</i>	
	(5) The Comptroller, by written notice (issued within a reasonable time after having decided the application) must notify the applicant whether the application has been granted or refused, and-	(5) The Comptroller, by written notice (issued within a reasonable time after having decided the application), shall notify the applicant whether the application has been granted or refused, and-	
	(a) if granted, state the period during which any stipulated goods being imported into or entering Nigeria will be made subject to seizure and become subject to detention <u>under subsection (4)</u> ;	(a) if granted, state the period during which any stipulated goods being imported into or entering Nigeria will be made subject to seizure and become subject to detention <i>under sub-clause (4) of this clause</i> ; and	
	(b) if refused, state the reasons for the	<b>(b) Retained</b>	



	refusal.		
	(6) For the purposes of acting under <u>subsection (4)</u> in relation to goods that are stipulated goods or suspected on reasonable grounds to be stipulated goods-	(6) For the purposes of acting under <i>sub-clause (4) of this clause</i> in relation to goods that are stipulated goods or suspected on reasonable grounds to be stipulated goods-	
	(a) any member of the customs authorities will act <i>mutatis mutandis</i> as if he or she were an inspector who, in connection with counterfeit goods or alleged or suspected counterfeit goods, were exercising the powers contemplated in <u>section 4(1)</u> on own initiative <u>in terms of section 3(4)</u> ;	(a) any member of the customs authorities shall act <i>mutatis mutandis</i> as if he or she were an inspector who, in connection with counterfeit goods or alleged or suspected counterfeit goods, were exercising the powers <i>under clause 3 (1) of this Bill</i> on their own initiative <i>under clause 2 (4) of this Bill</i> ; <b>and</b>	
	(b) the following provisions of this <u>Act</u> will apply <i>mutatis mutandis</i> in relation to any member of the customs authorities, <u>namely-</u>	(b) the following provisions of this <b>Bill shall</b> apply <i>mutatis mutandis</i> in relation to any member of the customs authorities- <del>namely-</del>	
	(i) the provisions in accordance with or subject to which the powers contemplated in <u>section 4(1)</u> may be exercised by an inspector so acting on own initiative;	(i) the provisions in accordance with or subject to which the powers contemplated in <i>clause 3 (1) of this Bill</i> may be exercised by an inspector acting on his or her own initiative, <b>and</b>	
	(ii) the provisions by which any other power or any right function, duty, obligation, exemption, indemnity or liability is conferred or imposed on an inspector so acting. However, the Minister, at the request of the Minister of Finance acting on the recommendation of the Commissioner, may by notice in the Gazette exempt the members of the customs authorities from any of the provisions made applicable by this	(ii) the provisions by which power, right, function, duty, obligation, exemption, indemnity or liability is conferred or imposed on an inspector acting and the Minister, at the request of the Minister of Finance, acting on the recommendation of the Commissioner may, by notice in the Gazette, exempt the members of the customs authorities from any of the provisions made applicable by this paragraph if satisfied that there are suitable	

	paragraph if satisfied that there are suitable and appropriate alternative arrangements made by or under the Customs and Excise Act, that cover the purpose of the provision from which exemption is sought	and appropriate alternative arrangements made under the Customs and Excise Act, that cover the purpose of the provision from which exemption is sought.	
	(7) The customs authorities will not be obliged to act <u>in terms of subsection (4)</u> unless the owner of the intellectual property right, the subject matter of which is alleged to be featured or borne by or incorporated or embodied in or to have been applied to stipulated goods, furnishes to the Comptroller security in the manner and amount that the Comptroller may require to indemnify the customs authorities and their members against any liability that may be incurred pursuant to the seizure and detention of goods or anything done in relation to goods when acting or purportedly acting under this <u>section</u> and to cover any expenses that may be incurred in effecting the seizure and detention of the goods.	(7) The customs authorities shall not be obliged to act <i>under sub-clause (4) of this clause</i> unless the owner of the intellectual property right, the subject matter of which is alleged to be featured or borne by or incorporated or embodied in or to have been applied to stipulated goods, furnishes to the Comptroller security in the manner and amount that the Comptroller may require to indemnify the customs authorities and their members against any liability that may be incurred pursuant to the seizure and detention of goods or anything done in relation to goods when acting or purportedly acting under this <i>clause</i> and to cover any expenses that may be incurred in effecting the seizure and detention of the goods.	
	(8) The provisions of this <u>Act will</u> not be construed so as to render the customs authorities or any of their members liable for:	(8) The provisions of this <b>Bill shall</b> not be construed so as to render the customs authorities or any of their members liable for-	
	(a) any failure to detector seize stipulated goods;	(a) any failure to detect or seize stipulated goods;	
	(b) the inadvertent release of any such	(b) the inadvertent release of any such goods;	

	goods; or	or	
	(c) any action taken in good faith in respect of such goods.	(c) any action taken in good faith in respect of such goods.	
<b>16</b>	<b>Evidence and Presumptions</b>	<b>Evidence and Presumptions</b>	
	16.-(1) Subject to <u>section 5(4)(b)</u> , any statement taken down or other documentary evidence procured by an inspector in the course of exercising any power <u>in terms of section 4(1)</u> may be made available to a complainant at his or her request. <u>The complainant may make copies of or extracts from any such statement or documentary evidence and must return the original statement or document to the inspector.</u>	15.-(1) Subject to <i>clause 4 (4) (b) of this Bill</i> , any statement taken down or other documentary evidence procured by an inspector in the course of exercising any power <i>under clause 3 (1) of this Bill</i> may be made available to a complainant at his or her request. <del>The complainant may make copies of or extracts from any such statement or documentary evidence and must return the original statement or document to the inspector.</del>	
		(2) The complainant may make copies of or extracts from any such statement or documentary evidence and shall return the original statement or document to the inspector.	
	(2) An inspector may be called as a witness by any party to civil or criminal proceedings concerning counterfeit goods. or by the court, whenever the inspector conduct the exercise or performance of his or her powers or duties <u>in terms of section 4(1), 5, 6, 7 or 9</u> or the nature of the circumstances in or activities with reference to which those	(3) An inspector may be called as a witness by any party to civil or criminal proceedings concerning counterfeit goods or by the court, whenever the inspector's conduct, the exercise or performance of his or her powers or duties <i>under clause 3 (1), 4, 5, 6 or 8</i> or the nature of the circumstances in or activities with reference to which those powers or duties	

	powers or duties were exercised or performed, is in issue or relevant in those proceeding	were exercised or performed, is in issue or relevant in those proceeding	
	(3) In any civil proceedings concerning an act of dealing in counterfeit goods by any person, it will be permissible, if relevant, to present evidence about that person's conviction on account of an offence founded on the same act of dealing in counterfeit goods.	(4) In any civil proceeding concerning an act of dealing in counterfeit goods by any person, it is permissible, if relevant, to present evidence about that person's conviction on account of an offence founded on the same act of dealing in counterfeit goods.	
	(4) (a) A statement in the prescribed form, made under oath or affirmation by an inspector, to the effect that the goods specified under his or her signature in the inventory attached to that statement, are goods seized by him or her from a specified person at a specified place and on a specified date, will, upon production to the court, be admissible in evidence and be sufficient proof of the facts stated therein in any civil or criminal proceedings concerning counterfeit goods or any act of dealing therein, if relevant to those proceedings and if the inventory has been prepared by the inspector, and has been certified to be correct, as required by <u>section 7(1)(a)</u> .	(5) A statement in the prescribed form, made under oath or affirmation by an inspector, to the effect that the goods specified under his or her signature in the inventory attached to that statement, are goods seized by him or her from a specified person at a specified place and on a specified date, shall, upon production to the court, be admissible in evidence and be sufficient proof of the facts stated therein in any civil or criminal proceeding concerning counterfeit goods or any act of dealing therein, if relevant to those proceedings and if the inventory has been prepared by the inspector, and has been certified to be correct, as required by <i>clause 6 (1) (a) of this Bill</i> .	
	(b) If a statement has been produced and handed in as evidence in terms of <u>paragraph (a)</u> , the court, in its discretion and	(6) If a statement has been produced and handed in as evidence <i>under sub-clause (5) of this clause</i> , the court, in its discretion and	

	notwithstanding the provisions of that paragraph, may order that the inspector who made that statement be directed or subpoenaed to appear before the court to give oral evidence concerning any matter mentioned or dealt within that statement.	notwithstanding the provisions of that paragraph, may order that the inspector who made that statement be directed or subpoenaed to appear before the court to give oral evidence concerning any matter mentioned or dealt within that statement.	
	(5) Where the subsistence of an intellectual property right in respect of protected goods or any person's title to or interest in such intellectual property right is in issue in any civil or criminal proceedings concerning counterfeit goods, the subsistence of, title to or interest in such intellectual property right, where it is alleged-	(7) Where the subsistence of an intellectual property right in respect of protected goods or any person's title to or interest in such intellectual property right is in issue in any civil or criminal proceeding concerning counterfeit goods, the subsistence of, title to or interest in such, intellectual property right, where it is alleged to -	
	(a) to encompass the rights in respect of a trade mark as contemplated in <u>paragraph (a) of the definition of "intellectual property right" in section 1 (1)</u> , may be proved in accordance with the provisions of <u>sections 49,50 and 51</u> of the Trade Marks Act,	(a) encompass the rights in respect of a trade mark as defined in <i>clause 24 of this Bill</i> , may be proved in accordance with the provisions of <i>sections 49, 50 and 51</i> of the Trade Marks Act,	
	(b) To be copyright in a work, maybe proved in accordance with the provisions of section 26(1 2) of the Copyright Act, which provisions will apply <i>mutatis mutandis</i> ;	(b) <del>to</del> be copyright in a work, may be proved in accordance with the provisions of section 26 (12) of the Copyright Act, which provisions shall apply <i>mutatis mutandis</i> ;	
	(c) to be the exclusive right to use a particular mark may be proved by producing to the court a copy of the Gazette in which that notice was published, accompanied by a statement under oath or affirmation made	(c) be the exclusive right to use a particular mark may be proved by producing to the court a copy of the Gazette in which that notice was published, accompanied by a statement under oath or affirmation made by the Minister or	

	<p>by the Minister or any officer designated by the Minister, which is to the effect that such notice has not been withdrawn or amended in its essence. However, the provisions of this subsection will not be construed so as to detract from the power of the court, in relation to any such matter or any aspect thereof-</p>	<p>any officer designated by the Minister, which is to the effect that such notice has not been withdrawn or amended in its essence. <del>However, the provisions of this subsection will not be construed so as to detract from the power of the court, in relation to any such matter or any aspect thereof-</del></p>	
		<p>(8) The provisions of sub-clause (7) shall not be construed so as to detract from the power of the court, in relation to any such matter or any aspect thereof-</p>	
	<p>(i) to require oral evidence to be given;</p>	<p>(a) to require oral evidence to be given; <b>and</b></p>	
	<p>(ii) in the case of a High Court, to order that the evidence of a person who resides or is for the time being outside the area of jurisdiction of that Court, be taken by means of interrogatories.</p>	<p>(b) in the case of a High Court, to order that the evidence of a person who resides or is, for the time being, outside the area of jurisdiction of that Court, be taken by means of interrogatories.</p>	
	<p>(6) Where any person who conducts business in protected goods featuring, bearing, incorporating or embodying the subject matter of a particular intellectual property right is proved to have been found in possession of suspected counterfeit goods to which the subject matter of the same intellectual property right has been applied-</p>	<p>(9) Where a person who conducts business in protected goods featuring, bearing, incorporating or embodying the subject matter of a particular intellectual property right is proved to have been found in possession of suspected counterfeit goods to which the subject matter of the same intellectual property right has been applied-</p>	
	<p>(a) it <u>will</u>, in any civil proceedings concerning an act of dealing in counterfeit goods founded on that person's possession of the</p>	<p>(a) it <i>is</i>, in any civil proceeding concerning an act of dealing in counterfeit goods founded on that person's possession of the suspected</p>	

	<p>suspected counterfeit goods, be presumed, until the contrary is proved, that such person was in possession of the latter goods for the purpose of dealing therein if the quantity of those goods is more than that which, in the circumstances, reasonably may be required for his or her private and domestic use;</p>	<p>counterfeit goods, to be presumed, until the contrary is proved, that such person was in possession of the latter goods for the purpose of dealing therein if the quantity of those goods is more than that which, in the circumstances, reasonably may be required for his or her private and domestic use; <b>and</b></p>	
	<p>(b) the same presumption will, in any criminal proceedings arising from that person's possession of the suspected counterfeit goods, apply <i>mutatis mutandis</i> unless credible evidence in rebuttal of the fact presumed, is tendered.</p>	<p>(b) the same presumption, in any criminal proceeding arising from that person's possession of the suspected counterfeit goods, applies <i>mutatis mutandis</i> unless credible evidence in rebuttal of the fact presumed, is tendered.</p>	
<b>17</b>	<p><b>Liability for Damage or Loss Arising Pursuant to Application of Act</b></p>	<p><b>Liability for Damage or Loss Arising from Application of the Act</b></p>	
	<p><b>17.</b>-(1) any person suffering damage or loss caused by the wrongful seizure, removal or detention of goods alleged to be counterfeit goods, or by any action contemplated in <u>section 7(1) (a), (b) or (c) or (2)</u> wrongfully taken by an inspector with reliance on that section read with <u>section 4(1)</u>, or caused during or pursuant to the seizure, removal or detention of such goods in terms of this Act, will be entitled to claim compensation for that damage or loss which claim, subject to <u>subsection (2)</u>, will be against the complainant and not against the State, the</p>	<p><b>16.</b>-(1) A person suffering damage or loss caused by the wrongful seizure, removal or detention of goods alleged to be counterfeit goods, or by any action <i>under clause 6 (1), (a), (b), (c) or (2) of this Bill</i> wrongfully taken by an inspector with reliance on that clause read with <i>clause 3 (1) of this Bill</i>, or caused during or pursuant to the seizure, removal or detention of such goods under this Bill, will be entitled to claim compensation for that damage or loss which claim, subject to <i>sub-clause (2) of this Bill</i>, shall be against the complainant and not against the State, the inspector or the person</p>	

	inspector or the person in charge of the 10 counterfeit goods depot where those goods are or were detained.	in charge of the 10 counterfeit goods depot where those goods are or were detained.	
	(2) The State or such inspector or the person in charge of the relevant counterfeit goods depot as the case may be, will be liable in respect of a claim contemplated in subsection (1) only if:	<b>(2) Retained</b>	
	(a) in the seizure or removal of the alleged counterfeit goods, the inspector, or, in the detention and storage of those goods, that person so in charge or the inspector (depending on the circumstances), has been grossly negligent; or	(a) in the seizure or removal of the alleged counterfeit goods, the inspector or, in the detention and storage of those goods, that person in charge or the inspector (depending on the circumstances), has been grossly negligent; or	
	(b) the inspector or that person so in charge (as the case may be), in the seizure, removal, detention or storage of those goods, acted in bad faith.	<b>(b) Retained</b>	
	(3) Any reference in paragraphs (a) and (b) of subsection (2) to an inspector or to a person in charge of a counterfeit goods depot (however expressed) will be construed so as to include any person acting on the instruction or under the supervision of the inspector or the person so in charge, as the case may be.	(3) A reference in <i>sub-clause (2) (a) – (b) of this Bill</i> to an inspector or to a person in charge of a counterfeit goods depot (however expressed) shall be construed so as to include any person acting on the instruction or under the supervision of the inspector or the person in charge, as the case may be.	
<b>18</b>	<b>Miscellaneous Offences</b>	<b>Miscellaneous Offences</b>	
	<b>18. A person will be guilty of an offence-</b>	<b>17. A person commits an offence-</b>	



	(a) upon failing to comply with any request, direction, demand or order made or given by an inspector in accordance with the provisions of this <u>Act</u> ;	(a) upon failing to comply with any request, direction, demand or order made or given by an inspector in accordance with the provisions of this <b>Bill</b> ;	
	(b) when obstructing or hindering an inspector in performing his or her functions under this <u>Act</u> ;	(b) when obstructing or hindering an inspector in performing his or her functions under this <b>Bill</b> ;	
	(c) if that person, without the necessary authority, breaks, damages or tampers with a seal applied by an inspector in terms of this Act or removes any goods, documents, articles, items, objects or things sealed or sealed-off by an inspector or detained or stored at a counterfeit goods depot in terms of this <u>Act</u> ; or	(c) if that person, without the necessary authority, breaks, damages or tampers with a seal applied by an inspector under this Bill or removes any goods, document, article, item, object or thing sealed or sealed-off by an inspector or detained or stored at a counterfeit goods depot under this <b>Bill</b> ; or	
	(d) when, if asked <u>in terms of section 5(1)</u> for information or an explanation relating to a matter within the knowledge of that person, he or she-	(d) when, if asked <i>under clause 4 (1) of this Bill</i> for information or an explanation relating to a matter within the knowledge of that person, he or she-	
	(i) refuses or fails to give that information or explanation; or	<b>(i) Retained</b>	
	(ii) gives information or an explanation knowing it to be false or misleading.	<b>(ii) Retained</b>	
<b>19</b>	<b>Penalties</b>	<b>Penalties</b>	
	<b>19.</b> -(1) Any person convicted of an offence referred to in <u>section 2(2)</u> , will be Punishable:	<b>18.</b> -(1) A person convicted of an offence referred to <i>in clause 1 (2) of this Bill</i> , is punishable, <b>in the case of -</b>	

	(a) in the case of a first conviction, with a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, that may not exceed N5,000,00 per article or item, or with imprisonment for a period that may not exceed <u>three</u> years, or with both such a fine and such term of imprisonment;	(a) a first conviction, with a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not exceeding N5,000,000 per article or item, or imprisonment for a term not exceeding <b>3</b> years, or with both fine and imprisonment;	
	(b) <u>in the case of</u> a second or any subsequent conviction, with a fine, in respect of each such article or item, that may not exceed N10 000,00 per article or item, or with imprisonment for a period that may not exceed five years, or with both such a fine and such term of imprisonment.	(b) <del>in the case of</del> a second or any subsequent conviction, with a fine, in respect of each such article or item, not exceeding N10 000,000 per article or item, or imprisonment for a term not exceeding 5 years, or with both fine and imprisonment.	
	(2) <u>Any</u> person convicted of an offence referred to in <u>section 18</u> , will be punishable with a fine or imprisonment for a period that may not exceed <u>six</u> months.	(2) A person convicted of an offence <i>under clause 18</i> , is punishable with a fine or imprisonment for a term not exceeding <b>6</b> months.	
	(3) (a) A court that has convicted a person of an offence contemplated in <u>section 2 (2)</u> <u>must</u> when considering which penalty to impose, amongst others take into account any risk to human or animal life, health or safety or danger to property (whether movable or immovable) that may arise from the presence or use of the counterfeit goods in question.	(3) A court that has convicted a person of an offence <i>under clause 1 (2) of this Bill shall</i> , when considering which penalty to impose amongst others, take into account any risk to human or animal life, health or safety or danger to property (whether movable or immovable) that may arise from the presence or use of the counterfeit goods in question.	

	(b) Without detracting from the discretion that a court in criminal proceedings has with regard to sentencing, a court that has convicted any person of an offence referred to in <u>section 2 (2)</u> may take into account, in mitigation of sentence, any evidence to the effect that such person, fully, truthfully and to the best of his or her ability had disclosed to an inspector who acted against him or her in terms of <u>section 4(1)</u> or to a member of the Police Force who investigated that offence, all information and particulars available to that person in relation to anyone or more, or all, of the following matters (whichever may have been applicable in the circumstances)-	(4) Without detracting from the discretion that a court in criminal proceedings has with regard to sentencing, a court that has convicted any person of an offence <i>under clause 1 (2) of this Bill</i> may take into account, in mitigation of sentence, any evidence to the effect that such person, fully, truthfully and to the best of his or her ability had disclosed to an inspector who acted against him or her <i>under clause 3 (1) of this Bill</i> or to a member of the Police Force who investigated that offence, all information and particulars available to that person in relation to anyone or more, or all, of the following matters (whichever may have been applicable in the circumstances)-	
	(i) <u>me</u> source from which the counterfeit goods involved in the commission of the offence, were obtained;	(a) <i>the</i> source from which the counterfeit goods involved in the commission of the offence, were obtained;	
	(ii) the identity of the persons involved in the importation, exportation, manufacture, production or making of those counterfeit goods;	<b>(b) Retained</b>	
	(iii) the identity any if reasonably demanded, the addresses or whereabouts of the persons involved in the distribution of those goods;	(c) the identity of the persons and, if reasonably demanded, the addresses or whereabouts of the persons involved in the distribution of those goods; and	
	(iv) the channels for the distribution of those goods	<b>(d) Retained.</b>	

	(4) <u>(a)</u> The Minister may from time to time by notice in the Gazette increase the amounts of the fines mentioned in <u>paragraphs (a) and (b) of subsection (1)</u> .	(4) <del>(a)</del> The Minister may, from time to time by notice in the Gazette, increase the amounts of the fines mentioned in <i>sub-clause (1) (a) and (b) of this Bill</i> .	
	(b) That notice must be laid on the table in the National Assembly, for its consideration and approval, within 14 days after the date on which it is published in the Gazette, if the National Assembly is then in session, or, if it is not then in session, within 14 days of the commencement of its next session.	(5) That notice shall be laid before the National Assembly, for its consideration and approval, within 14 days after the date on which it is published in the Gazette, if the National Assembly is in session or, if it is not in session, within 14 days of the commencement of its next session.	
20	<b><u>Orders Permissible following Conviction of Person of Offence Contemplated in Section 2(2)</u></b>	<b><i>Permissible Orders after Conviction</i></b>	
	20.-(1) Subject to <u>section 10</u> , the court having convicted a person of an offence <u>contemplated in section 2(2)</u> may declare the counterfeit goods in question to be forfeited to the State or order that those goods and their packaging, and, where applicable any tools that were used by or on behalf of the convicted person for the manufacturing production or making of those or any other counterfeit goods or for the unlawful application to goods of the subject matter of any intellectual property right, be destroyed.	19.-(1) Subject to <i>clause 9 of this Bill</i> , the court, having convicted a person of an offence <i>under clause 1 (2) of this Bill</i> , may declare the counterfeit goods in question to be forfeited to the Government or order that those goods and their packaging and, where applicable, any tool that was used by or on behalf of the convicted person for the manufacturing, production or making of those or any other counterfeit goods or for the unlawful application to goods of the subject matter of any intellectual property right, be destroyed.	
	(2) <u>Any person who submits any counterfeit</u>	(2) <del>A</del> person who submits any counterfeit	

	<p>goods purchased by him or her (<u>hereafter called the aggrieved person</u>), to an inspector, together with proof of the price that was paid for those goods, will be entitled to receive payment of a sum of money equivalent to three times the amount of that paid, in the following circumstances-</p>	<p>goods purchased by him or her (<i>in this Bill referred to as "the aggrieved person"</i>) to an inspector, together with proof of the price that was paid for those goods, is entitled to receive payment of a sum of money equivalent to three times the amount of that paid, in the following circumstances-</p>	
	<p>(a) The person who had sold those counterfeit goods must have been convicted of an offence referred to in <u>section 2(2)</u> founded on the sale of those goods. Alternatively, an order, against the seller, must have been made in <u>terms of section 10(1)(a)</u> directing that those goods be delivered up to the owner of the intellectual property right, the subject matter of which was unlawfully applied to those goods, or up to a complainant deriving his or her title from that owner;</p>	<p>(a) the person who had sold those counterfeit goods must have been convicted of an offence referred to in <i>clause 1 (2) of this Bill</i> founded on the sale of those goods or an order, against the seller, must have been made <i>under clause 9 (1) (a) of this Bill</i> directing that those goods be delivered up to the owner of the intellectual property right, the subject matter of which was unlawfully applied to those goods, or up to a complainant deriving his or her title from that owner;</p>	
	<p>(b) The aggrieved person must have co-operated fully in the prosecution of the seller for that offence;</p>	<p>(b) the aggrieved person must have co-operated fully in the prosecution of the seller for that offence;</p>	
	<p>(c) when the court having so convicted the seller of those goods or having made an order <u>in terms of section 10(1)(a)</u>, has also issued an order awarding sum of money to the aggrieved person and directing the seller to pay that award. However, the court must make the latter order if satisfied that the</p>	<p>(c) when the court, having so convicted the seller of those goods or having made an order <i>under clause 9 (1) (a) of this Bill</i>, has also issued an order awarding sum of money to the aggrieved person and directing the seller to pay that award but the court shall make the latter order if satisfied that the requirements</p>	

	requirements of paragraphs (a) and (b) have been met.	of paragraphs (a) and (b) have been met.	
	(3) The provisions of <u>subsection (2)</u> will apply and be applied, <i>mutatis mutandis</i> , in relation to and for the benefit of any person who, otherwise than by way of a transaction of purchase and sale, has acquired, in consideration for value given by him or her, goods that are counterfeit goods.	(3) The provisions of <i>clause (2) of this Bill shall</i> apply and be applied, <i>mutatis mutandis</i> , in relation to, and for the benefit of, any person who, otherwise than by way of a transaction of purchase and sale, has acquired, in consideration for value given by him or her, goods that are counterfeit goods.	
21	<b><u>Civil or criminal liability under other Laws and Institution of Civil or Criminal Proceedings there under not affected by this Act</u></b>	<b><i>Civil or Criminal Proceedings are not affected by this Bill</i></b>	
	<b>21.</b> Subject to the Constitution of the Federal Republic of Nigeria, 1999 (as amended 2010), and the <u>Criminal Procedure Act</u> , the provisions of this Act will not detract from a person's civil or criminal liability, in terms of any other law, on account of his or her infringement of any intellectual property right and from the capacity or competence in terms of any law to institute civil or criminal proceedings in respect of such infringement.	<b>20.</b> Subject to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the <i>Administration of Criminal Justice Act, No...</i> , 2015, the provisions of this Bill shall not detract from a person's civil or criminal liability, under any other law, on account of his or her infringement of any intellectual property right and from the capacity or competence under any law to institute civil or criminal proceedings in respect of such infringement	
22	<b>Minister's Power to Appoint or Designate Inspectors</b>	<b>Minister's Power to Appoint or Designate Inspectors</b>	
	<b>22.</b> -(1) the Minister may appoint any fit and proper person as an inspector for the	<b>21.</b> -(1) The Minister may appoint any fit and proper person as an inspector for the	

	purposes of this <u>Act</u> .	purposes of this <b>Bill</b> .	
	(2) (a) The Minister, by notice in the Gazette, may designate any specified class or category of persons to be inspectors for the purposes of this <u>Act</u> ;	(2) The Minister may, by notice in the Gazette, designate any specified class or category of persons to be inspectors for the purposes of this <b>Bill</b> ;	
	(b) The Minister, in a like manner, may amend or withdraw such a notice at any time.	(3) The Minister may, in a like manner, amend or withdraw such a notice at any time.	
	(3) The Minister or any official acting under the authority of the Minister, must issue to each of the inspectors contemplated in this section a certificate in the prescribed form stating that the person in whose name it has been issued has been appointed or designated an inspector (as the case may be) in terms of or by virtue of this Act.	(4) The Minister or any official acting under the authority of the Minister, shall issue to each of the inspectors a certificate in the prescribed form stating that the person in whose name it has been issued has been appointed or designated an inspector (as the case may be) <i>under this Bill</i> .	
<b>23</b>	<b>Minister's Powers Regarding Counterfeit Goods Depots</b>	<b>Minister's Powers Regarding Counterfeit Goods Depots</b>	
	<b>23.</b> -(1) The Minister, by notice in the Gazette, <u>may</u> from time to time designate any place defined in the notice to be a counterfeit goods depot for the purposes of this Act, and may in a like manner amend or withdraw such a notice at any time.	<b>22.</b> -(1) The Minister <i>may</i> , by notice in the Gazette <del>may</del> from time to time, designate any place defined in the notice to be a counterfeit goods depot for the purposes of this Bill, and may, in a like manner, amend or withdraw such a notice at any time.	
	(2) The Minister <u>must</u> in respect of a counterfeit goods depot appoint any fit and proper person as the person in charge of the counterfeit goods depot.	(2) The Minister <i>shall</i> , in respect of a counterfeit goods depot, appoint any fit and proper person as the person in charge of the counterfeit goods depot.	

<b>24</b>	<b>Regulations</b>	<b>Regulations</b>	
	<b>24.</b> The Minister may make regulations not inconsistent with the provisions of this Act-	<b>23.</b> The Minister may make regulations not inconsistent with the provisions of this Bill-	
	(a) in relation to any matter which, in terms of this Act, may or <u>must</u> be prescribed;	(a) in relation to any matter which, under this <b>Bill</b> , may or <b>shall</b> be prescribed;	
	(b) prescribing any inventory to be prepared or made <u>in terms of this Act</u> ;	(b) prescribing any inventory to be prepared or made <i>under this Bill</i> ;	
	(c) that may be necessary or expedient for the proper and effective control, management and administration of a counterfeit goods depot and the proper care of the goods detained therein;	<b>Retained</b>	
	(d) in relation to the manner or form in which any application (other than any application to a court of law) is to made <u>in terms of this Act</u> , and may prescribe forms for that purpose; and	(d) in relation to the manner or form in which any application (other than an application to a court of law) is to made <i>under this Bill</i> , and may prescribe forms for that purpose; and	
	(e) in relation to any other administrative or procedural matters that may be necessary or expedient for the proper and effective administration of this Act.	(e) in relation to any other administrative or procedural matter that may be necessary or expedient for the proper and effective administration of this <b>Bill</b> .	
<b>25</b>	<b>Interpretations</b>	<b>Interpretations</b>	
	<b>1.</b> -(1) In this Act, unless the context otherwise requires:	<b>24.</b> -(1) In this Bill-	
	"act of dealing in counterfeit goods" means any actor conduct referred to in <u>section 2(1); (iii)</u> ;	"act of dealing in counterfeit goods" means any act or conduct referred to in <i>clause 2(1)</i> ;	



	"apply to", with reference to any goods, means use upon or in physical or other relation to any goods, and, unless clearly inappropriate, includes to embody or incorporate in any goods;	<b>Retained</b>	
	"Complainant" means a person who, <u>in terms of section 3(1),</u> is entitled to lay a complaint contemplated in that section and who has laid such a complaint;	"complainant" means a person who, <i>under clause 3(1) of this Bill,</i> is entitled to lay a complaint and who has laid such a complaint;	
	"counterfeiting"- (a) means, without the authority of the owner of any intellectual property right subsisting in Nigeria in respect of protected goods, the manufacturing, producing or making, whether in <u>the Republic</u> or elsewhere, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are substantially identical copies of the protected goods;	"counterfeiting"- (a) means, without the authority of the owner of any intellectual property right subsisting in Nigeria in respect of protected goods, the manufacturing, producing or making, whether in <i>Nigeria</i> or elsewhere, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are substantially identical copies of the protected goods;	
	(b) means, without the authority of the owner of any intellectual property right subsisting in Nigeria in respect of protected goods, manufacturing, producing or making, or applying to goods, whether in Nigeria or elsewhere, the subject matter of that intellectual property right, or a colourable imitation hereof so that the other goods are calculated to be confused with or to be taken	<b>(b) Retained</b>	

	as being the protected goods of the said owner or goods manufactured, produced or made under his or her licence; or		
	(c) where, by a notice under the Merchandise Marks Act, the use of a particular mark in relation to goods, except such use by a person specified in the notice,	(c) where, by a notice under the <b>Merchandise Marks Act</b> the use of a particular mark in relation to goods, except such use by a person specified in the notice, has been prohibited,	
	has been prohibited; means, without the authority of the specified person, making or applying that mark to goods, whether in Nigeria or elsewhere. However, the relevant act of counterfeiting must also have infringed the intellectual property right in question;	means- (i) without the authority of the specified person, making or applying that mark to goods, whether in Nigeria or elsewhere, and (ii) the relevant act of counterfeiting must also have infringed the intellectual property right in question;	
	"counterfeit goods" means goods that are the result of counterfeiting, and includes any means used for purposes of counterfeiting;	"counterfeit goods" means goods that are the result of counterfeiting and includes any means used for purposes of counterfeiting;	
	"counterfeit goods depot" means a place designated under <u>section 23</u> to be a counterfeit goods depot, and includes any place deemed by <u>section 7(1)(c)</u> to be a counterfeit goods depot;	"counterfeit goods depot" means a place designated <i>under section 22 (1)</i> to be a counterfeit goods depot, and includes any place deemed by <i>section 6(1) (d)</i> to be a counterfeit goods depot;	
	"document" includes a tape recording, a photograph and any electronic or magnetic or other medium on, in, or by means or by way of which, images, sound, data or information may be stored, and "documentary" will be construed accordingly;	"document" includes a tape recording, a photograph and any electronic or magnetic or other medium on, in, or by means or by way of which, images, sound, data or information may be stored, and "documentary" will be construed accordingly;	

	<p>"exporter" includes any person who, at the relevant time:</p> <p>(a) is the owner or is in control or possession of any goods exported or to be exported from Nigeria;</p> <p>(b) Carries the risk for any goods so exported or to be so exported;</p>	<p><b>Retained</b></p> <p><b>(a) Retained</b></p> <p><b>(b) Retained</b></p>	
	<p>(c) represents that or acts as if he or she is the exporter or owner of any goods so exported or to be so exported;</p> <p>(d) actually" takes or attempts to take any goods from Nigeria;</p> <p>(e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so exported or to be so exported;</p>	<p><b>(c) Retained</b></p> <p><b>(d) Retained</b></p> <p><b>(e) Retained</b></p>	
	<p>(f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e) and, in relation to imported goods destined for exportation from Nigeria, includes the manufacturer, producer, maker, supplier or shipper of those goods or any person inside or outside the Nigeria representing or acting on behalf of such a manufacturer, producer, maker, supplier or shipper.</p>	<p><b>(f) Retained</b></p>	
	<p>"Export" and "exportation" will be construed in accordance with the preceding provisions of these interpretations;</p>	<p><b>Retained</b></p>	
	<p>"importer" includes any person who at the relevant time;</p>	<p>"importer" includes any person who at the relevant time-</p>	

	(a) is the owner or is in control or possession of any goods imported or to be imported into the <u>Republic</u> ; (b) carries the risk for any goods so imported or to be so imported;	(a) is the owner or is in control or possession of any goods imported or to be imported into <b>Nigeria</b> ; <b>(b) Retained</b>	
	(c) represents that or acts as if he or she is the importer or owner of any goods so imported or to be so imported;	<b>(c) Retained</b>	
	(d) actually brings or attempts to bring any goods into the <u>Republic</u> ; (e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so imported or to be so imported;	(d) actually brings or attempts to bring any goods into <b>Nigeria</b> ; <b>(e) Retained</b>	
	acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e) and "import" and "importation" will be construed accordingly;	(f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e), and "import" and "importation" shall be construed accordingly;	
	"inspector" means any person who under or by virtue of section 22 has been appointed as or designated to be an inspector for the purposes of this Act, as well as:	"inspector" means any person who under or by virtue of section 22 has been appointed as, or designated to be, an inspector for the purposes of this Bill, and-	
	(a) any police officer holding the rank of sergeant or a higher rank;	<b>(a) Retained</b>	
	(b) the Comptroller General of Customs and any official contemplated in <u>section 15(9)</u> , in performing their functions in the circumstances contemplated in <u>section 15(4)</u> ;	(b) the Comptroller-General of Customs and any official contemplated in <i>clause 15 (9)</i> , in performing their functions in the circumstances contemplated in <i>clause 15 (4)</i> ;	
	"intellectual property right" means	<b>Retained</b>	

	(a) the rights in respect of a trade mark conferred by the Trade Marks Act (b) the copyright in any work in terms of the Copyright Act;	(a) Retained  (b) Retained	
	"Minister" means the Minister of Trade and Investment	"Minister" means the Minister of <b>Industry, Trade and Investment</b> ;	
	"Owner", in relation to an intellectual property right, includes a person who has the capacity in law to enforce the intellectual property right in his or her own name;	Retained	
	"package" or "packaging" means any container, wrapping or outer cover and the contents thereof, or any bundle or single piece in the case of unpacked goods, and, when used as a verb, has a corresponding meaning;	Retained	
	"prescribed" means prescribed by regulation under this <u>Act</u> ;	"prescribed" means prescribed by regulation under this <b>Bill</b> ;	
	"protected goods" means- (a) goods featuring, bearing, embodying or incorporating the subject matter of an intellectual property right with the authority of the owner of that intellectual property right, or goods to which that subject matter has been applied by that owner or with his or her authority;	Retained	
	(b) any particular class or kind of goods which, in law, may feature, bear, embody or incorporate the subject matter of an	Retained	

	intellectual property right only with the authority of the owner of that intellectual property right, or to which that subject matter may in law be applied, only by that owner or with his or her authority, but which has not yet been manufactured, produced or made, or to which that subject matter has		
	not yet been applied, with the authority of or by that owner (whichever is applicable);		
	"this <u>Act</u> " includes any regulation made under this Act;	"this <b>Bill</b> " includes any regulation made under this <b>Bill</b> ;	
	"tools" includes machinery;	"tools" includes machinery;	
	"vehicle" includes any motor car, van, truck, trailer, caravan, cart, barrow, train, aircraft, ship, boat or other vessel, and any other vehicle, craft or means of conveyance of any kind whatsoever, whether self-propelled or not, as well as any pack animal	"vehicle" includes any motor car, van, truck, trailer, caravan, cart, barrow, train, aircraft, ship, boat or other vessel, and any other vehicle, craft or means of conveyance of any kind whatsoever, whether self-propelled or not, as well as any pack animal;	
	<u>Without derogating from the meanings of the words "place", "premises" and "vehicle".</u> and unless clearly inappropriate, any reference in this <u>Act</u> -	<del>Without derogating from the meanings of the words "place", "premises" and "vehicle",</del> unless clearly inappropriate, any reference in this <b>Bill to any</b> -	
	(a) <u>to any</u> place or premises, must be construed as a reference also to any freight container, irrespective of its size, at, on or in the place or premises;	(a) <del>to any</del> place or premises, shall be construed as a reference also to any freight container, irrespective of its size, at, on or in the place or premises;	
	(b) <u>to any</u> vehicle, <u>must</u> be construed as a reference also to such a freight container on or in the vehicle.	(b) <del>to any</del> vehicle, <b>shall</b> be construed as a reference also to such a freight container on or in the vehicle.	

26	<b>Short Title</b>	<b>Short Title</b>	
	25. This Bill may be cited as the Counterfeit Goods Bill.	25. This Bill may be cited as the Counterfeit Goods Bill, 2017	
		<b>COUNTERFEIT GOODS BILL, 2016</b>	
	<b>Explanatory Memorandum</b>	<b>Explanatory Memorandum</b>	
	This Bill seeks to introduce measures <u>aimed</u> against the trade in counterfeit goods so as to further protect owners of trademarks, copyright and certain marks under the Patent Act against the unlawful application, to goods, of the subject matter of their respective intellectual property rights and against the release of goods of that nature ( <u>called "counterfeit goods"</u> ) into the channels of commerce <u>for that purpose</u> to prohibit certain acts in relation to counterfeit goods as well as the possession of counterfeit goods in certain circumstances to create offences in that regard and prescribe penalties in relation thereto.	This Bill seeks to introduce measures <b>against</b> the trade in counterfeit goods to further protect owners of trademarks, copyright and certain marks under the Patent Act against the unlawful application, to goods, of the subject matter of their respective intellectual property rights and against the release of goods of that nature ( <del>called "counterfeit goods"</del> ) into the channels of commerce <del>for that purpose</del> <b>this Bill also seeks</b> to prohibit certain acts in relation to counterfeit goods as well as the possession of counterfeit goods in certain circumstances and create offences in that regard and prescribe penalties in relation thereto.	