MEASURES THAT CAN BE TAKEN TO FIGHT COUNTERFEITING IN KENYA

BY

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UNITED STATES INTERNATIONAL UNIVERSITY - AFRICA

FALL 2014
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A Research Project Submitted To the School of Business in Partial Fulfillment of the Requirement for the Degree of Masters in Business Administration (MBA)

UNITED STATES INTERNATIONAL UNIVERSITY - AFRICA

FALL 2014
STUDENT’S DECLARATION

I, the undersigned, declare that this is my original work and has not been submitted to any other college, institution or university other than the United States International University in Nairobi for academic credit.

Signed: __________________________  Date: __________________________

Cressida Nduati (ID 629661)

This project has been presented for examination with my approval as the appointed supervisor.

Signed: __________________________  Date: __________________________

Gidraph Nduati

Signed: __________________________  Date: __________________________

Dean, Chandaria School of Business
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ABSTRACT

The purpose of the study was to determine the measures that can be taken to fight counterfeiting in Kenya. The study was guided by the following research questions: How effective are the existing policies in fighting counterfeiting in Kenya? How can anti-counterfeit organizations be improved to fight counterfeiting in Kenya? And finally, How can consumer awareness of counterfeits be used to fight counterfeiting in Kenya?

The research design adopted was a descriptive cross-sectional study. This involved the analysis of data collected from a population, or a representative subset at a specific point in time. The study focused on five organizations whose main function was fighting counterfeiting in its various forms which included; Anti-Counterfeit Agency, Kenya Bureau of Standards, Kenya Copyright Board, Music Copyright Society of Kenya and Kenya Industrial Property Institute. With a population of a thousand and twenty eight employees at 95% confidence level and a confidence level of 7.4%, the sample size used was 150 employees. Data collection was through the use of a questionnaire developed by the researcher. The data collected was analyzed using Statistical Package for Social Sciences tool. Descriptive statistics was used to analyze the data. General information was analyzed using frequencies and percentages. Inferential statistics were also used such as Pearson’s Chi-Square test to determine the relationship between independent and dependent variables.

The findings established that the government policies currently in use for fighting counterfeiting are on intellectual property, quality of standard of products and copyright protection. The study also rated the effectiveness of each of the policies and the findings indicated that they were not effective. A chi-square test on the effectiveness of the existing policies resulted in a value of 0.051. This value was more than 0.05, so we accepted the H₀ that the existing policies are not effective in fighting counterfeiting in Kenya.

The study established that anti-counterfeit organizations can be best improved by more resource allocation in terms of budgetary amount and increase in number of employees. In determining the number of employees that would be best, the findings showed that 60% indicated that between 15 to 20 employees would be best, 25% indicated between 10 to 14 employees would be best and 15% indicated that more than 20 employees would serve best. Compared to the findings on the current number of employees, majority of the respondents
considered an increase in resource allocation as a way of improvement. The calculated chi square value was 0.069 which was more than 0.05, so we accepted the $H_0$ that the resources that the organizations had were limited to effectively fight counterfeiting in Kenya.

The study highlighted the reasons for low involvement by consumers in fighting counterfeiting which included consumers finding counterfeit goods to be cheaper, of better quality, easily accessible and consumers find it had to distinguish genuine products from the counterfeit products. The study also established the measures to increase consumer awareness per strata and majority of the respondents in each of the strata advocated for creation of awareness. The calculated chi square value for this was 0.038 which was less than 0.05, so we rejected $H_0$ and adopted the $H_1$ that consumer awareness can be used to fight counterfeiting in Kenya. The study found that creation of awareness can be through training, advertising and brochures.

In conclusion, the study shows the current policies in place are not effective to curb counterfeiting, measures need to be taken to improve the anti-counterfeit organizations such as increase in resource allocation and more needs to be done to create consumer awareness on counterfeiting in order to increase support from consumers.

The study recommends that government should involve more parties in the policy making process, increased resource allocation to increase their effectiveness and that consumers should be provided with a facility for them to easily and securely identify genuine products and the counterfeit products.
ACKNOWLEDGEMENT

I take this opportunity to acknowledge first my family who have been very supportive of my studies, secondly, the participants in the data collection who were more than willing to spare their time and share information with me and last but not least my supervisor Mr. Gidraph Nduati, who through his guidance this document came to be.
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<tr>
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<td>Organization for Economic Co-operation and Development</td>
</tr>
<tr>
<td>EAC</td>
<td>East African Community</td>
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<tr>
<td>IDC</td>
<td>International Data Corporation</td>
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<td>GAO</td>
<td>Government Accountability Office</td>
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<td>CIB</td>
<td>Counterfeiting Intelligence Bureau</td>
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<td>ICC</td>
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<td>Intellectual Property Rights</td>
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<tr>
<td>IIPA</td>
<td>International Intellectual Property Alliance</td>
</tr>
<tr>
<td>INTA</td>
<td>International Trademark Association</td>
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<td>IACC</td>
<td>International Anti-Counterfeit Coalition</td>
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<tr>
<td>GACG</td>
<td>General Anti Counterfeit Group</td>
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<tr>
<td>CBD</td>
<td>Central Business District</td>
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<tr>
<td>OEM</td>
<td>Original Equipment Manufacturer</td>
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<tr>
<td>CM</td>
<td>Contract Manufacturer</td>
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CHAPTER ONE

1.0 INTRODUCTION

1.1 Background of the Study

Counterfeiting is used as a broad term which encompasses any manufacturing of a product which so closely imitates or copies the appearance of another product to mislead a consumer that it is indeed the other product. Therefore, it may include trademark infringing goods, as well as copyright infringements (Admin, 2011). The word counterfeit frequently describes but not limited to both the forgeries of currency and documents, as well as the imitation of clothing, handbags, shoes, pharmaceuticals and many more products. Counterfeit consumer products have a reputation of being of lower quality and sometimes not working at all and may even include toxic elements. This has resulted in the deaths of hundreds of thousands of people, due to automobile and aviation accidents, poisoning, ceasing to take essential compounds for example in the case a person taking non-working medicine.

The concept of counterfeiting also includes copying of packaging, labeling and any other significant features of the product. Counterfeit products are often produced with the intent to take advantage of the superior value of the imitated product. Counterfeiting is generally perceived by society as a victimless crime with fakes or knock-offs simply constituting a cheap alternative purchase, and seen by criminals, for example, perpetrators of counterfeiting, as having a low risk of prosecution with light penalties relative to the large profits to be made.

The reality is that the international trade in counterfeit products is estimated to exceed six per cent of global trade. It is not only damaging to businesses and investment opportunities but is also having a negative impact on society and the global economy (Anti-Counterfeit Congress, 2004). Trade in counterfeit goods is a lucrative and growing area. Pollinger (2008) wrote a paper showing how profits made from counterfeiting are used to finance terrorist activities. Therefore not only is counterfeiting damaging to businesses, but rather its existence breeds other adverse effects on the society.
The range of counterfeit products is extremely broad and the trends indicate that counterfeiters are no longer confining their activities to just luxury goods but are increasingly exploiting consumer goods, which include everyday items. This constitutes a serious threat to public health and safety since these counterfeit products are not subject to safety checks. Fragrances and hair products are examples of the most frequently copied beauty products, and, with the reproduction of packaging becoming an art form, it can be almost impossible for a shopper to tell the difference upon first glance.

Cosmetics, medicines and other goods that can seriously damage the health of consumers continue to be faked in large quantities. Changes in the routes of fraud, an increased range of products being copied and the use of the internet in selling counterfeit goods make customs job even more challenging (Admin, 2009).

Some of the factors contributing to counterfeiting are globalization and liberalization of the markets, increase in poverty worldwide, consumer and institutional lack of awareness, weak laws and enforcement institutions, advancement in technology being used wrongly, corruption within enforcement institutions and brand owners’ lack of brand registration.

The spread of counterfeit goods has become global in recent years, which has partially been attributed to globalization. According to a study by Counterfeiting Intelligence Bureau (CIB) of the International Chamber of Commerce (ICC), counterfeit goods make up 5 to 7% of World trade; however these figures cannot be accurately substantiated due to the secretive nature of the industry.

A report by the Organization for Economic Co-operation and Development, Vithlan (1998) indicates that up to two hundred billion dollars of international trade could have been in counterfeit and illegally-copied goods in 2005. In the same year of 2005, EU customs seized more than 75 million counterfeited and pirated goods. In November 2009, the OECD updated these estimates, concluding that the share of counterfeit and pirated goods in world trade had increased from 1.85% in 2000 to 1.95% in 2007 which is a great increase worldwide.

Findings by the European Commission in November 2003 indicated that china is the world’s largest source of counterfeit goods. 66 per cent of goods seized in Europe in 2002 came from
Asia that is Thailand and China in particular. Examples of other findings are; according to the U.S. Customs and Border Patrol, found that most of the seized counterfeit goods were dominated by goods from China. During fiscal years 2004 through 2009, China accounted for 77 percent of the aggregate value of goods seized in the United States, with the closest competitor being Hong Kong, a special administrative region of China, which accounted for 7 percent. India ranked third, accounting for only 2 percent. Another example is research by the Organization for Economic Cooperation and Development, an intergovernmental group based in Paris that also considered China to be the number one offender when it came to counterfeit goods.

The U.S. federal auditors released a study in 2010, titled “Intellectual Property: Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods.” The document from the Government Accountability Office (GAO) stated that the actual financial losses, jobs lost, and economic impact associated with piracy and counterfeiting is difficult to quantify.

With the launch of the Commission's Customs Action Plan in Europe to combat counterfeiting and piracy, a number of actions have been initiated. These include targeted time limited Operational customs actions at major ports and airports in Europe where in a recently finalized customs action led to the seizure of more than 90 large maritime containers of fake products and more are expected to be seized. Cosmetic giants such as L'Oreal, Beiersdorf and Johnson & Johnson have all targeted the counterfeit craze by launching anti-counterfeit drives in the Middle East and China, areas supposedly at the heart of the operations (“Counterfeit Goods a Serious Threat”, 2006).

In the East African Community Area; in a report entitled “Counteracting Counterfeiting: Strategies for improving the integrity of Medicinal Marketplace in Tanzania” given in September 2005, the Director General of the Tanzania Food and Drugs Authority noted that fake medicines are alarmingly on the increase and a number of serious cases have been detected where unscrupulous dealers repackage and re-label expired drugs or drugs with non-active ingredients such as chalk. Also according to a news report in 2009, July; the East African region lost five hundred million dollars to counterfeit goods.
The East African Community Partner States fall under the category of emerging markets in global trade. The problem of counterfeiting and piracy is most prevalent in such regions due to a combination of some factors found in these regions. For example, 80% of the world’s population and 70% of the world’s small businesses reside in those regions. Also considering the fact that the EAC states have high population densities and the cost of genuine products being unaffordable, counterfeiting and piracy become almost acceptable and the only means of enjoying the delights of modern technology.

In Kenya, it has been estimated that in some of the mostly affected industries, counterfeit trade accounts for more than 70% of the trade while the rest consists of trade in genuine products and/or services. Counterfeit trade costs Kenya an estimate of around twenty billion Kenyan shillings yearly in lost revenue and employment opportunities, according to estimates by the Kenyan government. Among the counterfeit goods in the market in Kenya are drugs which are about 130 million dollars, textiles about 6.5 million dollars, tyres and tubes at about 4 million dollars and soaps and detergents at about 260,000 dollars. This is according to a workshop on Anti-Counterfeiting and Intellectual Property Strategies in Kenya held in Nairobi Safari Club hotel on 19th-20th September in 2006.

In Kenya, street vendors and exhibition stalls openly sell counterfeit or pirated goods. And generic medicines are marketed through counterfeit packaging of the popular legitimate brands. To further increase the dilemma, emerging technologies have made it easier for counterfeit traders to carry out the trade. For instance, digital audiotapes, digital broadcasting, optical character recognition (OCR), scanners, recordable compact discs (CDs), electronic cameras, the Internet and high quality photocopiers have made counterfeiting simpler and very rewarding (Wekesa and Sihanya, 2009).

From a study by KRA in 2010, it confirmed that the most common counterfeit products in Kenya are the fast moving products which include soaps and detergents, food products, alcoholic beverages, dry cell batteries, cosmetics, electrical and electronic equipments, common medicine, shoe polish, apparel, pens among others. This in turn has created stiff competition for genuine products with manufactures. One reason that the industry has grown is due to the weak legislation that exists in tackling the menace. Those involved usually get light prison sentences or even get
away with fines which only serve to encourage the culprits. The report titled 'Scope and Impact of Counterfeits in the Consumer goods sector' says counterfeit trade continues to thrive due to the easy access to the products as well as being a highly profitable business (OECD, 2008).

In September 2011, there was a revelation through the media that counterfeit HIV drugs were being sold in the country which served to show the laxity on our drug regulatory mechanisms. The Pharmacy and Poisons Board admitted that drugs had been licensed for use in Kenya after failing quality tests. There has been little information since on the action taken against officials behind the backdoor licensing racket or on the manufacturers and marketers guilty of exposing Kenyans to potentially harmful medication (Gathura, 2011).

Some of the sources of counterfeit products are through direct imports, transit goods and operations set up within the country. The operations set up use either or all of the following techniques to counterfeit; using of genuine labels stolen from suppliers, illegal printing of fake labels and adulteration of products.

There are two dimensions of counterfeiting, local dimension and international (regional) dimension. In local dimension, counterfeiting is primarily done within the country. Here, it is difficult to contain due to its geographical spread. This is because of difficulties in coping with the fast changing technology and the dis-jointed manner of dealing with counterfeits by government agencies. In this dimension it ranges from small scale to large scale counterfeiting. Local counterfeit products include fake products packed in genuine rejected packaging materials, recycled containers or genuine stolen packaging materials. The counterfeiters usually operate in local manufacturing facilities, which are backyard operations.

In the international dimension, these are cases where local trademarks are being imitated by counterfeiters in other countries for the goods destined for Kenya, that is products manufactured abroad for example China or in other cases for goods in transit to other countries. The strategic location of Kenya poses a great challenge because Kenya serves as a distribution point for goods into other countries: Ethiopia, Rwanda, Democratic Republic of Congo, Tanzania and Uganda. Although it can be managed, it is hard to eradicate due to the East African Community removing the concept of regional borders in terms of trade through becoming a fully-fledged Custom union.
and the difficulty of getting all parties involved to view the issue from the same perspective (Mugisa, Onyango, and Mugoya, 2009).

Impacts of counterfeit trade are; first, counterfeiters rarely (if ever) pay taxes or the relevant duties and rates. This denies the Kenyan Government and local authorities much needed revenue which could be used to provide better infrastructure, housing, electricity, telecommunications systems and health care to the population.

Secondly, Counterfeiters also incur limited production costs, thus they can afford to sell their goods cheaply and thereby undercut genuine producers. This deprives business of deserved profits. Thirdly, counterfeit goods pose great risks to public health and safety. Forged labels on baby formula, drugs that lack active ingredients, counterfeit alcohol, food, and personal care items have had and continue to have devastating effects on consumers including death.

Fourthly, where the counterfeits are of lower quality than the legit or genuine products, the legit entrepreneur’s reputation is tarnished and this leads to loss of future sales and loss of brand strength. Fifth, counterfeit trade may lead to strained trade relationships among intellectual property (IP) owners and counterfeiters or between countries. For instance, the US threatened to impose sanctions on countries like China, Brazil, Egypt and South Africa who were regarded as violating its nationals’ or corporations’ IP. Kenya has been specifically mentioned in the 2006 International Intellectual Property Alliance (IIPA) 2006 Special 301 Report because of the rampant counterfeit or piracy going on in most sectors and the Government’s failure or inability to address the problem effectively (IIPA, 2006).

Lastly, the use of clandestine labor has been on the increase as a result of counterfeiting, bringing with it all the negative effects of clandestine labor. For example, In the Czech Republic, one raid revealed 300 illegal Vietnamese immigrants working in deplorable conditions with dangerous equipment (UNODC, 2010).

From the above we can easily see that the affected parties of counterfeiting are not only the manufacturing companies but also the consumers of the goods and the government of the particular country. Law makers, policy makers, enforcement officials, and the industry must find a way to deal with the effects of counterfeit trade and a find a way to curb it. Under the East
Africa Common Market Protocol, each of the 5 member countries was supposed to set up anti-counterfeit agencies to deal with the menace. Kenya has set its own, known as the Anti-Counterfeit Agency, though it still faces financial and operations challenges. Tanzania and Rwanda are in the process of setting up agencies.

Counterfeiting is not only considered to fall under the discipline of International Business or trade as it affects trade but is also an element considered in Criminal Law where the Kenya Penal Code (Cap 63) provides a general framework for anti-counterfeiting criminal laws which is a topic in International legal environment. The focus of the study will be on the side of the government, on how it is fighting the vice.

Anti-Counterfeit Agency (ACA) is an Agency created under an Act of Parliament in 2008 to combat counterfeiting trade and other dealings in counterfeiting goods. The Act was made as a result of several reasons some of them being: lack of awareness by people on counterfeiting, lack of coordination or collaboration between institutions handling counterfeiting. Inadequate law or provisions on penalties, lack of an institutional framework for enforcing IPRs, and to enable Kenya comply with the provisions of the TRIPS Agreement in regard to enforcement of intellectual property rights and border measures.

The Act empowers ACA to deal with counterfeit goods, not services as a criminal act. Also ACA can deal with goods manufactured in Kenya, goods whose destination is Kenya or transit goods. The ACA’s mission is to combat counterfeiting and prohibit trade in counterfeit goods through training, research, consumer awareness and co-ordination with national, regional and international organizations in the effective enforcement of intellectual property rights.

The main functions of the Anti-Counterfeit Agency are; to enlighten and inform the public on matters relating to counterfeiting, to combat counterfeiting, trade and other dealings in counterfeiting goods in Kenya in accordance with the Act, to device and promote training programmes on combating counterfeiting, to co-ordinate with national, regional or international organizations involved in combating counterfeiting (ACA, 2014).

The main reasons for enforcement by of the Act by the ACA is because the state has a duty to guarantee one’s right to property, counterfeits lead to economic loss in terms of employment,
revenue, innovation and development, to protect the consumers, counterfeiters are linked to other crimes and to meet Kenya’s international obligations and enable Kenya to be in good relationship with partner states.

1.2 Statement of the Problem

Counterfeit products exist in the Kenyan market and they have negative effects on the economy which include financial, social and political. The financial effects of counterfeiting include losses which are on both the government and manufacturing companies. Counterfeiting discourages entrepreneurship, manufacturing companies lose brand names and company image, the company is forced to make cut backs due to loss and in some cases close down. Companies experience unfair competition and reduced investments while governments are forced to redirect resources to fighting counterfeiting which would be utilized in more beneficial activities.

The social effects of counterfeiting are increase in crime, consumer health risks because of consuming or using sub standard goods, loss of creativity or innovation by citizens as they result to counterfeiting, loss of jobs due to cut backs by the companies, insecurity due to increase in crime, loss of consumer confidence in products and damage to the environment. The Political effects of counterfeiting experienced include; tainted international relations with other countries when it comes to trade and influence of political issues through corruption by the counterfeiters to evade the law.

In light of this the Kenyan government has formed anti-counterfeit organizations, formulated policies and yet we still find that counterfeiting still persists in the country. An example of such an organization is the Anti-Counterfeit Agency which despite its formation in 2010 we find that the country is still affected by counterfeiting. The Anti-counterfeit Act of 2008 which was passed in parliament with the principal aim of prohibiting trade in counterfeit goods and dictate penalties for non conformists as a way of discouraging the vice we still find that despite these efforts counterfeiting is still rampant. There is therefore clearly a need to find permanent solutions or measures that the Kenyan government can adopt to stop and prevent counterfeiting.
1.3 **Purpose of the Study**

The purpose of the study was to establish the measures that can be taken to fight counterfeiting in Kenya.

1.4 **Research Questions**

The research sought to answer the following questions.

1.4.1 How effective are the existing policies in fighting counterfeiting in Kenya?

1.4.2 How can anti-counterfeit organizations be improved to fight counterfeiting in Kenya?

1.4.3 How can consumer awareness of counterfeits be used to fight counterfeiting in Kenya?

1.5 **Importance of the Study**

This study would be of importance to the following:

1.5.1 **Policy Makers:**

From this document they will be able to determine whether the policies they have made and the ones being used are adequate or if they have any shortcomings. This will be through the awareness that the document will create on the how people and companies are affected by counterfeiting.

1.5.2 **Researchers:**

They will be able to learn from this and use this as reference on further studies on the topic, as well as draw their own conclusions on better ways to fight counterfeiting.
1.5.3 Consumers:

It will create awareness to consumers by highlighting the effects of fake goods and how it affects them.

1.6 Scope of the Study

The study was carried out in Nairobi, Kenya. The target population was the anti-counterfeit agencies located in Nairobi. The target respondents included managers in the agencies because they possessed past and present knowledge of counterfeiting and therefore best placed to offer valuable information to the study. It also included respondents in non-managerial positions. The study focused on the measures that can be used to fight counterfeiting in Kenya. Existing policies, anti-counterfeit organizations and consumer awareness will be the measures the study will focus on.

Limitations that were faced included the possibility of participants responding positively with the aim of protecting their agencies, financial constraints in sampling and travelling to the agencies during the data collection and availability of some of the respondents.

1.7 Definition of Terms

1.7.1 Globalization:

This is the process of increasing connectivity and interdependence of the world’s markets and inter-dependence. It is also defined as the process in which interaction and integration among people, companies and governments of different nations. It is driven by international trade and investment (Admin, 2010).

1.7.2 Anti-Counterfeit Bill:

This is an Act of parliament with the intent to prohibit trade in counterfeit goods, to establish the Anti-counterfeit Agency, and for to highlight the consequences or penalties of being involved with counterfeit trade (Anti-Counterfeit Bill, 2008).
1.7.3 Knock-offs:

This is a term used to refer to counterfeit products or goods (Hornsby, 1974).

1.7.4 Clandestine labor:

This refers to undeclared work or labor that is illegal. This is derived from what the labor is used for (Hornsby, 1974).

1.7.5 Penal Code:

This is a document that comprises of all or a significant amount of a country’s criminal law. It contains offences that are recognized by the country, their penalties and other general provisions like prohibitions (The Penal Code, 1963).

1.8 Chapter Summary

In this chapter we have been able to understand what counterfeiting is and how it has not only affected several countries globally but also how it has affected and is continuing to affect trade in Kenya. From the brief description of the impact of counterfeiting, we find that the effects of counterfeit products are not limited but affect all parties in trade i.e. government, companies and consumers.

In chapter two, there will be literature review which will cover in-depth research from any former or existing material on counterfeiting and any cases found. It will also include the method adopted by governments to fight counterfeiting. Chapter three will entail a detailed description of the research methodology used to do population sampling and data collection. Chapter four will be an analysis of the results and findings from the research and data collection and finally chapter five will incorporate a discussion on the above and drawing of conclusions and recommendations.
CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 Introduction
This chapter presents a review of the literature related to the measures that can be taken to fight counterfeiting in Kenya and purpose. This section is organized or structured according to the research questions in order to ensure relevance to the research problem. It examines recent research studies, company data or industry reports that act as a basis for the proposed study. This is meant to give the reader an overview of previous relevant contributions to the problem so that they can understand the research problem and methodology to be used in the study.

2.2 Effectiveness of Policies Used in Fighting Counterfeiting

2.2.1 Introduction of new legislation
In 2008, Switzerland introduced a new set of legislations to try and fight against counterfeiting. These brought various reforms to all intellectual property laws and improved the legal options for law enforcement, particularly in the fight against counterfeiting and piracy. Owners of trademark and design rights now have the option to prohibit the import, export and transiting of commercially produced infringing objects for private use and to have those goods withheld by Customs (Admin, April 2006).

The changes were necessary because of so-called capillary imports, that is, the importation of infringing goods in small quantities. The new regulation affects only procedures at the border. Private persons in Switzerland who are in possession of unlawfully manufactured goods can still not be legally prosecuted. All of the intellectual property laws make it possible for rights holders to submit a petition for a simplified procedure for destruction. Once the goods have been withheld, the persons who are declaring the goods are informed of the petition to withhold and destroy. In case an unjustified destruction takes place, the injured party has the right to compensation as long as they did not expressly approve the destruction.
Customs acknowledges that modern technology has enabled an unprecedented level of production, decreased the costs of piracy and improved the quality of pirate copies especially in the music industry. A number of developing countries are perceived to be saturated by pirated recordings creating barriers to importation by genuine producers. Furthermore, the music organizations claim to have found evidence that the manufacturing and distribution of pirate CDs has become an organized, large scale criminal activity operating on a global level (OECD, 1998).

In China, more than half of all units sold are pirated but, because of much lower prices, the pirate sales total only US$165 million, compared with legitimate sales worth US$177 million. World-wide, recorded piracy levels have increased from about twenty per cent to more than thirty per cent of the total unit sales equaling to US$5 billion in 1996 compared with about US$2 billion in 1995. The extraordinarily high increase is attributed to a change in methodology of estimating piracy losses (IFPI, 2005).

The European Union introduced a new counterfeit goods regulation which is an enhancement of an intellectual property right owner's protection against infringement. In order to give better protection to intellectual property rights holders in respect of counterfeit goods, the recently endorsed Regulation seeks to revise the current position, fundamentally, by introducing the following measures: First, Extended protection of IPRs, the Proposed Regulation expands the IPRs which are subject to the activity of customs authorities to include trade names, topographies of semiconductor products, utility models and devices to circumvent technological measures. Secondly, a simplified procedure for detention and destruction of goods made mandatory under which an IPR holder and importer can agree that infringing goods should be destroyed under customs supervision. Thirdly, to address the increase in infringing goods resulting from internet sales, provision is made under the Proposed Regulation for a designated, accelerated procedure allowing officials to destroy small consignments of counterfeit goods (those containing three units or less or with a total weight of less than two kilograms) without legal proceedings having to be initiated. Fourth, Information sharing, goods merely in transit are not considered to be infringing goods for the purposes of the EU’s regulation of counterfeit goods and so cannot be detained or destroyed. However, the Proposed Regulation permits EU customs authorities to share information on
suspected infringement activity with customs authorities in non-EU destination countries. As a result, it is anticipated that there will be an increase of seizures taking place on importation. Finally, the Proposed Regulation allows IPR holders, in accordance with national law measures, to recover destruction and detention costs from the infringer or any other liable party. The viability of recovering such costs will, however, depend on the financial position of the infringing party (Squiresanders, 2013).

The US Congress introduced the Counterfeit Drug Enforcement Act of 2014 on December 11, 2014. This bill, similar to ones previously introduced would allow federal officials to sentence anyone found guilty of "knowingly" causing a drug to be adulterated or misbranded for periods up to life in prison. In addition to the sentencing provisions, a manufacturer made aware that its drugs may have been adulterated or misbranded must communicate that information to the FDA within 48 hours. The proposed law also provides for additional funding for the FDA to investigate and fight counterfeit medicines. Other elements of the bill provide for greater investigation powers such as the authority to issue subpoenas related to drug counterfeiting investigations (“New Drug Counterfeiting Bill”, 2015).

2.2.2 Impact of Policies on Organizations

International Trademark Association (INTA), is a not-for-profit organisation, with headquarters in New York, USA. It has some 4,200 members, companies and firms, from more than 160 countries, and pursues public policy matters concerning trademarks, educating business, the media and the public on the proper use of trademarks. INTA has identified Intellectual Property (IP) enforcement and the fight against counterfeit as a priority in its activities. In this regard, INTA encourages governments to enact legislation and promulgate regulations that go beyond the minimum enforcement standards contained in international accords such as the TRIPS Agreement. The Association also strives for harmonization of legislative protection against counterfeiting and supports initiatives on various national and international levels which has been a challenge (INTA, 2010).

The International Chamber of Commerce (ICC) represents business sectors worldwide. The ICC Counterfeiting Intelligence Bureau (CIB) was formed in 1985 as a focal point for industries
exposed to counterfeiting worldwide. CIB was the first international private business initiative to provide practical prevention and enforcement support for police and customs authorities and is actively involved in the campaign against the manufacture and distribution of counterfeit goods. CIB, whose services benefit multinational companies, trade associations, law firms and providers of anti-counterfeiting technology, has now extended its activities to include intellectual property fraud. Some of the main activities of the CIB include gathering and evaluating intelligence; investigating sources and distribution of fake products; providing expert advice and training; and supplying evidence to enable police to make arrests and to seize counterfeit goods (International Chamber of Commerce 2012). The massive growth of the internet has opened up new marketing and distribution channels for counterfeit goods, primarily produced in developing countries.

Responding to this threat, CIB set up an internet investigations team.

European Communities Trade Mark Association (ECTA), is an organisation representing European law practitioners, with headquarters in Deurne-Antwerpen, Belgium. It lists approximately 1,300 members coming from 80 countries who act before the Office for Harmonisation in the Internal Market (OHIM) in the field of trade marks and industrial designs. Some specialised committees have been established, among them the Anti-Counterfeiting Committee (European Communities Trade Mark Association, 2004). In ECTA’s 31st annual conference held in 2012, one of the topics of discussions was the challenges they faced which included; many brands are still not protected in China and, historically, businesses have paid large sums of money to acquire their trademarks. It was advised that to beat counterfeiters, practitioners must understand the system, calculate their budgets, and most importantly, have a strategy rather than to blindly target the infringers. Another challenge faced by ECTA is to ensure that legislation and regulation remained relevant with changing times and harmonizing of multiple international agreements on policies.

The Business Software Alliance (BSA), was formed by the leading software companies in 1988 as a direct response to the piracy problem. Its aim is to increase the legitimate market for software and discourage abuse of copyright-protected work around the world. It is active in 60 countries and works with government officials and industry groups to improve enforcement of IPR and educate the public on piracy.
According to the Intellectual Property Rights (IPR) study, the number of new business applications, and both legal and pirated, increased by twenty nine per cent in 1996. This is slightly less than the growth rate reported for 1995, which was thirty two per cent. The data indicates that nominal losses due to piracy increased from US$12.3 billion in 1994 to US$13.3 billion in 1995 but decreased to US$11.2 billion in 1996. According to IPR, the decline in losses can be attributed to the erosion of the price of business software (Business Software Alliance, 2007).

BSA has realized that it needs to engage in robust discussions on the best ways to aid the tech industry in developing common descriptions for software-related technologies. Common nomenclature will only help examiners, courts, and competitors do a better job of determining the full scope of the claimed invention or patented software.

The Department of Defense introduced and published an Anti-counterfeit document with the stated purpose being to establish policy and assigns responsibilities necessary to prevent the introduction of counterfeit materiel at any level of the department of defense (DOD) supply chain. It was also to provide direction for anti-counterfeit measures for DoD weapon and information systems acquisition and sustainment to prevent the introduction of counterfeit material. It also assigned responsibilities for prevention, detection, remediation, investigation, and restitution to defend the DoD against counterfeit material that pose a threat to personnel safety and mission assurance. This document goes on to give some of the policies it intends to implement in its fight against counterfeiting, including documentation, risk reduction and other measures, all geared towards the reduction of counterfeiting in the DoD. Similar documents that discuss measures used to fight against counterfeiting are published daily by governments, public (US Department of Defense, 2013).

2.2.3 Policies and Trade

Globerman and Shapiro (2007) briefly discuss the cost of trade protection. They recommend a policy approach that emphasizes the “private” efforts of brand owners to protect their products rather than strengthening retaliatory trade legislation. They go on to discuss the net costs of counterfeit trade and the cost of trade protection. They talk of a policy approach that emphasizes
the “private” effort of brand owners to protect their products rather than strengthening retaliatory trade legislation in their paper on the international activities and effects of state owned enterprises.

Hetzler (2002) summarizes the legislative measures taken in the EU between 1988 and 2002. He highlights the effects of these initiatives for the German market and elaborates on the relationship of counterfeit producers with organized crime, emphasizing the entrepreneurial character of the activities. Bach (2004) has this point of view: that both extreme scenarios (total devaluation of intellectual property versus total control of the right holders) are unlikely and that a careful discourse of policy makers is necessary in order to find a suitable intermediate position.

The Ghanaian social enterprise operates a mobile-based drug authentication service that allows customers to text in a unique code find out whether they are purchasing a real product. Most companies agree that reducing their product prices to compete with counterfeiters is not the most productive way forward. Price is not the limiting factor, they say, and most could not make the cuts needed to equal the cost of counterfeits even if they wanted to. Instead, many companies are using technology to fight fakes - a business that has grown legs on the continent, (Simons, 2007).

Admin (2011) Minister of Industrialization told journalists in Nairobi that due to the fact that the EAC adopted a Common Market Protocol counterfeits products and trade can only be defeated through collaboration. In a report given by the then minister of industrialization at the regional workshop on the implementation of an inter-agency approach to Intellectual Protection (IP) and enforcement it was clear that the EAC countries had resolved to come up with strategies for formalizing the inter-agency approach at the EAC regional.

Kenya’s government has worked hard to crack down on the counterfeit phone industry, waiving a 16 percent tax duty on mobile devices - which increased the cost of real handsets over low-priced fakes. "It is estimated the counterfeit market share dropped by almost 6 percent as a result of this bold move," Nokia’s (Hasayen, 2009). In addition, nearly every country in the world has an existing body (in Kenya we have the Kenya Bureau of Standards) that is tasked with the responsibility to ensure that no counterfeit goods proliferate in the respective country (Gabriel, Yannis, & Langa, 1998).
The use of policy is one of the steps necessary in fighting counterfeiting. However, the effectiveness of the use of policy depends on the level of implementation of the policies given. If there is effective implementation, the use of policy is a proper initial step in working towards the improvement of policy use and implementation.

The effectiveness of the policies in place both locally and internationally can be best achieved through collaboration or adequate cooperation with other authorities. This includes both local authorities and international. This unfortunately is hindered because of lack of tradition to cooperate, limited resources and lack of legal framework for cooperation. In Kenya, there are policies that exist regarding counterfeiting at all levels. However, corruption, poor implementation and the lack of resources by policy implementation bodies is the main reason why we still have a very high rate of counterfeit goods permeating into the country annually. Anti-counterfeiting bodies in Kenya mostly operate within the public sector (KACC, 2010).

The largest body that works against prevention of counterfeiting in the country is the Kenya Bureau of Standards. While the body works hard to ensure there is as little counterfeiting in Kenya as possible, they are not doing nearly enough to fight it. One of the problems seems to lie in lack of cooperation with other local and cross-border agencies charged with fighting counterfeiting. The borders of Somalia, Tanzania, Uganda, and Ethiopia and at the coastal ports are too porous due to insufficient funding and lack of proper inter-governmental co-operation (Gething et al., 2007). Lack of proper policy brings about serious and multifaceted implications on manufacturers and brand owners. Companies are likely to face a loss of revenue owing to substitution effects by illicit goods and constraints on product pricing (Montoro-Pons & Cuadrado-Garcia, 2006).

2.3 Improving of Anti-counterfeit Organizations

2.3.1 Role of Anti-counterfeit organizations

Anti-counterfeit organizations all have general goals that they aim at achieving. Some of these goals are to improve collaboration among governments, organizations, institutions, agencies and associations engaged in combating counterfeit products at the national, regional and/or
international level and raise awareness among international organizations and other stakeholders. They aim to raise awareness among national and regional authorities and decision-makers with a view to calling for effective legislative measures in order to combat counterfeit products and establish mechanisms for the effective exchange of information and to provide assistance on specific issues pertaining to combating counterfeit products. Finally, they aim to establish mechanisms for the effective exchange of information and to provide assistance on specific issues pertaining to combating counterfeit products (Kirkpatrick, 2007).

Some of the leading anti-counterfeit organizations in the world include the Global Anti-Counterfeiting Group, the International Anti-Counterfeiting Coalition (IACC), the World Health Organization and others. Each of these organizations have different ways and goals when tackling counterfeiting. The International Anti-Counterfeiting Coalition (IACC) is an international organisation devoted solely to combating product counterfeiting and piracy. Its members represent a cross section of business and industry, from automobiles, apparel, luxury goods, and pharmaceuticals, to food, book publishing, software and entertainment. IACC develops and conducts training for domestic and foreign law enforcement officials, submits comments on intellectual property enforcement laws and regulations and participates in regional and international programs aimed at improving intellectual property enforcement standards. Its anti-counterfeiting programs are designed to increase protection for patents, trademarks, copyrights, service marks, trade dress and trade secret (International Anti-Counterfeiting Coalition, 2013).

The General Anti Counterfeiting Group (GACG) Network links a number of national and regional anti-counterfeiting organisations world-wide whose common objective is to exchange and share information, to participate in, and contribute to, appropriate international activities and representations, and to co-operate in the resolution of specific Intellectual Property problems and challenges globally and in their respective national or regional areas (Davenport et al., 2004).

Based in England, the Anti Counterfeiting Group (ACG) is a trade association representing an international membership of some 200 manufacturers, distributors of branded products and firms of intellectual property lawyers and agents. The group identifies its activities in, inter alia, providing support and co-ordination with law-enforcement agencies and courts, and creating a
national and international network of information, advice and contacts on anti-counterfeiting activities (Neely et al., 2003).

The World Health Organization, the United Nations specialised agency for health, was established in 1948, and groups 192 Member States. The organisation has staff at the headquarters in Geneva, and in other countries. Faced with widespread trade in counterfeit medicines, WHO operates a specific program on counterfeit and substandard medicines which aims at strengthening international cooperation and prevention in this field (WHO, 2012).

European Brand Association (AIM) is the representation for branded goods industries in Europe. Its members consist of about 1800 companies of all sizes, through corporate members and national associations in 20 countries. Headquarters are located in Brussels, Belgium. The company’s objective is to create a good commercial environment for brands, offering maximum value to consumers by virtue of intellectual property protection, fair competition and innovation. Intellectual property protection and enforcement, and the fight against counterfeiting, is one of AIM’s policy priorities. In this respect, the association also provides a number of publications and documents (Hemmingway et al., 2006).

2.3.2 Anti-counterfeit Organizations and Technology

Ethicon, an organization committed to advancing surgical care worldwide is continually developing and applying anti-counterfeiting measures throughout the process of product development, distribution and enforcement. For example, during distribution, Ethicon continues to establish and enforce distribution agreements that include provisions addressing counterfeit product. In identification, Ethicon actively monitors the global marketplace for potential counterfeit products through a combination of product sampling, analysis of customer complaints, and other means. If counterfeit product is confirmed, appropriate health authorities are notified and comprehensive communications are provided to customers so that these products can be identified, quarantined, and appropriate action taken as quickly as possible. In enforcement, Ethicon works with numerous government agencies and business partners around the world to identify counterfeit product manufacturers and distributors. Once they are identified, we vigorously pursue legal actions against those responsible.
Finally, in prevention, Ethicon periodically institutes new product and packaging features that allow improved tracking of its products through the supply chain. Such features also make it easier to distinguish Ethicon products from counterfeit products (Ethicon, 2015).

MarkMonitor®, the world leader in enterprise brand protection and a Thomson Reuters Intellectual Property & Science business, uses software as a service (SaaS) delivery model to provide advanced technology and expertise that protects the revenues and reputations of the world's leading brands. In the current digital world, brands face new risks due to the web's anonymity, global reach and shifting consumption patterns for digital content, goods and services. Customers choose MarkMonitor for its unique combination of industry-leading expertise, advanced technology and extensive industry relationships to preserve their marketing investments, revenues and customer trust (Markmonitor, 2015).

Another of technology use by organizations is Kodak. Kodak recognizes global enterprises are under intense and ever growing pressure to protect their brand against issues such as black markets, product tampering, trademark infringement, grey market and counterfeiting. It accomplishes this through the strategic and tactical use of their advanced material science, imaging and printing technologies designed to improve product tracking and tracing. Kodak’s anti-counterfeiting and diversion technology is currently used by major pharmaceutical, consumer product, apparel, health & beauty, and luxury goods manufacturers around the world. Backed by a legacy of innovative and sophisticated technologies, Kodak will provide easy-to-implement solutions, backed by our worldwide service and support organization (Kodak, 2015).

NetNames is a leader of industry leading corporate domain name management, online brand protection, online security, anti-piracy and acquisitions services. The company is responsible for managing and protecting online brands for medium to large organizations, from all types of industries, across the globe. NetNames provides companies with global reach on the internet whilst protecting their brands from online fraud. As the global leader in this field, NetNames has been chosen by many of the world’s most successful brands to enable and protect their internet presence (NetNames, 2015).
2.3.3 Collaboration among Anti-Counterfeit Organizations

The Motion Picture Association of America (MPAA) formed in 1922, is a global organization with commercial and regional offices in Brussels, Singapore, Sao Paulo, Mexico City and Toronto. In addition, they work with content protection groups and organizations in over 30 countries worldwide. The MPAA and its member companies are committed to protecting the rights of those who create the movie contents. They are also committed to embracing new technologies and innovative approaches that enable consumers to enjoy their favorite movies and television shows in exciting and flexible ways.

The MPAA is also committed to engaging and working with government agencies at every level around the world to stem the tide of film theft. Often these efforts are focused on the creation of local, targeted initiatives that combine legislation, the dedication of law enforcement and a consumer awareness campaign to curtail film theft and raise awareness about the problem in cities, states and countries around the world. From Hong Kong and Singapore to the major cities of Brazil, from Los Angeles to New York and Toronto to London, these targeted campaigns have led to improved laws and increased enforcement of those laws. They have also heightened consumer awareness to the high costs movie theft has on their local communities (“Governments around the World Take a Stand for Creators, Consumers”, n.d., para. 1).

Congresses and workshops devoted to effective protection and enforcement of intellectual property rights; to continue the anti-piracy and anti-counterfeiting activities, consider it necessary to enhance cooperation among the G8 and other countries, as well as competent international organizations, notably the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), the World Customs Organization, Interpol, the Organization for Economic Co-operation and Development (OECD), and the Council of Europe; to give priority to promoting and upholding laws, regulations and/or procedures to strengthen intellectual property enforcement, raising awareness in civil society and in the business community of the legal ways to protect and enforce intellectual property rights and of the threats of piracy and counterfeiting, and also to providing technical assistance in that area to developing countries (Hillestad et al, 2005).
De Castro et al. (2008) argue that there is need for anti-counterfeit agencies across borders to come together to fight against counterfeiting. While national regulatory, oversight, and law enforcement agencies will often cooperate across borders, as well as through international agreements and investigative agencies such as the Kenya Bureau of Standards, the statutory authority of these agencies ends at national borders. Public sector agencies are currently overwhelmed by the counterfeiting problem and need the support of private enterprise. For this reason, private-sector entities should recognize that relying solely on law enforcement to solve their counterfeiting issues is a very poor strategy. Organizations need to be proactive in developing an anti-counterfeiting strategy that includes law enforcement and legislation as just one critical component of their overall anti-counterfeiting efforts.

An example of this is Pfizer, Inc which is an American multinational pharmaceutical corporation headquartered in New York City and with its research headquarters in Groton, Connecticut, United States. Pfizer develops and produces medicines and vaccines for a wide range of medical disciplines, including immunology, oncology, cardiology, endocrinology, and neurology. In an effort to fight counterfeiting, Pfizer and the National Association of Boards of Pharmacy in the USA have launched a new effort to draw attention to the risks associated with counterfeit medicines and help patients to safely buy drugs online. As part of the exercise, Pfizer carried out an online sampling exercise in which it bought its product Viagra from 26 pharmacy websites. All the pharmacies examined were found to be operating illegally, and 81 per cent of them were selling counterfeit Viagra. To help raise awareness of the problem of counterfeit drugs, Pfizer and the National Association of Boards of Pharmacy have set up a YouTube channel and various other online resources to provide easy-to-understand information about the dangers of buying medicines online (SecuringIndustry, 2015).

Another example of institutions working together to curb counterfeiting is Gerontological services. According to a report by Gerontological Services Inc. in 2012, The World Customs Organization (WCO) and Gerontological Services, Inc. (GS1) signed a cooperation agreement on 4 September 2012 aimed at exploring ways to optimize the fight against counterfeiting and piracy. The WCO and GS1 have agreed to maintain a continuous working relationship on all Customs related matters, particularly by leveraging the use of WCO tools and GS1 identification standards, as part of international efforts to tackle the illicit trade in counterfeit and pirated goods.
The Interface Public-Members (IPM) tool was launched by the WCO in 2010 to enhance communication between Customs and rights holders, facilitate the sharing of information, and strengthen the capacity of customs officials to better combat counterfeiting and piracy. GS1 standards enable the unique and unambiguous identification of items which leads to reduced costs and increased security, both vital benefits for Customs and business in the 21st century international trading environment (GSI, 2012).

Locally, according to an online news report, Philips East Africa, is setting up a Short Messaging System (SMS) platform that will assist consumers with the authentication of the Philips Lighting portfolio in cases of doubt. They are currently working with Anti Counterfeit Agency in Kenya to fight counterfeiting. This SMS platform will help out consumers to verify the products they purchase (CIO, 2015).

2.4 Use of Consumer Awareness and Attitudes to fight counterfeiting
This section examines materials on consumer awareness about counterfeiting and their attitudes towards it. It also covers the consumer awareness measures taken by governments, agencies and private companies.

2.4.1 Deceptiveness of Counterfeits
Bosworth (2006) has recently suggested considering a spectrum of deception that runs from “super-deceptive” (branded and counterfeit goods appear identical and impossible to tell apart) to completely non-deceptive (all buyers are able to distinguish the counterfeit from the genuine article). Indeed, the quality of counterfeits has improved over the years and it is becoming more difficult for consumers to identify them. Non-deceptive counterfeits pose little or no health or safety risk to the public and the buyer, and have apparently little demonstrable impact on genuine brands. They may even help to build brand awareness and to increase the snob value for both originals and counterfeits (Shultz and Saporito, 2006). According to Barnett (2005), under some circumstances, they can even lead to benefits for society, e.g. when necessary expensive products such as particular drugs become affordable to poor people.
Gentry et al. (2006), the degree of deceptiveness apparently depends on the consumer’s awareness, knowledge, and experience. Only in cases where consumers have awareness of possible deceptiveness, can determinants of purchase intentions for counterfeit products differ substantially from determinants of purchase intentions for original brands. Its characteristics are copied into another product as to be indistinguishable from the original and sold at a lower price as if it were the original, whereas consumers are well aware of the difference between the two products. This perceived difference can vary according to the quality and utility of the counterfeit in comparison to the genuine product. Furthermore, the definition of counterfeiting includes a form of acquisition behavior, excluding the alternative of any form of mere (illicit) adoption behavior, observed when downloading or making copies of digital products. In those cases, price is not an issue and hence the behavior and its determinants can be basically conceived to differ from the counterfeit purchase decisions that are the focus of this study.

Many counterfeit products are mostly purchased because they cannot be clearly distinguished from the original. To address this problem, teas scribos® a security solutions provider, provide each individual product with a unique identity which can be easily and securely checked by retailers, consumers, customs and brand owners. The overt and covert security features are distributed across multiple authentication levels. The different user groups have access to different numbers of features. The item-unique serial number, however, remains the same on all authentication levels, so that the different authenticity features can be reciprocally verified. Teas scribos® uses patented technologies that are developed in-house (Kenya) and globally (Germany) unique. These can also be used to make existing identification system standards, such as the MAPP code (automotive parts market), secure. Because the security labels are produced exclusively for brand owners by teas scribos® in Kenya, third parties have no access to the security solutions. These closed, sophisticated technology platforms make the labels extremely counterfeit-proof, (McLean, 2004).

According to Yager (2010) the level or extent of deception that consumers face is also an important factor to consider when developing assumptions for the substitution rate and value of the fake goods. Price, packaging and location of the transaction are the most important signs to the consumer, indicating the legitimacy of a good. For example, consumers who buy counterfeit
pharmaceutical drugs are more likely to be deceived, particularly when the counterfeit drugs are sold through the same distribution channel as the genuine products.

2.4.2 Determinants of Consumer Purchase

Eisend and Schuchert-Guler (2006) thoroughly reviewed selected studies on the determinants of consumers’ intention to purchase counterfeit products and provide a theoretical concept in order to explain the motives when purchasing such goods. Furnham and Valgeirsson (2007) use a scale known as Richins’s materialism scale, the Schwartz value inventory, and questions beliefs about counterfeits to analyze the variability in people’s willingness to buy counterfeit products. They find that belief about counterfeits, demographic information, and materialism but not the Schwartz value inventory (i.e. power, achievement, hedonism, self-direction, universalism, benevolence, conformity, tradition, and security) adds considerably to the explanation.

Wee et al. (1995) examined the impact of non-price determinants on consumers’ intentions to purchase counterfeit products. In general, the authors find these determinants to be highly product specific, and thus are not able to generalize their findings. Bloch et al. (2003) in a laboratory market offered consumers original and counterfeit goods and found pronounced purchase intentions for the illicit products. Cordell et al. (2006) also investigated consumers’ willingness to purchase counterfeit products, which they find to be positively related to product performance expectations.

Branding and price conditions as well as retailer conditions influence the willingness to purchase low, but not high, investment-at-risk products. Not yet thoroughly analyzed has been the difference in purchasing behavior of consumers in test markets with and without imitation products. Corresponding findings would help to understand the interference of counterfeit trade with licit trade and thus allow for a better understanding of substitution effects with respect to non-deceptive counterfeiting. Another area of study, which has only been vaguely investigated, is the impact of illicit markets on the perception of trademarks and brands and thus on the goodwill towards licit enterprises. Both areas need to be addressed when conducting financial impact analyses.
Gentry et al. (2006) investigate product counterfeiting from a consumer search perspective. Interviews with consumers provide a picture of the cues they use to detect counterfeits and for decisions to purchase or not to purchase fake goods. Reliable cues with respect to authenticity were arrangement and location of the sales outlet and product price. While a small group of consumers said they were able to notice very minor deviations among genuine and original products, the quality only serves as an indicator for the class of poorly manufactured knockoffs. Factors positively affecting purchase decisions of counterfeits were their low prices, the low investment risks when buying low-cost fakes, negative reactions to the speed at which fashion products fall out of favor, and, in Western markets, the fun of showing imitation products to friends.

Penz and Stottinger (2005) rely on the theory of planned behavior to systematize past findings in the field of non-deceptive counterfeit purchases and come up with a model explaining key drivers for the demand for counterfeits. Their findings indicate that search costs and accessibility are major factors determining counterfeit purchases. The embarrassment potential appeared to strongly influence purchase intentions with respect to counterfeits that are significantly cheaper than the originals, while the subjective norm (i.e. the valuation of quality and functionality) strongly influence purchase intentions with respect to counterfeits that were similar in price compared to their genuine counterparts.

Substandard imitation products that are difficult to distinguish from genuine goods can diminish the level of quality associated with a product or company. Moreover, large numbers of low-cost counterfeits can reduce the perceived exclusiveness of luxury goods (Wilke & Zaichkowsky, 2009). On the other hand, companies may experience increased brand awareness as well as additional demand due to bandwagon and network effects (Barnett, 2005). Counterfeit production can foster learning effects among illicit companies, but a high market share of counterfeit software, for example, may at the same time establish lock-in effects and barriers to entry for emerging legitimate competitors (Kirpatrick, 2007).

Conner and Rumelt (2004) argue that although software are the intellectual property of a firm, they should be made openly available or in a format that is transferable or ‘counterfeitable’ to
consumers. This, in their opinion, raises profits of consumers and is beneficial for both the firm and the consumer.

The various supply chain participants today all hold valid and necessary roles; counterfeiting is not the result of any particular parties engaged in the supply chain. Rather, what needs to change is that the entire supply chain engages in the standardized screening of all business partners. Furthermore, strict quality measures need to be adopted and enacted by all in the industry; it is no longer responsible to assume that anyone in the supply chain is immune to being the victim of counterfeiting – there are no safe sectors in the semiconductor and electronics supply chains, nor is counterfeiting the problem of the open market alone (Andre et al., 2006).

Importantly, supply-demand economics is not an exclusive rule to blindly follow; rather it is a market condition that is coupled with a trend of increased counterfeiting. Therefore, we ought to recognize such a trend and use it as a guideline for increasing quality control diligence during those periods. For example, in today's global market, there are increasing incidents of quite common, lower valued components being counterfeited. These previously less common counterfeit parts are on the rise because their higher volume presents availability opportunities. These high volume components are susceptible to counterfeiting not because of their profit margins alone, but rather because of the availability of valid parts that can be purchased by a counterfeiter, substituted for counterfeits and returned to the CM or OEM or distributor (whether franchised or independent), leaving the valid and/or counterfeit parts to be re-sold or for the valid parts to be mixed with counterfeit parts in order to increase the chance of passing looser inspections or less rigorous sampling and testing protocols. Profitability is realized as a result of volume and gaps in the supply chain’s quality measures (Furukawa et al., 2008).

2.4.3 Consumer Attitude towards counterfeits

Consumer demand for counterfeit goods shall always exist due to the fact that counterfeit goods are relative cheap and available. Many customers are aware of the existence of counterfeit goods. Although they may not know how to identify them, especially those that are of relatively good quality, some are obvious to see. For example, the existence of counterfeit mobile phones is common knowledge. Before the implementation of the policy in Kenya where all counterfeit phones were switched off, one could visit a shop and ask for a fake Nokia or Samsung and
purchase it at a fraction of the cost price of the original product. These products were commonly known as ‘Chinese’ phones, due to the fact that they all seemed to originate from the Asian nation. While customers may be aware of the existence of these products, not all of them are able to identify the products. However, even in cases where they know a product is not an original, most counterfeits work – albeit not as well as the originals – and many consumers are willing to purchase them (Mutua, 2011).

An article by Amine and Magnusson in 2008 indicated that most initiatives to thwart counterfeiting fail because consumer attitudes and behaviors are not adequately considered. The consumers’ expectation is that it is up to their governments to protect them against dangers from counterfeit medicines, car parts, airplane components and other potentially fatal products. Contradictorily, the same consumers defend their right to choose between expensive, genuine brand-name products and much cheaper but inferior counterfeits.

Most consumers believe that they can recognize counterfeit products. Many view these as a source of enjoyment, especially in the case of fashion items which are knowingly purchased at a lower price regardless of quality. Such consumer attitudes are at odds with legal standards, moral values, publicly stated corporate codes of conduct and even the consumers’ own well-being. Even if consumers suspect potentially negative consequences, their desire to be fashionable and to keep up with friends and peers lead them to ignore these. If such attitudes are not factored into the analysis of consumer involvement in the counterfeit market, then initiatives to dissuade consumers from these purchases will remain ineffective.

Success in fighting counterfeits requires targeted actions involving all stakeholders on both the supply and the demand sides of the market as well as a clear-sighted evaluation of respective costs, benefits and trade-offs. Hence consumers are at the center of a complex global market in which several parties pursue their own interests, each involving conflicting cost-benefit analyses (Amine and Magnusson, 2008).

An online Article by Dr. Ali in 2008 on why people buy counterfeit brands, the types of people who may be more willing to counterfeit products and those who have relatively little regard for the law and those who have negative attitudes towards big business. This may be because they
feel that genuine brands charge unfair prices, those people who see themselves as being shrewd shoppers willing and able to beat the system may also be more likely to buy counterfeits. Counterfeits may also appeal to those people who want to demonstrate their status, but don’t have the funds to do so with genuine products. Another factor that may encourage counterfeit consumption is where people are curious and want to experiment. Some people are also comfortable with taking risks and doing something that is illegal may not be a problem. The most motivating factor for consumer purchase of counterfeit products is their relatively low price but it is commonly appreciated that such products will be of lower quality than genuine products. However some research has found that people who have previously bought counterfeit goods believe that they are as good as genuine products which will in turn encourage them to repeat their actions (“Why people buy counterfeit brands”, 2008).

Consumers play a leading role in maintaining of counterfeit trade. It is therefore important to gain a deeper insight in the potential motives of consumers’ willingness to purchase counterfeit products. Vida (2007) concluded that a consumer’s attitude towards counterfeit luxury goods refers to the degree people are able to rationalize counterfeiting practice with respect to the costs, pricing and quality of genuine and counterfeit products. The attitudes could be divided into two specific issues; attitudes towards counterfeiting and attitudes toward market practices. If a person’s attitude towards counterfeiting is favourable, they are more likely to purchase a counterfeit product. The attitude towards market practices refers to a person’s beliefs and feelings towards the operations of some organizations. If a person holds a negative attitude towards the brand companies it is less likely that they would purchase the branded originals and vice versa (Wee et al., 1995)

### 2.5 Chapter summary

The chapter covered available material on counterfeiting with reference to the research questions. It provided a detail synopsis of the policies made by organizations both international and local to curb counterfeiting, the agencies mandated with the role of fighting counterfeiting and also explains about consumer awareness and how the various parties that is both government and private sectors are trying to create awareness to the public.
CHAPTER THREE

3.0 RESEARCH METHODOLOGY

3.1 Introduction

This chapter will cover the research methodology of this study, second, explain the populations sample design, third, describe the data collection method and instruments to be used and finally, provide an explanation of the statistical procedures used to analyze the data.

3.2 Research Design

According to Kerlinger (1986) research design is the plan and structure of investigation so conceived so as to obtain answers to research questions. The plan is the overall program of the research and includes an outline of what the investigator will do from writing of the hypothesis and their operational implications for the final analysis of data. According to Cooper and Schindler (2003) research design is the plan and structure of investigation so conceived as to obtain answers to research questions.

Purpose of this study is to establish the measures that can be taken to fight counterfeiting in Kenya. Considering the nature of the research purpose, a descriptive cross-sectional study design was chosen to assist obtain relevant information concerning the study. This involved the analysis of data collected from a population, or a representative subset at one specific point in time. The advantages of using cross-sectional studies was that they are relatively inexpensive and took up little time to conduct, many outcomes and risk factors could be assessed and they can estimate prevalence of outcome of interest as sample is usually taken from the whole population.

3.3 Population and Sampling Design

3.3.1 Population

The population of the organizations that deal with counterfeiting in some form in the country is 9 institutions. The study focused on the organizations whose core function is combating counterfeiting in its various forms which totaled to 5 organizations. This included; Anti-

The main functions of the organizations include; combating counterfeiting, trade and other dealings in counterfeiting goods, to enlighten and inform the public on matters relating to counterfeiting, to device and promote training programmes on combating counterfeiting, copyright protection, consumer protection by providing standardization and conformity assessment services, administering of industrial property rights among others. The data collected was from respondents in both managerial and non-managerial positions in the organizations.

3.3.2 Sampling Design

3.3.2.1 Sampling Frame

A sampling frame is a list or other device used to define a researcher's population of interest. The sampling frame defines a set of elements from which a researcher can select a sample of the target population. Because a researcher rarely has direct access to the entire population of interest in social science research, a researcher must rely upon a sampling frame to represent all of the elements of the population of interest. Generally, sampling frames can be divided into two types, list and non-list (Grundy & King, 2002). In this research, the type of sampling frame used was a list. The list consisted of all the organizations that mainly deal with counterfeiting and all the employees in each of the organizations.

Table 3.1: List of organizations that deal with counterfeiting

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Organization</th>
<th>Number of Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Anti-Counterfeit Agency (ACA)</td>
<td>60</td>
</tr>
<tr>
<td>2</td>
<td>Kenya Bureau of Standards (KEBS)</td>
<td>820</td>
</tr>
<tr>
<td>3</td>
<td>Kenya Copyright Board</td>
<td>40</td>
</tr>
<tr>
<td>4</td>
<td>Music Copyright Society of Kenya (Head Office)</td>
<td>20</td>
</tr>
<tr>
<td>5</td>
<td>Kenya Industrial Property Institute</td>
<td>88</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>1028</strong></td>
</tr>
</tbody>
</table>
3.3.2.2 Sampling Technique

To ensure fair representation and generalization of finding to the general population, probability sampling technique was used. The type of probability sampling used was stratified sampling technique, which involved dividing the population into segments or strata. Simple random sampling was then used to select the sample for this study.

The advantage of the technique was that it improved the representativeness of the sample by reducing sampling error. In this technique, each stratum was mutually exclusive; every element in the population was assigned to only one stratum. The strata were also collectively exhaustive: no population element was excluded. Then simple random sampling or systematic sampling was applied within each stratum.

The strata were determined on basis of institution and a total of five stratums were derived.

3.3.2.3 Sample Size

The following formula is used when you have little or no information about the population (Creative Research Systems, 2014). The formula used to determine the sample size was;

\[
ss = \frac{Z^2 * (p) * (1-p)}{c^2}
\]

Where:

\(Z = Z\) value (e.g. 1.96 for 95% confidence level, 2.58 for 99% confidence level)

\(P = \) Choice percentage (0-100)

\(C = \) confidence interval, expresses as decimal (e.g. .04 = ±4)

A confidence interval gives an estimated range of values which is likely to include an unknown population parameter, the estimated range being calculated from a given set of sample data. The
confidence level is the probability value \((1 - \alpha)\) associated with a confidence interval. With the following as the values:

\[ Z = 1.96 \text{ (95% confidence level)} \]

\[ P = .5 \]

\[ C = \pm 7.4 \]

The derived sample size was 150.

The next step was to determine the number of respondents to sample per strata. This is presented in Table 3.2.

**Table 3.2: Sample size per strata**

<table>
<thead>
<tr>
<th>Strata</th>
<th>Number of Employees</th>
<th>Formula</th>
<th>Sample Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-Counterfeit Agency (ACA)</td>
<td>60</td>
<td>150/1028*60</td>
<td>9</td>
</tr>
<tr>
<td>Kenya Bureau of Standards (KEBS)</td>
<td>820</td>
<td>150/1028*820</td>
<td>120</td>
</tr>
<tr>
<td>Kenya Copyright Board</td>
<td>40</td>
<td>150/1028*40</td>
<td>5</td>
</tr>
<tr>
<td>Music Copyright Society of Kenya (Head Office)</td>
<td>20</td>
<td>150/1028*20</td>
<td>3</td>
</tr>
<tr>
<td>Kenya Industrial Property Institute</td>
<td>88</td>
<td>150/1028*88</td>
<td>13</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1028</strong></td>
<td></td>
<td><strong>150</strong></td>
</tr>
</tbody>
</table>

**3.4 Data Collection Methods**

The study used primary data which was collected from the respondents in the five organizations. The method used to collect data was through the use of a semi-structured questionnaire which was administered using personal interviews. According to Ackroyd and Hughes (1981), there are
distinct advantages in using a questionnaire: large amounts of information can be collected from a large number of people in a short period of time and in a relatively cost effective way, can be carried out by the researcher or by any number of people with limited affect to its validity and reliability, can be analyzed more scientifically and objectively than other forms of research amongst others.

The questionnaire contained both open ended and closed questions. The closed questions contained multiple choices for the respondents to select from. The open ended questions allowed for the respondents to respond in their own words and opinion. The number of questions in the questionnaire was kept to the minimal and guidelines on how to respond to the questions were included. This would enable the respondents to have ample time to fill them and provide accurate answers.

3.5 Research Procedures

The research procedure outlines the process in which data collection was done. The activities prior to data collection included cross checking and pre-testing of the questionnaire. The questionnaire was pretested on a group of 10 respondents to ensure that shortcomings of the questionnaire were discovered. After pretesting the deficiencies were corrected in readiness for field data collection.

The next step involved scheduling of the administration of the questionnaires. This included sending introduction letters to the organizations requesting for data collection. This was followed by scheduling to administer the questionnaires based on the respondents’ availability. Administering of the questionnaires started off at Anti-Counterfeit Agency, followed by Kenya Bureau of Standards then Kenya Industrial Property institute. Afterwards the questionnaires were administered at Kenya Copyright Board and finished the process at Music Copyright Society of Kenya.

During the data collection, most of the respondents took an average of 15 minutes to fill the questionnaires and in cases where the respondents were unavailable, re-scheduling was done to a more convenient time. In overall, majority of the respondents participated positively although the preferred population sample was not reached.
After field data collection the next step was preparation for data analysis. This involved examining of the surveys for correctness and completeness, coding and keying data into a database in SPSS, the statistical analysis software. All incomplete and erroneous surveys were discarded from the analysis.

3.6 Data Analysis

Descriptive statistics were used in the initial analysis and checking of validity of the data collected. Descriptive statistics involves providing of simple summaries of the data collected in order to present the quantitative characteristics of the data and measures of the study. The data analysis tool used was statistical package for social scientists (SPSS).

Pearson’s Chi-Square test of independence was also used as a measure of association. It entails determining whether there’s an association between variables. A chi-square test is called significant if there’s an association between two variables and non significant if there is no association.

3.7 Chapter Summary

The chapter has described the research design of the study. It has presented information on the population, explained the sample selection, the procedure used in designing the data collection instrument and the data collection process, and explained the statistical procedures used to analyze the data. In the next chapter, the results and findings are presented then followed by chapter five which entails the discussion, conclusions and recommendations.
CHAPTER FOUR

4.0 RESULTS AND FINDINGS

4.1. Introduction

This chapter provides an analysis of the data that has been collected from the field. The first part covers the sample response rate; the second part talks about the characteristics of the respondents; third part reviews the respondents’ role and working duration in the organizations to determine experience and exposure to information. The fourth section discusses the respondents response to questions related to the research questions and the final part is the chapter summary.

A hundred and fifty questionnaires were distributed to the five organizations namely; Anti-Counterfeit Agency, Music Copyright Society of Kenya, Kenya Copyright Board, Kenya Industrial Property Institute and Kenya Bureau of Standards (KEBS). Only a hundred and twenty (120) questionnaires were satisfactorily completed. The response rate was therefore 80%.

4.2 Characteristics of Respondents

This section presents data on the characteristics of the respondents which include their gender, level of education, their role in the organization and their working duration in the respective organizations.

4.2.1 Gender of the respondents

The research established that, in Anti-Counterfeit Agency had 63% of the respondents were male and 37% were female respondents. In Kenya Bureau of Standards, 52% of the respondents were male and 48% were female respondents. Music Copyright Society of Kenya had 50% male respondents and 50% female respondents. Kenya Industrial Property Institute had 50% male respondents and 50% female respondents and in Kenya Copyright Board, 100% of the respondents were male. These findings are presented in figure 4.1.
4.2.2 Level of Education

The research sought to establish the level of education of the respondents. The breakdown per stratum was as follows; In Anti-Counterfeit Agency, 65% of the respondents had degree level and 25% respondents had other levels of education. Kenya Bureau of Standards had 75% of respondents with degree level, 11% of the respondents with certificate level, 8% of the respondents with diploma level and 6% of the respondents with other level of education.

Music Copyright Society of Kenya had 100% of the respondents with degree level of education. Kenya Industrial Property Institute had 80% of respondents with degree level of education and 20% of the respondents with other level of education. Kenya Copyright Board had 100% of the respondents with degree level of education.

Other education levels of education included Masters and PhD levels. This therefore shows there was no restriction or limitation when collecting data based on education level. The findings are presented in figure 4.2.
4.2.3 Role of the respondents in the organization

This section presented data on the respondents’ role in the organization. Per stratum it was as follows; Anti-Counterfeit Agency had 63% of the respondents in non-managerial positions and 37% of the respondents in managerial positions. Kenya Bureau of Standards had 76% of the respondents in non-managerial positions and 24% of the respondents in managerial positions. Music Copyright Society of Kenya had 50% of the respondents in managerial and 50% of the respondents in non-managerial position. Kenya Industrial Property Institute had 90% of the respondents in non-managerial and 10% of the respondents in managerial position. Kenya Copyright Board had 80% of the respondents in non-managerial and 20% of the respondents in managerial position. These findings are presented in figure 4.3.
The research sought to investigate how long the respondents had worked in their respective organizations. In Anti-Counterfeit Agency, 88% of the respondents had worked for less than four years and 12% respondent had worked between 15-19 years. In Kenya Bureau of Standards, 53% of the respondents had worked for less than four years, 27% had worked between 20-24years, 8% had worked between 10-14years, 8% had worked between 15-19 years and 4% had worked for more than 24years.

In Music Copyright Society of Kenya, 50% of the respondents had worked for less than four years and 50% had worked between 10-14years. In Kenya industrial Property Institute 40% of the respondents had worked for less than four years, 40% had worked between 20-24years and 20% had worked for more than 24years. In Kenya Copyright Board, 60% of the respondents had worked for less than four years and 40% had worked for more than 24years. The findings are presented in figure 4.4.
4.3 Measuring effectiveness of existing policies

This section presents data on the existing policies in place, effectiveness of the existing policies, existing policy making process and improving on existing policy making process.

4.3.1 Organizational Role in dealing with counterfeiting

The research investigated the role of the organization in dealing with counterfeiting and it was established that; 46% indicated that their role was to inform consumers on how to identify counterfeiting goods, 38% indicated that the organization had other roles in dealing with counterfeiting 8% indicated that it was to inform consumers on the demerits of consuming counterfeiting goods and 8% indicated that the role of the organizations was the creation and implementation of stiff penalties on people using counterfeiting goods. Other roles included investigation of counterfeiting cases, prosecution of the counterfeiters and copyright and trademark registration and protection. The findings are presented in the table 4.1.
Table 4.1: The organizational role in dealing with counterfeiting

<table>
<thead>
<tr>
<th>Organizational Role</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
</tr>
<tr>
<td>Inform consumers on how to identify counterfeit goods</td>
<td>55</td>
</tr>
<tr>
<td>Inform consumers on the demerits of consuming counterfeit goods</td>
<td>10</td>
</tr>
<tr>
<td>Creation and implementation of stiff penalties</td>
<td>10</td>
</tr>
<tr>
<td>Others (investigation of counterfeiting cases, prosecution of the counterfeiters and copyright and trademark registration and protection)</td>
<td>45</td>
</tr>
<tr>
<td>Total</td>
<td>120</td>
</tr>
</tbody>
</table>

4.3.2 Government counterfeiting policies

The government counterfeiting policies were investigated in the study and; 55% of the respondents indicated that government policies currently in use are for fighting counterfeiting goods are on intellectual property, 15% of the respondents indicated that it lied on quality and standards of products, 15% of the respondents indicated it was in copyright protection and 15% indicated that the policies included all the above. The findings are presented in the figure 4.5.
Figure 4.5: government counterfeiting policies

4.3.3 Effectiveness of the government counterfeiting policies

The research sought to establish the effectiveness of existing government counterfeiting policies. In intellectual property the research established that; 40% the respondents indicated that they were very effective, 20% indicated they were effective, 18% indicated they were neutral about it, 12% had other opinions and 10% indicated that they were not effective. The findings are presented in table 4.2.

Table 4.2: Effectiveness of intellectual property policies

<table>
<thead>
<tr>
<th>Effectiveness Level</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
</tr>
<tr>
<td>Very Effective</td>
<td>48</td>
</tr>
<tr>
<td>Effective</td>
<td>24</td>
</tr>
<tr>
<td>Neutral</td>
<td>22</td>
</tr>
<tr>
<td>Not Effective</td>
<td>12</td>
</tr>
<tr>
<td>Other</td>
<td>14</td>
</tr>
<tr>
<td>Total</td>
<td><strong>120</strong></td>
</tr>
</tbody>
</table>
4.3.3.1 Effectiveness of policies on quality and standards of goods

The research established that, 38% indicated they were very effective, 22% indicated that they were neutral, 20% indicated they were effective, 14% indicated they were not effective and 6% had other opinions. The findings are presented in table 4.3.

Table 4.3: Effectiveness of Quality and Standards of goods policies

<table>
<thead>
<tr>
<th>Effectiveness Level</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
</tr>
<tr>
<td>Very Effective</td>
<td>46</td>
</tr>
<tr>
<td>Effective</td>
<td>24</td>
</tr>
<tr>
<td>Neutral</td>
<td>26</td>
</tr>
<tr>
<td>Not Effective</td>
<td>17</td>
</tr>
<tr>
<td>Total</td>
<td>120</td>
</tr>
</tbody>
</table>

4.3.3.2 Effectiveness of policies on copyright protection

The research established that; 40% indicated they were neutral, 20% indicated they were effective, 18% indicated they were very effective, 14% indicated they were not effective and 8% had other opinions. The findings are presented in table 4.4.

Table 4.4: Effectiveness of Copyright protection policies

<table>
<thead>
<tr>
<th>Effectiveness Level</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
</tr>
<tr>
<td>Very Effective</td>
<td>22</td>
</tr>
<tr>
<td>Effective</td>
<td>24</td>
</tr>
<tr>
<td>Neutral</td>
<td>48</td>
</tr>
<tr>
<td>Not Effective</td>
<td>17</td>
</tr>
<tr>
<td>Other</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>120</td>
</tr>
</tbody>
</table>
4.3.4 Effectiveness of organization’s policies in fighting counterfeiting

The effectiveness of the organizations’ policies were investigated and the findings showed that most of policies fell into four major categories; Policies based on enforcing of the Counterfeit Act, policies on investigating counterfeit cases and prosecution of culprits, policies on ensuring goods meet the expected standards and policies on copyright protection.

4.3.4.1 Effectiveness of policies based on enforcing Counterfeit Act

It was established that, 40% said they were neutral, 20% said they were not effective, 15% believed they were very effective, 10% believed they are effective and 15% of the respondents had other responses. The findings are presented in table 4.5.

Table 4.5: Effectiveness of policies based on the Counterfeit Act

<table>
<thead>
<tr>
<th>Effectiveness Level</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
</tr>
<tr>
<td>Very Effective</td>
<td>18</td>
</tr>
<tr>
<td>Effective</td>
<td>12</td>
</tr>
<tr>
<td>Neutral</td>
<td>48</td>
</tr>
<tr>
<td>Not Effective</td>
<td>24</td>
</tr>
<tr>
<td>Other</td>
<td>18</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>120</strong></td>
</tr>
</tbody>
</table>

4.3.4.2 Effectiveness of policies on conducting investigations on counterfeit cases and prosecution of culprits

It was established that, 48% indicated they are very effective, 20% of the respondents indicated they were not effective, 12% indicated they were neutral, 10% indicated they are effective and the remaining 10% had other opinions. The findings are presented in table 4.6.
Table 4.6: Effectiveness of policies on investigating counterfeiting and prosecutions

<table>
<thead>
<tr>
<th>Effectiveness Level</th>
<th>Distribution</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>Percentage</td>
</tr>
<tr>
<td>Very Effective</td>
<td>58</td>
<td>48</td>
</tr>
<tr>
<td>Effective</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Neutral</td>
<td>14</td>
<td>12</td>
</tr>
<tr>
<td>Not Effective</td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td>Other</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>120</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

4.3.4.3 Effectiveness of policies on ensuring goods meet the expected standards

It was established that 30% indicated they were not effective, 25% indicated they were neutral, 20% had other opinions, 15% indicated they are effective and 10% indicated they were very effective. The findings are presented in table 4.7.

Table 4.7: Effectiveness of policies on quality standards

<table>
<thead>
<tr>
<th>Effectiveness Level</th>
<th>Distribution</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>Percentage</td>
</tr>
<tr>
<td>Very Effective</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Effective</td>
<td>18</td>
<td>15</td>
</tr>
<tr>
<td>Neutral</td>
<td>30</td>
<td>25</td>
</tr>
<tr>
<td>Not Effective</td>
<td>36</td>
<td>30</td>
</tr>
<tr>
<td>Other</td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>120</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

4.3.4.4 Effectiveness of policies on copyright protection

It was established that, 22% believed they are very effective, 18% believe that they are effective, 40% said they are neutral, 15% said they were not effective, 5% of the respondents had other responses. The findings are presented in table 4.8.
Table 4.8: Effectiveness of policies on copyright protection

<table>
<thead>
<tr>
<th>Effectiveness Level</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Effective</td>
<td>26</td>
<td>22</td>
</tr>
<tr>
<td>Effective</td>
<td>22</td>
<td>18</td>
</tr>
<tr>
<td>Neutral</td>
<td>48</td>
<td>40</td>
</tr>
<tr>
<td>Not Effective</td>
<td>18</td>
<td>15</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>120</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

4.3.5 Determining the process of policy making

The research sought to establish the process followed by organizations when making counterfeiting policies. It was established that; 48% said that experts are involved during policy making process, 32% said that information is gathered from consumers and involve them during policy making, 14% said that information is collected from the producers and in involve them in the policy making and 6% of the remaining respondents said that policies are formed without any consultation. This is presented in the table 4.9.

Table 4.9: Policy making process

<table>
<thead>
<tr>
<th>Policy Making Process</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
</tr>
<tr>
<td>Gather information from consumers and involve them during</td>
<td>38</td>
</tr>
<tr>
<td>policy making</td>
<td></td>
</tr>
<tr>
<td>Gather information from producers and involve them during</td>
<td>17</td>
</tr>
<tr>
<td>policy making</td>
<td></td>
</tr>
<tr>
<td>Involve experts during policy making</td>
<td>58</td>
</tr>
<tr>
<td>Formulate policies without consultation</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>120</strong></td>
</tr>
</tbody>
</table>
4.3.6 Improving on the policy making process

The research established that; 38% wanted the localization of policy making to ensure counterfeiting is dealt with in the respective regions, 22% of the respondents were for outsourcing policy making to the public or private organization 20% preferred expert committees within themselves to form the policies and 20% preferred the existing policy making process maintained. These findings are presented in table 4.10.

Table 4.10: policy maker’s improvement in policy making process

<table>
<thead>
<tr>
<th>Policy Making Process</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
</tr>
<tr>
<td>Outsource policy making to the public or private organizations</td>
<td>26</td>
</tr>
<tr>
<td>Expert committees within themselves to form the policies</td>
<td>24</td>
</tr>
<tr>
<td>Existing policy making process maintained</td>
<td>24</td>
</tr>
<tr>
<td>Localize of policy making to ensure counterfeiting is dealt with in the respective regions</td>
<td>46</td>
</tr>
<tr>
<td>Totals</td>
<td>120</td>
</tr>
</tbody>
</table>

4.3.7 Chi-Square Test on the effectiveness of existing policies in fighting counterfeiting

In answering the first question, the study asked questions about the organizational role in dealing with counterfeiting, government counterfeiting policies, effectiveness of the government counterfeiting policies, effectiveness of organization’s policies in fighting counterfeiting, determined the process of policy making and ways of improving on the policy making process. The result is presented in table 4.11.
Table 4.11: Results on the Effectiveness of Existing Policies in Fighting Counterfeiting In Kenya

<table>
<thead>
<tr>
<th>Chi-Square Tests</th>
<th>Value</th>
<th>Asymp. Sig. (2-sided)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pearson Chi-Square</td>
<td>8.343a</td>
<td>0.051</td>
</tr>
</tbody>
</table>

In this case, the calculated chi square value was 0.051. This value indicated that the existing policies are not effective in fighting counterfeiting in Kenya.

4.4 Measures to improve Anti-Counterfeit organizations

This section sought to establish the measures that Anti-counterfeit organizations can take to improve on their effectiveness based on the work they carry out. This included determining activities carried out by the organizations and the extent of their coverage, increasing of resources allocation specifically increasing of number of employees and increasing budgetary allocation.

4.4.1 Activities undertaken by agencies in fighting counterfeiting

The research established that; 62% indicated they reported matters to concerning counterfeiting to respective bodies, 34% indicated they worked hand in hand with other anti-counterfeiting bodies to curb counterfeiting and 8% of the respondents indicated the organizations ensured that consumers buy goods using the right procedures. This is presented in the table 4.12.
Table 4.12: activities undertaken by agencies in fighting counterfeiting

<table>
<thead>
<tr>
<th>Activities</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
</tr>
<tr>
<td>Ensure Consumers buy goods using the right procedures</td>
<td>10</td>
</tr>
<tr>
<td>Work hand in hand with anti-counterfeiting bodies</td>
<td>41</td>
</tr>
<tr>
<td>Report the matters concerning counterfeiting to respective bodies</td>
<td>64</td>
</tr>
<tr>
<td>Others</td>
<td>5</td>
</tr>
<tr>
<td>Totals</td>
<td>120</td>
</tr>
</tbody>
</table>

4.4.2 Extent of Coverage of the counterfeit bodies

The extent of the coverage of the counterfeit bodies was investigated and it was established that; 85% said the extent of their coverage was country wide which was in the category of others, 10% said their coverage is county wise and 5% said the coverage is district wise. The findings are presented in the figure 4.6.

![Extent of Coverage](image)

Figure 4.6: Extent of coverage of Agencies
4.4.3 Number of employees currently involved

The research sought to establish the number of employees in the respective organizations that are assigned to fighting counterfeiting. The findings showed that 46% indicated that between 6 and 10 employees are involved, 38% indicated that between 11 and 15 employees are involved, 10% indicated more than 15 were involved in the process and 8% indicated between 0 and 5 employees are involved. These findings are presented in table 4.13.

Table 4.13: Number of employees currently involved in fighting counterfeiting

<table>
<thead>
<tr>
<th>No. of Employees</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
</tr>
<tr>
<td>0-5</td>
<td>10</td>
</tr>
<tr>
<td>6-10</td>
<td>55</td>
</tr>
<tr>
<td>11-15</td>
<td>45</td>
</tr>
<tr>
<td>More than 15</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>120</td>
</tr>
</tbody>
</table>

4.4.4 Number of employees that would be best required to further the cause of fighting counterfeiting

The research established that; 60% indicated between 15 and 20 employees would be best, 25% indicated between 10 and 14 employees would be best and 15% indicated that more than 20 employees would serve best. The findings are presented in the table 4.14.
Table 4.14: Number of employees that would be effective

<table>
<thead>
<tr>
<th>No. of Employees</th>
<th>Distribution</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>10-14</td>
<td></td>
<td>30</td>
<td>25%</td>
</tr>
<tr>
<td>15-20</td>
<td></td>
<td>72</td>
<td>60%</td>
</tr>
<tr>
<td>More than 20</td>
<td></td>
<td>18</td>
<td>15%</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>120</td>
<td>100%</td>
</tr>
</tbody>
</table>

4.4.5 Budget Allocated to fighting counterfeiting

The research sought to establish the amount of money allocated in each organization to fight counterfeiting. It was established that; 48% indicated it was between 5million and 10million, 25% indicated it was between 1million and 5million, 17% indicated it was more than 10million and 10% indicated it was below a million. The findings are presented in figure 4.7.

Figure 4.7 Budget Allocation
4.4.6 Budget amount that would be effective

The research established that; 50% indicated between 5 and 10 million would be effective, 40% indicated that 10 million and above would be effective and 10% indicated between 0 and 5 million would be effective. These findings are presented in the table 4.15.

Table 4.15: Amount that would be effective

<table>
<thead>
<tr>
<th>Amount (millions)</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
</tr>
<tr>
<td>0-5</td>
<td>12</td>
</tr>
<tr>
<td>5-10</td>
<td>60</td>
</tr>
<tr>
<td>More than 10</td>
<td>48</td>
</tr>
<tr>
<td>Total</td>
<td>120</td>
</tr>
</tbody>
</table>

4.4.7 Chi-Square Test on how Anti-counterfeit organizations can be improved to fight counterfeiting

The second research question was “How can anti-counterfeit organizations be improved to fight counterfeiting in Kenya?” In answering this question, the study asked questions about the activities undertaken by agencies in fighting counterfeiting, extent of coverage of the counterfeit bodies, number of employees currently involved, number of employees that would be best required to further the cause of fighting counterfeiting, budget allocated to fighting counterfeiting and budget amount that would be effective. The result is presented in table 4.16.

Table 4.16: Results on the Measures to Improve Anti-counterfeit bodies to fight counterfeiting

<table>
<thead>
<tr>
<th>Chi-Square Tests</th>
<th>Value</th>
<th>Asymp. Sig. (2-sided)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pearson Chi-Square</td>
<td>8.327a</td>
<td>0.069</td>
</tr>
</tbody>
</table>
In this case, the calculated chi square value was 0.069. This value indicated that the resources that the organizations had were limited to effectively fight counterfeiting in Kenya and anti-counterfeit organizations can be improved by decentralizing operations and personnel around the country.

4.5 Using consumer awareness to fight counterfeiting

This section sought to establish how organizations can utilise consumer awareness to curb counterfeiting. This included determining why the low involvement by consumers, identification of activities carried out by the organizations to create awareness and increasing consumer awareness.

4.5.1 Reasons for low involvement by consumers

The research sought to establish reasons why consumers are not actively involved in the fight against counterfeiting.

It was established that; in ACA, 70% of the respondents indicated that counterfeiting goods are cheaper, 20% indicated that counterfeiting goods are of better quality and 10% of the respondents had other reasons as to why consumers are not playing an active role in fighting against counterfeiting. In KEBS, 80% of the respondents indicated that counterfeiting goods are cheaper and 20% indicated that counterfeiting goods are of better quality.

In MSCK, 55% of the respondents indicated that counterfeiting goods are cheaper and 45% indicated that counterfeiting goods are of better quality. In KCB, 55% of the respondents indicated that counterfeiting goods are cheaper and 45% indicated that counterfeiting goods are of better quality. In KIPI, 50% of the respondents indicated that counterfeiting goods are cheaper, 20% indicated that counterfeiting goods are of better quality and 30% of the respondents had other reasons as to why consumers are not playing an active role in fighting against counterfeiting.

The other reasons indicated included; counterfeit goods were easily accessible, they find it hard to identify the genuine products from the counterfeit ones especially in cases of pharmaceutical
drugs and they believed that no action would be taken if they report such cases. These findings are presented in table 4.17.

**Table 4.17: Reasons for low involvement by consumers**

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Strata</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACA</td>
<td>KEBS</td>
<td>MCSK</td>
<td>KCB</td>
<td>KIPI</td>
<td></td>
</tr>
<tr>
<td>Counterfeit goods are cheaper</td>
<td>F</td>
<td>%</td>
<td>F</td>
<td>%</td>
<td>F</td>
<td>%</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>70</td>
<td>76</td>
<td>80</td>
<td>1</td>
<td>50</td>
</tr>
<tr>
<td>Counterfeit goods are of better quality</td>
<td>F</td>
<td>%</td>
<td>F</td>
<td>%</td>
<td>F</td>
<td>%</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>20</td>
<td>19</td>
<td>20</td>
<td>1</td>
<td>50</td>
</tr>
<tr>
<td>Other</td>
<td>F</td>
<td>%</td>
<td>F</td>
<td>%</td>
<td>F</td>
<td>%</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>F</td>
<td>%</td>
<td>F</td>
<td>%</td>
<td>F</td>
<td>%</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>100</td>
<td>95</td>
<td>100</td>
<td>2</td>
<td>100</td>
</tr>
</tbody>
</table>

4.5.2 Identifying current activities undertaken to increase consumer awareness

The research sought to determine what activities the organizations undertake to create consumer awareness.

It was established that; In ACA, 40% indicated they use training to create awareness, 40% indicated they use brochures, 10% indicated they use other methods and the remaining 10% indicated they use advertising. In others category, some of the responses indicated included use of trade shows and exhibitions to create awareness, use of websites and use of social network. In KEBS, 40% indicated the use training to create awareness, 40% indicated they use brochures and the remaining 20% indicated they use advertising.

In MCSK, 50% indicated the use training to create awareness and the remaining 50% indicated they use advertising. In KCB, 60% indicated the use training to create awareness, 20% indicated they use brochures and the remaining 20% indicated they use advertising. In KIPI, 60% indicated...
the use training to create awareness, 25% indicated they use advertising and the remaining 15% indicated they use brochures. These findings are presented in table 4.18.

Table 4.18: Activities undertaken to increase consumer awareness

<table>
<thead>
<tr>
<th>Activity Undertaken</th>
<th>Strata</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACA</td>
</tr>
<tr>
<td></td>
<td>F</td>
</tr>
<tr>
<td>Training</td>
<td>3</td>
</tr>
<tr>
<td>Brochures</td>
<td>3</td>
</tr>
<tr>
<td>Advertising</td>
<td>1</td>
</tr>
<tr>
<td>Others</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
</tr>
</tbody>
</table>

4.5.3 Receiving of reports on a monthly basis

The research sought to establish the number of monthly counterfeiting reports received by the agencies. It was established that, 100% of the respondents indicated that ACA received reports ranging from 401-500, on a monthly basis. In KEBS, 100% of the respondents indicated they received reports ranging from 401-500, on a monthly basis. In MCSK, 100% of the respondents indicated they received reports ranging from 101-200, on a monthly basis. In KCB, 100% of the respondents indicated they received reports ranging from 201-300, on a monthly basis. In KIPI, 100% of the respondents indicated they received reports ranging from 0-100, on a monthly basis. This is presented in table 4.19.
Table 4.19: Reports received on a monthly basis

<table>
<thead>
<tr>
<th>Number of Reports</th>
<th>Strata</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACA</td>
</tr>
<tr>
<td></td>
<td>F</td>
</tr>
<tr>
<td>0-100</td>
<td></td>
</tr>
<tr>
<td>101-200</td>
<td></td>
</tr>
<tr>
<td>201-300</td>
<td></td>
</tr>
<tr>
<td>301-400</td>
<td>8</td>
</tr>
<tr>
<td>401-500</td>
<td></td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
</tr>
</tbody>
</table>

4.5.4 Classification of reports received

The study investigated the types of complaints received from consumers and it was established that; in ACA, 60% of the respondents received complaints about counterfeiting spirits, 25% indicated they received complaints about counterfeiting phones and electronic equipments and 15% of the respondents received complaints about pharmaceutical products.

In KEBS, 60% of the respondents received complaints about counterfeiting spirits, 20% indicated they received complaints about counterfeiting drugs, 10% indicated they received complaints about counterfeiting phones and electronic equipment and 10% of the respondents received complaints about pharmaceutical products. In MCSK, 100% of the respondents received complaints about other categories of products. Their main category was in duplicated forms of work i.e. music and movies.

In KCB, 85% indicated they receive complaints about other categories of products and 15% of the respondents received complaints about phones and electronic equipment. The other category
included infringement of rights through piracy of forms of works i.e. music, movies and
authorship. In KIPI, 85% of the respondents received complaints about counterfeit drugs and 15%
indicated they receive complaints about counterfeit phones and electronic equipment. The
findings are presented in table 4.20.

**Table 4.20: Reports classification**

<table>
<thead>
<tr>
<th>Types of Complaints</th>
<th>Strata</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACA</td>
</tr>
<tr>
<td></td>
<td>F</td>
</tr>
<tr>
<td>Complaints about counterfeit spirits</td>
<td>5</td>
</tr>
<tr>
<td>Complaints about counterfeit drugs</td>
<td>1</td>
</tr>
<tr>
<td>Complaints about counterfeit phones and</td>
<td>2</td>
</tr>
<tr>
<td>electronic</td>
<td>0</td>
</tr>
<tr>
<td>Others</td>
<td>8</td>
</tr>
</tbody>
</table>

**4.5.5 Encouraging Consumers to be actively involved in fighting counterfeiting**

The research sought to establish the measures that can be used to encourage consumer
participation. It was established that; In ACA, 62% of the respondents say the consumers of
counterfeiting goods should be reported and 38% of the respondents wanted there to be creation
of awareness to the general public using various tools.

In KEBS, 55% of the respondents say consumers to be refrained from purchasing counterfeiting
goods, 42% of the respondents wanted there to be creation of awareness to the general public
using various tools and 3% of the respondents say the consumers of counterfeiting goods should
be reported. In MCSK, 50% of the respondents wanted there to be creation of awareness to the
general public using various tools and 50% of the respondents say the consumers of counterfeiting goods should be reported.

In KCB, 50% of the respondents say consumers to be refrained from purchasing counterfeiting goods, 40% of the respondents wanted there to be creation of awareness to the general public using various tools and 10% of the respondents indicated that other measures should be used to increase consumer involvement. In KIPI, 40% of the respondents say consumers to be refrained from purchasing counterfeiting goods, 40% of the respondents wanted there to be creation of awareness to the general public using various tools and 20% of the respondents indicated that other measures should be used to increase consumer involvement.

Some of the suggestions indicated in the other category were a reward system to be introduced for those that participate, prevent the counterfeit goods from entering the market in the first place and making genuine products more affordable to the consumers. The findings are presented in table 4.21.

Table 4.21: Measures to increase consumer involvement

<table>
<thead>
<tr>
<th>Measures to increase consumer involvement</th>
<th>Strata</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACA</td>
</tr>
<tr>
<td></td>
<td>F  %</td>
</tr>
<tr>
<td>Consumers of counterfeiting goods should be reported</td>
<td>5  62</td>
</tr>
<tr>
<td>Consumers to be refrained from purchasing fake goods</td>
<td>0  0</td>
</tr>
<tr>
<td>Creation of awareness to the general public</td>
<td>3  38</td>
</tr>
<tr>
<td>Other measures</td>
<td>0  0</td>
</tr>
<tr>
<td>Total</td>
<td>8  100</td>
</tr>
</tbody>
</table>
4.5.6 Chi-Square Test on how consumer awareness can be used to fight counterfeiting

The third research question was “How can consumer awareness of counterfeits be used to fight counterfeiting in Kenya?” In answering this question, the study asked questions about the reasons for low involvement by consumers, current activities undertaken to increase consumer awareness, number of reports received on a monthly basis, classification of reports received and ways of encouraging consumers to be actively involved in fighting counterfeiting. The result is presented in table 4.22.

Table 4.22: Results on using consumer awareness to fight counterfeiting

<table>
<thead>
<tr>
<th>Chi-Square Tests</th>
<th>Value</th>
<th>Asymp. Sig. (2-sided)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pearson Chi-Square</td>
<td>8.423a</td>
<td>0.038</td>
</tr>
</tbody>
</table>

In this case, the calculated chi square value was 0.038. This indicated that consumer awareness can be used to fight counterfeiting in Kenya. The study found that awareness can be created through training, advertising and brochures.

4.6 Chapter Summary

This chapter presented and analyzed the research findings from the data collected. The findings were presented in charts, frequency tables and percentages. The major finding was that the existing measures in place to curb counterfeiting are not effective enough and more needs to be done.
CHAPTER FIVE

5.0 DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The chapter begins with a brief summary of the entire study including the purpose of the study and methodology used followed by an in depth discussion of the findings and finally the conclusion and the recommendations. The aim of the study was to determine the Measures that could be undertaken to fight counterfeiting in Kenya.

5.2 Summary

Counterfeiting is used as a broad term which encompasses any manufacturing of a product which so closely imitates or copies the appearance of another product to mislead a consumer that it is indeed the other product. Therefore, it may include trademark infringing goods, as well as copyright infringements. The word counterfeit frequently describes but is not limited to both the forgeries of currency and documents, as well as the imitation of clothing, handbags, shoes, pharmaceuticals and many more products (Admin, 2011).

The purpose of the study was to investigate the measures that can be taken to fight counterfeiting in Kenya. The research questions that were being addressed in the study were; How effective are the existing policies in fighting counterfeiting in Kenya? How can anti-counterfeit organizations be improved to fight counterfeiting in Kenya? And how can consumer awareness of counterfeits be used to fight counterfeiting in Kenya?

The target population was employees in five agencies in Nairobi namely Anti-Counterfeit Agency, Music Copyright Society of Kenya, Kenya Copyright Board, Kenya Industrial Property Institute and Kenya Bureau of Standards (KEBS). A sample size of hundred and fifty (150) respondents was used.
Stratified sampling technique was used to determine the sample for the study. The sampling technique was advantageous in that it was the most representative of a population. The data collection tool used was a questionnaire which was pre-tested on at least 10 respondents before the actual data collection to help in revealing any ambiguities in the tool. Data collected was processed and analyzed by use of descriptive statistics and Pearson’s Chi-Square test using SPSS computer software. The results were presented in tables and graphical form for easy interpretation.

In respect to the effectiveness of the existing policies, the findings established that 55% of the respondents indicated that they were fairly effective and their shortfall was due to the poor implementation of the policies by the agencies. This could be as a result of poor communication between the agencies, poor coordination and lack of strategy on how to go about it. This in turn has affected the effectiveness of the policies. Although the policies instill some confidence that the policy makers intend to curb counterfeiting much needs to be done.

In respect to improving anti-counterfeit bodies, the research established that the main challenges faced by the agencies were lack of enough resources. This included poor staffing and low budget allocation. Lack of proper equipment and access to latest technology was also mentioned as a reason. Some of the solutions suggested were increasing of the number of employees and increasing the budgetary allocation to the agencies.

In respect to increasing consumer involvement in the fight against counterfeiting, it was established that there is limited effort and involvement from consumers for various reasons. Most consumers felt that counterfeit goods are cheaper and easily available. Putting into consideration that most consumers range between middle class and lower class it would be harder for them to be convinced to buy genuine products. The suggested measures to increase customer involvement were; creation of awareness of the harmful effects of using counterfeits, training, advertisement and use of stiffer penalties on the consumers of counterfeit goods.
5.3 Discussion

5.3.1 Effectiveness of existing policies in fighting counterfeiting in Kenya

The research first sought to find out the organizations’ roles, their policy making process and effectiveness of the policies. The research also included capturing information on the government policies and their effectiveness.

It was established that; 46% of the respondents indicated that their role was to inform consumers on how to identify counterfeiting goods, 8% indicated it was to inform consumers on the demerits of consuming counterfeiting goods, 8% indicated it was the creation and implementation of stiff penalties on people using counterfeiting goods and the remaining 38% indicated the organization had other roles in dealing with counterfeiting. This agrees with Kirkpatrick (2007) who argues that Anti-counterfeit organizations have general goals that they aim at achieving. Some of these goals are to improve collaboration among governments, organizations, institutions, agencies and associations engaged in combating counterfeit products at the national, regional and/or international level and raise awareness among international organizations and other stakeholders.

Locally, each organization is mandated to fight counterfeiting in a particular way and it is backed with laws and bills to define the extent at which they are allowed to go. Some of the examples of laws in place are the Trade Marks Act of 1995, the Trade Descriptions Act of 2002, the Copyright Act of 2001 to name just a few. Each of these Laws discusses how counterfeiting cases should be handled and the penalties for counterfeiting.

The findings showed, 55% of the respondents indicated that government policies currently in use for fighting counterfeiting goods are on intellectual property, 15% of the respondents indicated that they are on quality and standards of products, 15% of the respondents indicated it was in copyright protection and 25% indicated the policies were about other areas. From these findings it can be concluded that, the government policies are based on all the above areas. This is reflected in the Anti-Counterfeit Bill of 2008, where enforcement structures and mechanisms and all types of infringements are described with laws and policies on how to deal with such.
Findings showed, in terms of effectiveness of policies on intellectual property, 40% the respondents felt that they were very effective, 20% said that they were effective, 18% were neutral about it, 10% said that they were not effective and 2% had other opinions. With respect to policies on quality and standard of goods; 38% indicated they were very effective, 22% indicated that they were neutral, 20% indicated they were effective, 14% indicated they were not effective and 6% had other opinions. In respect to effectiveness of policies on copyright protection; 40% indicated they were neutral, 20% indicated they were effective, 18% indicated they were very effective, 14% indicated they were not effective and 8% had other opinions.

In reference to the effectiveness of organization policies, on average 55% of the respondents believed that the policies were effective. This shows there’s some confidence in the policies being used by the Anti-counterfeit bodies. Although there is much to be done to improve on the existing policies to make them effective, the policies seem to instill some confidence in the public.

In relation to the policy making process, 32% said that information is gathered from consumers and involve them during policy making, 14% said that information is collected from the producers and involve them in the policy making, 48% said that experts are involved during policy making process and 6% of the remaining respondents said that policies are formed without any consultation. This shows that the current policy making process is done by the government and includes external parties in the process. Policies are defined with enough consultation from consumers and experts on how to best curb counterfeiting.

In terms of improving on the policy making process, 22% of respondents were for outsourcing policy making to the public or private organization, 23% wanted expert committees within themselves to form the policies, 23% of the respondents wanted the existing policy making process maintained and 38% of the respondents wanted the localization of policy making to ensure counterfeiting is dealt with respective region. From this we can see the preference is that policy making be regional based compared to the rest.

Globerman and Shapiro (2007) recommend a policy approach that emphasizes the “private” efforts of brand owners to protect their products rather than strengthening retaliatory trade legislation. He goes on to discuss the net costs of counterfeit trade and the cost of trade...
protection. He talks of a policy approach that emphasizes the “private” effort of brand owners to protect their products rather than strengthening retaliatory trade legislation.

The respondents felt that this would allow the policy makers to formulate policies best suited to the particular regions. This is because most regions are afflicted by different types of counterfeit where you find some regions have more cases of counterfeit alcohol than others and other regions might have more cases of counterfeit pharmaceutical drugs. It can therefore be concluded that the ineffectiveness of the policies made do not stem from the fact that they are made without involving the right parties but rather at what level the policies are made.

Regardless of who is incharge of the policy making, information sharing is critical to assist the respective parties make better and more effective policies. Information sharing should also not be limited to locally but also include other countries and international bodies. This can be through formation of bodies that encompass several countries or organizations from different countries which will allow for ease of sharing of information, technological knowhow and expertise.

In summary, the existing policies were fairly effectiveness. The failure was not on the policies itself but rather on the implementation of the policies. Challenges were mainly faced in the carrying out of the policies which is done by the Anti-Counterfeit bodies. These challenges are discussed in the research question on how to improve Anti-Counterfeit bodies.

5.3.2 Measures to Improve Anti-counterfeit bodies to fight counterfeiting

The research sought to establish the existing situation of Anti-counterfeit bodies and how best to improve them. From this it was determined that the resources that the organizations had were limited.

Findings showed that 46% indicated that between 6 and 10 employees are involved, 38% indicated that between 11 and 15 employees are involved, 10% indicated more than 15 were involved in the process and 8% indicated between 0 and 5 employees are involved. The research also sought to find out how many employees would be suitable. 60% indicated between 15 and 20
employees would be best, 25% indicated between 10 and 14 employees would be best and 15% indicated that more than 20 employees would serve best.

In respect to this, it can therefore be established, in terms of personnel assigned to dealing with counterfeiting in the organizations, most of the respondents suggested an increase in the number of personnel assigned which showed that the existing personnel were overwhelmed with the workload involved. In Nairobi CBD, it is clear that agencies are not actively carrying out their roles as we find street vendors and exhibition stalls openly selling counterfeit or pirated goods from mobile phones to electronic goods. We can therefore conclude the public sector agencies are currently overwhelmed by the counterfeiting problem and need the support of not only of other bodies but also of private enterprises. For this reason, private-sector entities should recognize that relying solely on law enforcement and Anti-counterfeit bodies to solve their counterfeiting issues is a very poor strategy and need to be proactive in developing an anti-counterfeiting strategy.

A good example of this is the International Chamber of Commerce (ICC) which represents business sectors worldwide. The ICC Counterfeiting Intelligence Bureau (CIB) was formed in 1985 as a focal point for industries exposed to counterfeiting worldwide. CIB was the first international private business initiative to provide practical prevention and enforcement support for police and customs authorities and is actively involved in the campaign against the manufacture and distribution of counterfeit goods. CIB, whose services benefit multinational companies, trade associations, law firms and providers of anti-counterfeiting technology, has now extended its activities to include intellectual property fraud.

In regard to budget allocation for curbing counterfeiting, it was established that; 48% indicated it was between 5 and 10 million, 25% indicated it was between 1 and 5 million, 17% indicated it was more than 10 million and 10% indicated it was below a million. The budget allocation not only covered court cases, creating consumer awareness, training but administrative costs as well. This is in line with Gething et al., (2007) who state that the borders of Somalia, Tanzania, Uganda, and Ethiopia and at the coastal ports are too porous due to insufficient funding and lack of proper inter-governmental co-operation.

The research also sought to establish the budgetary allocation that would be sufficient and it was established that; 50% of the respondents indicated between 5 to 10 million would be sufficient,
40% indicated that 10 million and above would be sufficient and 10% indicated between 0 to 5 million would be sufficient. 80% of the respondents had indicated a higher budget than what is currently allocated which concludes that the budget was not enough to effectively carry out their responsibilities.

The findings suggest that the agencies need to devote more resources to effectively fight counterfeiting in Kenya. This needs to change and adopt a more effective approach of resource allocation to the organizations. An example of this is the International Anti-Counterfeiting Coalition (IACC) an organisation devoted solely to combating product counterfeiting and piracy. IACC develops and conducts training for domestic and foreign law enforcement officials, submits comments on intellectual property enforcement laws and regulations and participates in regional and international programs aimed at improving intellectual property enforcement standards. Its anti-counterfeiting programs are designed to increase protection for patents, trademarks, copyrights, service marks, trade dress and trade secret internationally through increase in resource allocation (International Anti-Counterfeiting Coalition, 2013).

The extent of coverage of the organizations was not enough to create an impact. It was established that most of the bodies their main offices were Nairobi based with personnel being sent to various regions in the country to investigate or carry out the organizations’ roles. This of course would be a strain on the already few personnel. This was established where 85% indicated the extent of their coverage was country wide which was in the category of others, 10% of the respondents indicated their coverage is county wise and 5% indicated the coverage is district wise. Gething et al., (2007) state that the borders of Somalia, Tanzania, Uganda, and Ethiopia and at the coastal ports are too porous due to insufficient funding and lack of proper inter-governmental co-operation.

5.3.3 Using consumer awareness to fight counterfeiting

The research sought to establish the reasons as to the low involvement of consumers in the fight against counterfeiting. It was established that, 61% of the respondents indicated that it was due to the fact that counterfeit goods are cheaper, 31% of the respondents indicated that counterfeit
goods are of better quality, 8% of the respondents indicated other reasons as to why consumers are not playing an active role in fighting against counterfeiting.

Bosworth (2006) suggested that considering a spectrum of deception that runs from “super-deceptive” where branded and counterfeit goods appear identical and impossible to differentiate them from genuine goods, to completely non-deceptive where all buyers are able to distinguish the counterfeit from the genuine article. With the improvement in technology, the quality of counterfeits has improved over the years and it is becoming increasingly difficult for consumers to identify them. Locally, in an attempt to counter this, pharmaceutical companies joined with the government to create a provision for consumers to confirm the drugs they purchase. This was through the short messaging service where they could send a code printed on the drugs purchased to a local number and they would receive confirmation of whether the product is genuine.

The research also sought to determine what activities organizations undertake to create consumer awareness. It was established that on average; 50% of the respondents indicated they use training to create awareness, 25% indicated they use advertising, 23% indicated they use brochures and the remaining 2% indicated they use other methods. In others category, some of the responses indicated included use of trade shows and exhibitions, use of websites and use of social network. An example of an organization using various tools to create awareness is the Motion Picture Association of America (MPAA) formed in 1922. It is committed to engaging and working with government agencies at every level around the world to stem the tide of film theft. Often these efforts are focused on the creation of local, targeted initiatives that combine legislation, the dedication of law enforcement and a consumer awareness campaign to curtail film theft and raise awareness about the problem in cities, states and countries around the world (“Governments around the World Take a Stand for Creators, Consumers”, n.d., para. 1).

The research sought to determine the number of complaints and/or reports made by consumers. It was established that, 100% of the respondents in ACA, indicated that they received reports ranging from 401-500, on a monthly basis. In KEBS, 100% of the respondents indicated they received reports ranging from 401-500, on a monthly basis. In MCSK, 100% of the respondents indicated they received reports ranging from 101-200, on a monthly basis. In KCB, 100% of the
respondents indicated they received reports ranging from 201-300, on a monthly basis. In KIPI, 100% of the respondents indicated they received reports ranging from 0-100, on a monthly basis.

In comparison to the reports in the media on the ghastly effects counterfeit drugs and alcohol has had on consumers, we can safely conclude that there’s little involvement on the part of the consumer to report the counterfeit goods. Furthermore, it was found that in some cases consumers knowingly consume or purchase counterfeit products. Most of the complaints reported are about counterfeit mobile phones and yet we find most people knowingly purchase them due to their relatively cheap price. Mutua (2011) argues consumer demand for counterfeit goods shall always exist due to the fact that counterfeit goods are relative cheap and available.

The research sought to establish the measures that can be used to encourage consumer participation. It was established on average that; 42% of the respondents wanted there to be creation of awareness to the general public using various tools, 29% of the respondents say consumers to be refrained from purchasing counterfeiting, 23% of the respondents say the consumers of counterfeiting goods should be reported and 6% of the respondents indicated that other measures should be used to increase consumer involvement. Some of the suggestions indicated in the other category were a reward system to be introduced for those that participate, prevent the counterfeit goods from entering the market in the first place and making genuine products more affordable to the consumers.

Customers can be made to refrain from counterfeit goods by first of all making it easy for them to identify counterfeit goods. There are several technologies being used to mark the genuine products. An example of this is by teas scribos® security solutions which provide each individual product with a unique identity which can be easily and securely checked by retailers, consumers, customs and brand owners.

The U.S. federal auditors released a study, “Intellectual Property: Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods.” The document indicated that a number of actions have been initiated involving cosmetic giants such as L’Oreal, Beiersdorf and Johnson & Johnson in launching anti-counterfeit drives in the Middle East and China, areas supposedly at the heart of the operations.
5.4 Conclusion

5.4.1 Effectiveness of existing policies in fighting counterfeiting

The findings established that the majority of the respondents felt that though the policies in place are somewhat effective, the measures in place are not enough to fight counterfeiting. For starters, lack of proper regional based policies had brought about serious and multifaceted implications on manufacturers and brand owners. Therefore, the policy making process needed to be more inclusive of other parties apart from the current policy makers.

Law policy makers have set up measures to fight counterfeiting in Kenya and have gone to an extent of setting up an organization with the sole mandate of fighting counterfeiting. The challenge seems to be there is lack of proper implementation and execution of the existing policies as well as enforcement of the law and the said policies by the authorities.

5.4.2 Measures to improve Anti-counterfeit bodies

The agencies in focus were not doing enough to fight against counterfeiting in Kenya. One of the problems was lack of sufficient funding and resources to allow the organizations to carry out their roles. With the extent of their coverage seen to be country wide, it is therefore important to have enough budget allocation and personnel to carry out their roles.

Another challenge seen seemed to be the lack of cooperation with other local and cross border agencies charged with fighting counterfeiting. The borders of Somalia, Uganda and Ethiopia and at some of the coastal ports were too porous due to the lack of proper inter-organizational cooperation.

Anti-counterfeit organizations do not have goals to further improve collaboration among government organizations, institutions, agencies and associations engaged in combating counterfeit products at the national, regional and international level.
5.4.3 Using consumer awareness to fight counterfeiting

Most of the consumers are not aware of the counterfeit products and some consumers have difficulties in distinguishing original products from counterfeiting ones, especially in cases of pharmaceutical drugs. Original products are not clearly distinguished from counterfeit products since retailers, consumers and brand owners did not incorporate unique serial numbers or unique features in their products as an authentication method.

There are cases where there is total disregard by consumers where they choose to consume counterfeit goods either due to their relatively cheap price compared to genuine products and ease of access to them. Further measures need to be implemented to encourage consumers to buy genuine products and report cases of counterfeit goods.

5.5 Recommendations

Based on the above conclusions, the following recommendations were made:

5.5.1 Recommendations for improvements

5.5.1.1 Effectiveness of existing policies in fighting counterfeiting

The government should consider involving more parties in the policy making such as, the private sector and consumers in order to make better and effective policies. Policies formulated should be more customized to suit the various regions allowing for anti-counterfeit bodies to fully and effectively fight counterfeiting.

The government should consult with other policy making bodies within the African region and also internationally in order to compare policies and also gain knowledge on which are best policies and regulations to have and enforce. While formulating policies, policy makers should consider revising the budget and resources allocated to the bodies as well to ensure that have adequate tools to implement the policies.
5.5.1.2 Improving Anti-counterfeit organizations to fight counterfeiting

Anti-counterfeiting organization should have goals to improve collaboration among government, association and other agencies engaged in combating counterfeit products at all levels and raise awareness among various organization and other stakeholders with a view of calling for effective legislative measure and establish mechanisms for effective exchange of information and provide assistance on specific issues pertaining to combating counterfeiting product.

Non regulatory, oversight and law enforcement agencies should come together and co-operate across the country to fight against counterfeiting and if possible across the border. Organizations need to be pro-active in developing an anti-counterfeiting strategy that includes law enforcement and legislation as a key component of their overall anti counterfeiting effort.

Agencies should make use of investigation agencies for example, the National Intelligence Service, police to acquire information before doing physical checks at shops, supermarkets, factory raids and other activities which can be costly and time-consuming, it’s critical to know where they should be focused and use of intelligence can help identify the most egregious infringers, so that defensive efforts can be focused where they’ll be most effective. The Anti-counterfeit agencies should be continuously monitoring the market for any new counterfeiting products.

5.5.1.3 Using consumer awareness to fight counterfeiting

Original product should be clearly distinguished from counterfeit product by providing each individual product with a unique identity which can be easily and securely checked by retailers, consumers and any other party in the supply chain. Brand owners should create awareness of their unique indentifying symbol without compromising the uniqueness of the identifying mark to ensure that consumers are aware of how to identify the genuine product.

Customers can be an important ally in minimizing sales of counterfeit goods with all its associated costs. Educate customers about the risks of buying from unauthorized sources, and
recruit them to join in the effort by reporting suspicious goods and sellers. Stiffer penalties should be introduced against the perpetrators of counterfeiting as well the consumers who choose to use counterfeit products.

5.5.2 Recommendations for further Studies

The study invites similar studies that can explore new ideas that may have been left out in this study, which will highlight other measures that can be used to curb counterfeiting in Kenya. This study particularly recommends further studies be carried out how to increase long term consumer involvement in the fight against counterfeiting.
REFERENCES


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APPENDICES

APPENDIX A: INTRODUCTORY LETTER

To Whom It May Concern

Dear Sir/Madam,

I am a student at United States International University pursuing an MBA. I have designed a questionnaire to gather information regarding measures that can be taken to fight counterfeiting in Kenya.

The study to be carried out is for a project paper that acts as a partial fulfilment for the course of Business Research Methods. Please note that any information you give will be treated extremely confidential and at no instance will it be used for any other purpose other than for this project.

Your assistance will be highly appreciated. I look forward to your prompt response.

Yours Faithfully,

Researcher,

Cressida Nduati
APPENDIX B: QUESTIONNAIRE

Introduction
Hello. I am a student at the United States International University. I am conducting a research on counterfeiting in Kenya, specifically on measures to combat it. This research is for my Master’s Degree. The information provided here is strictly confidential and will not be shared with any external entities. The questionnaire will take approximately fifteen minutes to ask the questions. Please feel free not to answer a question if you cannot. You are also free to end the interview any time you like.

Organizational and Behavioral Assessment Tool

1. Name of the person filling the questionnaire?

2. Gender of the Respondent:
   
   Male [ ]

   Female [ ]

3. Education
   
   a) Secondary [ ]

   b) Professional Certificate [ ]

   c) Diploma [ ]

   d) University [ ]

   e) Other (specify) --------------------------
4. What is your role within this organization?

______________________________________________________________________________
______________________________________________________________________________

5. How long have you been working in this organization?

<table>
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<tr>
<th>0-4 years</th>
<th>5-9 years</th>
<th>10-14 years</th>
<th>15-19 years</th>
<th>20-24 years</th>
<th>Others specify</th>
</tr>
</thead>
</table>

6. What is the role of this organization in dealing with counterfeiting in Kenya?

(Tick you response)

a. inform the consumers how to identify counterfeiting goods
b. inform the consumers on the demerits of consuming this goods
c. create and implement stiffer penalties for people selling these products
d. Others specify

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7. Which are the government policies currently in use in fighting counterfeiting?

(Tick you response)

a. Policies on Intellectual property
b. Policies on quality and standards of products
c. Policies on copyright protection
d. Others specify

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8. What are the policies that your organization uses in fighting counterfeiting?

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9. Rate the effectiveness of the existing government policies in fighting counterfeiting?

*(Tick your response)*

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<th>Policy</th>
<th>Very Effective</th>
<th>Effective</th>
<th>Neutral</th>
<th>Not Effective</th>
<th>Others specify</th>
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<td>Policies on quality and standards of products</td>
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<td>3</td>
<td>Policies on copyright protection</td>
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<td>4</td>
<td>Other</td>
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10. Rate the effectiveness of the organization’s policies in fighting counterfeiting?

*(Tick you response)*

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<th>Policy</th>
<th>Very Effective</th>
<th>Effective</th>
<th>Neutral</th>
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11. What is the process of policy making in the fight against counterfeiting?

*(Tick you response)*

a. Gather information from consumers and involve them during policy making
b. Gather information from producers and involve them during policy making
c. Involve experts during policy making
d. Formulate policies without consultation

Others specify

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12. In which ways can policy makers improve the policy making process?

*(Tick you response)*

a) Outsource policy making to public or private organizations
b) Form expert committees within themselves to form the policies
c) Maintain the existing policy making process
d) Localize policy making to ensure counterfeiting is dealt with respective to regions
e) Other (*specify*)

f) Don’t know

g) Refused to answer

13. How many employees are currently involved in the process of fighting counterfeiting?

………………………………………………………………………………………………

14. How many employees would be best required to further the cause of fighting counterfeiting?

………………………………………………………………………………………………

15. What is the budget allocated to fighting counterfeiting in this organization?

………………………………………………………………………………………………

16. How much do you think would be required to be effective?

………………………………………………………………………………………………

17. What are the activities undertaken by the counterfeiting bodies in terms of fighting counterfeiting in Kenya?

(*Tick you response*)

a. Ensure they buy goods using the right procedure

b. Work hand in hand with ant-counterfeiting bodies

c. Report matters concerning counterfeiting to respective bodies

d. Others, specify

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18. What is the extent of coverage of the counterfeiting bodies?

a. Division

b. District
c. County

d. Others, specify

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19. What are the activities taken by counterfeiting bodies in raising counterfeiting awareness?

   a. Training
   b. Brochures
   c. Advertizing
   d. Others specify

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20. How many reports about counterfeiting have you received this month from consumers?

   Number of Reports
   a) 0 -100
   b) 101 - 200
   c) 201 - 300
   d) 301 – 400
   e) 401 - 500
   f) Other Specify

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21. What are the complaints mainly about?

a. Counterfeit spirits
b. Counterfeit pharmaceutical products
c. Counterfeit phones, electronic equipments etc
d. Others specify

22. Why do the consumers not play active role in fighting counterfeit goods?

(Tick you response)

a. counterfeit goods are cheaper
b. counterfeit goods are of better qualities
c. counterfeit goods are easier to access
d. Others specify

23. Which measures should be taken to encourage consumers to play an active role in fighting against counterfeiting goods?

a. Refrain from purchasing counterfeit goods
b. Report the vendors of counterfeit goods
c. Help in the creating of awareness
d. Others specify

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24. Suggest what consumers should do in the fight against counterfeiting?
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25. In what ways would the consumer benefit by being actively involved in the fight against counterfeiting?
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Thank you for your time

End!