



Five counterfeit hotspots in Poland that brand owners must be aware of

In the next edition of our series on markets around the world that reportedly engage in the sale of fake goods, we head to the Eastern European nation of Poland.

Back [in 2017](#), Polish police seized hundreds of thousands of counterfeit goods valued at over \$12 million, with 12 people detained as part of the enforcement action. The operation was jointly conducted by Poland's tax office, border guards and police, with more than 200 buses filled with fake foods near Warsaw. According to law enforcement at the time, the goods were to be sold to wholesalers and retailers across Poland and neighbouring countries. The operation, which led the country's news coverage that day, highlighted the scale of the problem that Poland faces when it comes to counterfeit goods.

For that reason, we reached out to [Bartosz Krakowiak](#), IP attorney, and [Sławomir Mazur](#), co-head of the trademark and legal team, at Polservice, who reveal the most effective ways to tackle fakes in Poland, and some of the most notorious markets for counterfeits.

In a nutshell, what should a rights holder know about enforcing against counterfeit goods in Poland?

Enforcement against counterfeit goods and their producers and sellers in Poland is usually performed through criminal law measures. Criminal prosecution is frequently used and is a relatively effective way of fighting the trade in counterfeit goods. Despite some faults, it allows illegally marked products to be forfeited and can be used to impose penalties on infringers without too much effort or expense on the part of rights holders (when compared to the civil procedure route).

The Polish Industrial Property Law provides that anyone who, for the purpose of placing on the market, marks goods with a counterfeit trademark or distributes/sells goods bearing such a trademark shall be subject to a fine, restriction of freedom or imprisonment for up to two years (up to five years in more serious cases). Only recently, earlier in 2019, an amendment has been introduced which explicitly lists EU trademarks as falling within the scope of the said provision. Before this happened, some doubts had been expressed – totally unjustified in our opinion – as to EU trademarks being subject of the criminal offence of counterfeiting (due to the criminal law principle of *nullum crimen sine lege certa*).

As a rule, crimes related to counterfeiting are prosecuted at the injured party's request (except for the most serious cases). Following the submission of a request for prosecution (so-called criminal complaint), proceedings are conducted by the prosecution authorities *ex officio*. These prosecution authorities include not only the police and public prosecutor but also customs – the latter are entitled to take actions and conduct criminal investigations and raids in IP-crime related matters also internally (ie, not only on borders), jointly with or independently of tax related issues. When the criminal proceedings are in the *ex officio* phase there is not much involvement required from the rights holder, however, in most cases it is strongly recommended to appropriately stimulate and assist the prosecution authorities. This may involve pre-action test purchases, assistance in raids, producing non-authenticity reports, oral testimonies, etc. – sometimes with the help of cooperating private investigators.

In matters of minor importance, the proceedings may be quicker if voluntary acceptance of the penalty

is applied. This is a form of simplified procedure: if the infringer pleads guilty, the prosecutor may agree the penalty with the infringer and then request court for approval thereof. As an alternative, the case may go to full trial before the criminal court. Unfortunately, it is also not so rare that the criminal proceedings are discontinued by the prosecutor – for example, due to minor harmfulness of the infringement, alleged lack of the infringer's intentional fault or lack of identified person to be held liable – in the latter scenario with an option of having the counterfeit goods forfeited.

Civil law remedies are used to fight counterfeiters in serious cases involving large-scale infringements. However, certain legal issues, numerous formalities and the length of proceedings still discourage many rights holders from using these remedies to enforce their rights.

Poland has no specialist IP courts other than the EU Trademark and Design Court in Warsaw, however, a legislative initiative to establish a specialist IP court system is already well-advanced. The measures that may be applied by civil courts, including preservation of evidence, right of information, provisional / precautionary measures and sanctions, are now fully aligned with those required by the EU IP Rights Enforcement Directive (2004/48/EC). Some more detailed amendments in that respect are in the legislative pipeline.

Does landlord liability exist in Poland?

Until March 2019, there had been no explicit provision in Polish law that would constitute a basis of the liability of intermediaries for trademark infringements (the liability for indirect trademark infringements, including landlord liability). At that time, such liability, under certain circumstances, could only be imposed by the way of broad interpretation – in the spirit of Article 11 of the EU IP Rights Enforcement Directive (2004/48/EC) – of the general provisions of the Civil Code related to tortious liability of those who were helpful in causing the damage or who knowingly took advantage of the damage caused to another, or those whose acts result in threat of direct damage.

However, following the EU Court of Justice judgement in C-494/15 (*Tommy Hilfiger et al. vs Delta Center*), an amendment has been introduced to the Industrial Property Law which clearly states that any persons whose services were used to infringe trademark rights shall be liable for trademark infringement. The new provision entered into force in Poland on 16 March 2019.

So far, there have been no court decisions known to us that would impose the liability for trademark infringement on the owners of marketplaces where fakes were being sold by third parties. Undoubtedly, the above-mentioned new provision of the Industrial Property Law – aimed at proper implementation of Article 11 of the EU IP Rights Enforcement Directive (2004/48/EC) – constitutes a reliable ground for so-called landlord liability and the time will show to what extent it is used by the rights holders in their brand enforcement efforts.

Interestingly, the respective provision appears to be broader than actually required under Article 11 of the EU IP Rights Enforcement Directive (2004/48/EC) – it gives the rights holder possibility of raising against an “intermediary” any claims for trademark infringement, including those of financial nature (eg, damages), while Article 11 refers only to injunctions. Obviously, under the general principles of civil law, in order to claim damages (financial compensation) it is necessary to prove that the damage was caused by the other party's wilful action or negligence (as opposed to mere injunctive reliefs, where the liability is independent of the party's actual knowledge and will). In the case of a marketplace landlord, such “culpable behaviour” may be claimed, for example, in the situation where he had been notified by the rights holder of specific infringements of that rights holder's trademark rights, committed by individual sellers operating on the landlord's premises, and where he subsequently failed to take proper and timely actions to cease such infringements by his clients (stall/store owners).

Therefore, landlords may be required to introduce to their lease agreements with stall/store owners clauses prohibiting trademark infringements, however, it may be debated whether mere lack of such clauses – in the event of fakes actually being sold on the landlord's premises – could give rise to effective claims for damages (as opposed to mere injunctive reliefs).

Are there any local dedicated anti-counterfeiting associations or organisations in Poland?

There are no local associations or organisations in Poland dedicated solely to anti-counterfeiting. Anti-counterfeiting falls within the scope of interest of some consumer organisations and general IP associations active in Poland, including the Polish Group of AIPPI (operating in Poland as a national association called Association for the Protection of Industrial Property). Also various anti-counterfeiting efforts of such international IP associations as INTA are more and more visible in Poland.

Counterfeit hotspots you should know in Poland:

When it comes to the challenges of enforcement at marketplaces in Poland, and recommendations to brand owners, the same observations and recommendations apply to all the below locations. Specifically:

Challenges: One shall remember that sellers at these markets are usually small fish or dummies. Even if they are caught red-handed, new sellers will appear in their place. Such sellers get their supply in hand-to-hand transactions which are not confirmed with an invoice or other document and they do not even know the personal data of their suppliers. Because the sellers are the last link in the chain, it is hardly possible to track the exact source/manufacture of fake products. Therefore, attempts to follow link by link very soon would reach a dead end. So measures that are taken are rather to diminish the symptoms (sellers), not the cause (manufacturer or importer). On top of that, sometimes marketplaces have their own 'early warning system' (ie, scouts who, in case of a sudden appearance of authorities, raise a quiet alarm). A blitz of information is spread among the sellers and when the enforcement officers reach the area, counterfeit goods either 'disappear' or 'become ownerless'.

Recommendations: The authorities from time to time organise control raids on their own initiative. On the other hand, they are open to act upon request from brand owners. Especially if information about important sellers/manufacturers is provided. Furthermore, quite often the authorities inquire whether any brand owner's specialist would assist them in a control raid to make the first 'field verification' of suspect products. Here, an assistance from the brand owner's local business staff or cooperating private investigators may be very helpful.



For the most part, fakes are sold on the suburbs of Warsaw rather than in the centre of the city

Wólka Kosowska

Location: Found in the fork of streets Nadrzeczna/Marii Świątkiewicz, 05-552 Wólka Kosowska close to Warsaw. This is not a single market, but a vast area on which several trade centres are grouped by nationality (Polish, Turkish, Chinese, Vietnamese) ([map link](#)).

Counterfeit risk factor: Very high.

Fakes know to be sold there: Virtually any product of any brand.

Challenges of enforcement at this marketplace: The marketplace in Wólka Kosowska is probably the biggest and most notorious place of counterfeit trade in Poland and one of the biggest in Middle-East Europe. Some scholars show it as an example of the counterfeit products trade as an activity of organised criminals and is connected with other shady businesses (eg, illegal immigration [including human trafficking], slavery and worker exploitation, money laundering, tax avoidance). The place is divided into 'national' markets, but the whole area is dominated by the Chinese and the Vietnamese sellers as far as invested capital and organisation is regarded. These sellers also organise the importation of fake products from China or Vietnam, but rarely sell the goods in person.

Therefore, most of fake goods sold in Wólka Kosowska are imported from China or Vietnam. However, some are also manufactured locally in Poland. The place is a supply point for many traders (re-sellers) from Poland and from neighbouring countries. Usually, the purchase of illegal merchandise is made at night, at the so-called 'night market', and these involve hand-to-hand deals without any invoice or other confirmation. For this reason, various authorities (police, customs, border guard) which control the marketplace, first focus on financial (tax) issues and counterfeiting is often a secondary target. From time to time, there are raids and other enforcement actions, spontaneous or coordinated with rights holders, undertaken by these authorities, usually with large scale seizures of fake items.

Recommendations to brand owners: Cooperate with authorities.

Bakalarska

Location: Found at Bakalarska 11 in south-west Warsaw ([map link](#)).

Counterfeit risk factor: High

Fakes know to be sold there: Clothing, footwear, and fragrance.

CH PTAK

Location: Found at Rzemieślnicza 35 in the town of Rzgów ([map link](#)).

Counterfeit risk factor: High

Fakes know to be sold there: Mostly clothing and footwear.

Border markets

Location: Marketplaces along the Polish-German border located in the towns of Kostrzyn, Osinów Górny, Osinów Dolny, Słubice and Łęknica ([map link](#)).

Counterfeit risk factor: High

Fakes know to be sold there: Clothing.



Kostrzyn nad Odrą is a town located close to the border with Germany

Tuszyn and Głuchów

Location: Two marketplaces along the national road No 91 and highway A1 ([map link](#)).

Counterfeit risk factor: High

Fakes know to be sold there: Mostly clothing and footwear.

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If you can share insights on the counterfeit hotspots in your jurisdiction, [contact WTR senior reporter Tim Lince](#).

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