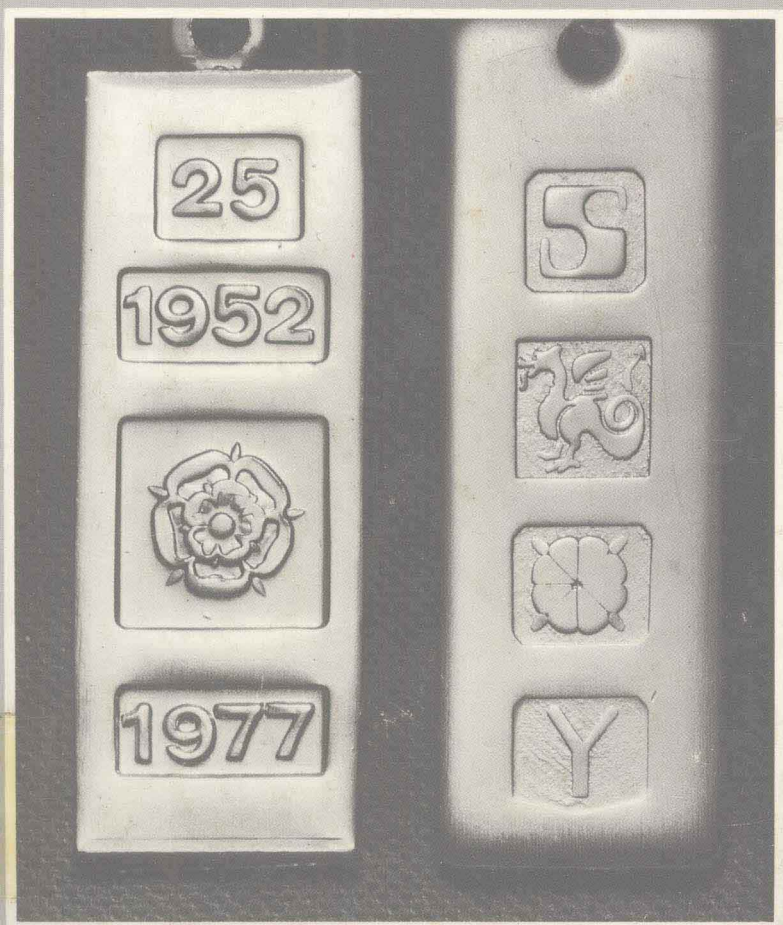


Roland Rowell
**Counterfeiting and
Forgery**

A Practical Guide to the Law



Butterworths

Counterfeiting and forgery

A practical guide to the law

Roland Rowell, BA, LL.M, DCA, MITSa, MBIM

London
Butterworths
1986

United Kingdom	Butterworth & Co (Publishers) Ltd, 88 Kingsway, LONDON WC2B 6AB and 61A North Castle Street, EDINBURGH EH2 3LJ
Australia	Butterworths Pty Ltd, SYDNEY, MELBOURNE, BRISBANE, ADELAIDE, PERTH, CANBERRA and HOBART
Canada	Butterworth & Co (Canada) Ltd, TORONTO and VANCOUVER
New Zealand	Butterworths of New Zealand Ltd, WELLINGTON and AUCKLAND
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South Africa	Butterworth Publishers (Pty) Ltd, DURBAN and PRETORIA
USA	Butterworth Legal Publishers, ST PAUL, Minnesota, SEATTLE, Washington, BOSTON, Massachusetts, AUSTIN, Texas and D & S Publishers, CLEARWATER, Florida

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British Library Cataloguing in Publication Data

Rowell, Roland

Counterfeiting and forgery: a practical guide to the law.

1. Fraud — England

I. Title

344.205'263 KD800

ISBN 0 406 10110 8

Typeset by Computerised Typesetting Services Ltd, Finchley, London
Printed and bound in Great Britain by Billing & Sons Ltd, Worcester

To my wife, Margot,
for her understanding
during the evolution
of this book.

‘Counterfeiting the marks is of the most evil consequence imaginable; for it prevents the discovering the makers of false and unlawful gold and silver works, and destroys the security, and prevents the knowledge of goods and true works; and thereby puts a cheat upon the Kingdom.’

William Badstock
The Touchstone (1667)

‘The valuable properties that we own are our brands.’

Sir Adrian Cadbury
Chairman, Cadbury Schweppes plc (1983),
from a paper entitled ‘The Food Industry in the 1980s’.

Foreword

It gives me great pleasure to subscribe a foreword to this book which will be a very valuable reference book for all those concerned in the business of combating counterfeiting.

The growth in the importance of brand names both for the manufacturer and the consumer who has come to rely on them as a guarantee of quality has perhaps inevitably led to a dramatic increase in product counterfeiting in recent years. It has been estimated that the trade in counterfeit products now makes up some 3% of world trade, with potentially disastrous effects for legitimate manufacturers and their employees. Control of counterfeiting is now more important than it has ever been, and this book should therefore be particularly welcomed as the first book to be devoted to a study of the relevant law on the subject in the UK.

Whilst traditionally counterfeiting has been an activity commonly associated with developing countries, especially in the Far East, it is nevertheless a sad fact that Europe in general and the UK in particular is by no means free of the activities of counterfeiters. In recent years videos, pre-recorded tapes, clothing and perfume have been particularly notable on the UK market. In some cases these goods have been imported for sale, in others produced in the UK. Increasingly, counterfeiting is moving from cottage industry to major international fraud, and it is essential that those in industry and elsewhere who have to deal with the problem are fully aware of the possibilities that are open to them in their fight to contain the damage done, not only to legitimate producers but also to consumers and the economy as a whole.

The fight against counterfeiting in the UK is greatly assisted by the efforts of the Trading Standards Officers, who despite being hampered at times by lack of resources and technical problems with the Trade Descriptions Act, have provided an invaluable source of help and practical assistance to legitimate industry in removing

counterfeits from shops and market stalls. It is therefore particularly appropriate that this book should have been written by a serving Trading Standards Officer with a wealth of practical experience of the subject.

This book should be on the bookshelf of every company with a name and reputation worth protecting, as well as providing an invaluable guide for those who advise companies in a professional capacity.

Anthea Worsdall

Secretary – Anti-Counterfeiting Group

Preface

Counterfeiting is a term familiar to most people, though many will fail to appreciate its meaning. This surprisingly high level of awareness may be attributable to nothing more than the generally known fact that banknotes contain anti-counterfeiting devices. However, reports concerning instances of commercial counterfeiting are seldom out of the media, generating an air of intrigue that obscures the reality of a pernicious form of criminal activity which deceives the purchaser, damages legitimate producers and harms the state through loss of taxes and duties. In spite of this considerable awareness of the problem and the increasing damage caused to our markets by the commercial counterfeit, counterfeiting remains an area of activity almost devoid of research. The detrimental effect has, however, created an urgency to establish a solution to the problem which can only stem from a greater knowledge of its type, scale and location within our legal system. This book is intended to provide such an insight and create a greater appreciation of the problem, its effect and solution.

It is anticipated that the book will appeal to the legal practitioner in private practice who is being called upon increasingly to provide expertise for a client suddenly finding his business suffering from the effects of commercial counterfeiting. Lawyers, trade mark and patent agents in industry, together with trade associations and consultants receiving requests for assistance from their members or clients, will also derive benefits from the information given about product and brand name abuse. Students of intellectual property, criminal or consumer protection law will find the different slant given by this book to these subjects a challenge to traditional concepts. Enforcers of the law in HM Customs and Excise, Police and the Trading Standards Service will find the collation of all counterfeiting and forgery offences between the covers of a single

work extremely useful, and the arrangement of specimen charges a labour-saving feature.

Concern, reflecting the seriousness of the situation, has been growing within the international trading community in relation to the increase in commercial counterfeiting. This concern is evident in the proposal for an EEC Council Regulation (COM (84)705) which lays down measures to discourage the release of counterfeit goods for free circulation. Awareness also exists within GATT (General Agreement on Tariffs and Trade). As a result of the meeting of the GATT Contracting Parties in November 1984, agreement was reached upon the establishment of a group of experts who would urgently pursue an examination of counterfeiting activity.

The United Kingdom government has also recognised the problems caused by commercial counterfeiting in their consultative document 'Intellectual Property Rights and Innovation' (Cmnd 9117, December 1983), the main thrust of which is toward the ready availability of innovation protection for the smaller inventor. It would, however, be a fruitless exercise to provide easily obtainable and readily understood protection of the intellectual property rights of small inventors if their products are counterfeited once they are successful.

Finally, suggestions are made in the book regarding countering of counterfeiting. Those finding themselves suffering at the hands of counterfeiters need to respond swiftly with every means at their disposal. It is therefore essential to introduce preventative measures *before* the inevitable happens.

Roland Rowell
November 1985

Acknowledgments

The writer would like to record his appreciation for the help and encouragement of Professor Brian Harvey, Dean of the Faculty of Law, University of Birmingham, in achieving completion of this work. Grateful acknowledgement is made to the Guardians of the Standard of Wrought Plate in Birmingham for the use of the archives and library facilities of the Assay Office. Warm thanks are extended to the many people who have been so interested and helpful, including colleagues throughout the Trading Standards Service and those listed below for special mention. Finally to Janet Brown for patiently typing the original manuscript and translating Norman-French statutes.

Stanley Beechey, OBE. Former Assay Master, Birmingham Assay Office; Phyllis Benedikz, Librarian, Birmingham Assay Office; Vincent Caratou, FIPI, Chairman of Caratou International; David Carlisle, Distillers Co plc; Bryan Cassidy, Director General, Cosmetic, Toiletry & Perfumery Association; Howard Eeles, BSc (Hons), Marketing Director Renack (Leisure) Ltd; Michael Flint, Solicitor and author of *A User's Guide to Copyright* (2nd edn, Butterworth & Co) for permission to reproduce the specimen pleadings contained in the Appendix; David Fletcher-Rogers, Legal Adviser, Dunlop Ltd; John Howard, Principal Industry Officer, Customs and Excise Department, Hong Kong; Patrick Isherwood, Legal Adviser, British Phonographic Industry Ltd; Graham Jones, Detective Chief Inspector, West Midlands Police; Vincent Newman, OBE BSc, Director, International Numismatic Anti Forgery Bureau, formerly Director, International Bureau for the Suppression of Counterfeit Coins and an officer of the Royal Mint; Michael Pendleton, Solicitor, Lecturer in Law, University of Hong Kong; Sidney Ridler, Technical Adviser, Bradbury and Wilkinson plc; Laurence Shaw, Patent and Trademark Agent,

European Patent Attorney and author of *The Practical Guide for People with a new Idea*; Sidney Silverstone, HM Customs and Excise; Clive Wilson, UK Sales Development Manager — Security Papers, Wiggins Teape (Mill Sales) Ltd; Anthea Worsdall, Secretary, Anti-Counterfeiting Group.

Organisations

Commissioners of Her Majesty's Customs and Excise in relation to their kind consent to reproduce Notice No 34 relating to Imported Goods: Infringement of Trade Marks; Common Law Institute of Intellectual Property Ltd and British Institute of International and Comparative Law for permission to reproduce the specimen pleadings in Section B of the Appendix, from their publication *Piracy and Counterfeiting of Industrial Property and Copyright* by Michael Flint.

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