

7. ECTA Articles



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INTRODUCTION

Intellectual property crime and money laundering are included in one of the top ten priorities for 2022-2025 of the EU Policy Cycle EMPACT. However, in many jurisdictions, counterfeit trade is not high on the priority list of law enforcement. In the Netherlands, this can change when the financial magnitude of the criminal offence is larger and the Fiscal Intelligence and Investigation Service (hereinafter: Fiscal Fraud Police) gets involved. Combatting counterfeiters has proven to be effective to target criminal networks, organised financial crimes and money laundering.

THE COURT CASE

In this case, two defendants, owners of a commercial partnership, were summoned by the public prosecutor after a criminal investigation by the Fiscal Fraud Police that included telephone taps and seizures. The defendants were suspects of counterfeiting in a professional way, as a company (being an aggravating circumstance under Dutch Penal Law) and, moreover, they were also suspected of habitual money laundering of the money made with the manufacture and trade of counterfeit clothing, in particular Canada Goose, Parajumpers and Stone Island jackets. They invested the money in real estate.

The Fiscal Fraud Police found multiple *Marktplaats* listings in which the counterfeit jackets were offered for sale. The defence did not get much further than stating that everything was shown in the accounts – but that did not, in fact, add up.

In March 2018, several persons including one of the defendants were arrested. The police seized a printing machine, several printing blocks bearing the brand Canada Goose and Stone Island, six sewing machines and over 10,000 counterfeited labels in a residential house and at company premises.

During interrogations, it became apparent that the persons were already active since 2016, sewing in badges and affixing labels in unbranded jackets coming in from Italy in



return for payment. One of the defendants stated that he did not know what happened with the unbranded jackets after he sold them – however, the Court had clear evidence from recordings of telephone conversations that the defendant knew about applying labels, which made the defendant an accessory of professional counterfeiting.

As to habitual money laundering, both defendants were proven to be joint offenders. The Court considered that 283,326.67 EUR was spent in cash, and 153,175.00 EUR in cash was found in a safe, which could not be explained by private withdrawals so that there had to be an illegal source of income. The suspicion of habitual money laundering was considered to be proven by the Court, since the defendants could not explain the difference between earnings and withdrawals. A total amount of 436,501.00 EUR was proven to have been acquired by money laundering.

In view of the size of the amount declared to have been proven and the period during which the expenses and deposits were made, the Court found it also to have been proven that the suspects had made a habit of money laundering.

CONSIDERATIONS OF THE COURT

When determining the sentence, the Court considered that in cases where the amount of money laundering was between 250,000

and 500,000 EUR, imprisonment of twelve to eighteen months can be considered as the starting point for sentencing. However, the Court had to bear in mind the undue delay rules of Art. 6 ECHR, because there was a delay in this case of more than one and a half years.

1. Counterfeiting and unfair competition

One of the defendants was complicit in commercial trade of counterfeit goods for one and a half years. The trade marks and copyright of several rights holders had been infringed. There was also unfair competition in respect of *bona fide* companies that do respect the interests of those rights holders. The brand owners themselves lose revenue if potential customers buy the counterfeit items instead of the original items.

2. Habitual money laundering

Together, the defendants laundered an amount of almost half a million euros and made a habit of it. With that money, the defendants partly paid for their new house, renovated it and had a new bathroom and kitchen installed. By introducing criminal money into the legal payment system, the defendants co-operated with each other in concealing criminal activities and the income obtained thereby. This encourages criminal behaviour because it can create the impression that illegally acquiring income pays off. This also disadvantages

the state, and therefore society, because no tax is paid on that illegally obtained income. Furthermore, money laundering poses a serious threat to the legal economy and affects the integrity of financial and economic transactions.

THE COURT DECISION

The Court rendered verdicts of ten and nine months imprisonment, minus the time already spent in police custody, with an operational period of two years. The Court rejected the public prosecutor's confiscation claim relating to the house of the defendants and held this additional punishment to be currently disproportionate, partly in view of the fact that no further investigation had been carried out into the house and nothing is known about, for example, its value. Money on the accounts of the defendants, cash found in the safe and even counterfeit bank notes were confiscated.

CONCLUSION

This case shows that when establishing largescale counterfeiting and intellectual property crime, it is about time for trade mark owners to team up with the police, so that financial and economic crimes such as counterfeiting and money laundering can be combatted in a win-win strategy both for law enforcement and the trade mark owners themselves.¹

TWO PERSONS WERE SUMMONED TO THE AMSTERDAM CRIMINAL COURT AFTER CRIMINAL INVESTIGATIONS EVIDENCING THAT THEY WERE PRODUCING COUNTERFEIT CANADA GOOSE, PARAJUMPERS AND STONE ISLAND JACKETS – AND WERE ALSO ENGAGING IN HABITUAL MONEY LAUNDERING.

Amsterdam Criminal Court Rules Against Counterfeiters Accused of Habitual Money Laundering

¹ Sources: <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2021:6903>;
<https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2021:6902>;
<https://www.europol.europa.eu/crime-areas-and-trends/eu-policy-cycle-empact>.