

Derbyshire County Council

Meeting with Cabinet Member, Health and Communities

27 May 2014

Report of the Strategic Director, Health and Communities

TACKLING INTELLECTUAL PROPERTY CRIME IN DERBYSHIRE 2013-14

1 Purpose of the report:

To inform the Cabinet Member, Health and Communities of action taken during the previous year to tackle intellectual property crime in Derbyshire and to seek approval for proposed enforcement priorities.

2 Information and analysis:

- 2.1 Tackling intellectual property (IP) crime (counterfeit goods) has been a local, regional and national trading standards priority for several years. The total loss to the economy from counterfeit goods has been estimated to be in excess of £9b with computer software, film and music, clothing and footwear being amongst the sectors most heavily suffering loss. But it is not just 'designer goods' that are targeted, it has also been reported that automotive parts have been counterfeited posing serious safety concerns as well as pharmaceuticals and medicines. Illicit tobacco has also caused concerns as, whilst all tobacco products are harmful, counterfeit and illicit tobacco pose additional risks and also a loss of income to the Exchequer.
- 2.2 As with the majority of the legislation that the Division enforces, the local authority has a statutory responsibility to deal with counterfeiting under the Trade Marks Act 1994 and the Copyright Designs and Patents Act 1998. Because of the nature of this illegal activity and the links with other criminality such as drugs, illicit tobacco and benefit fraud we work closely with other agencies particularly, the Police and HMRC and also with Trading Standards colleagues in neighbouring authorities and the Trading Standards East Midlands Scambuster Team. Derbyshire is no different to any other large rural authority in terms of the scale of the problem. There has been a significant increase in complaints about counterfeit goods over the past ten years, although the number of complaints has stabilised over the past 12 months. There appears to have been less counterfeiting activity at local markets and boot sales, but an increase in counterfeit goods being sold via the internet. The most significant change over the past 12 months has been a massive increase in the amount of illicit tobacco – both packets of cigarettes and hand-rolling tobacco (HRT) being sold from short term leased shops in market towns throughout the county.

- 2.3 Table 1 below shows the type quantity and type of counterfeit goods seized in the county during the past 12 months together with the approximate 'street value' of the goods seized.

Table 1 – quantity of counterfeit goods seized in Derbyshire

Number/ quantity	Type	'High Street' Value (£)
118	Clothing and headphones	10,790
30	Handbags & purses seized	23,350
	Counterfeit mugs & t-shirts	45,745
121	Jewellery	3,993
190	Individual branded car accessories	6,704
876,090	Cigarettes seized	350,436
794.83	Hand-rolling tobacco seized (kg)	238,448
	Total	£679,466

Investigations as a result of enforcement action following the detection of counterfeit goods resulted in a range of enforcement action depending on the scale and severity of the offences detected. Six warning letters as well as two 'Formal Cautions' were issued and six prosecutions completed resulting in a custodial sentence of 36 weeks being imposed by the courts. Further details regarding intellectual property enforcement during 2013-14 is provided in the attached appendix.

- 2.4 Trading Standards Services throughout the UK are adopting a more 'intelligence-led' approach to enforcement in recognition of the need to respond to organised criminal activity that crosses local and regional borders. For some years Derbyshire Trading Standards has adopted the National Intelligence Model (NIM) approach which identifies 'prevention, intelligence and enforcement' activities to tackle criminal activity. Gathering and sharing intelligence helps identify those IP criminals posing the greatest threat to the local economy. The Division inputs relevant information on to a national trading standards database called Patriarch (formerly Memex). This facilitates the sharing of information about criminal activity in a secure way with other enforcement agents. Raising awareness about IP crime – both to enable consumers to be wary and make informed choices when making purchasing decisions and to deter potential and actual criminal behaviour – is an important part of the crime prevention strategy; and the Division, with the support of the Public Relations team, has issued 16 press releases during the year about counterfeit goods.
- 2.5 The significant increase in illicit tobacco on sale in Derbyshire has shifted enforcement activity into this sector and away from branded 'high street' consumer goods. Counterfeit tobacco poses a serious health risk as cheap illicit tobacco undermines the Government strategy of reducing demand by keeping the price of tobacco high. Whilst all tobacco is harmful to health, illicit cigarettes pose an additional potential risk as there is no control of what they contain. There have also

been instances of house fires as the counterfeit product does not have the self-extinguishing properties of the legal product.

- 2.6 Illicit tobacco also represents unfair competition to local retailers of legitimate tobacco products. Given the scale of intellectual property crime and finite trading standards resources, it is necessary to prioritise enforcement activity to those areas of highest risk – both in terms of health, consumer detriment and loss to the local economy. It is therefore proposed that the Division continues to focus on tackling illicit tobacco and those products where there may be a risk to public health and/or safety posed by the product. In addition, the Division will concentrate on organised crime groups operating in or based in the county and those posing the greatest risk to the local economy. This will mean that it may not be possible to respond to individual complaints about breaches of IP legislation where the amount of counterfeit product is relatively small. Greater use of advisory and warning letters will be made – particularly with regard to on-line sales of counterfeit products.

3 Other considerations:

In preparing this report the relevance of the following factors has been considered; financial, legal, prevention of crime and disorder, equality of opportunity; and environmental, health, human resources, property and transport considerations.

4 Background papers:

None

5 Key Decision:

No

6 Call-in:

Is it required that call-in be waived for any decision on this report?

No

7 Strategic Director's recommendation:

That the Cabinet Member, Health and Communities notes the activity to tackle intellectual property crime in Derbyshire and endorses the proposed policy towards enforcement.

David Lowe
Strategic Director
Health and Communities

Appendix - Trading Standards Project Report; Intellectual Property (IP) Enforcement in Derbyshire 2013-14

Activities Undertaken:

This Service received 149 complaints regarding intellectual property (IP) issues. These covered a range of products, such as cigarettes and tobacco, handbags, car accessories, clothing, jewellery and headphones. The Service responds differently to each enquiry depending on the quality of evidence provided, as well as the location of the supply and/or seller identity. Illicit tobacco continues to feature largely in investigations undertaken, as this issue has an economic impact on retailers of genuine product and health implications for those who choose to buy it.

Where the complaint/enquiry yields significant intelligence on a counterfeiting operation, a log of the intelligence is entered onto the Trading Standards East Midlands (TSEM) regional intelligence database Patriarch (formerly MEMEX). In the past year, this Service submitted 45 intelligence logs.

This Service continues to work with other agencies in the fight against counterfeiting & IP crime, such as the Police, HMRC, the Anti-Counterfeiting Group (ACG) and representatives of the brand holders, such as Imperial Tobacco and BBC. Derbyshire Trading Standards has continued to employ the services of Wagtail UK Ltd who provide specialist sniffer dogs which proved invaluable in finding illicit tobacco stored in secret locations within shop premises.

Derbyshire Trading Standards continues to contribute to the TSEM IP group to discuss best practice on IP matters to provide a consistent regional approach.

Sixteen press releases were sent out detailing the results of recent successes in the courts. In addition, the Service contributed to a radio interview to discuss local tobacco-related issues.

Results:

Investigations undertaken led to the following:

- 6 prosecutions resulting in one custodial sentence of 36 weeks;
- Proceeds of Crime investigations resulting in confiscation orders totalling £17011.71;
- 118 items of clothing and headphones (High Street value £10790);
- 30 handbags & purses seized (High Street value £23,350 approx);
- Counterfeit mugs & t-shirts (High Street value approx. £45745);
- 121 items of jewellery (High Street value £3993 approx);
- Over 190 individual branded car accessories (High Street value approx. £6704.28);
- 876,090 cigarettes seized, (High Street value £350,436 approx);
- 794.825kg of hand-rolling tobacco seized (High Street value £238,447.50 approx).

The tobacco investigations alone were as a result of 13 organised enforcement operations with the Police and Wagtail UK Ltd resulting in seven arrests and subsequent interviews with possible defendants. These investigations are on-going.

Two investigations resulted in Formal Cautions issued and on six occasions warning letters were sent.

Significance of Results:

The number of complaints received has stayed relatively the same suggesting IP crime is still a problem. However, the products found has changed dramatically this year, with a massive 10-fold increase in the amount of illicit tobacco being identified compared with the previous year. Car boots, which used to be a popular way of selling counterfeit goods, have not been an issue this year compared with previous years and the Service has not had cause to visit these as often this year.

The majority of the counterfeit goods are advertised online, either through online auctions or social media, with Facebook presenting the same legal issues as in previous years.

Conclusion:

Intellectual property (IP) crime is still a significant problem within Derbyshire, affecting both retailers of genuine goods and consumers.

Illicit tobacco is a major area of IP crime for Derbyshire, with repeated visits to retail premises resulting in more and more evidence being found. Investigations have identified an organised crime group behind much of it, justifying the need to prioritise resources in this area.

A close eye needs to be kept on those using the internet to supply counterfeit goods. A misconception by those who do is that they think they retain an air of anonymity by 'hiding' behind a user name or similar. This simply isn't the case & this Services' expertise in obtaining real details should not be lost.

Recommendations:

- Continued use of NAFN to obtain details of those suspected of using online auctions and social media to supply counterfeit product;
- Explore the introduction of a Derbyshire Trading Standards' Facebook page to enable the Service to contact those suspected of dealing in fake goods;
- Continue to work with industry bodies, trade mark holders and enforcement authorities;
- The Service's Accredited Financial Investigator should continue to pursue enforcement under The Proceeds of Crime Act 2002.

Date 11 April 2014