

## EDITORIAL

"Compensation" is a legal concept which is not limited to compensating the victim for damages caused thereto by the aggressor, but includes the imposition upon the defendant of a payment of a pecuniary nature to the plaintiff party, in order to deter said defendant from repeating the crime committed thereby.

Unfortunately, this concept is not taken into consideration in the decisions issued by the Lebanese courts regarding intellectual property lawsuits. The relatively high compensation imposed by certain courts are mere exceptions, while the vast majority of compensation is very low and is not deemed as a deterring penalty.

Therefore, counterfeiters often resume the counterfeiting of products and trademarks, the deception of consumers, and diversion of customers in their favour, after yielding large profits from previous deals, and due to the fact that the yielded profits are greater than the penalty imposed by the Lebanese Courts.

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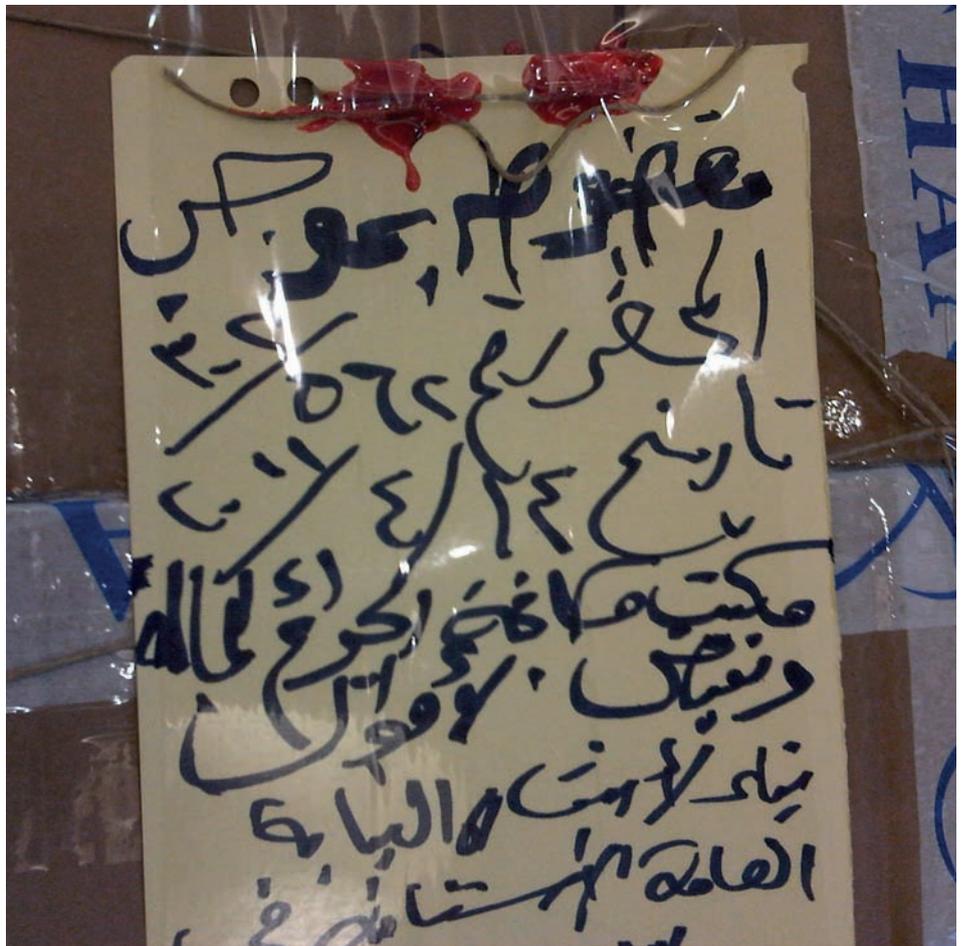
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Stop dealing with counterfeit

## 70 Operations Resulting in the Seizing of Counterfeit Products of Global Trademarks



Seizures sealed by order of the Financial Crimes and Money Laundering Repression Bureau of the Judicial Police.

More than two thousand counterfeit products holding one of the famous trademarks in the world of fashion were seized during 70 operations which took place in the past months. (P.2)

### **A First-of-Its-Kind-Judgment: Stay of Execution of the Prison Sentence in Counterpart of Payment of Compensation within a Month**

The single criminal judge in Metn, Justice Margie Majdalani, issued a stay of execution upon the prison sentence imposed on the defendants, which were accused of selling goods bearing counterfeited marks. This stay of execution is conditional upon the fulfillment by the defendants of the civil obligations due to the plaintiff by way of compensation payments, due within a period of one month as of the date of entry into force of the present judgment. (P.3)

### **Lebanon Ranking 27 in International Piracy**

Al Balad, 28/02/2011

Lebanon ranked 27 in international piracy, and last in regional piracy of American software, whose value is equivalent to twenty eight million dollars in 2010, according to the "special report" issued by the International Intellectual Property Alliance.

The report showed that the piracy level in Lebanon reached 72%, exceeding by far the general average in the world. (P.2)

# The Latest in Measures Against...

## 70 Operations Resulting in the Seizing of Counterfeit Products of Global Trademarks



Seizures During an Operation Carried out by the Intellectual Property Protection Bureau at the Ministry of Economy

Said operations, held by the Intellectual Property Protection Bureau at the Ministry of Economy, presided by Ms. Salwa Faour, and the judicial police, upon the motion of the Appellate Public Prosecutors Justices Randa Yakzan and Joseph Maamary in Beirut and Justices Maher Cheaito and Claude Ghanem in Mount Lebanon, included stores and big and small shopping centers in Beirut and Mount Lebanon. The seized products included purses, suitcases, belts and other products manufactured by the global company. It is noteworthy that public prosecutors are no longer neglecting such crimes, and refer them to the competent court after bringing suits against all violators.

### 70% Discount to Reduce Piracy

12/06/2011

Adobe Middle East and North Africa offered a discount of 70% on Adobe Creative Suite 5 and Acrobat programs for Lebanese companies. This step, taken in cooperation with the Ministry of Economy, aims at reducing the piracy phenomenon in the Lebanese Market. During the announcement of the offer, the director of the Business Software Alliance - Gulf Region, Mr. Jawad Al Rida, warned of the negative impact of the use of pirated software on users activities and on the economy. He added: "The violation of the intellectual property rights affects the State's income and prevents the creation of new job opportunities".

### Lebanon Ranking 27 in International Piracy

Therefore, the International Intellectual Property Alliance recommended keeping Lebanon on the "Control List" for 2011.

Lebanon ranks after Kuwait where the amount of pirated software reached thirty nine million dollars, preceded

by the Saudi Arabia with one hundred eighty nine million dollars, while China ranks first with three thousand seven hundred million dollars.

### KASPERSKY LAB: Cybercrimes Are Increasing

Al Bayan, 07/10/2011

KASPERSKY LAB, the biggest computer anti-virus company in Europe, expects the increase of cybercriminals targeting online shopping sites, e-stores, auctions and purchase and sale message boards, knowing that the websites of this category accounted for a quarter of the total number of hacking attacks.

Yury Namestnikov, Malware Analyst in the Global Research and Analysis Team in KASPERSKY LAB states that: "Organizations rarely publicize the fact that they have been targeted by distributed denial-of-service or DDoS attacks in order to protect their reputation. Meanwhile, cybercriminals are increasingly using this kind of DDoS as a diversionary tactic when launching more sophisticated attacks as those attacking online banking systems. He

adds: "Complex attacks of this nature are particularly damaging in that they can cause significant losses for the financial institutions as well as their clients".

### Raid on a Printing Establishment and Seizure of Counterfeit Medications and Stimulants

Al-Mustakbal, 21/10/2011

Upon a motion of the competent court, and in the presence of the president of the Pharmaceutical Sector in Bekaa Health Department, a force from Zahleh Judicial Detachment, of the Regional Criminal Investigation Office in the Judicial Police Unit, raided a printing establishment in Ali Al-Nahri where expired medications, 200 large boxes containing different kinds of powder and pills and 600 glass containers filled with a certain liquid were found. Furthermore, clichés of different medications and sports stimulants were confiscated. Such raid came as a response to information regarding the counterfeit of different kinds of medications and sports stimulants in Bekaa.

The competent court is currently investigating with the owners of the printing establishment Y.J. (41 years) and his brother B. (38 years).

## CASES

### A First-of-Its-Kind-Judgment Stay of Execution of the Prison Sentence in Counterpart of Payment of Compensation within a Month

#### In the Facts:

The Cybercrime and Intellectual Property Protection Bureau seized a sizable quantity of perfumes and cosmetics (97 products in total) bearing counterfeit marks similar to the marks of the products of the plaintiff company in the locality of Souk Al Ahad (Sunday Flea Market) in Horch Tabet, made out of stands displaying products of all kind.

Consequently, the public prosecution brought claims against three persons who were selling counterfeit products, and against two other persons who were providing products to said persons, after seizing /189/ counterfeit products in their place of business in the locality of Borj Al-Barajneh.

Moreover, the Bureau seized /20/ perfume bottles bearing counterfeit marks similar to the marks of the products of the plaintiff company in the locality of Dekwaneh, where a sixth defendant offered said products for sale to the plaintiff's attorney. Moreover, the public prosecution brought a claim against a seventh defendant who was providing the salesman with the counterfeit perfumes.

#### In the Law:

The court found that each of the defendants had knowingly offered perfumes and cosmetics for sale, bearing counterfeit marks similar to the marks of the products of the plaintiff company, which led to the deviation of the customers of the plaintiff in favor of each of the defendants. Therefore, the acts committed by each of the said defendants constitute a misdemeanors as stipulated in Articles /702/, /703/ and /714/ of the Criminal Law.

The Court ruled "to impose upon each of the defendants the payment of a compensation to the plaintiff company for the damage caused thereto due to the perpetrated misdemeanors, without

taking into account the sale value of the original product bearing a trademark of the plaintiff company."

#### Judgment:

The court convicted all of the seven defendants, and sentenced three thereof to imprisonment for a period ranging between three and five months, while the fines imposed thereupon ranged between LBP 300,000 and LBP 1,000,000. Furthermore, the court imposed upon the defendants the payment to the plaintiff company a compensation ranging between LBP 1,000,000 and LBP 5,000,000, with a total compensation amounting to LBP 15,000,000 as damages.

Moreover, the court has issued a stay of execution upon the prison sentence imposed on the three defendants and sentenced them to the fine only, should each of said defendants fulfill the civil obligations due thereby with regards to the payment of compensations due to the plaintiff company within a period of one month as of the date of entry into force of the judgment.

Therefore, the present judgment is considered audacious since it ruled a stay of execution of a prison sentence conditional upon the settlement of civil obligations, taking into account, indirectly, the importance of the aforementioned compensations since the trademark counterfeit misdemeanors are considered as economic crimes.

" Stay of execution of the prison sentence, and sentence to a fine only, conditional upon the payment of compensations due to the plaintiff company within one month as of the date of entry into force of the judgment "

### Arrest of a Network Selling Door-to-Door Counterfeit Perfumes, Caught Red-handed.

The designated Criminal Single Judge in Baabda, Justice Roland Al Chartouni, sentenced the defendant for having perpetrated the offence of counterfeit of an internationally known perfume

trademark, to imprisonment for one year and one month and to a fine amounting to LBP 15,000,000 as well as compensation damages amounting to LBP 30,000,000.

#### In the Facts:

Acting upon a complaint filed by an international company specialized in the production and sale of cosmetics, the Cybercrime and Intellectual Property Protection Bureau arrested the defendant while delivering cosmetics bearing counterfeited marks imitating the marks of the plaintiff company.

As it appeared in the facts of the trial the said defendant had been working for the second defendant for one week only, and wasn't aware that the products he was delivering were counterfeit. He was receiving bags from the second defendant, each allocated to a customer, and was later delivering the said bags and collecting the payments of invoices in return.

The defendant's act of having fraudulently deviated the customers of the plaintiff company constitutes the offense stipulated in Article /714/ of the Criminal Law.

#### In the Law:

Based on the articles of the Criminal Law, the Court's ruling found the second defendant guilty of the act of counterfeiting the trademark of the plaintiff company (Article 702), as well as being guilty of having fraudulently deviated the customers of the plaintiff company (Article 714), in addition of having perpetrated the offence stipulated in Article 86 of Law No 75/1999, which is the act of having counterfeited the designs and shapes of packages belonging to the plaintiff company.



Sale of Counterfeit Perfumes on the Roads.

**Judgment:**

The court convicted the second defendant and sentenced him, after having merged the penalties, to imprisonment for a period of one year and one month and to a fine amounting to LBP 15,000,000. Moreover, the court imposed upon said defendant the payment to the plaintiff company of LBP 30,000,000 in damages. On the other hand, the court acquitted the first defendant, as being an employee of the second defendant and being responsible only of the delivery of goods to costumers and the collection of the price thereof, and moreover the evidence at hand did not establish his participation in the counterfeiting process.

### Expired and Counterfeit Foodstuffs Compensation and Fine amounting to LBP 28,000,000

The single criminal judge in Beirut Emily Mirna Al Kallas, sentenced the defendant, accused of counterfeiting a foodstuff trademark, to a fine amounting to LBP 8,000,000 as well as to the payment of compensation damages to the plaintiff amounting to LBP 20,000,000.

**In the Facts:**

Acting upon a complaint filed by an international company specialized in the production of foodstuffs, the Cybercrime and Intellectual Property Protection Bureau raided a warehouse for the sale of foodstuff in the region of Kornish El Nahr and seized /8640/ boxes, each containing /6/ cubes, and /60/ cases, each containing /144/ boxes of chicken broth or each box containing six cubes.

All the aforementioned quantity had been expired for over two months as of the date of the seizure thereof, and bore the trademark of an internationally known foodstuff. The plaintiff party declared the seized products to be counterfeit. The defendant stated that he had imported all said products from Egypt where they were manufactured by the plaintiff company, that the expired products were not intended for sale, and that he had placed a paper indicating said matter; however, the detectives failed to notice it, but said allegations remained unproved.

One hundred and three thousand pieces having been expired for more than two months are seized.

**In the Law:**

Upon the examination of a sample of the seized products, they appeared to be different from the original products, bearing a counterfeited trademark of the plaintiff company, constituting the elements of the offense stipulated in Articles /109/ and /114/ of the Customer Protection Law and the elements of Article /702/ of the Criminal Law. The defendant's act of deviating of the customers of the plaintiff in his favor by fraudulent means constitutes the elements of offense stipulated in Article /714/ of the Criminal Law.

**Judgment:**

The Court convicted the defendant and sentenced him to a fine amounting to LBP 8,000,000, after merging the penalties and granting him mitigating circumstances with respect to his imprisonment as per Article /354/ of the Criminal Law. The Court imposed upon the defendant the payment of LBP 20,000,000 to the plaintiff as damages.

### The Lebanese Courts Protect Global Trademarks Conviction for the Sale of the Product "Kalant" Similar to "Kit Kat"

The criminal single judge in Tripoli, Justice Hanadi Jaber convicted the defendants accused of the offense of trademark imitation, for having sold the product "Kalant", which is similar to "Kit Kat" brand, refuting the excuses presented by the defendants stating that the product is officially and duly manufactured in Syria, as a registered mark has priority in the protection against any unfair competition whether by counterfeit or similarity.

**In the Facts:**

Based on a complaint filed by "Société des Produits Nestlé", owner of the trademark "Kit Kat", after having taken knowledge of the marketing of a product baring the brand name "Kalant" in imitation of Kit Kat's design and trademark adopted by said company, the Financial Crimes and Money Laundering Repression Bureau in the Judicial Police has seized /177/

boxes, each containing /24/ pieces of the infringing product, subject-matter of the complaint, in three commercial stores.

During the closing session of the trial, the plaintiff requested the imposition upon the three defendants the payment of LBP 10,000,000 in damages. The attorney of the defendants moved for their acquittal, claiming that said defendants had not committed the counterfeit offense, as the products were being produced in Syria and is duly registered in the Syrian commercial register. Furthermore, they were unaware of the counterfeit and their role was limited to the sale of a limited quantity of the aforementioned products.

"The registered mark has priority in the protection against any unfair competition whether by counterfeit or similarity".

**In the Law:**

The court held that the following conditions must be present for raising a criminal case against the defendants: that the product at hand be a counterfeit of the trademark "Kit Kat", and the proof of knowledge by said defendants of said counterfeit. In this regard, the court held that the brand "Kalant" had adopted a design similar to the design of the plaintiff company's product, in terms of its rectangular form, oval frame, red and white colors, in addition to the fact that said product belongs to the same family of chocolate as of the plaintiff company's product.



\*Kalant, the Product Bearing a Trademark Similar to "Kit Kat"

Consequently, the first condition was considered as fulfilled. Furthermore, the court held that the similarity in the two products creates confusion in the mind of the average consumer, particularly as most of the consumers in the present case are children who are interested in the external form of the product, and as the defendants are experienced in trade and, by virtue of their work, are aware of

the existence of the trademark "Kit Kat". As a result, the second condition was considered as being fulfilled.



Same Chocolate Kind.

Moreover, the court held that the criminal case is not limited to the manufacturing of the counterfeit product, but encompasses the sale and display of said product with the intention to deceive. It found as well that the allegations of the defendants stating that the aforementioned product is officially and

duly manufactured in Syria, should not be considered as the legal or legitimate justification allowing said defendants to promote and sell the infringing product inside the Lebanese territories, where the registered trademark is given priority in the protection from any unfair competition whether by counterfeit or similarity.

Furthermore, the difference in the sale price was not taken into consideration with respect to the enforcement of the counterfeit provisions, as the legal rule taken into consideration is the extent of availability of the counterfeit product

and the similarity rule affecting the duly registered and adopted trademark.

**Judgment:**

The court convicted the three defendants of the misdemeanors set forth in Article /703/ of the Criminal Law and Article /114/ of Law no. 659/2005; as a result, the fines ranged between LBP 1,000,000 and LBP 100,000, after having merged the penalties and mitigated the imprisonment sentence of the defendants. The court imposed upon the defendants the payment of compensation damages to the plaintiff amounting to LBP 1,300,000.



## CONFERENCES

### Forum on "The Role of Intellectual Property in Stimulating Competition in Businesses and Industries"

Nahas: 7,000 Trademarks Registered in 2010

The Ministry of Economy and Trade, in cooperation with the World Intellectual Property Organization (WIPO) and the Lebanese Franchise Association (LFA), organized a forum entitled "The Role of Intellectual Property in Stimulating Competition in Businesses and Industries" at the headquarters of the Economic and Social Council, on June 28 and 29, 2011. Lecturers included professors and specialists in the field of intellectual property from Lebanon, Arab and Asian countries.

1.3 billion dollars is the value of the trademark of Manchester United.

The Minister of Economy and Trade, Mr. Nicolas Nahhas, stressed in his speech the commitment of the Ministry to develop laws on intellectual property and to conform them to international agreements. He revealed that the Intellectual Property Protection Bureau at the Ministry broke a record in 2010, with around 7,000 trademark registrations, i.e. an increase of 18% compared to 2009.

The consultant to the Minister of Economy, Mr. Roger Melki, revealed in his speech that the revenue of the intellectual property sector in Lebanon registers around one billion US dollars annually, i.e. 2.5% of the national product. Melki added that «about 6,000 institutions and 23,000 persons work in this sector, i.e. 2.1% of the labor market in Lebanon.»



The Director of Small and Medium Enterprises (SMEs) Division in (WIPO), Mr. Guriqbal Singh, pinpointed the importance of franchising of

businessmen and small and medium enterprises and the importance of intellectual property with respect to the growth of businesses and industrial development in the knowledge economy.

The representative of WIPO, Mr. Amer Abdul-Aziz lectured on the means of utilizing intellectual property in the development of the economy, through the provision of necessary licenses, the monitoring of franchise rights and the pursuit of commercial exploitation. In this regard, he revealed that the value of the trademark of Manchester United reached 1.3 billion US dollars.



Josiah Young, specialist in Intellectual Property and managing director of Clyde & Co LLP, elaborated on the main conditions in concluding a successful franchise agreement, namely quality assurance, development rights, exclusive rights, geographical domain, timeframe, terms of use, protection and advertisement of the trademark. Young encouraged the settlement of conflicts and the amicable termination of contracts since resort to arbitration, despite being a useful mechanism, collides with the issue of implementation of the arbitration awards in the Middle East, whereas the resort to the local courts system involves a lengthy time frame.

"Arab Governments Forum on Intellectual Property and Cybercrimes"  
Safadi: "Lebanon will Adhere to Internet Treaties"

The Ministry of Economy and Trade, in cooperation with "Business Software Alliance - Gulf Region", organized "the Arab Governments Forum on Intellectual Property and Cybercrimes" held at the Phoenicia Hotel on the 26th and 27th of April 2011, on the occasion of the World Intellectual Property Day.

At the opening session, the Minister of Finance, Minister of Economy and Trade then, Mr. Mohamed Al Safadi assured that: "Lebanon, based on its commitment to cope with the international digital revolution through legislations protecting copyrights, is working towards adherence to the internet treaties: WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT)".

Safadi added that: "These two intellectual property treaties set international rules aiming at preventing the access to creative works or benefiting from them online without authorization. These two treaties have great importance in promoting the development of electronic commerce and information industries through guaranteeing the quality and validity of the digital content which allows the innovators to yield financial gains due to their talents, creativity and investments".

Safadi : "Lebanon is working towards adherence to the internet treaties: WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT)".

The representative of the WIPO, Amjed Abdul-Ghaffar and the Business Software Alliance Chair - Gulf Region, Jawad Al Reda also delivered welcoming speeches.

During the first session, the Director of the Intellectual Property Protection Bureau, in Lebanon's Ministry of Economy and Trade, Salwa Faour, broached the role of the Bureau in intellectual property protection in Lebanon.

The head of the General Department of Total Quality at the Dubai Police, Major General Abdul-Qodoos Abdul-Razzak Al Obeidli also pinpointed the experience of the UAE's Intellectual Property Organization. On the other hand, the consulting expert Mr. George Ghandour presented WIPO's agenda on development aiming at the inclusion of the developmental dimension in intellectual property protection policies.

In the second session, the president of the Association for the Development of Legal Informatics in Lebanon, Justice Fawsi Khamis, presented a study on cybercrimes in light of the Lebanese Law and jurisprudence, and the President of the Cybercrime Office at the Judiciary Police, Major Elie Bittar elaborated on the method of usage of high technology in combating crimes against intellectual property. Attorney Walid Nasser shed the light on the obstacles facing the implementation of intellectual property protection law in Lebanon in the field of computer software.

In the third session, Colonel Abdullah Abdul Rahman Bin Sultan presented the experience of the Dubai Police in the protection of copyrights of the employee, being a strategic value. The president of the Lebanese Association for Information Technology, Dr. Mona

Jabbour discussed the legal aspects of safety and security in cyberspace.

Attorney Walid Abou Farhat explained the importance of collective management in combating piracy through digital technology in light of intellectual property laws.

2.5% of the national product is constituted from the income of the intellectual industry sectors in Lebanon.

The fourth and final session included a presentation of the efforts exerted by the Ministry of Economy in the UAE to combat piracy, presented by the head of Copyrights Department at the Ministry of Economy, Mr. Fawzi Al Jabiri. The representative of the Ministry of Culture and Information in the Kingdom of Saudi Arabia, Mr. Ahmed Bin Eid Al Hayout discussed the means of statutory

protection of computer software in KSA.

The Forum's sessions were concluded by a presentation of the director of Intellectual Property Protection Bureau in Egypt, Mr. Mohamed Hijazi, on the economic value of intellectual property rights in light of procedures and experiences. Attorneys Rany Sader and Nisrine Haddad represented Sader in the forum.

No comment!



Sale of Medications on Motorcycles

## INTERVIEW

### Sader: "Chalk in Medications... and Toys Exposing Children to Cancer"

04/03/2011 – in an interview at "Sawt Al Mada"

"The value of international trade in counterfeit products exceeds a trillion or a thousand billion US dollars" explains Attorney Rany Sader, specialized in the field of Intellectual Property and legal representative of international companies in matters relating to Intellectual Property. He describes this phenomenon as "The economic cancer".

Mr. Sader linked the reasons behind the counterfeit of products to many elements, the most important of which being the interest of the dealer in the profit, exceeding that of the product itself and the consumer society seeking the acquisition of luxury items that are not within reach, in a world described as a global village with the advent of development in technologies facilitating communication.

Mr. Sader gave examples of the used raw materials and counterfeit products

manufactured by children below the age of 5 or 6, causing their exposure to cancer: chalk in medications, corrupt substance in heart medications, sawdust in food like soup, non potable water..."

Among the examples given by Mr. Sader, we cite: "car parts, aircraft parts of which 520 thousand parts are sold approximately yearly, electrical equipments for home or personal use, medications constituting 5% of the global trade in counterfeit products, clothing which occupies 20% of the European Market, cosmetics whose value had reached 210 million US dollars two years ago in the Gulf, cigarettes whose rate reached 50% in Sweden, while China exports 190 billion counterfeited cigarette yearly."

Mr. Sader insisted upon the necessity of distinguishing the corrupt goods from counterfeit products, and gave the consumer certain instructions in order to detect counterfeit products, of which: "the price that could constitute an element of evidence, the colors of the product,

the quality of the printing, typographical errors, images, similar names, quality of used covers, smell and shape of foodstuff".

Mr. Sader stressed on the cooperation of the concerned parties including the Ministry of Economy, judicial bodies, censorship authorities and the civil community, with the exception of "Customs in the Ministry of Finance refusing to sign agreements with international medication and foodstuff companies to train its personnel, despite having signed a cooperation agreement with certain tobacco companies aiming at protecting their interests since tobacco, unlike consumable goods, represents an important income for the treasury, which is apparently more important to the Ministry than the health of nationals."

"Customs in the Ministry of Finance refuse to sign agreements with international medication and foodstuff companies to train its personnel"

**“Beware of Counterfeit” Campaign  
Winner of the “Silver Lion” Award in “Cannes Festival”**



“Beware of Counterfeit! The closest things can be fake”, the campaign launched by Brand Protection Group - Lebanon (BPG) and organized by “Leo Burnett”, a pioneer in the field of advertisement, having won the “Silver Lion” Award at the Cannes Festival, one of the major and most important awards in the field.

**The campaign reached 92% of the Lebanese population.**

The campaign included a video clip in which a lady suspects that her husband is “fake” after having asked to spend the day with her parents. The campaign also included advertisements published in newspapers, magazines and billboards on roads.

On March 15th, 2011 during the World Anti-Counterfeit Day, Lebanon witnessed the biggest advertising stunt known to the Middle East, using conventional and unconventional media means. The most read and widespread newspapers in Lebanon published their issues with fake logos on their front page, and asked their readers to contact 1739 if they spot anything unusual in the newspaper logo.

The journalist Marcel Ghanem also participated in the campaign by broadcasting a fake introduction of the talk show “Kalam El Nass”, where another person, looking very much like Mr. Ghanem, imitated his way of talking and his movements. Hosts of renown radio shows in “Radio One”, “Inter Radio”, “Sawt El Ghad” and “Nostalgie” participated as

well.

The social networking service Facebook was also used as a medium for the campaign, where pages of 250 influential personalities of the Lebanese community were faked, with mere modifications to their titles, names or pictures. Visitors were requested to verify if these pages were real or fake. Furthermore, a large number of young people wearing the logo “Beware of Counterfeit” were sent to commercial center t City Mall where they imitated passers-by.

**1739 call center witnessed an increase of 850% after the campaign.**



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