

UNIVERSITY OF NAIROBI

DEPARTMENT OF SOCIOLOGY

**THE EFFECTS OF CONTROL MEASURES ON PREVENTION OF TRADE IN
COUNTERFEIT ELECTRICAL GOODS IN NYAMAKIMA NAIROBI.**

**A RESEARCH PAPER PRESENTED IN FULFILMENT OF THE
REQUIREMENTS FOR THE AWARD OF A MASTER OF ARTS DEGREE IN
SOCIOLOGY (CRIMINOLOGY)**

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OCTOBER 2010

DECLARATION

DECLARATION BY CANDIDATE

I, hereby declare that this Research Project is my original work and has not been submitted for examination in any other University

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DEDICATION

First and foremost, I wish to dedicate this work to God Almighty for giving me the strength and resources to complete this self-sponsored programme. To my parents who sacrificed a lot to ensure that I received the best education that they could afford. To my loving and wise father who taught me the value of education since my early days, I wish to say a big thank you. May God bless you abundantly with more knowledge. To my caring mother, for not losing faith in me especially during my most trying moments when I almost gave up on the course.

I also wish to dedicate this work to my two siblings, for constant encouragement and advice, which ensured that I did not lose focus throughout the duration of the programme. Their words of encouragement kept me going even when the challenges seemed too hard to overcome. Finally, I wish to dedicate his work to my classmates for being such good companions throughout this long and intellectually stimulating journey.

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ABBREVIATIONS

TRIPS	Trade-Related Aspects of Intellectual Property Rights
WTO	World Trade Organization
KRA	Kenya Revenue Authority
GoK	Government of Kenya
OECD	Organization for Economic Development
SI	International System of units
KEBS	Kenya Bureau of Standards
PVOC	Pre-Verification of Conformity
S-Mark	Standardization Mark
NEP	National Enquiry Point
T.B.T	Committee on Technical Barriers to Trade
IPR	Intellectual Property Rights
WIPO	World Intellectual Property
BASCAP	Business Alliance to Stop Counterfeiting and Piracy
WCO	World Customs Organization
EAC	East Africa Community
COMESA	Common Market for Eastern and Southern Africa
KIPI	Kenya Intellectual Property Institute
KACA	Kenya Anti-counterfeit Agency,

ABSTRACT

Counterfeiting is a global concern since it impacts negatively on innovation and poses a threat to the welfare of consumers. It also lowers tax revenues, increases the cost of implementing anti-counterfeiting measures and contributes to substantial resources that are channeled to criminal networks. Counterfeiting also affects business by impacting on sales and licensing, brand value and firm reputation and the ability of firms to benefit from the breakthroughs they make in developing new products. Consumers too are affected by the significant health and safety risks that substandard counterfeit products pose to those who consume the items. The Kenya Association of Manufacturers (KAM), estimated that counterfeits costed local companies more than Sh50 billion in 2008 while the government lost Sh19 billion in taxes due to the manufacture and sale of counterfeit goods. This study sought to assess the effects of control measures on the prevention of trade in counterfeit electrical goods in the Nyamakima area of Nairobi Central Business District.

The site of the study was Nyamakima area in downtown Nairobi which is to the East of the C.B.D. and is positioned in between Kirinyaga and River roads and is also part of the Grogan area. The site consists of mainly retail and wholesale businesses dealing in electrical products, textiles, automotive spare parts and stationery that are patronized by consumers from the middle and low end of the income brackets. A sample size of 32 persons was chosen purposively from traders of electrical goods in shops located in Nyamakima area. The study revealed that 41 percent of participants dealt in electrical items for single phase while 34 percent dealt in electrical fittings and appliances with the rest (25 percent) dealing in domestic electrical items. The most popular electrical items according to respondents were Philips fittings including bulbs and tubes represented by 44 percent followed by foreign brands of switches and sockets at 41 percent and lastly a mix of East African Cables, electrical pipes and imported cables at 15 percent.

About 69 percent of the respondents sourced their stock of electrical items mostly from China and Dubai followed by 28 percent who sourced from local manufacturers, distributors and wholesalers while 3 percent sourced their stock from Europe. Majority of

the respondents (66 percent) have handled non genuine imported electrical brands while 31 percent have handled non genuine Lorenzetti showers and immersion heaters. Only 3 percent of the respondents indicated that they have not handled non genuine electrical items of any type. Many of the respondents totaling 60 percent indicated that they sold counterfeits in cases when customers demanded for cheap and affordable items while 16 percent of the respondents did not indicate any reasons for selling such items. A few respondents (12 percent) said that they sold counterfeits when genuine items were out of stock while a similar number (12 percent) sold the items either when they failed to differentiate between genuine and counterfeit items or when they required to recover costs.

The study also revealed that legal measures were not effective in preventing trade in counterfeit electrical goods, as evidenced by those respondents who rated poor (56 percent) and those who rated very poor at 35 percent. Similarly, KRA was rated poor and very poor by 44 percent each of the respondents. A majority of respondents (72 percent) also rated KIPF's performance as very poor. About 84 percent of the respondents revealed that they did not often encounter anti counterfeit officers in their business practice while 16 percent never encountered the officials. Out of the 22 respondents who indicated they were told by enforcers that their stock was not genuine, 14 bribed officers while 4 did not bribe the officers. Only 10 respondents indicated that they were not told by enforcers that their stock was not genuine and therefore did not bribe officers.

This study found that with regard to strategies to strengthen control measures, 25 percent of the respondents recommended seizure and destruction of counterfeit electrical items while another 25 percent proposed the enforcement of laws. The rest of the respondents recommended strengthening control measures through increasing sensitization and education of stakeholders (22 percent), increasing capacity of agencies (16 percent), constantly reviewing legal instruments (9 percent) and making genuine products affordable (3 percent).

Important recommendations offered in this study include the government to ensure that the legal instruments available are reviewed constantly so that they are punitive and deterrent in nature. The enactment and operationalization of the Anti-Counterfeit Goods

Act of 2008 is therefore the recommended way forward. The government should also sensitize and educate law enforcement agencies, the public, right holders and the users on the importance of protecting and enforcing intellectual property rights. The capacity of KIIBS and KRA in terms of resources and personnel should be increased in order for them to play a vital role in ensuring that inspection is done on goods on transit to avoid dumping of substandard goods into the country.

CHAPTER ONE

INTRODUCTION

1.1 Background

Counterfeits can be defined simply as “look-alikes” that resembles the genuine items in appearance and packaging, but which contain substandard or no ingredients of the genuine items. According to the Organization for Economic Co-operation and Development (OECD) counterfeiting is a term used to describe a range of illicit activities linked to Intellectual Property Rights (IPR) infringement (OECD 2007). In Kenya counterfeiting is taken to mean the manufacturing, production, packaging, re-packaging, labeling or making of any goods to mimic or pass as genuine. In other words, genuine goods are imitated in such manner and to such a degree that those goods are identical or substantially similar or calculated to be confused with or to be taken as being the genuine goods. Such goods may also be unlicensed and lack the authority of the owner of any intellectual property right (CIPO, 2008).

Counterfeiting is currently a global concern and Governments are mainly concerned about counterfeiting because of the negative impact it has on innovation and the threat it poses to the welfare of consumers. Other reasons are lower tax revenues, the cost of implementing anti-counterfeiting measures which include responding to public health and safety consequences and corruption. In addition, counterfeiting contributes to the substantial resources that are channeled to criminal networks, including organized crime, terrorism and other groups that disrupt and corrupt society (Keplinger, 2009)

Counterfeiting also affects business by impacting on sales and licensing, brand value and firm reputation and the ability of firms to benefit from the breakthroughs they make in developing new products. Consumers are affected by the significant health and safety risks that substandard counterfeit products pose to those who consume the items (Keplinger, 2009). Specifically, consuming counterfeit products has been associated with accidents and job losses among other negative influences. Counterfeits do not meet the quality possessed by genuine products, most often fail to function as expected and this results in accidents. Counterfeit products lower sales of the genuine product due to their

low price and therefore make firms not to receive expected revenue from their innovations thereby employing fewer personnel

Counterfeiting is a longstanding problem which is growing in scope and magnitude globally (Keplinger 2009). According to the International Chamber of Commerce, international trade in counterfeit goods has grown 10, 000 percent in the last two decades to an estimated \$650 billion each year (Radebe, 2007; Hardy, 2009; Patton and Onyango, 2009). According to the World Customs Organization (WCO), which groups 174 customs administrations who collectively administer 98 percent of international trade, counterfeiting accounts for about 7 percent of global commerce. Counterfeit goods are often produced on an industrial scale (WCO 2009). According to research by the European Commission, the trade in some counterfeit goods is more profitable than drug trafficking (Patton and Onyango, 2009).

Some estimates suggest that counterfeits comprise 30 to 40 percent of the total trade in Africa. Africa's growing trade with South East Asia, the world's largest producers of fakes has already triggered a surge in counterfeit goods across the continent. For instance trade between China and Africa hit \$106.8 billion in 2008, reflecting a 30 percent growth since the turn of the millennium, according to Chinese government data (Patton and Onyango, 2009). Heightened scrutiny of counterfeit goods in Europe and the United States makes the situation worse for the region and the continent since the penalties in Africa offer little, if any, deterrence to sophisticated criminal networks with fines in some markets amounting to less than \$10 (ibid).

Almost Sh70 billion was lost in Kenya as a result of counterfeits in 2008. According to the Kenya Association of Manufacturers (KAM), counterfeits cost local companies more than Sh50 billion in 2008 with the government losing Sh19 billion in taxes during the same period due to the manufacture and sale of fake goods (Kibiwott, 2009). Among the critical products being counterfeited and which have found their way into the local market include electrical fittings, electronic equipment, processed foods, alcoholic beverages, medicines, pharmaceutical products, sanitary towels and optical lenses. Some

counterfeit products surprisingly even have the Kenya Bureau of Standards (Kebs) quality mark

Counterfeiters usually target fast moving consumer goods although the coverage is also expanding towards many other sectors (OECD 2007). Although counterfeit products may appear as excellent copies of the genuine product, investigations have shown that many of these products are often made using inferior materials. In addition, counterfeiters avoid key manufacturing steps thereby producing substandard products that fail to pass minimum safety tests. These practices enable counterfeiters to reduce the cost of their products thus, allowing them to be sold at prices no genuine brand manufacturer can match. Detection based on appearance can be difficult, and may only be determined by opening suspicious products and performing tests.

Counterfeit electrical goods in Kenya mainly originate from South East Asia. Consumers of these products either purchase them knowingly or unknowingly. The ready availability of the counterfeit electrical gadgets is suspected to be the cause of frequent unexplained fire outbreaks especially in the slum areas. In Nairobi for instance the Nyumakima area is the major source of electrical products sold in the city and its environs. A large proportion of these products are believed to be counterfeits.

1.2 Problem Statement

Trademark counterfeiting is rampant in the electrical goods trading sector. Counterfeiters tend to target well-known industrial and consumer brands, and registered certification marks of testing and certification laboratories. Examples of these well-known brands are Phillips, Mems, Umbtree and Clipsal electrical products.

The electrical products seized as counterfeits are predominantly consumer items, including power strips, surge protectors, extension cords, and batteries. However, shipments of counterfeit components used in power distribution including transformers, switchgears, motors, gas and hydraulic turbines have been found. Others are turbine generator sets, contacts, timers, fuses, distribution boards, wiring accessories, circuit

breakers and industrial control relays. Lamps and electronic lamp ballasts, smoke detectors, receptacles, ground-fault circuit interrupters, conduit fittings, telecommunications cables, and electrical connectors have also been found (OECD 2007).

These fraudulent products pose serious financial and legal liabilities to the electrical product industry, and they have become a grave safety crisis for consumers. Undetected counterfeit electrical products such as circuit breakers, batteries, extension cords and surge protectors can cause fires, shocks, explosions and electrocutions thereby causing death, injury and substantial property loss in the home and the workplace (OECD 2007).

Counterfeit electrical products may contain inferior materials, with little or no concern for consumer and workplace safety. This causes the products to overheat or cause short circuits and lead to fires, shocks or explosions. Examples of defects found in counterfeit electrical products include counterfeit batteries that when used fail to prevent explosion in electronic products when mistakenly installed backwards. Counterfeit power strips marked for 12-gauge wire have been found to actually contain 24-gauge wire and tend to catch fire under normal use. Counterfeit circuit breakers that looked indistinguishable from a known branded breaker have been found to have nothing but a switch inside (OECD 2007).

Inadequate consumer awareness on counterfeits and substandard goods and ignorance by individuals and society on the negative effects posed by these products have been reported as obstacles to a government-led fight against unscrupulous importers (Wako 2007). Counterfeiting thrives because consumers are attracted by the cheap prices without worrying about quality.

Kenya is a member of and a signatory to most major international and regional intellectual property conventions. These include the World Intellectual Property Organization (WIPO), the African Regional Industrial Property Organization, the Paris Convention on the Protection of Industrial Property, and the Berne Convention on the

Protection of Literary and Artistic Works (Waku 2007). Despite this, the war against counterfeits in Kenya has been beset by several challenges. These include the lack of sufficient resources by regulatory authorities and lack of capacity among investigators, law enforcers, prosecutors and judicial officers and general lack of knowledge and information on intellectual property laws by dealers and consumers (Waku 2007).

Consumers of these products lack capacity to detect counterfeit electrical products and also suffer from weaknesses in consumer protection laws. They also face economic pressures which force them to minimize expenses when purchasing such products. Dealers are able to import counterfeit electrical products due to corruption and weak controls at the country's entry points. Subsequently, genuine products face unfair competition from the cheaper counterfeits.

However, Kenya is at risk of losing the war against imported counterfeit goods as experts warn that the global economic slowdown since 2008 has provided opportunities for the illicit trade to thrive in Africa, the preferred sales destination for the copy cats. A weak purchasing power among consumers is said to fuel demand for fake goods but Kenya, like most African countries, is more exposed because of porous borders, weak or nonexistent intellectual property laws and low consumer awareness (Patton and Onyango, 2009).

Trade in counterfeit electrical products thrives in Nyamakima area despite Kenya having institutions charged with setting and enforcing quality standards for all the goods including electrical products entering the country. A visit to the area which houses most of the wholesale and retail electrical outlets in Kenya reveals massive trade in counterfeit electrical products. This scenario has been met by the researcher during normal course of business as sales personnel in the area. The researcher has also noted that the Kenya Bureau of Standards, the Kenya Revenue Authority and Kenya Association of Manufacturers have recently been carrying out raids to seize such products but this has not deterred this lucrative business.

Considering the rampant trade in counterfeits in the Nyamakima area of Nairobi despite the extensive moral and legal mandate of these institutions to protect consumers of electrical products from counterfeit and substandard imported electrical products, it is critical to examine to what extent the control measures have deterred trade in counterfeit electrical products in this area. This study therefore sought to investigate the effects of control measures on prevention of trade in counterfeit electrical products in Nyamakima area of Nairobi. The study was guided by the research question:

To what extent have the Control Measures deterred trade in counterfeit electrical goods in Nyamakima area in Nairobi?

1.3 Objectives of the Study

1.3.1 General Objective

The main objective of this study was to assess the effects of control measures on the prevention of trade in counterfeit electrical goods in the Nyamakima area of Nairobi Central Business District (CBD)

1.3.2 Specific Objectives

1. To describe the nature of trade in counterfeit electrical goods in Nyamakima area of Nairobi CBD.
2. To identify and analyse the control measures established to prevent trade in counterfeit electrical goods in Nyamakima area of Nairobi CBD.
3. To assess obstacles to prevention of trade in counterfeit electrical goods in Nyamakima area of Nairobi CBD.
4. To identify the strategies used to overcome the obstacles to the prevention of trade in counterfeit electrical goods in Nyamakima area.
5. To evaluate the appropriate strategies to strengthen the control measures to prevent trade in counterfeit electrical goods in Nyamakima area of Nairobi CBD.

1.4 Rationale

Counterfeits hurt the economy, manufacturers and the consumer in terms of uncollected taxes, loss of revenue and also loss of money because counterfeit goods are not durable. Infringements undermine the ability of right holders to recover their investment costs and/or otherwise benefit from their innovative or creative work. The study adopts a multi dimensional approach in order to understand the problem from different angles. That is, it explores the trader, consumer and the authority dimensions of the phenomenon and the outcomes would assist to tackle the problem holistically. Documents available in the country tackle the problem of trade in counterfeits broadly and do not focus on trade in counterfeit electrical goods specifically. This information is therefore not sufficient to explain this problem.

The study therefore aimed at promoting incentives and disincentives thereby opening up this area for trade which is compliant to regulations set out by the government. On a global level, the problem is too great to be solved by individual governments, enforcement authorities, business sectors or companies (Clark, 2009). Counterfeiting enforcement requires law enforcement , governments at all levels, the private sector and international partners to work closely together to effectively target this crime.

The Nyamakima area was selected because it is an important part of the distribution chain for electrical products being used in Nairobi and surrounding areas and elsewhere in the country. There are many shops in the area that deal in electrical products at both retail and wholesale levels. In some parts of Nyamakima one can find entire streets with shops exclusively dealing with electrical products. Bearing in mind that the construction industry is currently very vibrant, there is a possibility that buildings and their occupants are put at risk through the use of counterfeit electrical products. Taking into consideration that there are a lot of alleged illegal activities going on in this area including sale of stolen automobile spare parts and unlicensed businesses operating behind legal businesses, the conditions here justified a study on the counterfeits. No known study has been conducted in the area focusing on counterfeit electrical products.

1.5 Scope and Limitations

This study involved 32 traders in electrical products in the Nyamakima area and the purpose for this was to investigate their awareness and attitudes to counterfeits and legal preventive measures. The study also involved six officials, one each from the Kenya Revenue Authority, Kenya Bureau of Standards, City Council of Nairobi, Kenya Anti-counterfeit Agency and Kenya Intellectual Property Institute which are institutions tasked with enforcement of the law.

The study focused on the Nyamakima area which has the largest concentration of business outlets dealing with electrical products in the Nairobi CBD. A limitation for the study was that traders feared to divulge information concerning the source of their merchandise and if they handled counterfeit products for the fear of being arrested by the authorities concerned. This was overcome by clearly stating the purpose of the study and assuring respondents that the researcher was not going to record their names or that of their businesses and that the information provided would be used only for academic purposes.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter presents a review of literature related to the objectives of the study. It gives a general background of counterfeiting both globally and in Kenya and reasons why counterfeiting continues to thrive. The control measures put in place and their impact in preventing trade in counterfeit electrical products are also discussed. Literature from related studies has also been reviewed while conceptual and theoretical frameworks are provided to aid in the analysis and interpretation of data on the phenomenon of counterfeiting.

2.1.1 Evolution of Counterfeiting

The general information about product counterfeiting is to be found mainly in the press as well as in trade magazines as well as in reports published by industry alliances or government organizations (Staake et al, 2009). However there is a dearth of literature concerning counterfeiting in Kenya and Africa in general. General counterfeiting information about Africa and Kenya specifically is mainly found in the press, from Kenya Association of Manufacturers and the Ministry of Trade and Industry. Globally, knowledge on the mechanisms and structure of the illicit market, the tactics of counterfeit producers, consumer behavior with respect to imitation products and the financial impact on individual companies is still rather limited (Staake et al, 2009).

The overall degree to which products are being counterfeited is unknown due to the clandestine nature of activities, the general lack of indicative data and the difficulty in detecting counterfeit products (OECD, 2007). However, counterfeiting has been recognized as a significant and growing problem worldwide, occurring both in less and more developed countries (Matos et al, 2007). Product counterfeiting in particular has developed into a severe threat to companies and consumers alike (Staake et al, 2009).

On the world scale, this occurs through negating the research and development efforts of manufacturers, fair trade, commercial competition and the security of employment in many sectors of the world economy (WCO, 2009). Companies are likely to face a loss of

revenue owing to substitution effects by illicit goods and constraints on product pricing (Montoro-Pons and Cuadrado-Garcia, 2006). Substandard imitation products that are difficult to distinguish from genuine goods can diminish the level of quality associated with a product or a company. Other effects are considerable enforcement costs in cases of counterfeit occurrence, expensive product recalls, potential liability claims in cases of counterfeit of health and safety hazards for consumers, consumer confusion and brand dilution (Staake, R. et al. 2009).

Although counterfeiting is a world wide problem, Asian countries are notorious as the world's worst violators of intellectual property rights. China has built a reputation as the leading exporter of counterfeit goods to the world. More than 60 percent of counterfeit products seized by US authorities in 2003 were produced in China (Cheung and Prendergast, 2007; Trott and Hoecht 2007). However, significant anti-counterfeiting efforts are concentrated in China. For example, Chinese customs seized 330 million counterfeit goods in 2007, an increase of 87 percent on 2006 (OECD 2007; Patton and Onyango, 2009). The Chinese government is active in its pursuit of intellectual-property violators, but with such a vast, populous and rapidly industrializing nation to police, it is difficult to apprehend and prosecute criminals.

Electrical products play a vital role in the building and construction industry in Kenya. Both construction companies and individuals undertaking personal construction need to install electricity in the buildings after construction is complete. This calls for the purchase of electrical products and the sourcing of these goods brings to the fore the presence of counterfeit electrical products in the shops. Purchase of these counterfeit electrical products imposes a negative effect on the country's economy.

2.2.0 Anti- Counterfeiting Control Measures

2.2.1 Legal Measures in Kenya

In the administration of criminal law, the role of courts is to protect the society from the harmful acts of criminals through meting out of punishments. Laws pertaining to counterfeiting in Kenya originate from Acts of Parliament or Statutes, the Kenya Constitution and International Treaties and Conventions. (Dwonwong'a, 1994).

Before the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) was negotiated in the 1986 – 94 Uruguay Round of the World Trade Organization (WTO), there were no mandatory provisions on the enforcement of intellectual property law at the international level (Ramappat, 2000; Wako, 2007). Enforcement was done at the national level and therefore national laws in Kenya like the Industrial Property Act of 1989, the Trade Marks Act of 1995, The Copyright Act of 2001, the Trade Descriptions Act of 2002, The Seeds and Plant Variety Act and the Weights and Measures Act of 1988 were utilized. Other laws used to fight counterfeiting are the Penal Code, Criminal Procedure Code, the Evidence Act, the Civil Procedure Act and the Customs and Excise Act now known as the East African Customs Act (Wako, 2007). The recent entrant to the above is the Anti Counterfeit Act of 2008.

The Industrial Property Act of 1989 (revised in 2001) and the Copyright Act of 2001 were passed to accommodate the TRIPS agreement. The Industrial Property Act of 2001 created an independent statutory body called the Kenya Industrial Property Institute to consider applications for and grant industrial property rights among other roles. The Act also provided for a maximum fine of Kshs. 50, 000 or five years in jail or both. These criminal sanctions for infringement were neither punitive nor deterrent. The Copyright Act of No 2001 came into operation in February 2003 and makes provision for both civil remedies and criminal sanctions for copyright infringement in literary, musical and artistic works, audio-visual works, sound recordings, broadcast and connected purposes. The maximum fine payable under this Act is Kshs. 800, 000 and a maximum jail term of 10 years.

The Weights and Measures Act of 1988 provides for the amendment and consolidation of the law relating to the use, manufacture and sale of weights and measures and to provide for the introduction of international system of units (SI). Section 2 of Chapter 513 provides for inspection in relation to weights and measures or measuring instrument to be an examination of the weight, measure or measuring instrument by an inspector with the object of checking that it has not been modified after verification and that its stamp is valid. The punishment for selling or causing the sale of such false measuring instruments is a maximum fine of Kshs 20, 000 or a maximum jail term of 3 years or both.

The Trade Descriptions Act of 2002 is the most relevant since it places severe sanctions specifically against counterfeiting. It prohibits misrepresentations of goods and services, accommodation and facilities provided in the course of trade, prohibits false or misleading indications as to the price of goods; confers powers to require information or instructions relating to goods to be marked on or to accompany the goods or to be included in the advertisements. According to Section 8 of Chapter 505, trade descriptions "means any of the following matters with respect to any goods or parts of goods a) Identity and quantity; b) Size or gauge; c) Method of manufacture, production, processing or reconditioning; d) Composition.

Section 7 of the same Act prohibits the importation of goods bearing fake indication of origin and provides that no person shall import into Kenya:

- (a) Any goods to which there is applied a trade description which contains a direct or indirect reference to any country, town or place in which the goods were not manufactured or produced or;
- (b) Any goods which bear the name of any manufacturer, dealer or trader in Kenya, unless there is added to that name in a conspicuous manner, the name of the country in which such goods were made or produced and the name of the manufacturer of the goods in that country. Section 15 provides for punishment of a fine of Kshs. 2 million or maximum jail term of 2 years or both fine and imprisonment. Section 21 (1) to (4) enables an inspector to inspect any goods, premises if he has reasonable cause to suspect that an offence under this Act has

been committed and seize or enter by force to seize and detain any goods and documents by warrant from a magistrate.

From the foregoing we note that among all the other Acts, the Trade Descriptions Act of 2002 apart from placing severe sanctions proves to be most useful and particular for offences like trade in counterfeit electrical goods. It traces the goods from the point of manufacture to entry into the country and finally at the point of sale to consumers.

The Anti-Counterfeit Act of 2008 which is not yet operational is expected to contribute immensely towards the reduction of trade in counterfeit electrical goods. It imposes stiffer penalties for offenders and empowers the agency concerned to destroy counterfeit goods and educate the public on the dangers of consuming counterfeit goods.

Interpretation of the above laws is conducted by criminal courts which are entrusted with hearing of cases related to offences in breach of anti-counterfeit laws. These courts are the Subordinate courts of the First Class chaired by the Chief Magistrate, Senior Principal Magistrate and Resident Magistrate. The Attorney General is the principal legal advisor to the government and is the chief public prosecutor with the role of drafting bills and presenting them to Parliament. The Attorney General also advises all government agencies like the police department in prosecution of criminal cases. Agencies like KRA and KEBS rely on the police department for arrest and prosecution of suspects involved in trade in counterfeit electrical goods.

The government has in place measures that are geared towards controlling counterfeiting by establishing and operationalizing institutions such as the Kenya Bureau of Standards which ensures that products entering the consumer market from within and outside are not counterfeits through the use of the standardization marks. The Customs Department restricts entry of counterfeit goods into the country by seizing and destroying such goods while the Kenya Industrial Property Institute, Weights and Measures Department and the Enforcement and Monitoring Unit of KRA ensure that counterfeiting is fought from all sides.

2.2.2 Kenya Bureau of Standards

The Kenya Bureau of Standards (KEBS) is the national standards organization in Kenya performing the functions of promoting standardization in industry and commerce, providing facilities for testing of commodities and any material substance from or with which and the manner in which they may be manufactured, produced, processed or treated and controlling the use of standardization mark and distinctive marks. The two marks that KEBS uses to ensure that goods meant for Kenyan consumption are of good or accepted standards is the Pre-Verification of Conformity (PVOC) and the Standardization Mark (S-Mark) which is a symbol of credibility for imports and is a powerful marketing tool which ensures that products conform to local and international standards.

The Quality Assessment and Inspection Department of KEBS does market surveillance for both local and imported products and also handles quality related consumer complaints. The National Enquiry Point (NEP) is another department which is charged with the role of issuing notifications to the WTO Secretariat on issues such as statements of implementation and administration of the agreement, bilateral or plurilateral agreements and handling enquiries on standards, technical regulations and conformity assessment procedures. Other roles of the NEP are the provision of information on standards, standards related documentation, technical regulations or rules and conformity assessment procedures. The role of KEBS is however a positive effort towards detection of counterfeit electrical goods in the Kenya Consumer Market. The KEBS Act provides for seizing of counterfeit electrical goods like cell batteries and electrical appliances and preferring charges against perpetrators.

2.2.3 Kenya Revenue Authority

Kenya Revenue Authority's (KRA) customs department plays an important role in the fight against counterfeit goods through border measures to restrict entry of such goods into the country. Counterfeit goods originate from countries with weak intellectual property laws and enforcement mechanisms and are exported to countries that have a high demand for the goods (Wako, 2007). The Customs Department through the

Customs Act can search for, seize and destroy prohibited goods which infringe intellectual property laws.

The department however faces challenges such as difficulty in spotting the difference between counterfeit and genuine goods due to increased similarity as a result of technological adjustments that easily produce logos, designs, packaging and even certificates of authenticity. One of the ways of going around this problem is to have background knowledge contained in the application. A drawback to these efforts has been attributed to collusion by some officials in customs to allow counterfeit goods into the country.

2.2.4 Private/Public Partnerships

The Enforcement and Monitoring unit of KI BS that deals with counterfeiting, works with other law enforcement agencies such as the Police, Weights and Measures department, KI BS, Kenya Industrial Property Institute, the Copyright Board and rights holders in the private sector such as KAM. Indeed it has been confirmed that Kenyan borders and ports are porous thereby allowing counterfeit goods into the country and this has resulted in KI BS's failure to stop manufacture and importation of counterfeit goods into the country (The Standard Newspapers of 19th January and 10th June 2009).

KI BS has come under immense criticism from different sectors among them the Kenya Association of Manufacturers (KAM) which has noted a high proliferation of counterfeit products and low cooperation from KI BS especially in the protection of trade marks (The Standard Newspapers of 19th of January 2009 and 10th June, 2009). According to KAM, PVOC' and S-Mark increase the cost of doing business by manufacturers in Kenya by 15% through wastage of a lot of time to get raw materials from overseas. Secondly, KAM is of the opinion that tests conducted by KI BS are not satisfactory due to testing as per Kenyan Standards instead of comparing with genuine products, the way it is done by the Government Chemist.

Manufacturers through KAM have led the way in lobbying for serious government participation in addressing trade in counterfeits including electrical goods. In addition, KAM regularly uses advertisements to sensitize the public against consumption of counterfeits. Such advertisements are aired on Television, radio and outdoor roadside billboards. However, these efforts seem to be ineffective considering the continued purchase of counterfeit products.

2.3.1 Global Anti-Counterfeiting Efforts

Product counterfeiting has been around for years and is considered as a major infringement in the intellectual Property Rights (IPR). IPR constitute intangible assets that are similar to other assets. The ownership of these intangible assets tends to provide a vital competitive advantage that is based on the right to use and to prevent others from using the intellectual property in question. The immediate purpose of intellectual property rights is to stimulate the generation and diffusion of intellectual contributions by providing monopoly gain to its creators.

The essential functions of IPR laws are to protect consumers from deception and confusion, to protect companies from unfair competition, to provide incentives for investment in research and development, to foster industrialization and to encourage direct investments (Schultz, 2002). In order to protect IPRs, and by extension protect against counterfeiting, international conventions were established including preliminary statutes concerning product counterfeiting. Two examples of the conventions were the Paris Convention for the protection of Industrial Property of 1883 and the Berne Convention for the protection of Literary and Artistic Works in 1886. The Madrid System for the International Registration of Marks was instituted to protect trade marks. Subsequently, the World Intellectual Property (WIPO) was formed as a result of these conventions.

2.3.2 International Agreements

In 1994 the World Trade Organization and the World Intellectual Property Organization introduced the Agreement on Trade-Related Aspects of Intellectual Property Rights

including Trade in Counterfeit Goods Bill or the TRIPS Agreement into the multilateral trading system. TRIPS was also introduced due to lack of enforcement power noted after the GATT Uruguay round of negotiations (Trott and Hoecht, 2007). Through this agreement, creators were given intellectual rights or the right to prevent others from using their inventions, designs and other creations, and to use that right to negotiate payment in return for others using them. Such rights include patents or inventions, copyrights for books and paintings, and registered trademarks such as logos of products and brand names.

TRIPS can therefore be seen as an attempt to narrow the gaps in the way these rights are protected around the world and at the same time, bring them under international rules (Ramappa, 2000). TRIPS established the minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. Article 41 of the Agreement recommends members to ensure enforcement procedures specified in part III are available under their law so as to permit effective action against any act of infringement of Intellectual Property Rights (IPRs) covered by the agreement including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. Article 50 of the agreement provides for the judicial authorities to have authority to order prompt and effective provisional measures such as those to prevent infringement of any IPR and also prevent the entry into the channels of goods or importation of goods immediately after customs clearance (Ramappa, 2000).

Currently, governments working with industry have been working through international institutions such as World Intellectual Property Organization (WIPO), Interpol and the World Customs Organization (WCO) to improve enforcement. Industry has similarly stepped up efforts to combat counterfeiting through sector specific groups as well as through more broadly based industry alliances. The International Chamber of Commerce (ICC) created the Business Alliance to Stop Counterfeiting and Piracy (BASCAP) in 2005 to spearhead the global initiative. Industry has also cooperated closely with governments to improve enforcement, taking an active role in organizing the three Global

Congresses on counterfeiting and piracy that were held in 2004, 2005 and 2007 to address issues (OECD, 2007)

2.3.3 Obstacles to Prevention of Trade in Counterfeit Electrical Goods

One of the reasons why counterfeiting continues to thrive is globalization of trade. While globalization has resulted in the lowering of international barriers, it has also created new opportunities for illegal trade. Manufacturers shifting their production operations to developing countries where intellectual property rights enforcement lags behind more developed countries creates an opportunity for counterfeiters by promoting the development of manufacturing capacity in the form of equipment and workforce training. Such opportunities arise in emerging market economies such as Asian Tigers where established multi national companies are forced to create joint venture production with local markets. Some of these companies engage in producing and distributing similar products of inferior quality and without permission to use the royalty owners' trade mark.

The creation of free trade zones where international traders store, assemble and manufacture products that are moving across borders with minimal regulation also creates opportunities for counterfeiting. Apart from allowing parties to disguise the original point of manufacture, these zones can also have goods repackaged with counterfeit trademarks prior to being exported (Clarke, 2009). Linked to the above is the constant advance of technology which allows contract manufacturing plants to recreate any product that a client wants in short time frames and at low costs (Kerplinger, 2009; Wee, Tan et al. 1995).

Another factor is the increased use of the internet to conduct trade in counterfeit goods on an international platform. Online auction sites such as eBay can be manipulated by those bent on misrepresentation and fraud (OECD, 2007). Organized crime networks and syndicates have turned trade in counterfeit goods into a global phenomenon due to the high profits realized relatively low risk of detection and light penalties compared to trade in illegal drugs (Fowe, 2006).

Weak legal measures in existence primarily fuel trade in counterfeit electrical goods in Nyamakina Area. Counterfeiting is widespread because criminals see counterfeiting as “having a low risk of prosecution with light penalties relative to the large profits to be made. Enforcement laws are particularly lax in developing countries such as Kenya since counterfeiting is seen as the problem of the trade mark owner and may be viewed as an underground economy that creates jobs and jumpstarts economic growth. Cross border piracy fuelled by weak or non-existent laws and enforcement mechanisms in various jurisdictions across the region is therefore a major challenge to the war against counterfeiting (Wako, 2007). The general lack of knowledge and information on intellectual property laws is another factor which contributes to failure in prevention of counterfeit electrical trade.

The infringement of intellectual property may partly occur as a result of failure to appreciate the importance of intellectual property due to regarding it as a civil matter and not a criminal offence. Lack of sufficient resources as well as the lack of capacity among law enforcers and judicial officers is another challenge (Wako, 2007). The authorities mandated to fight counterfeit trade have been performing poorly due to poor resource allocation for salaries and equipment. Corruption on the part of relevant government agencies has been blamed for the continued trade in counterfeit goods. The harsh economic conditions drive many members of the public into purchasing counterfeit electrical products with or without their knowledge.

Linked to the above is the issue of identification of counterfeit and pirated products. It is common for customs officials and other mandated authorities to fail to spot the differences between fakes and genuine goods at the point of entry into the country. The identification of counterfeit electrical goods, seizing and preserving them as evidence has also been a challenge due to the nature of counterfeiters in mobility and ability to relocate after destroying any incriminating material (Wako, 2007).

Due to high costs of litigation and extended lengths of time taken to determine lengthy and tedious infringement cases, many right holders opt not to pursue such cases. Lenient punishment such as non custodial sentences or payment of fines encourage offenders to

re-offend (Wako, 2007) and this subsequently increases cases of trade in counterfeit electrical goods.

2.3.4 Strategies to Improve Control Measures

The government must ensure that the legal instruments available are reviewed constantly to ensure that they are punitive and deterrent in nature. The Trade Marks Act, the Industrial Property Act and the Trade Descriptions Act should be amended more often in order to cater for the interests of right holders. In line with the above is the enactment of the Anti-Counterfeit Goods Act of 2008, which is expected to revolutionize legal treatment of counterfeit trade. This is because the Act imposes tough punitive measures to combat the manufacture and trade in counterfeit goods by providing penalties that are pegged onto the retail value of the legitimate goods. The Act also seeks to create an Agency mandated for enforcement and administration of rights while providing Anton Piller Orders which will provide expedient procedures for preserving evidence (Wako, 2007).

Another strategy is for the government to sensitize and educate law enforcement agencies, the public, right holders and the users on the importance of protecting and enforcing intellectual property rights. Institutions such as the Kenya Industrial Property Institute and the Copyright Board are strategically placed to collaborate with industry players and stakeholders to offer sensitization programs. These programs should especially target stakeholders such as customs and police officers, officers from KEBS and Weights and Measures as well as right holders and users through seminars and trainings (Wako, 2007).

A rider to the above is increasing the capacity of KEBS and KRA in order for them to play a vital role in ensuring that inspection is done on goods on transit to avoid dumping of substandard goods into the country. The government will be well advised to work with other countries by entering into bilateral trade agreements like EAC and COMESA to ensure that they come up with new tools of intellectual property and counterfeit enforcement and deterrence. Such agreements will ensure constructive dialogue on

intellectual property rights within the international community to ensure equitable benefits for global and social growth (Wako, 2007).

Counterfeiters target products which have high profit margins, low risks of detection, lighter potential penalties, size of the market and logistical challenges for producing the products (OECD, 2007). There is an enormous demand for counterfeit merchandise which is usually offered at lower price and considered by many consumers to be nearly equal or of better value (Schultz, 2002). A large portion of counterfeit purchase activities consist of non-deceptive counterfeiting where consumers knowingly choose to buy counterfeit products. Many of these consumers perceive no wrongdoing and even perceive this purchase as an economically sound decision (Schultz, 2002).

Research has shown that consumers who perceived more risk in the counterfeits have unfavorable attitudes towards them and those consumers who have already bought a counterfeit have a favorable attitude towards it. Those consumers whose relatives and friends approve their decision to buy counterfeits also have more favorable attitudes. Consumers who considered important values such as honesty, politeness and responsibility tend to have a negative attitude while those who seek accomplishment have a positive attitude (Matos, I. et al. 2007; Wee, I. et al. 1995). Consumers who knowingly purchase counterfeits are influenced by the characteristics of the product concerned, personal values and beliefs and risks and logistical factors (OECD, 2007).

2.4 Theoretical Framework

2.4.1 Control Theory

According to Giddens (2000), Control Theory posits that crime occurs as a result of an imbalance between impulses towards criminal activity and the social or physical controls that deter it. It is assumed that people act rationally and that, given the opportunity, everyone would engage in deviant acts. Many types of crime are as a result of situational decisions or opportunities motivating persons to act.

Travis Hirschi (1969) argued that humans are fundamentally selfish and make calculated decisions about whether or not to engage in criminal activity by weighing the potential benefits and risks. Bonds hold people to society and good behaviour and when strong, they maintain social control by binding people not to commit crimes but if weak, delinquency and deviance occurs.

Some control theorists see the growth of crime as outcome of the increasing number of opportunities and targets for crime in modern society. The presence of goods of value and absence of restrictions offers an opportunity for committing crimes. Target hardening offers a way of preventing such crimes through taking practical measures to control the criminal's ability to commit crime. Control theory is linked to an influential approach to policing called the **theory of broken windows**. The proponents of this theory were Wilson and Kelling (1982) who suggested that there is a direct connection between the appearance of disorder and actual crime. If a single broken window is left unrepaired, it sends a message to potential offenders that neither police nor local residents are committed to the upkeep of the community. As time goes by, more signs of disorder will occur such as graffiti, litter and vandalism

Such an area will deteriorate gradually and "respectable" residents will leave to be replaced by deviant newcomers such as drug dealers and homeless people. This theory served the basis of zero-tolerance policing or approach that emphasizes the process of maintaining order by reducing serious crimes in targeting petty crime and forms of disruptive conduct such as vandalism and loitering. Crackdowns in low-level deviance is therefore thought to produce a positive effect in reducing more serious forms of crime. The limitation of this theory is that it leaves it to the police to identify a 'social disorder' since it does not offer a systematic definition of disorder.

Relevance of the theory

This theory can be used to explain trade in counterfeit electrical goods in Nyamakima area. This trade occurs as a result of an imbalance between the increasing number of opportunities available for trade and the control measures available to deter it. These

traders in Nyamakina area deal in counterfeit electrical goods by weighing the potential benefits and risks. The presence of counterfeit electrical goods and absence of restrictions offers an opportunity for this trade to thrive. The appearance of disorder within the area therefore leads to the crime and departure of respectable traders.

2.4.2 Rational Choice Theory

Among the proponents of this theory are Talcott Parsons and James Cohen. According to Parsons, action is rational in so far as it pursues ends possible within the conditions of the situation by the means which, among those available to the actor, are intrinsically best adapted to the ends. The starting point here is that the actor knows the facts of the situation in which he acts and the conditions necessary for the realization of his ends or goals (Wallace, 1969). In other words, action is orientated to the attainment of goals and systems of action are evaluated by the individual who judges each system to be desirable or not, useful or not, gratifying or not and ranks all these systems according to their value to him in attaining his goals (Mudge, 1962)).

Cohen is of similar view that persons act purposively toward a goal which is shaped by values and preferences (Ritzer, 1992). The application of this theory in criminology does not give regard to Cohen's wider idea of individuals living within a social system striving to maintain common values through obeying rules. In application of the Rational Choice Theory to criminology therefore, criminals evaluate the risks of apprehension, the seriousness of punishments and the potential value or gains they are likely to derive from engaging in criminal activities (Siegel, 1995, Cornish and Clarke, 1986). The decision to commit crime is a matter of personal choice based on weighing of the available opportunities and risks. It therefore follows that if criminal behavior is rational, then imposing heavy penalties and making it difficult to commit crime can control it (Siegel, 1995).

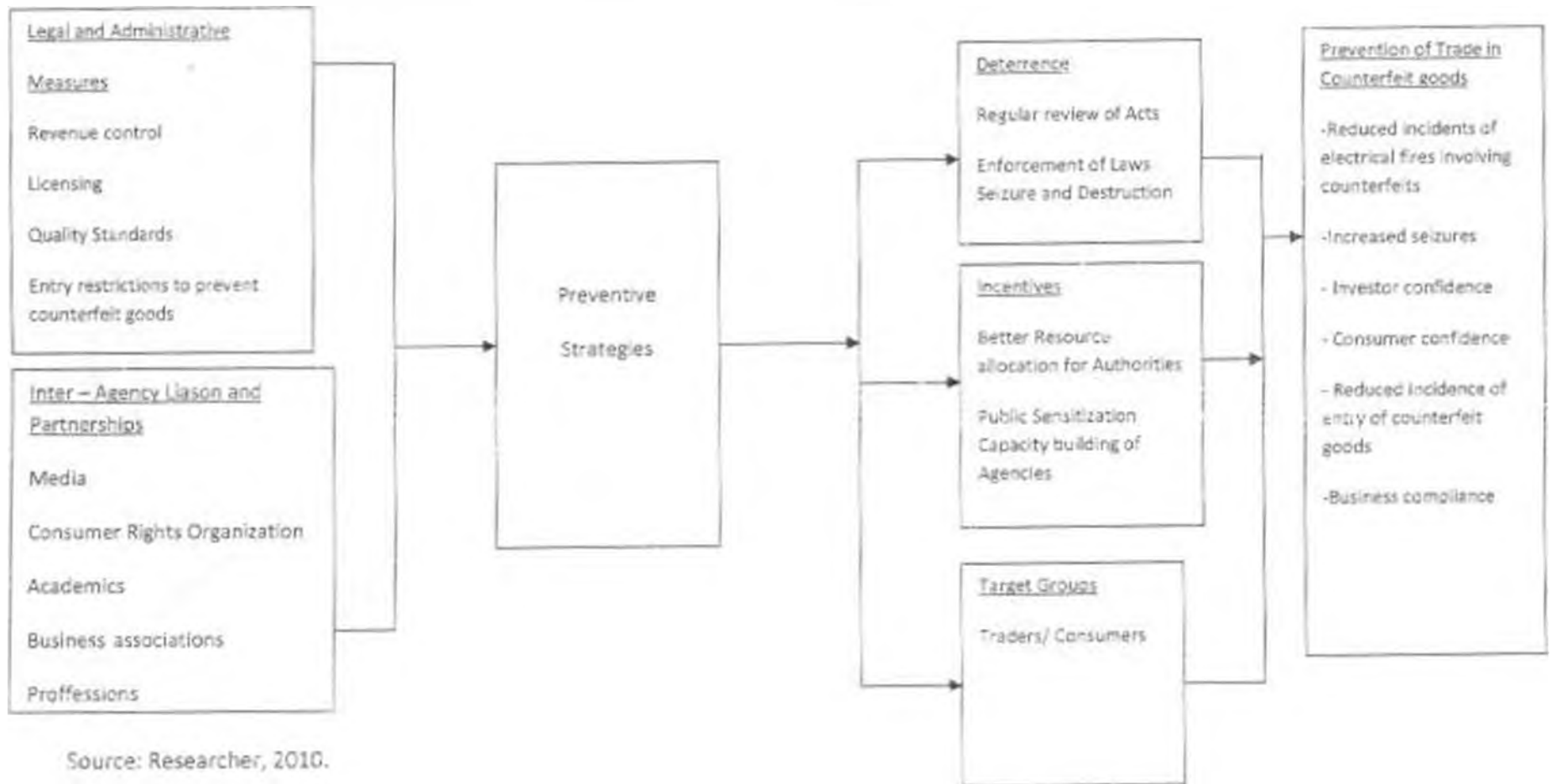
Relevance of the Theory

Persons who trade in counterfeit electrical goods make this decision after evaluating the benefits to be gained in terms of profits while at the same time considering the risks of

sanctions when apprehended. Since suspects would be aware of the current weak legal sanctions which do not impose tough punishment, they are encouraged to continue in trade of counterfeit electrical goods. Ineffective control measures therefore makes trade in counterfeit electrical goods to thrive.

2.5 Conceptual Framework

Figure 1: Control Measures Resulting in Prevention of Trade in Counterfeit Electrical Goods.



The figure above explains how Control Measures against trade in counterfeit electrical goods are applied on the Target Groups. These are Traders and Consumers in order to deter or give incentives so as to prevent trade in counterfeit electrical products. Legal measures should be applied with consideration to international treaties. Revenue Control, Licencing, Quality and Standards should be maintained. Seizure of counterfeit goods is to be done actively with Entry Restriction to prevent counterfeit goods from entering the country. Inter-Agency Liason and Partnerships through Media, Consumer Rights, Academics, Business Association and Professional groups will be maintained.

Control or preventive strategies are two fold, the first is Deterrence which is achieved by Regular Review of Acts related to trade in counterfeit electrical goods and the second is offering Incentives such as better Resource Allocation for Authorities and Increasing Public Sensitization and also Capacity of Building of Agencies. Application of these two strategies will lead to Prevention of Trade in counterfeit electrical goods which will be indicated by Reduced incidents of electrical fires due to counterfeits, increased Seizures, Consumer Confidence and Investor Confidence. Other indicators will be Reduced Entry of Counterfeit goods, and Business compliance with Regulations and Standard for trade in electrical products

The study therefore strives to look into control measures and their effects in the prevention of trade in counterfeit electrical goods. It will bring forward two Hypotheses as follows:

- Ho Ineffective Control Measures and Strategies have led to an increase in trade in counterfeit electrical goods in Nyamakima area of Nairobi (CBD).
- H1 Effective Control Measures and Strategies have led to a decrease in trade in counterfeit electrical goods in Nyamakima area of Nairobi (CBD).

2.5.1 Operationalization of Variables

The Independent Variable was operationalized as follows:-

Control Measures: In this study will refer to Legal and Administrative Measures.

Legal Measures: In this study will refer to Deterrent Measures.

Deterrent Measures: Will refer to measures taken to prevent trade in counterfeit electrical goods by imposing sanctions in all areas of the trade. They will be indicated by Enforcement of Local Laws, Market Surveillance and Strict Rules to prevent entry of counterfeit goods into the country. Other indicators are Seizure of Counterfeit and Media Publicity of traders dealing with counterfeit goods.

Administrative Measures: In this study will refer to Incentives.

Incentives: Will mean actions taken to discourage trade in counterfeit electrical goods but encourage trade in genuine goods. They will be indicated by increasing capacity of agencies, Sensitization and Education of Stakeholders, Offering Rewards to whistle blowers and Encouraging Special Prices on genuine goods.

The Dependent Variable Goods was operationalised as follows;

Trade in Counterfeit Electrical Goods: In this study will refer to selling of counterfeit electrical goods by dealers and buying by consumers. It will also mean importation of the goods into the country by dealers. The indicators of trade in counterfeit electrical goods will be Prosecution, Counterfeit goods in the market, Information by Stakeholder and Public Safety. Others are Performance of businesses dealing with genuine electrical products, Institutional Capacity and International Cooperation.

Prosecution: In this study will refer to criminal cases taken to court. It will be measured by the Number of persons charged in court.

Counterfeit goods in the Market. Will mean the presence or absence of counterfeit goods and will be measured by the amount of counterfeit goods seized in the market.

Information by Stakeholders: In this study will mean knowledge on trade in counterfeit electrical goods and will be measured by level of awareness on this trade by stakeholders.

Public Safety: Will mean safety of consumers of electrical goods and will be measured by the number of accidents experienced by consumers as a result of using counterfeit electrical goods.

Performance of local businesses: Will mean the success or failure of local businesses and will be measured by annual profit margins for local businesses dealing with electrical goods.

Institutional Capacity: In this study will mean the performance of KEBS and KRA and will be measured by their level of effectiveness in combating trade in counterfeit electrical goods.

International Cooperation: Will mean treaties and exchange of information on trade in counterfeit electrical goods between local stakeholders and international partners. It will be measured by the number of international treaties and value of counterfeit electrical goods seized as a result of International Cooperation.

CHAPTER THREE

RESEARCH METHODOLOGY

This chapter outlines the research site, research design used, sample design and the methods of data collection and analysis which will be utilized.

3.1 Research Design

The research utilized the Survey design which is relevant for this site given the large number of shops within the area. This type of design enabled the researcher to use a questionnaire to obtain information from a cross section of respondents. The design aimed at collecting both qualitative and quantitative data from respondents namely traders and enforcement authorities as far awareness and attitudes to counterfeit goods and legal preventive measures taken by the government are concerned.

3.2 Research Site

The site of the study was Nyamakima area in downtown Nairobi which is to the East of the C.B.D. and is positioned in between Kirinyaga and River roads and is also part of the Grogan area. The site consists of mainly retail and wholesale businesses dealing in electrical products, textiles, automotive spare parts and stationery that are patronized by consumers from the middle and low end of the income brackets. Most of these businesses are run by individuals or families and are in most cases informal with no proper registration.

Nyamakima area started as an informal business centre for Asians before independence and after independence with the Africanisation policy, many of the businesses were taken over by Africans. It is an area that is popular with bargain seeking customers. The area also falls under Nairobi City Council which is the issuing authority for all business permits including trade in electrical goods.

3.2.1 Sources of Data

The source of primary data was traders and consumers of electrical products in the site and government agencies mandated with licensing, inspection, testing and enforcement

of quality standards of these products. Secondary data was obtained from government and non-government agency publications, mass media and related literature both in print and electronic forms.

3.3 Sampling Design

A sample is a small group of individuals obtained from an entire group or accessible population having a common observable characteristic (Mugenda and Mugenda, 1999). Sampling is therefore a process of selecting a sample from a population to become the basis for predicting the prevalence of an unknown piece of information, situation or outcome regarding the population (Kumar, 2005). A sample size of 32 persons was chosen purposively from traders of electrical goods in shops located in Nyamakima area. From the enforcement regulatory agencies, one official was chosen purposively as a key informant. These officials bore the following designations: Licensing officer (NCC), Customs officer (KRA), Standards regulatory officer (KAM), Assistant Director Enforcement (KACA), Trade Mark officer (KIPI) and Quality assurance officer (KIBS).

The researcher used purposive sampling to select the shops and therefore respondents to be included in the study. This method was used to select those units with information with respect to objectives of the study. The method was chosen since it was foreseen that some shop owners would not be willing to participate in the study and therefore the researcher would have to select only those who would be willing.

3.4 Methods and Tools of Data Collection

The tools of collecting primary data which were used are questionnaires, direct observations and interview guides. The questionnaires for traders and consumers were administered through face to face interview while the one for agency officials was self administered. Observation checklists were used to observe traders of electrical goods. The in-depth interview guide was used to elicit data from traders of electrical goods and officials of agencies. Secondary data was obtained through document reviews and analyses.

3.5 Data Analysis

The collected data in form of the completed questionnaires and interview schedules underwent editing to detect and correct errors and omissions. It was then put in categories or classes through coding, then tabulated and counted. Descriptive statistical tools such as percentages and frequency distributions were used to analyze quantitative data which was then presented in tabular form. The researcher then used SPSS computer package to organize and analyze then interpret and present data. Statistical inferences were then drawn to form basis of the study findings through computation of frequencies.

CHAPTER FOUR

DATA ANALYSIS, INTERPRETATION AND PRESENTATION

4.1 Introduction

The main purpose of this study was to assess the effects of control measures on the prevention of trade in counterfeit electrical goods in the Nyamakima area of Nairobi's Central Business District (CBD). The sample for the study included 32 respondents each selected purposively from owners and workers of mainly retail and wholesale businesses dealing in electrical products in the Nyamakima area. This chapter reports on the results of analysis of data and its presentation covering the respondents' background information, the nature of trade in electrical goods and an assessment of the impact of control measures on the prevention of trade in counterfeit electrical goods in the Nyamakima area of Nairobi.

The chapter also looked into attitudes traders in electrical goods towards counterfeit electrical items and effectiveness of control measures. The findings of the study are presented using frequency distributions presented in tabular form.

4.2 Demographic Characteristics

This section presents the background information for the respondents detailing their demographic data, scale and duration of operation in trade of electrical goods. It also explains the types of items dealt with, suppliers, most popular items and reasons for popularity and most popular supply sources.

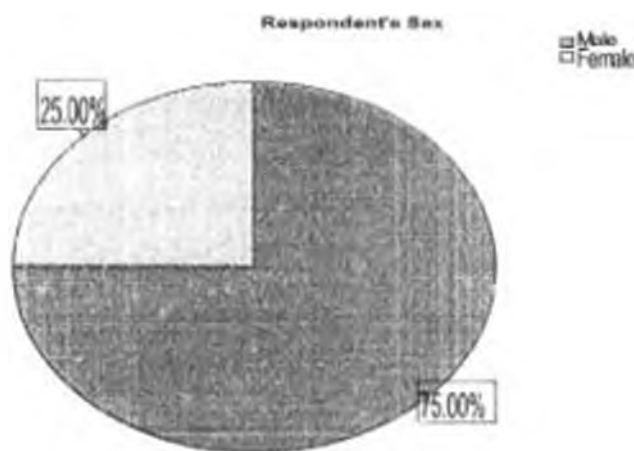
4.2.1 Distribution of Respondents

All the four areas of Nyamakima area were covered in the study and an equal number of respondents from each of the four areas participated in Kirinyuga road, River road, Kumasi road and Race Course road. This implies that this study was inclusive and a good representation of the entire population of Nyamakima area.

4.2.2 Gender of Respondents

Out of all participants of this study, 75 percent were male and 25 percent female. This difference is attributed to the high numbers of male owners and workers of the shops dealing in electrical goods as compared to females. This business can be regarded as being male dominated due to the challenges and inherent risks associated with it. They include theft, risks of arrests and longer working hours. The difference is however marginal to affect gender representation which was therefore accurately observed.

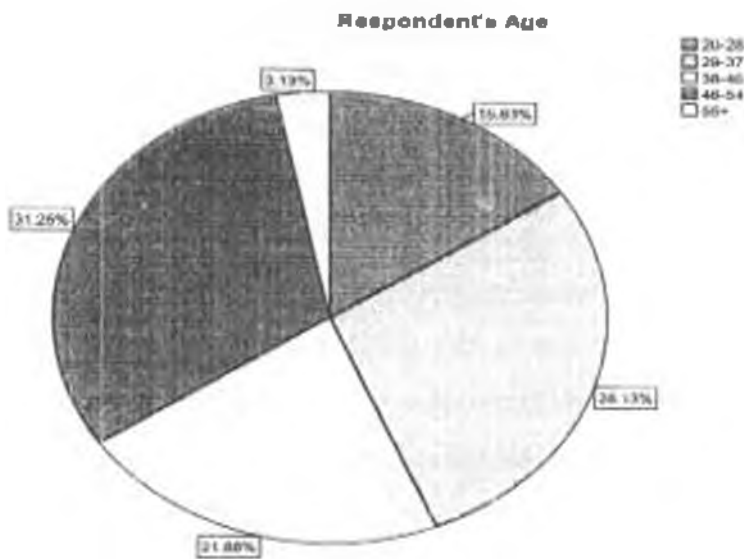
Figure 2: Respondent's Sex



4.2.3 Age of Respondents

Figure 3 shows that 31.3 percent of the respondents were between the ages of 46-54, 28.1 percent fell between ages 29-37, 21.9 percent were between ages 38-46, 15.6 percent were between ages 20-28 while only 3.1 percent of the respondents were above the age of 55 years. It can be deduced therefore that the respondents were mature and had enough experience to participate in the study. It can also be deduced that the trade mostly attracts individuals who may have worked in other sectors or businesses and left for one reason or another while still in their prime.

Figure 3: Respondents' Age Category



4.2.4 Respondents' Scale of Operation

68.8 percent of the respondents were found to be engaged in the business at the retail scale while the rest (31.3 percent) were wholesalers of electrical goods. This business can be said to attract mostly investors with limited resources enough for retailing and is therefore a good representation of a typical business industry dealing in electrical goods.

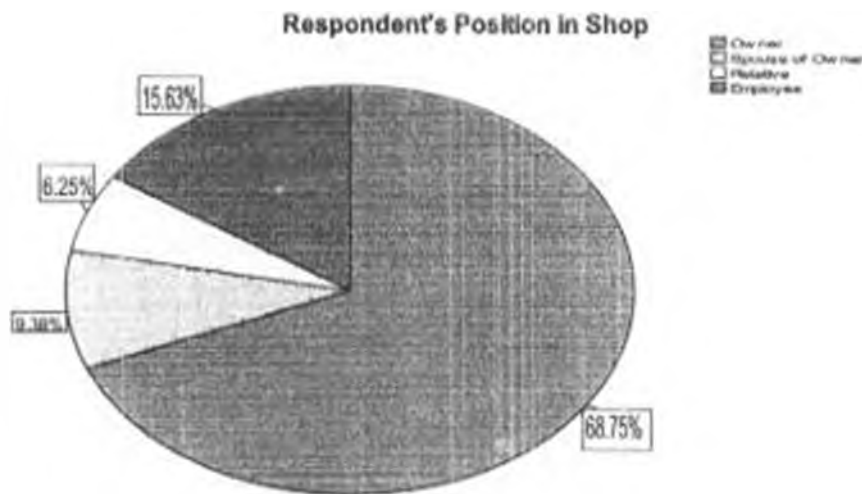
Figure 4: Respondents' Scale of Operation



4.2.5 Respondents' Position In Shop

Figure 5 shows that 68.8 percent of the participants in this study are owners of the businesses, 15.6 percent are employees, 9.4 percent are spouses of the owners while 6.3 percent are relatives of the owners. The above results reveal that majority of the respondents involved in trade in electrical goods are owners who prefer to do the business themselves perhaps due to experiencing cases of theft or due to limited revenues which might not be enough for payment of wages to other parties. Another reason can be given to be the need to keep secret the characteristics of the trade such as the types of electrical goods being sold in the shops. Those shops with slightly better revenues are able to employ people whom they can trust while a few owners engage their spouse or relatives. The owners do not engage their spouses mainly because of the need to diversify their economic interests or to allow their spouses to take care of the household. Similarly, a few relatives are employed due to their potential to steal and a corresponding unwillingness by the owners to press charges in such an event.

Figure 5: Respondents' Position In Shop

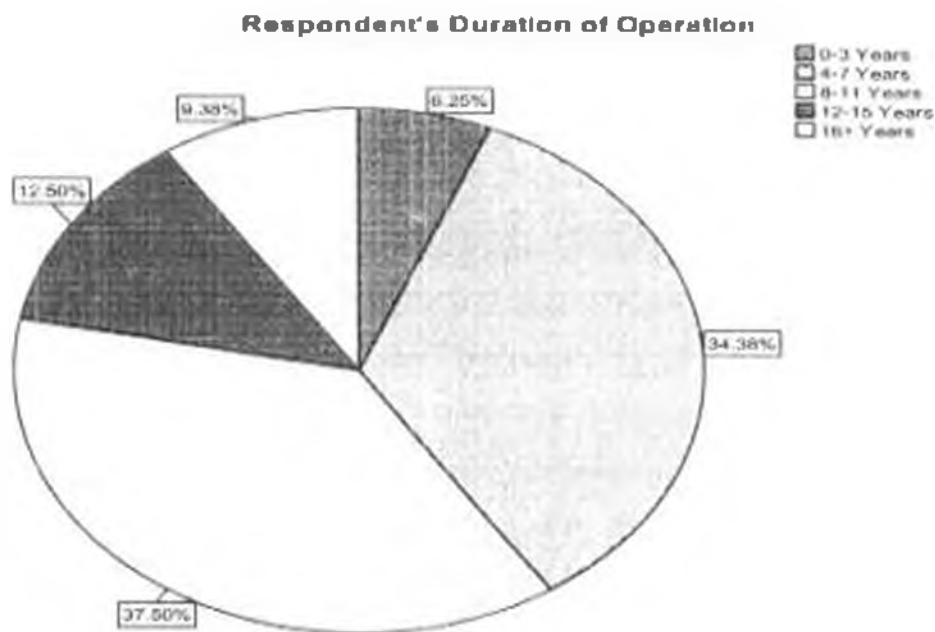


4.2.5 Respondents' Duration of Operation

When asked about the duration of operation in the business, 37.5 percent of respondents indicated that they had operated the businesses for between 8-11 years, 34.4 percent for between four to seven years, 12.5 percent between 12-15 years, 9.4 percent for over 16

years and only 6.3 percent have operated the business for three years and below. This implies that most respondents have information about the business and can be relied on in terms of revealing details of trade in electrical goods in Nyamakima area.

Figure 6: Respondents' Duration of Operation



4.3 Nature of trade in electrical Items

This section reveals the types of electrical items dealt with, suppliers of the electrical items, the most popular electrical items, reasons for popularity of the electrical items and the most popular supply sources for items stocked.

4.3.1 Types of Electrical Items Dealt With

Table 1: Distribution of Respondents according to Types of Electrical Items Dealt With

Electrical Items Dealt With	Responses	
	N	Percent
Electrical Fittings and Appliances	11	34%
Domestic Electrical Items	8	25%
Electrical Items for Single Phase	13	41%
Total	32	100%

The results in the table above show that 41 percent of participants deal in electrical items for single phase followed by those who deal in electrical fittings and appliances (34 percent). The rest of the participants represented by 25 percent dealt in domestic electrical items. This shows that most customers shopping for electrical items were preparing to install electricity in their constructed houses and were therefore mainly in need of electrical items for single phase followed by electrical fittings and appliances. There is lower demand for domestic electrical items perhaps as a result of some customers purchasing these particular products from supermarkets and other outlets because of convenience and the assumption that they get better price and quality from these sources.

4.3.2 Suppliers of Electrical Items

Table 2: Distribution of Respondents according to Suppliers of Electrical Items

Suppliers of electrical items	Responses	
	N	Percent
Importers and Foreign Manufacturers	13	41%
Local Manufacturers	12	38%
Wholesalers and Distributors	6	19%
Self	1	3%
Total	32	100%

Majority of the respondents (41 percent) reported that they received their stock from importers and foreign manufacturers, 38 percent from local manufacturers, 19 percent from wholesalers and distributors while a minimal number represented by 3 percent bought items directly on their own. It can be deduced that many respondents sourced electrical items from importers and foreign manufactures perhaps due to better prices, assurance of constant supplies and the assumption of better quality. Many others who got their stock from local manufacturers could have done so also because of the assurance of quality and the possibility of having their complaints addressed urgently in case of any queries. The few respondents who chose to source items from wholesalers and distributors did so due to familiarity and the opportunity to receive goods even before payment while those who bought the goods directly on their own could have established strong contacts with their sources.

4.3.3 Most popular Electrical Items

Table 3: Distribution of Respondents according to the Most Popular Electrical Items

Most Popular Electrical Items	Responses saying yes	
	N	Percent
Phillips Fittings(Bulbs and Tubes)	14	44%
Foreign Brands of Switches and Sockets	13	41%
East Africa Cables, Electrical Pipes and Imported Cables	5	15%
Total	32	100%

Table 3 above shows that the most popular electrical items according to respondents were Philips fittings including bulbs and tubes represented by 44 percent followed by foreign brands of switches and sockets at 41 percent and lastly a mix of East African Cables, electrical pipes and imported cables at 15 percent. These results can be interpreted to mean that Philips fittings are very popular because a large number of consumers buy them for use in lighting their homes and commercial premises. It does

not matter whether the houses are rented or occupied by owners since both categories of people use these goods. In addition, these goods are preferred more because of the brand name which has become synonymous with electrical items of superior performance. The same thing can be said about foreign brands of switches and sockets. Customers who purchase EA Cables, electrical pipes and imported cables are mostly those who have constructed their own houses or business premises and seek to install electricity into these buildings. Their numbers will therefore be fewer compared with the other categories of electrical items.

4.3.4 Reasons for Popularity of Electrical Items

Table 4: Distribution of Respondents according to Reasons Why Electrical Items are Popular

Reasons for Popularity	Responses	
	N	Percent
Good Quality	9	28%
Well known by Customers and Basic in all Installations	15	47%
Affordable and Easily available in the Market	8	25%
Total	32	100%

The most important reason for popularity of electrical items is because the items are well known by customers and are basic in all electrical installations (47 percent) followed by good quality (28 percent) and lastly, being affordable and easily available in the market (25 percent). It can be deduced that most customers demand what is already known and needed by themselves in the present circumstances. Many people in Nairobi live in rented houses as compared to those who live in their own houses therefore making items such as Philips bulbs and tubes a necessity in lighting. Those who constructed houses for rent or for their own occupation also required basic electricity items like Philips fittings, switches, sockets and cables. These items are also regarded by customers to be of good quality due to the trusted brand names and are also at the same time affordable and easily available in the market.

4.3.5 Most Popular Supply Sources for Items Stocked

Table 5: Distribution of Respondents according to the Most Popular Supply Sources for Items Stocked

Most Popular Supply Sources for the items stocked	Responses	
	N	Percent
Imports from China and Dubai	22	69%
Imports from Europe	1	3%
Local Manufacturers, Distributors and Wholesalers	9	28%
Total	32	100.0%

The results in Table 5 above show that 69 percent of the respondents source their stock of electrical items mostly from China and Dubai followed by 28 percent who source from local manufacturers, distributors and wholesalers. Only 3 percent of the respondents revealed that they sourced their stock from Europe. The large number of respondents who prefer imports from China and Dubai can be attributed to lower prices and the ease of availability of the items. Those who source their stock from local manufacturers, distributors and wholesalers do so also because of ease of availability and slightly low prices. Imports from Europe are considered expensive and not easily available and are therefore not as popular. Fewer respondents are therefore only able to stock imports from Europe for consumption by the high end customers.

4.4 Nature of Trade in Counterfeit electrical items

This section presents the non genuine electrical items handled by respondents, how respondents tell if items are genuine, their action on knowing items are not genuine and the steps they take in order to sell genuine items. It will also reveal circumstances for selling counterfeits, action when customers complain against counterfeit items and the problems associated with business involving counterfeit electrical items.

4.4.1 Non Genuine Electrical Items handled by Respondents

Table 6: Distribution of Respondents according to Non genuine Items Handled

Non genuine Items Handled	Responses	
	N	Percent
Imported Electrical Brands	21	66%
Lorenzetti Showers and Immersion Heaters	10	31%
None	1	3%
Total	32	100.0%

Table 6 above shows that majority of the respondents represented by 66 percent have handled non genuine imported electrical brands while 31 percent have handled non genuine Lorenzetti showers and immersion heaters. Only 3 percent of the respondents indicated that they have not handled non genuine electrical items of any type. The above can be attributed to the fact that quite a number of the electrical items imported from China and Dubai have been found to be non genuine while the popular Lorenzetti showers and immersion heaters have encouraged criminals to make counterfeits of the items. Enforcement agencies except NCC confirmed that imported finished end user products such as electrical items were the most common items for which violation of trade or quality rules was committed. The small number of respondents who have indicated that they have never encountered non genuine items might have indicated this for fear of facing sanctions such as arrest by authorities.

4.4.2 How Respondents tell if items are Genuine

Table 7: Distribution of Respondents according to how they tell if items are Genuine

How to tell if items are Genuine	Responses	
	N	Percent
Keys Standardization Mark	11	34%
Good Quality, Packaging and Higher Price	15	47%
Knowledge of Brand	6	19%
Total	32	100%

Table 7 shows that 47 percent of the respondents identify genuine items if they are of good quality, packaging and have a higher price than others. This can be attributed to the ease with which respondents could establish the level of finishing, weight and performance of the items in tandem with packaging and price. Genuine items are therefore more expensive than counterfeit items. Respondents who identified the Kebs Standardization Mark as the sign to tell genuine items apart from counterfeit ones were 34 percent while those who used their knowledge of the brand were 19 percent. This lower percentage for the Kebs Mark can be attributed to some non genuine items found to possess the mark hence the mark losing some credibility. The enforcement agencies such as KEBS, KAM and KRA listed the Kebs Standardization mark and packaging as the circumstances leading to disputes between them and traders on the genuineness of goods traded in shops. It can also be deduced that few individuals have been able to master salient features of goods to enable them differentiate genuine from counterfeit goods and this can be attributed perhaps to some respondents not having had the opportunity to consume the electrical items themselves.

4.4.3 Action on Knowing items not genuine

Table 8: Distribution of Respondents according to action on knowing items not genuine

	Responses	
	N	Percent
Reject or stop selling them	17	53%
Return to supplier and order for genuine or refund	8	25%
Sell to Customers Demanding cheaper items	6	19%
Nothing	1	3%
Total	32	100%

Out of all the respondents, 53 percent rejected or stopped selling non genuine items when they discovered that they were trading in these goods while 25 percent returned the goods to the supplier and ordered for genuine goods or refund. Another 19 percent

opted to sell the goods to customers who demanded for cheaper items while only one respondent (3 percent) did nothing. The relatively large number of respondents who indicated that they would reject and stop selling counterfeit items can be attributed to the fear of making a loss incase these products were impounded or customers refused to buy them. This may have occurred if they were dealing with a supplier who was not so regular. Some of them may have replied this way since they thought it to be the correct answer in the circumstances otherwise they would have chosen to keep and sell the items hence making enormous profits.

Respondents who chose to return the items and order for genuine ones may have sourced the items from a regular supplier and could therefore afford to go back to the same supplier for a replacement or refund. Those traders who indicated that they would sell the items to customers who demanded cheaper items were the typical traders driven by the prospect of making profits. These traders exhibited little fear for the law which could not impose stiff penalties hence they perceived relatively little risk. Apart from corruption, economic hardships, poorly managed porous borders and political interference, another reason for violations as identified by all the enforcement agencies except NCC was the lack of strict laws to regulate the trade and the desire for higher returns

4.4.4 Steps taken to sell genuine items

Table 9: Distribution of Respondents according to steps taken to sell genuine items

Steps to sell genuine items	Responses	
	N	Percent
Alert Authorities	2	6%
Deal with Selected Suppliers and Known Distributors or Companies	16	50%
Deal with Items Approved by Keba for Packaging, Weight and Labeling	12	38%
Do Nothing	2	6%
Total	32	100%

Majority of the respondents (50 percent) chose to deal with selected suppliers and known distributors or companies to ensure that they dealt with genuine items. This was the obvious way through which traders could ensure that the goods they bought and sold were genuine. The assumption here was that knowledge of the supplier would guarantee that the items received were genuine. Some other respondents (38 percent) indicated that they only dealt with items approved by Kebs which had proper packaging, weight and labeling in order to avoid selling counterfeit items. Again this was another obvious way of ensuring that goods traded were genuine since the Kebs Mark guaranteed that the item had been approved as genuine. However, such traders go further to inspect the packaging, weight and labeling but only if they possessed knowledge about the item could they have been certain of the product. Enforcement agencies such as KACA, KEBS and KAM identified the Kebs standardization mark as the leading requirement on trade in genuine goods that dealers are likely to comply with. The results also reveal that 6 percent each of the respondents either did nothing to ensure that they dealt only in genuine items or they alerted the authorities. Those who did not act in any way may have lacked information on what to do or might be willfully feigning ignorance but knowing their course of action fully well. The same can be said on those who indicated that they opted to alert authorities by seeking for advice on the items. This can be considered true since only a small number of traders would volunteer to contact the authorities directly on any matter.

4.4.5 Circumstances for selling counterfeits

Table 10: Distribution of Respondents according to circumstances for selling counterfeits

Circumstances for selling counterfeits	Responses	
	N	Percent
Customers Demand Cheap Affordable Items	19	60%
Genuine Items Out of Stock	4	12%
Failed to Differentiate and Sell to Recover Costs	4	12%
No Circumstances	5	16%
Total	32	100%

Many of the respondents totaling 19 or 60 percent indicated that they sold counterfeits in cases when customers demanded for cheap and affordable items while 16 percent of the respondents did not indicate any reasons for selling such items. A few respondents (12 percent) said that they sold counterfeits when genuine items were out of stock while a similar number (12 percent) sold the items either when they failed to differentiate between genuine and counterfeit items or when they required to recover costs. As a result of the harsh economic conditions, many customers were forced to go for counterfeit items knowing that the items were not genuine. Other customers may have considered the low prices as a bargain while others disregarded the impact that their actions have on the general trade. The traders who did not indicate any reasons may have done so for fear of sanctions if discovered to be trading in counterfeit items while the other two cases of 12 percent each were weak excuses for trade in counterfeit items. This was because the traders stocked counterfeit items irrespective of whether the stock of genuine items had expired or not, or whether there was the need to recover costs. The trader would therefore have been in possession of the counterfeits in the first place anyway.

4.4.6 Action when customers complain against counterfeit items

Table 11: Distribution of Respondents according to action on customer complaints

Action on customer complaints	Responses	
	N	Percent
Take Items, Replace them, Refund money and Complain to Supplier	18	56%
Reject, advice to buy genuine items and inform customers that Shop selling only Genuine	12	38%
Doing Nothing	2	6%
Total	32	100%

Table 11 above reveals that 56 percent of respondents acted on customer complaint against counterfeit items in the following way: received items, replaced them, refunded money and complained to the Supplier. Another portion of respondents (38 percent)

opted to reject the items, advised customers to buy genuine items and informed them that the shop sold only genuine items while 2 respondents or 6 percent did not do anything. Again, the action voted by most traders was the most popular and obvious one since no trader would want to admit to be trading in counterfeit items. However, such an action would stem from the need of preserving the business name, retaining the customers and alerting the supplier on the new developments. The smaller percentage of those who would reject the items can be explained by the nature of the trade which is made up of unscrupulous traders out to make profit and not losses. Such traders would therefore go to any length to deny any wrongdoing in order to shift the blame somewhere else. Those traders who chose to do nothing can again be said to be among the group which does not want to disclose their role in counterfeit trade for fear of sanctions from authorities.

4.4.7 Problems associated with business involving counterfeits

Table 12: Distribution of Respondents according to problems associated with business involving counterfeits

	Responses	
	N	Percent
Risk of Arrest and Harassment by Law Enforcement Agencies	10	31%
Accidents by Counterfeit Items	7	22%
Economic Losses by Traders and Government	12	38%
Ignorance by Consumers	1	3%
Institutional Failures	2	6%
Total	32	100%

The table above shows that 38 percent of the respondents sighted economic losses by traders and government as the leading problem faced while trading in counterfeit electrical items while another 31 percent regarded the risk of arrest and harassment by law enforcement agencies as a problem. Similarly, 22 percent of the respondents

indicated accidents by counterfeit items to be a problem associated with trade in counterfeit goods. Finally, a few respondents regarded institutional failures (6 percent) and ignorance by consumers (3 percent) to be the drawbacks while doing business in counterfeit items. Top on the list of any business person's mind is how to maximize profits and minimize losses, therefore economic losses are ranked at the top. This shows that many traders appreciated that the business was negative to the economy.

Second to this is the fear of arrest and harassment by authorities since this borders directly on the well-being of the traders. Harassment here may mean instances of bribery which also interfere with the bottom line for the business. Some of the traders may have been consumers of the electrical items and therefore appreciate the dangers posed by counterfeit items in terms of accidents while other traders took advantage of the ignorance by customers who bought counterfeit items. Apart from non genuine goods being cheaper and offering more profit, KRA identified failure of consumers to identify genuine from non genuine goods as drivers of trade in non genuine goods. Institutional failures such as bad governance and corruption closed the list of these problems and can be attributed to weaknesses within the government machinery charged with regulation of trade. Corruption has been listed by all the enforcement agencies except NCC to be the most important reason for the high frequency of violations in the trade. Others are economic hardships, poorly managed porous borders and political interference, the lack of strict laws to regulate the trade and the desire for higher returns. Traders may therefore reason that if they would not trade in counterfeit items then others would do so and ultimately they would be the losers.

Objective 2: To identify and analyse the control measures established to prevent trade in counterfeit electrical goods in Nyamakima area of Nairobi CBD.

4.5 Control Measures to prevent trade in counterfeits

This section discusses the effectiveness of the following control measures in preventing trade in counterfeit electrical items: Legal measures, KRA, KI BS, KAM, KIPi and KACA.

4.5.1 Effectiveness of Legal measures in preventing trade in counterfeit electrical items

Table 13: Distribution of Respondents according to Effectiveness of Legal Measures in preventing trade in counterfeit electrical items

	Frequency	Percent
Very Poor	11	35
Poor	18	56
Good	1	3
Excellent	2	6
Total	32	100

When asked to what extent they thought the legal measures were effective in preventing trade in counterfeit electrical goods, those respondents who rated poor were 18 or 56 percent while those who said very poor were 11 or 35 percent. On the other hand, those respondents who regarded legal measures as excellent were 2 or 6 percent while only one respondent or 3 percent who rated legal measures as being good. This high number of negative responses can be attributed to a general lack of trust in the effectiveness of the legal measures since the existing laws are not punitive enough. Many traders therefore engage in trade in counterfeits with the knowledge that they would not receive stiff sentences and fines or they can be able to win the cases. The enforcement agencies such as KAM, KIPi, KI BS and KRA rated the effectiveness of the legal measures as poor since laws have not been enforced more firmly.

4.5.2 Distribution of Respondents according to Effectiveness of KRA in preventing trade in counterfeit electrical items

Table 14: Perceptions of Effectiveness of KRA in preventing trade in counterfeits

	Frequency	Percent
Very Poor	14	44
Poor	14	44
Good	3	9
Excellent	1	3
Total	32	100

When asked to what extent they thought the KRA were effective in preventing trade in counterfeit electrical goods, those respondents who rated poor and very poor were 14 or 44 percent each while those who said good were 3 or 9 percent. Only one respondent or 3 percent regarded the effectiveness of KRA to be excellent. Again, this high number of negative responses (poor and very poor) can be attributed to a general lack of trust in the effectiveness of KRA because of the many occasions that trade in counterfeit items thrives in exchange for bribes. Many traders therefore engage in trade in counterfeits with the knowledge that they can bribe their way out or avoid any sanctions as long as they can bribe. The implication for this is that KRA lacks capacity to act against trade in counterfeit electrical items. Even though enforcement agencies generally rate the performance of KRA as good, the opposite is true since trade in counterfeit electrical goods continues unabated despite clear responsibilities in enforcing prohibitions, restrictions and in controlling importation of goods.

4.5.3 Perceptions of Effectiveness of KEBS in preventing trade in counterfeits

Table 15: Perceptions of Effectiveness of KEBS in preventing trade in counterfeits

	Frequency	Percent
Very Poor	9	28
Poor	19	59
Good	4	13
Total	32	100

Majority of the respondents (19 or 59 percent) thought that KEBS was not effective in preventing trade in counterfeit electrical goods and therefore rated poor while 9 respondents or 28 percent rated KEBS effectiveness as very poor. Those respondents who rated good were only 4 or 13 percent. The same trend as above is seen here too since those not in favour of effectiveness of KEBS outnumber the ones in favour by far. This high number of negative responses can be attributed also to a general lack of trust in the effectiveness of the KEBS since officers are not seen to be performing their work effectively. This may be because of receiving bribes or lacking capacity in form of funding or staff shortages. Many traders therefore engage in trade in counterfeits with the knowledge that they would not be arrested by KEBS personnel.

4.5.4 Perceptions of Effectiveness of KAM in preventing trade in counterfeits

Table 16: Perceptions of Effectiveness of KAM in preventing trade in counterfeits

	Frequency	Percent
Very Poor	21	66
Poor	11	34
Total	32	100

The results above show that respondents regarded the role played by KAM to be inferior since majority (21 or 66 percent) indicated that effectiveness of KAM was very poor and another 11 respondents or 34 percent chose poor. This can be attributed to a general lack of capacity in KAM in educating the public through sensitization on counterfeit trade. As a result, few traders felt any input from KAM and saw it only as an association of big business people which posed no threats to the trade in counterfeits. According to KIPi, KAM does not have measures in place to ensure counterfeits are not manufactured in the country and therefore fails in its mandate.

4.5.5 Perceptions of Effectiveness of KIP1 in preventing trade in counterfeits

Table 17: Perceptions of Effectiveness of KIP1 in preventing trade in counterfeits

	Frequency	Percent
Very Poor	23	72
Poor	8	25
Good	1	3
Total	32	100

The results above also show that majority of respondents (23 or 72 percent) rated KIP1 very poor while 8 respondents or 25 percent considered it poor. Only 1 respondent or 3 percent thought that KIP1's effectiveness is good. KIP1 plays a very minor role in the trade of counterfeit electrical items since it only engages manufacturers and enforcement agencies in sensitization issues thus excluding ordinary traders. The implication of this is continued in counterfeit items.

4.5.6 Perceptions of Effectiveness of KACA in preventing trade in counterfeit electrical items

Table 18: Perceptions of Effectiveness of KACA in preventing trade in counterfeits

	Frequency	Percent
Valid Very Poor	23	72
Poor	9	28
Total	32	100

Majority of respondents (23 or 72 percent) rated KIP1 very poor while 9 respondents or 28 percent rated it poor. At the time of going to the field, KACA had not been implemented fully and therefore only a few traders knew anything about its effectiveness. This short time of operation can therefore explain the reason why many traders had not been able to rate the act favorably. It is also to be noted that many

traders may not have known of its existence and hence rated it poorly. It is however a good legislation which offers stiffer punitive fines and sentences and has the potential of reducing engagement in this trade.

Objective 4: To assess obstacles to prevention of trade in counterfeit electrical goods in Nyumakima area of Nairobi CBD.

4.6 Obstacles to Prevention of trade in Counterfeit Electrical Items

Under this section, frequency of encountering anti counterfeit enforcers and actions in occasions told by inspectors that stock not genuine were tackled which included stoppage of stocking of counterfeits, bribing officers and doing nothing.

4.6.1 Frequency of Encountering Anti counterfeit Enforcers

Table 19: Distribution of Respondents according to frequency of encountering anti- counterfeit enforcers

	Frequency	Percent
Not Often	27	84
Not at All	5	16
Total	32	100

When asked how often they encountered anti counterfeit officers in their business practice, 84 percent of the respondents revealed that they did not encounter these officials often while 16 percent never encountered the officials. This state of affairs can be attributed to laxity by the authorities in conducting checks within the business premises because of being understaffed or perhaps because of corruption. It can be deduced that the enforcement agencies lack capacity to visit all these shops in terms of staff and logistics as a result of dismal allocation of funds from the treasury. Conflict of interest and vested or narrow interests by the enforcement agencies exhibited by their selective actions towards goods in addressing only their mandates result in the officers ignoring counterfeit issues. Only KEBS and KRA indicated that they dealt with cases

involving trade in counterfeits in their area of operation but also suffered setbacks from corruption, inadequate personnel and resources.

Other obstacles faced by the agencies were lack of political will to support the efforts in fighting counterfeit trade, intimidation of officers through political and administrative interference and collusion by officers. Apart from failure to fully utilize the control measures, there was also underutilization of distributor licenses for specific items which created loopholes for the sale of counterfeit goods. It was also noted that rather than being proactive, the agencies are reactive to cases of counterfeit goods hence are not effective in preventing trade in counterfeit goods. Similarly, globalization or international openness of the market liberalized trade therefore allowing for entry and/or manufacture of counterfeit goods in the country.

4.6.2 Occasion told by inspectors that stock not genuine

4.6.2(a) Occasions told stock not genuine and Stoppage of stocking of counterfeits

Table 20: Cross tabulation Table for Distribution of Respondents according to occasions told stock not genuine and Stoppage of stocking of counterfeits

Occasions told Stock Not Genuine * Stopped Stocking Counterfeit Goods Cross tabulation
Count

		Stopped Stocking Counterfeit Goods		Total
		Yes	No	
Occasions told Stock Not Genuine	Yes	8	14	22
	No	0	10	10
Total		8	24	32

Table 15 above reveals that out of the 22 respondents that indicated they were told by enforcers that their stock was not genuine, only 8 stopped stocking counterfeit goods while 14 did not stop stocking these goods. Only 10 respondents indicated that they

were not told by enforcers that their stock was not genuine and therefore did not stop stocking counterfeit goods. A total of 24 respondents did not stop stocking counterfeit goods despite being told or not being told that they stocked counterfeit items. This shows that given an opportunity, many traders would trade in counterfeit items. The large number (14) of those who continued to stock counterfeits despite being told that their stock is not genuine can be explained by reasons of profit since for these traders, counterfeit goods is the major source of profits. This group could also have continued stocking counterfeits due to their ability to bribe the officers. The few (8) who stopped stocking after being told were the law abiding traders who feared sanctions from the enforcement agencies and may not be willing to pay the bribes demanded.

4.6.2(b) Occasions told stock not genuine and Bribing Officers

Table 21: Cross tabulation Table for Distribution of Respondents according to occasions told stock not genuine and bribing Officers

Occasions told Stock Not Genuine * Bribed Officers Cross tabulation
Count

	Bribed Officers		Total
	Yes	No	
Occasions told Stock Not Genuine	14	8	22
	0	10	10
Total	14	18	32

Similarly, Table 16 reveals that out of the 22 respondents who indicated they were told by enforcers that their stock was not genuine, 14 bribed officers while 4 did not bribe the officers. Only 10 respondents indicated that they were not told by enforcers that their stock was not genuine and therefore did not bribe officers. The total number of respondents who did not bribe officers was 18 while those who gave bribes were 14 persons. This shows that many traders would only bribe officers when confronted and caught trading in counterfeit items. It can be deduced that there were few (8) traders who refused to bribe despite being told that their stock was not genuine. This number comprised of those traders who may not have been aware that the goods they traded in

were counterfeits or had simply agreed to face sanctions with the knowledge that they were not punitive enough. It was also clear that bribery was rampant given the difference between those who paid bribes and those who did not pay.

4.6.2(c) Occasions told stock not genuine and Doing nothing

Table 22: Cross tabulation Table for Distribution of Respondents according to occasions told stock not genuine and Doing nothing

**Occasions told Stock Not Genuine * Did Nothing Cross tabulation
Count**

		Did Nothing		Total
		Yes	No	
Occasions told Stock Not Genuine	Yes	2	20	22
	No	10	0	10
Total		12	20	32

The results shown in Table 17 above reveal that out of the 22 respondents that indicated they were told by enforcers that their stock was not genuine, 20 did something about the allegations while only 2 did not do any thing. The large number (22) of those who acted in response to advice can be attributed to fear of sanctions or the need not to pay bribes. Only 10 respondents indicated that they were not told by enforcers that their stock was not genuine and therefore did not act in any way. This shows also that traders are not law abiding and put profit before ethics in their business operations. Any excuse they get not to adhere with the law is taken and the result is more trade in counterfeit items. The total number of respondents who did not act in any way was 12. This number can be explained by opportunities available for bribery and the acute need of making profit hence revealing a lax enforcement system.

Objective 4: To identify the strategies used to overcome the obstacles to the prevention of trade in counterfeit electrical goods in Nyamakima area.

Objective 5: To evaluate the appropriate strategies to strengthen the control measures to prevent trade in counterfeit electrical goods in Nyamakima area of Nairobi CBD.

4.7 Strategies to improve control measures

This section deals with the respondents' familiarity with control measures and the strategies they employ to strengthen these control measures

4.7.1 Familiarity with control measures

Table 23: Perceptions of familiarity with control measures

Familiarity with control measures	Responses	
	N	Percent
Imports ban, Seizure and Destruction of Counterfeit Goods	11	34%
Law Enforcement and Institutional Requirements by KESB or KRA	9	59%
Not aware of any Measures	2	7%
Total	32	100%

The results in Table 24 above show that majority of the respondents (59 percent) are familiar with law enforcement and institutional requirements by KESB or KRA as the leading measure in the control of trade in counterfeit electrical items. Another 34 percent know imports ban, seizure and destruction of counterfeit goods as a measure in the control of trade in counterfeit electrical items. Only 2 or 7 percent of the respondents are not familiar with any measure in the control of trade in counterfeit electrical items. These results can be attributed to the general knowledge of traders about the common measures such as law enforcement and institutional requirement such as the KESB Standardization Mark since most of them have interacted with these issues on many instances. The other group (34 percent) consists of larger businessmen

who usually feel the impact of these control measures at a more personal level while the few who did not know of any measures are the newly employed.

The other control measures such as KIPI, KACA and NCC were not known by majority of the respondents due to their ineffectiveness and the general lack of capacity of the institutions. KIPI did not have the capacity to ensure that businesses comply with regulations while KACA was yet to start implementation of the act hence had no measures put in place. Similarly, NCC does not deal with counterfeit trade issues.

4.7.2 Strategies to strengthen control measures

Table 24: Perceptions of strategies to strengthen control measures

Actions to strengthen control measures	Responses	
	N	Percent
Constantly Review Legal Instruments	3	9%
Increase Sensitization and Education of Stakeholders	7	22%
Enforce Laws	8	25%
Seizure and Destruction of Counterfeits	8	25%
Increase Capacity of Agencies	5	16%
Making Genuine Products Affordable	1	3%
Total	32	100%

This study found that with regard to strategies to strengthen control measures, 25 percent of the respondents recommended seizure and destruction of counterfeit electrical items while another 25 percent proposed the enforcement of laws. The rest of the respondents recommended strengthening control measures in the following ways: increase sensitization and education of stakeholders (22 percent), increase capacity of agencies (16 percent), constantly review legal instruments (9 percent) and making genuine products affordable (3 percent). Enforcing laws and seizure and destruction of counterfeits attracted many respondents due to its ability to end the trade. The measures

are punitive since heavy fines, longer prison sentences and loss of goods through destruction has a great negative impact on such trade. Second to this in effectiveness is to increase sensitization and education of stakeholders and also to increase capacity of agencies. These measures are meant to ensure a level playing field to all traders since all of them will be educated against counterfeit trade while the agencies will be able to effect their mandates. The end result will be a reduction in trade in counterfeit electrical goods. Similarly though favored by a few respondents, reducing prices of quality items will ensure that customers buy their choice of products at an affordable price. There will be no need for them to look for cheap counterfeit items. Most traders did not select this measure because they sell the items and are therefore more interested in making profits than in anything else.

Other strategies of overcoming obstacles to prevention of trade in counterfeit items were the elimination of the vested or narrow interests by the enforcement agencies, provision of adequate staff within the agencies and a clear cut plan of action to reduce conflict of interest among the agencies. Lobbying for enhanced political support and giving the agencies complete independence to reduce intimidation of officers through political and administrative interference also contribute towards prevention of trade in counterfeit items. In addition, eradication of corruption and collusion by officers, full utilization of control measures, proper utilization of distributor licenses for specific items and proactive action by the agencies towards cases of trade in counterfeit goods are important steps

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This section provided for findings made, recommendations and conclusions and areas that needed further research. The recommendations focused on the thematic areas of study namely nature of trade in counterfeit electrical goods, obstacles to prevention of trade in counterfeit electrical goods and strategies to improve the control measures.

5.2 Summary of Findings

The findings were made in light of objectives of the study and they show that most customers mainly bought electrical items for single phase while fewer customers bought electrical fittings and appliances. Many of the shops sourced electrical items from importers and foreign manufactures while a few got their stock from local manufacturers. Imports were preferred because of profits as they were bought very cheaply and sold at a good profit. Some locally manufactured items such as EA Cables were preferred because of their promise of quality. The most popular electrical items in the market were Philips fittings and foreign brands of switches and sockets which are the items mostly used in newly constructed houses. They are most popular because they are well known by customers and are basic in all electrical installations. The most common sources of electrical items are China and Dubai due to cheapness of products and assurance of constant supplies.

It was also found that majority of traders have handled non genuine imported electrical brands in the course of conducting business. The two ways by which respondents could tell that items were genuine was by observing if they were of good quality packaging and had a higher price than others and through the Keps Standardization mark. In instances when respondents discovered that they were trading in non genuine items, their reaction was to reject or stop selling these items. In efforts to ensure that they dealt with genuine items, many respondents dealt with selected suppliers and known distributors or companies. Majority of the traders sold counterfeits when customers demanded for cheap and affordable items

The most common reaction by traders to customer complaints against counterfeit items was to receive items, replace them and refund money then complain to the supplier. Economic losses by traders and government together with the risk of arrest and harassment by law enforcement agencies were the two leading problems faced by traders while trading in counterfeit electrical items. Majority of the respondents did not encounter anti counterfeit officers in their business practice often, revealing a huge lapse in the operations of the agencies. The lack of resources and personnel rendered most of the enforcement agencies ineffective since they were not able to accomplish their mandates. For example, because shops do not display counterfeit items on the shelves, Kchs was not able to conduct searches in shops due to lack of powers.

Many traders therefore stocked counterfeit items despite being informed while a few refused to bribe despite being told that their stock was not genuine. Furthermore many acted in response to advice that their stocks were counterfeits due to fear of sanctions or the need not to pay bribes. All the control measures such as legal measures, KRA, KIBS, KAM and KIPI were found to be inadequate since most traders rated the measures as either poor or very poor. The enforcement agencies confirm this by giving themselves a general rating of poor led by KIPI and KACA. Despite this state of affairs, majority of the respondents were familiar with law enforcement and institutional requirements by KIBS or KRA as the leading measure in the control of trade in counterfeit electrical items. This is followed by imports ban, seizure and destruction of counterfeit goods as a measure in the control of trade in counterfeit electrical items. Respondents recommended the following major strategies to strengthen control measures: seizure and destruction of counterfeit electrical items, enforcement of laws, increase sensitization and education of stakeholders and increase capacity of agencies.

5.3 Conclusion

From the above findings, conclusions can be drawn that lack of sufficient resources as well as the inadequate capacity among law enforcers is an important challenge since authorities mandated to fight counterfeit trade have been performing poorly due to poor resource allocation for salaries and equipment. Corruption on the part of relevant

government agencies has been blamed for the continued trade in counterfeit goods. Traders are involved in high frequency of violations such as corruption as shown by the large numbers who offered to bribe enforcement officers after being told that their stock was not genuine. The harsh economic conditions drive many members of the public into purchasing counterfeit electrical products with or without their knowledge.

Linked to the above is the issue of identification of counterfeit and pirated products. It is common for customs officials and other mandated authorities to fail to spot the difference between fakes and genuine goods at the point of entry into the country. Therefore, the identification of counterfeit electrical goods, seizing and preserving them as evidence was also a challenge. Inadequate consumer awareness on counterfeits and substandard goods and ignorance by individuals and society on the negative effects posed by these products have been reported as obstacles to a government-led fight against unscrupulous importers. This is because counterfeiting thrives because consumers are attracted by the cheap prices without worrying about quality.

Weak legal measures in existence primarily fuel trade in counterfeit electrical goods in Nyamakima Area. Enforcement laws are lax in Kenya while enforcement mechanisms are not up to standard. This is evidenced by the major extent in which trade in counterfeits is being conducted in Nyamakima area. The performance of agencies like KEBS and KRA mandated to fight this trade has not been satisfactory due to lack of comprehensive laws to govern trade and specifically address trade in counterfeit products. KACA and KIPF have not been able to join in this fight actively because of non implementation of the Anti Counterfeit Act and lack of capacity respectively.

The gaps experienced in enforcement due to few visits to retail outlets by KEBS and KRA had been related to lack of manpower on the ground, lack of strict laws and lack of powers to conduct searches in shops since traders do not display counterfeit items on shelves. Lenient punishment such as non-custodial sentences or payment of fines encourage offenders to re-offend and this subsequently increases cases of trade in counterfeit electrical goods. On the side of KAM, due to high costs of litigation and

extended lengths of time taken to determine lengthy and tedious infringement cases, many right holders opt not to pursue such cases. The control measures have therefore not been able to deter trade in counterfeit electrical goods in Nyamakima area in Nairobi.

5.4 Recommendations

Under policy recommendations, the government must ensure that the legal instruments available are reviewed constantly to ensure that they are punitive and deterrent in nature. The enactment and operationalization of the Anti-Counterfeit Goods Act of 2008 is expected to revolutionize legal treatment of counterfeit trade. The operationalization of this act should therefore be hastened due to its many benefits. Other Acts such as the Trade Marks Act, the Industrial Property Act and the Trade Descriptions Act should be amended more often in order to cater for the interests of right holders.

The government should also sensitize and educate law enforcement agencies, the public, right holders and the users on the importance of protecting and enforcing intellectual property rights. Institutions such as the Kenya Industrial Property Institute and the Copyright Board are strategically placed to collaborate with industry players and stakeholders to offer sensitization programs. These programs should especially target stakeholders such as customs and police officers, officers from KEBS and Weights and Measures as well as right holders and users through seminars and trainings.

The elimination of vested or narrow interests by the enforcement agencies, provision of adequate staff within the agencies and a clear cut plan of action to reduce conflict of interest among the agencies will go a long way towards fighting counterfeit trade. Lobbying for enhanced political support and giving the agencies complete independence to reduce intimidation of officers through political and administrative interference are also positive steps. The eradication of corruption and collusion by officers, full utilization of control measures, proper utilization of distributor licenses for

specific items and proactive action by the agencies towards cases of trade in counterfeit goods are important will also be of much assistance in achieving prevention

In addition, the capacity of KEBS and KRA should be increased in order for them to play a vital role in ensuring that inspection is done on goods on transit to avoid dumping of substandard goods into the country. The government should work with other countries by entering into bilateral trade agreements like EAC and COMESA to ensure that they come up with new tools of intellectual property and counterfeit enforcement and deterrence. Such agreements will ensure constructive dialogue on intellectual property rights within the international community to ensure equitable benefits for global and social growth. Even though it is difficult to control globalization or international openness of the market which has liberalized trade to allow for entry and/or manufacture of counterfeit goods in the country, steps must be taken to protect the country from this situation by enhancing the control measures.

This study focused on assessing the effects of control measures on the prevention of trade in counterfeit electrical goods in the Nyamakima area of Nairobi Central Business District (CBD). It was noted that this matter has not been given due attention by the central government and other stakeholders. Further studies are therefore recommended in other business sectors in Kenya to get a true picture of the problem and to promote strategies which can tackle the problem economically and efficiently.

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APPENDIX I
INTRODUCTION LETTER

University of Nairobi

Date.....

Faculty of Arts

Department of Sociology

To the Respondent,

Dear Sir/ Madam,

My name is Kingola P.M. and I am a Post graduate student at the University of Nairobi. I am conducting a study on the Impact of Control measures on Prevention of Trade in Counterfeit Electrical Goods in Nyamakima, Nairobi. This is a partial fulfillment for the award of Master of Arts Degree in Criminology and Social Order.

Apart from aiming to achieve the goal of consumers accessing genuine electrical goods, the study will help in advising on formulation of better policies leading to prevention of trade in counterfeit electrical goods. The study will also inform as to how both local and foreign manufacturers of electrical products can benefit from fair trade practices.

Your response and opinions will be confidential and will only be used for the purpose of the study. I shall not record your name, neither will I discuss the interview with any one except the supervisor of this study. I would like you to answer all the questions but you have the right to refuse to take part in the study or to answer any of these questions. The interview will take about 45 minutes and not more.

Thank you in advance.

Yours Truly,

Kingola, P.M.

M.A Student.

APPENDIX II

RESEARCH QUESTIONNAIRE FOR TRADERS OF ELECTRICAL GOODS IN NYAMAXIMA, NAIROBI.

PART A – BACKGROUND INFORMATION /PERSONAL DATA

1. Respondent's Sex 1. Male 2. Female

2. Respondents Age

(a) 20 -28		1
(b) 29 - 37		2
(c) 38 - 46		3
(d) 46 - 54		4
(e) 55 +		5

3. What is the scale of this business operation?

(a) Retail 1

(b) Wholesale 2

4. What is your position in the shop?

(a) Owner 1

(b) Spouse of owner 2

(c) Relative 3

(d) Employee 4

5. How long have you operated the business?

(a) 0 - 3 years ago 1

(b) 4 - 7 years ago 2

(c) 8 - 11 years ago 3

(d) 12 - 15 years ago 4

(e) 16+ years ago 5

6. What electrical items do you deal in?

7. Who are the suppliers of these items?

8. Which among these items are popular with buyers?
9. Why are they popular?
10. Which are the most popular supply sources for the items you stock?
11. Do you deal with any electrical items for which you have to issue any warranties?
 - (a) Yes 1
 - (b) No 2
12. Have you ever come across any items that you believe are not genuine? If so, what are these items?
13. Are you aware of the existence of counterfeits in the business in which you are engaged?
 - (a) Yes 1
 - (b) No 2
14. If yes, how do you tell if the items supplied to you are genuine?
15. What do you do when you realize that some of the items you are buying are not genuine?
 - (a) Go ahead and sale.
 - (b) Inform the supplier and return.
 - (c) Inform authorities.
 - (d) Dispose using other methods (Specify).
16. What steps have you taken to ensure that the items you sell are genuine?
17. Are there occasions when you have to sell items that are not genuine to your customers? If so in what circumstance is this necessary?

18. What do you do when your customers approach you to complain about items that they consider not genuine?
- | | | |
|-----|---|---|
| (a) | Ignore the complaint and send the customer away | 1 |
| (b) | Replace it with another item and contact the supplier | 2 |
| (c) | Report to enforcement agencies | 3 |
| (d) | Other – specify | 4 |
19. What are some of the problems you would associate with business involving counterfeits in your industry?
20. How often do you encounter anti-counterfeit enforcers in your business practice?
21. Are there occasions that you have been told by inspectors that some of your stock is not genuine?
- | | | |
|-----|-----|---|
| (a) | Yes | 1 |
| (b) | No | 2 |
22. If so, what did you do about their concerns?
23. What measures to control/prevent these problems are you familiar with?
24. What needs to be done to strengthen the above measures?
- | | | |
|-----|---|---|
| (a) | Positively review legal instruments. | 1 |
| (b) | Increase sensitization and education of stakeholders. | 2 |
| (c) | Enforce laws. | 3 |
| (d) | Seizure and destruction of counterfeits. | 4 |
| (e) | Increase capacity of agencies. | 5 |
| (f) | Other (Specify) | 6 |
25. To what extent do you think the following measures are effective in preventing trade in counterfeit electrical goods?

Key;

1. Very poor

2. Poor

3. Good

4. Excellent

(a) Legal Measures 1. 2. 3. 4.

Explain.....
.....
.....

(b) KRA 1. 2. 3. 4.

Explain.....
.....
.....

(c) KEBS 1. 2. 3. 4.

Explain.....
.....
.....

(d) KAM 1. 2. 3. 4.

Explain.....
.....
.....

(e) KIP 1. 2. 3. 4.

Explain.....
.....
.....

I thank you for your cooperation.

APPENDIX III

Key Informant Interview Guide for Enforcement Officials from KRA Headquarters, KEBS Headquarters, KIPi Head office, KACA Office and NCC Central Business District.

General information

Male or female

Organization, Designation and Length of service

1. What are the control measures available to prevent trade in counterfeit electrical goods in Nairobi Area?
2. What are the legal measures applicable in the prevention of trade in counterfeit electrical goods?
3. From your assessment, in what ways have these measures led to meeting the objective of prevention of trade in counterfeit electrical goods?
4. What needs to be done to achieve success in eradication of trade in counterfeit electrical goods?
5. What control measures are relatively effective in preventing trade in counterfeit electrical goods?