GOVT PUBL
14 OCT 1997
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GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper *As 'n Nuusblad by die Poskantoor Geregistreer*

OL. 388 CAPE TOWN, 1 OCTOBER 1997 No. 18324

KAAPSTAD, 1 OKTOBER 1997

OFFICE OF THE PRESIDENT

o. 1284. 1 October 1997

It is hereby notified that the President has assented the following Act which is hereby published for general formation:—

o. 37 of 1997: Counterfeit Goods Act, 1997.

KANTOOR VAN DIE PRESIDENT

No. 1284. 1 Oktober 1997

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 37 van 1997: Wet op Nagemaakte Goedere, 1997.

ACT

To introduce measures aimed against the trade in counterfeit goods so as to further protect owners of trade marks, copyright and certain marks under the Merchandise Marks Act, 1941, against the unlawful application, to goods, of the subject matter of their respective intellectual property rights and against the release of goods of that nature (called "counterfeit goods") into the channels of commerce; for that purpose—

to prohibit certain acts in relation to counterfeit goods as well as the possession of counterfeit goods in certain circumstances;

to create offences in that regard and prescribe penalties in relation thereto;

to confer, in certain circumstances, upon inspectors and certain members of the South African Police Service the power, upon having obtained a warrant, or upon being otherwise authorised by or in terms of this Act, to enter premises and there to search for, and, if found, to seize and remove, counterfeit goods or suspected counterfeit goods for detention pending the finalisation of civil or criminal proceedings to be instituted or any other disposal thereof authorised by or in terms of the Act;

to provide that the Commissioner for Customs and Excise and his or her staff, upon having granted an application to that end by the owner of an intellectual property right, will have the power to seize and detain counterfeit goods or suspected counterfeit goods imported into or entering the Republic during a particular period and calculated to infringe that intellectual property right;

and to provide for incidental matters.

(English text signed by the President.)
(Assented to 19 September 1997.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. (1) In this Act, unless inconsistent with the context—

(i) "act of dealing in counterfeit goods" means any act or conduct referred to in section 2(1); (iii)

(ii) "apply to", with reference to any goods, means use upon or in physical or other relation to any goods, and, unless clearly inappropriate, includes to embody or incorporate in any goods; (i)

(iii) "complainant" means a person who, in terms of section 3(1), is entitled to lay a complaint contemplated in that section and who has laid such a complaint; (xi)

(iv) "counterfeiting"—

(a) means, without the authority of the owner of any intellectual property right subsisting in the Republic in respect of protected goods, the manufacturing, producing or making, whether in the Republic or elsewhere, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are substantially identical copies of the protected goods;

(b) means, without the authority of the owner of any intellectual property right subsisting in the Republic in respect of protected goods, manufacturing, producing or making, or applying to goods, whether in the Republic or elsewhere, the subject matter of that intellectual property right, or a colourable imitation thereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said owner or any goods manufactured, produced or made under his or her licence; or

WET

Tot invoering van maatreëls gerig teen die handel in nagemaakte goedere ten einde die eienaars van handelsmerke, outeursreg en sekere merke onder die Handelswaremerke-wet, 1941, verdere beskerming te verleen teen die onwettige aanwending op goedere van die onderwerpe van hul onderskeie intellektuele goedereregte en teen die vrystelling van goedere van dié aard (genoem "nagemaakte goedere") in die handelsverkeer; om vir dié doel—

sekere handelinge met betrekking tot nagemaakte goedere, sowel as die besit van sulke goedere in sekere omstandighede, te verbied;

sekere misdrywe in daardie verband te skep en strawwe ten opsigte daarvan voor te skryf;

in sekere omstandighede aan inspekteurs en sekere lede van die Suid-Afrikaanse Polisiediens die bevoegdheid te verleen om, nadat 'n lasbrief verkry is, of indien andersins by of ingevolge hierdie Wet gemagtig, persele te betree en dit te deursoek na nagemaakte goedere of vermoedelik nagemaakte goedere en, indien dit gevind word, daarop beslag te lê en dit te verwyder vir die hou daarvan in bewaring hangende die afhandeling van siviele of strafregtelike verrigtinge wat ingestel gaan word of enige ander beskikking daaroor by of ingevolge hierdie Wet gemagtig;

voorsiening te maak dat die Kommissaris van Doeane en Aksyns en sy of haar personeel, ná die toestaan van 'n aansoek van die eienaar van 'n intellektuele goedereregin dié verband, oor die bevoegdheid beskik om beslag te lê op nagemaakte goedere of vermoedelik nagemaakte goedere wat in die Republiek ingevoer word of dit binnekom gedurende 'n bepaalde tydperk en wat daarop bereken is om op daardie intellektuele goedereregin inbreuk te maak, en om daardie goedere in bewaring te hou;

en om voorsiening te maak vir bykomstige aangeleenthede.

(Engelse teks deur die President geteken.)
(Goedgekeur op 19 September 1997.)

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing

1. (1) In hierdie Wet, tensy onbestaanbaar met die sinsverband, beteken—

(i) "aanwend op", met verwysing na goedere, om te gebruik of aan te bring op, of in fisiese of ander verband met, goedere, en, tensy duidelik onvanpas, ook om in goedere te beliggaam of te inkorporeer; (ii)

(ii) "beskermde goedere"—

(a) goedere wat, met magtiging van die eienaar van 'n intellektuele goedereregin, gekenmerk word aan die onderwerp van daardie intellektuele goedereregin, of wat dit dra, beliggaam of inkorporeer, of goedere waarop dié onderwerp deur daardie eienaar of met sy of haar magtiging aangewend is;

(b) enige bepaalde klas of soort goed wat, regtens, gekenmerk mag word aan die onderwerp van 'n intellektuele goedereregin, of dit mag dra, beliggaam of inkorporeer, slegs met die magtiging van die eienaar van daardie intellektuele goedereregin, of waarop daardie onderwerp regtens aangewend mag word slegs deur dié eienaar of met sy of haar magtiging, maar wat nog nie vervaardig, voortgebring of gemaak is, of waarop daardie onderwerp nog nie aangewend is, met die magtiging van of deur daardie eienaar nie (welke ook al van toepassing is); (xvi)

(c) where, by a notice under section 15 of the Merchandise Marks Act, 1941 (Act No. 17 of 1941), the use of a particular mark in relation to goods, except such use by a person specified in the notice, has been prohibited, means, without the authority of the specified person, making or applying that mark to goods, whether in the Republic or elsewhere.

However, the relevant act of counterfeiting must also have infringed the intellectual property right in question; (xv)

(v) "counterfeit goods" means goods that are the result of counterfeiting, and includes any means used for purposes of counterfeiting; (xiii)

(vi) "counterfeit goods depot" means a place designated under section 23 to be a counterfeit goods depot, and includes any place deemed by section 7(1)*(c)* to be a counterfeit goods depot; (xiv)

(vii) "document" includes a tape recording, a photograph and any electronic or magnetic or other medium on, in, or by means or by way of which, images, sound, data or information may be stored, and "documentary" will be construed accordingly; (iv)

(viii) "exporter" includes any person who, at the relevant time—

(a) is the owner or is in control or possession of any goods exported or to be exported from the Republic;

(b) carries the risk for any goods so exported or to be so exported;

(c) represents that or acts as if he or she is the exporter or owner of any goods so exported or to be so exported;

(d) actually takes or attempts to take any goods from the Republic;

(e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so exported or to be so exported;

(f) acts on behalf of any person referred to in paragraph *(a)*, *(b)*, *(c)*, *(d)* or *(e)* of this definition,

and, in relation to imported goods destined for exportation from the Republic, includes the manufacturer, producer, maker, supplier or shipper of those goods or any person inside or outside the Republic representing or acting on behalf of such a manufacturer, producer, maker, supplier or shipper. "Export" and "exportation" will be construed in accordance with the preceding provisions of this definition; (xvii)

(ix) "importer" includes any person who, at the relevant time—

(a) is the owner or is in control or possession of any goods imported or to be imported into the Republic;

(b) carries the risk for any goods so imported or to be so imported;

(c) represents that or acts as if he or she is the importer or owner of any goods so imported or to be so imported;

(d) actually brings or attempts to bring any goods into the Republic;

(e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so imported or to be so imported;

(f) acts on behalf of any person referred to in paragraph *(a)*, *(b)*, *(c)*, *(d)* or *(e)* of this definition,

and "import" and "importation" will be construed accordingly; (x)

(x) "inspector" means any person who under or by virtue of section 22 has been appointed as or designated to be an inspector for the purposes of this Act, as well as—

(a) any police official as defined in section 1(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), holding the rank of sergeant or a higher rank;

(b) the Commissioner for Customs and Excise and any official contemplated in section 15(9), in performing their functions in the circumstances contemplated in section 15(4); (viii)

(xi) "intellectual property right"—

(a) means the rights in respect of a trade mark conferred by the Trade Marks Act, 1993 (Act No. 194 of 1993);

(b) means the copyright in any work in terms of the Copyright Act, 1978 (Act No. 98 of 1978);

(c) in the case where, by a notice issued under section 15 of the Merchandise Marks Act 1941, the use of a particular mark in relation to goods, except such use by a person specified in the notice, has been prohibited, means

(iii) "daad van sake doen met nagemaakte goedere" enige handeling of gedrag in artikel 2(1) bedoel; (i)

(iv) "dokument" ook 'n bandopname, 'n foto en 'n elektroniese of magnetiese of ander medium waarop, waarin of waardeur beelde, klank, data of inligting vasgelê word, en "dokumentêre" word dienooreenkomstig uitgelê; (vii)

(v) "eienaar", met betrekking tot 'n intellektuele goedereg, ook 'n persoon wat regtens bevoeg is om die intellektuele goedereg in eie naam af te dwing; (xiii)

(vi) "gereedskap" ook masjinerie; (xviii)

(vii) "hierdie Wet" ook 'n regulasie kragtens hierdie Wet uitgevaardig; (xvii)

(viii) "inspekteur" 'n persoon wat kragtens of uit hoofde van artikel 22 as inspekteur vir die doeleindes van hierdie Wet aangestel of aangewys is, asook—

(a) 'n polisiebeampte soos in artikel 1(1) van die Strafproseswet, 1977 (Wet No. 51 van 1977), omskryf, wat die rang van sersant of 'n hoër rang beklee;

(b) die Kommissaris van Doeane en Aksyns en enige beampte in artikel 15(9) beoog, wanneer hulle hul werksaamhede verrig in die omstandighede in artikel 15(4) beoog; (x)

(ix) "intellektuele goedereg"—

(a) die regte ten opsigte van 'n handelsmerk wat by die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993), verleen word;

(b) die outeursreg in enige werk ingevolge die Wet op Outeursreg, 1978 (Wet No. 98 van 1978);

(c) in die geval waar, by wyse van 'n kennisgewing uitgereik ingevolge artikel 15 van die Handelswaremerke-wet, 1941 (Wet No. 17 van 1941), die gebruik van 'n bepaalde merk met betrekking tot goedere, behalwe sulke gebruik deur 'n persoon in die kennisgewing vermeld, verbied is, die daarmee gepaardgaande uitsluitende reg van dié vermelde persoon om daardie merk aldus te gebruik; (xi)

(x) "invoerder" ook iemand wat op die tersaaklike tydstip—

(a) die eienaar is van of in beheer of in besit is van enige goedere wat in die Republiek ingevoer word of is of ingevoer staan te word;

(b) die risiko dra vir enige goedere wat aldus ingevoer word of is of ingevoer staan te word;

(c) voorgee dat of optree asof hy of sy die invoerder of eienaar is van enige goedere wat aldus ingevoer is of word of ingevoer staan te word;

(d) werklik enige goedere die Republiek inbring of poog om dit te doen;

(e) op enige wyse hoegenaamd 'n voordelige belang het by enige goedere wat aldus ingevoer word of is of ingevoer staan te word;

(f) namens enigiemand in paragraaf *(a)*, *(b)*, *(c)*, *(d)* of *(e)* van hierdie omskrywing bedoel, optree,

en "invoer", hetsy as werkwoord of selfstandige naamwoord, word dienooreenkomstig uitgelê; (ix)

(xi) "klaer" iemand wat ingevolge artikel 3(1) geregtig is om 'n klagte beoog in daardie artikel aanhangig te maak en wat so 'n klagte aanhangig gemaak het; (iii)

(xii) "Minister" die Minister van Handel en Nywerheid; (xii)

(xiii) "nagemaakte goedere" goedere wat die resultaat is van namaking, en omvat dit enige middele wat vir die doeleindes van namaking gebruik word of is; (v)

(xiv) "nagemaaktegoedere-depot" 'n plek as nagemaaktegoedere-depot kragtens artikel 23 aangewys, en ook enige plek wat by artikel 7(1)*(c)* geag word 'n nagemaaktegoedere-depot te wees; (vi)

(xv) "namaking"—

(a) sonder magtiging van die eienaar van 'n intellektuele goedereg wat in die Republiek ten opsigte van beskermde goedere bestaan, die vervaardiging, voortbrenging of maak, hetsy in die Republiek of elders, van enige goedere waardeur daardie beskermde goedere op so 'n wyse of in so mate nageboots word dat daardie ander goedere wesenlik identiese kopieë van die beskermde goedere is;

(b) sonder magtiging van die eienaar van 'n intellektuele goedereg wat in die Republiek ten opsigte van beskermde goedere bestaan, die vervaardiging, voortbrenging of maak of aanwending op goedere, hetsy in die

the concomitant exclusive right of that specified person so to use that mark; (ix)

(xii) "Minister" means the Minister of Trade and Industry; (xii)

(xiii) "owner", in relation to an intellectual property right, includes a person who has the capacity in law to enforce the intellectual property right in his or her own name; (v)

(xiv) "package" or "packaging" means any container, wrapping or outer cover and the contents thereof, or any bundle or single piece in the case of unpacked goods, and, when used as a verb, has a corresponding meaning; (xvi)

(xv) "prescribed" means prescribed by regulation under this Act; (xix)

(xvi) "protected goods" means—

(a) goods featuring, bearing, embodying or incorporating the subject matter of an intellectual property right with the authority of the owner of that intellectual property right, or goods to which that subject matter has been applied by that owner or with his or her authority;

(b) any particular class or kind of goods which, in law, may feature, bear, embody or incorporate the subject matter of an intellectual property right only with the authority of the owner of that intellectual property right, or to which that subject matter may in law be applied, only by that owner or with his or her authority, but which has not yet been manufactured, produced or made, or to which that subject matter has not yet been applied, with the authority of or by that owner (whichever is applicable); (ii)

(xvii) "this Act" includes any regulation made under this Act; (vii)

(xviii) "tools" includes machinery; and (vi)

(xix) "vehicle" includes any motor car, van, truck, trailer, caravan, cart, barrow, train, aircraft, ship, boat or other vessel, and any other vehicle, craft or means of conveyance of any kind whatsoever, whether self-propelled or not, as well as any pack animal. (xviii)

(2) Without derogating from the meanings of the words "place", "premises" and "vehicle", and unless clearly inappropriate, any reference in this Act—

(a) to any place or premises, must be construed as a reference also to any freight container, irrespective of its size, at, on or in the place or premises;

(b) to any vehicle, must be construed as a reference also to such a freight container on or in the vehicle.

Dealing in counterfeit goods prohibited and an offence

2. (1) Goods that are counterfeit goods, may not—

(a) be in the possession or under the control of any person in the course of business for the purpose of dealing in those goods;

(b) be manufactured, produced or made except for the private and domestic use of the person by whom the goods were manufactured, produced or made;

(c) be sold, hired out, bartered or exchanged, or be offered or exposed for sale hiring out, barter or exchange;

(d) be exhibited in public for purposes of trade;

(e) be distributed—

(i) for purposes of trade; or

Republiek of elders, van die onderwerp van dié intellektuele goedereg of 'n getroue nabootsing daarvan sodat die ander goedere bereken is om verwar te word met of voor te kom as synde die beskermde goedere van bedoelde eienaar of enige goedere wat onder sy of haar lisensie vervaardig, voortgebring of gemaak is; of

(c) waar, by wyse van 'n kennisgewing ingevolge artikel 15 van die Handelswaremerke-wet, 1941, die gebruik van 'n bepaalde merk met betrekking tot goedere, behalwe sulke gebruik deur 'n persoon in die kennisgewing vermeld, verbied is, om sonder magtiging van die vermelde persoon, daardie merk te maak of aan te wend op goedere, hetsy in die Republiek of elders.

Die betrokke namakings handeling moes egter ook op die intellektuele goedereg wat ter sake is, inbreuk gemaak het; (iv)

(xvi) "pak" of "verpakking" enige houer, omhulsel of buitebedekking en die inhoud daarvan, of enige bondel of enkele stuk in die geval van goedere wat nie verpak is nie, en het die werkwoorde "pak" en "verpak" 'n ooreenstemmende betekenis; (xiv)

(xvii) "uitvoerder" ook iemand wat op die tersaaklike tydstip—

(a) die eienaar is van of in beheer of in besit is van enige goedere wat uit die Republiek uitgevoer word of is of uitgevoer staan te word;

(b) die risiko dra vir enige goedere wat aldus uitgevoer word of is of uitgevoer staan te word;

(c) voorgee dat of optree asof hy of sy die uitvoerder of eienaar is van enige goedere wat aldus uitgevoer is of word of uitgevoer staan te word;

(d) werklik enige goedere die Republiek uitneem of poog om dit te doen;

(e) op enige wyse hoegenaamd 'n voordelige belang het by enige goedere wat aldus uitgevoer is of word of uitgevoer staan te word;

(f) namens enigiemand in paragraaf *(a)*, *(b)*, *(c)*, *(d)* of *(e)* van hierdie omskrywing bedoel, optree,

en, met betrekking tot ingevoerde goedere wat bestem is om uit die Republiek uitgevoer te word, ook die vervaardiger, voortbrenger, maker, verskaffer of verskeper van dié goedere of enigiemand binne of buite die Republiek wat so 'n vervaardiger, voortbrenger, maker, verskaffer of verskeper verteenwoordig of namens hom of haar optree. "Uitvoer", hetsy as werkwoord of selfstandige naamwoord, word ooreenkomstig die voorafgaande bepalings van hierdie omskrywing uitgelê; (viii)

(xviii) "voertuig" enige motorkar, bestelwa, vragmotor of trok, sleepwa, karavaan, kar, stootkar, trein, lugvaartuig, skip, boot of ander vaartuig, en enige ander voertuig, tuig of vervoermiddel van watter aard ook al, hetsy selfaangedrewe, al dan nie, sowel as enige pakdier; en (xix)

(xix) "voorgeskryf" by regulasie kragtens hierdie Wet voorgeskryf. (xv)

(2) Sonder om aan die betekenisse van die woorde "plek", "perseel" en "voertuig" afbreuk te doen, moet, tensy duidelik onvanpas, enige verwysing in hierdie Wet—

(a) na enige plek of perseel, uitgelê word as 'n verwysing ook na enige vraghouer, ongeag die grootte daarvan, by, op of in die plek of perseel;

(b) na enige voertuig, uitgelê word as 'n verwysing ook na so 'n vraghouer op of in die voertuig.

Sake doen met nagemaakte goedere verbode en 'n misdryf

2. (1) Goedere wat nagemaakte goedere is, mag nie—

(a) in die loop van besigheid in die besit of onder die beheer van 'n persoon wees met die doel om sake met daardie goedere te doen nie;

(b) vervaardig, voortgebring of gemaak word nie behalwe vir die private en huishoudelike gebruik van die persoon deur wie die goedere vervaardig, voortgebring of gemaak is;

(c) verkoop, uitverhuur, geruil of verruil word of vir verkoop, uitverhuring, ruil of verruiling aangebied of uitgestal word nie;

(d) in die openbaar vir handelsdoeleindes ten toon gestel word nie;

(e) versprei word—

(i) vir handelsdoeleindes nie; of

(ii) for any other purpose to such an extent that the owner of an intellectual property right in respect of any particular protected goods suffers prejudice;

(f) be imported into or through or exported from or through the Republic except if so imported or exported for the private and domestic use of the importer or exporter, respectively;

(g) in any other manner be disposed of in the course of trade.

(2) A person who performs or engages in any act or conduct prohibited by subsection (1), will be guilty of an offence if—

(a) at the time of the act or conduct, the person knew or had reason to suspect that the goods to which the act or conduct relates, were counterfeit goods; or

(b) the person failed to take all reasonable steps in order to avoid any act or conduct of the nature contemplated in subsection (1) from being performed or engaged in with reference to the counterfeit goods.

Laying a complaint

3. (1) Any person who has an interest in protected goods, whether as the owner or licensee of an intellectual property right in respect of the protected goods or as an importer, exporter or distributor thereof (including the duly authorised agent or representative or the attorney of any such person), who reasonably suspects that an offence referred to in section 2(2) has been or is being committed or is likely to be committed by any person, may lay a complaint to that effect with any inspector.

(2) *(a)* The complainant must furnish information and particulars, to the satisfaction of the inspector, to the effect that the goods with reference to which that offence allegedly has been or is being or is likely to be committed, *prima facie* are counterfeit goods.

(b) For the purposes of paragraph *(a)*, the complainant may furnish to the inspector a specimen of the alleged counterfeit goods, or, if not reasonably possible, sufficient information and particulars from which the essential physical and any other distinctive features, elements and characteristics of the alleged counterfeit goods may be ascertained, and sufficient information and particulars as to the subsistence and extent of the intellectual property right, the subject matter of which allegedly has been applied to the goods alleged to be counterfeit goods, and as to the complainant's title to or interest in that right, and, where the alleged counterfeit goods are calculated to infringe an intellectual property right that subsists in respect of or has been applied to protected goods contemplated in paragraph *(a)* of the definition of "protected goods" in section 1(1), also a specimen of the relevant protected goods.

(3) In relation to a complaint that has been laid, an inspector must take appropriate steps in terms of and subject to section 4(1), if reasonably satisfied—

(a) that the person having laid the complaint, *prima facie* is a person who, in terms of subsection (1), is entitled to do so; and

(b) that—

(i) the goods claimed to be protected goods, *prima facie* are protected goods; and

(ii) the intellectual property right, the subject matter of which is alleged to have been applied to the offending goods, *prima facie* subsists; and

(c) that the suspicion on which the complaint is based, appears to be reasonable in the circumstances.

(4) The preceding provisions of this section do not preclude an inspector from taking any appropriate steps in terms of section 4(1) on his or her own initiative in relation to any act or conduct believed or suspected to be an act of dealing in counterfeit goods, provided the requirements of that section are met.

Inspector's powers in relation to counterfeit goods

4. (1) If, pursuant to any complaint laid with an inspector or on the strength of any other information at his or her disposal, the inspector has reasonable grounds to suspect

(ii) vir enige ander doel in so 'n mate dat die eienaar van die intellektuele goedereg ten opsigte van enige besondere beskermde goed, skade ly nie;

(f) ingevoer word in of deur of uitgevoer word vanuit of deur die Republiek nie behalwe as dit aldus ingevoer of uitgevoer word vir die private en huishoudelike gebruik van, onderskeidelik, die invoerder of uitvoerder;

(g) op enige ander wyse in die loop van die handel vervreem word nie.

(2) 'n Persoon wat enige handeling verrig of gemoeid is by enige gedrag wat by subartikel (1) verbied word, is skuldig aan 'n misdryf indien—

(a) die persoon, ten tyde van die handeling of gedrag, geweet het of rede gehad het om te vermoed dat die goedere waarop die handeling of gedrag betrekking het, nagemaakte goedere was; of

(b) die persoon nagelaat het om alle redelike stappe te doen om te verhoed dat enige handeling of gedrag van die aard in subartikel (1) beoog, verrig word of plaasvind met betrekking tot die nagemaakte goedere.

Aanhangig maak van klagte

3. (1) Iemand wat in beskermde goedere 'n belang het, hetsy as die eienaar of lisensiehouer van 'n intellektuele goedereg ten opsigte van die beskermde goedere of as 'n invoerder, uitvoerder of verspreider daarvan (met inbegrip van die behoorlik gemagtigde agent of verteenwoordiger of die prokureur van so iemand), en wat redelikerwys vermoed dat 'n misdryf bedoel in artikel 2(2) deur enige persoon gepleeg is of word of waarskynlik gepleeg gaan word, kan 'n klagte met dié strekking by enige inspekteur aanhangig maak.

(2) *(a)* Die klaer moet bewys ten genoeë van die inspekteur verstrek waarby aangetoon word dat die goedere met verwysing waarna daardie misdryf na bewering gepleeg is of word of waarskynlik gepleeg gaan word, *prima facie* nagemaakte goedere is.

(b) By die toepassing van paragraaf *(a)* kan die klaer aan die inspekteur 'n monster van die beweerde nagemaakte goedere verstrek, of, indien dit nie redelikerwys moontlik is nie, voldoende inligting en besonderhede waaruit die wesenlike fisiese en enige ander onderskeidende kenmerke, beginsels en eienskappe van die beweerde nagemaakte goedere vasgestel kan word, en voldoende inligting en besonderhede aangaande die bestaan en omvang van die intellektuele goedereg waarvan die onderwerp na bewering aangewend is op die goedere wat beweer word nagemaakte goedere te wees, en aangaande die klaer se titel op of belang in daardie reg, en, waar die beweerde nagemaakte goedere bereken is om inbreuk te maak op 'n intellektuele goedereg wat bestaan ten opsigte van of aangewend is op beskermde goedere beoog in paragraaf *(a)* van die omskrywing van "beskermde goedere" in artikel 1(1), ook 'n monster van die betrokke beskermde goedere.

(3) Met betrekking tot 'n klagte wat aanhangig gemaak is, moet 'n inspekteur gepaste stappe ingevolge en behoudens artikel 4(1) doen, indien redelikerwys daarvan oortuig—

(a) dat die persoon wat die klagte aanhangig gemaak het, *prima facie* iemand is wat ingevolge subartikel (1) geregtig is om dit te doen; en

(b) dat—

(i) die goedere wat volgens aanspraak beskermde goedere is, *prima facie* beskermde goedere is; en

(ii) die intellektuele goedereg waarvan die onderwerp na bewering op die gewraakte goedere aangewend is, *prima facie* bestaan; en

(c) dat die vermoede waarop die klagte gegrond is, in die omstandighede redelik skyn te wees.

(4) Die voorafgaande bepalings van hierdie artikel verhinder nie dat 'n inspekteur op sy of haar eie inisiatief enige gepaste stappe ingevolge artikel 4(1) doen met betrekking tot enige handeling of gedrag wat hy of sy glo of vermoed 'n daad van sake doen met nagemaakte goedere te wees nie, mits die vereistes van daardie artikel maar nagekom is.

Inspekteur se bevoegdhede met betrekking tot nagemaakte goedere

4. (1) Indien, na aanleiding van 'n klagte wat by 'n inspekteur aanhangig gemaak is of op sterkte van enige ander inligting tot sy of haar beskikking, die inspekteur redelike

that an offence contemplated in section 2(2) has been or is being committed or is likely to be committed, or to believe that an act of dealing in counterfeit goods has taken or is taking place or is likely to take place, he or she has the power, in accordance with paragraphs *(a)* to *(f)* of section 5(1)—

(a) to enter upon or enter any place, premises or vehicle in order to inspect any relevant goods and seize any suspected counterfeit goods, and may seize any suspected counterfeit goods found and cause them to be detained in accordance with this Act, and, where applicable, remove the suspected counterfeit goods for the purposes of detention;

(b) to collect or obtain evidence relating to the suspected counterfeit goods or the relevant act of dealing in counterfeit goods;

(c) to conduct at, on or in such place, premises or vehicle whatever search may be reasonably necessary for the purposes of paragraph *(a)* or *(b)* (including the search of a person); and

(d) to take whatever steps may be reasonably necessary in order to terminate the relevant act of dealing in counterfeit goods.

(2) Subject to section 5(2), the powers conferred on an inspector by subsection (1) may be exercised only on the authority of a warrant issued under section 6, and may be exercised wherever the suspected act of dealing in counterfeit goods has taken or is taking place or is likely to take place or is suspected on reasonable grounds to have taken place or to be taking place.

Extent of Inspector's powers in relation to counterfeit goods

5. (1) An inspector acting on the authority of and in accordance with a warrant issued under section 6, may at any reasonable time—

(a) enter upon or enter, and inspect, any place, premises or vehicle at, on or in which goods that are reasonably suspected of being counterfeit goods, are to be found or on reasonable grounds are suspected to be or to be manufactured, produced or made, and search such place, premises or vehicle and any person thereat, thereon or therein, for such goods and for any other evidence of the alleged or suspected act of dealing in counterfeit goods. For the purposes of entering, inspecting and searching such a vehicle, an inspector who is a police official or who is assisted by a police official may stop the vehicle, if necessary by force, wherever found, including on any public road or at any other public place;

(b) take the steps that may be reasonably necessary to terminate the manufacturing, production or making of counterfeit goods, or any other act of dealing in counterfeit goods being performed, at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future. Those steps may include any of the steps contemplated in paragraphs *(c)*, *(d)* and *(e)* but do not include the destruction or alienation of the relevant goods unless authorised by the court in terms of this Act;

(c) seize and detain, and, where applicable, remove for detention, all the goods in question found at, on or in such place, premises or vehicle;

(d) seal or seal off any place, premises or vehicle at, on or in which—

(i) the goods in question are found, or are manufactured, produced or made, either wholly or in part;

(ii) any trade mark, or any exclusive mark contemplated in paragraph *(c)* of the definition of "counterfeiting" in section 1(1), or any work which is the subject matter of copyright, is applied to those goods;

(iii) the packaging for those goods is prepared; or

(iv) the packaging of those goods is undertaken;

(e) seize and detain, and, where applicable, remove for detention, any tools which may be used in the manufacturing, production, making or packaging of those goods or applying a trade mark or that exclusive mark or such a work to them; and,

gronde het om te vermoed dat 'n misdryf beoog in artikel 2(2) gepleeg is of word of waarskynlik gepleeg gaan word of om te glo dat 'n daad van sake doen met nagemaakte goedere plaasgevind het of plaasvind of waarskynlik sal plaasvind, het hy of sy die bevoegdheid om, ooreenkomstig paragrawe *(a)* tot *(f)* van artikel 5(1)—

(a) enige plek, perseel of voertuig te betree of binne te gaan ten einde enige betrokke goedere te ondersoek en beslag te lê op enige vermoedelik nagemaakte goedere, en kan hy of sy op enige vermoedelik nagemaakte goedere wat gevind word, beslag lê en dit ooreenkomstig hierdie Wet in bewaring laat hou, en, waar van toepassing, die vermoedelik nagemaakte goedere verwyder vir die inbewaringhouding daarvan;

(b) getuienis wat betrekking het op die vermoedelik nagemaakte goedere of die tersaaklike daad van sake doen met vermoedelik nagemaakte goedere, bymekaar te maak of te verkry;

(c) by, op of in sodanige plek, perseel of voertuig die deursoeking uit te voer (met inbegrip van die visentering van 'n persoon) wat ook al vir die doeleindes van paragraaf *(a)* of *(b)* redelikerwys nodig mag wees; en

(d) die stappe te doen wat ook al redelikerwys nodig mag wees ten einde die betrokke daad van sake doen met nagemaakte goedere te beëindig.

(2) Behoudens artikel 5(2) mag die bevoegdhede wat 'n inspekteur by subartikel (1) verleen word, net uitgeoefen word op gesag van 'n lasbrief kragtens artikel 6 uitgereik, en kan dit uitgeoefen word waar ook al die verdagte daad van sake doen met nagemaakte goedere plaasgevind het of plaasvind of waarskynlik gaan plaasvind of op redelike gronde vermoed word plaas te gevind het of plaas te vind.

Omvang van inspekteur se bevoegdhede met betrekking tot nagemaakte goedere

5. (1) 'n Inspekteur wat optree op gesag van en ooreenkomstig 'n lasbrief uitgereik kragtens artikel 6, kan te eniger redelike tyd—

(a) enige plek, perseel of voertuig waarby, waarop of waarin goedere wat redelikerwys vermoed word nagemaakte goedere te wees, aangetref sal word of op redelike gronde vermoed word te wees of vervaardig, voortgebring of gemaak te word, betree of binnegaan en sodanige plek, perseel of voertuig deursoek na, en enige persoon daarby, daarop of daarin visenteer vir, sodanige goed en enige ander getuienis van die beweerde of verdagte daad van sake doen met nagemaakte goedere. 'n Inspekteur wat 'n polisiebeampte is of wat deur 'n polisiebeampte bygestaan word, kan, met die doel om so 'n voertuig te betree, te ondersoek en te deursoek, die voertuig, met geweld indien nodig, tot stilstand dwing waar ook al dit aangetref word, met inbegrip van op 'n openbare pad of by enige ander openbare plek;

(b) die stappe doen wat redelikerwys nodig mag wees om die vervaardiging, voortbrenging of maak van nagemaakte goedere of die verrigting van enige ander daad van sake doen met nagemaakte goedere by, op of in sodanige plek, perseel of voertuig te beëindig en die herhaling van so 'n daad in die toekoms, te verhoed. Daardie stappe mag enige van die stappe beoog in paragrawe *(c)*, *(d)* en *(e)* insluit, maar sluit nie die vernietiging of vervreemding van die tersaaklike goedere in nie tensy deur die hof ingevolge hierdie Wet gemagtig;

(c) op al die betrokke goedere wat by, op of in sodanige plek, perseel of voertuig gevind word, beslag lê en dit in bewaring hou, en, waar van toepassing, dit verwyder om in bewaring gehou te word;

(d) enige plek, perseel of voertuig verseël of afseël waarby, waarop of waarin—

(i) die betrokke goedere gevind word, of, hetsy in die geheel of gedeeltelik, vervaardig, voortgebring of gemaak word;

(ii) enige handelsmerk of enige uitsluitende merk beoog in paragraaf *(c)* van die omskrywing van "namaking" in artikel 1(1) of enige werk wat die onderwerp van outeursreg is, op daardie goedere aangewend word;

(iii) die verpakking van daardie goedere voorberei word; of

(iv) die verpakking van daardie goedere behartig word;

(e) beslag lê op enige gereedskap wat gebruik word by die vervaardiging, voortbrenging, maak of verpakking van daardie goedere of die aanwending van 'n handelsmerk of daardie uitsluitende merk of so 'n werk daarop, en dit in bewaring hou, en, waar van toepassing, dit verwyder om in bewaring gehou te word;

(f) if he or she reasonably suspects that a person at, on or in such place, premises or vehicle may furnish any information with reference to any act of dealing in counterfeit goods—

(i) question that person and take down a statement from him or her;

(ii) demand and procure from that person any book, document, article, item or object which in any way may be relevant to the nature, quantity, location, source or destination of the goods in question, or the identity and address of anyone involved or ostensibly involved as a supplier, manufacturer, producer, maker, distributor, wholesaler, retailer, importer, exporter or forwarding agent of, or other dealer in, the goods in question.

(2) Subject to subsection (3), an inspector may, during the day, without a warrant enter upon or enter any place, premises or vehicle after having identified himself or herself, and, in accordance with paragraphs *(a)* to *(f)* of subsection (1), exercise the powers of seizure, removal, detention, collecting evidence and search contemplated in section 4(1)*(a)*, *(b)* and *(c)* (except the power to search any person), as well as the power to take the steps contemplated in section 4(1)*(d)*, if—

(a) the person who is competent to consent to the entry and to such search, seizure, removal and detention, gives that consent; or

(b) the inspector on reasonable ground believes that—

(i) the required warrant will be issued to him or her in terms of section 6 if he or she were to apply for the warrant; and

(ii) the delay that would ensue by first obtaining the warrant would defeat the object or purpose of the entry, search, seizure, removal, detention, collection of evidence and other steps.

(3) Subsection (2)*(b)* does not serve as authority for, and may not be applied for the purposes of, entering and searching any private dwelling, nor for conducting such seizure and removal, the collection of evidence and the taking of the said other steps therein.

(4) Notwithstanding the provisions of subsections (1) and (2)—

(a) any steps taken by an inspector in accordance with paragraph *(a)*, *(b)*, *(c)* or *(d)* of subsection (1), or like steps taken by him or her by virtue of subsection (2), will cease to have any legal effect whatsoever unless the court confirms such steps, either finally or *pendente lite*, on the application of the inspector or the relevant complainant (where applicable) brought within 10 court days of the day on which those steps had been taken;

(b) no answer given or statement made by any person to an inspector exercising his or her powers in terms of paragraph *(f)*(i) of subsection (1) or given or made to any inspector exercising like powers by virtue of subsection (2), will, if self-incriminating, be admissible as evidence against that person in criminal proceedings instituted in any court against him or her, except in criminal proceedings where that person is tried for an offence contemplated in section 18*(d)*(ii), and then only to the extent that such answer or statement is relevant to prove the offence charged.

(5) The provisions of section 6(4) regarding the manner in which a search must be conducted, and section 6(5)*(b)*, (6), (7), (8) and (9), will apply *mutatis mutandis* to an inspector acting by virtue of subsection (2) of this section.

Provisions relating to issue and execution of warrant

6. (1) The warrant contemplated in section 4(2) read with section 5(1) will be issued in chambers by any judge of the High Court or by a magistrate who has jurisdiction in the area where the relevant suspected act of dealing in counterfeit goods is alleged to have taken or to be taking place or is likely to take place, and will be issued only if it appears to the judge or magistrate from information on oath or affirmation that there are reasonable grounds for believing that an act of dealing in counterfeit goods has taken or is taking place or is likely to take place, and the inspector seeking the warrant

(f) indien hy of sy redelikerwys vermoed dat 'n persoon by, op of in sodanige plek, perseel of voertuig enige inligting met betrekking tot enige daad van sake doen met nagemaakte goedere kan verstrek—

(i) daardie persoon ondervra en 'n verklaring van hom of haar afneem;

(ii) van daardie persoon enige boek, dokument, artikel, item of voorwerp vereis wat enigsins tersaaklik kan wees by die aard, hoeveelheid, ligging, bron of bestemming van die betrokke goedere, of by die identiteit en adres van enigiemand wat as verskaffer, vervaardiger, voortbrenger, maker, verspreider, groothandelaar, kleinhandelaar, invoerder, uitvoerder of versendingsagent van of in, of ander handelaar in, die betrokke goedere betrokke is of oënskynlik betrokke is, en dit van daardie persoon verkry.

(2) Behoudens subartikel (3) kan 'n inspekteur gedurende die dag en ná identifisering van hom- of haarself, enige plek, perseel of voertuig betree of binnegaan en, ooreenkomstig paragrawe *(a)* tot *(f)* van subartikel (1), die bevoegdheid van beslaglegging, verwydering, inbewaringhouding, bymekaarmaak van getuienis en deursoeking beoog in artikel 4(1)*(a)*, *(b)* en *(c)* (behalwe die bevoegdheid om 'n persoon te visenteer), sowel as die bevoegdheid om die stappe beoog in artikel 4(1)*(d)* te doen, uitoefen indien—

(a) die persoon wat bevoeg is om in te stem tot die betreding of binnegaan en sodanige deursoeking, beslaglegging, verwydering en inbewaringhouding, daardie instemming verleen; of

(b) die inspekteur op redelike gronde glo dat—

(i) die vereiste lasbrief ingevolge artikel 6 aan hom of haar uitgereik sal word indien hy of sy om die lasbrief sou aansoek doen; en

(ii) die vertraging wat sou volg deur eers die lasbrief te bekom, die oogmerk met of doel van die betreding of binnegaan, deursoeking, beslaglegging, verwydering, inbewaringhouding, bymekaarmaak van getuienis en ander stappe, sou verydel.

(3) Subartikel (2)*(b)* dien nie as magtiging vir, en word nie toegepas vir die doeleindes van, die betreding of binnegaan en deursoeking van enige private woning nie en ook nie vir die uitvoering van so 'n beslaglegging en verwydering, die bymekaarmaak van getuienis en die doen van bedoelde ander stappe daarin nie.

(4) Ondanks die bepalings van subartikels (1) en (2)—

(a) sal enige stappe gedoen deur 'n inspekteur ooreenkomstig paragraaf *(a)*, *(b)*, *(c)* of *(d)* van subartikel (1) of soortgelyke stappe deur hom of haar uit hoofde van subartikel (2) gedoen, ophou om enige regsgevolge hoegenaamd te hê tensy die hof sodanige stappe óf finaal óf *pendente lite* bekragtig op aansoek deur die inspekteur of die betrokke klaer (waar toepaslik) gebring binne 10 hofdae ná die dag waarop daardie stappe gedoen is;

(b) is geen antwoord verstrek of verklaring gedoen deur iemand aan 'n inspekteur by die uitoefening van sy of haar bevoegdhede ingevolge paragraaf *(f)*(i) van subartikel (1), of verstrek of gedoen aan 'n inspekteur wat soortgelyke bevoegdhede uitoefen uit hoofde van subartikel (2), indien dit self-inkriminerend is, as getuienis teen daardie persoon toelaatbaar in strafregtelike verrigtinge in 'n hof teen hom of haar ingestel nie, behalwe in strafregtelike verrigtinge waar daardie persoon teregstaan weens 'n misdryf in artikel 18*(d)*(ii) beoog, en dan ook net in die mate wat sodanige antwoord of verklaring relevant is ter bewys van die ten laste gelegde misdryf.

(5) Die bepalings van artikel 6(4) betreffende die wyse waarop 'n deursoeking uitgevoer moet word, en artikel 6(5)*(b)*, (6), (7), (8) en (9), is *mutatis mutandis* van toepassing op 'n inspekteur wat uit hoofde van subartikel (2) van hierdie artikel optree.

Bepalings met betrekking tot uitreiking en uitvoering van lasbrief

6. (1) Die lasbrief beoog in artikel 4(2) saamgelees met artikel 5(1), word in kamers uitgereik deur 'n regter van die Hoë Hof of deur 'n landdros wat regsbevoegdheid het in die gebied waar die betrokke verdagte daad van sake doen met nagemaakte goedere na bewering plaasgevind het of plaasvind of waarskynlik gaan plaasvind, en word net uitgereik indien dit vir die regter of landdros uit inligting onder eed of bevestiging voorkom dat daar redelike gronde bestaan om te glo dat 'n daad van sake doen met nagemaakte goedere plaasgevind het of plaasvind of waarskynlik gaan plaasvind, en

may be asked to specify which of the powers contemplated in section 4(1) is or are likely to be exercised.

(2) A warrant in terms of this section may be issued either with reference to only one separate suspected act of dealing in counterfeit goods or with reference to any number of such acts, whether any such act involves only one alleged offender or any number of alleged offenders, and irrespective of whether such offender or number of offenders is identified specifically by name or by reference to any particular place or circumstances, and any point in time.

(3) A warrant in terms of this section may be issued on any day and will be in force until—

(a) it has been executed; or

(b) it is cancelled by the judge or magistrate who issued it, or, if not available, by any other judge, or by any other magistrate with like authority (as the case may be); or

(c) the expiry of three months from the day of its issue; or

(d) the purpose for which the warrant was issued, no longer exists,

whichever may occur first.

(4) A warrant issued in terms of this section may be executed by day only, unless the person who has issued the warrant has authorised the execution thereof by night at times which must be reasonable, and the entry upon or into and search of any place, premises or vehicle specified in the warrant, and the search of any person thereat, thereon or therein, must be conducted with strict regard to decency and order, including—

(a) a person's right to, respect for and protection of his or her dignity;

(b) the right of a person to freedom and security of his or her person; and

(c) the right of a person to his or her personal privacy.

(5) An inspector executing a warrant in terms of this section must immediately before commencing with the execution thereof—

(a) identify himself or herself to the person in control of the place, premises or vehicle to be entered upon or entered, if that person is present, and hand to that person a copy of the warrant, or, if that person is not present, affix a copy of the warrant to a prominent spot at, on or to the place, premises or vehicle;

(b) furnish that person at his or her request with particulars regarding the inspector's authority to execute such a warrant. For that purpose an inspector may be requested to produce the certificate issued in respect of him or her under section 22(3).

(6) An inspector who on the authority of a warrant issued in terms of subsection (1) may enter upon or enter, and search, any place, premises or vehicle and search any person thereat, thereon or therein, may use such force as may be reasonably necessary to overcome any resistance to the entry and search.

(7) An inspector may enter upon or enter, and search, any place, premises or vehicle, and may search any person thereat, thereon or therein, only if he or she audibly has first demanded access thereto and has notified the purpose of the entry, unless the inspector on reasonable grounds is of the opinion that any goods, document, article or item may be destroyed or be lost if access is first demanded and that purpose notified.

(8) If, during the execution of a warrant in terms of this section, a person claims that any goods, document, article or item found at, on or in the place, premises or vehicle in question contains privileged information and refuses the inspection or removal thereof, the inspector executing the warrant, if of the opinion that the goods, document, article or item may be relevant to and necessary for the investigation of any complaint or any alleged or suspected act of dealing in counterfeit goods, must request the registrar of the High Court having jurisdiction, or that registrar's deputy, to seize and remove such goods, document, article or item for safe custody until the court has made a ruling on the question whether or not the information in question is privileged.

(9) In undertaking any search for and inspection and seizure of suspected counterfeit

die inspekteur wat die lasbrief verlang, kan gevra word om aan te dui watter van die bevoegdhede in artikel 4(1) beoog waarskynlik uitgeoefen sal word.

(2) 'n Lasbrief ingevolge hierdie artikel mag uitgereik word óf met verwysing na net 'n enkele afsonderlike verdagte daad van sake doen met nagemaakte goedere óf met verwysing na meerdere sulke dade, en hetsy daar by enige sodanige daad net een beweerde oortreder of meerdere beweerde oortreders betrokke is, en ongeag of sodanige oortreder of meerdere oortreders spesifiek by name of deur verwysing na enige bepaalde plek of omstandighede, en enige tydstip, geïdentifiseer word.

(3) 'n Lasbrief ingevolge hierdie artikel kan op enige dag uitgereik word en bly van krag totdat—

(a) dit uitgevoer is; of

(b) dit ingetrek word deur die regter of landdros wat dit uitgereik het, of, indien dié nie beskikbaar is nie, deur enige ander regter, of deur enige ander landdros met dieselfde gesag (na gelang van die geval); of

(c) drie maande verloop het sedert die dag waarop dit uitgereik is; of

(d) die doel waarvoor die lasbrief uitgereik is, nie meer bestaan nie,

watter ook al die eerste voorkom.

(4) 'n Lasbrief ingevolge hierdie artikel uitgereik, mag net gedurende die dag uitgevoer word tensy die persoon wat die lasbrief uitgereik het, magtiging verleen het vir die uitvoering daarvan gedurende die nag op tye wat redelik is, en die betreding of binnegaan en die deursoeking van enige plek, perseel of voertuig in die lasbrief vermeld, en die visentering van enige persoon daarby, daarop of daarin, geskied met streng voorbehoud van welvoeglikheid en ordelikheid, met inbegrip van—

(a) 'n persoon se reg op en eerbied vir en beskerming van sy of haar waardigheid;

(b) die reg van 'n persoon op vryheid en sekerheid van sy of haar persoon; en

(c) die reg van 'n persoon op sy of haar persoonlike privaatheid.

(5) 'n Inspekteur wat 'n lasbrief ingevolge hierdie artikel uitvoer, moet onmiddellik voordat met die uitvoering daarvan begin word—

(a) homself of haarself identifiseer aan die persoon in beheer van die plek, perseel of voertuig wat betree of binnegegaan staan te word, indien daardie persoon teenwoordig is, en 'n afskrif van die lasbrief aan daardie persoon oorhandig, of, indien daardie persoon nie teenwoordig is nie, 'n afskrif van die lasbrief op 'n opvallende plek by, op of aan die plek, perseel of voertuig aanbring;

(b) aan daardie persoon, op sy of haar versoek, besonderhede verstrek oor die inspekteur se magtiging om so 'n lasbrief uit te voer. 'n Inspekteur kan vir dié doel gevra word om die sertifikaat wat kragtens artikel 22(3) ten opsigte van hom of haar uitgereik is, te toon.

(6) 'n Inspekteur wat op gesag van 'n lasbrief uitgereik ingevolge subartikel (1) 'n plek, perseel of voertuig kan betree of binnegaan en dit deursoek en enige persoon daarby, daarop of daarin kan visenteer, kan die geweld gebruik wat redelikerwys nodig is om enige verset teen die betreding of binnegaan en die deursoeking of visentering te bowe te kom.

(7) 'n Inspekteur mag 'n plek, perseel of voertuig betree of binnegaan en dit deursoek, en mag 'n persoon daarby, daarop of daarin visenteer, alleenlik indien hy of sy eers hoorbaar toegang daartoe geëis het en die doel van die betreding verklaar het, tensy die inspekteur op redelike gronde van oordeel is dat enige goedere, dokument, artikel of item vernietig mag word of verlore mag gaan indien toegang eers geëis en dié doel verklaar word.

(8) Indien, gedurende die uitvoering van 'n lasbrief ingevolge hierdie artikel, 'n persoon beweer dat enige goedere, dokument, artikel of item wat by, op of in die betrokke plek, perseel of voertuig gevind is, gepriviligeerde inligting bevat en die ondersoek of verwydering daarvan weier, moet die inspekteur wat die lasbrief uitvoer, indien van oordeel dat die goedere, dokument, artikel of item ter sake is by en nodig is vir die ondersoek van enige klagte of enige beweerde of verdagte daad van sake doen met nagemaakte goedere, die griffier van die Hoë Hof wat regsbevoegdheid het, of dié griffier se adjunk, versoek om op sodanige goedere, dokument, artikel of item beslag te lê en dit vir veilige bewaring te verwyder totdat die hof 'n beslissing gegee het oor die vraag of die betrokke inligting gepriviligeerd is, al dan nie.

(9) Wanneer enige deursoeking na of visentering vir, ondersoek van en beslaglegging op vermoedelik nagemaakte goedere onderneem word, mag 'n inspekteur deur die

goods an inspector may be assisted by the complainant (if any) or any other knowledgeable person in identifying goods as suspected counterfeit goods.

Duties of inspector following seizure of goods

7. (1) An inspector who, in exercising his or her powers in terms of section 4(1), has seized any suspected counterfeit goods, must—

(a) forthwith seal, clearly identify and categorise these goods and prepare, in quadruplicate, an inventory of them and cause the person from whom those goods were seized to check the inventory for correctness, and, if correct, cause that person to make a certificate to that effect under his or her signature on each original of that inventory. If the seized goods are removed in terms of paragraph *(c)*, the inspector must endorse that fact under his or her signature on every original of that inventory, in which case that inventory will also serve as a receipt;

(b) furnish one of the originals of the inventory to the person from whom the goods were seized and another to the complainant (if any) within 72 hours after the seizure;

(c) as soon as possible remove the goods, if transportable, to a counterfeit goods depot for safe storage, or, if not capable of being removed or transported, declare the goods to have been seized, and seal off or seal and lock up those goods or place them under guard at the place where they were found, and thereupon that place will be deemed to be a counterfeit goods depot; and

(d) by written notice inform the following persons of the action taken by the inspector in terms of section 4(1) and of the address of the counterfeit goods depot where the seized goods are kept:

(i) The person from whom those goods were seized; and

(ii) also—

(aa) the complainant, where the inspector exercised his or her powers in terms of section 4(1) pursuant to a complaint laid in terms of section 3(1); or

(bb) any person who, in relation to those goods, qualifies in terms of section 3(1) to be a complainant, but who had not yet so laid a complaint at the time when the inspector exercised those powers on his or her own initiative as contemplated in section 3(4).

(2) In any notice in terms of subsection (1)*(d)* that is issued—

(a) to the complainant, the complainant must be notified of his or her right by virtue of section 9(1)*(a)* to lay a criminal charge, not later than three days after the date of the notice, against the person from whom those goods were seized (hereafter called the suspect);

(b) to a person qualifying to be a complainant, as contemplated in paragraph *(d)*(ii)*(bb)* of subsection (1), the inspector must invite that person (hereafter called the prospective complainant) to lay a complaint with him or her, and lay with the South African Police Service a criminal charge, not later than three days after the date of the notice, against the suspect for having performed an act of dealing in counterfeit goods that is an offence in terms of section 2(2).

(3) An inspector may demand from a complainant to disclose any information which may be relevant to the action that has been taken.

(4) *(a)* Any person prejudiced by a seizure of goods in terms of section 4(1), may at any time apply to the court on notice of motion for a determination that the seized goods are not counterfeit goods and for an order that they be returned to him or her.

(b) The court may grant or refuse the relief applied for and make such order as it deems just and appropriate in the circumstances, including an order as to the payment of damages and costs, if applicable.

(c) If deemed just and appropriate in the circumstances by a court that has refused the order sought, it may order, where those goods have been seized pursuant to a complaint

klaer (indien daar is) of enige ander kundige persoon bygestaan word by die identifisering van goedere as vermoedelik nagemaakte goedere.

Pligte van inspekteur na beslaglegging op goedere

7. (1) 'n Inspekteur wat by die uitoefening van sy of haar bevoegdhede ingevolge artikel 4(1) op enige vermoedelik nagemaakte goedere beslag gelê het, moet—

(a) daardie goedere onverwyld verseël, op duidelike wyse identifiseer, dit kategoriseer en 'n inventaris daarvan in viervoud opstel en die persoon ten aansien van wie op daardie goedere beslag gelê is, die inventaris vir juistheid laat nagaan, en, indien dit juis is, daardie persoon 'n sertifikaat met dié strekking onder sy of haar naamtekening laat aanbring op elke oorspronklike van dié inventaris. Indien die inbeslaggenome goedere ingevolge paragraaf *(c)* verwyder word, moet die inspekteur daardie feit onder sy of haar naamtekening op elke oorspronklike van dié inventaris endosseer, in welke geval dié inventaris ook as kwitansie dien;

(b) binne 72 uur na die beslaglegging, die persoon ten aansien van wie daar op die goedere beslag gelê is, voorsien van een van die oorspronklikes van die inventaris terwyl nog een aan die klaer (indien daar is) voorsien word;

(c) indien die goedere vervoer kan word, die goedere so spoedig moontlik verwyder vir die veilige berging daarvan in 'n nagemaaktegoedere-depot, of, indien dit nie verwyder of vervoer kan word nie, verklaar dat daar op die goedere beslag gelê is en die goedere afseël of verseël en toesluit, of dit laat bewaak, by die plek waar dit aangetref is, en daarna word daardie plek geag 'n nagemaaktegoedere-depot te wees; en

(d) by wyse van skriftelike kennisgewing die volgende persone verwittig van die optrede wat deur die inspekteur ingevolge artikel 4(1) onderneem is en aangaande die adres van die nagemaaktegoedere-depot waar die inbeslaggenome goedere gehou word:

(i) Die persoon ten aansien van wie op daardie goedere beslag gelê is; en

(ii) ook—

(aa) die klaer, waar die inspekteur sy of haar bevoegdhede ingevolge artikel 4(1) uitgeoefen het na aanleiding van 'n klagte ingevolge artikel 3(1) aanhangig gemaak; of

(bb) enige persoon wat met betrekking tot daardie goedere ingevolge artikel 3(1) kwalifiseer om 'n klaer te wees, maar wat op die tydstip toe die inspekteur daardie bevoegdhede op sy of haar eie inisiatief uitgeoefen het soos in artikel 3(4) beoog, nog nie aldus 'n klagte aanhangig gemaak het nie.

(2) In enige kennisgewing ingevolge subartikel (1)*(d)* wat uitgereik word—

(a) aan die klaer, moet die klaer in kennis gestel word van sy of haar reg, uit hoofde van artikel 9(1)*(a)* om, nie later nie as drie dae ná die datum van die kennisgewing, 'n kriminele aanklag in te dien teen die persoon ten aansien van wie op daardie goedere beslag gelê is (hieronder die verdagte genoem);

(b) aan 'n persoon wat kwalifiseer om 'n klaer te wees, soos beoog in paragraaf *(d)*(ii)*(bb)* van subartikel (1), moet die inspekteur op daardie persoon (hieronder die waarskynlike klaer genoem) 'n beroep doen om, nie later nie as drie dae ná die datum van die kennisgewing, by hom of haar 'n klagte aanhangig te maak, en by die Suid-Afrikaanse Polisiediens 'n kriminele aanklag in te dien, teen die verdagte weens dié se verrigting van 'n daad van sake doen met nagemaakte goedere wat ingevolge artikel 2(2) 'n misdryf uitmaak.

(3) 'n Inspekteur kan van 'n klaer vereis om enige inligting openbaar te maak wat ter sake is by die optrede wat onderneem is.

(4) *(a)* Enige persoon wat benadeel is deur 'n beslaglegging op goedere ingevolge artikel 4(1), kan te eniger tyd by wyse van kennisgewing van mosie by die hof aansoek doen om 'n beslissing dat die goedere waarop beslag gelê is, nie nagemaakte goedere is nie en om 'n bevel dat dit aan hom of haar terugbesorg word.

(b) Die hof kan die regshulp waarom aansoek gedoen word, toestaan of weier en die bevel uitvaardig wat hy in die omstandighede regverdig en gepas ag, met inbegrip van 'n bevel wat betref die betaling van skadevergoeding en koste, indien van toepassing.

(c) 'n Hof wat geweier het om die gevraagde bevel te verleen, kan, waar op daardie goedere beslag gelê is na aanleiding van 'n klagte ingevolge artikel 3(1) aanhangig

laid in terms of section 3(1), that the complainant furnishes security to the applicant in respect of those goods in an amount and manner determined by the court.

Storage of seized goods, and access thereto

8. (1) Goods that have been seized in terms of section 4(1) must be stored and kept in safe custody at a counterfeit goods depot until the person in charge of the depot—

(a) is ordered by a competent court in terms of this Act to return, release, destroy or otherwise dispose of those goods as specified in the order; or

(b) is directed by the inspector concerned, in the circumstances provided for in subsection (1)*(b)* or (2)*(a)*, *(b)* or *(c)* of section 9, to release those goods to the suspect.

(2) Goods seized in terms of section 4(1) will be available for inspection by the complainant, or, as the case may be, prospective complainant (if any), the suspect and any other interested person at the counterfeit goods depot on any working day during normal office hours.

(3) The person in charge of the counterfeit goods depot, on the request of the complainant or prospective complainant (as the case may be) or the suspect, must make the relevant seized goods available for testing or analysis by or on behalf of any such complainant or the suspect if the person so in charge, having taken into account the nature of such seized goods, the nature of the tests or analyses to be conducted, and the competence and suitability of the person by whom the tests or analyses are to be conducted, is satisfied that a request in that regard is reasonable.

(4) The person in charge of a counterfeit goods depot who is not willing to allow seized goods under his or her custody to be made available to the suspect for testing or analysis by any person or by a particular person, must forthwith refer the matter to the complainant or prospective complainant (as the case may be) who must either confirm or reverse that decision within 48 hours.

(5) *(a)* Where any such complainant has confirmed the decision not to allow the seized goods to be made available to the suspect for testing or analysis, that decision must be conveyed in writing to the suspect who may apply to the court for an order rescinding the decision and allowing those goods to be made so available.

(b) The court will grant the application if it finds the decision to be unreasonable in the circumstances.

Seized goods to be released if criminal investigation or criminal or civil proceedings not contemplated against suspect

9. (1) *(a)* Where suspected counterfeit goods have been seized by an inspector in terms of section 4(1), the complainant or prospective complainant (as the case may be), if he or she wishes to lay a criminal charge against the suspect with the South African Police Service for having committed an offence referred to in section 2(2) and request that a criminal investigation into the matter be undertaken, must do so not later than three days after the date of the notice referred to in section 7(2).

(b) If, upon the expiry of that three day period, a criminal charge has not so been laid, the relevant seized goods must be released to the suspect, subject to subsection (2).

(2) Subject to subsection (3), goods seized in terms of section 4(1), must be released to the suspect also—

(a) (i) if the State fails within 10 working days after the date of the notice given to the suspect in terms of paragraph *(d)*(i) of section 7(1) to inform the suspect, by further written notice, of its intention to institute a criminal prosecution against him or her for having committed an offence referred to in section 2(2); and

(ii) if any person to whom notice has been given in terms of paragraph *(d)*(ii) of section 7(1) fails within 10 working days after the date of that notice

gemaak, gelas, indien hy dit in die omstandighede regverdig en gepas ag, dat die klaer aan die aansoeker sekerheid ten opsigte van daardie goedere stel tot 'n bedrag en op die wyse deur die hof bepaal.

Berging van goedere waarop beslag gelê is, en toegang daartoe

8. (1) Goedere waarop ingevolge artikel 4(1) beslag gelê is, moet by 'n nagemaaktegoedere-depot geberg en in veilige bewaring gehou word totdat die persoon in beheer van die depot—

(a) ingevolge hierdie Wet deur 'n bevoegde hof gelas word om daardie goedere terug te besorg, vry te stel of te vernietig of andersins, soos in die bevel vermeld, daaroor te beskik; of

(b) in die omstandighede waarvoor in subartikel (1)*(b)* of 2*(a)*, *(b)* of, *(c)* van artikel 9 voorsiening gemaak word, deur die betrokke inspekteur gelas word om daardie goedere aan die verdagte vry te stel.

(2) Goedere waarop ingevolge artikel 4(1) beslag gelê is, is gedurende gewone kantoorure op enige werksdag deur die klaer, of, na gelang van die geval, waarskynlike klaer (indien daar is), die verdagte en enige ander belanghebbende by die nagemaaktegoederedepot vir ondersoek beskikbaar.

(3) Die persoon in beheer van die nagemaaktegoedere-depot moet, op versoek van die klaer of waarskynlike klaer (na gelang van die geval) of die verdagte, die betrokke inbeslaggenome goedere beskikbaar stel vir toetsing of ontleding deur of namens enige sodanige klaer of die verdagte indien die persoon aldus in beheer, na inagneming van die aard van sodanige inbeslaggenome goedere, die aard van die toetse of ontledings wat uitgevoer staan te word en die bekwaamheid en geskiktheid van die persoon deur wie die toetse of ontledings uitgevoer staan te word, oortuig is dat 'n versoek in daardie verband redelik is.

(4) Die persoon in beheer van 'n nagemaaktegoedere-depot wat nie bereid is om inbeslaggenome goedere wat in sy of haar bewaring is, aan die verdagte vir toetsing of ontleding deur enige persoon of deur 'n bepaalde persoon beskikbaar te stel nie, moet die aangeleentheid onverwyld na die klaer of waarskynlike klaer (na gelang van die geval) verwys, wat daardie besluit binne 48 uur óf moet bekragtig óf moet omkeer.

(5) *(a)* Wanneer enige sodanige klaer die besluit om nie toe te laat dat die inbeslaggenome goedere aan die verdagte vir toetsing of ontleding beskikbaar gestel word nie, bekragtig het, moet daardie besluit skriftelik oorgedra word aan die verdagte wat by die hof mag aansoek doen om 'n bevel dat die besluit ingetrek word en waarvolgens toegelaat word dat daardie goedere aldus beskikbaar gestel word.

(b) Die hof sal die aansoek toestaan indien hy bevind dat die besluit in die omstandighede onredelik was.

Inbeslaggenome goedere vrygestel te word indien kriminele ondersoek of strafregtelike of siviele verrigtinge teen verdagte nie beoog word

9. (1) *(a)* Waar 'n inspekteur ingevolge artikel 4(1) op vermoedelik nagemaakte goedere beslag gelê het, moet die klaer of waarskynlike klaer (na gelang van die geval), indien hy of sy 'n kriminele aanklag by die Suid-Afrikaanse Polisiediens teen die verdagte wens in te dien weens dié se pleging van 'n misdryf bedoel in artikel 2(2) en te versoek dat 'n kriminele ondersoek na die aangeleentheid onderneem word, dit doen nie later nie as drie dae na die datum van die kennisgewing bedoel in artikel 7(2).

(b) Indien by die verstryking van daardie driedae-tydperk 'n kriminele aanklag nie aldus ingedien is nie, moet die betrokke inbeslaggenome goedere behoudens subartikel (2) aan die verdagte vrygestel word.

(2) Behoudens subartikel (3) moet goedere waarop beslag gelê is ingevolge artikel 4(1) aan die verdagte vrygestel word ook—

(a) (i) indien die Staat in gebreke bly om, binne 10 werksdae na die datum van die kennisgewing aan die verdagte ingevolge paragraaf *(d)*(i) van artikel 7(1) gegee, die verdagte by wyse van verdere skriftelike kennisgewing te verwittig van sy voorneme om 'n strafregtelike vervolging teen hom of haar in te stel weens die pleging van 'n misdryf bedoel in artikel 2(2); en

(ii) indien 'n persoon aan wie ingevolge paragraaf *(d)*(ii) van artikel 7(1) kennis gegee is, in gebreke bly om, binne 10 werksdae na die datum van daardie kennisgewing, die verdagte by wyse van verdere skriftelike

to inform the suspect, by further written notice, of the person's intention to institute against the suspect civil proceedings founded on an act of dealing in counterfeit goods on the part of the suspect; or

(b) in any case where the State or that person has so given further notice, if that criminal prosecution or those civil proceedings (as the case may be) is or are not instituted within 10 court days after the date of the relevant further notice; or

(c) if the complainant in writing has instructed the inspector to release those goods to the suspect. However, such an instruction may not be given and the relevant seized goods may not be so released at any time after a criminal prosecution involving those goods has been instituted against the suspect; or

(d) upon the order of a competent court.

(3) *(a)* For the purpose of effecting the release of goods in terms of subsection (1)*(b)* or (2)*(a)*, *(b)* or *(c)*, the inspector who had seized those goods in terms of section 4(1) must issue a notice to the person in charge of the counterfeit goods depot where those goods are detained, directing that the relevant goods, as specified in the copy of the inventory attached to that notice, be released to the person specified therein, and at the same time cause a copy of that notice to be served on the suspect and on the complainant.

(b) The person in control of a counterfeit goods depot to whom a notice has been issued in accordance with the provisions of paragraph *(a)*, must release the relevant goods in accordance with that notice, on the fourth day after the date of that notice, unless a competent court has ordered otherwise.

Other orders that may be issued by court

10. (1) Without derogating from the powers of a court in any civil or criminal proceedings relating to counterfeit goods, such a court may order—

(a) that the goods in question, where they have been found to be counterfeit goods, be delivered up to the owner of the intellectual property right the subject matter of which has been unlawfully applied to those goods, or up to any complainant deriving his or her title from that owner, irrespective of the outcome of the proceedings;

(b) that those goods be released to any person specified in the order;

(c) that the complainant pays damages, in an amount determined by the court, to the person from whom those goods were seized and pays that person's costs;

(d) that the accused or the defendant or respondent (as the case may be) discloses the source from which those goods, if found to be counterfeit goods, have been obtained, as well as the identity of the persons involved or ostensibly involved in the importation, exportation, manufacture, production or making, and the distribution, of the counterfeit goods and in the channels of distribution of those goods.

(2) If a court in any civil or criminal proceedings has ordered the delivery up to any person of goods found to be counterfeit goods derived from any process of counterfeiting contemplated in paragraph *(b)* or *(c)* of the definition of "counterfeiting" in section 1(1), then, notwithstanding the provisions of any law, those goods—

(a) may not be released into the channels of commerce upon the mere removal of the subject matter of the intellectual property right that was unlawfully applied to those goods;

(b) if imported, may not be exported in an unaltered state,

unless the court, on good cause shown, has ordered otherwise.

Court may authorise search and attachment, pending institution of civil proceedings, to preserve evidence relevant to infringement of intellectual property right, etc.

11. (1) The owner of an intellectual property right who is aware or has reasonable grounds to believe that an act of dealing in counterfeit goods has taken or is taking place

kennisgewing te verwittig van die persoon se voorneme om teen die verdagte siviele verrigtinge in te stel wat gegrond is op 'n daad van sake doen met nagemaakte goedere van die kant van die verdagte; of

(b) in enige geval waar die Staat of daardie persoon aldus verdere kennis gegee het, indien daardie strafregtelike vervolging of daardie siviele verrigtinge (na gelang van die geval) nie binne 10 hofdae na die datum van die betrokke verdere kennisgewing ingestel word nie; of

(c) indien die klaer die inspekteur skriftelik aangesê het om daardie goedere aan die verdagte vry te stel. So 'n aansegging mag egter nie geskied en die betrokke inbeslaggenome goedere mag nie aldus vrygestel word te eniger tyd nadat 'n strafregtelike vervolging waarby daardie goedere betrokke is, teen die verdagte ingestel is nie; of

(d) op bevel van 'n bevoegde hof.

(3) *(a)* Ten einde die vrystelling van goedere ingevolge subartikel (1)*(b)* of (2)*(a)*, *(b)* of *(c)* te bewerkstellig, moet die inspekteur wat ingevolge artikel 4(1) op daardie goedere beslag gelê het, aan die persoon in beheer van die nagemaaktegoedere-depot waar daardie goedere in bewaring gehou word 'n kennisgewing uitreik waarby gelas word dat die betrokke goedere soos vermeld in 'n afskrif van die inventaris aan daardie kennisgewing geheg, vrygestel word aan die persoon daarin vermeld, en laat 'n afskrif van daardie kennisgewing terselfdertyd aan die verdagte en aan die klaer beteken.

(b) Die persoon in beheer van 'n nagemaaktegoedere-depot aan wie 'n kennisgewing ooreenkomstig die bepalings van paragraaf *(a)* uitgereik is, moet, tensy 'n bevoegde hof anders gelas, die betrokke goedere vrystel, ooreenkomstig daardie kennisgewing, op die vierde dag na die datum van daardie kennisgewing.

Ander bevele wat deur hof uitgereik kan word

10. (1) Sonder om afbreuk te doen aan die bevoegdhede van 'n hof in enige siviele of strafregtelike verrigtinge wat op nagemaakte goedere betrekking het, kan so 'n hof gelas—

(a) dat die betrokke goedere, indien daar bevind is dat dit nagemaakte goedere is, gelewer moet word aan die eienaar van die intellektuele goedereregwaarvan die onderwerp op onwettige wyse op daardie goedere aangewend is, of aan enige klaer wat sy of haar titel aan daardie eienaar ontleen, ongeag wat ook al die uitslag van die verrigtinge mag wees;

(b) dat daardie goedere vrygestel word aan enige persoon in die bevel vermeld;

(c) dat die klaer aan die persoon ten aansien van wie op daardie goedere beslag gelê is, skadevergoeding betaal in 'n bedrag deur die hof bepaal en ook dié persoon se koste betaal;

(d) dat die beskuldigde of die verweerder of respondent (na gelang van die geval) die bron vanwaar daardie goedere verkry is, openbaar maak indien daar bevind is dat dit nagemaakte goedere is, asook die identiteit van die persone wat betrokke of oënskynlik betrokke is by die invoer, uitvoer, vervaardiging, voortbrenging of maak, en die verspreiding, van die nagemaakte goedere en by die verspreidingskanale van daardie goedere.

(2) Indien 'n hof in enige siviele of strafregtelike verrigtinge gelas het dat goedere, wat bevind is nagemaakte goedere te wees wat ontleen is aan 'n namakingsproses beoog in paragraaf *(b)* of *(c)* van die omskrywing van "namaking" in artikel 1(1), aan enige persoon gelewer word, dan, ondanks enige wetsbepaling, mag daardie goedere—

(a) nie in die handelsverkeer vrygestel word bloot na slegs die verwydering van die onderwerp van die intellektuele goedereregwat op onwettige wyse op daardie goedere aangewend is nie;

(b) indien ingevoer, nie in onveranderde toestand uitgevoer word nie,

tensy die hof, op bewys van goeie gronde, anders gelas.

Hof kan, hangende instelling van siviele verrigtinge, deursoeking en in beslagneming magtig ter bewaring van getuienis ter sake by inbreukmaking op intellektuele goedereregwat, ens.

11. (1) Die eienaar van 'n intellektuele goedereregwat daarvan bewus is of redelike gronde het om te glo dat 'n daad van sake doen met nagemaakte goedere plaasgevind het of plaasvind of waarskynlik gaan plaasvind, kan, sonder om afbreuk te doen aan

or is likely to take place, may, without prejudice to any other remedy that he or she may have in law, apply *ex parte* to a judge in chambers for an order—

(a) directing the sheriff or another person designated by the court (hereafter referred to as a designated person) to enter upon or enter any specified place or premises accompanied by such other persons as the court may specify (if any) and there to search for, and, if found, seize and remove, such documents, records or other material as the court may specify and any such goods, alleged to be counterfeit goods, as may be so specified (hereafter referred to as subject goods), that are at, on or in such place or premises, and to attach such documents, records, material and goods;

(b) directing the respondent to point out to the sheriff or designated person all subject goods and to disclose and make available to him or her all documents and material that are relevant in order to determine whether the subject goods in question are counterfeit goods or are relevant to any transactions or dealings in counterfeit goods at, on or in the relevant place or premises or elsewhere, and to permit the sheriff or designated person to attach such subject goods, as well as such documents and material (hereafter jointly referred to as ancillary materials) and remove them for detention in safe custody;

(c) restraining the respondent from—

(i) interfering with the state of the subject goods or ancillary materials during the search, seizure, attachment or removal;

(ii) carrying out or continuing with the act of dealing in counterfeit goods that gave rise to the application;

(d) granting such further or alternative relief as the court considers appropriate.

(2) An application in terms of subsection (1) will be heard *in camera* unless the court is satisfied that the attendance of the proceedings by members of the public or any class or group of such members will not cause the applicant to suffer any prejudice or to be prejudiced when seeking to protect or enforce his or her relevant intellectual property right, and that such attendance, should the court order the relief sought, will not impair or detract from the efficacy of the order or the execution thereof.

(3) The court will not grant an application brought in terms of subsection (1) unless it considers that the applicant has a *prima facie* claim against the respondent for the infringement of an intellectual property right and that—

(a) the applicant's right to discovery of documents in any proceedings to be instituted by him or her is likely to be frustrated, either by reason of the nature of the suspected counterfeit goods in relation to which the application is made or due to other circumstances; or

(b) should the normal court procedure be followed or implemented, the goods relevant to the issues in those proceedings, or evidence in connection with transactions or dealings with the latter goods, are likely to be destroyed or to be so altered or placed or be otherwise disposed of in such manner as to effectively preclude the applicant from having access to the relevant goods.

(4) A court hearing an application so brought, may order that the relief applied for, be granted, subject to the terms and conditions specified in the order, or that relief be refused, or may make any other order that it deems just and appropriate in the circumstances.

(5) For the purposes of subsection (4), the court may—

(a) order that the sheriff or designated person may rely upon the assistance of knowledgeable persons, specified in the order, in identifying the subject goods and ancillary materials;

(b) order the applicant to furnish security to the respondent in an appropriate amount equal to a specified percentage of the value of the goods attached;

(c) issue an order restraining the respondent *pendente lite* from infringing the applicant's intellectual property right;

(d) issue a rule *nisi* calling upon the respondent to show cause before or on a specified day (which must fall on a date within 20 court days of the granting

enige ander regsmiddel waaroor hy of sy regtens mag beskik, *ex parte* by 'n regter in kamers aansoek doen om 'n bevel—

(a) dat die balju of 'n ander persoon deur die hof aangewys (hieronder 'n aangewese persoon genoem), gelas word om enige vermelde plek of perseel te betree of binne te gaan, vergesel van die ander persone (indien daar is) deur die hof vermeld, en aldaar te soek na die dokumente, rekords of ander materiaal wat die hof vermeld en enige sodanige goedere, wat na bewering nagemaakte goedere is, as wat aldus vermeld mag word (hieronder onderwerpgoedere genoem), wat by, op of in sodanige plek of perseel is, en, indien dit gevind word, daarop beslag te lê en dit te verwyder, en om sodanige dokumente, rekords, materiaal en goedere in beslag te neem;

(b) dat die respondent gelas word om aan die balju of aangewese persoon alle onderwerpgoedere uit te wys en aan hom of haar alle dokumente en materiaal openbaar te maak en beskikbaar te stel wat ter sake is ten einde te bepaal of die betrokke onderwerpgoedere nagemaakte goedere is of ter sake is by enige transaksie of handelsbedrywighede met nagemaakte goedere by, op of in die betrokke plek of perseel of elders, en om die balju of aangewese persoon toe te laat om sodanige onderwerpgoedere, asook sodanige dokumente en materiaal (hieronder gesamentlik aanvullende materiaal genoem) in beslag te neem en dit te verwyder ten einde dit in veilige bewaring te hou;

(c) wat die respondent belet om—

(i) gedurende die deursoeking, inbeslagneming of verwydering met die toestand van die onderwerpgoedere of aanvullende materiaal in te meng;

(ii) die daad van sake doen met nagemaakte goedere wat tot die aansoek aanleiding gegee het, uit te voer of voort te sit;

(d) wat die verdere of alternatiewe regshulp toestaan wat die hof gepas ag.

(2) 'n Aansoek ingevolge subartikel (1) word *in camera* aangehoor tensy die hof daarvan oortuig is dat bywoning van die verrigtinge deur lede van die publiek of enige klas of groep van dié lede nie daartoe sal lei dat die aansoeker enige nadeel ly of benadeel word wanneer daar getrag word om sy of haar betrokke intellektuele goedereg te beskerm of af te dwing nie, en dat sodanige bywoning, indien die hof die verlangde regshulp sou gelas, nie die effektiwiteit van die hofbevel of die uitvoering daarvan sal aantas of afbreuk daaraan sal doen nie.

(3) Die hof staan nie 'n aansoek ingevolge subartikel (1) gedoen, toe nie, tensy hy van mening is dat die aansoeker 'n *prima facie*-eis teen die respondent weens inbreukmaking op 'n intellektuele goedereg het en dat—

(a) die aansoeker se reg op die blootlegging van dokumente by enige verrigtinge wat deur hom of haar ingestel staan te word, waarskynlik verydel sal word, hetsy vanweë die aard van die vermoedelik nagemaakte goedere met betrekking waartoe die aansoek gedoen word of weens ander omstandighede; of

(b) indien die gewone hofprosedures nagevolg of daaraan uitvoering gegee sou word, die goedere wat by die geskilpunte in daardie verrigtinge ter sake is, of getuienis in verband met transaksies of handelsbedrywighede met laasgenoemde goedere, waarskynlik vernietig sal word of so verander of geplaas of op so 'n wyse andersins oor beskik sal word dat die aansoeker effektiewelik verhinder sal word om toegang tot die betrokke goedere te hê.

(4) 'n Hof wat 'n aansoek aanhoor wat aldus gedoen is, kan gelas dat die regshulp waarom aansoek gedoen word, toegestaan word behoudens die bedinge en voorwaardes in die hofbevel vermeld, of dat regshulp geweier word, of kan enige ander bevel uitvaardig wat hy in die omstandighede regverdig en gepas ag.

(5) By die toepassing van subartikel (4) kan die hof—

(a) gelas dat die balju of aangewese persoon, by die identifisering van die onderwerpgoedere en aanvullende materiaal, mag staatmaak op die bystand van die kundige persone in die bevel vermeld;

(b) gelas dat die aansoeker aan die respondent sekerheid stel tot 'n gepaste bedrag gelykstaande aan 'n vermelde persentasie van die waarde van die goedere wat in beslag geneem is;

(c) 'n bevel uitreik waarby die respondent *pendente lite* belet word om op die aansoeker se intellektuele goedereg inbreuk te maak;

(d) 'n reël *nisi* uitvaardig waarby die respondent aangesê word om voor of op 'n vermelde dag (wat moet val op 'n datum binne 20 dae vanaf die toestaan van

of the rule *nisi*) why an interdict restraining the respondent from infringing the applicant's intellectual property right and any order granting the applicant further relief, including an order directing the delivery of the subject goods up to the applicant, should not be granted or confirmed;

(e) order that the applicant, should he or she wish to institute proceedings against the respondent for the infringement of the applicant's intellectual property right, must do so not later than the date specified in the order.

(6) If the court has not made an order in terms of subsection (5)*(e)*, an applicant who wishes to institute the proceedings contemplated in that subsection must do so within 20 court days of the date of the order made in terms of subsection (4) and whereby his or her application was granted.

Provisions relating to execution of court order authorising search for counterfeit goods and evidence relevant thereto

12. (1) When the court in terms of section 11(4) has issued an order authorising a search of any place or premises, the respondent will be entitled to have his or her attorney present during the search and further execution of the order at, on or in such place or premises, if the presence of that attorney can be secured with due speed after the sheriff or designated person has arrived at the place or premises with a view to conducting that search and further executing that order.

(2) The sheriff or designated person, for the purpose of conducting the search, must be accompanied by the applicant's attorney who, after service, at the place or premises where the search is to be conducted, of a copy of the application and order on the respondent, or, if the respondent is not present, on a responsible person ostensibly in control of such place or premises, must explain the terms of the order to the respondent or that person and inform him or her that the respondent is entitled to have his or her attorney present during the execution of the order provided the presence of the respondent's attorney is secured with due speed.

(3) The sheriff or designated person conducting the search, must—

(a) prepare an inventory of the subject goods and ancillary materials attached by him or her on the authority of an order in terms of section 11(4) and furnish a copy of the inventory to the applicant and to the respondent;

(b) allow the parties to peruse the ancillary materials that have been so attached and to make copies thereof or excerpts therefrom; and

(c) allow the parties to inspect the subject goods and to have those goods tested or analysed on their behalf.

(4) When a search authorised by an order in terms of section 11(4) has been completed, the applicant's attorney must, without delay—

(a) make a statement under oath or affirmation in which he or she reports fully on the conducting of the search and on any other steps taken by him or her in relation to or pursuant to the search with a view to complying with the requirements of that order or an order in terms of section 11(5) and the requirements imposed by this section, and, where any subject goods or ancillary materials have been attached on the authority of an order in terms of section 11(4), annex to that statement a copy of the inventory prepared in relation to the relevant subject goods and ancillary materials in compliance with subsection (3) of this section;

(b) cause the original of that statement, together with its annex, to be filed in the office of the registrar of the court in question and cause a certified copy thereof to be served on the respondent.

Court may order unsuccessful claimant in proceedings for infringement of intellectual property right to pay compensation

13. (1) Where in any proceedings the claim of a person (hereafter called the erstwhile applicant) in respect of an infringement of his or her intellectual property right is dismissed, the court may order the erstwhile applicant to pay appropriate compensation

die reël *nisi*) redes aan te voer waarom 'n interdik wat die respondent belet om op die aansoeker se intellektuele goedereg inbreuk te maak en enige bevel waarby die aansoeker verdere regshulp verleen word, met inbegrip van 'n bevel wat die lewering van die onderwerpgoedere aan die aansoeker gelas, nie toegestaan of bekragtig behoort te word nie;

(e) gelas dat die aansoeker, indien hy of sy sou wens om teen die respondent verrigtinge in te stel weens inbreukmaking op die aansoeker se intellektuele goedereg, dit moet doen nie later nie as die datum in die bevel vermeld.

(6) Indien die hof nie 'n bevel ingevolge subartikel (5)*(e)* uitvaardig nie, moet 'n aansoeker wat wens om die verrigtinge beoog in daardie subartikel in te stel, dit doen binne 20 hofdae na die datum van die bevel ingevolge subartikel (4) uitgevaardig en waarby sy of haar aansoek toegestaan is.

Bepalings met betrekking tot uitvoering van hofbevel wat deursoeking na nagemaakte goedere en getuienis ter sake daarby magtig

12. (1) Wanneer die hof ingevolge artikel 11(4) 'n bevel uitgereik het waarby die deursoeking van enige plek of perseel gemagtig word, is die respondent geregtig dat sy of haar prokureur teenwoordig mag wees gedurende die deursoeking en verdere uitvoering van die bevel by, op of in sodanige plek of perseel indien die teenwoordigheid van dié prokureur met bekwame spoed nadat die balju of aangewese persoon by die plek of perseel opgedaag het met die doel om daardie deursoeking uit te voer en dié bevel verder uit te voer, bewerkstellig kan word.

(2) Die balju of aangewese persoon moet, ten einde die deursoeking uit te voer, vergesel word deur die aansoeker se prokureur wat, nadat 'n afskrif van die aansoek en bevel by die plek of perseel waar die deursoeking uitgevoer gaan word, beteken is aan die respondent, of, indien die respondent nie teenwoordig is nie, aan 'n verantwoordelike persoon wat oënskynlik in beheer van sodanige plek of perseel is, die bepalings van die bevel aan die respondent of daardie persoon moet verduidelik en hom of haar inlig dat die respondent geregtig is dat sy of haar prokureur gedurende die uitvoering van die bevel teenwoordig mag wees mits die teenwoordigheid van die respondent se prokureur met bekwame spoed bewerkstellig kan word.

(3) Die balju of aangewese persoon wat die deursoeking uitvoer, moet—

(a) 'n inventaris opstel van die onderwerpgoedere en aanvullende materiaal wat deur hom of haar in beslag geneem is op gesag van 'n bevel ingevolge artikel 11(4), en 'n afskrif van die inventaris aan die aansoeker en aan die respondent voorsien;

(b) die partye toelaat om die aanvullende materiaal wat aldus in beslag geneem is, deur te gaan en afskrifte of kopieë daarvan of uittreksels daaruit te maak;

(c) die partye toelaat om die onderwerpgoedere te ondersoek en dié goedere namens hulle te laat toets of ontleed.

(4) Wanneer 'n deursoeking wat by 'n bevel ingevolge artikel 11(4) gemagtig is, afgehandel is, moet die aansoeker se prokureur sonder versuim—

(a) 'n verklaring opstel onder eed of bevestiging, waarin hy of sy volledig verslag doen oor die uitvoering van die deursoeking en oor enige ander stappe wat met betrekking tot of na aanleiding van die deursoeking deur hom of haar gedoen is ter voldoening aan die vereistes van daardie bevel of 'n bevel ingevolge artikel 11(5), en die vereistes by hierdie artikel opgelê, en moet, waar enige onderwerpgoedere of aanvullende materiaal in beslag geneem is op gesag van 'n bevel ingevolge artikel 11(4), as aanhangsel by daardie verklaring 'n afskrif aanheg van die inventaris wat met betrekking tot die onderwerpgoedere en aanvullende materiaal opgestel is ter voldoening aan subartikel (3) van hierdie artikel;

(b) die oorspronklike van daardie verklaring, tesame met sy aanhangsel, laat liasseer in die kantoor van die griffier van die betrokke hof en 'n gewaarmerkte afskrif daarvan laat beteken aan die respondent.

Hof kan onsuksesvolle eiser by verrigtinge oor inbreukmaking op intellektuele goedereg gelas om vergoeding te betaal

13. (1) Wanneer in enige verrigtinge die eis van 'n persoon (hieronder die eertydse aansoeker genoem) ten opsigte van 'n inbreukmaking op sy of haar intellektuele goedereg afgewys word, kan die hof die eertydse aansoeker gelas om aan die eertydse

to the erstwhile respondent for any injury or prejudice caused to or suffered by him or her in consequence of any measures and steps taken in terms of section 11 or 12 on the authority of an order contemplated in section 11.

(2) For the purposes of subsection (1) and section 14—

(a) "erstwhile applicant" means the owner of an intellectual property right who was the successful applicant in any *ex parte* application brought in terms of section 11(1); and

(b) "erstwhile respondent" means the person against or in relation to whom relief was sought pursuant to that application.

Court may order release of attached subject goods and ancillary materials in certain circumstances

14. If an erstwhile applicant does not, before the date specified in an order contemplated in section 11(5)*(e)* or within the period referred to in section 11(6), whichever is applicable, institute proceedings against the erstwhile respondent for the infringement of the erstwhile applicant's intellectual property right, or if, in the case where those proceedings have been so instituted, the erstwhile applicant's claim has been dismissed by the court, the court, on the application of the erstwhile respondent or any other interested person claiming to be entitled to the subject goods and ancillary materials, may order that such goods and materials be released, respectively, to the erstwhile respondent or to such interested person who has proved his or her entitlement thereto.

Customs authorities' powers in relation to counterfeit goods being imported into Republic

15. (1) The owner of an intellectual property right may apply to the Commissioner for Customs and Excise (hereafter called the Commissioner), to seize and detain all goods—

(a) which are counterfeit goods featuring, bearing, embodying or incorporating the subject matter of that intellectual property right or to which the subject matter of that right has been applied;

(b) and which are imported into or enter the Republic during the period specified in the application. However, that period may not extend beyond the last day of the period for which that intellectual property right subsists.

(2) For the purposes of subsection (1), the applicant may furnish to the Commissioner a specimen of the goods that are protected goods of the nature contemplated in paragraph *(a)* of the definition of "protected goods" in section 1(1) (if any) and to which the subject matter of his or her relevant intellectual property right relates, and sufficient information and particulars as to the subsistence and extent of that intellectual property right and as to his or her title to that right.

(3) The Commissioner must consider and deal with an application in terms of subsection (1) without delay, and must grant the application if satisfied on reasonable grounds—

(a) that the goods claimed to be protected goods, are *prima facie* protected goods;

(b) that the intellectual property right, the subject matter of which relates to the protected goods, *prima facie* subsists; and

(c) that the applicant *prima facie* is the owner of that intellectual property right.

(4) When an application made in terms of subsection (1) has been granted and notice thereof given in terms of subsection (5), all goods that are counterfeit goods of the type with reference to which that application was made (hereafter called the stipulated goods), or suspected on reasonable grounds to be stipulated goods, and imported into or entering the Republic from time to time during the period determined by the Commissioner (which may be shorter than the period applied for), may be seized and detained by the customs authorities in performing their functions under the Customs and Excise Act, 1964 (Act No. 91 of 1964), subject to the provisions of subsections (6) and (7) of this section.

respondent gepaste vergoeding te betaal vir enige skade of nadeel wat hom of haar veroorsaak is of deur hom of haar gely is ten gevolge van enige maatreëls getref en stappe gedoen ingevolge artikel 11 of 12 op gesag van 'n bevel in artikel 11 beoog.

(2) By die toepassing van subartikel (1) en artikel 14, beteken—

(a) "eertydse aansoeker" die eienaar van 'n intellektuele goedereg wat die suksesvolle aansoeker was in enige *ex parte*-aansoek ingevolge artikel 11(1) gedoen; en

(b) "eertydse respondent" die persoon teen of met betrekking tot wie regshulp na aanleiding van daardie aansoek verlang was.

Hof kan in sekere omstandighede gelas dat inbeslaggenome onderwerpgoedere en aanvullende materiaal vrygestel word

14. Indien 'n eertydse aansoeker nie voor die datum vermeld in 'n bevel beoog in artikel 11(5)*(e)* of binne die tydperk bedoel in artikel 11(6), watter een ook al van toepassing is, verrigtinge teen die eertydse respondent instel weens inbreukmaking op die eertydse aansoeker se intellektuele goedereg nie, of indien, in die geval waar sulke verrigtinge wel aldus ingestel is, die eertydse aansoeker se eis deur die hof afgewys is, kan die hof, op aansoek van die eertydse respondent of enige ander belanghebbende wat daarop aanspraak maak dat hy of sy op die onderwerpgoedere en aanvullende materiaal geregtig is, gelas dat sodanige goedere en materiaal vrygestel word onderskeidelik aan die eertydse respondent of aan sodanige belanghebbende wat sy of haar aanspraak daarop bewys het.

Doeane-owerheid se bevoegdhede met betrekking tot nagemaakte goedere wat in Republiek ingevoer word

15. (1) Die eienaar van 'n intellektuele goedereg kan aansoek doen by die Kommissaris van Doeane en Aksyns (hieronder die Kommissaris genoem), om beslag te lê op, en in bewaring te hou, alle goedere—

(a) wat nagemaakte goedere is wat die onderwerp van daardie intellektuele goedereg as kenmerk het of wat dit dra, beliggaam of inkorporeer of waarop die onderwerp van daardie reg aangewend is;

(b) en wat gedurende die tydperk in die aansoek vermeld, ingevoer word in die Republiek of dit binnekom. Dié tydperk mag egter nie eindig na die laaste dag van die tydperk ten aansien waarvan daardie intellektuele goedereg bestaan nie.

(2) By die toepassing van subartikel (1) kan die aansoeker die Kommissaris voorsien van 'n monster van die goedere wat beskermde goedere is van die aard beoog in paragraaf *(a)* van die omskrywing van "beskermde goedere" in artikel 1(1) (indien daar is) en waarop die onderwerp van sy of haar betrokke intellektuele goedereg betrekking het en voldoende inligting en besonderhede aangaande die bestaan en omvang van daardie intellektuele goedereg en aangaande sy of haar titel op daardie reg.

(3) Die Kommissaris moet 'n aansoek ingevolge subartikel (1) sonder versuim oorweeg en dit afhandel, en moet die aansoek toestaan indien op redelike gronde daarvan oortuig—

(a) dat die goedere ten aansien waarvan aanspraak gemaak word dat dit beskermde goedere is, *prima facie* beskermde goedere is;

(b) dat die intellektuele goedereg waarvan die onderwerp op die beskermde goedere betrekking het, *prima facie* bestaan; en

(c) dat die aansoeker *prima facie* die eienaar van daardie intellektuele goedereg is.

(4) Wanneer 'n aansoek ingevolge subartikel (1) gedoen, toegestaan is en kennis daarvan gegee is ingevolge subartikel (5), kan daar op alle goedere wat nagemaakte goedere is van die soort met verwysing waarna daardie aansoek gedoen is (hieronder gestipuleerde goedere genoem) of wat op redelike gronde vermoed word gestipuleerde goedere te wees, en wat van tyd tot tyd, gedurende die tydperk deur die Kommissaris bepaal (welke tydperk korter mag wees as die tydperk waarvoor aansoek gedoen is), ingevoer word in die Republiek of dit binnekom, beslag gelê word, en kan dit in bewaring gehou word, deur die doeane-owerhede by die verrigting van hul werksaamhede kragtens die Doeane- en Aksynswet, 1964 (Wet No. 91 van 1964), behoudens die bepalings van subartikels (6) en (7) van hierdie artikel.

(5) The Commissioner, by written notice (issued within a reasonable time after having decided the application) must notify the applicant whether the application has been granted or refused, and—

(a) if granted, state the period during which any stipulated goods being imported into or entering the Republic will be made subject to seizure and become subject to detention under subsection (4);

(b) if refused, state the reasons for the refusal.

(6) For the purposes of acting under subsection (4) in relation to goods that are stipulated goods or suspected on reasonable grounds to be stipulated goods—

(a) any member of the customs authorities will act *mutatis mutandis* as if he or she were an inspector who, in connection with counterfeit goods or alleged or suspected counterfeit goods, were exercising the powers contemplated in section 4(1) on own initiative in terms of section 3(4);

(b) the following provisions of this Act will apply *mutatis mutandis* in relation to any member of the customs authorities, namely—

(i) the provisions in accordance with or subject to which the powers contemplated in section 4(1) may be exercised by an inspector so acting on own initiative;

(ii) the provisions by which any other power or any right, function, duty, obligation, exemption, indemnity or liability is conferred or imposed on an inspector so acting.

However, the Minister, at the request of the Minister of Finance acting on the recommendation of the Commissioner, may by notice in the *Gazette* exempt the members of the customs authorities from any of the provisions made applicable by this paragraph if satisfied that there are suitable and appropriate alternative arrangements made by or under the Customs and Excise Act, 1964, that cover the purpose of the provision from which exemption is sought.

(7) The customs authorities will not be obliged to act in terms of subsection (4) unless the owner of the intellectual property right, the subject matter of which is alleged to be featured or borne by or incorporated or embodied in or to have been applied to stipulated goods, furnishes to the Commissioner security in the manner and amount that the Commissioner may require to indemnify the customs authorities and their members against any liability that may be incurred pursuant to the seizure and detention of goods or anything done in relation to goods when acting or purportedly acting under this section, and to cover any expenses that may be incurred in effecting the seizure and detention of the goods.

(8) The provisions of this Act will not be construed so as to render the customs authorities or any of their members liable for—

(a) any failure to detect or seize stipulated goods;

(b) the inadvertent release of any such goods; or

(c) any action taken in good faith in respect of such goods.

(9) For the purposes of this section, "customs authorities" means the South African Revenue Service in its Division: Customs and Excise, the members of which are the Commissioner and those officials who are "officers" within the contemplation of the definition of "officer" in section 1(1) of the Customs and Excise Act, 1964.

Evidence and presumptions

16. (1) Subject to section 5(4)*(b)*, any statement taken down or other documentary evidence procured by an inspector in the course of exercising any power in terms of section 4(1), may be made available to a complainant at his or her request. The complainant may make copies of or extracts from any such statement or documentary evidence and must return the original statement or document to the inspector.

(2) An inspector may be called as a witness by any party to civil or criminal proceedings concerning counterfeit goods, or by the court, whenever the inspector's

(5) Die Kommissaris moet die aansoeker by wyse van skriftelike kennisgewing (wat uitgereik moet word binne 'n redelike tyd nadat oor die aansoek beslis is) in kennis stel of die aansoek toegestaan of geweier is, en—

(a) indien dit toegestaan is, die tydperk vermeld waartydens enige gestipuleerde goedere wat in die Republiek ingevoer word of dit binnekom, kragtens subartikel (4) onderhewig gestel word aan beslaglegging en inbewaringhouding;

(b) indien dit geweier is, die redes vir die weiering vermeld.

(6) Ten einde kragtens subartikel (4) op te tree met betrekking tot goedere wat gestipuleerde goedere is of op redelike gronde vermoed word gestipuleerde goedere te wees—

(a) tree enige lid van die doeane-owerhede op, *mutatis mutandis,* asof hy of sy 'n inspekteur was wat in verband met nagemaakte goedere of beweerde of vermoedelik nagemaakte goedere die bevoegdhede beoog in artikel 4(1) op eie inisiatief ingevolge artikel 3(4) uitoefen;

(b) is die volgende bepalings van hierdie Wet *mutatis mutandis* ten opsigte van enige lid van die doeane-owerhede van toepassing, naamlik—

(i) die bepalings ooreenkomstig waarmee of waarbehoudens die bevoegdhede beoog in artikel 4(1) uitgeoefen mag word deur 'n inspekteur wat aldus op eie inisiatief optree;

(ii) die bepalings waarby enige ander bevoegdheid of 'n reg, werksaamheid, plig, verpligting, vrystelling, vrywaring of aanspreeklikheid 'n inspekteur wat aldus optree, verleen of opgelê word.

Nietemin kan die Minister, op versoek van die Minister van Finansies handelende op aanbeveling van die Kommissaris, by kennisgewing in die *Staatskoerant* die lede van die doeane-owerhede vrystel van enige van die bepalings wat by hierdie paragraaf van toepassing gemaak word, indien daarvan oortuig dat daar geskikte en gepaste alternatiewe reëlings bestaan wat by of kragtens die Doeane- en Aksynswet, 1964, getref word en wat die doel van die bepaling waarvan vrystelling verlang word, ondervang.

(7) Die doeane-owerhede is nie verplig om ingevolge subartikel (4) op te tree nie tensy die eienaar van die intellektuele goedereg waarvan die onderwerp na bewering 'n kenmerk is van, gedra word deur, geïnkorporeer of beliggaam is in of aangewend is op gestipuleerde goedere, aan die Kommissaris sekerheid stel op die wyse en tot 'n bedrag wat die Kommissaris vereis ten einde die doeane-owerhede en hul lede skadeloos te stel teen enige aanspreeklikheid wat opgeloop mag word na aanleiding van die beslaglegging op en die inbewaringhouding van goedere wanneer kragtens hierdie artikel opgetree word of heet opgetree te word en ter dekking van enige uitgawes wat aangegaan mag word ter bewerkstelliging van die beslaglegging op en inbewaringhouding van die goedere.

(8) Die bepalings van hierdie Wet word nie uitgelê as sou dit die doeane-owerhede of enige van hul lede aanspreeklik stel weens—

(a) enige versuim om gestipuleerde goedere te bespeur of op te spoor of om daarop beslag te lê nie;

(b) die onbewuste vrystelling van enige sodanige goedere nie; of

(c) enige optrede wat te goeder trou ten opsigte van sulke goedere onderneem is nie.

(9) By die toepassing van hierdie artikel beteken "doeane-owerhede" die Suid-Afrikaanse Inkomstediens in sy Afdeling: Doeane en Aksyns, en waarvan die Kommissaris en daardie amptenare wat "beamptes" is binne die bestek van die omskrywing van "beampte" in artikel 1(1) van die Doeane- en Aksynswet, 1964, die lede is.

Getuienis en vermoedens

16. (1) Behoudens artikel 5(4)*(b)* kan enige verklaring afgeneem of ander dokumentêre getuienis verkry deur 'n inspekteur in die loop van die uitoefening van enige bevoegdheid ingevolge artikel 4(1), aan 'n klaer beskikbaar gestel word op sy of haar versoek. Die klaer kan van so 'n verklaring of sulke dokumentêre getuienis afskrifte of kopieë maak of uittreksels daaruit maak en moet die oorspronklike verklaring of dokument aan die inspekteur terugbesorg.

(2) 'n Inspekteur kan deur enige party by enige siviele of strafregtelike verrigtinge rakende nagemaakte goedere, of deur die hof, opgeroep word as getuie wanneer ook al

conduct, the exercise or performance of his or her powers or duties in terms of section 4(1), 5, 6, 7 or 9 or the nature of the circumstances in or activities with reference to which those powers or duties were exercised or performed, is in issue or relevant in those proceedings.

(3) In any civil proceedings concerning an act of dealing in counterfeit goods by any person, it will be permissible, if relevant, to present evidence about that person's conviction on account of an offence founded on the same act of dealing in counterfeit goods.

(4) *(a)* A statement in the prescribed form, made under oath or affirmation by an inspector, to the effect that the goods specified under his or her signature in the inventory attached to that statement, are goods seized by him or her from a specified person at a specified place and on a specified date, will, upon production to the court, be admissible in evidence and be sufficient proof of the facts stated therein in any civil or criminal proceedings concerning counterfeit goods or any act of dealing therein, if relevant to those proceedings and if the inventory has been prepared by the inspector, and has been certified to be correct, as required by section 7(1)*(a)*.

(b) If a statement has been produced and handed in as evidence in terms of paragraph *(a)*, the court, in its discretion and notwithstanding the provisions of that paragraph, may order that the inspector who made that statement be directed or subpoenaed to appear before the court to give oral evidence concerning any matter mentioned or dealt with in that statement.

(5) Where the subsistence of an intellectual property right in respect of protected goods or any person's title to or interest in such intellectual property right is in issue in any civil or criminal proceedings concerning counterfeit goods, the subsistence of, title to or interest in such intellectual property right, where it is alleged—

(a) to encompass the rights in respect of a trade mark as contemplated in paragraph *(a)* of the definition of "intellectual property right" in section 1(1), may be proved in accordance with the provisions of sections 49, 50 and 51 of the Trade Marks Act, 1993;

(b) to be copyright in a work, may be proved in accordance with the provisions of section 26(12) of the Copyright Act, 1978, which provisions will apply *mutatis mutandis*;

(c) to be the exclusive right to use a particular mark, conferred by a notice issued under section 15 of the Merchandise Marks Act, 1941, may be proved by producing to the court a copy of the *Gazette* in which that notice was published, accompanied by a statement under oath or affirmation made by the Minister or any officer in the Department of Trade and Industry designated by the Minister, which is to the effect that such notice has not been withdrawn or amended in its essence.

However, the provisions of this subsection will not be construed so as to detract from the power of the court, in relation to any such matter or any aspect thereof—

(i) to require oral evidence to be given;

(ii) in the case of a High Court, to order that the evidence of a person who resides or is for the time being outside the area of jurisdiction of that Court, be taken by means of interrogatories.

(6) Where any person who conducts business in protected goods featuring, bearing, incorporating or embodying the subject matter of a particular intellectual property right is proved to have been found in possession of suspected counterfeit goods to which the subject matter of the same intellectual property right has been applied—

(a) it will, in any civil proceedings concerning an act of dealing in counterfeit goods founded on that person's possession of the suspected counterfeit goods, be presumed, until the contrary is proved, that such person was in possession of the latter goods for the purpose of dealing therein if the quantity of those goods is more than that which, in the circumstances, reasonably may be required for his or her private and domestic use;

(b) the same presumption will, in any criminal proceedings arising from that person's possession of the suspected counterfeit goods, apply *mutatis*

die inspekteur se gedrag, die uitoefening of verrigting van sy of haar bevoegdhede of pligte ingevolge artikel 4(1), 5, 6, 7 of 9 of die aard van die omstandighede waarin of bedrywighede met verwysing waarna daardie bevoegdhede of pligte uitgeoefen of verrig is, by daardie verrigtinge in geskil is of ter sake is.

(3) By enige siviele verrigtinge rakende 'n daad van sake doen met nagemaakte goedere deur enige persoon, is dit toelaatbaar, indien relevant, om getuienis aan te bied oor daardie persoon se skuldigbevinding aan 'n misdryf gegrond op dieselfde daad van sake doen met nagemaakte goedere.

(4) *(a)* 'n Verklaring in die voorgeskrewe vorm afgelê deur 'n inspekteur onder eed of bevestiging en met die strekking dat die goedere wat onder sy of haar naamtekening vermeld word in die inventaris wat by daardie verklaring aangeheg is, goedere is waarop deur hom of haar ten aansien van 'n vermelde persoon beslag gelê is by 'n vermelde plek en op 'n vermelde datum, is, by oorlegging aan die hof by enige siviele of strafregtelike verrigtinge rakende nagemaakte goedere of enige daad van sake doen daarmee, as getuienis toelaatbaar, en is dit voldoende bewys van die feite daarin vermeld, indien dit by daardie verrigtinge relevant is en die inventaris deur die inspekteur opgestel is, en dit as juis gesertifiseer is, volgens voorskrif van artikel 7(1)*(a)*.

(b) Indien 'n verklaring ingevolge paragraaf *(a)* as getuienis oorgelê en ingehandig is, kan die hof, na goeddunke en ondanks die bepalings van daardie paragraaf, gelas dat die inspekteur wat daardie verklaring afgelê het, aangesê of gedagvaar word om voor die hof te verskyn ten einde mondelinge getuienis af te lê oor enige aangeleentheid in daardie verklaring genoem of behandel.

(5) Wanneer die bestaan van 'n intellektuele goedereereg ten opsigte van beskermde goedere, of enige persoon se titel op of belang in sodanige intellektuele goedereereg, by enige siviele of strafregtelike verrigtinge rakende nagemaakte goedere in geskil is, kan die bestaan van, titel op of belang in sodanige intellektuele goedereereg, waar dit beweer word—

(a) die regte ten opsigte van 'n handelsmerk te omvat soos in paragraaf *(a)* van die omskrywing van "intellektuele goedereereg" in artikel 1(1) beoog, ooreenkomstig die bepalings van artikels 49, 50 en 51 van die Wet op Handelsmerke, 1993, bewys word;

(b) die outeursreg in 'n werk te wees, ooreenkomstig die bepalings van artikel 26(12) van die Wet op Outeursreg, 1978, bewys word, welke bepalings *mutatis mutandis* van toepassing is;

(c) die uitsluitende reg om 'n bepaalde merk te gebruik, verleen by 'n kennisgewing uitgereik kragtens artikel 15 van die Handelswaremerke-wet, 1941, te wees, bewys word deur aan die hof 'n afskrif oor te lê van die *Staatskoerant* waarin daardie kennisgewing gepubliseer is, vergesel van 'n verklaring onder eed of bevestiging afgelê deur die Minister of enige beampte in die Departement van Handel en Nywerheid deur die Minister aangewys, met die strekking dat sodanige kennisgewing nie ingetrek of in wese gewysig is nie.

Nietemin word die bepalings van hierdie subartikel nie uitgelê as sou dit afbreuk doen aan die bevoegdheid van die hof om, met betrekking tot so 'n aangeleentheid of enige aspek daarvan—

(i) te vereis dat mondelinge getuienis afgelê word nie;

(ii) in die geval van 'n Hoë Hof, te gelas dat die getuienis van 'n persoon wat buite die regsgebied van daardie Hof woon of hom of haar dan daarbuite bevind, by wyse van vraagpunte afgeneem word nie.

(6) Wanneer bewys word dat iemand wat besigheid bedryf met beskermde goedere wat gekenmerk word aan die onderwerp van 'n bepaalde intellektuele goedereereg of wat dit dra, inkorporeer of beliggaam, in besit gevind is van vermoedelik nagemaakte goedere waarop die onderwerp van dieselfde intellektuele goedereereg aangewend is—

(a) word, in enige siviele verrigtinge rakende 'n daad van sake doen met nagemaakte goedere gegrond op daardie persoon se besit van die vermoedelik nagemaakte goedere, vermoed, totdat die teendeel bewys word, dat sodanige persoon in besit van laasgenoemde goedere was met die doel om sake daarmee te doen, indien die hoeveelheid van daardie goedere meer is as wat in die omstandighede redelikerwys vir sy of haar private en huishoudelike gebruik nodig is;

(b) geld dieselfde vermoede in enige strafregtelike verrigtinge wat voortspruit uit daardie persoon se besit van die vermoedelik nagemaakte goedere *mutatis*

mutandis unless credible evidence in rebuttal of the fact presumed, is tendered.

Liability for damage or loss arising pursuant to application of Act

17. (1) Any person suffering damage or loss caused by the wrongful seizure, removal or detention of goods alleged to be counterfeit goods, or by any action contemplated in section 7(1)*(a)*, *(b)* or *(c)* or (2) wrongfully taken by an inspector with reliance on that section read with section 4(1), or caused during or pursuant to the seizure, removal or detention of such goods in terms of this Act, will be entitled to claim compensation for that damage or loss which claim, subject to subsection (2), will be against the complainant and not against the State, the inspector or the person in charge of the counterfeit goods depot where those goods are or were detained.

(2) The State or such inspector or the person in charge of the relevant counterfeit goods depot, as the case may be, will be liable in respect of a claim contemplated in subsection (1) only if—

(a) in the seizure or removal of the alleged counterfeit goods, the inspector, or, in the detention and storage of those goods, that person so in charge or the inspector (depending on the circumstances), has been grossly negligent; or

(b) the inspector or that person so in charge (as the case may be), in the seizure, removal, detention or storage of those goods, acted in bad faith.

(3) Any reference in paragraphs *(a)* and *(b)* of subsection (2) to an inspector or to a person in charge of a counterfeit goods depot (however expressed) will be construed so as to include any person acting on the instruction or under the supervision of the inspector or the person so in charge, as the case may be.

Miscellaneous offences

18. A person will be guilty of an offence—

(a) upon failing to comply with any request, direction, demand or order made or given by an inspector in accordance with the provisions of this Act;

(b) when obstructing or hindering an inspector in performing his or her functions under this Act;

(c) if that person, without the necessary authority, breaks, damages or tampers with a seal applied by an inspector in terms of this Act or removes any goods, documents, articles, items, objects or things sealed or sealed-off by an inspector or detained or stored at a counterfeit goods depot in terms of this Act; or

(d) when, if asked in terms of section 5(1)*(f)* for information or an explanation relating to a matter within the knowledge of that person, he or she—

(i) refuses or fails to give that information or explanation; or

(ii) gives information or an explanation knowing it to be false or misleading.

Penalties

19. (1) Any person convicted of an offence referred to in section 2(2), will be punishable—

(a) in the case of a first conviction, with a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, that may not exceed R5 000,00 per article or item, or with imprisonment for a period that may not exceed three years, or with both such a fine and such term of imprisonment;

(b) in the case of a second or any subsequent conviction, with a fine, in respect of each such article or item, that may not exceed R10 000,00 per article or item,

mutandis tensy geloofwaardige getuienis ter weerlegging van die feit wat vermoed word, aangebied word.

Aanspreeklikheid vir skade of verlies wat by toepassing van Wet ontstaan

17. (1) Iemand wat skade of verlies ly wat veroorsaak is deur die onregmatige beslaglegging op of verwydering of inbewaringhouding van goedere wat beweer word nagemaakte goedere te wees, of deur enige optrede beoog in artikel 7(1)*(a)*, *(b)* of *(c)* of (2) wat onregmatig onderneem is deur 'n inspekteur met beroep op dié artikel saamgelees met artikel 4(1), of wat veroorsaak is gedurende of na aanleiding van die beslaglegging op of verwydering of inbewaringhouding van sodanige goedere ingevolge hierdie Wet, is geregtig om vir daardie skade of verlies vergoeding te eis, welke eis, behoudens subartikel (2) teen die klaer ingebring kan word en nie teen die Staat, die inspekteur of die persoon in beheer van die nagemaaktegoedere-depot waar daardie goedere aangehou word of is nie.

(2) Die Staat of sodanige inspekteur of die persoon in beheer van die betrokke nagemaaktegoedere-depot, na gelang van die geval, is ten opsigte van 'n eis beoog in subartikel (1) aanspreeklik slegs indien—

(a) by die beslaglegging op of verwydering van die beweerde nagemaakte goedere, die inspekteur, of, by die inbewaringhouding en berging van daardie goedere, die persoon aldus in beheer of die inspekteur (na gelang van die omstandighede), grof nalatig was; of

(b) die inspekteur of daardie persoon aldus in beheer (na gelang van die geval), by die beslaglegging op of die verwydering, inbewaringhouding of berging van daardie goedere, te kwader trou opgetree het.

(3) Enige verwysing in paragrawe *(a)* en *(b)* van subartikel (2) na 'n inspekteur of na 'n persoon in beheer van 'n nagemaaktegoedere-depot (hoe dit ook al uitgedruk word) word uitgelê as sou dit enigiemand insluit wat in opdrag of onder toesig van die inspekteur of die persoon aldus in beheer, na gelang van die geval, optree.

Diverse misdrywe

18. 'n Persoon is skuldig aan 'n misdryf—

(a) by versuim om te voldoen aan enige versoek, aansegging of lasgewing, vereiste of eis, of bevel deur 'n inspekteur ooreenkomstig die bepalings van hierdie Wet gerig, gedoen, gestel of gegee;

(b) by die dwarsboming of belemmering van 'n inspekteur by die verrigting van sy of haar werksaamhede kragtens hierdie Wet;

(c) indien dié persoon sonder die nodige magtiging 'n seël wat deur 'n inspekteur ingevolge hierdie Wet aangebring is, breek, beskadig of daarmee peuter of enige goedere, dokumente, artikels, items, voorwerpe of dinge wat ingevolge hierdie Wet verseël of afgeseël is deur 'n inspekteur of by 'n nagemaakte goedere-depot in bewaring gehou of geberg word, verwyder; of

(d) wanneer hy of sy, indien ingevolge artikel 5(1)*(f)* gevra vir inligting of 'n verduideliking met betrekking tot 'n aangeleentheid binne die kennis van dié persoon—

(i) weier of in gebreke bly om daardie inligting of verduideliking te verskaf; of

(ii) inligting of 'n verduideliking verskaf wetende dat dit vals of misleidend is.

Strawwe

19. (1) Iemand wat skuldig bevind word aan 'n misdryf bedoel in artikel 2(2) is strafbaar—

(a) in die geval van 'n eerste skuldigbevinding, met 'n boete, ten opsigte van elke artikel of item wat betrokke is by die bepaalde daad van sake doen met nagemaakte goedere waarop die misdryf betrekking het, wat nie meer as R5 000,00 per artikel of item mag bedra nie, of met gevangenisstraf vir 'n tydperk wat nie drie jaar te bowe mag gaan nie, of met beide so 'n boete en sodanige termyn van gevangenisstraf;

(b) in die geval van 'n tweede of enige daaropvolgende skuldigbevinding, met 'n boete, ten opsigte van elk so 'n artikel of item, wat nie meer as R10 000 per

or with imprisonment for a period that may not exceed five years, or with both such a fine and such term of imprisonment.

(2) Any person convicted of an offence referred to in section 18, will be punishable with a fine or imprisonment for a period that may not exceed six months.

(3) *(a)* A court that has convicted a person of an offence contemplated in section 2(2) must, when considering which penalty to impose, amongst others take into account any risk to human or animal life, health or safety or danger to property (whether movable or immovable) that may arise from the presence or use of the counterfeit goods in question.

(b) Without detracting from the discretion that a court in criminal proceedings has with regard to sentencing, a court that has convicted any person of an offence referred to in section 2(2) may take into account, in mitigation of sentence, any evidence to the effect that such person, fully, truthfully and to the best of his or her ability had disclosed to an inspector who acted against him or her in terms of section 4(1) or to a member of the South African Police Service who investigated that offence, all information and particulars available to that person in relation to any one or more, or all, of the following matters (whichever may have been applicable in the circumstances):

(i) The source from which the counterfeit goods involved in the commission of the offence, were obtained;

(ii) the identity of the persons involved in the importation, exportation, manufacture, production or making of those counterfeit goods;

(iii) the identity and, if reasonably demanded, the addresses or whereabouts of the persons involved in the distribution of those goods;

(iv) the channels for the distribution of those goods.

(4) *(a)* The Minister may from time to time by notice in the *Gazette* increase the amounts of the fines mentioned in paragraphs *(a)* and *(b)* of subsection (1).

(b) That notice must be laid on the table in the National Assembly, for its consideration and approval, within 14 days after the date on which it is published in the *Gazette*, if the National Assembly is then in session, or, if it is not then in session, within 14 days of the commencement of its next session.

Orders permissible following conviction of person of offence contemplated in section 2(2)

20. (1) Subject to section 10, the court having convicted a person of an offence contemplated in section 2(2) may declare the counterfeit goods in question to be forfeited to the State or order that those goods and their packaging, and, where applicable, any tools that were used by or on behalf of the convicted person for the manufacturing, production or making of those or any other counterfeit goods or for the unlawful application to goods of the subject matter of any intellectual property right, be destroyed.

(2) Any person who submits any counterfeit goods purchased by him or her (hereafter called the aggrieved person), to an inspector, together with proof of the price that was paid for those goods, will be entitled to receive payment of a sum of money equivalent to three times the amount of that price, in the following circumstances:

(a) The person who had sold those counterfeit goods must have been convicted of an offence referred to in section 2(2) founded on the sale of those goods. Alternatively, an order, against the seller, must have been made in terms of section 10(1)*(a)* directing that those goods be delivered up to the owner of the intellectual property right, the subject matter of which was unlawfully applied to those goods, or up to a complainant deriving his or her title from that owner.

(b) The aggrieved person must have co-operated fully in the prosecution of the seller for that offence.

(c) When the court having so convicted the seller of those goods or having made an order in terms of section 10(1)*(a)*, has also issued an order awarding that

artikel of item mag bedra nie, of met gevangenisstraf vir 'n tydperk wat nie vyf jaar te bowe mag gaan nie, of met beide so 'n boete en sodanige termyn van gevangenisstraf.

(2) Iemand wat skuldig bevind word aan 'n misdryf in artikel 18 bedoel, is strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk wat nie ses maande te bowe mag gaan nie.

(3) *(a)* 'n Hof wat iemand skuldig bevind het aan 'n misdryf beoog in artikel 2(2) moet, wanneer hy oorweeg watter straf om op te lê, onder meer in aanmerking neem enige risiko vir die lewe, gesondheid of veiligheid van mens of dier of gevaar ten opsigte van eiendom (hetsy roerend of onroerend) wat mag voortspruit uit die teenwoordigheid of gebruik van die betrokke nagemaakte goedere.

(b) Sonder om afbreuk te doen aan die diskresie waaroor 'n hof in strafregtelike verrigtinge beskik in verband met vonnisoplegging, kan 'n hof wat 'n persoon skuldig bevind het aan 'n misdryf beoog in artikel 2(2), ter strafversagting in aanmerking neem enige getuienis met die strekking dat sodanige persoon, aan 'n inspekteur wat ingevolge artikel 4(1) teen hom of haar opgetree het of aan 'n lid van die Suid-Afrikaanse Polisiediens wat daardie misdryf ondersoek het, al die inligting en besonderhede wat tot die beskikking van daardie persoon was, ten volle, op waarheidsgetroue wyse en na sy of haar beste vermoë, openbaar gemaak het met betrekking tot een of meer van, of al, die volgende aangeleenthede (watter ook al in die omstandighede van toepassing mag gewees het):

(i) Die bron vanwaar die nagemaakte goedere betrokke by die pleging van die misdryf, verkry is;

(ii) die identiteit van die persone betrokke by die invoer, uitvoer, vervaardiging, voortbrenging of maak van daardie nagemaakte goedere;

(iii) die identiteit en, indien redelikerwys vereis, die adresse van die persone betrokke by die verspreiding van daardie goedere, of die plekke waar diesulkes hulle bevind;

(iv) die verspreidingskanale van daardie goedere.

(4) *(a)* Die Minister kan van tyd tot tyd by kennisgewing in die *Staatskoerant* die bedrae verhoog van die boetes genoem in paragrawe *(a)* en *(b)* van subartikel (1).

(b) Daardie kennisgewing word in die Nasionale Vergadering vir oorweging en goedkeuring ter tafel gelê binne 14 dae ná die datum waarop dit in die *Staatskoerant* gepubliseer is, indien die Nasionale Vergadering dan in sessie is, of, indien dit nie dan in sessie is nie, binne 14 dae na die begin van sy volgende sessie.

Geoorloofde bevele ná skuldigbevinding van persoon aan misdryf beoog in artikel 2(2)

20. (1) Behoudens artikel 10 kan die hof wat 'n persoon skuldig bevind aan 'n misdryf in artikel 2(2) beoog, die betrokke nagemaakte goedere aan die Staat verbeurd verklaar of gelas dat daardie goedere en die verpakking daarvan en, waar van toepassing, enige gereedskap wat deur of namens die veroordeelde persoon gebruik is vir die vervaardiging, voortbrenging of maak van daardie of enige ander nagemaakte goedere of vir die onwettige aanwending op goedere van die onderwerp van enige intellektuele goedereg, vernietig word.

(2) Iemand wat enige nagemaakte goedere aangekoop deur hom of haar (hieronder die veronregte persoon genoem) aan 'n inspekteur voorlê tesame met bewys van die prys wat vir dié goedere betaal is, is onder die volgende omstandighede daarop geregtig om betaling te ontvang van 'n som geld gelykstaande aan drie keer die bedrag van daardie prys:

(a) Die persoon wat daardie nagemaakte goedere verkoop het, moet skuldig bevind wees aan 'n misdryf beoog in artikel 2(2) wat gegrond is op die verkoop van daardie goedere. So nie, moes daar teen die verkoper 'n bevel ingevolge artikel 10(1)*(a)* uitgevaardig gewees het waarby gelas is dat daardie goedere gelewer word aan die eienaar van die intellektuele goederereg waarvan die onderwerp onwettig op daardie goedere aangewend is, of aan 'n klaer wat sy of haar titel aan daardie eienaar ontleen.

(b) Die veronregte persoon moes ten volle saamgewerk het by die vervolging van die verkoper weens daardie misdryf.

(c) Wanneer die hof wat die verkoper van daardie goedere aldus skuldig bevind het of 'n bevel ingevolge artikel 10(1)*(a)* uitgevaardig het, ook 'n bevel uitgereik het waarby daardie som geld aan die veronregte persoon toegeken

sum of money to the aggrieved person and directing the seller to pay that award. However, the court must make the latter order if satisfied that the requirements of paragraphs *(a)* and *(b)* have been met.

(3) The provisions of subsection (2) will apply and be applied, *mutatis mutandis,* in relation to and for the benefit of any person who, otherwise than by way of a transaction of purchase and sale, has acquired, in consideration for value given by him or her, goods that are counterfeit goods.

Civil or criminal liability under other laws and institution of civil or criminal proceedings thereunder not affected by this Act

21. Subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and the Criminal Procedure Act, 1977, the provisions of this Act will not detract from a person's civil or criminal liability, in terms of any other law, on account of his or her infringement of any intellectual property right and from the capacity or competence in terms of any law to institute civil or criminal proceedings in respect of such infringement.

Minister's power to appoint or designate inspectors

22. (1) The Minister may appoint any fit and proper person as an inspector for the purposes of this Act.

(2) *(a)* The Minister, by notice in the *Gazette*, may designate any specified class or category of persons to be inspectors for the purposes of this Act.

(b) The Minister, in a like manner, may amend or withdraw such a notice at any time.

(3) The Minister or any official acting under the authority of the Minister, must issue to each of the inspectors contemplated in this section a certificate in the prescribed form stating that the person in whose name it has been issued has been appointed or designated an inspector (as the case may be) in terms of or by virtue of this Act.

Minister's powers regarding counterfeit goods depots

23. (1) The Minister, by notice in the *Gazette*, may from time to time designate any place defined in the notice to be a counterfeit goods depot for the purposes of this Act, and may in a like manner amend or withdraw such a notice at any time.

(2) The Minister must in respect of a counterfeit goods depot appoint any fit and proper person as the person in charge of the counterfeit goods depot.

Regulations

24. The Minister may make regulations not inconsistent with the provisions of this Act—

(a) in relation to any matter which, in terms of this Act, may or must be prescribed;

(b) prescribing any inventory to be prepared or made in terms of this Act;

(c) that may be necessary or expedient for the proper and effective control, management and administration of a counterfeit goods depot and the proper care of the goods detained therein;

(d) in relation to the manner or form in which any application (other than any application to a court of law) is to made in terms of this Act, and may prescribe forms for that purpose; and

(e) in relation to any other administrative or procedural matters that may be necessary or expedient for the proper and effective administration of this Act.

This Act binding on State

25. This Act binds the State.

word en die verkoper gelas word om daardie toekenning te betaal. Die hof moet egter laasgenoemde bevel uitvaardig indien daarvan oortuig dat aan die vereistes van paragrawe *(a)* en *(b)* voldoen is.

(3) Die bepalings van subartikel (2) is van toepassing en word toegepas, *mutatis mutandis*, met betrekking tot en ten voordele van iemand wat, anders as by wyse van 'n transaksie van koop en verkoop, goedere wat nagemaakte goedere is, bekom het as teenprestasie vir enige waardevolle prestasie deur hom of haar gelewer.

Siviele of strafregtelike aanspreeklikheid ingevolge ander wette en instel van siviele of strafregtelike verrigtinge daarvolgens nie geraak deur hierdie Wet

21. Behoudens die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), en die Strafproseswet, 1977, doen die bepalings van hierdie Wet nie afbreuk aan iemand se siviele of kriminele aanspreeklikheid, ingevolge enige ander wet, weens sy of haar inbreukmaking op enige intellektuele goedereregen aan die bevoegdheid of kompetensie ingevolge enige wet om siviele of strafregtelike verrigtinge ten opsigte van sodanige inbreukmaking in te stel nie.

Minister se bevoegdheid om inspekteurs aan te stel of aan te wys

22. (1) Die Minister kan enige geskikte en gepaste persoon as 'n inspekteur vir die doeleindes van hierdie Wet aanstel.

(2) *(a)* Die Minister kan by kennisgewing in die *Staatskoerant* enige vermelde klas of kategorie persone as inspekteurs vir die doeleindes van hierdie Wet aanwys.

(b) Die Minister kan op soortgelyke wyse so 'n kennisgewing te eniger tyd wysig of intrek.

(3) Die Minister of enige beampte wat op gesag van die Minister optree, moet aan elk van die inspekteurs in hierdie artikel beoog 'n sertifikaat in die voorgeskrewe vorm uitreik waarin verklaar word dat die persoon op wie se naam dit uitgereik is, ingevolge of uit hoofde van hierdie Wet as inspekteur aangestel of aangewys is (na gelang van die geval).

Minister se bevoegdhede betreffende nagemaaktegoedere-depots

23. (1) Die Minister kan van tyd tot tyd by kennisgewing in die *Staatskoerant* enige plek in die kennisgewing omskryf, as nagemaaktegoedere-depot vir die doeleindes van hierdie Wet aanwys, en kan op soortgelyke wyse so 'n kennisgewing te eniger tyd wysig of intrek.

(2) Die Minister moet ten opsigte van 'n nagemaaktegoedere-depot enige geskikte en gepaste persoon as die persoon in beheer van die nagemaaktegoedere-depot aanstel.

Regulasies

24. Die Minister kan regulasies wat nie met hierdie Wet onbestaanbaar is nie, uitvaardig—

(a) met betrekking tot enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf kan of moet word;

(b) wat enige inventaris wat ingevolge hierdie Wet opgestel of gemaak moet word, voorskryf;

(c) wat nodig of dienstig mag wees vir die behoorlike en doeltreffende beheer, bestuur en administrasie van 'n nagemaaktegoedere-depot en die behoorlike versorging van die goedere wat aldaar in bewaring gehou word;

(d) met betrekking tot die wyse waarop of vorm waarin enige aansoek (behalwe 'n aansoek by 'n geregshof) ingevolge hierdie Wet gedoen moet word, en kan vir dié doel vorms voorskryf; en

(e) met betrekking tot enige ander administratiewe of proseduriële aangeleenthede wat nodig of dienstig mag wees vir die behoorlike en doeltreffende uitvoering van hierdie Wet.

Hierdie Wet bindend op Staat

25. Hierdie Wet bind die Staat.

Short title and commencement

26. This Act will be called the Counterfeit Goods Act, 1997, and will come into operation on a date to be determined by the President by proclamation in the *Gazette*.

PRINTED BY CREDA PRESS, CAPE TOWN, FOR THE GOVERNMENT PRINTER, PRETORIA, TEL. (012) 323-9731 X267—7000
GEDRUK DEUR CREDA PRESS, KAAPSTAD, VIR DIE STAATSDRUKKER, PRETORIA, TEL. (012) 323-9731 X267—7000