

WENDY FAIR MARKETS

THE FUTURE: WHAT NOW?

It would appear that, at some time during the last 5 years, a decision was taken by Trading Standards Departments that perhaps a more cost effective way of dealing with the problem of the sale of counterfeit goods from markets, would be to target the market operator, rather than the market trader, passing the burden to the market operator to act as their enforcers.

Even before the unsuccessful prosecution was mounted against Wendy Fair, Wendy Fair were under increasing pressure from Trading Standards Departments to “cooperate” in dealing with the problem of counterfeit goods.

Whilst Wendy Fair were more than happy to “do their bit,” the demands that were being made of them were both unreasonable and unrealistic, in the context of the limited expertise and resources available to them, in common with all market operators. Indeed, it is not an exaggeration to suggest that if the Trading Standards Departments we have had to deal with were to have their way, it is unlikely that there would be a market industry at all.

In light of the increasing pressure from Trading Standards Departments, Wendy Fair, entered into discussions in good faith, with Hertfordshire Trading Standards, Hertfordshire Police, FACT and BPI to see whether a protocol could be agreed that set out the intentions and obligations of each party to deal with identifying and eliminating the sale of counterfeit goods from the Wendy Fair Markets. The intention was, that if a protocol could be agreed, and was shown to be working, then it would be suggested that it be rolled out as a recommended protocol to the industry as a whole.

Regrettably, whilst Wendy Fair were both acting in accordance with the terms of the draft protocol and expecting Trading Standards to do the same, as we now know, Trading Standards were, , at the same time, compiling a case prior to effecting the raid that gave rise to the prosecution.

In light of that experience, and the fact that entering into an agreed protocol would offer no protection to Wendy Fair against any subsequent decision on the part of Trading Standards to bring a prosecution, what was intended to be a well intentioned act of cooperation on the part of Wendy Fair had to be abandoned. Instead, considerable effort had to be expended on how best to protect Wendy Fair against allegations that they are involved in criminal activity. It has become clear to Wendy Fair that Trading Standards Departments are not prepared to provide genuine cooperation in dealing with the sale of counterfeit goods. Indeed, as Sally has said, as long as the problem can be pushed off their patch, they simply appear not to care what happens elsewhere.

Sally has outlined the steps that Wendy Fair now take in response to allegations made by Trading Standards Officers that a trader is dealing in counterfeit goods. This means that the important work of the Serious Organised Crime Agency is being obstructed by having to deal with unsubstantiated allegations made by Trading Standards officers, which must, inevitably, divert it from its more important work of dealing with Serious Organised Crime.

On many occasions, both Wendy Fair and I have tried to persuade Trading Standards Departments that the best way forward is by way of education, and that when they see items being sold on a stall that they believe are counterfeit, they should actually confront the trader himself who may well not even know that the goods are counterfeit. If they do see such goods, it is our view that Trading Standards have a duty to deal with that trader. There is no evidence that we have been shown to support the suggestion on the part of Trading Standards Departments, that their officers will be put at risk if they do this. Instead, it would appear that Trading Standards Departments prefer the excitement of “covert operations” and enjoy the thrill of dawn raids, as if they were some latter day participants in an episode of *The Sweeney*, rather than the more mundane approach of dealing with the offending trader at the time they see the offending goods.

It is to be hoped that as a result of the failed prosecution at least some Trading Standards Departments will now give consideration to changing their tactics and adapt the ‘see it, deal with it’ approach we have been advocating.

What of the parties whose rights are being infringed. Whilst the law must do its reasonable best to protect their rights it would appear that Trading Standards Departments have bought into the proposition that despite the size and wealth of these companies it is public money that must be expended in protecting their interests rather than leaving the bulk of the burden to the rights owners to enforce. It would appear that the relationship between Trading Standards Departments and the rights owners is extremely cosy and certainly more beneficial to the rights owners than might perhaps otherwise be expected given the publicly funded resources devoted to protecting those private rights. I am sure it is only a coincidence that those organisations are largely populated by former TSOs and police officers.

Sadly the experience of Wendy Fair in dealing with the rights owners through BPI and FACT is that in reality very little cooperation is forthcoming on the part of those organisations but then given the way in which Trading Standards Departments take up the cudgels on their behalf this is perhaps not surprising.

If nothing else comes out of this case it is to be hoped that meaningful discussion can now take place between Trading Standards Departments and the market industry to see whether a more constructive way forward can be agreed that is not based on fear of prosecution and the need on the part of market operators to take elaborate steps to avoid such prosecutions but instead a genuine attempt on their part to work with the industry to resolve the problem of counterfeit goods.