

Anti-counterfeit or anti-generics? The Kenyan Anti-Counterfeit Bill 2008

17 September 2008



In many countries, generic medicines are the first line therapy of choice and are an accessible and inexpensive source of quality pharmaceuticals. But, their value has been seriously undermined by the mistaken belief that generic medicines are, somehow, inferior to their brand-name equivalents. This mistaken logic is advantageous to large pharmaceutical companies that manufacture originator brands, but it is especially damaging when it prevents people living in poverty from getting access to the essential medicines they need.

The uncertainty is compounded further when potentially sub-standard counterfeit medicinal products enter a market. Those who claim that generics are inferior to brand-name medicines will unconsciously, and sometimes maliciously, 'muddy the water' and confuse patients, consumers and even healthcare professionals, by referring to generics in the same breath as substandard medicines and counterfeit medicines.

The Kenyan Anti-Counterfeit Bill, introduced in July 2008, contributes to the misunderstanding that surrounds generic medicines. The ambiguous language in the bill leaves the door open for the misrepresentation of generic medicines as "counterfeits". Health Action International (HAI) Africa has taken a lead in opposing the passage of the bill while this ambiguity remains.

HAI Africa's statement on the bill highlights how intellectual property (IP) issues such as, patents and trademarks have been thrown together with safety issues such as, the quality and formulation of medicines. The vague drafting makes no distinction in the way in which DVDs and medicines are treated when it comes to the new law. The World Health Organization is more precise when it comes to defining counterfeit medicines, because it includes the criterion, "deliberately and fraudulently mislabeled with respect to identity and/or source", which rightly recognises the fraudulent intent associated with counterfeiting that can, in no way, be applied to genuine generic medicines.

The implications of the Kenyan bill are particularly relevant in light of ongoing negotiations for the proposed Anti-Counterfeiting Trade Agreement (ACTA), which has won the backing of the EU, the G8 and other international players. If anti-counterfeiting provisions in the international arena start to mirror those found in the Kenya's national Anti-Counterfeit bill, the threat to generic medicines could be incredibly high— both in revenue and in lives.

PRESS RELEASE

Overtoom 60/II
1054 HK Amsterdam
The Netherlands
Tel: +31 20 683 3684
Fax: +31 20 685 5002
Email: info@haiweb.org
www.haiweb.org