

Defendant found guilty in Barbados' first ever criminal trial for sale of counterfeit goods
Barbados - Caribbean IP

**Counterfeiting
Infringement
Enforcement**

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- **Crown obtained guilty verdict in country's first criminal trial for sale of counterfeit goods**
- **Case involved counterfeit Fenty PUMA by Rihanna goods**
- **Trademark specialist identified a litany of differences between the confiscated items in evidence and genuine goods**

In February this year, Barbados concluded its first criminal trial for the sale of counterfeit goods, with the Crown obtaining a guilty verdict in the Magistrate's Court. The matter carried even more local interest as the counterfeit goods were related to a line of products marketed as 'Fenty PUMA by Rihanna'. The line of shoes, clothing and accessories is a result of the collaboration between entertainer Rihanna, arguably the most famous Barbadian, and German shoe and athletic apparel maker PUMA.

Grenville Ricardo Delpeache was arrested in November 2017 for selling shoes and backpacks that counterfeited the Fenty PUMA by Rihanna line. The counterfeits first came to light because the daughter of a local attorney purchased some. Her father, who works for PUMA, sent pictures to the company's trademark specialist, triggering an investigation and, eventually, a prosecution.

While Rihanna has developed a number of trademarks related to her ventures in fashion, perfume and cosmetics, including FENTY, the prosecution based its case on use of PUMA's marks. As such, evidence at the non-jury proceeding included the testimony of a PUMA trademark specialist. The trademark specialist identified a litany of differences between the confiscated items in evidence and genuine Fenty PUMA by Rihanna goods to ultimately opine that the offending items were not only not genuine, but "cheap counterfeits".

The defendant presented evidence at trial that he was unaware that the goods were counterfeit. He testified that he purchased the shoes for \$50 per pair in the United States and then attempted to sell them for the equivalent of \$100 per pair in Barbados. The presiding magistrate did not find the defendant credible, calling him "evasive and economical with the truth, at best".

Delpeache, who has yet to be sentenced, is due back in court next month. Based on sections of the statute the Crown proceeded under, the court could impose a fine of up to \$5,000, imprisonment of up to six months, or both. While the presiding magistrate indicated that he doubted the defendant's veracity, he also indicated he was unlikely to impose a prison term.

[Barbados' Trademarks Act](#), as amended, creates two main routes to criminal conviction related to the sale of counterfeit goods. The Crown can bring both types of prosecutions as summary proceedings (a feature that allows prosecution on an information rather than an indictment and does not provide a right to a jury trial).

One prosecution route requires proof that the defendant acted with knowledge. The recent conviction was pursued under the alternative route, a section of the act that requires proving a lack of the registered trademark owner's consent, rather than knowledge. The former prosecution option provides greater maximum penalties in a summary proceeding, but the latter can be prosecuted under an indictment as well, allowing a maximum punishment of a \$20,000 fine and 10 years of imprisonment. Both routes can lead to forfeiture or destruction of the infringing goods.

Delpeache appealed his conviction to the High Court. The High Court hears appeals from the Magistrate's Court, but can also encounter these criminal trademark infringements as a trial court if the Crown prosecutes by way of an indictment.

Barbados is set to have its second trademark-related criminal trial soon, also related to Fenty PUMA by Rhianna goods. In a further twist in the story, the accused in the upcoming trial is Rhianna's uncle Leroy Fitzgerald Brathwaite. Brathwaite pled not guilty.

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