

GERMANY

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ANTI-COUNTERFEITING

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Introduction

There is national legislation and EU-wide legislation as a basis for enforcement against counterfeiting. The national legislation is broadly based on EU directives and considers international treaties to which Germany is a contracting party.

The most important legislation applying in Germany for anti-counterfeiting are:

- the German Trademark Act;
- the EU Trademark Regulation (2017/1001);
- the German Design Act;
- the EU Design Regulation (2024/2822);
- the Patent Act;
- the Utility Model Act;
- the Copyright and Related Rights Act;
- the Act Against Unfair Competition;
- the Trade Secrets Act; and
- the EU Customs Enforcement Regulation (608/2013).

For slavish imitations not protected by the specialised IP legislation, the German Act Against Unfair Competition provides complementary protection, but requires additional unfair acts (e.g. an avoidable deception of origin).

Recent changes to the Trademark Act in 2026 concern the protection of geographical indications extending the protection to craft and industrial geographical indications, which is also reflected in recent EU Regulation 2023/2411, and corresponding adaptations to the registers managed by EUIPO and the German Patent and Trademark Office, respectively. No changes to anti-counterfeiting relevant legislation are anticipated.

1. Criminal prosecution and civil enforcement

1.1 Criminal prosecution

Criminal prosecution of counterfeiting behaviour is initiated either upon a criminal complaint or *ex officio*. Criminal prosecution is started *ex officio* for cases considered of particular public interest or if the offender acts for commercial gain or as a member of a gang. In all other cases a criminal complaint of the IP rights holder is necessary for starting criminal prosecution.

The non-extendable term for filing a criminal complaint is three months after the rights holder learning about the act and about the identity of the counterfeiter.

If the public prosecutor's office has initial grounds for suspicion (for example, a complaint, *ex officio*, through customs upon importation), and there is sufficient public interest, it will initiate a preliminary investigation against the suspect(s) to determine the circumstances of the offence.

This comprises investigations and securing of evidence by the public prosecutor (including counterfeit products as well as invoices and delivery notes), and searches of residential and business. If the items are not surrendered voluntarily, a seizure order may be issued.

After conclusion of the preliminary investigation, if there is sufficient suspicion, criminal charges are filed with the competent criminal court. Otherwise, the proceedings are discontinued for reasons such as, for example, lack of reasonable suspicion, insignificance or dismissal subject to conditions (usually payment of a fine).

If the public prosecutor discontinues proceedings/ does not take up proceedings, because there is no public interest, after a criminal complaint, a private criminal complaint is possible but does not have the advantages of securing of evidence by the public prosecutor. Public interest is assumed if the infringement is not only marginal (factors like the offender's benefit, the economic damage, etc. are considered).

The IP right holder can withdraw their criminal complaint until the criminal proceedings are finally concluded and, thus, terminate the criminal proceedings. *Ex officio* cases are considered a public offence and termination on request of the IP rights holder is not possible.

In case of public prosecution, the public prosecutor carries out all necessary investigations. They and the offender are the parties in the criminal proceedings. The IP rights holder may join as joint plaintiff. Otherwise, the IP rights holder is not necessarily involved in the proceedings, but might have other functions (e.g. be summoned as a witness).

Besides the general offences specified in the German Criminal Code or other German laws (e.g. fraud, document forgery, tax evasion), German IP legislation has provisions determining IP right infringement as a criminal offence: trademark, design and patent infringement are considered a criminal offence.

Criminal offences require wilfulness of the offender; wherein conditional intent is sufficient (i.e. the offender accepts the occurrence of the offence as a consequence of their action). A specific intent of the offender is required for trademark infringement because of taking advantage of the distinctiveness or reputation of a well-known trademark being considered a criminal offence.

Unlike in civil proceedings, damages and injunctive relief are not ordered in criminal proceedings which can be raised in the rarely used adhesion process by the IP rights holder.

Typical penalties in criminal proceedings are imprisonment for up to three years or a fine. If the offender acts for commercial gain or as a member of a gang, the penalties raise to imprisonment for up to five years or a fine in patent and design infringement and to imprisonment from three months to five years in trademark infringement. The fines are determined taking into account the personal and economic circumstances of the offender and range from five to 360 daily rates (amount of one daily rate: EUR 1 to 5000).

Confiscation of the counterfeit goods in the possession of the offender can be ordered (transferring ownership to the state), unless those are subject to destruction/removal in parallel civil proceedings.

The IP rights holder having a legitimate interest can request publication of the conviction. The type and extent of the publication is determined by the criminal court.

Criminal cases for counterfeiting are heard in general criminal courts, usually the local court at the location of the offender. There are no specialised courts for criminal enforcement in IP matters.

1.2 Civil enforcement

Germany has specialised courts and judges that hear IP rights disputes in civil enforcement, having jurisdiction for specified areas within Germany,

respectively. Infringers having a domicile in Germany may be sued at their legal seat, alternatively at the place of the tort, upon choice of the plaintiff. Infringers without domicile in Germany may be sued at the place of the tort.

Remedies typical in civil infringement proceedings are: claims to cease and desist, for actual damages, to unjust enrichment, for destruction and recall or permanent removal from sale of the infringing goods, for information concerning the origin and sales channels of infringing goods; for information regarding nature and scope of the infringing acts and to the infringer's banking, financial or commercial documents.

Preliminary *ex parte* injunctions in urgent matters may be obtained, even without a hearing. *Ex parte* injunctions are not available for all of the remedies: claims to damages are subject of the substantive proceedings and can only be raised there.

In view of the defendant's right to be heard, the court often orders oral hearings. The defendant can minimise the risk of receiving an *ex parte* injunction by filing of a protective letter, explaining and demonstrating that it is not infringing, which will be considered in case of a request for a preliminary injunction.

Granting preliminary injunctions requires urgency, which is typically assumed in counterfeiting actions. Typically, lack of urgency is assumed after the plaintiff having not taken action for about six to eight weeks from knowledge of the infringement, but there is no strict, legal definition of such period.

A preliminary injunction issued *ex parte* without a hearing can be opposed by the defendant. Subsequently, the court will hold a hearing within a short time and decide on upholding the injunction. The decision to grant a preliminary injunction is open for appeal, but the preliminary injunction remains enforceable as long as it is not annulled.

Unlike in substantive proceedings, witness declarations (affidavits) are typically accepted in preliminary proceedings. Hearings of witnesses are not common. The court may consider a probable invalidity of the IP right when weighing the opposing interests in regard to a cease-and-desist order, other than in substantive proceedings.

If a preliminary injunction is found unfounded at a later stage, the defendant is entitled to compensation for damages, including compensation for a recall of the products from the defendant's customers.

At the defendant's request, the court may order the plaintiff to initiate substantive proceedings within a term. If the term passes without initiation of substantive proceedings, the court will annul the preliminary injunction.

In substantive proceedings a final judgment is issued (unless the parties settle). All types of claims might be raised.

Substantive proceedings might be initiated on the IP rights owner's request or, with some limitations, on the licensee's request. The court may order the plaintiff to provide a security deposit for the costs of the proceedings.

Typically, there is a written procedure ahead of the oral hearing. The burden of proof for disputed facts is on the side of the asserting party. Proof is possible by, for example, hearing of a witness, hearing of a court-appointed expert, providing documentary evidence. The parties must assert factual circumstances fully and truthfully, or else risk criminal prosecution.

The court does not conduct an *ex officio* examination of the facts. In absence of persuasive evidence provided by the party having the burden of proof, the court will regard the respective fact as unproven. Registered IP rights are assumed as valid, unless such right has been declared invalid by the competent court or an admissible counterclaim for invalidation is pending. Suspension at the discretion of the court and on request of the defendant is possible in view of co-pending nullity proceedings.

The first instance court decision is appealable. New matter is usually not allowed in second instance.

The losing party has to compensate the winning party for reasonable attorneys' fees and court fees, on the extent to which the party prevails.

German IP Acts comprise virtually identical provisions establishing the basis of claims for damages. For specification of the respective amount, over the time, three calculation methods have been developed (subsequently enshrined in the Acts as part of the Act on the Improvement of the Enforcement of Intellectual Property Rights) for specification of the amount, wherein it is incumbent upon the plaintiff to quantify the damages:

- **Licence analogy (fictitious licence fee).** Damages are quantified based on the fiction of a properly obtained licence.
- **Actual damages.** Losses of the injured party (lost profits during the period of infringement and positive damages, such as legal fees incurred).
- **Infringer's profit.** Assumption that profits on the infringer's side are linked to the rights holder's damages.

1.3 Grey market and counterfeit goods

According to section 24 of the Trademark Act, trademark rights are exhausted once the branded goods have been put on the market in Germany, the EU or the European Economic Area by the owner or with their consent, unless there are justified reasons (e.g. altering or deterioration of the goods).

The unlawfulness of distributing an original product may arise from:

- the goods not being intended for distribution on the European market;
- changes made by the distributor to the goods or their original packaging;
- luxury brand goods being distributed through channels outside the manufacturer's established distribution system; and
- medicinal products being protected by a patent or SPC.

The manufacturer is entitled to all remedies available for infringement of intellectual property rights, including: injunctions, disclosure of the distribution channel and the scope of the unlawful distribution activities, destruction of the infringing goods, and damages.

The same conditions as described above for civil actions and criminal proceedings apply.

Claims for unfair competition in case of counterfeit goods not complying with EU Directive 2001/95/EC and general product safety regulations, consumer protection regulations might additionally be available.

1.4 Criminal v. civil enforcement

Criminal enforcement provides the advantage of the investigations of the public prosecutor: the immediate seizure of the counterfeit goods, also for investigation

purposes, and the collection of evidence, which in civil proceedings might be hard to obtain. However, criminal enforcement does not allow the IP rights holder to claim damages; the fine goes to the state treasurer.

In civil proceedings the courts are highly specialised and competent and the IP rights holder as plaintiff has more control over the proceedings than in criminal enforcement where the public prosecutor leads. Criminal investigations may end without trial (e.g. by the infringer paying a fine following a plea bargain).

2. Anti-counterfeiting procedures, legislation and trends

2.1 Advancement in counterfeiting methods

Counterfeiting activities are increasing, and counterfeiters are improving their methods. For example, we note dedicated test shipping activities in small consignments, likely for identifying an easy way in the EU market and for making action by the brand owner unlikely, because of the imbalance of effort and costs to the overall benefit.

To address these challenges, brand owners need a strong IP portfolio and need to continuously dedicate a considerable part of the overall IP budget to monitoring and anti-counterfeiting activities. Based on a comprehensive and up-to-date assessment of the relevant circumstances, decisions should be made on whether and how to pursue action against specific counterfeiters, so as to avoid wasting time and money on less important matters while maintaining focus on the overall enforcement strategy.

2.2 Marketing

A major part of the counterfeiting activities is on online marketplaces and social media websites nowadays. The pandemic and the associated lockdown have clearly accelerated this trend. Recently, marketing shifts to live shopping and product promotions with videos and on social media and away from traditional shopping websites. Shopping on social media is especially popular in the younger generation, who are often less aware of the potential presence of counterfeit goods and their risks.

Brick and mortar counterfeit activity is still present; however, it is of comparatively less importance.

Due to the variety of offers online and their often short-lived nature, it is extremely difficult to track and enforce IP rights on such social networking and live streaming sites.

“Dupe Culture” and “Knockoff Culture” is getting increasingly accepted, especially among younger generations who do not see problems in purchasing lookalikes or believe that the dupes do not violate IP rights. Reports show that a major part of the younger age group (below 35 years of age) has already deliberately bought dupes or does so regularly.

Recent EU legislation, such as the VAT regulations and Product Liability Directive, having provisions of extended liability, provide some improved means for authorities for monitoring and taking action against illegal sales activities in the online market or regarding products not complying with EU standards.

2.3 Progress for rights holders

There have been no big changes or progress for rights holders who want to take a more financially focussed approach: rights holders can use the existing legislation. Tools of takedown services have improved; for example, the identification of counterfeit products becomes easier using (commercial) website and platform-crawling services.

2.4 Problematic platforms

Important traditional online shopping platforms are Amazon, eBay and Pinterest, and more recently Temu. Social media is increasingly used for offering products. While Instagram is used by buyers to discover and research and users click through to buy, Facebook Marketplace and Shops are used for direct shopping.

TikTok online shopping started in Germany in March 2025. One-third of the German TikTok users had already made a purchase there by mid-April 2025, showing the success of discovery e-commerce in Germany.

3. New and evolving technologies and online anti-counterfeiting enforcement strategies

Germany does not have specific legislation directed to e-shops, social media accounts or online shopping platforms. The existing legislation offers tools (civil and criminal) to act successfully against third parties involved in the sale of counterfeit goods. According to the German Supreme Court, platforms are required to actively take action against counterfeiters after receiving a corresponding hint.

Perpetrators, accomplices, participants and mere disruptors can be held liable for infringing activities. Active or passive contribution to an infringement might result in liability for the infringement, especially for third parties enabling the sale of counterfeits, such as providing services designed for breaking digital locks or providing/enabling acts of copyright infringement. The remedies available are those mentioned above.

Steps taken when faced with an online infringer that also has a physical storefront depend on the circumstances. There is no standardised procedure for the investigations, but enforcement authorities will usually investigate both online and offline.

3.1 Domains

The enforcement of trademarks or name rights against domains is generally the subject of the dispute resolution policy of the agency administering the domain. DENIC is the administrator of the .de domain. DENIC does not have an independent dispute resolution policy but supports the claimant when prosecuting a domain dispute in court: when a right owner proves to have a corresponding right vis-à-vis DENIC, a “Dispute” entry is issued, blocking the transfer of the domain to third parties. The “Dispute” entry is released (after one year, with an extension possible if a dispute is pending in court), if the right is not asserted against the domain owner.

The number of committed crimes on the internet is slightly decreasing in Germany, according to the BKA statistics. This also holds for counterfeit and fraudulent websites.

3.2 Social media

With the shift from traditional e-commerce platforms to social media, short-form video apps and live commerce channels, social media is increasingly used by bad actors. The bad actors benefit from the challenges in monitoring and observing the activities and from a different understanding of acceptable practices as regards non-original goods in the younger generation.

This means that there are a huge number of counterfeit products on sale through social media accounts such as Facebook, Instagram and TikTok. Counterfeiters largely operate with dupes, in small amounts, presenting the goods through short-form videos. Sometimes, the presentations of the products do not (fully) show the products, show the counterfeit product in original product packaging (de-boxing) or have blurred parts.

Private marketplaces and encrypted platforms are largely used for illicit commerce, especially for illegal products like non-legal medicine, drugs, weapons, etc.

While there are not specific policies or technologies that have hindered brand protection efforts, brand protection remains challenging. Platforms and technologies for identification and facilitated take-down of counterfeit goods evolve and help brand owners protect their rights.

3.3 Artificial intelligence (AI)

As of August 2026, the German AI Act (implementing relevant EU legislation) will be binding for so-called high-risk systems.

The German professional organisation of lawyers, the German Patent Attorney's Chamber and the Institute of Professional Representatives before the European Patent Office (epi) have issued guidelines for the use of AI tools. These also complement the codes of professional conduct to be observed when using AI.

No modifications to existing privacy legislation have been made, yet, in view of AI.

3.4 Deepfakes

We have not seen deepfakes in the context of counterfeits, yet. Because of recent cases involving pornographic content, the legislator is planning on categorising the production of deepfakes as a crime.

3.5 Crypto technology

There is no national legislation relating to crypto technology, yet.

3.6 Digital content piracy

There are no specific laws relating to the streaming of content piracy. Copyright law applies. According to the European Court of Justice (Decision C-527/15), simply watching streams can constitute a copyright infringement if the user knows or should know that the content is being offered illegally.

The German Internet Copyright Clearinghouse (CUII), founded by internet service providers and rights holders with the goal to issue recommendations for blocking networks where copyright infringements occur, investigates suspected cases and issues a recommendation for a block in case of copyright violations confirmed. Internet service providers then implement a DNS block for the website in question.

3.7 QR code abuse

QR code abuse exists, including copying the original QR code and applying it on the counterfeit products.

4. Border enforcement

4.1 Measures

EU Customs Regulation 1383/2003 and German corresponding legislation provide the basis for customs action and border seizure. German Customs is part of COPIS, the EU-wide IP rights database for customs enforcement. Applications for Actions (AfA) can be filed based on national or EU law with the German Customs or with EUIPO's Enforcement Portal. AfAs filed in other EU countries are made available to German Customs through COPIS. An AfA should comprise as much information as possible regarding the original goods and, if available, the expected counterfeit goods.

Customs might take action based on a national or EU-wide AfA or *ex officio*.

In *ex officio* cases, the IP right holder is informed of the hold of suspected goods and has then a short term to decide whether to file an AfA based on national legislation.

With an AfA in place, seized goods will be destroyed on confirmation from the rights holder that they are counterfeit. Seized goods will also be destroyed if the importer is notified in writing and does not object by the deadline. The rights holder has to bear the costs for withholding and destroying the goods, which might be reclaimed in a subsequent court action.

The customs seizure proceedings have become more efficient over the years and the number of retained and seized goods and their value increase consistently. Filing of an AfA is free of charge and constitutes a valuable tool to fight counterfeiting.

In addition to the goods, customs can also provide information as to the sender and the destination of the goods upon request. This information can be used subsequently by the rights holder.

The IP rights owner can use civil and criminal measures as described above against importers importing counterfeit goods.

Except for providing the information in the AfA, there is also the possibility to specifically arrange training sessions with German customs for training them in, for example, how to identify infringing goods.

4.2 Recent trends and developments

The pandemic and economic pressures forced consumers to be more cost sensitive, resulting in consumers seeking cheap products online, which leads to an increase in e-commerce and a shift of the counterfeiting activities to the online market. This more global and more diversified market increases the challenges for IP owners to fight counterfeiting. These seem to be permanent trends.

There is no particular shift to specific types of products recognisable.

Relevant organisations

German Patent and Trademark Office (DPMA/GPTO)

This is the main authority in Germany entrusted with the registration and protection of trademarks, designs and patents.

www.dpma.de

General Customs Directorate (Generalzolldirektion) (Zoll)

Zoll/German Customs concerns the major anti-counterfeiting responsibilities in Germany and at the borders regarding identification and seizure of counterfeits at the border or upon entry to Germany.

www.zoll.de

Bundeskriminalamt (BKA) or the Federal Criminal Police Office (Germany)

This is the federal investigative police agency of Germany. Their operations include investigating cases of international organised crime, including counterfeiting activities, mafia and band crimes, etc.

www.bka.de

5. Additional information and other relevant updates

Germany does not have a statal IP law enforcement coordination body.

6. Frequently asked questions

Can I do something to combat counterfeiting of my products without a huge budget?

There are means available for each budget. Talk to your lawyer, we will find a plan for your specific situation.

What is the advantage of fighting an infringer by criminal action?

Using criminal proceedings is particularly advantageous if there is a strong and clear suspicion of counterfeiting activities, but it is still difficult to prove and to gather evidence. The prosecutor in criminal investigations has more opportunities to collect and seize evidence and counterfeiting goods. Also, it is a rather low budget option but requires the suspect of counterfeiting and its extent being big enough for the prosecutor to take up.

Continued on the following page.

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Following her PhD in the field of fluid dynamics at the Technical University of Munich, Ulla completed her training as a patent attorney in a Munich law firm and subsequently gained diverse experience in intellectual property law as a (senior) partner in a medium-sized patent law firm. With the successful completion of the course “European Intellectual Property Law” Ulla obtained the qualification Master of Laws (LLM). Further, Ulla completed the advanced training “Leadership in Law Firms” at Harvard University. Ulla is founding partner of Alpspitz IP and is admitted to practice as a German and European patent, trademark and design attorney and as a representative before the Unified Patent Court.

FIRM PROFILE**Alpspitz IP**

Alpspitz IP, founded in 2023, is a team of patent attorneys having worked together for over 20 years. What unites us is our enthusiasm for innovations, expressive brands and creative designs. This formed a team that not only provides outstanding services but also sets to work every day with commitment and joy – for progress, the future and sustainability, but first and foremost for our clients. We pursue concerns conscientiously, purposefully and with a focus on the essentials. We are characterised not only by creativity and tenacity, but also by efficiency – a proven recipe for success over many years.