

## **PRESS RELEASE**

### **CHIEF INSPECTOR CONFIRMS THAT “VEE RUBBER” INNER TUBES IMPORTED BY M/S MARTIN MBWANA ARE COUNTERFEITS**

#### **IN THE MATTER OF CLAIM NO 1 OF 2013**

Acting pursuant to Regulation 34B(7) of the Merchandise Marks Regulations, 2010, the Chief Inspector of the Merchandise Marks Act (1963), as amended, has confirmed that the quantity of 10,600 pieces of inner tubes labelled “VEE RUBBER” in a container Number PCIU 273021-9, seized by inspectors of the Merchandise Marks Act (MMA) on 19<sup>th</sup> June, 2013 during a normal inspection operation, which were imported into the country by M/S Martin Mbwana, are counterfeits contrary to section 3 (1) (g) and section 10 (a) of the MMA, as amended, and ordered that they be destroyed in accordance with Regulation 22 (1) of the Merchandise Marks Regulation 2008 as amended.

He also ordered that if the container in question contained other goods/products, which do not bear VEE RUBBER brand, these be released forthwith by the FCC.

The decision was made on Wednesday, 9<sup>th</sup> October, 2013 by a Hearing Committee appointed by the Chief Inspector of the Merchandise Marks, in respect of complaint lodged by the complainant, M/S TUK TUK Ltd. following seizure by the MMA inspectors of the aforesaid imported motor cycle inner tubes suspected to be counterfeit.

Regulation 34 B (1) and (2) of the Merchandise Marks Regulations, 2008 as amended by the Merchandise Marks (Amendment) Regulations, 2010 (made under section 18A of the MMA) confers upon the Chief Inspector, the mandate to hear and determine complaints lodged with him by parties challenging the seizure of counterfeit goods.

In arriving at the decision, the Chief Inspector was satisfied that evidence presented by the Complainant, Claimant and the Respondent confirmed the fact that the seized motor cycle inner tubes branded VEE RUBBER were counterfeit and hence contravened sections 3 (1) (g) and 10 (a) of the MMA.

The Hearing Committee was satisfied that:

- (i). The MMA creates only one offence of counterfeit in different circumstances such as importation, selling, transporting, distributing, etc.
- (ii). The explanation given by the Complainant while differentiating between genuine and counterfeit VEE RUBBER inner tubes basing on elements of elasticity, strip colours, smells, packaging materials, identification marks (letters), country of origin, estimated distance coverage in use as relevant; this evidence was not refuted by the Claimant in his testimony and during cross examination. Identification of the counterfeit goods by the brand owner (the Complainant) evidenced a difference between exhibit of a **genuine tube** and exhibit of **a tube alleged to be counterfeit** from the testimony of the Complainant which proved that the exhibit belonging to the Claimant was a counterfeit.
- (iii). From the Claimant's testimony, it was not disputed that the goods were imported into the country that he ordered the motorcycle tubes of various sizes quoted in the Pro-foma Invoice shown;

The right of appeal was explained to both parties. Mr. Sylvester Sengerema, Advocate from G & S Advocates for Mr. Martin Mbwana (the Claimant), expressed the intention to appeal the decision of the Chief Inspector to the Fair Competition Tribunal.

Frederick Ringo  
**MMA CHIEF INSPECTOR**

**Issued by the Office of the Chief Inspector of the Merchandise Marks, this  
11<sup>th</sup> day of October, 2013**