MALAYSIA

APAA ANTI-COUNTERFEITING COMMITTEE REPORT –

COUNTRY REPORT

(APAA Hong Kong, 29 November – 2 December 2026)

79th Council Meeting

PART 1 – LEGISLATIVE UPDATES

There were no major legislative updates in 2026.

PART 2 – ENFORCEMENT UPDATE

A. Integrated Enforcement Management System

Introduction

The **Ministry of Domestic Trade and Cost of Living** has implemented the **Integrated Enforcement Management System (IEMS)**, effective 1 February 2026. It is a centralised online platform for managing intellectual property (IP) enforcement in Malaysia. While the substantive requirements and types of applications remain unchanged, all submissions must now be made exclusively through the online platform, replacing the previous practice of filing via hand delivery or email.

Filing Update

All Intellectual Property Infringement Complaint Applications must now be submitted exclusively via IEMS (no manual or email filings). This applies to enforcements under the Trademarks Act 2019, Copyright Act 1987, Patents Act 1983, and Geographical Indications Act 2022

Related Programmes

It also covers related programs, including:

- Site blocking (e.g. films and online content)
- Product training for enforcement officers
- Basket of Brands (BOB) applications

Who Must Register & How

The system applies to rights holders, companies, and their legal representatives, who must:

i) first register an account;
ii) appoint an authorised representative (supported by a Letter of Authorisation or Power of Attorney); and
iii) upload all relevant IP rights, products, and supporting documents (including images) before lodging any complaint.

Filing Requirements

- The complainant must be registered as a “Penyedia Maklumat” (Information Provider)
- Ensure all supporting documents are in order for submitting the complaint
- Submit the complaint via the IEMS portal
- Upon successful submission and verification, a “LULUS (Pass)” notification will be issued
- An officer from the Intellectual Property Division will contact the applicant for further action

Key Takeaway

This development represents a shift towards a fully digital, more transparent and streamlined enforcement framework and rights holders are advised to ensure their IP portfolios are properly recorded in IEMS to avoid delays.

MALAYSIA

APAA ANTI-COUNTERFEITING COMMITTEE REPORT –

COUNTRY REPORT

(APAA Hong Kong, 29 November – 2 December 2026)

79th Council Meeting

B. Establishment Of A New Border Control Agency

Introduction

The **Malaysian Border Control and Protection Agency (AKPS),** effective 1 October 2025, has assumed certain border enforcement functions previously carried out by the Royal Malaysian Customs (RMC) and is responsible for border enforcement across all 114 entry points by 2026. Established under the Border Control and Protection Agency Act 2024 (BCPA 2024), AKPS is responsible for:

- the inspection and control of persons, goods and vehicles entering or leaving Malaysia, as well as the prevention and investigation of border-related offences, including monitoring and controlling the entry of goods into Malaysia and combating smuggling and the importation of counterfeit goods.

Intellectual Property Standpoint

From an intellectual property enforcement perspective, this development enhances the ability of brand owners to address counterfeit goods at the point of entry, before such goods enter the domestic market.

AKPS is required to exercise its functions under section 6(1)(a) of the BCPA 2024, which includes inspecting and controlling goods being imported. This responsibility encompasses the seizure of counterfeit goods, as their importation contravenes written law—specifically, section 54 of the TMA 2019 defines counterfeit goods as those bearing, without authorization, a trademark identical or similar to a registered trademark, thereby infringing the proprietor's rights, extending to prohibit the import of goods bearing unauthorized trade marks (s.54(3)(f)).

The enforcement of intellectual property rights, particularly regarding counterfeit goods, represents a significant aspect of AKPS's border control mandate. Under Section 6(1)(a)(ii), AKPS has explicit authority over the "inspection and control of goods taken into or out of the prescribed area," which directly encompasses counterfeit goods enforcement at borders.

Separately, there are border measure provisions under the Trademarks Act 2019 governing the importation and exportation of counterfeit goods. In practice, however, these measures place a significant evidential burden on brand owners, who are required to provide detailed shipment information (such as importer details, transport particulars and point of entry), which is often not readily available. Although enforcement authorities are empowered to act ex officio, there is currently no formal recordal system of intellectual property rights and notifications to brand owners are limited in practice.

In light of the above, we typically work with brand owners to adopt practical measures to enhance border enforcement, including conducting targeted training sessions with enforcement authorities and providing product identification materials to assist in the detection of counterfeit goods at entry points (please refer to page 7 onwards for further details).

Key Takeaway

As AKPS is a newly established agency, its practical enforcement approach and coordination with existing authorities remain to be fully observed, and we will continue to monitor developments and provide updates as its role evolves.

MALAYSIA

APAA ANTI-COUNTERFEITING COMMITTEE REPORT –

COUNTRY REPORT

(APAA Hong Kong, 29 November – 2 December 2026)

79th Council Meeting

PART 3 – RECENT COURT CASES

The following decisions of the Malaysian courts which relate directly to enforcement against counterfeits are summarized below:

No.	Cases	Facts	Significance
1	**Ma Hoa Trading Co Ltd v Public Prosecutor [2026] MLJU 207** Court of Appeal Lim Chong Fong, Noorin Badaruddin And Mohd Radzi Abdul Hamid Jjca	In 2020, enforcement authorities seized 21 containers of LUFFMAN-branded cigarettes at the Port of Tanjung Pelepas, Johor. The cigarettes bore markings including "Made Under Authority of Leadon Tobacco Intl. USA", although the trademark proprietor had not licensed the Appellant to use those markings. The containers had been shipped by the Appellant from Vietnam and were destined for a consignee in the Philippines, with the shipping documentation showing that the goods were in transit and intended for transshipment, rather than importation into Malaysia. The seizure was initially made pursuant to the TMA 2019, although forfeiture was subsequently pursued under the Trade Descriptions Act 2011 ("TDA"). The Court of Appeal unanimously allowed the Appellant's appeal and set aside the High Court's order for seizure and forfeiture. The Court found that there was no evidence that the cigarettes had been exposed for supply in Malaysia or were possessed, held or controlled for the purpose of supply in Malaysia. The fact that the Appellant was the owner and consignor of the cigarettes was insufficient, without evidence of the requisite purpose of supply. The goods remained within the container yard pending transshipment, with no Malaysian buyer, importation into the Malaysian market, repacking or sale. The Court further held that the cigarettes constituted bona fide goods in transit and were therefore not subject to seizure and forfeiture under the TDA in the circumstances. The Sessions Court's order for release of the goods was accordingly restored.	The decision is significant to anti-counterfeiting enforcement as it clarifies the limits of enforcement against goods merely transiting through Malaysia. The Court noted that section 82(8) of the TMA 2019 expressly excludes goods in transit from the statutory border-measures regime and held, in the context of the TDA, that bona fide transit goods which are not intended to enter the Malaysian market should similarly not be subject to seizure and forfeiture.
2	**Kotra Pharma (M) Sdn Bhd v Ho Choi Yee [2026] MLJU 1247** High Court	The plaintiff, the owner of the registered **CREOBIC** trademark for antifungal cream products, sued the defendant after a trap purchase revealed that the defendant was selling allegedly counterfeit CREOBIC products through her Lazada store. The defendant admitted operating the online store and selling the products but argued that she was merely a reseller, had sourced the goods	A reseller may be liable for trademark infringement notwithstanding that it did not manufacture the counterfeit goods or allegedly did not know that the goods were counterfeit. Knowledge or

	Raja Segaran S Krishnan Jc	from a supplier, and did not know they were counterfeit. The Court held that these arguments did not constitute a valid defence because trademark infringement under the **Trademarks Act 2019** arises from using the mark in the course of trade, and neither knowledge nor intention is required to establish liability. Finding that there was no bona fide triable issue, the Court granted summary judgment on trademark infringement, issued a permanent injunction restraining further sales, ordered delivery up of infringing goods, and directed an inquiry into damages, while leaving the passing off, copyright, and enhanced damages claims to be determined at a later stage.	intention is not required to establish civil liability for trademark infringement. The decision is particularly significant for online marketplace sellers and retailers dealing in counterfeit products.
3	**Leung Kai Fook Medical Co Pte Ltd & Anor v Ninso Global Sdn Bhd (formerly known as TCT Home Centre (Sarawak) Sdn Bhd) [2026] MLJU 900** **High Court** Edwin Paramjothy Michael Muniandy JC	The Plaintiffs are the proprietors of the well-known **Arm & Axe / Axe Brand** trademarks for medicated oil products. Following a KPDN raid on the Defendant's premises on 25 July 2022, 34 infringing products were seized. Despite the raid, the Defendant continued to sell the infringing goods. Its own records showed that at least **19,429 units** were sold through at least **63 outlets** over approximately **20 months**. Liability for trademark infringement and passing off had previously been determined by summary judgment and affirmed by the Court of Appeal. In the subsequent assessment of damages, the High Court awarded RM20,904.24 as an account of profits; RM250,000 for loss of goodwill and reputation; RM25,000 as additional damages; RM25,000 as general damages; and RM75,000 as exemplary damages, amounting to RM395,904.24, together with interest and costs.	The decision provides significant guidance on the remedies available in cases involving counterfeit trademarks under the TMA 2019. The Court held that additional damages under sections 56(7)(c) and 56(8) may be awarded having regard to the flagrancy of the infringement, the benefit obtained by the infringer and the need for deterrence and that the absence of criminal proceedings does not preclude such an award. The Court regarded the Defendant's continued sales after the KPDN raid, together with the scale and geographical reach of the infringement, as evidence of deliberate and flagrant conduct.
4	**Ferrero S P A v Koon Brothers Sdn Bhd & Anor [2026] MLJU 804** **High Court**	**Inter-parte Interlocutory Injunction** Ferrero, the proprietor of various registered NUTELLA trademarks in Malaysia, including the Nutella Coppetta Mark, applied for an inter-partes interlocutory injunction pursuant to Order 29 of the Rules of Court 2012,	The decision demonstrates the willingness of the Malaysian courts to grant interlocutory injunctive relief to prevent continued use of allegedly infringing

	Edwin Paramjothy Michael Muniandy JC	seeking to restrain the Defendants, Koon Brothers Sdn Bhd (the "1st Defendant") and My Biscuit Marketing (the "2nd Defendant") (collectively "the Defendants"), from manufacturing, marketing, distributing, selling, offering for sale, advertising, promoting, or otherwise dealing in products that allegedly infringe the Plaintiff's registered trademarks, well-known marks, and trade representation. Ferrero alleged that the products and packaging imitated essential features of the Nutella marks and get-up, including the "nu" prefix, black and red lettering, hazelnut and green-leaf imagery, jar-like packaging and white lid. In considering the alleged trademark infringement, the High Court applied the established principles of trademark comparison and assessed the **overall impression** created by the competing marks and get-up, rather than conducting a meticulous search for differences. The Court considered, among other features, the Defendants' use of the "nu" prefix with black and red lettering, hazelnut and green-leaf imagery, jar-like packaging with a white lid, and similar colour schemes and presentation. It found that these similarities were capable of creating a misleading association with Nutella, particularly having regard to imperfect consumer recollection and the fact that the parties' products operated within the broader confectionery market. The High Court found that Ferrero had established bona fide serious issues to be tried concerning trademark infringement under section 54(2)(b) of the TMA 2019, infringement of well-known marks and passing off. The Court therefore granted an interlocutory injunction restraining the Defendants from dealing in the allegedly infringing products pending the determination of the action at trial.	marks and product get-up pending trial, particularly where continued use may cause consumer confusion and harm the goodwill and distinctiveness of a well-known brand. The Court held that damage to goodwill, reputation and trademark distinctiveness is inherently difficult to quantify and may therefore not be adequately compensated by damages. In determining the balance of convenience, the Court considered that preserving the status quo and preventing potential consumer confusion outweighed the prejudice caused by restraining the Defendants pending trial.

MALAYSIA

APAA ANTI-COUNTERFEITING COMMITTEE REPORT –

COUNTRY REPORT

(APAA Hong Kong, 29 November – 2 December 2026)

79th Council Meeting

PART 4 - 2026 NEWS REPORT ON RAIDS IN MALAYSIA

The following recent enforcement actions in Malaysia involving significant raids and seizures of suspected counterfeit goods are summarised below:

No.	News/Key Highlights
1.	**Highest fine for selling counterfeit items (as of May 2026)** Man was fined RM200,000 (approx.. USD 50,000) for selling counterfeit items, the highest fine in Malaysia pursuant to TMA 2019. The accused paid the fine to avoid serving a six-month prison sentence.
2.	**Petaling Street raid – counterfeit World Cup jerseys** The Ministry of Domestic Trade and Cost of Living (MDT) raided five premises in Jalan Petaling, Kuala Lumpur, seizing **5,403 suspected counterfeit World Cup jerseys valued at RM270,150 (approx. USD 67,000)**. Six foreign workers were detained in connection with the operation. The jerseys were reportedly sold for about **RM50 (approx. USD12)** to local buyers, but could exceed **RM100 (approx. USD25)** for foreign tourists. The operation was capable of generating approximately **RM5,000 (approx. USD1,230) per day**. Case was investigated under the TMA 2019
3.	**Fake designer goods worth almost RM300,000 seized in Selangor** MDT, together with the Royal Malaysia Police and representatives of trademark owners, raided a storage premises in Petaling Jaya, Selangor, seizing **468 pieces** of suspected counterfeit clothing valued at **RM292,800 (approx. USD72,000).** The goods included clothing bearing brands such as Lacoste, Hugo Boss, Gucci, Balenciaga and Louis Vuitton. The counterfeit products were allegedly represented as genuine and sold at shopping malls for **between RM450 (approx. USD111) and RM1,500 (approx. USD369) per item**. Sales receipts, QR codes and stock records were also seized. The case is being investigated under the Trademarks Act 2019 for suspected unauthorised use of registered trademarks.