

**NEW AGE TUSSLE WITH THE LEGAL MEASURES IN CONTROLLING
THE COUNTERFEITING PRACTICES: A SPECIFIC STUDY ON IP
SEGMENT**

Tanisha Ranjan

Assistant Professor (Law), Jharkhand Raksha Shakti University

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ABSTRACT

Globalisation, trade facilitation, and the expanding economic significance of intellectual property are all drivers of economic enlargement. However, they have also led to different ways for illicit networks to expand the span and scale of their operations, free-riding on intellectual property and polluting trade routes with counterfeit goods. Leading to the serious outcome for both the economy and the citizens. Trade in counterfeit goods not only damages economic growth but also undermines good governance, the rule of law and citizens' trust in government, and can ultimately threaten political stability. Tracing back to the history of counterfeiting from 1925, we have seen a huge rise over the time. And India is not new to counterfeiting. It costs the Indian economy INR 1 trillion every year. In fact, one in three Indian adults have been victims of fake products from one or the other e-commerce websites, making online counterfeiting the fastest growing crime. In addition, in some cases, such as that of fake pharmaceuticals, counterfeit goods can have serious health and safety implications for citizens.

The legal structure intends to protect the enthusiasm of clients and partners and reasonable come back to the correct holders is the core of IPR insurance and requirement by the Legislature to guarantee IP security of right holders and battle the rotting impact of forging in India. Aside from the legal arrangements, the legal choices and perceptions in setting of disallowing forging in India merit referencing.

We are confident that this article will make a major contribution to the understanding of the volume, magnitude and harmful societal effects of illicit trade in counterfeit and will urge policy makers to shape effective solutions to combat and deter this scourge.

Key terms: Counterfeit, IPR, illicit trade, India

INTRODUCTION

Counterfeiting has consistently been a confounded worry for the Indian just as Global economy. Everyone cherishes a decent deal. There is an unexplainable fulfilment that one gets from the acquisition of excellent marked products at an unassuming cost. It is this part of customer conduct that the fake item industry depends upon. Fakes give a modest option in contrast to the first items. As a rule, the fake items are sold at 1/4th of the cost of the first. This makes them appealing to shoppers. Where Counterfeiting can be characterized as the false impersonation of something, for example, cash, trademark and so on. As such to fake is to make a duplicate, for the most part with the goal to cheat or produce. Duplicating additionally alluded to as the demonstration of replicating brands, has even more multiplied with mechanical progression.

Counterfeiting is a global menace and no economy in the world has remained unaffected by this menace. The Indian citizens lives, and economy has also been affected and disturbingly counterfeiting incidents have been increasing in the last three year. Although, measuring the economic impact of counterfeiting is methodologically challenging, informed studies estimate that trade in counterfeit goods is now 3.3 percent of world trade and increasing. It is well known and documented that counterfeit goods can cause risks to consumers' health and well-being, distort competition, damage legitimate producers' interests and their brand names, undermine employment and reduce tax income. A big challenge is that Counterfeiters are becoming smarter, better funded, and organized. The onus on all impacted parties to stay one step ahead of them is even more critical. The growth of e-commerce, the globalization of markets has made the fight against counterfeiting even more challenging.¹

The forging hazard has widely and profoundly infiltrated the business sectors around the world, as a result of which rich brands like Prada and Gucci which must be found in particular restrictive showrooms would now be able to be seen in any arbitrary road shop of India. Basically Counterfeiting and theft includes encroachment of IPR (Intellectual Property Rights) in the idea of trademarks, licenses and copyrights.

The USTR (United States Trade Representative) Report in 2015 gave a rundown of famous market everywhere throughout the world and India's Tank Road and Sadar Bazar in New Delhi were perceived as infamous markets. The Report additionally expressed that India positioned first in quite a while of number of named physical markets with an expansion in reports of fake clothing and footwear. By virtue of broad exchange of fake merchandise, even in 2016 India

¹file:///C:/Users/user/Downloads/1623216858-4730baa0efdb83aba174859af0a3a6a5
Report%20The%20State%20of%20Counterfeiting%20in%20India%202021.pdf

highlights in the need watch rundown of USTR Special 301 Report.²

HISTORY OF COUNTERFEIT

1. SIGNIFICANTLY IDENTIFIED MILE STONES OF COUNTERFEIT ACTS IN THE WORLD HISTORY

a. Portuguese Bank Note Crisis Of 1925

When the British banknote printers Water low and Sons produced Banco de Portugal notes equivalent in value to 0.88% of the Portuguese nominal Gross Domestic Product, with identical serial numbers to existing banknotes, in response to a fraud perpetrated by Alves dos Reis. Similarly, in 1929 the issue of postage stamps celebrating the Millennium of Iceland's parliament, the Althing, was compromised by the insertion of 1 on the print order, before the authorized value of stamps to be produced.³

b. Counterfeit Scandal Of Hungary 1926

When several people were arrested in the Netherlands while attempting to procure 10 million francs worth of fake French 1000-franc bills which had been produced in Hungary; after 3 years, the state-sponsored industrial scale counterfeit operation had finally collapsed. The League of Nations' investigation found Hungary's motives were to avenge its post-WWI territorial losses (blamed on Georges Clemenceau) and to use profits from the counterfeiting business to boost a militarist, border-revisionist ideology. Germany and Austria had an active role in the conspiracy, which required special machinery. The quality of fake bills was still substandard however, due to France's use of exotic raw paper material imported from its colonies.⁴

C. German Counterfeit Bills During World War II

During World War II, the Nazis attempted to do a similar thing to the Allies with Operation Bernhard. The Nazis took Jewish artists in the Sachsenhausen concentration camp and forced them to forge British pounds and American dollars. The quality of the counterfeiting was very

²wipo/ip/uni/dub/04/7 , “wipo national seminar on intellectual property for faculty members and students of ajman university”, (20/08/2022)

<https://www.wipo.int/edocs/mdocs/arab/en/wipo_ip_uni_dub_04/wipo_ip_uni_dub_04_7.pdf>

³Postage stamps and postal history of the Sovereign Military Order of Malta, (20/08/2022) <https://en.wiki.hereiszyn.com/wiki/Postage_stamps_and_postal_history_of_the_Sovereign_Military_Order_of_Malta>

⁴Kaustabh Nandan Sinha, counterfeiting a global problem, (20/08/2022) <<http://www.legalserviceindia.com/article/l294-Counterfeit.html>>

good, and it was almost impossible to distinguish between the real and fake bills. The Germans could not put their plan into action, and were forced to dump the counterfeit bills into a lake. The bills were not recovered until the 1950s.⁵

2. HISTORICAL INPUT FROM WORLD AT LARGE TO DOMESTIC LEVEL

a. Counterfeit In World

A recent survey from the US has come out with the finding that worldwide 10 per cent of perfumes and cosmetics, 11 per cent of clothing and footwear and around six per cent of drugs bought by consumers are fakes. The figure rises to a staggering 80 per cent in some developing countries. According to the International Anti-Counterfeiting Coalition, in the US alone trademark counterfeiting robs the country of \$200 billion (Rs 9, 20,000 crore) annually.

b. Counterfeit In Europe

The Anti-Counterfeiting Group (ACG), organiser of a pan-European survey, put the total loss to the European Union economy from counterfeiting and piracy at £250 billion (Rs. 20, 00,000 crore) per year; of this £30 billion is lost in taxes and excise. Polo Ralph Lauren, Gap, Banana Republic, American Eagle, Abercrombie and Fitch, Guess, J.Crew, Nautica Timberland are brands which most prone to counterfeiting. Another estimate says 4,100 jobs are lost each year in the UK alone because of counterfeiting - wrecking industries and draining funds which otherwise would have reached public services,

C. Counterfeit In Asia

Talk about counterfeit products and one automatically thinks of a few countries. While India is not lagging behind the rest of the pack - mostly developing countries - it is China that is head and shoulder above others in this category.

China is the biggest source of counterfeit goods in Asia and piracy rate in China is more than 90 per cent. As much as 30 per cent of the counterfeit products worldwide is being made in China. China spurious goods are sold all over the world including India counterfeit goods is easily accessible in Indian market.⁶

Countries like Singapore and Hongkong which are regarded as shoppers paradise are also den for

⁵ Kaustabh Nandan Sinha, counterfeiting a global problem, (20/08/2022) <>

<http://www.legalserviceindia.com/article/1294-Counterfeit.html>

⁶Kaustabh Nandan Sinha, counterfeiting a global problem, (20/08/2022) <>

<http://www.legalserviceindia.com/article/1294-Counterfeit.html>

counterfeited goods brands like Louis Vuitton are most effected also electronical appliance are the one which are targeted the most.

d. Counterfeit In India

Indian metros have become bases for manufacturing counterfeit products and account for maximum IPR violations. Delhi is the hub of counterfeit products in India as nearly 70 per cent counterfeit products originate there. A FICCI survey has estimated the loss of revenue to the Indian exchequer by way of taxes to be roughly around Rs 1,000 crore a year. FMCG, software, automobile, packaged water, and garments sectors are the most affected by IPR violations, though there are laws in India against counterfeiting, their enforcement is tedious. "Lengthy legal proceedings often yield no results Indian courts are becoming aware of the need for the Judiciary to develop progressive and novel methods of granting relief to check infringers and counterfeiters.

The Supreme Court has taken the lead and in the case of *Laxmikant Patel vs Chetanbhat⁷ Shah* held that "once a case of passing-off has been made out, the practice is generally to grant a prompt ex-parte injunction followed by the appointment of a local commissioner, if necessary". And also authorizing the Court Receiver to seize the goods whether they are lying at the defendant's factories or at the premises of their retailers. These are known as roving orders. The Court Receiver is often authorised to take the help of the police in conducting the raids. Also in case of *Microsoft Corporation Vs.Mr. Kiran and Anr⁸*.

A decree is passed for permanent injunction in favor of the plaintiff and against the defendants restraining the defendants from using or otherwise copying, selling, offering for sale, distributing, issuing to the public, counterfeit/unlicensed versions of the plaintiff's software, in any manner, amounting to infringement of the plaintiff's copyrights in the said computer programs and related manuals.

The punishment for counterfeiting should be both compensatory and punitive. compensatory to provide for the damages and punitive to deter wrong-doers , to emphasise that breach of intellectual property rights was a wrong not only to the plaintiff, but also society at large and the consumers who suffer on account of that deception and to underscore that it is difficult for the plaintiff to prove the actual damages suffered by him considering that infringers do not maintain appropriate accounts of their transactions as they know that the same are objectionable and unlawful.

⁷ AIR2002SC275, 2002(1)ALD45(SC)

⁸ MIPR2007(3)214, 2007(35)PTC748(Del)

And in one such landmark case, the Delhi High Court, in the Time Warner Inc. vs. Lokesh Srivastava & Anr⁹ case, awarded "punitive and exemplary damages," in addition to compensatory damages, for flagrant infringement of trademarks and copyrights. Such decision really helps in reducing counterfeit and other kinds of IPR infringements. Modern- age counterfeiters are experts. They counterfeit goods using technologically innovative methods. Delay in judicial relief has assisted counterfeiters in remaining one step ahead of the law. In this context, Section 135 introduced in the Trademarks Act, 1999, is significant. It gives statutory powers to the courts to grant ex-parte (that is, without notice to the defendant) relief in appropriate cases. The courts are empowered to grant ex-parte injunctions against infringers restraining them from selling counterfeit goods, etc., and ex-parte order for discovery of documents, preserving of infringing goods, documents or other related evidence, and restraining the defendant from disposing of his assets in a manner which may affect plaintiff's ability to recover damages.

This provision will cause financial damage to counterfeiters by restraining the disposal of any asset of the counterfeiters even if the same are not related to the infringing activity. Section 135 of Trademark Act 1999 reads as follow-

(1) The relief which a court may grant in any suit for infringement or for passing off referred on in section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up the infringing labels and marks for destruction or erasure.

(2) The order of injunction under sub-section (1) may include an ex parte injunction or any interlocutory order for any off the following matters, namely :-

(a) for discovery of documents.

(b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit.

(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

(3) Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way

⁹ [2006]131CompCas198(Delhi), 116(2005)DLT599, 2005(30)PTC3(Del)

of damages (other than nominal damages) or on account of profits in any case -

- (a) where in a suit for infringement of a trade mark, the infringement complained of is in relation to a certification trade mark or collective mark, or
- (b) where in a suit for infringement the defendant satisfies the court-
 - (i) that at the time he commenced to use the trade mark complained of in the suit, he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was on the register or that the plaintiff was a registered user using by way of permitted use, and
 - (ii) that when he becomes aware of the existence and nature of the plaintiff's right in the trade mark, he forthwith ceased to use the trade mark in relation to good or services in respect of which it was registered, or
- (c) where in suit for passing off, the defendant satisfies the court-
 - (i) that at the time he commenced to sue the trade mark complained of in the suit he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was in use, and
 - (ii) that when he became aware of the existence and nature of the plaintiff's right in the trade mark, he forthwith ceased to use the trade mark complained of.

The most common problem is that manufacturers of genuine branded products are unable to obtain timely relief as the identity of the defendant is not easily ascertainable. This problem has been overcome by the grant of what are known as "John Doe" orders. These orders operate against infringing goods which may be seized wherever they are located and would operate against any potential defendant who is subsequently identified as the counterfeiter/infringer and the court order is served on him. One such 'John Doe' order was granted by the Delhi High Court in *Taj Television Limited vs Rajan Mondal*¹⁰. This practise is fairly well developed in the UK, New Zealand and Canada. While no organisation has come up with such an assessment in India so far, a FICCI estimate has put the annual loss of revenue to the Indian companies in excess of Rs 4,000 crore.

ECONOMIC IMPACT AND EFFECT : THE INDIAN SCENARIO

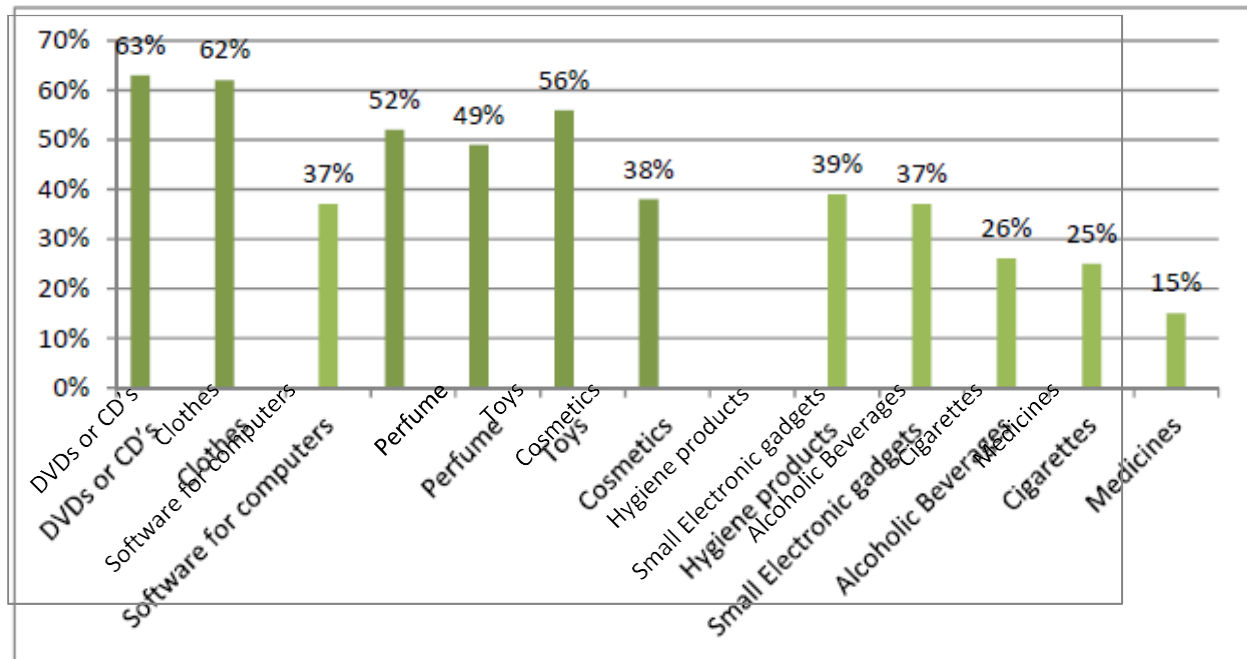
"Illicit trade in smuggled, counterfeit and pirated goods is a major threat to the economies. It

¹⁰ FSR 2003 (407)

damages legal business, causes huge financial losses, compromises the safety of the consumers and leaves a gaping hole in the exchequer” **Mr Anil Rajput, Chairman, FICCI CASCADE**¹¹

A. BASCAPS (2009) STATISTICS ON COUNTERFEITING IN INDIA –

GRAHP 3: Percentage Of Consumers Acknowledged To Acquiring Counterfeit



B. Seminar on Containing Counterfeiting and Smuggling – A Step Towards Prosperous Nation Building , 13 FEB 2020- The Advisor of FICCI CASCADE and former chairman of Central Board of Indirect taxes and Customs, Mr. P C Jha, stated in his seminar that “counterfeiting and piracy stood at Rs. 57.23 lakh crore in 2013 and was expected to go up to Rs. 119.7 lakh crore by 2022.”¹²

C. Socio-economic Impact of Counterfeiting, Smuggling and Tax Evasion', - the expected

¹¹ FICCI CASCADE FICCI Committee Against Smuggling and Counterfeiting Activities Destroying Economy (CASCADE), “Counterfeiting, Piracy and Smuggling in India – Effects and Potential Solutions”, (20/08/2022), <<https://cdn.iccwbo.org/content/uploads/sites/3/2016/11/Counterfeiting-piracy-and-smuggling-in-India-Value-of-IP-in-india.pdf>>

¹² committee against smuggling and counterfeiting activities destroying the economy, “seminar on containing counterfeiting and smuggling – a step towards prosperous nation building” (26/06/2020)<<https://www.ficciscascade.in/seminar-on-containing-counterfeiting-and-smuggling-a-step-towards-prosperous-nation-building-2/>>

Government annual tax loss because of the reason of counterfeit merchandises in 2012 was Rs. 26,190 crore or almost USD \$4.23 billion.

D. Cascade Report, Released On September 26, 2019- The report states that the counterfeit and piracy have already instigated a loss of Rs 1.17 lakh crore to the economy of Indian in 2017-18 in five significant trades—fabrics, handy garments, tobacco products, capital goods , and consumer durables.

E. Invisible Enemy: Impact of Smuggling on Indian Economy and Employment- the report additionally evaluates that about 16.36 lakh positions were lost in these five sectors due to falsifying in 2017-18. Capital merchandise endured the most, with a Rs 52,511 crore misfortune that rendered 6.12 lakh labourers jobless. Customer durables were next with Rs 21,452 crore misfortunes.

F. 2014, Cascade had studied seven sectors: FMCG packaged and personal goods, automobiles, computer equipment, cell phones, tobacco, liquor, broadcasting and films. It evaluated a 44.4 percent jump in misfortunes in only two years, from Rs 72,969 crore in –2011-12 to Rs 1,05,381 crore.

G. The Automotive Component Manufacturing Association Of India (ACMA)- gauges 35 percent of vehicle parts in the market are counterfeit. The Authentication Solution Providers' Association, (once in the past known as Hologram Manufacturers Association of India) asserts an absolute loss of Rs 1 –trillion due to falsifying in India. On the food portion alone, example studies by state sanitation divisions incorporated by the FSSAI offer a fractional feeling of the scale in question. In 2018- 19, out of 85,172 examples gathered from all over India, 22,441 (or 26.4 percent) neglected to fit in with set norms. In any case, it's murky. "We can't state each one of those examples were phony items. Frequently certifiable items come up short for a few reasons," says a senior FSSAI official. The sanitation administrative instrument has its own difficulties. An intense lack of sanitation reviewers has been a lasting issue. In Delhi, for example, 34 such posts were made in the late '70s. Not just has the number remained static, a large portion of these posts have been lying empty for quite a long while. Directly, just 22 food –inspectors are there to serve a populace of over 1.25 crore. UP, with its 20 crore-in addition to populace, has just 750 sanitation officials. Different states also don't have a lot to cheer about.¹³

H. Invisible Enemy – Impact of counterfeit on Indian Economy and Employment 2019 was

¹³ Jeevan Prakash Sharma, Fake Bazaar! From Lipsticks To Toothpastes, Noodles To Milk, Counterfeit Products Make A Killing, (20/08/2022), <<https://www.outlookindia.com/magazine/story/business-news-fake-bazaar-from-lipsticks-to-toothpastes-noodles-to-milk-counterfeit-products-make-a-killing/302225>>

discharged. The examination was dispatched by FICCI CASCADE and directed by Thought Arbitrage Research Institute (TARI) without precedent for India. which was directed in seven key industry, segments in particular auto segments, liquor, PC equipment, FMCG (individual merchandise), FMCG (bundled products), cell phones and tobacco, further gauges a yearly deals misfortune to Industry at Rs. one lakh crore or USD \$16.13 billion. As indicated by the investigation the most noteworthy income losing enterprises were FMCG (bundled merchandise) at USD \$3.28 billion or Rs. 20,378 crore (23.4%), FMCG (individual products) at USD \$2.43 billion or Rs. 15,035 crore (25.9%), auto parts at USD \$ 1.48 billion or Rs. 9,198 crore (29.6%), cell phones at USD \$1.45 billion or Rs. 9,042 crore (20.8%) and tobacco at USD \$1.44 billion or Rs 8,965 crore (15.7%).

- Counterfeit of products in 5 segments specifically materials, instant pieces of clothing, cigarettes, hardware and parts and buyer gadgets forestalled the expansion of more than 16 lakh occupations in India in 2017-18 and Indian economy lost Rs 1.17 trillion.
- Of 16 lakh occupations, more than 5 lakh employments expansion was straightforwardly affected due to fake and more than 11 lakh positions were lost dueto in reverse linkage and multiplier impacts of these ventures.
- Counterfeit and yield misfortune to the residential readymade pieces of clothing industry expanded to Rs 5,509 crore in 2017-18 from Rs 3,780 crore in 2015-16.
- Trade in carrying, stash, fake and pilfered merchandise has expanded consistently over the most recent couple of years and remained at 3% of worldwide exchange
- After China, India figures most as often as possible in Counterfeiting and Piracy.¹⁴

I. Counterfeit on music production-40% of Music Productions are replicated and sold unlawfully and misfortune comes to 600 crores every year.

J. Music and Movies- film business in India, normally highlighting Bollywood is relied upon to develop to US\$ 40.3 billion (at 11.6 percent CAGR) by 2018.¹⁵ The development will principally be driven by carefully determined incomes. Yet, this development would be influenced by robbery. The Indian film industry assessed at INR 15,000 crore brought about lost

¹⁴AC Team 2, 6th edition of MASCRAD for 2019 held in New Delhi, (20/08/2022) <<https://affairsccloud.com/6th-edition-of-mascrade-for-2019-held-in-new-delhi/>>

¹⁵ 2015 Top Markets Report, International Trade Administration, (20/08/2022)

10 to 20 percent every year in light of theft.¹⁶ Absence of severe laws in the fragment and negligible fines has prompted the disappointment of holding robbery within proper limits. One of the famous usual methodologies conveyed towards robbery is the harsh document sharing systems.¹⁷

K. India has the highest level of Piracy of films in all the English -speaking countries. talking nations. Hindi film "KAMINEY" was down-stacked more than multiple times on BIT TORRENT with 2/3 down-loaders situated in India. This is simply online theft Offline robbery with CDS and DVDs is moreover India positions Fourth in a wide range of illicit downloads after US, UK and Canada.

L. Counterfeit of luxury brands-10% of major sodas and 10 to 30% of beauty care products, bundled food are phony. An arbitrary study of enlisted Indian Companies uncovers that in excess of 60 organizations start with "NIKE", 65 with the name "ROLEX, 217 organizations with "INTEL". This marvel isn't restricted to multinationals as it were. 136 organizations start with "Goodbye" and more than 400 with "Dependence".¹⁸

M. A 2016 International Criminal Court Governmental (ICC) report- evaluates that the absolute estimation of pirated and counterfeited merchandise will reach somewhere in the range of \$1.9 and \$2.81 trillion by 2022, and that is without considering the more extensive monetary and social expenses. What's more, a recent report by Markmonitor found that catchphrase look through utilized by buyers on web search tools raised in excess of seven fold the number of fake sites than real retailers. This internet forging stretches out all through Social Media as phony PPC advertisements that utilization credible images drive individuals to their locales, another test to an organization's image security system.¹⁹

N. Retail markets- A driving industry body proposes that fake extravagance retail showcase in India liable to twofold to INR 5,600 crore by 2015. The current phony extravagance items showcase is assessed around INR 2,500 crore. The counterfeit luxury goods market is expanding at a CAGR of as high as 45 percent.

¹⁶ Indian film loses about 2250 crore due to piracy, IBN, (20/08/2022)

¹⁷ Piracy cost Bollywood US\$ 959 million: Report, Times Of India, 2010 (20/08/2022)

¹⁸ Extract from keynote paper on "Counterfeiting and Piracy" presented at One-Day Seminar on "Intellectual Property Rights" organized by CII at the SVP National Police Academy, Hyderabad on (20/08/2022)

¹⁹ [Amanda G. Ciccattelli, The Growing Problem of Online Counterfeit Products, \(20/08/2022\)](https://www.ipwatchdog.com/2017/07/20/growing-problem-online-counterfeit-products/id=85846/)

O. Online commerce- Online trade is a huge supporter of this development bookkeeping to more than 25 percent of all phony extravagance products sold. The online extravagance showcase worth INR 17,000 crore is developing at more than 20 percent.²⁰

IMPACT ON NATIONAL ECONOMY, SECURITY AND WELFARE

- A. Loss of Revenue due to tax evasions-** the counterfeiting is an unauthorized marketing of fake goods. Thus counterfeit goods do have any direct or indirect tax attached to it. Henceforth the government face a huge loss in this department
- B. Loss of jobs-** the counterfeit not only cause loss to the company's sale and profit but also loss to the jobs of many deserving candidate.
- C. Workers exploitation-** as companies at loss, this leads to exploitation of workers due to low wages. This further leads to unsafe and unhealthy working conditions.
- D. Mistreatment of women, Child Labour and illegitimate immigrant workers** Undesirable impact on environment and public health
- E. Criminals, terrorists and the corrupt flourish**
- F. Foreign direct investments drift is lower**
- G. Foreign exchange structure and volume may endure by virtue of doubt about nature of items**
- H. Higher expenses of hostile to duplicating activities. Foreign trade structure and volume may suffer on account of distrust about quality of products**
- I. Higher costs of anti-counterfeiting operations.**

EFFECT ON SOCIETY: IMPACT ON CONSUMERS / BUYER AND END-USER

- **Higher exposure to health and safety risks-**

The counterfeit drugs, food items and also the clothes is of cheap quality hence the customers are exposed to the health and safety risk.

²⁰ FICCI, "Emerging Challenges to Legitimate Business in the Borderless World" (20/08/2022)

http://ficci.in/spdocument/20689/Emerging_Challenges_Report_%20illicit%20trade.pdf

Fake medicines, foods and beverages, toys, auto parts and health and beauty products endanger consumers and deny them of the benefits they expect from the legitimate products. The Automotive Component Manufacturers Association of India reported that use of fake parts resulted in 25,400 deaths and more than 93,000 injuries during 2009.²¹

- ***Experience lower consumer utility due to poor quality-*** counterfeit is selling of fake materials and of poor quality. Hence the goods bought by the customers are not at all long lasting. Thus consumer utility is reduced.
- ***Total or partial loss of money due to very low quality²²⁻*** Due to low quality of the counterfeit goods, the life of goods is very less. Resulting in total or partial loss of money of customers
- What companies say-
 - ❖ ***Official Spokesperson, Colgate-Palmolive (India) Limited-*** “The sale of counterfeit - products affects consumers. Their interests are paramount and we will continue to educate them about authorised channels and genuine Casio products.”
 - ❖ ***Satoshi Yamazaki, Casio Computer Co Ltd-*** “We regularly undertake quality checks of our products with the help of consumers, local authorities and our distribution network. Recently, we worked with the Telangana and Andhra police.”
 - ❖ ***Sunil Kataria, Godrej Consumer Prod Ltd-*** “We periodically collect samples from the market for testing. Wherever required, we investigate in partnership with the government to address an issue and prevent its recurrence.”
 - ❖ ***Sharad Singla, brand marketing director, Adidas,-*** admits counterfeits “derail the complete value chain for consumers looking for quality and elevated functionality”. Adidas too has always endeavoured to educate consumers and guide them to authorised channels, he says. “We also have a robust legal team that works with the authorities to intercept fakes.”

²¹ FICCI, “Emerging Challenges to Legitimate Business in the Borderless World” (20/08/2022)

<http://fikki.in/spdocument/20689/Emerging_Challenges_Report_%20illicit%20trade.pdf>

²² Veer Singh, Combating Counterfeiting And Piracy : An Overview (20/08/2022)

<<http://www.commonlii.org/in/journals/nalsarlawrw/2011/2.pdf>>

JUDICIAL ACTIVISM AND FACING CHALLENGE

- **Less Stringent Penalties**

The benefits picked up in selling the phony items are enormous. Likewise as the punishments for selling such items are frequently less rigid the merchants and retailers don't timid from facing the challenge and selling or offering to sell the pilfered items. Gallup is a multi-year old association with a goal to convey ground breaking research, examination, and counsel. In the year 2005, Gallup directed a review to comprehend the purchaser attitude with respect to falsified items and associated conditions

- **No Specific Legislation-**

India has no specific legislation to deal with this serious issue. Furthermore, the term counterfeit and piracy has not even been defined specifically by any of the legislation. It is most dealt under infringement by IP laws. Whereas under IPC the punishment and powers of police to seize the goods have been mentioned. For instance, when experiencing fakes in the pharmaceutical part, rights holders can move toward the nearby medications position to record a protest. This will at that point help the police to complete a pursuit and to hold onto any fake merchandise. Simultaneously, the rights holder has the alternative of recording a claim for trademark encroachment and going off.

The level of wrongdoing is really uplifted with counterfeit food items. Specialists state present correctional arrangements are no hindrance. The FSSAI needs urgent update, says Sanjeev Kumar of Luthra and Luthra Partners Law Offices. "Its details must be streamlined, video recording of assaults must be commanded in order to limit defilement/control, and corruption must welcome on rigid discipline," he includes. It's general wellbeing, at last, that we are discussing.

- **Companies Don't Want To Get Embroiled In Legal Hassles**

Companies would prefer not to get involved in lawful issues they feel prosecution drains them as much as the misfortune falsifying itself causes. Additionally, they think if the news spread, it carries an awful name to the organization. That is the reason regularly when the police strike a unit on the grievance of an organization and discovers fakes of different organizations as well, it doesn't record a case for the benefit of different organizations. "We educate them, however some of them would prefer not to seek after the case, so the violator is attempted uniquely for falsifying one item," says a police official. Numerous corporate delegates, thus, assert that regularly cops request a payoff to complete strikes since "they think we are the brilliant goose".

COUNTERFEITING ON THE RISE

India is not new to counterfeiting. It costs the Indian economy INR 1 trillion every year.²³ In fact, one in three Indian adults have been victims of fake products from one or the other e-commerce websites, making online counterfeiting the fastest growing crime. Counterfeiting activities take place round the clock and impact all major industries and sectors to some extent. The US Federal Bureau of Investigation (FBI) has named counterfeiting ‘The Crime of the 21st century’. There has been an increase in counterfeiting incidents from where they were in 2019 and 2018. The number of incidents being reported by media has also surged. According to report by ASPA in the last three years, an average increase of counterfeit incident reports by 20 percent. In 2020, 666 cases were reported with an increase of 96 cases comparing to 2019²⁴. With businesses being attacked more often and on a larger scale than ever before, there is a direct impact on consumer trust. Quality, transparency, and traceability in the supply chain have become prime factors for consumers. During 2010-2017, there were almost 29 recall events in India across the automobile, drugs, and food sectors. In 2020 alone, the Indian auto industry recalled a total of 3,37,082 vehicles²⁵.

Counterfeiting Is Becoming Rampant: The Past 50 / 80/ 100 Years In All Aspects Especially, It Is Very High In IPR

Counterfeiters are becoming smarter and taking their work seriously. ASPA data shows a regular pattern – counterfeit activities happen across the year and are not limited to festive or any specific seasons. This means that counterfeiting is no more a causal act for the perpetrators, and they look for every opportunity they can monetize. For instance, even during the COVID-19 lockdown, more than 30 incidents were reported in India during March-April 2020 that involved making sub-standard PPE kits and related items. According to the Delhi Police data, 155 people were arrested in 147 cases under the Excise Act and 18,556 bottles of liquor was recovered in the first two weeks of April during the ongoing lockdown. This only brings to light how brands need to wake up to the fact that counterfeiters are constantly evolving with the times, exploring digital mediums, and targeting any product sector which is easy to breach. They have a ready game plan.²⁶

²³ ASPA, Counterfeit News Repository, Report ‘ The State of Counterfeiting n India 2021’, (20/08/2022)

²⁴ ASPA, Counterfeit News Repository, Report ‘ The State of Counterfeiting n India 2021’, (20/08/2022)

²⁵ ASPA, Counterfeit News Repository, Report ‘ The State of Counterfeiting n India 2021’, (20/08/2022)

²⁶FICCI, “Emerging Challenges to Legitimate Business in the Borderless World” (20/08/2022) http://ficci.in/spdocument/20689/Emerging_Challenges_Report_%20illicit%20trade.pdf>

2. Legal Structure

The legal structure intends to protect the enthusiasm of clients and partners and reasonable come back to the correct holders is the core of IPR insurance and requirement. The below mentioned guidelines have been figured by the Legislature to guarantee IP security of right holders and battle the rotting impact of forging in India. Aside from the legal arrangements, the legal choices and perceptions in setting of disallowing forging in India merit referencing.²⁷

- a. Trademarks Act, 1999
- b. Copyright Act, 1957
- c. The Patents Act, 1970
- d. The Designs Act, 2000
- e. The Geographical Indications of Goods (Registration and Protection) Act,1999
- f. The Information Technology Act, 2000
- g. Indian Penal Code, 1860
- h. The Drugs and Cosmetics Act, 1940
- i. The Food Safety and Standards Act, 2006
- j. The Customs Act, 1962
- k. Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007
- l. Laws relating to Parallel imports
- m. Laws relating to Export

a. TRADEMARK

The term “counterfeit” has not been defined under the TM Act, 1999. This term is dealt under infringement. All counterfeits are infringements but all infringements are not counterfeits. In simple words it means that the counterfeit is one kind of infringement. The scope of counterfeit

²⁷ “Counterfeiting in India: Laws and Remedies” (20/08/2022) M<<file:///D:/NLU/dissertation/15.pdf>>

is narrow than that of infringement.

Sec 29 of TM Act, 1999 defines infringement as- a use of a mark, by an unauthorised or an authorised person or a person who is not the registered proprietor, which is identical or deceptively similar to the trademark in relation to the goods or services in respect of which the trademark is registered.²⁸

b. COPYRIGHT

The piracy has not specifically been dealt under the Act just like a trademark, the matters under piracy are been handled along with infringement. As it is commonly said that piracy are infringement but all infringement are not piracy. The provision with deals with piracy/ infringement under the the Act are-

Sec. 55- this section provides civil remedies to the offenders of copyright infringement such as such as injunctions, damages and account of profits. This section further states that the infringing copies are shall be submitted to the court.²⁹

Sec. 64- Power of police to seize infringing copies.— 2 [(1) Any police officer, not below the rank of a sub inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purposes of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable be produced before a Magistrate.³⁰

Sec. 53-power of registrar to investigate- he registrar of copyright has the power to investigate any alleged ship, dock or premise and order to confiscate them.³¹

C. PATENTS ACT

A patent applicant whose application is confirmed is granted patent for 20 years from the date of

²⁸ Trademark Act, 1999

²⁹ Copyright office GOI, THE COPYRIGHT ACT, 1957 (14 OF 1957) (20/08/2022)
<<http://copyright.gov.in/Documents/CopyrightRules1957.pdf>>

³⁰ Copyright office GOI, THE COPYRIGHT ACT, 1957 (14 OF 1957) (20/08/2022)
<<http://copyright.gov.in/Documents/CopyrightRules1957.pdf>>

³¹ Copyright office GOI, THE COPYRIGHT ACT, 1957 (14 OF 1957) (20/08/2022)
<<http://copyright.gov.in/Documents/CopyrightRules1957.pdf>>

filing.³² After the grant of patent applicant he has all the exclusive right over his patent, that is, right to sell, license, sale importing etc. also he has exclusive right to stop others from using his inventions.³³

The counterfeiting of patent takes place when any new invention is being copied and is sold to the public. Here the customers believing it to be the original invention buy the product. Fake and carbon copy clinical gadgets have gotten progressively common and represent an undeniable and possibly genuine danger to wellbeing. Since MOLTENO Ophthalmic didn't fabricate them, we can't affirm the exhibition, mechanical properties, biocompatibility or sterility of fake items. Be alert and quickly report to us any cases of licensed innovation encroachment, comparable names or exchange marks being utilized in the market for comparable items or any clone or fake (counterfeit) item.³⁴

According to the report by FICI, highest rate of sale in Indian grey markets is of mobile phones. It is reported that almost INR19,066 crore rupees was in loss in 2014 which increased from INR 9,042 crore in 2012.³⁵ The report states that the main reason behind selling of the counterfeit mobiles are that people get latest technology at the low price.

Any infringement requires the legal executive to meddle and make sure about such right. Nonetheless, the patentee is required to establish a suit for looking for cures, for example, interlocutory/between time directive, harms or record of benefits and changeless injunction, which are all perceived as common cures.³⁶ The Patents Act doesn't give criminal cures. Be that as it may, criminal risk emerges where an article is unfairly spoken to be protected or mystery necessities under the demonstration are penetrated.

d. THE DESIGNS ACT, 2000

The Industrial designs discuss to that piece of a business item, which is worried about the decorative or tasteful highlights of the item and not with its utility. The Designs Act, 2000 and the Designs Rules, 2001 were instituted to secure new or unique structure applied on items fabricated by modern procedure and to guarantee that the craftsman, maker, originator of

³² Section 53 of the Patents Act, 1970

³³ Section 48 of the Patents Act, 1970

³⁴ The CII National Committee on FMCG 2014-15, Combating Counterfeits through Technologies and Global Standards, (20/08/2022), <<https://gs1india.org/media/cii-report-on-combating-counterfeits-through-technologies-global-standards.pdf>>

³⁵ Illicit Markets- A Threat to our National Interests: The Mobile Phones Industry, FICCI CASCADE(20/08/2022)

³⁶ sec104, Patent Act, 2000

another or novel plan are not denied of their genuine prize. A mechanical structure is enlisted for a time of fifteen years (a plan is at first enrolled for a time of ten years which can additionally be stretched out for a long time)³⁷ and after the enrolments of a modern plan it will not be legal for any individual to apply or cause to be applied the structure or clear or fake impersonation thereof, to any article in any class of articles where the plan is enrolled. Note that import of such items is additionally unlawful and would add up to Piracy of Registered Designs.³⁸

Section 22 gives that anybody submitting a demonstration of theft will be obligated to pay to the rights holder up to ₹ 50, 000 (roughly \$1,000) per enrolled plan. The rights holder may likewise look for between time alleviation and an order, given that the correct holder must demonstrate that the claimed encroaching act includes their plan bringing about a monetary misfortune.³⁹

C. THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

Geological sign is a name or sign utilized on specific items, which is utilized to distinguish a decent as beginning in the region or a district or region in a domain, where a given quality, notoriety or other trait of the great is basically owing to its topographical inception. At present 192 geological signs are enlisted in India and generally unmistakable among them are Darjeeling Tea, Tequila, Kancheepuram Silk, Scotch Whisky, Tirupathi Laddu, Bikaneri Bhujia Champagne and so forth. Geological Indications of Goods (Registration and Protection) Act, 1999 administers the laws identifying with Geographical Indication. The Act characterizes the offenses and gives punishments to adulterating and dishonestly applying topographical signs which are comparative in nature to the relating offenses of Trademark. Topographical Indications of Goods (Registration and Protection) Act, 1999 and Geographical Indications Of Goods (Registration and Protection) Rules, 2002 are the significant laws for enrolment and assurance of geological sign.

The Geographical Indications of Goods (Registration and Protection) Act, 1999 accommodates security to all endeavours situated in the region, which may utilize the topographical sign on explicit merchandise that they produce. The demonstration gives the privilege to the GI proprietors to get reliefs in instances of infringement and furthermore accommodates criminal cures where the term of detainment shifts from a half year to 3 years and fine from ₹ 50,000 to ₹

³⁷ Section 11 of the Designs Act, 2002 ³⁷

³⁸ Section 22 of the Designs Act, 2002

³⁹ Pratistha Sinha, "India: Recourse Against Counterfeiting" (20/08/2022)
<<https://www.mondaq.com/india/trademark/649674/recourse-against-counterfeiting>>

2 lacs.⁴⁰

Since, the essential issue of this piece concerns the solutions for forging, the article quickly examines the common just as criminal solutions for redressal of complaints.

f. THE IPR RULES, 2007

India shares the border with most of the countries. This is one of the factors which leads to the counterfeit. As more the countries attached more easy transportation of the counterfeiting goods. Thus it is important to have a check on the borders.

Under this Rule the customs officers of competent authority have the right or the power to either seize or suspend the clearance of the counterfeited or pirated goods. Apart from this The Rules furthermore authorises the Custom Department to abolish imports infringing IPR.

Significant highpoints of the Rules:

- *notice for protection*- The proprietor of IP rights has to direct a notice for security of its IPR to the alarmed expert for appending the clearance of counterfeit imports
- *Ownership of valid IPR*- the organization requesting for the suspension should be a valid owner of the IPR. This condition is a obligatory essential for availing border security under the above Rules
- Under common settings within in a period of 1 month the custom authorized registers the IP of the Right Holder
- *Prohibition of imports*- Upon registration and check-up, the import of suspected counterfeit merchandises are forbidden in the Customs Act, 1962

The above mentioned guidelines have been framed by the Administration to guarantee IP security of right owners and battle the crumbling consequence of counterfeiting in India.

Separately from the legal provisions, the judicial conclusions and comments in setting of elimination counterfeiting in India are worth stating.⁴¹

g. IPC

⁴⁰ Chapter VIII, Geographical Indication of Goods (Registration and Protection) Act, 1999

⁴¹Counterfeiting in India: Laws and Remedies, (20/08/2022)
<<https://www.vakilno1.com/legalviews/counterfeiting-india-laws-remedies.html>>

The questions of counterfeiting and infringement have been expanding with an incredible pace since recent years and have pulled in genuine worries of the officials around the globe towards themselves and in the event that we take this to the Indian viewpoint for this there are assistance given in different sculptures, for example, The Copyright Act, 1957, The TradeMarks Act, 1999, The Patents Act, 1970, and so on. In any case, some alleviation are additionally given in the Indian Penal Code.

IPC provisions:

Cheating: a person is said to have committed the offence of cheating when he had made a false representation of a registered TM or copy right goods by counterfeiting it. And with wrongful intention have gained profit out of it by selling the counterfeit product to the innocent buyers.

Section 415/420 of IPC talks about cheating it says:

- **S.415 IPC:**

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Illustration (b) says A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.⁴²

- **S.420 IPC: Cheating and dishonestly inducing delivery of property.—**

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.⁴³

Forgery: When an individual or people manufacture a report and gives an impression as a rule open that a specific trademark is claimed by him/them that add up to phony which is given in

⁴² IPC, 1860

⁴³ IPC, 1860

area S. 463, S. 464, S,468 IPC

- ***S. 463 IPC:***

Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.⁴⁴

- ***S. 464 IPC: A person is said to make a false document or false electronic record,***

First, Who dishonestly or fraudulently—

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any [electronic signature] on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the electronicsignature,

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly —Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or

⁴⁴ IPC, 1860

electronic record or the nature of the alteration.]⁴⁵

S. 468 IPC: Forgery for purpose of cheating.—Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.⁴⁶

Criminal conspiracy: When at least 2 man assembling, sell or help in circulation of a fake item they all can be held at risk for criminal intrigue of the illicit demonstration under Section 120B IPC

- **S.120A: When two or more persons agree to do, or cause to be done:**

1. an illegal act, or
2. an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy;

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

- **S.120B:**

Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.⁴⁷

Counterfeiting of property mark: If a person or persons, who use, manufacture or sell goods with counterfeit property mark shall be liable to be charge with Sections 481,482, 483, 485, 486, 487, 488 of Indian Penal Code.⁴⁸

⁴⁵ IPC, 1860

⁴⁶ IPC, 1860

⁴⁷ IPC, 1860

⁴⁸ Shrihar , Provisions in IPC against selling and manufacturing of counterfeit products, (20/08/2022),

- ***Sec. 481. Using a false property mark.-***

Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.⁴⁹

- ***482. Punishment for using a false property mark.-***

Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.⁵⁰

- ***483. Counterfeiting a property mark used by another.-***

Whoever counterfeits any property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.⁵¹

- ***486. Selling goods marked with a counterfeit property mark.-***

Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark] affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves-

- a. that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and
- b. that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or
- c. that otherwise he had acted innocently, be punished with imprisonment of either

<https://brandsandfakes.com/provisions-in-ipc-against-selling-and-manufacturing-of-counterfeit-products/92/>

⁴⁹ IPC, 1860

⁵⁰ IPC, 1860

⁵¹ IPC, 1860

description for a term which may extend to one year, or with fine, or with both.⁵²

- **487. Making a false mark upon any receptacle containing goods.-**

Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.⁵³

- **488. Punishment for making use of any such false mark.-**

Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.⁵⁴

h. IT ACT 2000

The fundamental goal of the Information Technology Act, 2000 alongside united standards is to give lawful acknowledgment to exchanges did by methods for electronic information between change and different methods for electronic interchanges. The IT Act characterizes electronic record to mean information, record or information created, picture or sound put away, got or sent in an electronic structure or smaller scale film or PC produced miniaturized scale fiche.⁵⁵

- **Penalty for damage to computer, computer system, etc.-**

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network commits any one of the following acts then he shall be liable to pay damages by way of compensation not exceeding INR 1,00,00,000/- (Rupees One Crore only) to the person so affected by such act, namely;

- a. Admittances or secures access to such computer, computer system or computer network;
- b. downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or

⁵² IPC, 1860

⁵³ IPC, 1860

⁵⁴ IPC, 1860

⁵⁵ Section 2(1)(t) of the Information Technology Act, 2000

stored in any removable storage medium; introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

- c. damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;
- d. disrupts or causes disruption of any computer, computer system or computer network;
- e. denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;
- f. provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of the IT Act, rules or regulations made thereunder;
- g. charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network.⁵⁶

Messing with PC source reports and punishment thereof Whoever purposely or deliberately covers, crushes or changes or purposefully or intentionally makes another disguise, annihilate or adjust any PC source code utilized for a PC, PC program, PC framework or PC arrange, when the PC source code is required to be kept or kept up by law until further notice inpower, will be culpable with detainment as long as three years, or with fine which may stretch out up to Rs 2,00,000/- (Rupees Two Lakhs), or with both.⁵⁷

- **Hacking with computer system and penalty –**

Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking with computer system and shall be punished with imprisonment up to three years, or with fine which may extend up to Rs 2,00,000/-(Rupees Two Lakhs), or with both.⁵⁸

- **Publishing of information which is obscene in electronic form and penalty –**

⁵⁶ Section 43 of the Information Technology Act, 2000

⁵⁷ Section 65 of the Information Technology Act, 2000

⁵⁸ Section 66 of the Information Technology Act, 2000

Distributing of data which is indecent in electronic structure and punishment - Whoever distributes or transmits or causes to be distributed in the electronic structure, any material which is lecherous or requests to the lascivious intrigue or if its impact is, for example, to will in general debase and degenerate people who are likely, having respect to every important condition, to peruse, see or hear the issue contained or typified in it, will be rebuffed on first conviction with detainment of either depiction for a term which may stretch out to five years and with fine which may reach out to Rs 1,00,000/ - (Rupees One Lakh just) and in case of a second or ensuing conviction with detainment for a term which may stretch out to ten years and furthermore with fine which may reach out to Rs 2,00,000/ - (Rupees Two Lakhs as it were).⁵⁹

i. DRUGS AND COSMETICS ACT, 1940-

The fundamental target the Drugs and Cosmetics Act, 1940 (hereinafter alluded as the DC Act) and the Drugs and Cosmetics Rules, 1945 is to direct the import, assembling, dispersion and offer of medications and beautifiers inside the domain of India. The Act characterizes misbranded, fake and corrupted medications and beautifying agents under different arrangements of the Act.⁶⁰

The current Act disallows the import of following medications or beauty care products:

- a) any drug or cosmetic which is not of standard quality;
- b) any misbranded drug or misbranded or spurious cosmetic;
- c) any adulterated or spurious drug;
- d) any drug or cosmetic for the import of which a licence is prescribed, otherwise than under, and in accordance with, such licence;
- e) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof the true formula or list of active ingredients contained in it, together with the quantities thereof;
- f) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed;

⁵⁹ Section 67 of the Information Technology Act, 2000

⁶⁰ Section 3 and 9 of the Drugs and Cosmetics Act, 1940

- g) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;
- h) any drug or cosmetic the import of which is prohibited by rules made in this regard. However, this provision does not apply to the import of small quantities of any drug for the purpose of examination, test or analysis or for personal use..⁶¹

Notwithstanding the above standards, the Central Government may by notice forbid the import of explicit medications or makeup which it thinks about essential for open intrigue.⁶²

Duty of the Customs Officials under the DC Act The Collector of Customs or some other official of the Government approved by the Central Government for this benefit, may confine any imported bundle which he suspects to contain any medication or restorative the import of which is restricted under the DC Act and will forthwith report such detainment to the Drugs Controller, India, and, if fundamental, forward the bundle or test of the medication or corrective discovered in that to the Central 49 Drugs Laboratory.⁶³

Offence of importing prohibited goods and penalty thereof⁶⁴

Seizure of imported medications or beautifying agents, Where any offense culpable under aforementioned arrangements has been submitted, the transfer of the medications or beauty care products in regard of which the offense has been submitted will be obligated to appropriation.

j. THE FOOD SAFETY AND STANDARDS ACT, 2006

Seizure of imported medications or beautifying agents, where any offense culpable under aforementioned arrangements has been submitted, the transfer of the medications or beauty care products in regard of which the offense has been submitted will be obligated to appropriation.

- (i) any unsafe or misbranded or sub-standard food or food containing extraneous matter;
- (ii) any article of food for the import of which a licence is required under any statute or rules or regulations, except in accordance with the conditions of the licence; and
- (iii) any article of food in contravention of any other provision of the FSS Act or of any rule

⁶¹ Section 10 of the Drugs and Cosmetics Act, 1940

⁶² Section 10A of the Drugs and Cosmetics Act, 1940

⁶³ Section 11A of the Drugs and Cosmetics Act, 1940

⁶⁴ Section 13 of the Drugs and Cosmetics Act, 1940

or regulation made thereunder or any other for the time being in force.⁶⁵

The Act gives punishments to selling, putting away, appropriating or bringing in such precluded food items which change for each situation going from a fine of Rs One Lakh to Rs Ten Lakh relying on the classification of food item which is imported.⁶⁶

k. THE CUSTOM ACT 1962

Under Indian law the development of bearer/vessels/create/travelers/products and so forth all through nation is represented by the Customs Act, 1962 alongside rules and guidelines made thereunder. Under the Customs Act, 1962, imported merchandise are emptied and sent out products are stacked from the Customs ports, Airports, Inland Container Depots (ICD) and Land Customs Stations(LCS) informed by the Central Board of Excise and Customs (CBEC) Under the Customs Act, 1962, the Central Government has the ability to deny either totally or subject to such conditions as might be determined, import or fare of merchandise. The Central Government may confine or restrict import and fare of products encroaching trademarks, licenses and copyrights under segment 11(2)(n) of the Customs Act, 1962. Essentially, the Central Government may confine import and fare of products with the end goal of avoidance of the contradiction of any law for now in power, under segment 11(2)(u)of the Customs Act, 1962.

- **NEW AGE TUSSLE OF COUNTERFEITING AND ITS CONTROLLING MEASURES ALONG WITH ITS CHALLENGES IN TODAY'S DIGITAL WORLD**

In the year 2020, analyzing a total of 666 cases from the repository database, we found that 82 percent of the cases were of counterfeiting, while 12 percent were smuggling and 6 percent fell in other categories including adulteration⁶⁷. Alcohol and Tobacco are the sectors that showed both counterfeiting and smuggling cases. In the counterfeiting category, 25 percent of cases found were related to alcohol, followed by currency (19 percent), pharmaceutical (16 percent), FMCG (16 percent), and tobacco (8 percent). In smuggling cases (specifically related to products) 92 percent of cases found were related to tobacco. If you are scaling into a new sector, Tobacco faces the highest jump in 2020 over 2019 and 2018. According to a query response raised in the Lok Sabha, Indian authorities seized illegally imported cigarettes worth INR 1,772 crore between April 2020 and February 2021. That compares with seizures worth INR 187.6

⁶⁵ Section 25 of the Food Safety and Standards Act, 2006

⁶⁶ Section 51, 52, 54 and 57 of Food Safety and Standards Act, 2006

⁶⁷ ASPA, Counterfeit News Repository, Report 'The State of Counterfeiting n India 2021', (20/08/2022)

crore in the previous financial year⁶⁸.

.No specific legislation to address counterfeiting: India has a robust legal framework for combating counterfeiting and piracy, but a lot still needs to be done to simplify the enforcement procedure (as there is no specific legislation to address it). Thankfully, statutory remedies – civil, criminal, and administrative – can be found in various statutes, including the Trademarks Act 1999, the Copyright Act 1957, the Patents Act 1970, the Designs Act, the Geographical Indications Act 1999, the Drugs and Cosmetics Act 1940, the Food Safety and Standards Act 2006, the Consumers Protection Act 1986, the Penal Code, the Information Technology Act 2000, and the Customs Act, 1962.

Challenges in enforcement and execution: Although a small number of India's state authorities, including Maharashtra and Telangana, continue to operate dedicated crime enforcement units, other States have not followed suit or face organizational challenges. Further, slow execution encourages the criminals to continue their fraudster activities.

Non-adoption of technologies leading to identification: Our data shows that in many cases, criminals are acquitted in absence of evidence. As counterfeiters are getting smarter, they can imitate the packaging to a great extent. Many times, in absence of anti-counterfeiting technologies, it becomes difficult for the Police and the Enforcement & Investigative officers to identify the difference between genuine vs. fake, which further results in weak FIR and loopholes in evidence. d. Need clarity on regulations: Pharmaceuticals, Tobacco and Alcohol: The brand owners need to be more aware. Further, it has been often noticed that the adoption of authentication and traceability solutions is exceptionally low in absence of clear regulations. For example, in industries like Pharmaceuticals, Tobacco, and Food, we are yet to implement global authentication and traceability practices and regulations. Plus, there is no mandatory regulation for domestic drugs. We already have serialization for pharma and food exports, and it is important to have consistency in the domestic ecosystem⁶⁹.

“Gwalior: In a recent case, the accused was caught making fake ghee ten years ago (2010)⁷⁰. In 2017, the Special Judicial Magistrate had sentenced him to six months, but he was released on bail. The order of conviction was challenged in the appeal. Now, almost after ten years, the Additional Sessions Court served him a sentence of six months”. In many cases, these criminals re-start their activities even after getting parole.

⁶⁸ ASPA, Counterfeit News Repository, Report 'The State of Counterfeiting n India 2021', (20/08/2022)

⁶⁹ ASPA, Counterfeit News Repository, Report 'The State of Counterfeiting n India 2021', (20/08/2022)

⁷⁰ ASPA, Counterfeit News Repository, Report 'The State of Counterfeiting n India 2021', (20/08/2022)

CONCLUSION

Counterfeit is an exact imitation of branded goods. This is sold to the innocent customers with the intention to cheat the customers and also to gain profit out of it. It is such a phenomenon which happens in many stages and involves lot of people. Thought considered as a less serious crime and played a very little attention to it. Relying on data collected I believe that if this issue is not taken serious by the lawmakers as well as the customers, time is not so far when the market will have more counterfeit goods than the originals ones.

India has made important efforts to improve its IP legal framework and enforcement system and has taken several initiatives to modernize its IP administration. Some major achievements include an increase in the level of computerization, providing Internet connectivity among the various offices, creating an online facility for filing and processing patent and trademark applications, and computerizing intellectual property records to create databases.

From a trademark perspective, India recently acceded to the International Registration of Trademarks, known as Madrid Protocol. And, the recent development of a National IP Strategy Plan is a step toward acknowledgement of the importance of enforcement. It includes provisions: (1) stating that “strengthening of IP protection regime will involve improvement in the institutions that grant IPRs and in those that are responsible for its enforcement...”⁴⁷; (2) plans to increase the efficiency of the Controller General of Patents Design and Trademarks; and (3) a proposal to create a National Intellectual Property Enforcement Taskforce. However, the National IP Strategy Plan spends little time on anti- counterfeiting mechanisms or practical suggestions to address the need for greater enforcement.

Further, the Ministry of Human Resource and Development recently issues an official notification designating FICCI to Chair the Subcommittee under the Copyright Enforcement Advisory Council (CEAC)) responsible for coordinating relevant stakeholders to address the menace of piracy. This is a significant step in establishing a centralized coordinating organization. Despite the efforts to create a strong legal framework, adequate enforcement of existing IP law remains a serious challenge. Moreover, there has been little effect in terms of practical actions. Further, organized government follow-up and focus on enforcement has been minimal.

India’s economy – and public safety – continues to suffer from the effects of widespread counterfeiting, piracy and smuggling. This report shows that further improvement in IPR enforcement is crucial to deterring counterfeiting, piracy and smuggling, and spurring India’s economic development. The recurring call by India’s international trading partners for continued progress to improve its IPR regime validates the recommendations in this report.

SUGGESTIONS AND RECOMMENDATIONS

Separate Act

Counterfeit and piracy is a major threat to the economy of the country. It is a crime which is carried on openly and fearlessly. This reason behind this is because there is no deterrent remedy for the crime. Counterfeiting and piracy are considered as an economic crime which is less serious one as compared to the violent crimes. Hence this is mostly neglected and less considered. This can be clearly proved by stating that the crime has not been specifically defined as well as dealt under any of the Act. Under IP it is being dealt under the topic of infringement. Thus it is high time that legislative body to come up with a separate act where the crime is properly defined, discussed and deterrent remedy is provided to offenders.

Anil Rajput, who seats CASCADE, accuses high assessments for item forging: "It's basic information that a moderate duty rate will disincentives illegal exchange." Many industry pioneers feel item falsifying ought to be treated on a standard with different terrible violations for which police make quick move and courts show quickness. Everybody realizes places like Palika Bazar have fakes, says Akshay Sangwan, brand security director, Puma. "In the event that as a brand I need to research, go to the police headquarters, experience the whole procedure, it has neither rhyme nor reason," he said at FICCI's conference on forging.⁷¹

The level of wrongdoing is really increased with counterfeit food items. Specialists state present correctional arrangements are no hindrance. The FSSAI needs urgent update, says Sanjeev Kumar of Luthra and Luthra Partners Law Offices. "Its details must be improved, video recording of strikes must be ordered in order to limit defilement/control, and contaminated must welcome on severe discipline," he includes. It's general wellbeing, at long last, that we are discussing.⁷²

For Stopping The Supply Of Counterfeit Products

- To prioritize trademark examinations and seizures among customs other outskirt authorization capacities.
- To allocate assets to proceed with the elevated level of preparing of Indian traditions

⁷¹ Jeevan Prakash Sharma, Fake Bazaar! From Lipsticks To Toothpastes, Noodles To Milk, Counterfeit Products Make A Killing, (20/08/2022), <<https://www.outlookindia.com/magazine/story/business-news-fake-bazaar-from-lipsticks-to-toothpastes-noodles-to-milk-counterfeit-products-make-a-killing/302225>>

⁷² Jeevan Prakash Sharma, Fake Bazaar! From Lipsticks To Toothpastes, Noodles To Milk, Counterfeit Products Make A Killing, (20/08/2022), <<https://www.outlookindia.com/magazine/story/business-news-fake-bazaar-from-lipsticks-to-toothpastes-noodles-to-milk-counterfeit-products-make-a-killing/302225>>

authorities on IPR fringe authorization, including approaches to properly distinguish, seize, and discard fake items.

- To allocate spending assets to Customs authorities and offices to lead attacks.
- To modify the traditions enlistment procedure to acknowledge a standing bank ensure instead of an open assurance.
- To Link prioritization of assets to key outskirts states for fake merchandise, for example, Uttar Pradesh, West Bengal, Bihar, and Maharashtra.
- To Provide subsidizing for joint preparing endeavours between Indian traditions and key circumscribing nations customs authorities where fitting. Thus, considering joint activities key circumscribing nations.
- To Customs to concentrate assets on extra survey of equal imports as a wellspring of fake imports.

Concerning Domestic Creation Of Counterfeit Merchandise

- To Provide for abrogation of exchange permit given to retailers by nearby organization in the event that they are seen as blameworthy of selling counterfeit items
- To empower government charge monitors, including outside and interior inspectors, to check and record for veritable item licenses inside associations, regardless of whether open or private.
- To prioritize fake merchandise in wellbeing and security investigations under such laws as the Drugs and Cosmetics Act, and the Prevention of Food Adulteration Act.
- To Amend India's Trademark Act to reinforce security of notable imprint for the two trademarks and exchange names.
- To considering reinforcing existing arrangements that take into consideration the decimation of hardware utilized underway of encroaching fake material.
- To Continue Madrid Protocol execution.