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# THE ROLE OF TRADEMARK LAW IN MITIGATING THE IMPACT OF COUNTERFEIT GOODS ON BRANDS AND CONSUMERS

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## ABSTRACT

Counterfeiting, a form of intellectual property (IP) theft, involves the unauthorized use of another party's trademark. Trademarks often are words, phrases, or symbols that denote the origin of goods or services offered in the market. It informs the small and the big businesses of the consumer of authentic products. Upon illegally reproducing these trademarks, the counterfeiters receive an advantage in the repute of the brand, making a false claim to consumers, thereby diluting brand identity. Generally speaking, counterfeiting is seen as a victimless crime but a multi-billion-dollar problem, where unauthorized copies of products are sold as original products. In FY 2019–20, India's illicit commodities trade was valued at ₹2.6 trillion. The scope of trademark protection is limited to specific goods or classes for which the trademark is registered, meaning that unauthorized use only constitutes counterfeiting if the registered mark applies to those particular goods. This paper explores the Impact of Counterfeit Goods on Brands and Consumers, The Role of Trademark Law in Mitigating the Impact of Counterfeit Goods and enhancements in IP laws and Trademark laws, To understand the concept of counterfeiting goods on brands and its effects on consumer To analyze the relevant legislation for safeguarding the rights of legal entities and consumers. To analyze the WIPO guidelines on the counterfeiting of goods concerning Intellectual property rights. To critically examine the existing legal solutions concerning the counterfeiting and spoofing of brand products which affect the company's economic standards and brand value.

**Keywords:** Counterfeiting, Intellectual property (IP) theft, Trademarks, Victimless Crime, WIPO guidelines, Economic standards, Brand Value

## CHAPTER. I

### **1.1 Introduction**

Counterfeiting, a form of intellectual property (IP) theft<sup>1</sup>, involves the unauthorized use of another party's trademark. Trademarks often are words, phrases, or symbols that denote the origin of goods or services offered in the market. It informs the small and the big businesses of the consumer of authentic products. Upon illegally reproducing these trademarks, the counterfeiters receive an advantage in the repute of the brand, making a false claim to consumers, thereby diluting brand identity<sup>2</sup>. Beyond just affecting specific companies, counterfeiting damages customer confidence in genuine brands and the market as a whole.

The **TRIPS Agreement** defines "counterfeit trademark goods" as items, including their packaging, that bear a trademark without authorization<sup>3</sup>. This trademark is either identical to one that is validly registered for those goods or so similar in essential features that it is indistinguishable from the authentic mark, thereby infringing the trademark owner's rights under the import country's law. Importantly, trademarks can be applied not only directly to goods, such as computers but also to services, like insurance. The unauthorized use of a trademark, even if only on the packaging, qualifies as infringement and counterfeiting<sup>4</sup>. To meet this definition, the trademark must be officially registered within the jurisdiction where the unauthorized trade occurs, with imported goods requiring registration in the importing country as certified by its trademark registrar.

The scope of trademark protection is limited to specific goods or classes for which the trademark is registered, meaning that unauthorized use only constitutes counterfeiting if the registered mark applies to those particular goods. The counterfeit mark must also be virtually identical to the registered trademark, with only trivial differences disregarded<sup>5</sup>. The comparison is based on the overall impression of the registered trademark as it appears on the official

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<sup>1</sup> IACC (ed.) (2021) *What is counterfeiting*, International AntiCounterfeiting Coalition. Available at: <https://www.iacc.org/resources/about/what-is-counterfeiting> (Accessed: 03 October 2024).

<sup>2</sup> PF (2023) *India intellectual property theft: A growing concern to address*, Powerhouse Forensics. Available at: <https://powerhouseforensics.com/intellectual-property-theft/india-intellectual-property-theft/> (Accessed: 03 October 2024).

<sup>3</sup> TRIPS AGREEMENT (no date) Trips - article 51. Available at: <http://cptech.org/ip/texts/trips/51.html> (Accessed: 03 October 2024).

<sup>4</sup> *Counterfeiting (intended for a non-legal audience)* (2021) International Trademark Association. Available at: <https://www.inta.org/fact-sheets/counterfeiting-intended-for-a-non-legal-audience/> (Accessed: 03 October 2024).

<sup>5</sup> 7 April Berthene, Shoppers Buy More Online Compared To Before the Pandemic, DIGITAL COMMERCE 360 (June 8, 2020), <https://www.digitalcommerce360.com/article/coronavirus-impact-online-retail/>.

registration certificate, not necessarily as it is used on merchandise by the trademark owner<sup>6</sup>. This framework underscores the critical role of trademark law in protecting brands and consumers from the adverse effects of counterfeit goods, by setting strict criteria for what constitutes a counterfeit trademark<sup>7</sup>.

The **TRIPS Agreement** mandates that counterfeiting and piracy be criminalized, at a minimum, when carried out “on a commercial scale” and with intent. While countries are required to meet this standard, they also have the option to adopt stricter measures if desired. Counterfeiting is a serious crime that exploits consumers' desire for lower prices by offering imitation products that may seem like a cost-effective alternative to authentic items<sup>8</sup>. However, these cheaper options come with significant risks, such as producing inferior and potentially hazardous materials, posing health and safety risks, and exposing individuals to identity theft and credit card fraud.

**The Indian Trademark Act of 1999** addresses infringement under **Section 29**<sup>9</sup> but does not define "counterfeit." Infringing marks encompass a broader scope, including marks that are "confusingly similar" to authentic marks, whereas counterfeit marks are characterized as "**substantially indistinguishable**" from genuine ones, with only minor or trivial deviations. This distinction means that the "confusingly similar" test for infringement allows for greater variance, while counterfeit goods focus on close replication. The Hon'ble Supreme Court of India clarified the requirements for proving trademark infringement in the case of *S.M. Dyechem Ltd. v. Cadbury (India) Ltd*<sup>10</sup>. The Court ruled that, for a plaintiff to succeed in an infringement suit, it must be demonstrated not only that their trademark has been used by someone who is not the registered proprietor or an authorized user but also that this unauthorized use involves a mark that is identical or deceptively similar to the plaintiff's trademark.

According to **Section 102**<sup>11</sup> "falsifying a trademark" occurs when an individual, without the consent of the trademark's owner, creates a trademark or a mark that is deceptively similar to

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<sup>6</sup> Saif Khan, S.A. (2019) Procedures and strategies for anti-counterfeiting: India, Lexology. Edited by Anand and Anand. Available at: <https://www.lexology.com/library/detail.aspx?g=3044c5a2-8329-4468-811c-649e523ee1e2> (Accessed: 03 October 2024).

<sup>7</sup> Shobhit Agrawal and Saif Khan (11-May-21) Procedures and strategies for anti-counterfeiting: India, World Trademark Review. Available at: <https://www.worldtrademarkreview.com/global-guide/anti-counterfeiting-and-online-brand-enforcement/2021/article/procedures-and-strategies-anti-counterfeiting-india> (Accessed: 03 October 2024).

<sup>8</sup> UNFC, The Paris Agreement, Unfccc.int. Available at: <https://unfccc.int/process-and-meetings/the-paris-agreement> (Accessed: 04 October 2024).

<sup>9</sup> The Trade Marks Act, 1999 (Act No. 47 of 1999), Section 29

<sup>10</sup> 2000) 5 SCC 573

<sup>11</sup> The Trade Marks Act, 1999 (Act No. 47 of 1999), Section 102

the original.

Under the **Customs Act of 1962**<sup>12</sup>, combined with the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007<sup>13</sup>, importing goods that infringe intellectual property rights is strictly prohibited. Any goods manufactured, reproduced, or distributed violating applicable IP laws—whether within India or abroad and without the consent of the legitimate rights holder or their authorized representative—are covered under this rule.

**Section 28**<sup>14</sup> of the IPC 1860 characterizes counterfeiting as the act of creating an item that resembles another with the intent to deceive or with the knowledge that such resemblance may cause deception. Within the realm of fast-moving consumer goods (FMCG)

Counterfeit products can be categorized into three types: infringement, which involves producing lookalike items mimicking brand names and logos, and spurious products, which are inferior or adulterated goods packaged to resemble genuine products, creating a false impression of quality and safety. These counterfeit products exploit the reputations of legitimate businesses and consumer tendencies to seek lower-priced alternatives<sup>15</sup>.

## 1.2 Research Problem

Trademark laws attempt to minimize these problems, but the gap in enforcement and weaknesses in the Indian legal structure have hindered the effectiveness of such laws. This paper delves into the impacts of counterfeit goods on Indian brands and consumers, the role of trademark law in addressing these impacts, and potential enhancements in IP and trademark laws. An important gap exists in India's enforcement mechanisms, which remain financially weak and inefficient in both legal proceedings and the public awareness of risks related to counterfeit goods. Despite good legal provisions, it is presently lacking operational coordination between enforcement authorities and brand owners and uneven imposition of penalties.

## 1.3 Literature Reviews

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<sup>12</sup> The Customs Act, 1962 (Act No. 52 of 1962), Section 11

<sup>13</sup> Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (Notification No. GSR 745(E), dated 24th October 2007)

<sup>14</sup> Section 28 of the Indian Penal Code, 1860 (Act No. 45 of 1860)

<sup>15</sup> Bhavesh Haria, A.P. (2024) *A call to action*, *Law.asia*. Available at: <https://law.asia/proactive-approach-to-fight-counterfeiters/> (Accessed: 11 October 2024).

1. **Sonalika Gupta, Ms.Malobika Bose, The Intersection Of Trademark Law And E-Commerce In India: A Study Of Online Brand Protection, *Amity University Lko, Vol-10 Issue-2 2024 IJARIE-ISSN(O)-2395-4396.***

In this paper, the authors have discussed the relation between trademark law and e-commerce in the digital age. This paper primarily discusses the trademark law in the digital era regarding e-commerce by highlighting the role of brand, identity, and economic standards of the company of its trademark as their identity. And also provides strategies and measures for the protection of brand identity at online platforms in the Indian Market.

2. **Thio, R., Christiawan, R., &Wagiman, W. (2024). Trademark Law in the Digital Age: Challenges and Solutions for Online Brand Protection. *Global International Journal of Innovative Research.***

The authors of this paper have primarily discussed the concept of trademarks and its significance in the digital age especially in the field of e-commerce and online platforms. And also provided the list of challenges that a brand experiences in the infringement of domain name and trademark. It also suggested the various methods and measures for online brand protection in e-commerce and many other platforms where a trademark of the brand is used as the identity to get recognized by the consumers.

3. **Prachi Tyagi, Counterfeiting and its Impact on Trademark in the Fashion Industry through the Lens of Indian Law, *Journal of Intellectual Property Rights Vol 29, May 2024, pp 181-188.***

The author Prachi Tyagi in her research paper on Intellectual property rights discussed about one of the most significant forms of infringement of trademark and brand identity which is “counterfeiting.” Due to the advancement of technology and the growth of digital platforms, there is an increase in the chance of counterfeiting which is a major issue. It also discusses the impact of counterfeiting on trademarks in the field of fashion industry regarding legislation in respect to the IPR in India.

4. **Shoaib Khan, Analysing the Role of Copyright and Trademark in Business Transaction and India, *International Journal of Research Publication and Reviews, Vol 5, no 5, pp 9027-9033 May 2024, ISSN 2582-742.***

Shoid Khan, the author of this paper provided a conceptual understanding of the copyright and trademark in terms of business. This paper also has analyzed how the copyright and trademark rights for a company create widespread protection for their business idea and their start-ups in the field of business. significantly, this paper has many things included such as IP protection for businesses, the right against the infringement of trademarks and

domain names of the business, and their transaction in India concerning the Indian Legislation.

#### **5. Gasimova Chinara, Domain Name and Trademark Infringement (Cybersquatting) in the Digital Age (June 3, 2022).**

In this paper, the unfair and unauthorized use of someone's trademark as a domain name (cybersquatting) which results in infringement of the domain name and trademark, the impact of the high use of Internet and social media platforms on cybersquatting and most possibly measures to solve it will be analyzed. This research paper addresses trademark and domain name infringements (cybersquatting) on internet and social media platforms and emphasizes the importance of combating cybersquatting in the contemporary world.

### **1.4 Research Questions**

- Impact of Counterfeit Goods on Brands and Consumers?
- The Role of Trademark Law in Mitigating the Impact of Counterfeit Goods?
- Enhancements in Intellectual Property Law and Trademark Laws?

### **1.5 Scope and Limitations**

The present research primarily deals with how trademark law helps safeguard the rights and interests of the companies that are victims of the counterfeiting of their brand products. It also examines the role of online platforms and e-commerce in the increase of counterfeiting of products and how it is making profits for the counterfeiters of products. It also provides an overview of not only the company's rights against the counterfeiters but also the consumer's rights against the counterfeited product with all relevant measures for mitigating the impact of counterfeited goods on consumers and brands.

### **1.6 Research Objectives**

- To understand the concept of counterfeiting goods on brands and its effects on consumer
- To analyze the relevant legislation for safeguarding the rights of legal entities and consumers.
- To understand the effect of the digital era and e-commerce on the increase of counterfeiting of branded products.

- To analyze the WIPO guidelines on the counterfeiting of goods concerning Intellectual property rights.
- To critically examine the existing legal solutions concerning the counterfeiting and spoofing of brand products which affect the company's economic standards and brand value

## 1.7 Research Methodology

A descriptive and methods have followed throughout the paper. The study is based on Primary and Secondary Data. Primary sources referred to in this paper include Statutes, Cases, and Books. Secondary sources include various articles and journals that have been referred to for the purposes of this paper All the necessary and relevant materials that form a part of the study are collected from a wide range of sources that include books, articles, journals, newspapers, reports, and various seminars.

## CHAPTER II

### **Impact of Counterfeit Goods on Brands and Consumers**

Generally speaking, counterfeiting is seen as a victimless crime but a multi-billion-dollar problem, where unauthorized copies of products are sold as original products<sup>16</sup>, However, counterfeiting impacts several key stakeholders, from consumers to businesses and the government. Consumers are duped into buying substandard products, businesses become less likely to invest in product innovation, and the government loses a significant amount of money due to import taxes and customs duties<sup>17</sup>.

The global trade in counterfeit products is worth about \$500 billion<sup>18</sup>. A significant number of that customs officials seized were counterfeit or pirated merchandise<sup>19</sup>, The Federation of Indian Chambers of Commerce & Industry (FICCI) is a non-governmental trade association India's economy is growing, accompanied by an increase in illicit activities, and the financial

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<sup>16</sup> Kevin.town, *Transnational organized crime: let us put them out of business, Counterfeit goods: a bargain or a costly mistake?* Available at: <https://www.unodc.org/toc/en/crimes/counterfeit-goods.html> (Accessed: 13 October 2024).

<sup>17</sup> Goldstein, K. (2024) *Council post: The global impact of counterfeiting and solutions to stop it*, *Forbes*. Available at: <https://www.forbes.com/councils/forbesbusinesscouncil/2022/08/02/the-global-impact-of-counterfeiting-and-solutions-to-stop-it/> (Accessed: 11 October 2024).

<sup>18</sup> *Countering counterfeits: The real threat of fake products* (no date) Nam Organization. Available at: [https://www.nam.org/wp-content/uploads/2020/07/CounteringCounterfeits.vF\\_.pdf](https://www.nam.org/wp-content/uploads/2020/07/CounteringCounterfeits.vF_.pdf) (Accessed: 12 October 2024).

<sup>19</sup> *Trade in fake goods is now 3.3% of world trade and rising*, ORG. FOR COOP. & DEV. (Mar. 18, 2019), <https://www.oecd.org/newsroom/trade-in-fake-goods-is-now-33-of-world-trade-and-rising.htm>.

burden of addressing terrorism and crime is expected to escalate<sup>20</sup>. The report underscores the role of criminal organizations in several illegal activities, including drug and human trafficking, smuggling of cigarettes and alcohol, and the unlawful trade in wildlife products.

### The Economic Damage to Brands

As technology has advanced and online sales have increased rapidly, counterfeiting has become an imminent threat that affects the economy, particularly businesses. After the pandemic, US Federal Research Division Counterfeit goods contributed to a global black-market worth between \$1.7 trillion to \$4.5 trillion annually<sup>21</sup>. The effect of counterfeiting has been majorly felt in consumer goods brands on two fronts,

1. The losses are mainly in the loss of sales and brand reputation damage. Due to the existence of these counterfeits, markets present genuine products with competitive opposition often at cheaper rates owing to inferior materials or manufacturing at lower costs, thus resulting in consumers choosing them instead of the authentic.
2. Counterfeits often will not have the quality and safety guarantees of authentic products, which could jeopardize consumers and damage brand reputation, especially if buyers unknowingly purchase these fakes, expecting the standards of the real brand.

From an economic perspective, counterfeiting is a major worldwide source of competitiveness in the marketplace. Brands have to be concerned about both reputable counterfeiters and counterfeit rivals who steal market share<sup>22</sup>. Along with losing a company's revenue, counterfeiting degrades consumers' confidence in a company's products in the general market. According to IP and brand protection firm IncoPro, 64% of customers lost faith in online marketplaces and 52% of consumers lost faith in brands after buying a counterfeit product online. As a result of this, Nike stopped selling their goods on Amazon<sup>23</sup>.

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<sup>21</sup> European Union Intellectual Property Office (no date) *Global trade in Fakes - EUIPO - European Union, EUIPO*. Available at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fake\\_s/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fake_s/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf) (Accessed: 11 October 2024).

<sup>22</sup> Danny Grajales and Pérez-y-Soto (2021) Counterfeiting and piracy in 2021 – the global impact, *World Trademark Review*. Available at: <https://www.worldtrademarkreview.com/global-guide/anti-counterfeiting-and-online-brand-enforcement/2021/article/counterfeiting-and-piracy-in-2021-the-global-impact> (Accessed: 14 October 2024).

<sup>23</sup> Schiffer, J. (2020) *Why counterfeit beauty products are booming amid covid-19*, *Vogue Business*. Available at: <https://www.voguebusiness.com/beauty/why-counterfeit-beauty-products-are-booming-amid-covid-19> (Accessed: 15 October 2024).

Category	Prevalence in market	Consumer Insights
Apparel	31%	27% of consumers are unaware of counterfeits; 31% knowingly purchase them
Fast-Moving Consumer Goods (FMCG)	28%	89% of consumers acknowledge fake products, often buying due to price sensitivity,
Automotives	25%	
Pharmaceuticals	20%	
Consumer Durables	17%	
Agrochemicals	16%	

The study is based on an independent survey that was done with merchants and customers in twelve Indian cities to find out how they felt about counterfeiting in several important areas<sup>24</sup>. Counterfeiting goes far beyond 'high-value' products such as luxury products and encompasses everyday basic items from cumin seeds to cooking oil, and baby-care products to medicines, which increasing numbers of consumers identify as counterfeit. A surprising finding from the survey was that consumers estimate counterfeiting to constitute 25-30% of the market—a number that is higher than industry expectations<sup>25</sup>.

In FY 2019–20, India's illicit commodities trade was valued at ₹2.6 trillion and impacted practically every industry<sup>26</sup>. It is becoming more prevalent and severely harming the nation, businesses, and the general public.

In **Bisleri Vs. Bilseri**, it is a case that can be seen wherein counterfeiters are using smart moves to confuse the consumer minds and to make illegal earnings<sup>27</sup>. Here, the counterfeiter developed a name that was pretty close to the already renowned name of Bisleri. In such cases

<sup>24</sup> Saurav Anand, (2023) *Almost 25-30% products sold in India spurious with counterfeiting: Report, mint*. Available at: <https://www.livemint.com/industry/retail/almost-25-30-products-sold-in-india-spurious-with-counterfeiting-report-11674655725574.html> (Accessed: 07 October 2024).

<sup>25</sup> BW Online Bureau (ed.) (2023) *Counterfeit products 25-30% of the market in India: Report, BW Health*. Available at: <https://bwhealthcareworld.com/article/counterfeit-products-25-30-of-the-market-in-india-report-463110> (Accessed: 11 October 2024).

<sup>26</sup> IANS (2022) *India's illicit market stood at rs 2,60,094 cr in 2019-20: FICCI, Latest News, Breaking News, LIVE News, Top News Headlines, Viral Video, Cricket LIVE, Sports, Entertainment, Business, Health, Lifestyle and Utility News | India.Com*. Edited by India.com Business Desk. Available at: <https://www.india.com/business/indias-illicit-market-stood-at-rs-260094-cr-in-2019-20-bringing-rs-58521-cr-tax-loss-to-govt-ficci-5646379/> (Accessed: 11 October 2024).

<sup>27</sup> Roy, S.K., Singh, G. (2024). Case 17: Bisleri—Marketing to Manage the Counterfeit Challenge. In: Mutum, D.S., Ewe, S.Y., Ghazali, E.M., Louis Vincent, R. (eds) *Marketing Case Studies in Emerging Markets*. Springer Business Cases. Springer, Cham. [https://doi.org/10.1007/978-3-031-51689-4\\_18](https://doi.org/10.1007/978-3-031-51689-4_18)

of trademark infringement, legal businesses face more difficulties in protecting their intellectual property because of increasingly sophisticated counterfeiting tactics<sup>28</sup>.

### Five Industries affected by counterfeit

#### Clothing and Apparel industry,

Many people still say that this sector is highly resistant even during economic setbacks. But it is no exception to the problem of counterfeiting. Counterfeit products in India make up **\$200 million** each year from the fast-moving consumer goods sector. These counterfeit products exploit the perceived values of genuine brands to lose an average market share of almost 20% of FMCGs. This is more so for garments and textiles, which formed the highest percentage of counterfeit in the FMCG industry<sup>29</sup>.

Astonishingly, it is reported that almost 40% of the fashion ads appearing on social media are counterfeit. There are several reasons why counterfeits thrive in the garment and textile industry. Firstly, logo and trademark-based attributes can be reproduced quite easily for counterfeit reproduction purposes. brand-based garments can be sold only because it is highly exclusive and cannot be reached out by mass consumers of fashion apparel. Sometimes the lower reproduction cost will allow an otherwise unattainable and exclusive original for less, thus proving as an ideal alternative of replica production to the replicator. Additionally, consistently high demand along with trends change that creates a potential for an economy of large counterfeit brand generation. The apparel market is also largely unregulated, which further facilitates the proliferation of counterfeit goods. Notable examples include *Ray-Ban sunglasses, Nike and Adidas, Levi's jeans, Puma, Louis Vuitton and Gucci, H&M and Zara, local Indian brands like FabIndia and Biba*, and fake fashion ads on social media platforms. These counterfeit products often sell at lower prices, misleading consumers and diluting the brand's reputation<sup>30</sup>.

<sup>28</sup> Adgully. (2019, July 1). How Bisleri became a generic name for bottled mineral water - Part 1. Adgully. <https://www.adgully.com/how-bisleri-became-a-generic-name-for-bottled-mineral-water-part-1-86680.html>

<sup>29</sup> Covers, D. (2024) The shadowy world of fakes: Inside India's counterfeit garment trade, DFU Publications. Available at: <https://dfupublications.com/news/apparel/the-shadowy-world-of-fakes-inside-india-s-counterfeit-garmenttrade#:~:text=As%20per%20the%20FICCI%20Report%2C%202022%2C%20the%20counterfeit,annually%2C%20as%20per%20Confederation%20of%20Indian%20Industry%20estimates.> (Accessed: 15 October 2024).

<sup>30</sup> Journal covers the legal landscape of the fashion industry and its stakeholders and Fashion Law Journal covers the legal landscape of the fashion industry and its stakeholders (2023) *Combating counterfeit fashion products and safeguarding brand integrity in India*, *Fashion Law Journal*. Available at: <https://fashionlawjournal.com/combating-counterfeit-fashion-products-and-safeguarding-brand-integrity-in-india/> (Accessed: 14 October 2024).

### Food and Beverage industry

The forms of counterfeiting in the food and beverage industry include *adulteration and substitution, trademark infringement, repackaging, mislabeling, forgery, and application of unauthorized or illicit additives*. The fraud committed on packaged foods is the most common fraud and the commodities affected amount to an estimated **21.7%** of commodities in the packaged foods sector<sup>31</sup>.

For instance, in 2019, the number of significant food fraud cases reported in India reached 250. Among some of the popular brands whose business was affected by counterfeiting are **TATA salt and Nandini ghee**<sup>32</sup>. The alcoholic beverages sector has experienced more pronounced issues; in 2020, for instance, fake products accounted for **65% of all FMCG fraud**, and a 34% increase in fake alcohol was recorded during the same year. These include the following: the reliance on packaging as an identity mark, the failure to fully integrate anti-counterfeit measures, and consumer negligence in analyzing products<sup>33</sup>.

Regulated heavily in suburban and rural areas offers a very appealing environment for counterfeiters. The consequences of food fraud not only manifest as financial losses for trustworthy brands but also tamper with consumer confidence and can pose even serious health issues through allergic reactions or fatalities caused by toxic substances in spurious food products<sup>34</sup>. India's leading brands, including *TATA Salt, Nandini Ghee, Amul Butter, Bisleri, Royal Challenge Whisky, Pepsi and Coca-Cola, Mother Dairy, and FMCG products*, are facing counterfeiting issues due to their lack of quality and safety standards

### Pharmaceutical and Healthcare sector

India is one of the world's largest generic low-cost medicine manufacturers, which makes it a significant threat in cases of pharmaceutical and healthcare-related counterfeits. The country ranks third globally in terms of volumes of drug production and rising export volumes for generic drugs. However, alarming and concerning estimates reflect that **20% of**

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<sup>31</sup> www.ETRetail.com (2024) IND Food and Beverage Association releases a white paper on counterfeit and spurious food products - et retail, ETRetail.com. Available at: <https://retail.economictimes.indiatimes.com/news/food-entertainment/ind-food-and-beverage-association-releases-a-white-paper-on-counterfeit-and-spurious-food-products/110820204> (Accessed: 08 October 2024).

<sup>32</sup> Maria Schirone, P.V., Maria Schirone (2021) *Food frauds: Global incidents and misleading situations, Trends in Food Science & Technology*. Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0924224421003848> (Accessed: 14 October 2024).

<sup>33</sup> Food Control *A study on the food fraud of national food safety and sample inspection of China* Food Control, Volume 116, 2020, Article 107306 Dan Li, Shouwei Wang(Accessed: 14 October 2024).

<sup>34</sup> www.ETHospitalityWorld.com (2024) IND Food and Beverage Association releases a white paper on counterfeit and spurious food products - ET hospitality world, ETHospitalityWorld.com. Available at: <https://hospitality.economictimes.indiatimes.com/news/operations/food-and-beverages/ind-food-and-beverage-association-releases-a-white-paper-on-counterfeit-and-spurious-food-products/110811670> (Accessed: 14 October 2024).

*pharmaceuticals in India are either fake, counterfeit, or substandard, and as much as 35% of the world's counterfeit drugs originate from this country*<sup>35</sup>. The COVID-19 pandemic has fueled this problem. From 2020 to 2021, there was a 47% surge in counterfeit medical products mainly due to fear and an urgency created during the time, thus creating a bigger gap between demand and supply. The Indian government has taken a step by making it mandatory for all prescription drugs to be provided with QR codes and serialization; however, the problem has not yet come to a full stop. E-pharmacies have become problematic for the supply chain and have opened doors for easier entry into the market for counterfeit products<sup>36</sup>.

Counterfeiting in India's pharmaceutical and healthcare sector has led to scandals, recalls, and health risks. Companies like *Ranbaxy Laboratories, Dabur India Ltd., Sun Pharma, Dr. Reddy's Laboratories, GlaxoSmithKline (GSK), Bharat Biotech, and fake online pharmacies* have faced issues with counterfeit drugs, posing financial and public health risks.

### **Electronics and electrical appliances**

Counterfeits in electronics and electrical appliances form high risk, crossing the consumer frustration mark to national security. More than 15% of components used by the Pentagon in the United States are counterfeits. Such composition of counterfeits occurs at least in Palika Bazaar, Delhi where it constitutes 40 percent of market share. E-commerce sites have also been used to distribute fake electronic goods<sup>37</sup>. Thus, counterfeiters are now able to target a wider audience. Low prices attract counterfeit electronics, but it has made consumers lose interest in the quality, thus paving the way to market more of these items. Again, dependence on electricians who offer repair services leads to corruption in the supply chain, which easily propagates counterfeit products<sup>38</sup>. The easy availability of products with huge discounts in an ever-flourishing online market makes counterfeiters easily capture consumer demand. Companies like *Apple, Samsung, Sony, Lenovo, Microsoft, e-commerce platforms, and local markets* are all affected by counterfeit products, which often lack safety standards, poor performance, and pose security risks.

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<sup>35</sup> Sattigeri, Bhagya, Counterfeit Drugs in India: Significance and Impact on Pharmacovigilance (March 15, 2019). Available at SSRN: <https://ssrn.com/abstract=3353184>

<sup>36</sup> Press Release (ed) *Authentication solution provider's association: Counterfeiting in India: Anticounterfeit Awareness*, *aspaglobal*. Available at: <https://www.aspaglobal.com/report-for-nation> (Accessed: 14 October 2024).

<sup>37</sup> Lokesh Harjani (2022) *Why India ranks among the top five countries for counterfeit products and how to Combat it*, *Times of India Blog*. Available at: <https://timesofindia.indiatimes.com/blogs/voices/why-india-ranks-among-the-top-five-countries-for-counterfeit-products-and-how-to-combat-it/> (Accessed: 15 October 2024).

<sup>38</sup> Anti-counterfeiting in India - measures and examples (2024) *Bytescare*. Available at: <https://bytescare.com/blog/anti-counterfeiting-in-india> (Accessed: 15 October 2024).

## Cosmetics Industry

The cosmetics industry is facing a severe problem of counterfeiting. In 2019, around **10% of** the total cosmetics seized were counterfeit upper-middle-class population in India has increased exponentially and cosmetics have become an emerging industry<sup>39</sup>. However, this growth has been constrained due to the unregulated sale of counterfeit products. Major channels through which spurious cosmetics are sold include social media and e-commerce services. Influencer marketing mainly provides a façade of legitimacy to counterfeit items. Despite the existence of an almost stringent regulatory framework under the Drugs and Cosmetics Act of 1940, no action has yet been taken by such online sellers for peddling spurious cosmetics<sup>40</sup>. Misrepresentation advertisements usually carry hazy images of the authentic brands misleading the consumers and most of the counterfeiters have already stopped using trademarks in fear of litigation. Secondly, the low-priced branded cosmetic products compel the consumer to get hold of the fake product since the counterfeit is usually made of sub-quality material<sup>41</sup>.

## CHAPTER III

### **The Role of Trademark Law and IP Laws in Mitigating the Impact of Counterfeit Goods**

The 161st report of the Parliamentary Standing Committee on Commerce was submitted to the Rajya Sabha on July 23, 2021. This report focused on the IPR framework in India recognized the rising problem of counterfeiting and piracy as critical challenges to IP protection and proposed the creation of specific legislation aimed at mitigating these issues<sup>42</sup>. The committee further suggested developing a method to measure the revenue losses caused by counterfeiting and piracy and emphasized the need for an economic assessment of these crimes<sup>43</sup>. The report recommended enhancing enforcement by creating a central coordination body on IP

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<sup>39</sup> The Beauty Market in 2023: A special state of fashion report (2023) McKinsey & Company. Available at: <https://www.mckinsey.com/industries/retail/our-insights/the-beauty-market-in-2023-a-special-state-of-fashion-report> (Accessed: 15 October 2024).

<sup>40</sup> Petrucci, D. (2024) *Topic: Cosmetics industry, Statista*. Available at: <https://www.statista.com/topics/3137/cosmetics-industry/> (Accessed: 01 November 2024).

<sup>41</sup> Allied Market Research, <https://www.alliedmarketresearch.com/cosmetics-market> (2023) *Cosmetics market size, share, trends, growth 2032, Allied Market Research*. Available at: <https://www.alliedmarketresearch.com/cosmetics-market> (Accessed: 16 October 2024).

<sup>42</sup> Isheta T Batra, Radhika Bhusari (2021) Analysis: Parliamentary Standing Committee's 161st Report on 'IPR regime in India', TrailBlazer. Available at: <https://www.tbalaw.in/parliamentary-committee-161-ipr-analysis> (Accessed: 26 October 2024).

<sup>43</sup> Committee Report: Review of the Intellectual Property Rights Regime (2021) Committee reports, PRS Legislative Research. Available at: <https://prsindia.org/policy/report-summaries/review-of-the-intellectual-property-rights-regime> (Accessed: 26 October 2024).

Enforcement that would integrate all ministries, departments, and government bodies' actions toward giving a unified response to violations of IP.

The Trade Marks Act, 1999 provides the base of trademark protection in India. A way for both civil and criminal actions can be used for trademark infringement.

- **Section 29<sup>44</sup>** of the Act specifically safeguards registered trademarks and protects the rights of unregistered proprietors or licensees if infringed upon.
- In cases of falsification or unauthorized use of a trademark, the onus of proving the owner's consent rests with the accused under **Section 102<sup>45</sup>**.
- To deter repeat offenses, Sections **103<sup>46</sup>** and **105<sup>47</sup>** stipulate penalties for false trademark usage and trade descriptions, imposing harsher penalties for subsequent convictions.
- Civil recourse is provided through Section **135<sup>48</sup>**, in the form of remedies available from suits for trademark infringement or passing off, including the granting of injunctions and monetary damages or an accounting of profits, with discretionary orders to seize infringing materials. These provisions will provide a strong framework by protecting the rights of valid brand owners and reducing the impact of counterfeits.

In the 2017 case of **Montblanc Simplo GmbH vs. Gaurav Bhatia & Ors<sup>49</sup>**, the Delhi High Court ruled that counterfeit Montblanc products were being sold on an e-commerce platform, "Digaaz.com," at discounted rates. Montblanc alleged that the defendants misrepresented Montblanc's trademarks, such as the "Three Ring Device" and "Star Device," in the counterfeit items. The court found that the counterfeit products were low quality and had design inaccuracies, damaging Montblanc's reputation, and brand value. The court ordered a permanent injunction to prevent further sales or advertising under Montblanc's trademarks, but dismissed Montblanc's claim for damages. The case highlights the importance of trademark law in protecting brand reputation and consumer trust.

According to the Copyright Act of 1957, the exclusive rights to reproduce, publish, or sell original works are reserved for the creators. Civil and criminal remedies are given by the Act in case of copyright infringement.

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<sup>44</sup> The Trade Marks Act, 1999 (Act No. 47 of 1999), Section 29.

<sup>45</sup> The Trade Marks Act, 1999 (Act No. 47 of 1999), Section 102

<sup>46</sup> The Trade Marks Act, 1999 (Act No. 47 of 1999), Section 103.

<sup>47</sup> The Trade Marks Act, 1999 (Act No. 47 of 1999), Section 105.

<sup>48</sup> The Trade Marks Act, 1999 (Act No. 47 of 1999), Section 135.

<sup>49</sup> M/S Mont Blanc Simplo GmbH vs Gaurav Bhatia And Ors on 21 March, 2023

- Under **Section 55**<sup>50</sup>, civil remedies include injunctions, damages, and other legal compensations against the infringement of copyrighted works.
- **Section 64**<sup>51</sup> enables the confiscation of infringing copies wherever they are found, ensuring prompt seizure of unauthorized reproductions.
- **Section 53**<sup>52</sup> allows copyright holders to seek administrative remedies by requesting the registrar of copyrights to restrict the import of infringing copies into India.

The Designs Act, of 2000 aims at protecting original designs against piracy in the case of a registered design, and here again, civil remedies only are available.

- **Section 22**<sup>53</sup> deals with liabilities for design infringement and prescribes a penalty of up to ₹50,000 on each registered design infringed. An interim injunction can also be applied to prohibit the production of pirated designs, and this has a preventive function for the design proprietors. Taken together, these legislative measures constitute a sound framework for intellectual property protection, which would help cushion the effects of counterfeiting on both brands and consumers.

## Legal Protection

The need for anti-counterfeit solutions should be matched with solid legal protection. Between **2018 and 2020**, the average annual increase in counterfeiting cases rose by 20 percent, mainly against pharmaceuticals, tobacco, fast-moving consumer goods, currency, and liquor with a cumulative of 84 percent of reported cases of counterfeiting. Such rising cases of counterfeiting call for the provision of law provisions for intellectual property to those industries. **The Consumer Protection Act of 2019 defines "spurious goods"** as counterfeit goods, meaning items that are falsely claimed to be genuine. Such legislation prescribes penalties for the manufacture, storage, sale, distribution, or importation of such spurious goods, and such a comprehensive legal framework would be necessary to prevent counterfeiting and to protect consumers and legitimate businesses<sup>54</sup>.

**Rule 5 of the Consumer Protection (E-Commerce) Rules, 2020**<sup>55</sup> states that every e-commerce marketplace shall ensure that the sellers give an undertaking that all the descriptions, images, and other information related to their products or services are correct. Such information

<sup>50</sup> The Copyright Act, 1957 (Act No. 14 of 1957), Section 55

<sup>51</sup> The Copyright Act, 1957 (Act No. 14 of 1957), Section 64.

<sup>52</sup> The Copyright Act, 1957 (Act No. 14 of 1957), Section 53.

<sup>53</sup> The Designs Act, 2000 (Act No. 16 of 2000), Section 22.

<sup>54</sup> The Consumer Protection Act, 2019 (Act No. 35 of 2019), Section 91

<sup>55</sup> Consumer Protection (E-Commerce) Rules, 2020, Rule 5

must accurately reflect the actual appearance, nature, quality, and purpose for which the products are intended, and such information must be provided clearly and conspicuously to the users on the platform.

**Section 79 of the Information Technology Act, of 2000**<sup>56</sup> provides such intermediaries with crucial immunity. Such a provision ensures that there is no liability for any third-party material hosted through the intermediary platform, with the intermediary meeting the required 'due diligence' principles as stipulated by the Central Government. This concept of legal immunity is quite popularly termed the '**Safe Harbour**' Principle, which shields the intermediaries from liabilities for information they do not create but a host.

### **Legal Consequences of Trademark Misuse**

Under the Trade Marks Act, 1999 the Act prescribes strict relief in the following four broad heads of trademark infringement namely; trademarks used with counterfeit marks; False trademark applications; trading representation deceptive and providing or offering goods or services based on a false trademark as well as false trade description. Specifically, the provisions of **Sections 102 to 107** of the Act provide for a detailed requirement of punishment of these infractions and, therefore, highlight the intention of the legal framework regarding the protection of trademark rights and integrity of the marketplace.

### **The Importance of Proactive Brand Protection**

Brands have largely remained complacent over counterfeiting mainly due to uncertainty over the managing of publicity. Again, the far reach of the internet has further restricted the government control in online counterfeiting and piracy<sup>57</sup>. Brands will have to be proactive against counterfeiters by using the resources and tools available to shield both their business and customer trust.

**First, track-and-trace systems** allow for total product traceability along the supply chain through GPS and serialized codes, so that brands can track items in transit<sup>58</sup>. These codes are

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<sup>56</sup> The Information Technology Act, 2000 (Act No. 21 of 2000), Section 79

<sup>57</sup> www.ETBrandEquity.com, M.L.R. more at:  
<https://brandequity.economicstimes.indiatimes.com/news/marketing/fighting-the-good-fight-against-duplicates/109933220> (2024) Fighting the good fight against duplicates - ET brand equity, ETBrandEquity.com. Available at: <https://brandequity.economicstimes.indiatimes.com/news/marketing/fighting-the-good-fight-against-duplicates/109933220> (Accessed: 26 October 2024).

<sup>58</sup> TraceX Technologies (2024) Navigating product traceability in supply chains: Decoding efficiency, Blockchain for Food Safety, Traceability and Supply chain Transparency. Available at: <https://tracextech.com/product-traceability-in-supply-chains/> (Accessed: 25 October 2024).

available through smartphones or proprietary technology, authenticate products, and provide unique security markers, such as covert taggants, to improve the safety of products and allow brands to have greater control over counterfeiting.

**Online brand protection** measures help to track and detect intellectual property theft. Such is an essential safeguard for startups as they rely heavily on IP for brand equity. Anti-piracy algorithms and extensive monitoring systems ensure the effective detection and response of IP violations by brands<sup>59</sup>.

**Digital printing** has allowed brands to imprint variable serialization codes into the packaging, labels, or other materials that give items traceability and authenticity for products. The whole process enhances transparency and participation in tracking the item through the manufacturing stage and at the point of a consumer's purchase.

**Modern authentication technologies** further secure products. For instance, **invisible pigments, QR codes, NFC chips, and NFTs** provide brands with alternatives to authenticate and give consumers the confidence to buy them. Such technologies embedded inside the products at the moment of manufacture provide a more than sufficient defense against possible counterfeiting<sup>60</sup>. Such a pervasive threat to brand operations in the global online market calls for proactive brand protection, multi-layered, and unlocks avenues for consumer engagement and supply chain insight.

## CHAPTER IV

### Enhancements in Intellectual Property Law and Trademark Laws

The Indian government, in the Union Budget for 2023-24, has increased funding to the intellectual property sector by 15%, increasing it from INR 285.41 crores, approximately USD 38.4 million, to INR 328.98 crores, around USD 40.1 million. Of this amount, about INR 281.60 crores (approximately USD 34.3 million) will be for the strengthening of Intellectual Property Rights (IPR) Policy Management and improvement in the infrastructure of the Controller General of Patents, Designs, and Trademarks. Moreover, around INR 0.83 crores (approximately USD 101,291) has been allocated to foster cooperation between the Department for Promotion of Industry and Internal Trade (DPIIT) and the World Intellectual Property Organization (WIPO). The collaboration set up under a Service Level Agreement will

<sup>59</sup> LexisNexis (2023) Brand protection, LexisNexis Intellectual Property Solutions. Available at: <https://www.lexisnexisip.com/solutions/brand-protection/> (Accessed: 27 October 2024).

<sup>60</sup> Gupta, B. (2024) Next-Gen Authentication: Moving Beyond Passwords in Cybersecurity, Medium. Available at: <https://medium.com/@gupta.brij/next-gen-authentication-moving-beyond-passwords-in-cybersecurity-853b76600e64> (Accessed: 27 October 2024).

strive to put in place Technology and Innovation Support Centres across India. The Indian government, DPIIT, along with WIPO, strives to shape the intellectual property landscape for the country to encourage innovation while combating infringement<sup>61</sup>.

The Intellectual Property Appellate Board (IPAB) was abolished in April 2021, transferring all pending appeal matters and revocation/rectification actions to commercial divisions of High Courts in Delhi, Mumbai, Chennai, Gujarat, and Kolkata. In July 2021, the Delhi High Court announced the creation of the Intellectual Property Division (IPD) to handle IP matters. The Delhi High Court issued the Intellectual Property Rules 2022, regulating matters listed before IPD and prescribing the practice and procedure for the exercise of its jurisdiction. The IPD has resulted in speedy case disposal, with hearings in Bombay, Gujarat, and Calcutta<sup>62</sup>.

In the case of **Sirona Hygiene Private Limited v. Parulben Navnath Chothani Trading as Shiv Enterprise & Ors**<sup>63</sup>, Justice Pratibha M. Singh of the Hon'ble Delhi Court addressed the issue of counterfeit goods sold online, emphasizing the urgent need to combat this growing trend. She remarked that the widespread sale of counterfeit and knock-off products on the internet poses a significant threat not only to trademark owners but also to consumers purchasing these items. The court's stance underscores the necessity for robust trademark laws to safeguard the interests of both brands and consumers in the face of rampant online counterfeiting.

Over the years, innovations in solving challenges associated with counterfeiting have sprouted. In one end, Alibaba, a leader in Chinese e-commerce platforms, has built a more holistic anti-counterfeiting system using cutting-edge computer technologies and big data combined with business practices and law frameworks. This system uses several tools like false product identification models, image recognition techniques, semantic recognition algorithms, product information databases, and real-time interception systems, which have been able to obtain an accuracy rate of 97.6%.

Similarly, Indian e-commerce platforms such as Flipkart and Snapdeal are proactive in fighting counterfeit products by using algorithms that detect price differences between fake and genuine items. At the same time, Amazon also introduced its anti-counterfeiting initiative called Project Zero, which talks of a zero-tolerance policy on counterfeit goods. There are three main elements here: automatic protection through AI, which detects and blocks listings of counterfeit products; self-service, where genuine brand owners can remove their counterfeit products

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<sup>61</sup> LexOrbis (2023) Radio-frequency identification, Encyclopædia Britannica. Available at: <https://www.britannica.com/technology/RFID> (Accessed: 30 October 2024).

<sup>62</sup> *ibid*

<sup>63</sup> *Sirona Hygiene Private Limited vs Parulben Navnath Chothani Trading As ...* on 25 April, 2022

directly; and product serialization, which serializes each item with unique serial numbers to verify its authenticity. Such technological innovations are a great step forward in the continuing fight against counterfeits while reasserting the importance of trademark law to protect brands and consumers alike.

## Advanced Anti-Counterfeiting Measures

Even as counterfeits are viewed as a cause of concern from outside an organization, internal vulnerabilities from supply chain leakages, for example, or weakness in controlling vendors may do the same. Hence companies need to implement a host of cross-functional countermeasures instead of adopting single-point measures to tackle counterfeiters.

- 1) **Many businesses underestimate small-scale infringers**, which go unchecked and grow into big infringers, causing major losses in market share as these counterfeiters become established<sup>64</sup>. It is, therefore, essential for companies to get senior management support so that they can allocate resources and budgets for brand protection initiatives.
- 2) The legal landscape is evolving, with courts increasingly acknowledging the damage caused by counterfeiting and imposing stricter penalties. For instance, the Supreme Court of India has clarified that offenses under **Section 63**<sup>65</sup>, are cognizable and non-bailable, enabling swift legal action against counterfeit goods without lengthy delays. Additionally, courts are now more likely to mandate that infringers disclose their suppliers, providing valuable intelligence for companies to combat counterfeiting.
- 3) Businesses should gather information about the counterfeit supply chain through different channels, from **customer feedback to distributor insights**. Market intelligence is therefore very crucial in preventing counterfeits from entering the marketplace<sup>66</sup>.
- 4) Investment can help detect fraudulent online sellers, and proactive measures, such as removing listings **Investment in AI-driven monitoring systems** or blocking domain

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<sup>64</sup> Sam Werthmuller (2021) Small business, big problem: New report says 67% of smes worldwide are fighting for survival, World Economic Forum. Available at: <https://www.weforum.org/press/2022/12/small-business-big-problem-new-report-says-67-of-smes-worldwide-are-fighting-for-survival/> (Accessed: 28 October 2024).

<sup>65</sup> The Copyright Act, 1957 (Act No. 14 of 1957), Section 63.

<sup>66</sup> Andino, J.M.M. de (2014) Counterfeits in the supply chain: A big problem and it's getting worse, IndustryWeek. Available at: <https://www.industryweek.com/supply-chain/inventory-management/article/21962741/counterfeits-in-the-supply-chain-a-big-problem-and-its-getting-worse> (Accessed: 28 October 2024).

names associated with counterfeit goods, have become more common, especially when launching new products<sup>67</sup>.

- 5) Companies can strengthen their supply chains through **regular vendor audits and by enforcing a strict zero-tolerance policy** regarding counterfeiting<sup>68</sup>. Vendor audits typically encompass:
  - Quality management system assessments
  - Financial stability reviews
  - Regulatory compliance checks
  - Security measure verifications
- 6) Employing innovative technologies like **radio-frequency identification (RFID) and secure packaging designs**, including microtext and invisible barcodes, enhances product tracking and authentication. Furthermore, regular updates to packaging can complicate counterfeiting efforts, while enhanced collaboration between legal, sales, and product teams can lead to better design solutions<sup>69</sup>.
- 7) To maximize the effectiveness of anti-counterfeiting measures, companies must also engage in **public awareness campaigns**.

Food business operators are becoming conscious of the fact that adulterated and counterfeit products form the biggest risk not only against the brand integrity but to the safety of consumers who use them<sup>70</sup>. In the fight against food fraud, **FBOs are embracing a broad array of advanced technologies, such as detection, traceability, and authentication**. Blockchain technology enhances traceability through a decentralized, transparent record of transactions throughout the supply chain, while smart contracts automate compliance with predetermined conditions and reduce the need for human oversight. DNA barcoding and next-generation sequencing authenticate species, especially for adulteration-prone products, and radio frequency identification integrated with IoT sensors offers real-time monitoring of environmental conditions during handling.

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<sup>67</sup> PricewaterhouseCoopers (2022) Combating fraud in the era of digital payments, PwC. Available at: <https://www.pwc.in/industries/financial-services/fintech/dp/combating-fraud-in-the-era-of-digital-payments.html> (Accessed: 28 October 2024).

<sup>68</sup> Global Sources (2024) Understanding Vendor Audits in the B2B Context, Global Sources. Available at: <https://www.globalsources.com/knowledge/vendor-audit/> (Accessed: 28 October 2024).

<sup>69</sup> Raikar, Sanat Pai. "radio-frequency identification". *Encyclopedia Britannica*, 18 Sep. 2023, <https://www.britannica.com/technology/RFID>. Accessed 31 October 2024.

<sup>70</sup> Track-and-trace: Novel anti-counterfeit measures for 3D printed personalized drug products using smart material inks (2019) *International Journal of Pharmaceutics*. Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0378517319304776> (Accessed: 28 October 2024).

## Enhancements needed

Smartphone applications, RFID technology, and collaboration with digital marketplaces are all ways to combat counterfeiting. Smartphone applications allow consumers to quickly verify product authenticity by scanning a Unique Product Identifier (UPI) on the packaging. Crowdsourcing platforms like 'Black Market Billions allow users to upload images of counterfeit goods and GPS location data, raising consumer awareness about common counterfeit areas. RFID technology offers a flexible alternative to barcodes, allowing better tracking and inventory control through automated systems. This enhances traceability, especially in industries vulnerable to counterfeiting.

Collaboration with digital marketplaces can help companies tackle online counterfeit sales by improving visibility for genuine products, building a strong online presence, and blacklisting vendors selling fake goods. E-commerce platforms are also actively working to blacklist vendors selling fake goods and implementing stricter policies to address counterfeit listings. These strategies can make anti-counterfeiting efforts more robust, especially in India's rapidly growing consumer market<sup>71</sup>.

## CONCLUSION

Counterfeiting is seen as a victimless crime but a multi-billion-dollar problem, where unauthorized copies of products are sold as original products, Along with losing a company's revenue, counterfeiting degrades consumers' confidence in a company's products in the general market. In FY 2019–20, India's illicit commodities trade was valued at ₹2.6 trillion and impacted practically every industry. Five Industries are affected majorly by the counterfeit Clothing and Apparel industry, Food and Beverage industry, the Pharmaceutical and Healthcare sector, Electronics and electrical appliances, Cosmetics Industry. The 161st report of the Parliamentary Standing Committee on Commerce was submitted to the Rajya Sabha on July 23, 2021. The Trade Marks Act, 1999 provides the base of trademark protection in India. A way for both civil and criminal actions can be used for trademark infringement and other IP Laws. The Importance of Proactive Brand Protection where Brands have largely remained complacent over counterfeiting mainly due to uncertainty over the management of publicity. Again, the far reach of the internet has further restricted the government control in online counterfeiting and piracy. Even as counterfeits are viewed as a cause of concern from outside

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<sup>71</sup> Leveraging technology to curb counterfeiting: Deloitte India: Forensic (2017) Deloitte India. Available at: <https://www2.deloitte.com/in/en/pages/finance/articles/leveraging-technology-to-curb-counterfeiting.html> (Accessed: 15 October 2024).

an organization, internal vulnerabilities from supply chain leakages. This Research indicates that a significant portion of consumers may unknowingly purchase counterfeit products, highlighting the importance of educating the public about identifying genuine goods and the risks associated with counterfeits. Collaborative efforts, such as joint enforcement actions and the sharing of best practices, can bolster anti-counterfeiting initiatives. Companies need to implement cross-functional countermeasures to combat counterfeiting. Small-scale infringers can grow into big ones, causing market losses. The legal landscape is evolving, with courts imposing stricter penalties. Businesses should gather information about the counterfeit supply chain, invest in AI-driven monitoring systems, strengthen supply chains through vendor audits, and use innovative technologies like RFID and secure packaging designs. Public awareness campaigns and collaboration with digital marketplaces can also help combat counterfeiting. Advanced technologies like blockchain, smart contracts, DNA barcoding, and RFID can enhance traceability and protect consumers.

