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## TRADEMARK LAW AND COUNTERFEITING

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### ABSTRACT

This research study examines the critical interplay between trademark law and counterfeiting, underscoring their profound implications for intellectual property rights, economic stability, and consumer safety. Trademarks, vital for distinguishing goods and services, have evolved from ancient symbols to legally protected assets under frameworks like India's Trademarks Act, 1999, fostering brand integrity and trust. However, counterfeiting, a global industry valued at \$464 billion in 2019, per OECD data, and projected to reach \$1.79 trillion by 2030 according to Corsearch, threatens this ecosystem. It spans luxury items, pharmaceuticals, and everyday goods, causing financial losses, reputational damage, and health risks, often linked to organized crime. The study traces the historical development of trademarks and counterfeiting, highlighting their escalation with industrialization and technology. In India, while the 1999 Act addresses infringement, its lack of a specific counterfeiting clause and enforcement gaps limit effectiveness. Globally, challenges include jurisdictional disparities and e-commerce anonymity. Drawing from cases like *Mondelez v. Neeraj*, the paper reveals judicial efforts to protect trademarks, yet systemic issues persist. It advocates for stronger laws, technologies like blockchain, international cooperation, and consumer education to combat counterfeiting's growth. This multifaceted approach is essential to safeguard trademarks, curb economic harm, and ensure consumer confidence in an interconnected marketplace.

**Keywords:** Intellectual property, Trademark, Counterfeiting, Brand reputation, E-commerce, Industrialization, Well-known trademarks, Consumer trust

### CHAPTER 1: INTRODUCTION

*'Imitation is the sincerest form of flattery that mediocrity can pay to greatness'*, as rightly stated by Oscar Wilde, this quotation is very rightly stated but in the real world the imitation is a matter of scale especially under intellectual property laws.

Firstly, it is necessary to understand that a trademark is a sign that allows one business to differentiate its products or services from those of other businesses. The rights to intellectual property protect trademarks.<sup>705</sup> And as rightly stated by Director General of WIPO (2021), Daren Tang, *"Trademarks are the bread and butter of*

*the intellectual property world"*.<sup>706</sup> This statement emphasizes how important trademarks are to the ecosystem of intellectual property, acting as priceless assets that distinguishes outputs or commodities apart and promote customer confidence.

By utilizing a trademark, it allows an individual or business to prevent others from exploiting their goods or services without explicit permission. Additionally, any mark that could be mistaken for an already-existing mark is prohibited by trademark regulations. This implies that no one can use a sign or brand name that sounds or looks like one that already

<sup>705</sup> Trademarks, World Intell. Prop. Org., <https://www.wipo.int/en/web/trademarks> (last visited Jan. 8, 2025).

<sup>706</sup> World Trademark Review, World Intell. Prop. Org., [https://www.wipo.int/documents/d/director-general/docs-daren-tang-en-wtr\\_20210316.pdf](https://www.wipo.int/documents/d/director-general/docs-daren-tang-en-wtr_20210316.pdf) (last visited Jan. 8, 2025).

exists on the books, or that has a similar meaning, particularly if the goods or services are related. For example, it is illegal for a soft drink company to use a name that sounds like Coke or a symbol that resembles Coca-Cola.

The Trade- related aspects of Intellectual Property Agreement of 1994 states 'counterfeit trademark goods' as any products, including their packaging, that carry an unauthorized trademark identical to, or virtually identical to, a legally registered trademark in its key features, thereby infringing upon the trademark owner's rights under the importation of country's laws.<sup>707</sup>

The manufacturing and distribution of fake goods is a multibillion-dollar worldwide issue that has detrimental effects on consumers, companies, and governments' economies and health. Food, entertainment, medications, and clothing are all impacted by counterfeiting, and the connection between counterfeit items and international organized crime is frequently missed in the pursuit of knockoffs at deeply discounted costs. The ongoing high demand for low-cost goods combined with low production and distribution expenses makes counterfeiting a very profitable industry. Unaware shoppers and bargain hunters are the targets of illicit counterfeiting activities, which prey on people's desire for low-cost goods or just their financial situation. In almost every industry, items such as food, drinks, clothes, shoes, gadgets, pharmaceuticals, car parts, toys, currency, tickets to concerts and transit, alcohol, cigarettes, toiletries, building materials, and much more are unlawfully produced by counterfeiters. The augmentation of fake products and counterfeit goods on the virtual world has happened quickly, and many consumers have mostly been unaware of it. Most of the listings on Amazon are actually for third-party merchants rather than products offered by Amazon. The Verge claims that even Amazon's own product listings are "being taken over by fake sellers." According to CNBC,

Amazon has shipped consumers expired food, including baby formula, indicating that it is unable to keep an eye on something as simple as an expiration date.<sup>708</sup>

According to figures as given by the Organisation for Economic Co-operation and Development for 2019, the amount of international trade in pirated and counterfeit goods was estimated to be as high as USD 464 billion, or 2.5% of global trade, in that year. Previous OECD-EUIPO research, using the same methodology, found that the trade in pirated and counterfeit goods contributed up to 2.5% of worldwide commerce in 2013 (up to USD 461 billion) and 3.3% of global trade in 2016 (up to USD 509 billion). As a result, the amount of fake goods traded has remained significant in both nominal and absolute terms as well as in terms of its share of overall trade; these numbers are comparable to the GDPs of developed OECD countries like Austria and Belgium<sup>709</sup>.

According to research released by Corsearch, a leading provider of trademark and brand protection solutions, the global trade in counterfeit goods could reach \$1.79 trillion by 2030, a 75% increase from 2023 and a growth rate 3.6 times greater than the global economy during the same time frame. By 2030, counterfeit goods are predicted to account for 5% of global trade, or \$1 out of every \$20 spent on goods globally, up from 3.3% in 2023<sup>710</sup>.

According to Authentication Solution Providers' Association Global, a non-profit organization based in India, specializing in authentication technologies and anti-counterfeiting measures, reported that the five industries most impacted by counterfeiting are tobacco, alcohol, fast-moving consumer goods (FMCG), currency, and pharmaceuticals. The research indicated that the states with the most frequent counterfeiting

<sup>707</sup> Enforcement of Intellectual Property Rights, Part III, World Trade Org., [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_05\\_e.htm](https://www.wto.org/english/docs_e/legal_e/27-trips_05_e.htm) (last visited Jan. 9, 2025).

<sup>708</sup> Amazon Counterfeit Fake Products, N.Y. Times: Wirecutter, <https://www.nytimes.com/wirecutter/blog/amazon-counterfeit-fake-products/> (last visited Jan. 9, 2025).

<sup>709</sup> Global Trade in Fakes, Org. for Econ. Co-operation & Dev., [https://www.oecd.org/en/publications/global-trade-in-fakes\\_74c81154-en.html](https://www.oecd.org/en/publications/global-trade-in-fakes_74c81154-en.html) (last visited Jan. 10, 2025).

<sup>710</sup> Trade in Counterfeit Goods Market Set to Reach Trillions in 2030, Corsearch, <https://corsearch.com/about/press-releases/trade-in-counterfeit-goods-market-set-to-reach-1-79-trillion-in-2030> (last visited Jan. 10, 2025).



incidents were Delhi, Punjab, Madhya Pradesh, Jharkhand, West Bengal, Uttarakhand, Uttar Pradesh, Bihar, Gujarat and Rajasthan<sup>711</sup>.

To put it simply, counterfeit goods or services are those that are manufactured or marketed in violation of a patent, copyright, trademark, or other intellectual property rights. Unquestionably, counterfeiting is a large business. It is an organized crime that harms respectable enterprises, particularly small ones, and endangers the safety and well-being of consumers, undermines economies, and threatens national security along the way.

## CHAPTER 2: CONCEPTUAL FRAMEWORK OF TRADEMARK AND COUNTERFEITING

*'Counterfeit products erode consumer confidence, damage brand prestige, and negatively affect the economy'*<sup>712</sup>. Before understanding the meaning of the term counterfeiting in legal sense, it should be understood in the simple form, counterfeit means, 'something created with the intent of misleading by imitating something else, or to attempt deception through dissemblance or pretence'<sup>713</sup>.

Also, when someone duplicates or imitates anything without permission and shares imitation off as the real or original object, it's called counterfeiting<sup>714</sup>. Although counterfeiting is most frequently linked to currency, it might also happen with luxury goods like watches, purses, and clothing. Counterfeiting refers to the manufacturing, importing, exporting, distributing, and selling of fake consumer goods that are designed to closely resemble genuine products, deceiving buyers into believing they are authentic. It also includes the unauthorized use of a well-known brand's trademark or logo

on products that the brand has not produced or approved<sup>715</sup>.

Simply said, counterfeits are copies of genuine goods that are produced without the brand owner's consent. As they are often produced without proper quality or environmental regulations and may contain hazardous or toxic substances, counterfeit items are typically of far inferior quality than genuine ones and may even be harmful<sup>716</sup>. Unfortunately, counterfeiting affects a large number of successful and well-known businesses in almost every industry.

Counterfeiting harms a company's reputation and erodes consumer trust in the global market by creating uncertainty about genuine products from reputable brands, impacting both consumers and businesses.

### 2.1 Evolution of the concept Trademark

The idea of a trademark as well, though not in the modern sense, began to take shape globally with the onset of commercialization. According to certain academics, trademarks were utilized in the early stages of commerce development in various civilizations. When making artifacts in the past, various symbols were employed. It indicates the artifacts' originating place. Some symbols have superstitious and religious connotations. As a result, the various symbols employed in Egypt, Rome, and India imply that the idea of trademark law is as old as civilization. However, with the Industrial Revolution, the idea of a trademark based on proprietor rights evolved<sup>717</sup>.

Following the Industrial Revolution, nations such as the U.S., England, and Japan had rapid growth in the domain of trademark law. India was fighting for independence from colonial rule at the time and people were vying with one another to promote comparable goods. Under such circumstances, products with trademarks

<sup>711</sup>Counterfeiting in India, Eur. Union Intell. Prop. Helpdesk, [https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/geography-counterfeiting-india-2022-09-06\\_en](https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/geography-counterfeiting-india-2022-09-06_en) (last visited Jan. 10, 2025).

<sup>712</sup>Runjhun Sharma, Counterfeited Goods Leading to Trademark Infringement on E-Commerce Platforms in India, Int'l J. Creative Res. Thoughts, <https://www.ijcr.org/papers/IJCRT2402226.pdf> (last visited Jan. 20, 2025).

<sup>713</sup>Counterfeit, Merriam-Webster, <https://www.merriam-webster.com/dictionary/counterfeit> (last visited Jan. 20, 2025).

<sup>714</sup>Counterfeiting, Legal Info. Inst., Cornell L. Sch., <https://www.law.cornell.edu/wex/counterfeit> (last visited Jan. 20, 2025).

<sup>715</sup>Counterfeiting Intended for a Non-Legal Audience, Int'l Trademark Ass'n, <https://www.inta.org/fact-sheets/counterfeiting-intended-for-a-non-legal-audience/> (last visited Jan. 20, 2025).

<sup>716</sup>Ibid.

<sup>717</sup>Dr. Roopa Traisa, Counterfeiting of Trademarks, 6 J. Emerging Tech. & Innovative Res., Iss. 2, ISSN-2349-5162, <https://www.jetir.org/papers/JETIREV06029.pdf> (last visited Jan. 22, 2025).

direct customers to buy from a specific producer. Goodwill for their products is gradually gained through the use of these trademarks<sup>718</sup>.

If we properly look into the written historical development of trademarks, it was started to take the recognition in the year 1266, during the reign of King Henry III, England's Parliament enacted its first trademark-related law, known as The Bakers Marking Law. This law mandated that bakers stamp a unique mark on their bread. Following this, silversmiths were mandated to mark their products, printers began using unique symbols to identify their work, and emblems became common in noble estates, inns, taverns, and trade across England. In 1791, Thomas Jefferson, then U.S., Secretary of State, responded to a plea from Samuel Breck, a Boston-based sailcloth manufacturer, by recommending that Congress establish a trademark registration system. However, this suggestion was not acted upon. But in 1870 the U.S. passed its first Federal Trademark Act, with Averill Paints securing the first registered Trademark under the new law. Subsequently, Germany introduced trademark legislation in 1874, followed by Great Britain in 1875 and Japan in 1884. Over time, other nations implemented their own trademark laws. Nowadays, applicants can seek trademark protection in up to 107 countries<sup>719</sup>.

For instance, if we talk about the product, *PILSNER*, that was established in 1859 for Czech beer, is the oldest registered trademark in the world. Over 160 years later, it remains active and have been renewed successfully every decade. The first U.K. trademark was registered by *Bass* for beer. Legend has it that on January 1, 1876, a Bass employee spent the night outside the trademark office to be the first to submit a filing. This trademark is still in use today. And if we see the oldest U.S. trademarks, it includes *Coca-Cola* registration on January 31, 1893, and

continuously renewed. There is also *Heinz*, which was registration on December 28, 1897, and still active<sup>720</sup>. These examples show that with consistent renewal, trademark protection can last forever.

Trademarks have changed since the Industrial Revolution, moving from identifying the place of origin of a product to highlighting its qualities and attributes. In the past, the only common law remedies available to trademark owners against infringers were passing off and similar actions. This resulted in the adoption of trademark law, which seeks to eliminate all uncertainty and challenges by defining the rights and responsibilities of the trademark owner. As a result, India passed the Trademark Act 1940, which is a replica of the United Kingdom Trademark Act. The Trade and Merchandise Marks Act was passed in 1958. The 1958 Act consolidated the trademark-related provisions found in earlier Acts and legislation. The 1958 Act was superseded by the Act of 1999 is currently the law that governs trademarks<sup>721</sup>.

## 2.2 Necessities for registration of a trademark

A trademark is a sign or symbol that indicates the place of origin of a product and aids customers in identifying the producer. It can take many diff. forms, like name, number, colour, shape, or packaging, or it might be any unusual trademarks, like taste, smell, or sound. Only when a trademark is registered under the Trademark Act, 1999, it receives trademark protection in India<sup>722</sup>. A symbol must be depicted in a way that makes it easy to differ it from other trademarks to be eligible for registration. In order for physical copies to be filed and promoted in the trademark journal prior to registration, it must be graphically represented. It goes without saying that a trademark that lacks distinctiveness will not be able to assist customers in recognizing the goods they are interested in. It should be

<sup>718</sup> Ibid.

<sup>719</sup> Exploring the Global History of Trademarks, iGerent, <https://igerent.com/history-trademarks-all-around-world> (last visited Jan. 22, 2025).

<sup>720</sup> Ibid.

<sup>721</sup> Dr. Roopa Traisa, Counterfeiting of Trademarks, 6 J. Emerging Techs. & Innovative Res., Iss. 2, ISSN 2349-5162, <https://www.jetir.org/papers/JETIREV06029.pdf> (last visited Jan. 22, 2025).

<sup>722</sup> *Supra* not at 18

mentioned that unique components of sign are not always applicable and can vary from situation to situation. For instance, while awarding trademark registration, a generic term's long-term acquired secondary meaning may be taken into account<sup>723</sup>. To go in detail, there are few eligibility criteria for a trademark to be registered<sup>724</sup>, these are:

**Distinctiveness:** It is the most crucial requirement for trademark registration eligibility. Since a trademark needs to be unique, it shouldn't be like any other trademark already in use. Protecting a brand's distinctive identity and stopping others from adopting it are the goals of trademark registration. As a result, a trademark that lacks distinctiveness will not be registered

**Non-distinctiveness:** It is not possible to register a trademark that describes the commodity or service it represents. For instance, a corporation that sells apples is not permitted to register the name "Apple" as a trademark. This is due to the fact that the word describes the product rather than acting as a distinctive brand identification.

**Non-deceptiveness:** A trademark cannot be registered if it is misleading or deceptive. For instance, a trademark cannot be registered if it falsely implies a connection to a well-known brand or deceives customers about the calibre of the good or service.

**Non-offensiveness:** It is impractical to register a trademark that is obscene or derogatory. These trademarks cannot be registered since they are seen to be immoral and against public opinion.

**Non-similarity:** A trademark cannot be registered if it is identical to an already-registered brand in the same or a related class of goods or services. This is because it may lead to consumer misunderstanding and weaken the unique character of the current trademark.

**Availability:** It's crucial to confirm that the trademark is available for use and registration

before applying. One way to find out if a similar trademark already exists is to perform a trademark search.

### 2.3 Evolution of the concept counterfeiting

The roots of counterfeiting dates to early societies, when counterfeit items such as coins, textiles, and spices were sold as authentic. One of the earliest recorded cases of counterfeiting occurred in the Roman Empire, where counterfeiters produced fake coins using less valuable metals than the originals. Many anti-counterfeiting laws were introduced because of this deception, which hurt the economy. When printed money first appeared in the Middle Ages, it created new difficulties. Because counterfeiters tool leverage of simple printing methods, governments began enforcing watermarks and complex designs to prevent counterfeiting<sup>725</sup>.

The problem was made worse by the Industrial Revolution since mass production made it simpler to duplicate goods on a bigger scale. Markets were overrun with counterfeit goods, ranging from luxury imitations to fraudulent medications, which made more advanced detection techniques necessary. Significant developments in anti-counterfeiting and counterfeiting technologies occurred during the 20th century.

Advancements in technology and the expansion of global trade have enabled counterfeiters to produce increasingly high-quality fake products. Today, the battle against counterfeiting continues with the aid of digital tools. Each innovation in counterfeiting techniques is met with equally inventive anti-counterfeiting strategies, turning the history of counterfeiting into an ongoing game of cat and mouse<sup>726</sup>.

<sup>723</sup> Ibid.

<sup>724</sup> Trademark Registration Eligibility Criteria, S.K. Singh Assocs., <https://sksinghassociates.com/blog/f/trademark-registration-eligibility-criteria> (last visited Jan. 25, 2025).

<sup>725</sup> Evolution of Counterfeit and Anti-Counterfeit Technologies for Brand Protection, Ennoventure, <https://ennoventure.com/blogs/evolution-of-counterfeit-and-anti-counterfeit-technologies-for-brand-protection> (last visited Jan. 25, 2025).

<sup>726</sup> Supra note at 22



## 2.4 Counterfeiting as a notion

The issue of adulteration, counterfeiting, and spurious items has a significant impact on consumers and national economies in today's time and age, when there is globalization, commercialization, and industrialization are happening. Since these fake goods are already a part of our everyday lives, you can get a sense of how serious the issue. Simply put, counterfeiting is the practice of passing off non-authentic goods as authentic. Over the years it has become evident, it impacts the consumers' trust in the products, the reputation and also their goodwill, as the branded businesses<sup>727</sup>.

These fake goods are sold under a recognizable brand or manufacturer, and gullible and naive customers were tricked into believing that the goods came from the real source. Therefore, it could be asserted that the claim that the original manufacturer created the replica products is nothing more than deception. It is used in a way that makes it impossible for even the manufacturer to tell the difference between authentic and fake goods. The names, packaging, designs, and addresses of these fake goods are all comparable to those of the legitimate manufacturer. Below is the image which will give the better idea of the term counterfeits<sup>728</sup>.



As explained by World Intellectual Property Organisation, trademark counterfeiting is a category of trademark infringement<sup>729</sup>. Trademark infringement occurs when a mark that is identical or nearly indistinguishable from

a registered trademark is used on goods or services that are the same as those for which the trademark is officially registered. The goal of counterfeiting is to intentionally or knowingly replicate trademarks without permission to deceive consumers; it does not necessitate demonstrating confusion or likeness.

And according to TRIPS, "counterfeit trademark goods" are products, including packaging, that are illegally bearing a trademark that is the same as or nearly unaltered copy to a legitimately registered trademark in all material respects<sup>730</sup>. The law of the nation where these items are imported violates the rights of the trademark owner. When counterfeiting happens knowingly and on a commercial scale, it is illegal according to TRIPS regulations.

In simple words, goods that wear a trademark without permission, are nearly identical to a registered brand, or are difficult to tell apart from the original are considered counterfeit trademark goods. The rights of the trademark owner are violated by these fake goods. Due to the extensive distribution of fake goods, consumers are unsure about the products' authenticity, either because of ignorance or improper handling of the fakes. Both the consumer's right to safety and their right to information are being violated. Selling fake goods is against unfair commercial practices and the right to info. Furthermore, counterfeit goods lack the genuineness of the goods and could endanger the lives of customers.

## 2.5 Balancing well known trademarks and counterfeit

As given in the Sec. 2(1) (zg) of the Trademark Act of 1999<sup>731</sup>, It states that a well-known mark has gained such strong recognition that its use in connection with other products is likely to be perceived as indicating an association with the original brand, especially when used in the

<sup>727</sup> *Supra* not at 18

<sup>728</sup> *Ibid*.

<sup>729</sup> WIPO, World Intell. Prop. Org., <https://www.wipo.int/wipolex/en/text/305907> (last visited Jan. 26, 2025).

<sup>730</sup> TRIPS, World Trade Org., [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2b\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2b_e.htm) (last visited Jan. 26, 2025).

<sup>731</sup> Section 2(1)(zg): Definition and Interpretation, India Code, [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_11\\_60\\_00004\\_199947\\_1517807323972&orderno=2](https://www.indiacode.nic.in/show-data?actid=AC_CEN_11_60_00004_199947_1517807323972&orderno=2) (last visited Jan. 27, 2025).



context of trade or service provision. A recognizable trademark includes the following components: A classification that denotes that a significant portion of the public uses a certain offering like 'TATA'. It can be used to purchase more goods by anybody else. Probably, this will point to a relationship like the one between TATA Diamonds and TATA Sons Ltd<sup>732</sup>.

It's true that the market has the most duplicate products from well-known or popular brands. The manufacturer of these faulty goods should undoubtedly capitalize on the well-known trademark's fame to sell their goods more readily in the marketplace.

The economic sustainability of both businesses and the safety and confidence of consumers are seriously threatened by counterfeiting the high-end brands such as Chanel, Louis Vuitton, and Rolex are frequently targeted by counterfeiters, leading to substantial financial losses and brand dilution. The rise of globalization and the proliferation of online marketplaces have further fuelled the spread of counterfeit products by simplifying their distribution<sup>733</sup>. According to the Global Brand Counterfeiting 2018 report<sup>734</sup>, the global trade in counterfeit goods was valued at \$1.2 trillion in 2017, with projections indicating continued growth. In response, robust legal frameworks and effective enforcement mechanisms are essential to protect well-known trademarks. Many countries, including India, have rules that give well-known brands exceptional protection from infringement and unlawful use.

### CHAPTER 3: GLOBAL CHALLENGES IN PROSECUTING COUNTERFEIT GOODS

In today's international economy, counterfeit goods have grown to be a serious threat to the

enterprises, consumers and economies. The counterfeit goods permeate the market, imitating authentic brands but with lower quality and possible hazards, they range from opulent items to common place items. Numerous groups and governments are intensifying their efforts to address this expanding issue as awareness increases. In the global marketplace, counterfeit goods have long been commonplace, posing serious risks and difficulties for companies in a variety of sectors. These fake goods, which are frequently copies of real ones, provide a number of issues, from monetary losses to harm to one's reputation.

For instance, purchasing a fake purse or pair of jeans might not be considered a criminal act; it's just a less expensive method to accessorize with the newest styles. But frequently, little consideration is given to how the funds can eventually wind up in the hands of organized crime or how the sectors that depend on legal sales are negatively impacted. Purchasing counterfeit medications can mask the long-term dangers, tainted medications have been linked to multiple cases of disability and death, and they can fuel the development of drug-resistant illnesses. Due to their inferior quality, even obscure products like safety eyewear or electrical plugs that have been unlawfully copied and replicated pose serious risks.

According to research conducted by the OECD and EUIPO, the trade in counterfeit and pirated goods was expected to account for up to 2.5% of global commerce in 2013, or up to USD 461 billion, and 3.3% of global trade in 2016, or USD 509 billion. Therefore, the quantity of commerce in fakes has remained substantial in nominal, absolute, and percentage terms, and it is comparable to the GDPs of advanced OECD nations like Austria and Belgium. Data from 2019 indicates that the amount of international trade

<sup>732</sup> Well Known Trademark, Intell. Prop. Leaders, <https://blog.intellectualpropertyleaders.in/well-known-trademark/> (last visited Jan. 27, 2025).

<sup>733</sup> Trademark Infringement Well Known Marks, Intell. Prop. Leaders, <https://blog.intellectualpropertyleaders.in/trademark-infringement-well-known-marks/> (last visited Jan. 27, 2025).

<sup>734</sup> Global Counterfeiting Report 2018–2020, Globe Newswire, <https://www.globenewswire.com/news-release/2018/05/15/1502333/0/en/Global-Brand-Counterfeiting-Report-2018-2020-Luxury-Brands-incurred-Losses-of-30-Billion-Due-to-counterfeiting.html> (last visited Jan. 27, 2025).

in pirated and counterfeit goods reached USD 464 billion, or 2.5%, in that year<sup>735</sup>.

According to a joint report by Crisil and the Authentication Solution Providers Association (ASPA) of 2023<sup>736</sup>, counterfeiting is most common in the FMCG (28%) and garment sectors (31%), followed by the automobiles (25%), pharmaceutical (20%), consumer durables (17%) and agrochemicals (16%) sectors. Approximately 25–30% of all products marketed in the nation are fake. According to the report, 31% of consumers voluntarily buy fake goods, while 27% of consumers are not aware that a product is a fake at the time of purchase. The poll also shows that over 89% of customers are aware that there are counterfeit goods on the market and are frequently pressured to purchase them for a variety of reasons, including price sensitivity, the gap between supply and demand, the desire to purchase luxury brands, peer pressure, and social incentives.

Every sector is impacted by counterfeiting since it deprives governments, corporations, and society of jobs, tax money, and commercial revenues. For brands in all sectors, counterfeit goods pose a continuous and changing problem. It is a complex issue because of the financial losses, harm to one's reputation, legal disputes, and technological developments in counterfeiting. Counterfeit products are appealing to consumers because they are less expensive than authentic ones, which appeals to consumers on a tight budget.

### 3.1 Economic challenges for brands

Counterfeit products have become a major financial burden for brands worldwide, with the global counterfeit trade valued at hundreds of billions of dollars annually. This widespread issue leads to significant revenue losses for legitimate businesses, reducing their ability to

generate profits and invest in innovation, research, and development. The financial strain also affects market competitiveness, forcing brands to allocate resources toward anti-counterfeiting measures instead of business growth. Luxury brands, particularly those in fashion and accessories, are among the most impacted by counterfeiting. High-end labels like Louis Vuitton, Gucci, Prada, Chanel, and Rolex frequently fall victim to counterfeiters due to their strong brand identity and consumer demand. The availability of fake luxury goods at lower prices diminishes exclusivity and damages brand prestige. Additionally, unsuspecting buyers may purchase counterfeit products believing they are genuine, only to find them inferior in quality, which negatively affects consumer trust and brand perception<sup>737</sup>.

A study by the OECD highlighted the massive financial damage inflicted on the luxury industry, with counterfeit products resulting in \$2.8 trillion in lost sales in 2022. The economic impact extends beyond individual brands, affecting manufacturers, suppliers, designers, and retailers dependent on the industry<sup>738</sup>.

The counterfeit market has serious consequences beyond financial losses. It leads to job losses in legitimate industries, depriving workers of stable employment. Governments face revenue depletion due to tax evasion, reducing funds for public services. Businesses must also bear rising enforcement and brand protection costs to combat counterfeiting. Additionally, the counterfeit trade fuels organized crime, supporting illicit activities such as money laundering and smuggling, which pose significant economic and security threats.

### 3.2 Reputational Damage

In addition to monetary losses, fake goods can seriously damage a brand's reputation. Customers are frequently disappointed by subpar craftsmanship, safety risks, or a lack of

<sup>735</sup> Global Trade in Fakes, Org. for Econ. Co-operation & Dev., [https://www.oecd.org/en/publications/global-trade-in-fakes\\_74c81154-en.html](https://www.oecd.org/en/publications/global-trade-in-fakes_74c81154-en.html) (last visited Feb. 1, 2025).

<sup>736</sup> Almost 25–30% Products Sold in India Spurious with Counterfeiting: Report, Livemint, <https://www.livemint.com/industry/retail/almost-25-30-products-sold-in-india-spurious-with-counterfeiting-report-11674655725574.html> (last visited Feb. 1, 2025).

<sup>737</sup> Legal and Regulatory Challenges: Tracking and Prosecuting Counterfeit Products, Veritech, <https://veritech.in/blog/counterfeit-products> (last visited Feb. 2, 2025).

<sup>738</sup> Ibid.

customer service when they unintentionally buy counterfeit goods expecting the same quality and dependability as authentic ones. Long-term client connections and market credibility are eventually impacted by this bad experience, which breeds mistrust and reduces brand loyalty. Additionally, brands could unintentionally be connected to unethical activities including child labour, subpar working conditions, and environmental concerns that are linked to the creation of counterfeit goods<sup>739</sup>.

For instance, when manufactured in unregulated facilities, counterfeit medications present significant health hazards and may have negative effects on users. Brands frequently experience harm to their reputations when their names are linked to risky and inferior items that are on the market, even when they are not directly involved in counterfeiting. This demonstrates the pressing need for improved consumer knowledge and brand protection strategies to lessen the dangers posed by fake goods.

### 3.3 Legal and Regulatory Challenges

Protecting brands from counterfeit goods and enforcing intellectual property rights are difficult, resource-intensive, and frequently expensive legal battles. It is challenging to monitor and hold counterfeiters accountable since they usually operate across numerous jurisdictions.

Global e-commerce has made enforcement operations more difficult since counterfeiters use social media, encrypted messaging applications, and online marketplaces to spread bogus items anonymously. There is a legal framework for protecting intellectual property established by international agreements like the TRIPS, but enforcement varies greatly between nations. In many areas, counterfeiters can operate with little fear of legal repercussions due to inadequate punishments, weak legal frameworks, and ineffective enforcement systems. Some

governments lack the infrastructure, political will, or resources needed to combat counterfeiting successfully, which gives illegal operators even more confidence. Additionally, brands are unable to quickly remove counterfeit goods from the market due to regulatory loopholes and prosecution delays. Strengthening intellectual property protection measures, guaranteeing harsher penalties for counterfeiters, and developing a more standardized strategy to combat counterfeiting globally all depend on cross-border collaboration between law enforcement agencies, corporations, and regulatory authorities<sup>740</sup>.

### 3.4 Challenges of Technological advances

Counterfeiters have modified and improved their techniques in response to technological advancements, making it more challenging to identify phony goods. This problem has been greatly exacerbated by the development of 3D printing technology, which enables counterfeiters to produce excellent copies that nearly resemble authentic goods. Because of their near-identical materials, exact detailing, and similar packaging, these sophisticated counterfeits are difficult for authorities and consumers to distinguish from real goods. Additionally, counterfeiters now have a worldwide reach and more anonymity because of the quick growth of e-commerce platforms and online marketplaces. Since many of these counterfeit goods are sold by unaffiliated vendors who frequently adopt false identities, it is challenging for law enforcement and brands to find them<sup>741</sup>.

Blockchain technology has become a viable way to fight counterfeiting. Blockchain allows firms to follow a product's journey through the supply chain, guaranteeing authenticity at every turn by establishing a safe, transparent, and impenetrable digital record. Customers can make well-informed purchasing decisions by using RFID chips, NFC tags, or QR codes to

<sup>739</sup> Supra note at 34

<sup>740</sup> Supra note at 34

<sup>741</sup> Ibid.



confirm a product's legitimacy<sup>742</sup>. Although blockchain presents a potentially useful defense, supply chains are only just beginning to utilize it widely, and its actual effect on lowering counterfeiting has not yet been adequately assessed.

### 3.5 Challenge for Consumer awareness

Lack of consumer knowledge about the dangers of counterfeiting is a significant obstacle in the fight against it. Unaware of the possible safety risks, many people unintentionally buy fake items or are seduced by low prices, particularly in the areas of electronics, pharmaceuticals, and auto components. In addition to lowering quality, fake goods damage consumers' faith in genuine companies<sup>743</sup>.

Social media and online marketplaces are used by counterfeiters, making it hard for customers to tell the difference between phony and authentic products. Through awareness campaigns, collaborations with advocacy organizations, and explicit authentication requirements, brands need to proactively educate consumers. Customers can verify the legitimacy of products before making a purchase by using trustworthy verification technologies like smartphone applications, NFC tags, and QR codes. Encouraging customers to report counterfeit items can also help law enforcement. In order to reduce the demand for counterfeit goods, businesses, governments, and internet platforms must work together.

### 3.6 Brands strategies against counterfeits<sup>744</sup>

To tackle counterfeit products, brands implement industry-specific strategies to safeguard their reputation and consumers. Some common approaches include:

- i. Advanced Authentication: Brands incorporate security features like holograms, serial numbers, and tamper-proof packaging to prevent replication.

- ii. Transparent Supply Chains: Using blockchain and traceability solutions, companies ensure product authenticity from manufacturing to sale.
- iii. Intellectual Property Protection: Legal measures are taken against counterfeiters at both national and international levels to disrupt illegal operations.
- iv. Consumer Awareness: Educational campaigns inform buyers about the dangers of counterfeit goods and ways to verify authenticity.
- v. Law Enforcement Collaboration: Companies work with authorities, customs, and regulators to detect and seize counterfeit products at entry points and distribution centres.
- vi. Online Surveillance and Takedowns: Dedicated teams monitor e-commerce platforms and social media to identify and remove counterfeit listings.
- vii. Customs Enforcement: Registering trademarks with customs agencies helps intercept counterfeit goods before they reach the market.
- viii. Legal Action Against Platforms: Brands take legal steps against websites, payment processors, and others enabling counterfeit sales.
- ix. Industry-Wide Cooperation: Businesses, trade groups, and government agencies collaborate to share intelligence and strengthen anti-counterfeiting efforts.

By combining these strategies, brands enhance their defenses against counterfeiting and protect both their market value and consumer trust.

## CHAPTER 4: INDIA'S LEGISLATION ON TRADEMARK COUNTERFEITING

Counterfeiting, the illegal replication of goods or intellectual property, has become a major problem in the nation as well as globally with substantial social and economic ramifications.

<sup>742</sup> Ibid.

<sup>743</sup> *Supra* note at 34

<sup>744</sup> Ibid.

India's primary legislations governing trademark law is the Trademarks Act, 1999, which establishes a framework for trademark registration, protection, and enforcement.

Trademark protection in India dates back to the 10th century when merchants used marks for owners' intellectual property and trade. During the Middle Ages, craftsmen used production marks to distinguish goods and maintain quality standards. The first Anglo-Indian Trademark law, the Bakers Marking Law of 1266, required bakers to mark their bread. Before 1940, India had no formal trademark law, relying on other legal provisions for enforcement. The Indian Trademarks Act of 1940 was later replaced by the Trade and Merchandise Marks Act of 1958. With globalization, India aligned its laws with international agreements like TRIPS and the Paris Convention. To modernize trademark regulations, the Trademarks Act, 1999, was enacted, replacing the 1958 law to address evolving trade and industry needs<sup>745</sup>.

The Trademarks Act, 1999, replaced the Trade and Merchandise Marks Act, 1958, aligning Indian trademark law with WTO's TRIPS agreement. It introduced protection for service marks, collective marks, and well-known trademarks, granting them special rights. The Act also empowered police to arrest for trademark infringement and increased penalties. Key changes included clearer definitions, extended registration periods, and recognition of non-traditional trademarks. The accompanying trademark Rules, 2002, came into effect on September 15, 2003. Together, the 1999 Act and 2002 Rules currently govern trademark laws in India<sup>746</sup>.

There is no separate clause in India's Trademarks Act, 1999 that is devoted only to the term "counterfeiting." Nonetheless, it deals with counterfeiting by outlining the consequences

for associated violations in some of the Sections of the Act, which are discussed in this chapter.

**Section 29: Infringement of registered trademarks<sup>747</sup>:** Trademark infringement occurs when an unauthorized party uses an identical or deceptively similar mark, causing confusion or harming the trademark's reputation. It applies to trade names, packaging, advertising, imports, exports, and misleading promotions that exploit or damage the trademark's distinctiveness. Furthermore, deceptive advertising that unjustly takes advantage of or harms the reputation or uniqueness of the trademark is illegal.

**Section 102: Falsifying and falsely applying trademarks<sup>748</sup>:** Falsifying or falsely applying a trademark involves creating, altering, or using a similar mark without permission to misrepresent goods or services. A "false trademark" includes any misused or manipulated mark, with the accused responsible for proving owner approval in court.

**Section 103: Penalty for applying false trademarks, trade descriptions etc.<sup>749</sup>:** Falsifying or misusing a trademark, including false trade description or tampering with origin markings, is punishable by 6 months to 3 years in prison and a fine of ₹50,000 to ₹2 lakh, with possible reductions in special cases.

**Section 135: Relief in suits for infringement or passing off<sup>750</sup>:** Courts may grant injunctions, damages, or destruction of infringing materials in trademark cases. Interim relief includes evidence preservation and asset restrictions. However, damages are denied if the

<sup>745</sup> Suvrashis Sarkar, History and Evolution of Trademarks in India, 6 Indian J. Applied Res., Iss. 11, ISSN 2249-555X, [https://www.worldwidejournals.com/indian-journal-of-applied-research-\(IJAR\)/recent-issues-pdf/2016/November/November\\_2016\\_1492175968\\_242.pdf](https://www.worldwidejournals.com/indian-journal-of-applied-research-(IJAR)/recent-issues-pdf/2016/November/November_2016_1492175968_242.pdf) (last visited Mar. 1, 2025).

<sup>746</sup> Supra note at 42

<sup>747</sup> Section 29, Trademarks Act, 1999, India Code, [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_11\\_60\\_00004\\_199947\\_1517807323972&orderno=29](https://www.indiacode.nic.in/show-data?actid=AC_CEN_11_60_00004_199947_1517807323972&orderno=29) (last visited Mar. 1, 2025).

<sup>748</sup> Section 102, Trademarks Act, 1999, India Code, [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_11\\_60\\_00004\\_199947\\_1517807323972&orderno=110](https://www.indiacode.nic.in/show-data?actid=AC_CEN_11_60_00004_199947_1517807323972&orderno=110) (last visited Mar. 1, 2025).

<sup>749</sup> Section 103, Trademarks Act, 1999, India Code, [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_11\\_60\\_00004\\_199947\\_1517807323972&orderno=111](https://www.indiacode.nic.in/show-data?actid=AC_CEN_11_60_00004_199947_1517807323972&orderno=111) (last visited Mar. 1, 2025).

<sup>750</sup> Section 135, Trademarks Act, 1999, India Code, [https://www.indiacode.nic.in/show-data?abv=null&statehandle=null&actid=AC\\_CEN\\_11\\_60\\_00004\\_199947\\_1517807323972&orderno=145&orgactid=AC\\_CEN\\_11\\_60\\_00004\\_199947\\_1517807323972](https://www.indiacode.nic.in/show-data?abv=null&statehandle=null&actid=AC_CEN_11_60_00004_199947_1517807323972&orderno=145&orgactid=AC_CEN_11_60_00004_199947_1517807323972) (last visited Mar. 1, 2025).

infringement involves certification marks or if the defendant unknowingly used the mark and stopped upon discovery.

Although there isn't a single section in the Trademarks Act of 1999 that is specifically referred to as "counterfeiting," several parts work together to define and punish conduct associated with trademark fraud and misuse. Through both civil and criminal remedies, the provisions guarantee trademark owners have legal action against counterfeiters.

In the case of *Mondelez India Foods Pvt. Ltd. (formerly Cadbury India Limited and Ors.) v. Neeraj Food Products*<sup>751</sup>, the Delhi High Court in this case applied the doctrine of *Res Ipsa Loquitur* ("the thing speaks for itself") to highlight the striking similarities between the plaintiff's and defendant's products. While negligence typically requires proof, in certain cases, it is presumed based on evident facts. In August 2015, Cadbury India Limited filed a suit seeking a permanent and mandatory injunction against the defendant for using a deceptively similar trademark, "JAMES BOND," for chocolates, resembling Cadbury's "GEMS" in packaging and branding. The plaintiff argued that the defendant's mark was inspired by Cadbury's fictional character and registered copyright "GEMS BOND," which appeared in advertisements and a short-lived comic series in the 1980s-90s. The defendant's product appeared to be a direct imitation, with similar packaging and color schemes, creating confusion among consumers.

The Delhi High Court, after reviewing the pleadings, evidence, and arguments, applied the principle of *Res Ipsa Loquitur*<sup>752</sup> in this case, emphasizing the striking similarities between the plaintiff's and defendant's products. The court noted that the defendant's product packaging closely resembled the plaintiff's, including identical background colours, similar

placement of brand names, and nearly identical design elements, such as inscriptions and colour schemes. Additionally, the defendant's mark, *JAMES BOND*, was inspired by the plaintiff's copyrighted fictional character, *GEMS BOND*, making the resemblance even more deceptive.

The court relied on landmark Supreme Court judgments, including *Corn Products Refining Co. v. Shangrila Food Products Ltd.*<sup>753</sup> and *Parle Products (P) Ltd. v. J.P. & Co., Mysore*<sup>754</sup>. In *Corn Products*, the Supreme Court held that trademark similarity should be assessed from the perspective of an average consumer with imperfect recollection. The *Parle Products* case established that courts should focus on similarities rather than dissimilarities when comparing trademarks. A similar approach was followed in *ITC Ltd. v. Britannia Industries Ltd.*<sup>755</sup>, reinforcing the imp. of preventing consumer deception due to identical packaging.

The court also considered the target consumers, children in both urban and rural areas who could be easily misled by the defendant's imitation product. Given that these chocolates are sold in small sizes where trademarks may not be fully visible, distinguishing between the two products would be difficult even for adults, further increasing the likelihood of confusion.

Based on these findings, Justice Prathiba M. Singh ruled in favor of the plaintiff, granting a permanent and mandatory injunction against the defendant. The plaintiff was recognized as the rightful owner of the *GEMS* trademark and the *GEMS BOND* copyright. The court also confirmed that the defendant had infringed and passed off the plaintiff's registered trademark. The defendant's claim that their trademark was distinct was rejected, as they failed to provide

<sup>751</sup> *Mondelez India Foods Pvt. Ltd. & Anr. v. Neeraj Food Prods.*, CS(COMM) 393/2018, <https://www.manupatrafast.in/TempPDF/MANU-DE-2622-2022-Del20250402002742.pdf> (last visited Mar. 1, 2025).

<sup>752</sup> *Res Ipsa Loquitur*, Legal Info. Inst., Cornell L. Sch., [https://www.law.cornell.edu/wex/res\\_ipsa\\_loquitur](https://www.law.cornell.edu/wex/res_ipsa_loquitur) (last visited Mar. 1, 2025).

<sup>753</sup> *Corn Prods. Refining Co. v. Shangrila Food Prods. Ltd.*, AIR 1960 SC 142, <https://www.manupatrafast.in/TempPDF/MANU-SC-0115-1959-BLR20250406233414.pdf> (last visited Mar. 1, 2025).

<sup>754</sup> *Parle Prods. (P) Ltd. v. J.P. & Co., Mysore*, AIR 1972 SC 1359, <https://indiankanoon.org/doc/880032/> (last visited Mar. 1, 2025).

<sup>755</sup> *ITC Ltd. v. Britannia Indus. Ltd.*, FAO(OS) (Comm) No. 77 of 2016, <https://indiancaselaw.in/britannia-industries-ltd-v-itc-ltd/> (last visited Mar. 1, 2025).



sufficient evidence. Additionally, the defendant could not establish that the plaintiff's trademark was common in trade, resulting in another ruling in the plaintiff's favor.

Taking into consideration Supreme Court observations on costs in commercial cases (*Uflex Ltd. v. Government of Tamil Nadu & Ors*<sup>756</sup>), as well as provisions from the Commercial Courts Act, 2015, and the Delhi High Court Intellectual Property Division Rules, 2022, the court awarded damages of ₹10 lakhs to the plaintiff. Furthermore, the defendant was ordered to pay actual litigation costs amounting to ₹15,86,928 within three months of the ruling. All pending applications were subsequently disposed of.

Despite all these provisions, issues persist since the Act lacks a specific provision against counterfeiting, enforcement procedures are slow, and consumer awareness is low. India may improve enforcement procedures through specialized authorities as technology is taking toll everywhere. Although the current framework is strong, certain changes are required to guarantee better enforcement and flexibility in response to changing trade practices.

However, counterfeiting persists due to challenges like global trade complexities, technological advancements that facilitate counterfeit production, and inadequate international cooperation. Reports such as the 2024 Notorious Markets List<sup>757</sup> continue to expose numerous physical and online platforms that enable counterfeiting, highlighting enforcement difficulties. Thus, although the legal framework is robust, additional strategies are needed to keep pace with the evolving counterfeiting landscape.

<sup>756</sup> *Uflex Ltd. v. Gov't of Tamil Nadu & Ors.*, AIR ONLINE 2021 SC 729, <https://indiankanoon.org/doc/125586420/> (last visited Mar. 2, 2025).

<sup>757</sup> 2024 USTR Notorious Markets List Issued, Ass'n of Am. Publishers, <https://publishers.org/news/2024-ustr-notorious-markets-list-issued/> (last visited Mar. 10, 2025).

## CONCLUSION AND SUGGESTIONS

### Conclusion

Trademark law and counterfeiting present a complex, evolving challenge that impacts on intellectual property rights, economic stability, and consumer trust. Trademarks serve as vital business assets, symbolizing reputation and goodwill, a role that has expanded from early commerce to modern laws like India's Trademarks Act, 1999. However, counterfeiting estimated at \$464 billion in global trade in 2019 and projected to hit \$1.79 trillion by 2030 poses a serious threat, affecting industries from luxury goods to pharmaceuticals and often linked to organized crime.

Despite legal frameworks like TRIPS and India's trademark laws, enforcement struggles due to a lack of specific anti-counterfeiting provisions, slow judicial processes, and low public awareness. Global challenges include online anonymity, jurisdictional issues, and advanced counterfeiting methods. Cases like *Mondelez India Foods Pvt. Ltd. v. Neeraj Food Products* show judicial support, yet systemic gaps remain. Addressing counterfeiting requires stronger laws, the use of technologies like blockchain, global collaboration, and consumer education. Only a comprehensive strategy can protect trademarks, reduce economic harm, and preserve trust in a globalized market.

### Suggestions

Based on the insights the following suggestions are proposed to address the escalating issue of trademark counterfeiting in the future:

**Strengthen Legal Frameworks:** Amend India's Trademarks Act, 1999 to explicitly address counterfeiting with clearer definitions and stricter penalties. Push for global alignment under TRIPS for consistent enforcement.

**Adopt Advanced Technology:** Use blockchain, RFID, and QR codes for secure supply chains and real-time product authentication. Develop AI tools to detect counterfeits online.

**Improve Enforcement:** Set up dedicated anti-counterfeiting units in high-risk regions (e.g., Delhi, UP, Gujarat). Train and fund customs and police to better intercept fake goods.

**Raise Consumer Awareness:** Launch national campaigns, especially in rural areas and among children, to promote awareness and verification methods. Collaborate with brands and platforms.

**Regulate E-Commerce:** Require stricter seller verification and counterfeit monitoring on platforms like Amazon. Enforce legal accountability for enabling counterfeit sales.

**Promote Global Cooperation:** Strengthen cross-border law enforcement collaboration to dismantle international counterfeit networks and share best practices.

**Support Small Businesses:** Offer legal aid and affordable anti-counterfeiting tools to small enterprises that are most vulnerable to IP violations.

**Encourage Innovation:** Provide incentives like tax breaks or grants for developing and deploying anti-counterfeit tech such as holograms and secure packaging.

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