Brand Imitation, Counterfeiting and Consumers

D.Y. Chacharkar
Brand Imitation, Counterfeiting and Consumers

Dr. D.Y Chacharkar
Associate Professor
Department of Business Administration and Management Studies
Sant Gadge Baba Amravati University
Amravati, Maharashtra
Price: ₹ 50

ISBN : 81-86641-68-8

2013 edition

This Monograph is Published with the Financial Assistance from Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution, Government of India

Printed at : New United Process, A 26, Phase II, Naraina Indl Area, New Delhi-110028
Brands have a kind of universal language and brand names represent information about a variety of attributes linked to a product, such as its features, meaning, and quality. Branding makes it easy for consumers to talk about products as successful brands make firms sensitive to the upkeep of quality. The concept of branding or identification leads to an increase in the quality of the offerings in the marketplace. Consumers understand that brands make life easier by reducing the risk of inferior or poor-quality goods. Besides actual physical differences in product/service attributes, brands are differentiated in terms of the subjective image they impress on the consumer’s mind. Brand image is created through labelling, advertising, package design, and retail distribution.

A counterfeit, on a strict definition, is something that is forged, copied or imitated without the perpetrator having the right to do it, and with the purpose of deceiving or defrauding. Such rights are legally enshrined in patents (linked with inventions), copyright (which covers literary, musical and artistic works, and software), trademarks (which include words, pictures and symbols), industrial designs and other forms of intellectual-property protection. Manufacturers tend not to differentiate between imitators and counterfeiters. Both can create similar problems for original brands because both infringe on the original’s image and profits. Sales losses due to imitators easily surpass this, because there are many more imitators or look-alikes than direct copies.

New technology has broadened the range of goods that are vulnerable to copying. It has dramatically improved their quality, as well as lowering their cost of production. Where once counterfeits were cheap and shoddy imitations of the real thing, today their packaging and contents often render them almost indistinguishable from the genuine article. There is no doubt that counterfeit luxury goods provide an elevated feeling to consumers who cannot or will not pay for the original. They allow lower-income people to have a little brush with prestige, appear more affluent from a distance and perhaps feel better about themselves. This is one reason why consumers fall into the trap and buy such products.

Fake brands have flooded India- India has 60 ‘Nike’s, 65 ‘Rolex’s
and 217 ‘Intel’s. Such is the impact of counterfeiting and piracy that over 400 companies begin with the word ‘Reliance’. An ORG retail audit revealed that for every 100 strips of genuine Action 500, there were 54 look-alikes. Vicks Vaporub and inhaler have about 20 clones.

For counterfeiters, the easiest thing to do is to deceive the rural consumers. Put a passable product into a tube, with markings that resemble the original and market it in rural, semi-urban areas, through promoters, agents and retailers willing to make a quick buck. For most, the job is easy to carry. Retailers earn at least twice the margin on imitated brands that they do on the genuine product. The aim of the end seller is to sell it to the consumer as genuine and may be at same or reduced price as the genuine product. It’s about risk and reward, and currently there is little risk, but huge reward. Retailers know where to buy imitated brands from, and the outlets where counterfeits are sold into may look different across the region, but they operate the same way. Mostly imitated brands are being purchased by unaware and illiterate persons, so rural areas are huge markets for imitated brands. A rural consumer is brand loyal and this also makes it easy to sell look-alike.

The number of counterfeit and look alike products in India have increased so much that popular brands covering a wide range of product categories have been losing 10-30 percent of their business to them. The scenario of counterfeiting prevailing in India demands urgent need to constantly look at newer and newer means of addressing and trying to resolve the problems from various forms of brand attack. Also, it is in the interest of consumers, brand owners and the government to bring the menace of brand attack under control.

This monograph deals with the menace of such products that have filled the Indian markets. The consumers are being taken for a ride, while the government loses revenue and the company loses trust and loyalty apart from revenue.

I am grateful to the Centre for Consumer Studies, Indian Institute of Public Administration, New Delhi, particularly Prof. Suresh Misra, Coordinator of the Centre for giving me the opportunity to write this monograph. I am sure this monograph will help educate the consumers about spurious products that are available in the market and protect themselves from the harmful effects of such products.

New Delhi
Dated: 25 May, 2013

D.Y. Chacharkar
CONTENTS

PAGE

Preface iii
Introduction 1
The Brand-Concept 1
Imitation Strategies 8
Protection to Trade Mark 12
Counterfeiting: Another Form of Brand Attack 13
Counterfeiting: International Scenario 15
Consequences of Counterfeiting on Society 17
Why Counterfeiting and Piracy are Increasing? 21
Combating the Counterfeiting Menace 23
An Overview of Counterfeits/Imitated Brand Market 24
Market Scenario of Fake Products in FMCG Products 26
Measures to Protect Brand 31
Role of International Organizations to Protect Brand Imitation 35
Brand Attacks: Indian Scenario 44
An Overview of the Regulatory Regime of Brand Protection 53
Role of FICCI Brand Protection Committee to Wage a War against Counterfeiting 62
Schools as a Center of Education 65
Educating Consumers: Role of Government and the Corporates 66
BRAND IMITATION, COUNTERFEITING AND CONSUMERS

INTRODUCTION

A brand is a product from a known source (organization). The name of the organization can also serve as a brand. A brand is a product, service, or concept that is publicly distinguished from other products, services, or concepts so that it can be easily communicated and usually marketed. Branding is the process of creating and disseminating the brand name. Branding can be applied to the entire corporate identity as well as to individual product and service names.

Brands are usually protected from use by others by securing a trademark or service mark from an authorized agency, usually a government agency. Once you’ve learned that no one else is using it, you can begin to use your brand name as a trademark simply by stating it is a trademark (using the “TM” where it first appears in a publication or Website). After you receive the trademark, you can use the registered symbol after your trademark.

The Brand- Concept

What is Brand? It includes a name, logo, slogan, and/or design scheme associated with a product or service. Brand recognition and other reactions are created by the use of the product or service and through the influence of advertising, design, and media commentary. A brand is a symbolic embodiment of all the information connected to the product and serves to create associations and expectations around it. A brand often includes a logo, fonts, color schemes, symbols, and sound, which may be developed to represent implicit values, ideas, and even personality (see Figure 1).

The word “brand” is derived from the Old Norse *brandr* meaning “to burn.” It refers to the practice of producers burning their mark (or brand) onto their products. The word brand began simply as a
way to tell one person’s cattle from another by means of a hot iron stamp. A legally protected brand name is called a trademark. The word brand has continued to evolve to encompass identity. Brand is the personality that identifies a product, service or company and how it relates to key constituencies: Customers, Staff, Partners, and Investors etc.¹

**Definition- Brand**

Unique design, sign, symbol, words, or a combination of these, employed in creating an image that identifies a product and differentiates it from its competitors. Over time, this image becomes associated with a level of credibility, quality, and satisfaction in the consumer’s mind. Thus brands help harried consumers in crowded and complex marketplace, by standing for certain benefits and value. Legal name for a brand is trademark and, when it identifies or represents a firm, it is called a brand name.²

Brands are often some of the most valuable assets a company possesses. A brand is a unique marketing identity created for a product, product line, company, or even industry. Brands are associated with trademarks, trade names, service marks, and the

---


²FIG. 1: THE COMPONENTS OF BRANDS
like; however, many marketing experts insist that the concept of branding encompasses much more than a unique name or logo. Brands serve their owners by allowing them to cultivate customer loyalty for, and recognition of their offerings. Brands also serve the consumer; they supply information pertaining to factors such as the quality, origin, and value of goods and services. Without brands to guide buying decisions, the free market would become a confusing, faceless crowd of consumables. Among other detriments, the efficiencies of a self-service economy would be nixed.

A brand is backed by an intangible agreement between a consumer and the company selling the products or services under the brand name. A consumer who prefers a particular brand basically agrees to select that brand over others based primarily on the brand’s reputation. He or she may stray from the brand occasionally because of price, accessibility, or other determinants, but some degree of allegiance will exist until a different brand is accepted and then preferred by the buyer.³

Types- Brand

There are two main types of brand – manufacturer brands and own-label brands.

Manufacturer Brands

Manufacturer brands are created by producers and bear their chosen brand name. The producer is responsible for marketing the brand. The brand is owned by the producer. By building their brand names, manufacturers can gain widespread distribution and build customer loyalty.

Own Label Brands

Own-label brands are created and owned by businesses that operate in the distribution channel – often referred to as “distributors”. Often these distributors are retailers, but not exclusively. Sometimes the retailer’s entire product range will be own-label. However, more often, the distributor will mix own-label and manufacturer's brands. The major supermarkets are excellent examples of this. Own-label branding – if well carried out – can often offer the consumer excellent value for money and provide the distributor with additional bargaining power when it comes to negotiating prices and terms with
Different types of brands work for different marketing approaches that business might take. Basically, there are a few general types of brands that business could fall into:

- **Product Brands**: Products (commodities) become branded products when you win awareness in the marketplace that your product has compelling characteristics that make it different and better than others in the product category. Branding is a powerful tool that differentiates your offering in ways that create consumer preference and allow you to command premium pricing.

- **Service Brands**: Services are products that people buy sight-unseen. People buy services purely based on their trust that the person or business they’re buying from will deliver as promised. One selling a service or running a service business, will need to develop and manage a strong, positive brand image.

- **Business Brands**: In addition to or instead of branding products or services a business can brand itself. The best advice to any business is to build only one brand.

- **Personal Brands**: Business also has a personal brand and people know it by that name or they hold that brand image in their mind.

- **Personality Brands**: Personality brands are personal brands gone big-time. They’re individual brands that are so large and strong that they not only deliver wide-reaching personal celebrity but also create significant value when associated with products or services. Their names are associated with a superior quality and subject expertise that speaks to their personality branding.

**Brand Development**

Brand development is contingent upon two kinds of purchases; the initial purchase and the repeat purchase. Communication is playing an influential role in the initial purchase. For repeat purchases, communication plays more of a supporting role. The most important factor in winning repeat business is the experience the consumer had from the initial purchase. One should strive to “over satisfy” the consumer in that first experience to maximize the chance that the customer will come back.

The development of a successful brand must meet four requirements. First, the brand must convey distinctive values and
deliver on these values. What does the brand promise to deliver – taste, safety, style, prestige, performance and satisfaction. They may even be arranged in some hierarchy which is arranged for different emphasis in different markets as shown in Fig. 2.

FIG. 2: EXAMPLE OF BRAND VALUE HIERARCHY


Then of course, the brand must deliver on those promises. All fancy packaging and advertising in the world will do little to convince the consumer to purchase again if the basic promise is not kept. Second, the brand must differentiate a specific product from others in the class or industry. Third, brand must be appealing to the customer. Fourth, successful brand development means that your brand must have a clear identity.6
Brand Imitation: Concept

Imitation is a fundamental part of biological and social life. It is a way by which various species learn, make sense, survive, compete and evolve as acquire traits and behavior that help them thrive in their respective environments. It has been essential for human evolution because it facilitates the diffusion of new ideas, technologies and inventions. Human new born are so prone to imitation that scholars have labeled them “Imitation Machine”.

A brand imitation is a product that copies a famous or a leading brand, using similar attributes, such as name, shape, logo, and design. Thus, in the brand owner’s perception, brand imitation is an infringement of the core value of the original brand. Many countries have enacted relevant legislation to protect brands from the infringements of imitation. In the eyes of the imitated brand owners, brand imitation is an infringement of the original brand’s equity.

A copycat or a simulation is a copy of a product in form or substance with no attempt to actually duplicate the brand name. Shops sell look-alike Rolex and other famous watches, the watch just mimics the look of a Rolex. However, they are attempting to profit from association with a brand and may face other legal challenges.

Definition- Brand Imitation

A brand imitation is a product that borrows or copies some special attributes of a famous or leading brand, such as a name, shape or colour.

Brand imitations are also known as “Knock-offs” and “are not identical to the original but are similar in substance, name, form, meaning or intent to an acknowledged and widely known product or service”. Brand imitation also relates to “Passing-off” which describes “the situations in which people confuse one business or one product with another.”

The economist defines imitation as, “something that is forged or imitated without the perpetrator having the right to do it, and with the purpose of deceiving or defrauding.” An imitation is also described as, “A deliberate attempt to deceive consumers by copying and marketing goods bearing well-known trademarks, generally together with packaging and product configuration, so that they look like they are made by a reputable manufacturer
when they are in fact inferior copies”. Imitation deceives the consumer. The act of imitation can and does create severe public health risks and safety hazards, besides economic harm. Local economies are damaged by the loss of sales of genuine products and national economies lose millions of dollars in unpaid taxes and excise revenue. The infringing products are a threat not only to consumers, but also to the growth of consumer industry and consumer goodwill.

Menace of Brand Imitation

Many companies which use branding as their major key for marketing are facing the problem of imitators which makes them lose a possible high profit and potential customers who will prefer to buy the cheaper alternative even though it is just an imitation. Nowadays, the branded companies are in great trouble and crisis because they are not only facing tough competition but also the challenge of brand imitation. Brand imitation is affecting their market and eating up the profits.

The imitator’s biggest strategy is to earn profit by selling the famous brand on low cost. So the consumers perceive the product as a same original brand on a low cost. Brand imitation is a profitable marketing strategy based on the utilization of similarity in order to facilitate the acceptance of a brand by consumers. The brand imitator may attribute the original brand’s properties (quality, performance, reliability, origin, etc.) and such generalization is thought to have a significant impact on brand attitude and purchase. The similarity of two products is generally perceived by consumers as a product by same company. This generalization gives path to imitators. When the qualities and image of a product is not clear in the mind of a consumer then this confusion also leads towards brand imitation.

The aim of the creators of imitator brands is to position the new product next to a better known (often market leader) brand. One potential result of brand imitation is consumer brand confusion, where consumers buy the imitator brand thinking it is the original. Brand imitation is not a minor problem. Brand imitation cases involve fast moving consumer goods, automobiles, sportswear, travel companies, professional sports associations, petroleum products, limousine services, fast food restaurants, insurance companies, casinos, medicines, watches, and food products, to mention only a few.
Imitation strategies beyond a certain point can have harmful consequences for both firms and consumers. Two occasions for potential harm to firms occur when a consumer unknowingly purchases an imitator brand. First, the consumer may be dissatisfied with the product purchased and attribute his or her dissatisfaction to the original brand, never realizing that the brand consumed was an imitated brand. Second, the consumer may be satisfied with the imitator brand, become aware that it is not the original brand, and switch brand preferences in favor of the imitator brand. Competitor imitation strategies and resultant confusion can thus harm firms by reducing the number of consumers who become repeat or loyal purchasers.

Additionally, consumers’ product or service choices may suffer when they misattribute product dissatisfaction with an imitator product to the original brand. For example, when a consumer unknowingly buys a pair of counterfeit Nike whose soles split after a week of use, he or she is unlikely to buy Nike again—even though Nike may be a high quality product and was the original brand choice.

**Imitation Strategies**

Imitation strategy is the strategy that mimics the strategy of other companies. Imitation strategy can be classified into four types.

- **Imitation strategy of the first type is piracy strategy.** Companies that perform this kind of imitation strategy sell products with the brand and product design exactly the same. This strategy has illegal activities.

- **Imitation strategy of the second type is cloning strategy.** Companies using this strategy are really imitating an existing product, but give other brands.

- **Strategy imitation of the third type is a strategy that mimics the design or trade dress mentioned.**

- **Strategy imitation of the fourth type is creative adaptation strategies,** namely copying existing products and developing or adapting to apply to the new environment. This strategy is also referred to as a strategy of camouflage or disguise strategies.

For large companies, strategy of imitation is only used for short-term, such as Toyota’s Lexus to compete with BMW and compete
with Rinso Wings. While small companies have often used it as a permanent strategy. Small brands in general use it when entering the market, and to reach regions that are difficult to reach by big brands. This strategy is suitable to target lower markets. Imitation strategy not only imitates in making products, but also imitates the strategy of promotion and distribution strategies. However, imitation strategy is only used at the beginning of it. If companies continue to use this strategy for a long term, this company will be its firm follower and will never be number one company or market leader.13

**Can Imitation be Strategic?**

Strategy rests on unique activities, deliberately choosing a different set of activities to deliver a unique set of values. Imitation, however, can be a part of a set of activities that is distinct in its derivative form or combinative architecture. An imitation can be a replica of an existing product, process, or model and yet be new to a product market or region. A blueprint for the formulation, deployment, and exploitation of imitation strategies, to make for an easy to execute framework the key strategic dilemmas are translated into basic questions of where to imitate (the industry from which to draw the imitation), what to imitate (the object of imitation: a product, a process, or an entire business model), who to imitate (the entity behind the model), when to imitate (the timing of imitation), how (the form and process of imitation), and how brand benefits to imitator?14

**Where to Imitate**- Imitation opportunities exist everywhere, but there are sectors where imitation is especially feasible. In general, imitation tends to be easier where legal protection is not robust and where complementary assets cannot be mustered to protect innovators.

**What to Imitate**- Imitators start with one target in mind and end up with another. It is vital for the firm to determine the target in advance, because once imitation is launched, it is very difficult to abort the process.

**When to Imitate**- “Imitation without a temporal sense is probably doomed.” Imitator follows a pioneer, but often they are in a position to choose whether to be an early or a late entrant. On rare occasions it is even possible to move ahead of the original. The main strategic choices concerning timing are to be a fast second (a rapid mover
coming on the heels of a pioneer), a come from behind (a late entrant trailing the first imitators using strong differentiating factors). The fast second strategy captures the bulk of pioneer advantage at a lower cost and with a higher success probability. Recently, HUL launched new round shape Ponds Dreameflower powder, but within two months Ponds imitated powder was found at a slum area (Dharni) in Amravati District. The come from behind is a latecomer that may have been forced to sit it out because of legal barriers, regulation, technical difficulties in building a working replication, internal resistance, or a market dominated by two or more strong players. Latecomers also may have made a deliberate decision to enter the market with new imitated product at a more opportune time- for example, when consumer confidence is higher or receptivity toward a new product category is greater. There is sometimes merit in a late entry using lower pricing, especially if customers are uncertain about product quality; however, a late entry differentiated by quality, price, appearance.

In many new product markets, the initial phase of slow growth is followed by takeoff, maturity and finally decline. This life cycle gives the latecomer imitator plenty of time to become thoroughly familiar with the users’ needs or to develop a superior understanding of the underpinnings of the system. By leveraging superior strength in key areas such as quality, reputation, design, or geographic reach, the latecomer imitator can leapfrog the innovator and early imitators, depriving them of their hard-won advantages and transforming the lead into a liability and a sunk cost. The survey in Amravati district reveals a very interesting story in this context according to the experience shared by retailer that ‘P.B. Patel’s camel snuff was sold at ₹1/- and after few years company stopped its production and introduced same snuff but after increasing price to ₹2/-. Latecomer imitator was very familiar with user’s needs and by hiring same packaging-manufacturer which worked for the Patel industry, launched same snuff product in slum area at Rs. 1/- with same brand name.

How to Imitate- The question of how to imitate has to do with the pattern, process, and sequence. The bottom line is that imitators not only must make a clear decision on how to imitate but also must build a detailed road map that will show how to get there. This
planning should include a clear designation of staff and unit responsibilities and processes to be used from inception to implementation.\textsuperscript{15}

**How Brand Imitations Benefits**

**The Manufacturer of Spurious Products**
- Run by increasingly sophisticated and highly organized groups.
- Two core competencies required:
  - Efficient, low cost manufacturing; and
  - Excellent distribution network.
- Why is it so profitable for them...?
  - Much easier to copy than innovate.
  - Steal the idea at no cost.
  - Very quick turnaround.
- How is this done......?

**The Product**
- They will invest in appearance, but not on ingredients.
- The carton / outer pack may look like the original, but its performance will not.
- The major health and safety issue is on foods, in unhygienic environments with zero health standards, or analysis or raw materials.
- But even more worrying is the consumer safety.

**Retailer’s Imitated Brands**

One of the most vexed marketing issues to have surfaced in recent years in developed markets is that of retailer ‘Imitated’ brands. Such imitations have been particularly evident in many countries but the problem is one which confronts brand owners in other countries too. Imitated brand are retailer private label brands which mimic the trade dress of the brand leader. The imitators try to avoid direct trademark infringement by choosing names which do not infringe those of the brand leader and therefore, the brand leader normally
has no legal recourse based upon registered trademark rights. In practice, the irate brand owner usually has little option but to bite the bullet or to appeal to the retailer’s sense of fair play.

The problem is of course exacerbated by the fact that retailers are both competitors and customers of the brand owner who are particularly reluctant to adopt a massively confrontational stance vis-à-vis such important customers. Conversely, the retailers themselves are coming under such price competition, which might have been unacceptable to them some years ago are now seen to be justified on commercial grounds. The irony of the retailer imitated brands is that they are not directed at weak or under-supported brands but at brands which have been well and consistently managed and supported by their owners. Indeed, the purpose of the imitator is, clearly, to compete by unfair means with brands where conventional, fair private label tactics have failed.

In fact, the imitated brands are not priced at a huge discount to manufacturers’ brands. Rather, they are priced quite close to the manufacturer’s brand and at a substantial premium to conventional own-label. Clearly, they are an attempt by retailers to buy products at private label prices and sell them at close to manufacturers’ brand prices without any of the costs of brand development or brand support. It is certain that the imitations have crossed the line between what is fair in business and what is not fair. If imitations are allowed to continue it shall not only see the destruction of leading brands but also a massive reduction in brand-related economic activity and investment.16

**Protection to Trade Mark**

It is generally acceptable to use the ® symbol to indicate that a word or device is a trademark. In many countries, however, this symbol usually has the legal meaning of ‘Registered Trademark’, and since there are very few countries in the world which do not have penalties for describing a mark as registered when it is not-and since it is sometimes difficult to achieve registration of a company’s trademarks in all countries of interest, it would be wise to avoid the use of the word ‘registered or the ® symbol for products destined for many markets, while the Trademark application is still pending, is to use TM. It should also be noted that in some countries
it is essential to indicate that a mark is registered in order to be able to assert one’s rights subsequently against third parties. In many countries, the symbol must be used as soon as the mark is registered, as otherwise it is not possible to obtain damages in infringement proceeding. Although, a brand is much more than a name, the name itself (and its visual rendering) is usually one of the following:

- a trademark
- a trade name
- a service mark
- a certification mark (authorized use of another’s trademark to indicate the quality or legitimacy of the third party, e.g., by a repair service to indicate they are authorized to do work for the original equipment manufacturer)
- a collective mark (used by members of a group or professional association)

Counterfeiting: Another Form of Brand Attack

Counterfeit products are those bearing a trademark that is identical to, or indistinguishable from, a trademark registered to another party and infringe the rights of the holder of the trademark. Counterfeits are reproductions of a trademark brand, which are closely similar or identical to genuine articles. This includes packaging, labeling and trademarks, to intentionally pass off as the original product. Lai and Zaichkowsky stated that counterfeiting and piracy are in essence the same since they are both the reproduction of identical copies of authentic products. These two terms have been used interchangeably. However, piracy is mainly related to software and fixed medium content such as film and music recordings. Furthermore, counterfeiting is dissimilar to other forms of intellectual property infringements like grey market goods.

What are the common features of pass-off and a counterfeit product? Both are bogus. Counterfeiting is the art of accurate duplication where even the original manufacturer won’t be able to distinguish between a genuine and a fake product and pass-off product on the other hand, is one which comes with minor changes from the original one. An extra alphabet or the absence of a G in your Parle-G biscuit are some examples.
Counterfeiting appears in two different forms, as deceptive and non-deceptive counterfeiting. Under deceptive counterfeiting, the consumer is not aware of the fact that he/she purchases a copy rather than the original product and cannot be held accountable for the behavior. In non-deceptive counterfeiting, consumers intentionally purchase fake products. Counterfeit products diminish the symbolic value of authentic products and dilute the brand equity. As counterfeits are cheaper alternatives of more expensive genuine products, there might not be a noticeable difference in perceived quality, which will result in the erosion of genuine brand equity.

The counterfeiter enjoys the benefits of the equity inherent in the brand without having to pay the costs of building this equity or ensuring the product is of the same quality as the branded goods. The difference between fakes and genuine is so difficult to tell that it foxes not just unsuspecting consumers but even sales executives of companies. For example X Company producing Tommy Hilfiger shirts is counterfeiting a mark without acquiring a license to do so and without paying any royalty. Certain consumer goods, especially very expensive or desirable brands or those which are easy to reproduce at low rates have become quite frequent and common targets of counterfeiting. The counterfeiters either attempt to deceive the consumer into thinking they are purchasing a legitimate item, or convince the consumer that they could deceive others with the imitation. Some counterfeits are produced in the same factory that produces the original, authentic product, using the same materials.

Counterfeits of brands are intentionally capitalizing on the fact that their products are positioned at a lower and more competitive price. On the same note, there is a compelling and addictive attraction basing on the attitudes that consumers would want to purchase a branded product, but would be unwilling to foot the high price tag associated with it. The general perception is that the low financial risks provide the added benefit for consumers to purchase counterfeit goods, as prices of counterfeits are relatively advantageous. In addition, because counterfeits are often at a lower price, the expectation of quality would not be equivalent to that of the genuine article. As long as the basic functional requirements are met or the visibility and symbolic value is achieved, consumers will be satisfied.
However, the product quality of counterfeit products has been improving in recent years due to better technological advancement, bringing a competitive advantage to counterfeit products. Certain products can be tried before purchase to gauge the functionality or performance, which can encourage consumers, willingness to purchase. However, unlike genuine products, counterfeit products are still without warranties, adding to greater financial risks of purchases. It has been found that if the perceived product attributes between the genuine product and the counterfeit product are similar in terms of quality, the purchase intention will be higher.20

Counterfeiting has existed for a long time, yet the phenomenon has only been a serious concern for legitimate manufacturers since the 1970. It is estimated that the value of counterfeit goods in the global market grew by 1100 percent between 1984 and 1994. The International Chamber of Commerce states that counterfeits account for eight percent of world trade. Globally, the sales of counterfeit products are estimated to be about $300 billion. Clearly, counterfeiting has become a significant economic phenomenon in the last two decades.

Despite the fact that selling and manufacturing counterfeits are considered to be crimes in some countries, for example, the U.S. and the U.K, near about one-third of consumers would knowingly purchase counterfeit goods regardless of the potential consequences associated with counterfeits. Since demand is always the key driver of a market, consumer demand for counterfeits is one of the leading causes of the existence and upsurge in growth of the counterfeiting phenomenon.

**Counterfeiting: International Scenario**

A recent survey from the US has come out with the finding that worldwide 10 percent of perfumes and cosmetics, 11 percent of clothing and footwear and around 6 percent of drugs bought by consumers are fake. The figure rises to a staggering 80 percent in some developing countries. According to the international Anti-Counterfeiting coalition in the US alone trademark counterfeiting robs the country of $200 billion (₹9,20,000 crore) annually. The anti-counterfeiting group (ACG) organizer of a pan–European survey, put the total loss to the European Union economy from counterfeiting...
and piracy at ₹20, 00,000 crore per year which is lost in taxes and excise.

**Counterfeiting in Asia**

Talk about counterfeit products and one automatically thinks of a few counterfeits. While India is not lagging behind the rest of the pack – mostly developing countries- it is China that is head and shoulder above others in this category. China is the biggest source of counterfeit goods in Asia and piracy rate in China is more than 90 percent. As much 30 percent of the counterfeit products worldwide are being made in China. China's spurious goods are sold all over the world including India, counterfeit goods are easily accessible in Indian markets. Countries like Singapore and Hong Kong which are regarded as shoppers’ paradise are also a den for counterfeited goods brands like Louis Vuitton.21

China has been acknowledged as the world’s most notorious country for counterfeiting, where all sources of counterfeit goods can be traced. It has been recorded that 20 percent of goods sold in the Chinese market are counterfeit goods. These goods span across a wide range of products including apparel, cigarettes, electronics, food, mobile phones, pharmaceuticals, skin care products and many others. In particular, as the Chinese are avid consumers of luxury goods, the counterfeiting of luxury brands has reached astronomical levels.22

**Counterfeiting in India**

Indian metros have become bases for manufacturing counterfeit products and account for maximum IPR violations. Delhi is the hub of counterfeit products in India as nearly 70 percent counterfeit originate there. A FICCI survey has estimated the loss of revenue to the Indian exchequer by way of taxes to be roughly around ₹1,000 crore a year. FMGC, Software, Automobile, Packaged Water and Garment sectors are the most affected by IPR violations, though there are laws in India against counterfeiting, their enforcement is tedious. Lengthy legal proceedings often yield no results.

Modern-age counterfeiters are experts. They counterfeit goods using technologically innovative methods. Delay in judicial relief has assisted counterfeiters in remaining one step ahead of the law. In this context, section 135 introduced in the Trademark Act, 1999, is
significant. It gives statutory powers to the courts to grant *ex-parte* (that is without notice to the defendant) relief in appropriate cases. The courts are empowered to grant *ex-parte* injunctions against infringers restraining them from selling counterfeit goods, etc., and *ex-parte* order for discovery of documents, preserving of infringing goods, documents or other related evidence and restraining the defendant from disposing of his assets in a manner which may affect plaintiff’s ability to recover damages.23

**Consequences of Counterfeiting on Society**

Counterfeiting is often viewed as a victimless crime. Some consumers believe that purchasing fake product means they get ‘great deal’. Other believe that many luxury brands are overpriced to begin with and that brand owners will get their ‘comeuppance’ by having counterfeits of their goods sold in the market at low prices. It is clear that some counterfeits have direct and harmful consequences. The harm wrought by counterfeit products affects a number of different parties –brand owners and the brands’ consumers, employees, distributors, and investors, as well as government and law enforcement authorities. The economic and social consequences of counterfeiting to these and other parties can be very damaging.24

**Harmful Effects of Counterfeiting**

The drastically low cost is a pointer to the dangerously high health and safety hazards that fake products pose. But neither the Government nor the industry has done much to test and publicise the harmful effects. Most counterfeit products- including fake medicines- are not poisonous, but simply ineffective and unhygienic. People consume fakes without suffering side effects, that keeps the business going and no alarm is raised. In most cases, the damage could be slow, steady and irreparable. The consumer is unable to trace the cause to the product. A recent lab test conducted by Pepsi India of 67 fake and regional soft drinks brands in Rajasthan found bacteria, yeast and coli in most bottles.

Even Aircraft Components despite of the fact that the legitimate market for aircraft parts is a heavily regulated industry, counterfeit aircraft parts slip into the chain of supply and distribution and can result in death and injury. The origin of counterfeit aircraft parts, where it can be ascertained, indicates that, with respect to accidents
in the United States of America caused by such parts, more reported incidents involved parts produced in the United States of America than in other areas of the world. It is reported that the number of incidents of detection of unapproved parts has been positively affected by industry and government cooperation. Similarly, there is an emerging growth area for counterfeiters, who target short-duration products, such as standard parts which are or can be sold off the shelf, or which can be fitted to different makes and models of automobiles components. Such parts are less likely to carry any security device or anti-counterfeiting technology.

The health and safety risks they pose make counterfeiting of medicines and FMCG products more grievous than the piracy of other products. It explains the abysmal level of consumer awareness about the staggering scale and the harmful effects of counterfeiting.25

**Economic Consequences of Counterfeiting**

The brand owners and consumers often suffer considerable harm from counterfeiting. In fact, the harm extends to governments at all levels and even to entire societies. The creator of goods or services is the one who will be most hurt by product counterfeits that attempt to imitate their creation. However, in many cases, creator transfers the rights in their original creation. They could sell the brand name or license another party to produce their brand name creation. When unauthorized products are introduced that attempt to capture the value of the legitimate brand, these right holders can also be harmed.

According to the International Anti-counterfeiting Coalition (IACC), automobile manufacturers are losing $12 billion annually, and the equivalent of 210,000 jobs to counterfeit parts. There are estimates that the unlicensed manufacture of medications is running in excess of $10 billion a year. Without having to recoup research and development costs, many counterfeits can enter the market with a similar product in less than two percent of time and less than 1/1000 of the cost of manufacturing the original. World Trade Organization and other involved pharmaceutical industries suggest that 5 to 7 percent of the world’s medications may be counterfeit. A study of International Association estimated that a group of participating manufacturers lost an average of 22 percent of their sales as a result of trademark infringement and counterfeit. However,
authentic products and counterfeit products are not always perfect substitutes for each other. Therefore, it is often difficult to determine exactly how many sales are being lost to the counterfeiters. Counterfeiters increase the supply of seemingly comparable goods in the marketplace. At the same time, counterfeit products drive down the demand for products from legitimate producers. If the producers of authentic goods reduce their price to compete with the counterfeiters, then the brand is devalued because it appears not to warrant the premium price for which brands are developed.

Another loss may be royalty income. In many cases, original creators eventually sell the rights to produce and/or sell their branded product. The value to the licensee is based on the value of the brand that has been developed previously. Normally, the original licensor benefits from the licensing agreement by obtaining a royalty from the licensee that is based on the number of items produced and/or sold. Thus, when counterfeiters adversely impact the sales that the authorized producers are able to make, they also impact the royalties which the authorized producers are going to be able to make to the original right holder. In many cases, the end consumers are unaware that they have purchased counterfeit goods. Therefore, when the product does not perform as expected, or as the consumer has come to expect from previous usage then the reputation of legitimate producers is damaged. Even if consumers later become aware that the product was not authentic they may still blame the legitimate producer for the damage done. A more subtle, but no less worrisome, dimension is the effect of the economic consequence of counterfeiting and piracy upon society.

**Social Consequences**

The social consequences of counterfeiting and piracy are felt most personally by those artists, creators, and entrepreneurs who compete directly against the illegal products. As an example, local musicians, music groups, record companies, and distributors cannot put out a record or CD; and their products (embodying local and national artists) are pushed out of the market by the counterfeit copies, which are sold at a lower price, and generally with none of the artwork, lyrics, or printed material which accompany legitimate copies, and certainly no guarantee as to quality. As this example of
music shows, local creativity and culture are strangled by counterfeiting and piracy; the country and its citizens are the ultimate losers in this scenario, as inadequate respect for cultural works and heritage counters national efforts to promote indigenous culture and identity. Counterfeiting of medicines, airplane and auto parts has a detrimental effect on the health and safety of the public. The WHO estimates that approximately 70 percent of all medicines sold in some African countries is counterfeit. While counterfeit medicines are more of a problem in developing countries, their effects are universally felt by all. In 1981, the pharmaceutical company Searle discovered that over one million counterfeit birth control pills had been distributed to unsuspecting women, resulting in unwanted pregnancies and irregular bleeding. The United States Food and Drug Administration recalled US $7 million worth of intra-aortic pumps used during open-heart surgery after it discovered malfunctioning counterfeit parts in them. A counterfeit version of the antibiotic Ceclor™ caused children in seven states in the United States of America to suffer painful ear infections and possibly permanent ear damage. In Mexico, a counterfeit version of the powerful skin medicine Retin-A contained only vitamin A cream. With respect to counterfeit aviation and auto parts, several incidents have resulted in death. In 1989, a Norwegian airplane crashed, killing 55 persons. The cause was reported as substandard counterfeit bolts. In 1991, General Motors Corporation investigated an auto accident in which a mother and her child were killed. The results indicated that counterfeit brake parts had caused the accident; the counterfeit brake pads were made out of wood chips. A helicopter crash in 1987, which caused the death of a reporter, was caused by a counterfeit clutch; upon further investigation, it was learned that similar accidents had occurred, and that more than 600 helicopters, some sold to NATO, were equipped with the same counterfeit parts. These examples highlight the fact that purchasers of counterfeit goods do not have the same benefits and protection that purchasers of authentic goods enjoy including warranty protection and the advantages that derive from use of products that have had the benefit of regulatory review. The lesson from just this aspect of counterfeiting is clear, and must be taken seriously: people can die when criminals foist counterfeit items, especially medicines, and auto and airplane parts on an unsuspecting public.26
Why Counterfeiting and Piracy are Increasing?

Advances in new technologies, particularly digital and computer-related technologies, have produced marvelous new products and services which make our lives more pleasant and more interesting, and which empower the individual as never before. Cultural activities, such as music, film, literature and art, are enhanced on an almost daily basis. New medicines and vaccines, and new medical treatments, are reported so frequently that we start to take for granted the amazing power which exists to fight disease and sickness, prolong our lives, and reduce suffering in the world. Some of these technological advancements have not been used for the public good. Manufacturing now accounts for more than 75 percent of total world exports. Manufacturing is a value-adding process. While manufacturers are constantly adding value to existing products, they are, at the same time, creating new products; and this creates market demand.

By increasing market demand for their products so effectively, manufacturers are also, unintentionally, creating a market for counterfeit products, which are almost always lower in price. Manufacturers are thus victims of their own success. Price differences between various markets, which are often strategically segmented by manufacturers and distributors, are reflected in pricing policy, underscoring a significant gap in consumer purchasing power in different countries. This policy often drives people to produce and distribute counterfeit goods in their local market. As counterfeiting activities have become rampant, counterfeiters create distribution channels and establish an economic and even political presence in society. Some economies are supported by these activities which create local job opportunities. Emerging markets are producing an increase in demand of startling proportions for well-known products, which legitimate manufacturers have been unable to completely satisfy. This extraordinary demand for goods and products has outstripped the abilities of the enforcement agencies to monitor and protect against counterfeit products. Certain new technologies have allowed easier reproduction of IPR bearing products and goods and facilitated the reproduction of products in nearly every field where there are eager customers or market demand for the legitimate products. Cultural products, such as music, films, computer products,
and literary products, are easily reproduced and foisted onto the public, facilitated in large part by new technologies. International trade has increased substantially in the past few decades, for several reasons, including: standardized rules and remedies applicable to the multilateral trading system; increased telecommunications capacities; the rise of the Internet; and the effectiveness of manufacturers in branding their products, creating market demand, and producing products which are designed to satisfy that market demand. Increased worldwide demand for goods and products and a corresponding lack of proportional increase in worldwide enforcement mechanisms needed to support that demand and production, such as customs, police, and judiciary, allow for cracks and niches in the system. Counterfeiters are right there, ready to fill those cracks with counterfeit goods.

**Organized Criminal Involvement in Counterfeiting**

Because of high-profit potential and relatively low risk, organized criminal elements are deeply involved in counterfeiting and piracy. Profits from counterfeiting and piracy are often used to fund other criminal activities; and unfortunately, the criminal enforcement infrastructure, as well as the public, does not always view counterfeiting and piracy as the serious crimes that they are. The active involvement of organized crime in counterfeiting and piracy is a proven, irrefutable fact. International criminal organizations produce, distribute, sell, and traffic in counterfeit and pirated goods for several reasons: it is lucrative; it is often a low-risk activity; and it funds other activities where the risk, as well as the rewards, are much greater. A disturbing attitude has existed in the public, and sometimes in the judiciary, and in law enforcement agencies, that counterfeiting and piracy are low-level mischief and of little consequence. The dedicated efforts of many organizations and governments have finally started to change this misperception. The results and consequences of the involvement of organized crime in counterfeiting and piracy can be quite serious. Organized crime is almost always involved in commercial-scale counterfeiting and piracy operations. The profits from such operations are then channeled into other criminal operations. It is a connection which is dangerous and, as discussed, leads to unwanted and serious short-term and long-term consequences.27
Combating the Counterfeiting Menace

When evaluating anti-counterfeiting technologies, two questions generally remain foremost in the minds of corporate executives- ‘will it work?’ and ‘will it be worth the investment?’ These questions are particularly germane in view of disappointing results that some companies have experienced in their rush to adopt various methods to protect their brands, only to see that astute counterfeiters were able to defeat their efforts in short order. The key issue, therefore, is not simply to adopt a technology, but to adopt the right technology. The application of an anti-counterfeiting solution can indeed provide excellent protective measures and significantly reduce the counterfeiting problem if the brand owner adopts three fundamental strategies. First, the solution must be thoughtfully chosen, second, it must be effectively promoted in the marketplace, and third, the technology must be properly implemented. The three core strategies are reviewed below:

First, in order for any technology to succeed, it must be implemented at the most elemental level- i.e. the very product that is sold in the marketplace. The greatest success in terms of interdiction and deterrence against fraud can only occur when a brand owner’s products are clearly distinguishable from counterfeits and knock-offs. The role of the technology solution should be to greatly facilitate that distinction which in turn provides a clear asset in terms of an anti-counterfeiting impact.

The second fundamental strategy requires the company to communicate its adoption of an anti-counterfeiting solution to the marketplace. Although this should seem obvious, many brand owners are loath to admit that a counterfeiting problem had afflicted their products in the first place. This positive approach, which can be undertaken by the sales team directly to the retailers, makes for a far more effective message. The brand owner will be remiss if it invests in an anti-counterfeiting technology and then fails to properly promote it in the marketplace.

The third and final strategy is elegantly simple- choose the right technology! Some companies in the past have deployed a technology solution that did not effectively target the actual problem and therefore, ended up being unsuccessful, much to the consternation of senior management. Certain anti-counterfeiting technologies are inherently
expensive and yet have a short half-life, because the counterfeiter can easily duplicate them. An effective solution for protecting branded assets can only be arrived at by identifying a technology that has considerable robustness and longevity and yet requires a modest and acceptable level of investment.

So, how exactly does a brand owner confidently identify a brand protection technology that will have a high probability of success in passing the two salient questions posed at the outset—will it work and will it be worth the investment? There are five Golden Qualities that are critically important in any effective anti-counterfeiting solution. The fundamental requirement for brand owners is to adopt a technology that can be applied at the individual product or item level. There are various brand protection solutions that are indeed applied at the product level, but which are of use only to security specialists and therefore impenetrable to the ordinary consumer.

The first golden quality consumer empowerment represents an absolutely critical requirement for several reasons.

Second, a strong case can be made in terms of obtaining a marketing edge when consumers are empowered with verification ability.

Third, consumer verification at the time of purchase serves as the most potent answer to public calls for greater corporate responsibilities and provides the best response to that delicate question. The anti-counterfeiting technology in this case would not only provide robust brand protection but also shield the owner from any culpability in those cases where a fake product was purchased by a consumer who opted to bypass verification.

Fourth, anti-counterfeiting technology ensures ease of implementation, use by the consumers and long-term stability. The identification of fake goods at the point of sale would provide an entirely new dilemma and make guilty retailers aware that they can be easily identified.

Fifth, anti-counterfeiting technology should provide some additional valuable features.28

An Overview of Counterfeits/Imitated Brand Market

FMCG Products

Fast Moving Consumer Goods (FMCG) or Consumer Packaged
Goods (CPG) refer to the products that are sold quickly at low price rates. As the products are sold quickly so the products have gained the phrase “fast moving consumer goods”. To be more precise, FMCG is an acronym for Fast Moving Consumer Goods that we buy from local supermarkets on daily basis. The things have high turnover at relatively low-cost. The absolute profit made on this kind of product is relatively small but as it is sold in large quantities so the holders and the businessmen concerned with it get a notable profit on it.

The main features of FMCG products from market’s angle:

- Generally replaced and used for a short span;
- High turnover at relatively low-cost;
- Sold quickly;
- Having fast move in the marketplace;
- High volumes;
- Marginal profit but sold in large quantities;
- Extensive distribution networks; and
- High stock turnover.

From a consumer perspective, the characteristics of FMCG products are as follows:

- Frequent purchase;
- Requires low involvement (one need not require any effort relating to the item particularly those having strong brand loyalties); and
- Low price.

FMCG may categorize products as follows:

1. **Personal Care**
   i) Oral Care (Toothbrush, Paste, etc.)
   ii) Hair Care (Shampoo, Hair oil, etc.)
   iii) Skin Care (Suns cream, body lotion, etc.)
   iv) Personal Wash (soaps, etc.)

2. **Cosmetics and Toiletries**
   i) Perfumes
   ii) Feminine hygiene
   iii) Deodorants
   iv) Paper products, etc.
3. Household Care

Household care fabrics wash including laundry soaps and synthetic detergents. Cleaning, washing up, dish/utensil cleaners, floor cleaners, toilet cleaners, air fresheners, metal polish and furniture polish, insecticides and mosquito repellents, bags & foils, etc.

4. Besides, dairy products, baked goods, meat, fruits and vegetables are included in this genre.

5. Alcohol, toiletries, pre-packaged foods, soft drinks and cleaning products are also in this category having high turnover.

Market Scenario of Fake Products in FMCG Product Categories

Technically, fake products are those that are identical to the original in looks, colors, name- down to the last detail on packaging, including the manufacturer’s address. Not every producer of the phony goods goes to such lengths. Some make a slight change in the name and copy the rest of the design to pass it off as the original. In most cases, a consumer is not able to notice the subtle change. 80 percent of those who purchased lookalike brands thought they were buying the original. Besides, under Trade Mark Act, imitation of label, words, letter, shapes of goods, packing, combination of colors and even signature is also an offence. In fact, the more popular a brand, the more it gets copied. For example, Nokia becomes NOKAI/ NQKAI, Ponds may be Poland, Fair & Lovely becomes Four & Lovely, Saridon could be Silidon, and Zincovit Syrup become Zinkovit Syrup, etc. In most cases, a consumer is not able to notice the subtle change. The following information helps to know the products are fake or not. Counterfeiting can kill a brand and cripple a company’s distribution system. The losses of the industry and the government are the gain of faker. Counterfeit products are sold at the same price as the originals, but the production and marketing cost are usually less than a fourth of the real’s price. The use of cheap ingredients, zero expenses on advertising and minimal distribution costs enables a faker to recover his investment within three months, after that it is cream. The fake version of a BL-5C Nokia Battery, costs only ₹ 80, while original having cost tag of ₹ 600. An 80g of spurious Krack Pack Biscuits could cost less than ₹ 5 against the market price of ₹ 8, that of original.29
It is becoming a common experience for the consumers, who are duped into believing that the products they are buying are genuine, but which are actually fake. The plethora of counterfeits and pass-off (look alike) products have posed a serious problem before leading Fast Moving Consumer Goods (FMGC) companies such as Hindustan Unilever, Proctor & Gamble, Tata and so on. Companies have already initiated a major mass awareness campaign against the counterfeits of their brands, apart from a legal action against the violators of their trademarks and copyright.

**Identification of a Fake**

The menace of these look-alike and pass-off products are not easy to detect since they carry the similar brand name, graphics, packaging colour and get-up with minor alterations. This can confuse the buyer and they often do not even know that they are buying a fake product. These spurious products replication of well-known brands are of lower quality and efficacy with adverse side effects and safety hazards to consumers. For example, a low quality beauty product can cause skin rashes and other health problems. Consumers can ensure buying genuine product, if he/she thoroughly studies following details.

**TABLE 1: HOW TO TELL A FAKE**

| **Ingredients** | Though a mandatory requirement, key ingredients of the product may not be mentioned on the product. |
| **Date of Manufacture, Batch No.** | Usually embossed on tube crimps or printed on labels of bottles, this information may not be there on a fake. |
| **Packaging** | Design and colour are not the latest versions. Printing will be inferior and may come off. |
| **Manufacturer’s Address** | In case of lookalike products, manufacturer’s address will be missing but fakes carry full details as in the original. |
| **Similarity** | In many cases, fake products look exactly similar as original. Very little change may be there on a fake. Pay close attention to ads announcing new packs. |

As per the Indian Standards, products should be legibly and indelibly bear a number of information that gives the consumer a complete idea of the product they are consuming.

The mandatory information on the products is as follows:

a) Name of the product
b) Name and address of the manufacturer
c) Date of manufacture
d) Batch number
e) Net volume of content
f) Green dot (Veg. mark)
g) Red dot (Non Veg. Mark)
h) FPO license number
i) Storage instructions
j) Instruction of use/consumption
k) List of key ingredients
l) Nutritional information
m) Disposal of packaging/recyclability of packaging

Typical Affected Products

Computer Software

This is the most affected of all the products and industries touched by counterfeiting and piracy. According to the *Global Software Piracy Report*, the Business Software Alliance (BSA) and the Software & Information Industry Association (SIIA), the global piracy rate for PC business software applications was an astounding 36 percent.

Luxury Goods and Fashion Wear

Copies of luxury goods, especially fashion goods, proliferate most notably in Europe where the major manufacturers are located. To import fake clothing or items from one country, and to manufacture or import the labels from another is very common. The common technique is that the fake labels are attached in the country of intended sale, thus making it much more difficult to identify fake goods in
transit while these goods are in sufficiently large quantities to justify governmental enforcement action. It is observed that one of the major sources of these fakes is legitimate sub-contractor manufacturers, facilities which are legitimately authorized to manufacture original items, but who manufacture far in excess of the ordered amount. The overruns more out of the back door at greatly reduced prices than original. These overruns creat a sort of gray market; they are items illegitimately manufactured by a legitimate manufacturer, which are illegitimately sold or placed in the stream of commerce. These overruns are essentially counterfeit goods which negatively affect the economy.

To quote an example in this context very recently fake phones have hit the Chinese market much before Apple released the real ones. It is called ‘hiPhone5’ which is a copy of ‘iPhone5’, to avoid copyright regulations concerning brand names. The product is being sold for prices ranging between 200 yuan and 800 yuan (¥1300-5400) according to technology website cnet.com. The copycats’ products are designed along rumored specifications and leaked image about Apple’s real version. However, Apple company is yet to announce the specifications of iPhones’s new version, which is likely to be launched in the coming weeks.32

**Sportswear**

Sports are big business, but so also is the sporty, healthy lifestyle, with a dramatic increase in spa and fitness facilities, and the proliferation of diets, healthy life books, and so forth. Counterfeit sportswear is facilitated by several factors. The biggest segment of the market for these items is the youth market, the segment most willing to buy, even search out, counterfeit goods with well-known brand names at lower prices. The market for these items is also easily reachable, since, to a large extent, it centers on major events, particularly sport and music events. Mobile vendors of counterfeit goods are present in large numbers at these events, and evidence suggests that these vendors are internationally organized and funded. Because they generally carry small inventories to these events, governmental authorities are restrained from putting a heavier emphasis on, or using more resources against them. Another factor which helps this area to prosper is that buyers mostly just want the brand name; counterfeiters can easily attach fake labels onto ordinary clothing, and thereby satisfy large numbers of the youth market.
Perfumes

Perfume products are generally sold in established retail outlets, which lend price stability and authenticity to the market. However, the industry is experiencing attacks from counterfeiters and estimates that its losses in this area are greater than 15 percent of its total turnover. A willing public will generally purchase counterfeit perfumes from smaller shops and street vendors at so-called bargain prices, where it is often claimed that the goods are stolen, but are the real thing.

Toys

The toy industry can be divided into traditional toys, and the rapidly growing electronic toy industry. Traditional toys are often copied, and then sold under different names and trademarks, rendering infringement actions close to impossible. Electronic games are an ever more serious problem.

Pharmaceuticals

Because of the dramatic effects which counterfeit pharmaceuticals can have on public health and safety, including the death of unsuspecting victims, this is an area which currently receives more attention than ever before. The problem of counterfeit drugs and medicines is most acute in certain developing countries, where there might not exist a regulatory infrastructure to prevent or curb the problem. According to a recent OECD report on counterfeiting, the main factors underlying the problem of counterfeit pharmaceuticals in developing countries are: “weak drug regulatory control and enforcement, scarcity and/or erratic supply of basic medicines uncontrolled distribution chains; large price differentials between genuine and counterfeit medicines; lack of effective IPR protection; lack of regard for quality assurance; and corruption of the health care system.” It is estimated by the WHO that 6 percent of worldwide pharmaceutical sales are counterfeit, and that up to 70 percent of all medicine sold in some countries is counterfeit.

Counterfeit drugs are multimillion dollar industry. China admits its role in fake drugs supply in many cases. It is hub of fake medicines. The fake medicines market is said to be worth over $100 billion by 2010. Dubai is particularly attractive to counterfeiters because of its
strategic location. Records show that the nearly one third of drugs confiscated from Europe last year came from USA, UAE, IPR units of Dubai. Customs authority destroyed 293 tons of counterfeit products just in the first five months of the year. The New York Times wrote of a complex supply chain of fake drugs that ran from counterfeit drug manufacturers in China through Hong Kong, The UAE, Britain and the Bahamas, ultimately leading to an internet pharmacy whose American customers believed they were buying medicine from Canada.

Watches

It is estimated that 5 percent of global trade in watches is counterfeit. It is interesting to note that in some countries, such trade creates a barrier to the sale of legitimate products. The difficulties encountered by some governments in enforcing IPRs, and the public perception in some quarters that such counterfeiting in business as usual; all serve to hamper any efforts to beat back the legal trade.

Measures to Protect Brands

Brand- Need for Protection

Brands owned by a company are among its most important assets. The brand represents an assurance of consistent quality associated with the company that owns it. Like any other assets, brands are prone to various forms of attack. Counterfeiting, duplication, alteration, misuse, tampering or diversions are some of the various known and repeated forms of brand attack prevalent all over the world. When brand attack occurs, brand owners lose their revenue and market share that are legitimately theirs. More importantly, their reputation and image of the company suffer huge damage. Almost everyone in the value chain is affected when a brand is attacked.

- Consumer- Get less value, feels cheated and could even risk his life by consuming spurious goods.
- Brand owner- Loses profits, brand value and customers.
- Government- Loses tax revenue and incurs additional expenditure on enforcement due to the pressure to raid counterfeiters.
- Society- The resultant deterioration of culture, breeds dishonest behaviour.
Therefore, it is in the interest of consumers, brand owners and the government to bring the menace of brand attack under control. The scale of counterfeiting today is untenable, representing 5-7 percent of the world trade, which reflects a massive loss to the recorded economy. Thus, there is an urgent need to constantly look at newer and newer means of addressing and trying to resolve the problems from various forms of brand attack.

**Brand Protection- Today’s Business Armour**

From time immemorial, man has used an armour to protect his body from enemy attack and over the ages huge investments were made to improve the quality of this protection. Today, such protection is addressed by advanced new technology, whereby individuals hardly notice that their bodies and souls stand protected against even the most vigorous physical attack. New materials provide new solutions, but the ancient concept of the attacker seeking to protect himself to the maximum extent possible, against retaliatory counter-attack, remains unchanged.

In the world of brands, the modern day soul or essence of many businesses, brands are subject to attack, without the fair play that hallmarked the medieval battlefield. In modern times, in business as in war, all this has changed. Now, subterfuge has an important role in attack. Brands today are subject to fair attack through competing brands and unfair attack through forgery, fraud and every devious means of cheating the consumers as invented by man! In order to protect a brand from attack, visible as well as invisible “armour” must be used, defending against fair and unfair attack, countering every instance of non-heraldic cheating. The brand owner must protect his property and every available technique to mitigate the risk of attack on the brand.

**Protecting the Brands under IP Regime**

The modern industrialized nations are turning into branded societies. The change is clearly visible in the commercial arena, where the companies and their respective products or services are recognized by Brands. Brand provides identity to a commodity or service and ensures uniqueness of a good or a service. It creates a promise on part of the company to provide same quality of goods and services every time. Today, trademark is not merely a symbol of goodwill but
often the most effective agent for the creation of goodwill. The trademark jurisprudence is based on various rationales including consumer protection, economic aspect and propertization of brands. This diversification has led to fazed protection. Traditionally, trademark was considered merely a symbol of identification, but in the early twentieth century, the US Supreme Court expanded this view in the landmark judgment of *Coca-Cola Bottling Co. v. Coca-Cola Co.*, where the court held that “*trademark is merely one of the visible mediums by which the goodwill is identified, bought, sold, and known to the public.*”

This gave rise to the economic rationale for brands along with consumer protection. Law aims to protect a producer’s rights in the trademark, specifically the word or symbol, and such protection has been characterized as propertization. Trademark jurisprudence developed in light of consumer protection rights, property rights, economic efficiency and universal concepts of justice that underlie the law relating to brands.

The protection of brand under trademark laws assimilates the concepts of consumer protection laws. It aims at protecting the interest of the consumer by removing the confusion caused or which can be caused by the presence of deceptively similar mark and customarily, it protects the goodwill in a mark. A strong brand reduces informational cost, increases consumer confidence, facilitates price and variety competition, fosters the maintenance of quality and has the ability to satisfy the emotional and self-expressive needs of the consumers. Brand protection also involves trade law aspects such as unfair trade practices. Trademark doctrines encompass exclusive right of ownership in the mark. Unfair use of brand occurs when a manufacturer other than the owner falsely or deceptively uses the mark to promote its own product. Common law doctrine such as *passing off* developed as the result of unfair trade practices. These doctrines lay down the basis of present trademark laws. Moreover, economics also plays a vital role in the regime of the trademark laws. Studies based on economic principles provide incentives for firms to make investments that are aimed at gaining consumer confidence in their marks. Also, one of the principal benefits of trademark protection is that it lowers consumer search costs. Successful brand owners have earned a unique, credible, sustainable,
fitting, and valued place in customers’ minds. In addition, in the current competitive economies, brand is considered as the most important commercial and institutional asset. A trademark’s value depends on a brand’s reputation, which is a product of a firm’s expenditures on product quality, service, advertising, and so on. Hence, the protection also includes brand management, advertising and brand valuation studies.

International Legal Framework

Counterfeiting and piracy are most certainly current subjects of attention. However, they are not new subjects. In the 1800s, certain manufacturers of goods, particularly tools, cutlery, cotton thread and other commodities, noticed that their goods, and their marks were being copied in newly industrializing countries. Their complaints, which were similar to ones being leveled in the book publishing field by noted authors, led to the creation and adoption of international treaties to deal with the protection of IPRs. The Paris Convention for the Protection of Industrial Property was adopted in 1883, and the Berne Convention for the Protection of Literary and Artistic Works was adopted in 1886. These two landmark international instruments established certain principles relating to counterfeit and pirated goods, which are deemed integral today in protecting IPRs and in creating orderly markets. The conventions provide that disputes between countries can be brought before the International Court of Justice (Paris Article 28 and Berne Article 33); no Member State has ever resorted to this remedy.

A solution to the problem through an international instrument was first taken up in the Uruguay Round and resulted in the TRIPS Agreement. Part III of the TRIPS Agreement specifies certain minimum standards for the enforcement of IPRs. All Members are obligated to implement these standards, which include General Obligations, Civil and Administrative Procedures and Remedies, Provisional Measures, Special Measures related to Border Measures, and Criminal Procedures. These provisions establish procedures which, for the first time in an international instrument, require signatories to provide that IPR holders can effectively assert their rights, seize infringing goods, seek remedies against criminal enterprises and infringing goods, and seek the assistance of those
agencies of government which have responsibilities in these matters, such as the courts, police, customs, and other administrative agencies. On another level, when Members of WTO have disputes with other Members concerning, *inter alia*, the effective enforcement of IPRs, they are able to proceed in certain stages to bring their complaints through the Dispute Settlement Mechanism. These procedures are based upon mandatory jurisdiction in the WTO where there are sufficiently weighty remedies to ensure compliance, and in the event of proven noncompliance, to effect remedial compensation to the aggrieved Member. This is a noteworthy experiment in support of intellectual property, in support of the expansion of the multilateral trading system, and in support of creativity and innovation. The rapid development of digital technology and global telecommunications capacities, while providing us with many benefits, has also produced a situation in which copyright and related rights in works have been rendered vulnerable to on-line abuse and infringement. Most noteworthy is the refinement and clarification of the Right of Communication to the Public (which derives from the Berne Convention and includes making available works over the Internet), and the Obligations Concerning Technological Measures of Protection. These latter provisions are new tools, and in the countries which have implemented them in their national legislation, new legal actions are being taken and a new body of case law is growing up, which successfully take the enforcement fight into cyberspace.

**Role of International Organizations to Protect Brand Imitation**

Following are the few selected agencies known for the latest know-how, statistics and fake-fighting technology:

**FTC (USA)**

The Federal Trade Commission is the nation’s consumer protection agency. The *FTC’s Bureau of Consumer Protection* works for the consumer to prevent fraud, deception, and unfair business practices in the marketplace. The Bureau:

- Enhances consumer confidence by enforcing federal laws that protect consumers.
- Empowers consumers with free information to help them exercise their rights and spot and avoid fraud and deception.
Wants to hear from consumers who want to get information or file complaint about fraud or identity theft.\textsuperscript{33}

**IMPACT**

The *International Medical Products Anti-Counterfeiting Taskforce* (IMPACT) is a voluntary grouping of governments, organizations, institutions, agencies and associations from developing and developed countries, aimed at sharing expertise, identifying problems, seeking solutions, coordinating activities and working towards the common goal of fighting counterfeit medical products. IMPACT aims at ensuring appropriate regional representation, in particular from developing countries.

Counterfeit medical products are a major public health risk for all communities. The phenomenon has grown in recent years due to counterfeiting methods becoming more sophisticated and to the increasing amount of merchandise crossing borders. WHO has responded to the challenge by creating a global coalition of stakeholders called IMPACT (International Medical Products Anti-Counterfeiting Taskforce). The taskforce, created in 2006, has been active in forging international collaboration to seek global solutions to this global challenge and in raising awareness of the dangers of counterfeit medical products.

IMPACT will aim to achieve the following main goals:

- Improve collaboration amongst governments, organizations, institutions, agencies and associations engaged in combating counterfeit medical products at the national, regional and/or international levels;
- In light of the global dimension of counterfeiting, raise awareness among international organisations and other stakeholders;
- Raise awareness amongst national and regional authorities and decision-makers in order to advocate for effective legislative measures in order to combat counterfeit medical products;
- Establish mechanisms for the effective exchange of information and to provide assistance on specific issues pertaining to combating counterfeit medical products;
- Develop technical and administrative tools to support the establishment or strengthening of international, regional and national strategies;
• Encourage and facilitate coordination among different anti-counterfeiting initiatives.

The mission of IMPACT is to promote and strengthen international collaboration to combat counterfeit medical products.34

NASPO

The mission of the North American Security Products organization, NASPO, is to develop national and international fraud counter-measures and control standards and to certify compliance with those standards in the areas of financial transactions, identity management and material goods. DuPont is a member of the North American Security Products Organization, a non-profit member-supported organization that certifies that providers of security documents, labels, cards, packaging, materials and technology operate under an agreed-upon set of operational standards and security protocols.

FDA

The United States Food and Drug Administration (FDA) have a counterfeit drug page that provides Task Force Reports and other information to help other agencies and the private sector to protect the nation’s drug supply from the threat of counterfeits.

FDA is an agency within the Department of Health and Human Services and consists of centers and offices. The FDA is responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our nation’s food supplies, cosmetics, and products that emit radiation, and regulating the manufacturer, marketing, and distribution of tobacco products.

The FDA is also responsible for advancing the public health by helping to speed innovations that make medicines and foods more effective, safe, and more affordable; and helping the public get the accurate, science-based information they need to use medicines and foods, and to reduce tobacco use to improve health.

ACG

The Anti-Counterfeiting Group (ACG) is a not for profit trade association, recognised as a leading authority on the worldwide trade in fakes. ACG was founded in the UK in 1980 with just 18 members
(mostly in the automotive industry) who discovered that they had a common problem with counterfeits. ACG now represents nearly 200 organisations globally, operating in, or providing specialist advice to, most industry sectors where counterfeiting is an issue.

ACG represents the interests of UK and multinational companies, manufacturing just about everything you can think of, from toothpaste to mobile phones, chocolate to car parts. ACG membership also includes lawyers, trade mark agents and brand protection specialists, creating a unique environment for anti-counterfeiting interests to flourish and collaborate. Via lobbying, networking and awareness activities, ACG campaigns against the trade in fakes on behalf of consumers and legitimate business interests, in partnership with government and law enforcement agencies, and other rights organisations. ACG’s ultimate aim is to change society’s perception of counterfeiting as a harmless activity, by exposing the worldwide economic and social cost of intellectual property crime. For the last 25 years, Anti-Counterfeiting Group (ACG) has been campaigning against the trade in fake goods, on behalf of the major manufacturers. DuPont is also a member of the ACG’s Brand Protection Group (BPG).

**BASCAP**

The International Chamber of Commerce launched *Business Action to Stop Counterfeiting and Piracy* (BASCAP) to connect all business sectors and cut across national borders in the fight against counterfeiting and piracy. The Business Action to Stop Counterfeiting and Piracy (BASCAP) was established in 2005 by the International Chamber of Commerce (ICC) to take a role in the fight against counterfeiting and piracy. BASCAP aims to unite global business community to more effectively identify and address intellectual property rights issues and petition for greater commitments by local, national and international officials in the enforcement and protection of IPR.

The work of BASCAP aims to:

- increase both awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm.
- compel government action and the allocation of resources towards improved IPR enforcement.
• create a culture change to ensure intellectual property is respected and protected.

BASCAP speaks out on the damage caused by counterfeiting and piracy, including:
• Harm to the economy, loss of employment prospects.
• Danger to consumer health and safety.
• Loss of innovation and poor quality products.
• Financial links to organized crime.
• Erosion of technology transfer.36

CACP

The Coalition against Counterfeiting and Piracy (CACP) is committed to increasing the understanding of the negative impact of counterfeiting and piracy by working with the United States government to drive greater government-wide efforts to address this threat. To fight the growing threat of counterfeiting and piracy to the economy, jobs, and consumer health and safety, the business community, led by the U.S. Chamber of Commerce’s Global Intellectual Property Center, organized itself through a broad-based business coalition, the Coalition against Counterfeiting and Piracy (CACP).

Formed in 2004, the CACP has grown to more than 700 members, making it the largest business coalition of its kind. The coalition is committed to increasing the understanding of the negative impact of counterfeiting and piracy and to finding real solutions by working with governments, industry, opinion leaders, the media, and consumers. The CACP is focusing on a few primary goals, which will make a measurable impact in the fight against counterfeiting and piracy.37

ICC-CIB

The International Chamber of Commerce formed The Counterfeiting Intelligence Bureau (CIB) in 1985 as a focal point for industries and other affected interest worldwide to fight the growing problem of counterfeiting. Totally unique, the CIB is the first international, private business initiative to go beyond political lobbying with practical prevention and enforcement support for police and
customs authorities – a vital element in the campaign against the manufacturing and distribution of counterfeit goods around the world. Members include large multinational companies, trade associations, law firms and technology producers from various countries and sectors.

The International Chamber of Commerce’s Counterfeiting Intelligence Bureau CIB) protects industry from the damage caused by counterfeiting by gathering intelligence, making undercover enquiries, organising the seizure of counterfeits, and providing expert advice and training to its members. Based in the UK, CIB is a membership organisation tasked with combating counterfeiting and piracy.

Key member services include:
- Information on counterfeiting throughout the world.
- Investigations aimed at targeting production and shipments of counterfeits worldwide, monitoring markets and taking enforcement action.
- A monthly Confidential Bulletin dealing with all aspects and issues relating to counterfeiting, plus Guides and Special Reports on Counterfeiting.
- Research and Consultancy services including market surveys, authentication of documents and security holograms and devising effective anti-counterfeiting strategies.
- Providing legal advice and coordinating litigation.
- Access to the CIB’s Counterforce Network of intellectual property and anti-counterfeiting law firms worldwide.
- Conferences and Workshops in Europe/North America.

IACC

The touchstone of The International Anti-Counterfeiting Coalition (IACC)’s mission is to combat counterfeiting and piracy by promoting laws, regulations and directives designed to render the theft of intellectual property undesirable and unprofitable. The IACC serves as an umbrella organization, offering anti-counterfeiting programs designed to increase protection for patents, trademarks, copyrights, service marks, trade dress and trade secrets. The International Anti-Counterfeiting Coalition produces “Facts on Fakes” and other interesting reports and statistics.
Critical to the IACC’s purpose is its belief that acts of counterfeiting create severe public health and safety hazards, as well as economic harm. The IACC initiates actions and supports government actions that will ultimately result in increased enforcement, lead to the prosecution of intellectual property infringers, and create a strong deterrent to counterfeiters and pirates.

In an effort to create conditions under which its members’ intellectual property rights are safe from illegal copying, infringement and other forms of theft, the IACC engages in substantive dialogue with governments worldwide. In pursuing its mission, the IACC provides law enforcement officials with information and training to identify counterfeit and pirated products and in the methods of product security to prevent the infringement of its members’ intellectual property rights.

The International Anti-Counterfeiting Coalition Inc., (IACC) is a Washington, D.C.-based non-profit organization devoted solely to combating product counterfeiting and piracy. Formed in 1979, today it is comprised of a cross section of business and industry - from autos, apparel, luxury goods and pharmaceuticals, to food, software and entertainment - the IACC’s members’ combined annual revenues exceed $650 billion. The IACC develops and conducts training for domestic and foreign law enforcement officials, submits comments on intellectual property enforcement laws and regulations in the United States and abroad and participates in regional and international programs aimed at improving intellectual property enforcement standards.39

MEMA

Motor and Equipment Manufacturers Association’s Brand Protection Council provides a forum for manufacturers to discuss counterfeiting, intellectual property rights, gray market or diversion, share best practices, recommend solutions, formulate future seminars and promote networking.40 Parts' suppliers are the backbone of the vehicle manufacturing industry and the country’s manufacturing base. The industry constitutes the largest manufacturing sector in the United States, directly employing over 685,000 individuals across the country and contributing to more than 3.29 million jobs. Without the contributions of the nation’s parts suppliers, domestic vehicle
manufacturing and maintenance would almost certainly grind to a halt, adversely affecting the way we drive and go about our daily lives.

The Motor & Equipment Manufacturers Association (MEMA) has represented parts suppliers since 1904. Today, it serves members through its four affiliate associations:
- Automotive Aftermarket Suppliers Association
- Heavy Duty Manufacturers Association
- Motor & Equipment Remanufacturers Association
- Original Equipment Suppliers Association

ACAPI

Membership of Anti-Counterfeiting & Piracy Initiative (ACAPI) which is located in Nigeria is open to all individuals, companies and organizations, large and small, committed to the fight against counterfeiting and piracy. Participants are invited to endorse ACAPI objectives, contribute to the development of ACAPI projects and lend their organization's name to the ACAPI growing list of supporters. They manage to give fearless and excellent services to their members as they are not under anyone’s obligation. They are poised to bring the gap between advocacy and enforcement.

ACAPI Mission

To connect the business community, individuals and non-governmental organisations across the country so as to more efficiently identify and address intellectual property rights (IPR) issues and petition for greater commitments by local, state and federal government agents in the enforcement and protection of brands against counterfeiting and piracy in Africa.

ACAPI Objectives
- Increase public and political awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm.
- Compel government action and the allocation of resources towards improved IPR enforcement.
- Create a culture change where intellectual property is respected and protected.
ACAPI seeks to accomplish these objectives by:

- Connecting ongoing business activities, business strategies and messages.
- Producing information and products that have value to corporations and trade associations across sectors.
- Providing a platform for leveraging ongoing and new business initiatives through use of the business network and contacts with regulatory agencies; network of media relationships; and relationships with non-governmental organizations.\(^{42}\)

**EAASM**

The European Alliance for Access to Safe Medicines (EAASM) was founded in 2007 with the clear objective of fighting against counterfeit medicines and promoting patient safety around Europe. Combating counterfeit medicines requires the coordinated effort of all the various public and private stakeholders who are affected and are competent in addressing the different aspects of the problem. Wherever this problem is discussed, the call has been for co-ordination and collaboration. The EAASM aims to make that happen.

The European Alliance for Access to Safe Medicines (EAASM) is an independent, cross-sector patient safety Alliance campaigning for the exclusion of counterfeit and substandard medicines from the supply chain. Raising public awareness of the issues surrounding counterfeit medicines forms a key part of the activities of the EAASM.\(^{43}\)

**EIPR**

EIPR does all the research and ground work to identify spurious goods manufacturers and their point of sales. EIPR has a nationwide network of trained and skilled staff and also has strategic tie-ups with enforcement agencies in Asian countries. The company also provides governments, businesses and individuals with information, analysis, training, advice and products to mitigate risks associated with white collar crimes, misuse of property and intrusions to computer networks.\(^{44}\)

The company is organized into three primary business groups: Investigations and Intelligence Group, I.P.R. Security and Services Group and Information Security Group. The Investigations and
Intelligence Group provides intellectual property protection and investigation, fraud investigations, due diligence, litigation support, computer forensics and integrity consulting services as well as providing business intelligence gathering and analysis to corporations, financial institutions, law firms and governments.  

**Brand Attacks: Indian Scenario**

The number of counterfeit and look alike products in India has increased so much that popular brands covering a wide range of product categories have been losing 10-30 percent of their business to them. Scene of counterfeiting prevailing in India demands urgent need to constantly look at newer and newer means of addressing and trying to resolve the problems from various forms of brand attack. Also, it is in the interest of consumers, brand owners and the government to bring the menace of brand attack under control.

Fake brands flood India-India has 60 ‘Nike’s, 65 ‘Rolex’s and 217 ‘Intel’s. Such is the impact of counterfeiting and piracy that over 400 companies begin with the word ‘Reliance’, an industry chamber said. An ORG retail audit revealed that for every 100 strips of genuine Action 500, there were 54 look-alikes. Vicks Vaporub and inhaler had about 20 clones.10-30 percent of cosmetics, toiletries, packaged food are counterfeit. 10 percent of soft drinks sold as brands are sold every year. 61 percent of computer software and 40 percent of music sold are pirated.

Also, according to one estimate at least ₹20 crore worth of fake currency in the denomination of 500 and 100 is in circulation. No matter what product you consume or what brand you use, chances are that you are buying a fake. The consequences range from rip offs to severe health hazards. Fake goods have now become up market and sophisticated, sitting side by side with originals on the shop shelves with almost nothing to differentiate between the two. And from there, they are entering millions of homes across urban-rural India.

A sample study of 30 FMCG companies undertaken by A C Nielsen estimated that it loses ₹1,600 crore every year in its sales turn over due to brand piracy. The estimation was jointly done by A C Neilson and KPMG. According to an AC Nielsen FICCI study, the fast moving consumer goods sector loses ₹ 2,600 crore a year owing to counterfeiting, while the government loses ₹ 900 crore a
year in the process. Menace of counterfeiting is also haunting the drug market.

A survey was conducted to estimate the size of counterfeit of FMCG products and it revealed the stark reality of FMCG companies having maximum loss up to 40 percent and an average loss around 20 percent of their market share of their well-known products. A recent A C Nielsen survey has estimated that eight out of ten Indian consumers are fooled by counterfeiters. “They realize that they have bought a counterfeit only after the purchase”, “said A C Nielsen executive director Sarang Pachal. You name the product and it can be faked. Medicines, Cosmetics, shampoos, software, soft drinks, tea, biscuits, auto parts, music, etc., everything is counterfeited. Every time a company tries to shake off fakers by altering the design or colour of its products or adding complex holograms, the counterfeiters are usually only a few days behind them.

The tide in India is turning against counterfeiters and infringers. Until now they were undeterred, given the inability of genuine branded product manufacturers to cause them financial damage, and the slow judicial redress. All this is now changing as a result of progressive judicial pronouncements and legislative amendments. And with numerous judgments given against the counterfeiters by Hon’ble Supreme Court of India and various High Courts it can be easily concluded that India is waging a war against the people who are into the business of counterfeit.

Worldwide companies are increasingly trying to load their vulnerable products with anti-imitation features. Some of these are borrowed from pioneering security features developed for use on currency. They are clearly visible and are intended to help consumers distinguish fakes from genuine goods. Companies could also use covert features, primarily to help them trace their products through the supply chain and to distinguish genuine articles from fakes, especially if they need to take recourse to legal measures.

At best they will keep imitators on the run. In order to ebb the rising tide of imitation, industry needs to work in tandem with the government and create consumer awareness. The enforcement agencies also appear to be getting proactive, considering that the Nielsen study estimates the Government’s loss on account of tax evasions.47
FMCG giants also introduce look-alikes of successful brands. Oral care giant Colgate announced introduction of its Colgate Sensitive Pro-Relief toothpaste. Glaxo Smithkline Consumer Health Care’s associated company taking clue from it introduced Sensodyne toothpaste, for the same teeth problem. Today, Sensodyne is worth 75 crore dollar brand. The question is who introduced the concept and who got the credit, is important to be noted? Cadbury Craft India introduced its brand ‘Orio’ in biscuits’ category, the very popular brand world over. Immediately after this, Britannia introduced very similar product with brand name Treat-O and shocked Cadbury. Cadbury filed a legal suit against Britannia under rights of trademark and copyright. Although sale of Treat-O is not comparable with Orio, but certainly Orio had to face some set back in the Indian market. When these two brands are compared, there are so many things common between these two brands. Both are chocolate flavoured cookies, have same price, even commercial use for promotion is almost same. Orio is worth rupees 1 million dollar brand, but Indian consumer is in dilemma in these two products. The number one brand in the world has suffered from ‘ambush marketing’ strategy used by competitors. Such practices used by marketers are very common in the market place. A year before, HUL damaged the campaign of one its close competitors Procter and Gamble like anything. P&G put banners all over Mumbai for its ‘mystery shampoo’, on a very large scale. HUL taking due from it launched another campaign to counteract and attract attention of customers. In its campaign HUL claimed that, there is no mystery, ‘Dove’ is the number one shampoo; P&G offered the platform and golden opportunity to HUL to promote its competing products. This is considered to be a very good example of strategy imitation.

**Typical Consumable Products affected by Menace of Imitation/Counterfeits**

**Pharmaceuticals**

Wearing a fake watch may not harm you directly in the way that consuming a fake drug would, but it diminishes you nonetheless, and demits the possibilities of the world in which you live. The Indian Pharma Alliance claims an annual damage of ₹ 4,000 crore to the pharmaceutical industry due to spurious drugs. Pharmaceutical
industry is worth of ₹ 85,000 crore in India. Major pharmaceutical company, estimated share of duplicate medicine ranges between 20-25 percent of total pharmaceutical market. Counterfeit products are sold at the same price as the originals, but the production and marketing costs are usually less than a fourth of the real’s price. UP, Bihar, Maharashtra, Haryana and Himachal Pradesh are having many centers of production of duplicate medicines. These manufacturers have their own supply chain, and mostly target at rural areas.

Indian pharma sector is also facing growing threats even from overseas organisations and especially, organisations from its neighboring country, China. China is now considered to be the greatest threat to Indian pharma sector for fake drugs. China's piracy has been proved on so many incidents. There are dozens of examples, where companies and products are being faked for the domestic and international markets. China has admitted that its pharmaceuticals companies were involved in shipping fake drugs labeled ‘made in India’ to Nigeria. NAFDAC, Nigeria detained large consignment of fake-anti malarial generic pharmaceuticals, labeled ‘Made in India’ which were actually produced in China. Incidents like these are tarnishing the image of the Indian pharmaceutical products in the international market.

Taking a lesson from all such incidences, very recently, Commerce Ministry, Government of India introduced the rule that all medicines' packs, manufactured in India (only for export) must carry a bar code as of July 1, 2011. This will allow medicines to be traced and tracked to its source of origin. “However it is not legislation but a rule passed by the Commerce ministry. It also involves just bar coding which can be duplicated whereas our proposal was to have both UID and 2D bar coding” Drug Controller General of India, Dr. Surinder Singh said.48

**Soft Drinks**

Soft drink manufacturers lose an estimated 10 percent of their ₹7,000 crore annual sales to fake drinks. The losses of the industry and the government are the fakers’ gains. Counterfeit products are sold at the same price as the originals, but the production and marketing cost are usually very less since, these manufacturers compromise lot on quality and safety standards.
Gutkas

Consumption of tobacco and tobacco based products is very popular in India which adversely affects health of tobacco consumers. So, considering its ill effects, Government of Maharashtra banned tobacco based products at public places. However, it was observed that during the ban period, gutka pouches were on rampant sale in Amravati. Due to sudden increase in demand duplicate gutkas got easy passage, and were sold in Amravati market on a large scale as reported in one of the newspaper artice. Retailers encashed this situation and sold original brand of gutkas charging ₹1-2 more on M.R.P.

Imitations: Rural India Scenario

For counterfeiters, the easiest thing to do is to deceive rural consumers. Put a passable product into a tube, with markings that resemble the original and market it in rural, semi-urban areas, through promoters, agents and retailers willing to make a quick buck. For most, the job is easy to carry. Retailers earn at least twice the margin on imitated brands that they do on the genuine product. The aim of the end seller is to sell it to consumer as genuine and, may be at same or reduced price as the genuine product. It’s about risk and reward, and currently there is little risk, but huge reward. Retailers know where to buy imitated brands from, and the outlets which counterfeits are sold into may look different across the region, but they operate the same way. Mostly imitated brands are being purchased by unaware and illiterate persons, so rural areas are huge markets for imitated brands. A rural consumer is brand loyal and this also makes it easy to sell look-alike.

Marketing and Research Team (MART) has undertaken an impressionistic survey to access the impact of fakes on the rural market. Their research, that covers villages in eastern and western Uttar Pradesh, kasbas around Bhopal and the fake products market in Delhi that services many of the rural areas, shows that the phenomenon is rampant and much more intense than in the cities. For instance, according to the MART report, in the traditional village haats, the main selling locales of rural India, the researchers found that the absence of original branded FMCG products was 100 percent.
MART study in this context suggests that it is the demand-supply gap that is fuelling the problem in this sector. Distributors appointed by companies stick to the villages closest to their town, while tiny shops and paannwallas are serviced by mobile distributors on cycles who stock counterfeit products. Besides, in particular seasons the manufacturing of fake products rises and reaches the retailers much before the genuine brand can. For instance, during summer, fakes abound in cold drinks and talcum powder, while in winter it’s cold cream and Vaseline. Another interesting observation is that FMCG counterfeit products only come in the smallest size of packaging. In the rural segment and slums where fake products thrive, the consumers’ low purchasing power makes sachets and 25g and 30g packs popular. And it is in the case of these small packs that consumers are duped more easily as the quantity is not large enough for the buyer to discern its quality. Especially, in sachets of pan masala, shampoos, hair oils, tooth pastes, detergents and so on.

With unaware and illiterate persons, rural areas are huge markets for imitated brands. One such survey was conducted in petty shops in rural areas to find out the fake chocolates available.

The rural consumers by looking at the ads of leading chocolate companies unknowingly purchase the fake chocolate brands because of their impulse.

Companies at War against Imitations

DABUR

The company in its war against counterfeits of its popular brand is finding way outs. Amla Hair Oil has been facing an increase in counterfeits and the company is trying to work a way out of it. The company has replaced its glass bottle with a pet bottle. Dabur finds that a subtle difference in packaging such as a gold foil stamping on the label or introducing holograms is not enough for home product consumers, especially for the less educated who find it difficult to make out the difference between a genuine and a fake.

COCA COLA

The leading soft drink brand Coca Cola too is in the process of exploring changes in its packaging. The company has incorporated
certain features that made their bottles tamper-proof. Apparently, this has been tested successfully in world market.

**PEPSI**

Pepsi’s experience has been similar. It has had to deal with copycat drinks called Dipsy, Tipsy, Sipsi, Toss Up, Dream Cola, 1UP, Lahar, and so on. The problem peaks in summer, when the consumption of colas and juices zooms. It is easy for manufacturers to set up shop with a bucket, plenty of sugar, artificial flavours, dangerous colours and soda. And of course, these fakes piggyback on the success of the original.

Though Pepsi and Coke have dropped prices substantially to make their products the flavour of the masses, spurious products still score because of poor consumer awareness. And fake product manufacturers reap windfalls because there are barely any input costs, no safety standards involved, excise or taxes paid. Pepsi India conducted raids and lab test of 67 fakes and regional soft drinks' brands in Rajasthan and found bacteria, yeast and coli in most bottles. The soft drink makers did not have bottle cleaning facilities and used tap water, cheap sugar and substandard colors. According to Pepsi Co. India officials, the Trade and Merchandise Marks Act, Copyright Act and Indian Penal Code (IPC) authorise companies to protect their marks and properties. Pepsi Co. has market intelligence efforts and resources in place to survey suspect locations and identify manufacturers/distributors of spurious goods.

**TABLE 2: LIST OF FAKE CHOCOLATES/TOFFEES AVAILABLE IN RURAL AREAS**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Original Brand</th>
<th>Imitated Brand</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Dairy Milk</td>
<td>Daily Milk</td>
</tr>
<tr>
<td>2</td>
<td>Kit Kat</td>
<td>Kir Kat</td>
</tr>
<tr>
<td>3</td>
<td>Coffee Bite</td>
<td>Coffee Toffee</td>
</tr>
<tr>
<td>4</td>
<td>Mango Bite</td>
<td>Mango Ripe and Mango Bits</td>
</tr>
<tr>
<td>5</td>
<td>Aasai</td>
<td>Aasha</td>
</tr>
<tr>
<td>6</td>
<td>Polo</td>
<td>Rolo</td>
</tr>
<tr>
<td>7</td>
<td>Vicks</td>
<td>Vibex</td>
</tr>
</tbody>
</table>
PROCTER and GAMBLE

P&G had got 55 injunctions against many manufacturers. In fact, after one of the massive raids in Madhya Pradesh for Vicks, the company used the services of an elephant to destroy the counterfeit catch. P&G’s Health care division sales were impacted up to 15 percent.

Some important cases of Counterfeiting/Imitations

The dispute with LG Chem Ltd. centers on DuPont’s solid surface brand Corian. In a petition filed last month before the Delhi High Court, DuPont has alleged that LG Chem has copied verbatim parts of Corian brochures to promote its own product LG-HiMacs. LG has allegedly also copied the product promotion pictures used by DuPont in this brochures.50

Kothamangalam, where a local firm had been illegally manufacturing and marketing paint products using the brand name of a Sharjah-based paint company for over a year. Raiding the company’s godown at Thangal, the police team seized paint products worth over ₹1 crore. The firm was faking the trademark and logo of Sharjah-based National Paint Factories Ltd. and selling paint products for over a year, the police said. “Presumably, they got hold of the catalogue of the original company and copied it. The packaging of the products was perfect. In fact, they had even mentioned the names of the European collaborators of the original company.”51

On complaints filed by Dabur, P&G, HLL all members of the Brand Protection committee of FICCI, the Delhi police have raided and seized large quantities of sachets and bottles of look-alike brands going by names like Darbar Amla Hair Oil, Sunmilk, Head & Showers, Pentane and A-Real. The raids were carried out on the manufacturing premises of Nimma International, Malviya Nagar, Delhi, under the supervision of the Asst Commissioner of Police, Crime Branch. According to a FICCI press release, the products violate the trademarks and copyrights of well-known brands like Ariel, Head & Shoulders and Pantene of P & G, Dabur Amla Hair Oil of Dabur and Sunsilk, Clinic of HLL.52

In a drive against counterfeit lighting products under a multinational brand name, officials of the Enforcement Directorate raided a central Calcutta dealer and seized a substantial number of
spurious products. The officials of the ED raided a shop in Lenin Sarani pursuant to a court order obtained by the Philips India Ltd and seized counterfeit lighting products under the brand name of ‘Philips’. The owner of the shop allegedly selling the counterfeit lighting products was apprehended during the raid which was in continuation of several earlier ones in the metropolis as well as in New Delhi, Chennai, Nagpur, and Hubli, a senior official of Philips India said.53

ANKUR Textiles, a sister company of Arvind Mills has taken legal action against duplication of its blouse material items of Manisha and Chokri brands. Deputing a private agency to investigate into the matter, the agency and city police carried out raids at Madhavpura Revdi Bazaar and Sarangpur areas and seized duplicate cloth, dyes, stamps and computerized screen printers. Five persons have been arrested by the police and two complaints have been lodged at Madhavpura and Rakhial police stations.54

This incidence occurred in village Antri, dist Buldhana, where a lady used shampoo for washing hair and immediately after the use her hair stuck to each other and formed a bundle. She had to immediately rush to doctor for the problem. Villagers’ showed their anger against the said brand of shampoo.55 Owner of Amul brand had filed cases against three local milk producers for their alleged violation of copyright in the design of the milk pouches. The dairies were marketing their milk in pouches which looked very similar to that of Amul. Dairy was selling milk under three varieties ‘Ankur Gold’, ‘Ankur Shakti’, and ‘Ankur Taaza’. According to report the rival dairy’s milk pouches carried colour combinations and fonts that were very similar to Amul pouches, which were available in three varieties, ‘Amul Gold’, ‘Amul Shakti’ and ‘Amul Taaza’.56

Crime branch cops unearthed a factory supplying spurious cold drink in Nagpur. The report reveals the accused prepared drinks, sealed bottles, and transported them to customers himself. The accused reported that he was involved in the business since last three years and used to deliver adulterated drinks mostly to bars and hotels. Nearly 6,748 bottles of cold drinks kept in 277 crates were seized during the raid, said a senior police officer. The accused was using borewell water and harmful chemicals to prepare the cold drinks. 57
An Overview of the Regulatory Regime of Brand Protection

Consumer Protection Act, 1986

The Consumer Protection Act, 1986 can be invoked to seek redressal against any defective products or deficient services including restrictive or unfair trade practices adopted by the manufacturer or trader. Further when the Act was amended in 2002, the spurious goods and services were brought within the ambit of the Act, besides enlarging the scope of unsafe goods and services that are hazardous to life and safety. With a view to serve the consumers better, the amended Act contains several provisions for facilitating quicker disposal of complaints by consumer forums, enhancing the capability of redressal agencies, strengthening them with more powers, streamlining procedures and widening the scope of the Act to make it more effective and purposeful.

The unique Consumer Protection Act is a comprehensive piece of legislation that covers all goods and services. Therefore, any aggrieved consumer is free to approach the Consumer Forums set up at District, State and National levels to redress his or her grievance. In the Act, the Consumer Forums have powers to issue directions to offending companies or traders to desist from manufacturing or offering hazardous goods for sale and to discontinue unfair trade practices or restrictive trade practices and also to warn them not to repeat these among other powers vested with them. The Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of consumers in general, is eligible to file complaints in consumer forums against any trade practice where a large number of consumers are affected. The Act enshrines all the consumers’ rights which are internationally accepted. As per the Act Consumer Protection Councils have been established at Central, State and District levels to promote and protect the consumer rights.

Trade Marks Act, 1999

The Indian law of trademarks is enshrined the new Trade Marks Act, 1999 which came into force with effect from September 15, 2003. The old Trade and Merchandise Marks Act, 1958 was repealed at the same time. The new Trademarks Act of 1999 is in line with
the WTO recommendations and is in conformity with the TRIPS Agreement to which India is a signatory. 58

India’s Trade Marks Act, 1999 (the “TM Act”), has introduced, inter alia, statutory protection for well-known trademarks, registration of service marks, shape of goods, their packaging and colour combination, letters or numerals, monograms, and three-dimensional marks. India has one central Trade Marks Registry in Mumbai and four branch Registries in the cities of Delhi, Kolkata, Chennai and Ahmadabad. Although an Indian company must file the trademark registration application based on its geographic location, a foreign proprietor can file the trademark registration applications in any of the Registries, provided their attorneys or agents have an address for communication within the concerned Registry’s jurisdiction. Although registration of trademarks is not compulsory in India, a registration certificate is prima facie proof of ownership of trade mark and entitles a proprietor to initiate an infringement action. A trademark can be registered in India in two to three years’ time, and the term of the registration is 10 years, renewable upon expiration. The TM Act also provides for registration of trade marks from the WTO members countries and provides the original application’s priority to the Indian application as well. Such applications must be filed in India within a period of six months from the date of filing in the convention country. There is no separate law protecting domain names, and principles of trademark law are applied to domain name protection.

In a suit alleging trademark infringement or passing off, a court may grant an injunction; award damages; direct an account of profits to be produced; or issue an order requiring delivery of the infringing labels and marks for destruction or erasure. Further, Indian courts have been protecting well-known trade marks (which satisfy the criteria under the trade mark laws), against misuse and dilution in India, even if such well-known trademarks have not been used in India.

The TM Act has also provided for criminal remedies in case of trademark infringement and passing off. The police can conduct a search and seizure action in the infringer’s premises without a warrant, after obtaining the Registrar of Trade Marks’ (the “Registrar”) prior opinion. Further, the TM Act has enhanced the punishment for
infringement and an offender can be imprisoned for a term up to three years with or without a fine up to ₹ 200,000 (3,000 Euros approximately). If a trademark is not registered in India, the trademark owner can initiate a passing off action against the infringer, based on the principles of common law. 59

The Trade Marks Act allows registration to be secured for the distinctive name, devices, labels, colours, words, shapes and even sound and smells that define one trader’s goods or services in the market, thus preventing other people from using them in relation to their products.

**Food Safety and Standards Act, 2006**

The Food Safety and Standards Act, 2006 came into effect five years (5.8.2011) after it was passed in Parliament, subsumes various central Acts like Prevention of Food Adulteration Act of 1954, Fruit Products Order of 1955, Meat Food Products Order of 1973, Vegetable Oil Products (Control) Order of 1947, Edible Oils Packaging (Regulation) Order of 1988, Solvent Extracted Oil, De-Oiled Meal and Edible Flour (Control) Order of 1967, Milk and Milk Products Order of 1992 and also any order issued under the Essential Commodities Act, 1955 relating to food. It will ensure prevention of fraudulent, deceptive or unfair trade practices which may mislead or harm the consumer, and unsafe, contaminated or sub-standard food. 60

The Food Safety and Standards Act is a step in the right direction and seeks to modify the basic approach to food safety from farm to fork. Under the current Act, there is a clear shift from “checking adulteration and prosecution” to “self-compliance” enabling responsibility with the food business operator to comply with the law. The Act mandates, through a new set of regulations, untouched areas like proprietary foods, novel foods, GM foods, dietary supplements etc. The Act also stipulates bringing regulations / guidelines for food imports, food recall and an active surveillance system. The current Act also empowers consumers to draw samples and send these for analysis to recognised labs—an act of empowerment of consumer to prevent food contamination through a structured legal remedy. In case of minor offences, the Act stipulates faster disposal without going to courts. As per the new Act, the role
of FSSAI will be:

- To frame rules, regulations, standards and guidelines in relation to articles of food and provide guidelines for accreditation of certification bodies / laboratories.

- To offer scientific advice and technical support to the Central and state governments in matters of framing the policy and rules in areas related to food safety and nutrition.

- To collect and collate data on food consumption, incidence and prevalence of biological risk, contaminants or residues thereof in food, and the introduction of a rapid alert system.

- To establish an information dissemination network about food safety across the country.

- To contribute to the development of international technical standards for food safety and phyto-sanitary standards.

- To promote general awareness on food safety and food standards.

The Food Safety and Standards Act is further strengthened with a new set of detailed rules and regulations coming into force in the year 2011. Food Safety and Standards Rules which came into effect in February 2011, details the administrative and enforcement structure, processes and procedures for sampling, prosecution & appeal, and powers and duties of various functionaries under the Act. Further, the Authority notified Food Safety and Standards Regulations on August 5, 2011. The Act, read together with these regulations, amalgamates all the previous laws and orders with duplications, conflicts, and redundancies removed, and cover in a more structured manner, the licensing of food businesses, standards for additives and food products, limits for contaminants, residues, labelling guidelines, prohibitory aspects of sale of food products, proprietary food and more. The FSSAI envisages the necessity of upgrading existing labs and creating a large network of new labs in order to provide the requisite support to the new and vibrant food safety regime.

The Authority has also taken steps to create a new enforcement structure and judicial dispensation system for fast track disposal of cases. The state level food safety commissioners will play a key role in surveillance and enforcement. Food safety commissioners in every state with the designated officers are now responsible for enforcing the Act in every district. The Authority has constituted scientific
panels and scientific committees to address all scientific matters relating to food safety so that matters of emerging science can be discussed and factored in during the development of new products by the industry.

The Act has various provisions to deal with misbranded and unsafe food and provides penalty for the same. The Act specifies penalties for manufacturing, storing, selling distributing or importing any food stuff which is sub-standard, misbranded or unsafe. Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is sub-standard, shall be liable to a penalty which may extend to five lakh rupees. Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is misbranded, shall be liable to a penalty which may extend to three lakh rupees. The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed. Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable:

(i) where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

(ii) where such failure or contravention results in a non-grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh Rupees.

The Act also specifies marking and labelling requirements for packaged foodstuff. The provisions enshrined under Food Safety
and Standards (Packaging and Labeling), Regulation, 2011 includes definition of Health Claims, Nutritional Claims and Claims for Risk Reduction. As per section 23, of FSS Act, 2006 on Packaging and Labeling of Foods provides:

1. No person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations. Provision that the labels shall not contain any statement, claim, design or device which is false or misleading in any particular concerning the food products contained in the package or concerning the quantity or the nutritive value implying medicinal or therapeutic claims or in relation to the place of origin of the said food products.

2. Every food business operator shall ensure that the labelling and presentation of food, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, does not mislead consumers.

**Copyright Act, 1958**

India is a signatory to both the Berne Convention and the Universal Copyright Convention. Therefore, in a copyright infringement of a work, not copyrighted in India, the authors from member states of these conventions will be protected in India on a reciprocal basis. The term of a copyright is the lifetime of the author plus 60 years from the calendar year following the year of the author’s death. Copyright registration is not mandatory in India. However, it is recommended as prima facie proof of Copyright ownership and assists in speedy and effective remedy in case of copyright infringement as under the Copyright Act, 1958 (the “CR Act). The police has wide powers to take quick action against infringement. Copyright registration in India takes about six months to one year.

A copyright holder is entitled to the same remedies as available for trade mark infringement including a search and seizure action. However, unlike under Trade Mark Act, the Registrar’s prior opinion is not required for conducting the search and therefore, the search
and seizure under the Copyright Act is more speedy and effective. The penalty prescribed under the Copyright Act for infringement is imprisoned up to three years and/or a fine up to ₹200,000 (3,000 Euros approximately). The Copyright Act seeks to protect the creator’s right in artistic, musical and literary works (e.g. computer programs), as well as sound recording and films, and can therefore be employed to protect various aspects of a product and its marketing, without the need for registration.

**Drugs and Cosmetics Act, 1940**

The Drugs and Cosmetics Act regulates the import, manufacture, distribution and sale of drugs and cosmetics. In view of the provisions of this Act, no person can import, manufacture, distribute, stock and sell any drug, except under the license granted for respective operations by the Authority notified under the said Act. The main functionaries under the Drugs and Cosmetics Act are the Licensing Authority and the Drug Inspector. While the Director of Food and Drugs Administration is empowered and notified as Licensing Authority to issue licenses for different categories of business in drugs, the Assistant Drugs Controller acts as Supervisory officers and assists the Director in implementation of the above Act and Rules there under. The above Act regulates the import, manufacture, distribution and sale of allopathic, ayurvedic and homoeopathic drugs, in view of these three systems of medicine of the quality of the drugs manufactures, under the three systems. The Act prescribes the standards for purity, identity and strength of drugs and cosmetics. Specimen of each of the above cited forms are indicated below.

For selling of Ayurvedic drugs and cosmetics, by way of retail and wholesale, no license is required, however, the vendor has to sell Ayurvedic drugs or cosmetics only which are manufactured, under the license. In view of the provisions contained in the Drugs Act, every activity in respect to drugs and cosmetics need a license from the Directorate of Food and Drugs Administration.

**Patents Act, 1977**

India has introduced product patent registration since 1st January, 2005. International patent applications can be filed in India through the patent cooperation treaty. A patent can be registered in India in two to three years. The term of the patent is 20 years from the date
of filing of the patent application, which can be renewed upon expiration. To prevent the abuse of patent and to facilitate commercial exploitation of the invention by an interested person, the Controller of Patents issues compulsory license for a patent. An application for grant of compulsory license for a patent can be made only after three years from the date of grant of that patent.

The patent law provides for pre-grant opposition, post-grant opposition, revocation petition and infringement proceedings against conflicting patents. If the patent application is pending before the Patent Office, pre-grant opposition proceedings may be instituted. A revocation petition or a post-grant opposition can be filed against a granted patent. A suit for patent infringement can be filed in the court against the infringer and remedies available for infringement are injunction, damages, or an account of profits. The court may also order for forfeiture or destruction of the infringing goods. Patents can be relied upon to provide monopoly protection in respect of new product innovations where the innovation involves either a development of existing technology or the invention of new technology. The Patents Act can be used to protect new innovations in manufacture that may be important to the unique ‘look’ of your product.

**Lacuna in Brand Protection**

Due to unsettled trademark jurisprudence and limitations, trademark laws are still insufficient to protect brands adequately. Statutory protection against infringement action is limited to a class or related classes. However, the brand suffers damage even due to imitation in other classes or by its dilution. Moreover, goodwill in the brand is still not given due consideration by the statutory remedy and remains secondary to the distinguishing factor. A few decades back, both civil and common law lawyers understood that the rationale for trademark protection resides in the trademark’s function of designating the origin of the good and that the public should be protected against the risk of confusion as to the origin of the goods deriving from the unauthorized use of an identical or similar sign in connection with identical or similar goods. The same approach is taken in protecting mark against infringement. Goodwill is still considered to be an additional factor and not one of the major characteristic of the brand. Therefore, brand requires dual protection
of (a) exclusivity and (b) goodwill. The above discussion on protection of brands under trademark regime dealt with protection of exclusivity of the brand and not the goodwill attached to it. It is important for us to understand the concept of goodwill under the trademark regime to appreciate its importance for brand protection.

The common law doctrine of *passing off* recognizes and protects the goodwill of a brand. The underlying principle of the doctrine is to protect the goodwill against its erosion through usage of identical or similar trading mark and preventing the exclusive reputation in trading name from getting debased. However, the *passing off* action associates the invasion of the proprietary rights (goodwill) of the trademark owner with the likelihood of consumer confusion, due to which it fails to protect the goodwill. Various tests in a *passing off* action, which are laid down and followed in a catena of cases, favours the consumer confusion based liability over the misappropriation based liability. The major focus of trademark law is protecting the source identification and information transmission function of marks. It helps to reduce the consumer search costs by enforcing exclusivity, supports seller incentives to maintain and improve product quality and reduces the risk that consumers will be misled into buying products they do not want.62

Hence, it is clear that goodwill is not considered as a primary element in the Trademark doctrines and reflects the influence of information transmission model. Similarly, the remedy under common law is based on information transmission function of mark. Hence, the different kinds of goodwill of the brand are not recognized by the law and thereby not protected appropriately.

**Recent Developments in India’s IP Laws**

Considering that the global integration of Indian economy required a strong IP regime, the Government of India has been initiating several legislative and administrative changes. This inter alia includes amendments to India’s IP laws, modernization of the IP registries with online access systems, establishment of the Intellectual Property Appellate Board (“IPAB”), border control measures to control parallel imports and counterfeiting. Further, the Copyright Law has been amended in 2012 to afford more protection to the right holders. Parliament passed certain amendments to the trademark in 2010 to facilitate implementation of the international registration
of trademarks as required under the Madrid Protocol. Additionally, the Commercial Division of the High Court’s Bill, 2009, will soon be enacted to dispose of the commercial disputes valued at ₹50,000,000 (800,000 Euros approximately) or higher within one year of filing the suit. 

**Role of FICCI Brand Protection Committee to Wage a War against Counterfeiting**

**FICCI BPC**

The India Brand Protection Committee appointed by the Federation of Indian Chamber of Commerce and Industry (FICCI). FICCI’s Brand Protection Committee has explored the issue of counterfeiting, pass offs and piracy from various angles in depth to work with the industry, policy-makers and professionals. The objective is to create the environment for capacity building, training and effective implementation of policy and the law. FICCI has also set up an interactive website called fake-busters.com which works as a platform for various industries. The FICCI BPC is a member of the Global Anti-Counterfeiting Group, an international forum to track the source of counterfeiting activities and take action on them.

Around a dozen leading corporate in India have joined together to wage a war against counterfeiting under the aegis of FICCI Brand Protection Committee. Companies including Procter & Gamble, HUL, Colgate, Marico, Smithkiline Beecham, Coke, Pepsi, Gillette, Brittannia have decided to jointly swoop on brand poachers. Mr. Bharat Patel, Chairman, Procter & Gamble Hygiene and Health Care Ltd., and Chairman, FICCI Brand Protection Committee, said the committee would focus on major consumer non-durable categories and eliminate counterfeit and pass-off products from it. He also added that “Counterfeiting has reached menacing proportions. It impacts industry, economy and hurts the consumer”, that’s the reason he has roped in representatives from across the industry to fight brand piracy.

Prof. Manubhai Shah, CERC, a member on the FICCI Brand Protection Committee, said “We may be rivals in day-to-day business but those who counterfeit our products belong to the same family”. Industry observers maintained that offenders manage to escape from the net of law by the time a raid is organised. “The joint effort is a
wonderful idea. We can jointly fight together”, said Pepsi Co. executive director Vikram Tandon.

The idea is to curtail fake products in the country and to this end work with the industry, consumer associations, government vigilance wings and trade associations. Strategic inputs of the Committee:

- Focus on enforcement and application of laws;
- Publicising the negative economic impact of fake products;
- Taking direct action against illegal manufacturers, traders, wholesalers and retailers; and
- Enhancing communication among the stakeholders.

The website, fake-busters.com provides information on companies and their crusade against counterfeits, including details of raids conducted and fake products seized. Besides, it carries a legal section which details existing laws on the subject and the legal remedies available. Already, corporate rivals otherwise involved in cut throat competition for a bigger market share have joined hands to wage a war on counterfeits and look alike goods. Many of these have been individually fighting a legal battle till now. For example, HUL conducts abort 400 raids every year on counterfeiters. However, they have come together under the brand protection committee (BPC) instituted under the aegis of FICCI, with the intention of facilitating trademark protection in India and protecting the interests against the menace of pass-off and counterfeit products.66

**It’s Important to Improve Consumer Buying**

Modern day purchase involves a very long list of goods for immediate needs and for future needs. Many a time goods are purchased in anticipation of some use, which is actually not even used for a single time. Lucrative offers made by a marketers often leads to buying of unwanted goods especially during impulse buying. Hence, it makes the problem of the modern buyer increasingly difficult. The increase in the productive capacity of the industries, bewildering array of variations in the products made available in the market, deceptive looks of products, for example, rayon looking like silk, or cotton finished like that of wool,etc., and the attractive packages and price offers are adding to the woes of the present day consumer. Hence it is needed that consumers should take precautions during buying process.
It is responsibility of the consumer to properly check the details given on the product label or shared by marketer. And immediately point out any malpractice adopted by marketer preferably at sale point itself. Precautions to be taken in the buying process are:

- In the first place, consumers need to acquire a wide range of information about the goods that are available in the market.
- In the second place, he needs to develop the ability to analyze the available products.
- In the third place, the consumer-buyer needs to understand the fundamental principles that are involved in good buying.
- In the fourth place, should not make decision in haste even if he/she is buying for others.

However, consumers should be aware about their duties, which they have to perform as a consumer, so as to enjoy their rights to the utmost level.

- Consumers should thoroughly check all details printed on labels. Check hologram/logo if he is aware of particular mark.
- Should always ask for proper bill i.e. cash memo/invoice.
- Go for patch tests wherever required. For cosmetics, skin and beauty products it is necessary to look out for any extraneous matter in liquid preparations, lumps in creams or ointments and always check the labels and read the list of ingredients carefully.
- Destroy empty packs, bottles and containers of used or leftover medicines to avoid recycling of refills because it may lead to reuse.
- Consumers should be aware of the quality and safety standards of counterfeits. One way to combat this behaviour is to use repetition of advertising massages to reinforce the quality and value of the original brands.
- Consumers should make a report to the company with proper documents, if they found any doubt about product. Company can lodge a complaint either with the local police station or authorities in the district.

**Schools as Center of Education**

A school as center of consumer education is widely accepted all over the world. Human being is a consumer of goods / services right
from his first day on the earth. Hence imparting the education about consumerism in school is not a bad idea. One such experiment conducted in Malaysia is discussed in the following paragraphs. The Consumers Association, Penanag, Malyasia designed a programme to impart knowledge about consumerism in schools. The CAP formulated four-fold objectives for the purpose.

- The first task of a consumer education programme in schools is to teach students to think critically.
- The next item would then be to learn to think out solutions to everyday problems of life such as for example; being cheated by a shopkeeper, adulteration in food products and so on.
- The process of thinking then leads to a number of possible actions that could be taken when particular problems arise with practice; students gain experience and can arrive at the most effective solutions to their problems.
- Another objective of consumer education in schools is to train students to plan a budget properly and make sensible economic decisions. If a consumer does not know how to take care of his resources, he is depriving himself of further opportunities for his own as well as the living standards of others he influences.
- Finally, students will have to learn to impart their knowledge and skills to others by teaching them what they have learnt.

This programme with little modifications if needed can be used for schools in India. In addition to above-mentioned practices, it is recommended that short term workshops can be arranged to see how students apply their knowledge imparted in the training. Expenditure on unwanted items or luxuries may be more than that on necessities because of an impulsive buying. Hence, training about purchase decisions as to, what to buy?, when to buy?, how to buy?, and how much to buy?, at early level of childhood is need of the time.

**Educating Consumers: Role of Government and the Corporates**

Government bodies have greater role to play, governmental bodies should educate consumers about the negative impacts of counterfeits. For example, consumers should be aware of the quality
and safety standards of counterfeits / imitated products. Certain forms of endorsement such as celebrities and government would project credibility. Counterfeiting advertisements showing negative economic impacts and long-term repercussions of counterfeiting activities can be used for this purpose.

Similarly, corporates may aid consumers, through education of the consumer that is, providing them with greater knowledge about the effectiveness of their products. There are several benefits of consumer education to individuals, business, and society. Corporates should accept it as their social responsibility. They should:
- Help the consumers to function more efficiently in the marketplace and support critical thinking;
- Impart life skills, which contribute to success in everyday living.

At the same time businesses also stand benefited through this. The benefits to business include: customer satisfaction, creation of realistic expectations of products and services and an increase in sales. The society benefits because consumer education encourages citizen awareness, and promotes a stable society. Therefore, the business clearly has a responsibility to help protect the rights of the consumers.

**Footnotes**

8. ibid., pp 10.
11. www.consumercare.co.in
15. ibid, pp 139.
17. ibid, pp.138.
21. “Strategies to kill fake product in Indian rural market”, pp. 25.world.indianmba.com /Faculty_Column/FC448/fc448.html
22. ibid., pp.336-349
23. “Strategies to kill fake product in Indian rural market”, pp 26-27, world.indianmba.com/Faculty_Column/FC448/fc448.html
26. ibid., pp. 147-151.
32. Dasgupta S., “Fake iPhone5 available in China for Rs. 1300”, *The Times of India*, August 8, 2011.
34. http://www.who.int/impact/en
41. Knowledge_center/index.html
44. http://www.eaasm.eu/About_the_EAASM


“Dabur, P & G, HLL conduct raids on brand pirates”, *The Times of India*, Ahmedabad Beuro, Jan. 23.


http://legalservicesindia.com/article/article/a-vision-of-food-176-1.html


http://www.ficci.com/sector/5/Add_docs/knowledgecenter.pdf


**References**


Ø “Fake sugar alters how body handles real sugar”, *The Times of India* (Nagpur), December 23, 2009.
Ø “India needs to have its own anti-piracy law”, *The Economic Times*, Feb. 14, 2011.
Ø “China admits to role in fake drugs supply”, *The Times of India*, August 13, 2009.
Ø Gupta S. & Sidhartha, “Consumer Protection Act to get more teeth”, *The Times of India*.
Ø “Brand names are imprinted on brain”, *The Times of India*, August 15, 2002.
Ø “Consumers wake up to a brand new day”, *The Times of India*, April 4, 2001.
Ø “Brand loyalty is more important”, *The Times of India*, July 7, 1994.
MODEL FORM-1 NOTICE BEFORE FILING THE COMPLAINT

Name and address
.................................................................................................................................
(of the trader, dealer, firm, company, etc.)
.................................................................................................................................
(Complete address)

IN RE: (Mention the goods/services complained of giving details)
.................................................................................................................................

Dear Sir,

This is to bring to your kind notice that I had purchased………….............from your ............................... for
a consideration of Rs……………………………...... paid in cash vide your cash memo/Receipt/Invoice
No....................................................... (or through cheque No
........................... dated ................... drawn on
........................................bank for a sum of Rs ....................

The said goods are suffering from the following defects:

(i) ............................................

(ii) ............................................ etc.

I have reported the above matter to you several times (give reference of earlier letters, if any) but despite all my pleadings you have not made good the defect in the goods (or deficiency in services) which is indeed regrettable and highly unbusiness like. On account of your aforesaid dereliction of duty and failure and neglect to rectify the same I have suffered losses/incurred expenses
...........................................................................................................................................
...........................................................................................................................................
...........................................................................................................................................
...........................................................................................................................................
...........................................................................................................................................

(give details)
which you are liable to compensate to me.
You are hereby finally called upon to
(i) remove the said defects in the goods

(ii) replace the goods with new goods

(iii) return the price/charges paid

(iv) pay compensation for financial loss/injury/interest suffered due to your negligence

.................................................................................................................................................
(give details)
in the sum of Rs ............................................ with interest
@ ............................................ % per annum
within............................days of the receipt of this notice
failing which I shall be constrained to initiate against you for
redressal of my aforesaid grievances and recovery of the
aforesaid amount such proceedings, both civil and criminal
as are warranted by law, besides filing a complaint under the
statutory provisions of The Consumer Protection Act, 1986
exclusively at your own risk, cost, responsibility and
consequences which please note.

Place............................
Dated............................

Sd/-

........... .  .
Model Form – 2 - The complaint

BEFORE THE HON’BLE DISTRICT CONSUMER DISPUTES
REDRESSAL FORUM AT .........................................................
OR
BEFORE THE HON’BLE STATE CONSUMER DISPUTES
REDRESSAL COMMISSION AT ....................................................
OR
BEFORE THE HON’BLE NATIONAL CONSUMER DISPUTES
REDRESSAL
COMMISSION AT NEW DELHI
IN RE: COMPLAINT NO ....................... OF 20 ........ IN THE MATTER
OF:
(FULL NAME) (DESCRIPTION) (COMPLETE ADDRESS)

............... Complainant

VERSUS
(FULL NAME) (DESCRIPTION) (COMPLETE ADDRESS)

................................. Opposite Party/ Parties

COMPLAINT UNDER SECTION 12/ SECTION 17/
SECTION 21 OF THE CONSUMER PROTECTION
ACT, 1986.

RESPECTFULLY SHOWETH

INTRODUCTION

(In this opening paragraph the complainant should give his introduction as well as that of the opposite party/parties.

TRANSACTION

(In this paragraph complainant should describe the transaction complained of, i.e., particulars and details of goods/services availed; items of goods/kind and nature of service; date of purchase of goods/availing of service; amount paid as price/consideration, full or in part towards the goods/service; Photocopies of the bill/cash memo/voucher or receipt should be attached and properly marked as Annexure – A, B, C and so forth or 1, 2, 3 and so forth.)
DEFECT DEFICIENCY

(In this paragraph complainant should explain the grievance, *i.e.*, whether the loss or damage has been caused by some unfair trade practice or restrictive trade practice adopted by any trader or there is some defect in the goods or there has been deficiency in service or the trader has charged excessive price for the goods. One should elucidate the nature of unfair trade practice adopted by the trader, *i.e.*, relating to the quality of goods/services; sponsorship; warranty or guarantee for such period promised. The nature and extent of defects in goods should be explained and so should the deficiency in service. In case of excessive price one should specify the details of actual price fixed by or under any law for the time being in force or as set out on goods and their packing vis-a-vis the price charged by the trader. Complaint can also be filed against offer for sale of goods hazardous to life and safety when used. You should narrate your grievance and rest assured it is being read/heard by compassionate and pragmatic judges. Photocopies of relevant documents must be attached.)

RECTIFICATION

(In this paragraph complainant should highlight what attempts were made by him to set things right, *i.e.*, personal visits or negotiations; communication in writing if any; whether any legal notice was got served and/or whether he has approached any other agency for redressal like, Civil or Criminal Court of competent jurisdiction; the stage of its proceedings, its outcome, if any, alongwith copies (certified preferably) of such proceedings. The nature of response got from the trader when irregularities were brought to his notice, should also be disclosed here).

OTHER PROVISIONS

(In this paragraph reference may be made to any other law or rules or regulations of particular procedure which is applicable to the case and/or which has been violated by the trader and consumer’s rights under the same. There are incidental statutory obligations, which traders must fulfil and in case of their failure to do so the case in *prima facie* made out and Forum would take cognizance).
EVIDENCE
(In this paragraph complainant should give details of documents and/or witnesses he will rely upon to substantiate his case. The documents attached as Annexures as stated above may be incorporated in a proper list and a list of witnesses (if any) may be filed similarly). The annexures should be attested as “True Copy”.

JURISDICTION
(In this paragraph complainant should liquidate the claim in the complaint, i.e., upto 20 lakh; 20 lakh to one crore; or above and set out the pecuniary jurisdiction of the Forum/State Commission/National Commission, as the case may be. The territorial Jurisdiction should be highlighted to obviate any formal objection).

LIMITATION
That the present complaint is being filed within the period prescribed under section 24A of the Act.

RELIEF CLAIMED
(In this paragraph complainant should describe the nature of relief he wants to claim. i.e., for removal of defects in goods or deficiency in service; replacement with new goods; return of the price or charges, etc., paid and/or compensation on account of financial loss or injury or detriment to his interest occasioned by negligence of the opposite party and elucidate how you have calculated the amount of compensation claimed).

PRAYER CLAUSE
It is, therefore, most respectfully prayed that this Hon’ble Forum/Commission may kindly be pleased to ................................................................. (Details of reliefs which complainant wants the Court to grant)

Place: ................................... Dated: ...................................

Complainant Through ...................................

(Advocate or Consumer Association, etc.)
Verification:

I, ............................. the complainant above named, do hereby solemnly verify that the contents of my above complaint are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein. Verified this ........................ day of ........................ 20 ...... at .......... Complainant.

Note: Although it is not compulsory, complainant may file an affidavit in support of the complaint which adds to the truth and veracity of allegations and gives credibility to the cause. It need not be on a Stamp paper but one should get it attested from an Oath Commissioner appointed by a High Court. The format is just as simple.
Model Form –3- Affidavit in support of the complaint

BEFORE THE HON’BLE................IN RE: COMPLAINT
NO............OF 20.............IN THE MATTER OF:
.................................................................

Complainant

Opposite party

AFFIDAVIT

Affidavit of
Shri..............................................................S/o. Shri

aged............................................years, resident of

(1) That I am complainant in the above case, thoroughly conversant with the facts and circumstances of the present case and am competent to swear this affidavit.

(2) That the facts contained in my accompanying complaint, the contents of which have not been repeated herein for the sake of brevity may be read as an integral part of this affidavit and are true and correct to my knowledge.

Deponent

Verification:

I, the above named deponent do hereby solemnly verify that the contents of my above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein. Verified this...............................day of.........................

20............. at..........

Deponent
Model Form –4- Reply by the trader to the complaint

BEFORE THE HON’BLE ...........................................
THE CONSUMER DISPUTES REDRESSAL FORUM/ COMMISSION AT..........................

IN RE: COMPLAINT NO..............................OF 20..............................

IN THE MATTER OF:

.............................................................................................................Complainant
VERSUS
.............................................................................................................Opposite Party

DATE OF HEARING.........................
WRITTEN STATEMENT ON BEHALF OF
RESPONDENTS TO THE COMPLAINT OF THE
COMPLAINANT

RESPECTFULLY SHOWETH:

Preliminary Objections

1. That the present complaint is wholly misconceived, groundless and unsustainable in law and is liable to be dismissed as such. The transaction question was without any consideration and free of charge.

2. That this Hon’ble Forum/ Commission has no jurisdiction to entertain and adjudicate upon the dispute involved in the complaint in as much as it is not a consumer dispute and does not fall within the ambit of the provisions of the Consumer Protection Act, 1986, hereinafter called the said Act and is exclusively triable by a Civil Court and as such the complaint is liable to be dismissed summarily on this score alone.

3. That the dispute raised by the complainant in the present complaint is manifestly outside the purview of the said Act and in any event, the Act is in addition to and not in derogation of the provisions of the.............. Act. The proceedings initiated by the complainant under the Act are honest, null and void and without jurisdiction.

4. That the definitions of ‘Complainant’, ‘Complaint’ ‘Consumer Dispute’ and ‘Service’, as defined in Section 2(1) of the said Act do not cover the claims arising under the present dispute and that from the aforesaid definitions, the complainant is not ‘consumer’ and the controversy involved in the complaint is not a ‘consumer dispute’.

5. That the present complaint is baseless and flagrant abuse of process of law to harass and blackmail the answering respondent.

6. That the complainant has no locus standi to initiate the present proceedings.

7. That the complaint is bad for non-joinder of necessary and proper party and is liable to be dismissed on this score alone.

8. That the complainant has already filed a Civil Suit for ................. in a court of competent jurisdiction which is pending disposal in
the Court of ............ and the present complaint has become infructuous.

9. That the present complaint is hopelessly barred by limitation.

10. That this Hon’ble Forum/Commission has no territorial or pecuniary jurisdiction in as much as the amount involved in the subject-matter exceeds/is less than the limit prescribed by Section 11(1) Section 17(1)(a)(i)/Section 21(a)(i) of the Act.

11. That the present complaint is frivolous and vexatious and liable to be dismissed under Section 26 of the Act.

12. That the present complaint has not been verified in accordance with law.

On Merits:

In these paragraphs respondent must reply each and every allegation made and contention raised by the complainant, factual and legal as well. In case one has already made good the defect or deficiency, elucidate steps taken. One may have, inter alia, following goods defences as well.

1. That the transaction entered between the parties to the above dispute is a commercial one and the complainant cannot claim any relief from this authority in as much as .............................................................

2. That the complainant had purchased the goods as a seller/retailer/distributor, etc., for consideration of resale and as such is barred from moving this Hon’ble Forum/Commission for the alleged defect/deficiency etc. in as much as .............................................................

3. That the complainant has already availed the warranty period during which the answering respondent has repaired/replaced the goods in question. The complainant is thus legally stopped from enforcing this complaint or to take benefit of his own wrong.

4. That the present complaint is an exaggeration beyond proportion despite the fact that the complainant is himself responsible for delay and laches in as much as he has on several occasions changed his option for class of goods/type of allotment scheme
of flats/model of vehicle, etc .................................................
(give details)

5. That the answering respondent is well within his rights to charge extra price for the subject-matter of the above dispute in as much as time was not the essence of delivery thereof. The complainant is liable to pay the increased price w.e.f ............ on account of escalation due to excise duty/budgetary provisions etc. in as much as…..(give details)

6. That the complainant has accepted the goods and/or service towards repair/replacement etc. without protest and the present complaint is merely an after thought.

7. That without prejudice the answering respondent as a gesture of goodwill is prepared to ..........................................................
(give details of rectification, if any, which can be done in case of minor or tolerable problems to avoid harassment to consumer and litigation problems)

The allegations of defect/default/negligence and/or deficiency in service are wholly misconceived, groundless, false, untenable in law besides being extraneous and irrelevant having regard to the facts and circumstances of the matter under reference. Prayer clause with all the submissions made therein is absolutely wrong and is emphatically denied. Complainant is not entitled to any relief whatsoever and is not entitled Model Form costs.

Sd/-

(Opposite Party)

Place: ......................
Dated: ......................

through

(Advocate)
Verification

I, .................... the above named respondent do hereby verify that the contents of paras ................ to ................ of the written statement on merits are true and correct to my knowledge. While paras .......................... to ............. of preliminary objections and ................ to ........ of reply on merits are true to my information, belief and legal advice received by me and believed to be true while the last para is prayer to this Hon’ble Court. Verified at ...................... this .....................day of.................... 20 ..............

Sd/-

(Opposite party)
The Indian Institute of Public Administration, established as an autonomous body under the Registration of Societies Act, was inaugurated on March 29, 1954 by Shri Jawaharlal Nehru who was the first President of the Society. The basic purpose of establishing this Institute was to undertake such academic activities as would enhance the leadership qualities and managerial capabilities of the executives in the government and other public service organizations. The activities of the Institute are organized in four inter-related areas of Research, Training, Advisory and Consultancy Services and Dissemination of Information.

CENTRE FOR CONSUMER STUDIES

CCS is dedicated to consumer studies and is sponsored by DCA, GoI. The objective of the CCS is to perform, facilitate and promote better protection of consumer's rights and interests with special reference to rural India. The broad areas of focus of the Centre comprise capacity building, advocacy, policy analysis, research, advisory and consultative services, and networking.

The Centre seeks to network with national and International agencies and interface with other stakeholders by serving as a bridging “think tank” with an intensive advocacy role. The Centre provides a forum for creating dialogue among policy makers, service providers, representatives of various business establishments and their associations, professional bodies/associations, civil society organizations, educational/research institutions, economic and social development organizations as well as leading NGO's.

Centre for Consumer Studies
Room No. 11A
Indian Institute of Public Administration
I.P. Estate, Ring Road
New Delhi-110002
Tel: 011-23468347, 23705928 (Fax)
Email: ccs.iipa@gmail.com
Website: www.consumereducation.in