
FOOD FOR FRAUD: THE RISING THREAT OF COUNTERFEIT FOOD AND BEVERAGES

Nysa Suri, B.A. LL.B. (Hons.), SVKM NMIMS School of Law, Bengaluru

ABSTRACT

In early 2025, social media platforms went into a frenzy as many videos surfaced online showing paneer turning black when tested with iodine, a common indicator of starch contamination, in both high-end restaurants and local eateries across India. The panic was especially pronounced given that paneer is more than just a dairy product; it is an integral part of Indian cuisine, widely considered a household staple and a beloved delicacy across regions and communities. While the frenzy may have subsided, as netizens inevitably move on to the next viral cause, the incident draws attention to a far more serious and enduring concern: food fraud. Food fraud is the act of intentionally deceiving the consumers by adulterating, mislabelling, substituting or counterfeiting food products for economic gain. This may include- diluting milk with water, substituting basmati rice with cheaper varieties, selling Imul butter instead of Amul butter or adding palm oil to what is supposed to be milk-based ice creams. Not only does this erode consumer trust, market integrity, and food safety norms, it also poses a serious risk to public health. The complexity of the global food supply chain, involving a large number of intermediaries like farmers, brokers, processors, manufactures, wholesalers and retailers, coupled with lax regulatory monitoring and oversight and lenient penalties and ingenuous customers create opportunities for both legitimate actors who operate in the food supply chain and criminal organizations to engage in food fraud. This paper intends to shed light on the concept of food fraud and food-counterfeiting, its interplay with intellectual property laws and draws comparisons between major jurisdictions like the European Union, the US and India on how they tackle this pressing issue.

Keywords: Food Fraud; Food Counterfeiting; Intellectual Property Rights; Food Safety; Consumer Protection; Trademark Infringement; Comparative Regulatory Frameworks.

INTRODUCTION

“Let food be thy medicine and medicine be thy food.” This famous quote which is widely attributed to Hippocrates underscores the importance of food to sustain life. While food is an essential prerequisite to life itself, it is also pertinent that the food we consume is unadulterated, fresh and pure. Food fraud refers to illegally deceiving consumers for profits using food as a means. A comprehensive understanding of food fraud would include: i) adulteration - ingredient substitution, dilution, and concealment, or more generally impurities, ii) tampering - date code tampering and refilling containers, iii) unauthorized production, and counterfeiting - intellectual property rights infringement.¹ It is a long-standing and persistent issue which has been impacting the global food supply-chain since decades.

This paper proceeds in five parts. Part I defines food counterfeiting and distinguishes it from broader food fraud. Part II examines the European Union's model of converged IP and food safety enforcement. Part III considers the United States, where robust IP law coexists with persistent enforcement gaps. Part IV turns to India, where statutory tools exist but institutional coordination remains absent. Part V concludes with recommendations for bridging this gap

I. WHAT IS FOOD-COUNTERFEITING?

Within the broader umbrella of food fraud, counterfeit food and beverages represent a particularly serious and legally complex category. Counterfeiting involves the unauthorised use of trademarks, trade names, logos, packaging or overall brand identity, which misleads consumers into believing that they are purchasing a genuine product. A classic example is the sale of Bilseri- a clear knock off of Bisleri- a popular brand known for packaged drinking water. From the name and the font to the colour scheme and packaging design, everything is deliberately designed to mimic the original, thereby exploiting consumer trust and infringing the brand's intellectual property rights.² In recent years, the perpetrators have started to use technologies during manufacturing, which helps them manufacture the product to a T. They copy the logo, design, barcodes and other packaging features which makes it difficult for an

¹Douglas C. Moyer, Jonathan W. DeVries & John Spink, *The Economics of a Food Fraud Incident—Case Studies and Examples Including Melamine in Wheat Gluten*, 71 Food Control 358 (2017) The economics of a food fraud incident – Case studies and examples including Melamine in Wheat Gluten - ScienceDirect

²India Today News Desk, *Fake 'Bilseri' Bottles? UP DM Orders Bulldozer Action Against Counterfeit Water Plant*, India Today (Oct. 6, 2024), <https://www.indiatoday.in/india/story/bisleri-fake-water-bottle-baghat-dm-bilseri-bulldozer-uttar-pradesh-counterfeit-products-2612216-2024-10-06>

average person to be able to differentiate between the real and counterfeit product. The “State of Counterfeiting in India – 2021” report published by ASPA Global, an Indian non-profit organisation specialised in authentication systems and anticounterfeiting solutions, highlighted that the top 5 sectors most affected by counterfeiting were currency, FMCG, alcohol, pharmaceutical, and tobacco.³ This is alarming because counterfeit food and beverages are not just a regulatory violation, it is a dual offence, combining public health risk with intellectual property crime. Counterfeit food and beverages also result in income loss since consumers pay for a certain product but receive cheap knockoffs of that product which may contain harmful chemicals and substances, thereby affecting their health. Addressing it requires coordination between food safety authorities and IP enforcement bodies⁴.

II. EUROPEAN UNION: COORDINATED ACTION THROUGH IP AND FOOD SAFETY

A recent campaign undertaken by European Union Intellectual Property Office- What’s on your table?⁵ (2025) seemed to address and discuss this issue at length. The report talked about seizure operations carried out by OPSON. These seizures were worth over €91 million, including 22,000 tonnes of counterfeit food and 850,000 litres of fake beverages. Common items included olive oil, cheese, pasta, and wine- many packaged to mimic trusted brands or misuse geographical indications. These products, the report said, pose serious health risks, with some containing harmful substances like methanol, fipronil, mercury or industrial-grade alcohol. When consumed, the impact of such chemicals to human health are not surprisingly-severe. The economic impact is equally grave: the EU wine and spirits sector alone suffers €2.28 billion in lost sales and over 5,000 lost jobs annually.

The EU’s legal response draws upon a robust IP regime, combining EU trademark law (EUTMR) with strong protections for Geographical Indications (GIs).

High-profile operations like OPSON help remove counterfeit and substandard food and drinks from the market. These operations are often in collaboration with Europol, Interpol and law

³ASPA, *The State of Counterfeiting in India 2021*, (2021), https://www.aspaglobal.com/pre_upload/nation/1623216858-4730baa0efdb83a

⁴Yiannaka, *Food Fraud: a persistent problem that demands a comprehensive approach*, J. Consumer Prot. & Food Safety (November 15, 2023). <https://doi.org/10.1007/s00003-023-01465-6>

⁵European Union Intell. Prop. Off., *The “What’s on Your Table?” Campaign Tackles Counterfeit Food and Beverages* (June 12, 2024), <https://www.euipo.europa.eu/en/news/the-what-s-on-your-table-campaign-tackles-counterfeit-food-and-beverages>

enforcement agencies of 29 countries of the EU, as well as food and beverage producers. The EUIPO contributes its expertise in trademark and GI protection, offers training, and works closely with enforcement authorities across member states.

Additionally, the General Food Law (GFL), i.e., Regulation 178/2002 is the cornerstone of food law in the European Union, establishing principles, requirements, and procedures that apply to the decision-making process in food safety. Regulation 2017/625 on official controls also talks about official control requirements across the entire agri-food chain, covering food, feed, animal health, plant health, and more. Article 9(2) specifically requires competent authorities in member states to not only detect violations but also identify possible intentional violations perpetrated through fraudulent or deceptive practices. Furthermore, the EU food fraud network, established in 2013, is a primary network through which, the European Commission connects with liaison bodies designated by EU member states to cooperate on combatting food fraud across borders. It facilitates cooperation between food safety authorities, police, customs officers, judges, and prosecutors to ensure compliance with EU agri-food legislation.⁶

As is clear from above, the EU promotes multi-agency coordination and consolidated action, involving customs, food regulators, law enforcement, and the EUIPO itself. They have built specialised networks and established regulatory structures through which food fraud can be detected. This convergence of IP enforcement and food safety regulation, rather than the EU treating it as separate domains is what sets it apart and distinguishes them. Their multi-pronged approach serves as a useful benchmark against which the frameworks of other jurisdictions, including the US and India, can be evaluated.

III. UNITED STATES: STRONG LAWS AND GROUND REALITIES

The Food and Drug Administration (FDA) is the central body which plays a crucial role in combatting food fraud. They have come up with compliance programs, research into detection methods and regulations through which- Economically Motivated Adulteration (EMA) can be dealt with. According to the FDA, EMA is responsible for estimated global losses of \$10–\$15

⁶European Comm'n, *Agri-Food Fraud: What Does It Mean?*, Food Safety, https://food.ec.europa.eu/food-safety/eu-agri-food-fraud-network/what-does-it-mean_en

billion annually, and in some cases up to \$40 billion.⁷

In its 2021–2022 sampling study, the FDA tested 144 imported honey samples from 32 countries and found that 10% were adulterated with undeclared sweeteners like corn or cane syrup.⁸ While follow-up testing conducted in FY22/23⁹ showed a reduced violation rate of 3%, the FDA has continued to issue import alerts, detaining non-compliant shipments at U.S. borders. Similar concerns have arisen with olive oil, spices, and seafood, where substitution or mislabelling compromises both consumer safety and market transparency. These examples reflect robust enforcement mechanisms undertaken by the FDA against food fraud- but not all such cases qualify as counterfeiting in the legal sense.

Other than the FDA, 18 U.S.C. § 2320 makes it a federal crime to intentionally traffic or attempt to traffic in goods or services that bear a counterfeit mark. This law covers a wide range of counterfeit items including consumer products, drugs and military products. Violations carry severe criminal and financial consequences, especially when counterfeit goods involve life-threatening drugs and medications.

15 U.S.C. § 1117 of the Lanham Act addresses the concept of counterfeiting in the US. Civil and criminal actions have been taken against fake packaged products where counterfeiters attempt to mimic the branding of trusted companies. These cases are typically pursued through joint enforcement by the FDA, Customs and Border Protection (CBP), and trademark owners. The CBP is particularly proactive in excluding, detaining and seizing counterfeit goods at any port of entry into the United States.¹⁰

Taken together, these examples show that the US possesses a sophisticated legal toolkit against food and beverage counterfeiting. A dedicated criminal counterfeiting statute under 18 U.S.C. § 2320, ex-parte seizure remedies under the Lanham Act, and an active FDA criminal

⁷U.S. Food & Drug Admin., *Economically Motivated Adulteration (Food Fraud)*, <https://www.fda.gov/food/compliance-enforcement-food/economically-motivated-adulteration-food-fraud>

⁸U.S. Food & Drug Admin., *FY21/22 Sample Collection and Analysis of Imported Honey for Economically Motivated Adulteration*, <https://www.fda.gov/food/economically-motivated-adulteration-food-fraud/fy2122-sample-collection-and-analysis-imported-honey-economically-motivated-adulteration>

⁹U.S. Food & Drug Admin., *FY22/23 Sample Collection and Analysis of Imported Honey for Economically Motivated Adulteration* (Sept. 18, 2024), <https://www.fda.gov/food/economically-motivated-adulteration-food-fraud/fy2223-sample-collection-and-analysis-imported-honey-economically-motivated-adulteration>

¹⁰World Trademark Review, “United States: How a Multi-Pronged Legislative Approach is Curbing the Online Trade in Fakes” (June 24, 2024), Anti-counterfeiting and Online Brand Enforcement: Global Guide 2024 - United States: How a multi-pronged legislative approach is curbing the online trade in fakes - WTR

investigations arm working alongside CBP at the border. Yet as the honey adulteration findings show, even with this framework in place, detection often lags behind the scale of the problem, and not every instance of food fraud rises to the level of actionable counterfeiting under the law. This suggests that strong substantive law and active enforcement agencies are necessary but not sufficient, a caution that matters even more for jurisdictions like India, where the underlying institutional coordination between IP and food safety regulators is itself still developing.

IV. INDIA: GAPS BETWEEN LAW AND ENFORCEMENT

In India, The Food Safety and Standards Act, 2006, enforced by the Food Safety and Standards Authority of India (FSSAI), is the country's primary food law. It prohibits the manufacture, sale, or distribution of unsafe, sub-standard, or misbranded food. However, it does not explicitly cover counterfeiting, and enforcement efforts tend to focus more on hygiene and adulteration rather than trademark-based deception. Counterfeiting is dealt with in the Trademarks Act, 1999, particularly under Sections 29 and 134, which provide for both civil and criminal action.

Despite these statutory laws, there is little cohesion or intermingling between FSSAI and law enforcement agencies. Most trademark-related actions rely heavily on private brand owners initiating complaints. According to the Authentication Solution Providers' Association (ASPA) 2020 report, as cited by the Global Food Consumers Forum¹¹, counterfeit incidents in India rose by 24% year-on-year between 2018 and 2019, with FMCG, alcohol, and agriculture among the top affected sectors. The report estimates that India loses over ₹1 lakh crore annually due to counterfeiting across sectors. Commonly counterfeited food products include mustard oil, cumin seeds, ghee, and illicit liquor. Although the Ministry of Consumer Affairs has urged states to enforce stricter packaging norms, especially for edible oils, implementation remains patchy.

States like Uttar Pradesh, Bihar and Rajasthan report some of the highest counterfeiting activities, particularly due to their close proximity with Nepal, Bangladesh, Pakistan, and Myanmar. All this, coupled with a rural population exceeding 75%, makes them particularly

¹¹Global Food Consumers Forum, *Food Fraud – Present Challenges to Indian Food Consumers* (May 26, 2022), <https://www.globalfoodconsumers.org/news/food-fraud-present-challenges-to-indian-food-consumers-copy/>

vulnerable to illicit trade and counterfeit distribution. In these areas, a combination of high demand for branded goods, limited access to official distribution networks, and low consumer awareness has enabled the rise of fake FMCG products, including counterfeit liquor, edible oils, and agricultural inputs.

In May 2024, a staggering 15 tonnes of fake coriander powder, turmeric powder, and other spices were seized by Delhi Police in the Karawal Nagar area, Delhi. It was reported that these fake spices were made of rotten leaves and rice, spoiled millets, wood dust, chilli heads, acids and substandard oils and the accused were supplying these adulterated spices to local markets and vendors in Delhi/NCR for the same price as the original products.¹²

Recently, in March 2026, two individuals had been arrested for manufacturing and supplying counterfeit protein supplements of reputed brands in Delhi. Police seized a large quantity of counterfeit supplements, packaging materials, and raw materials from the units. The recovered items included boxes of protein supplements labelled as Optimum Nutrition Gold Standard Whey, Syntha-6 Ultra-Premium Protein Matrix and Isopure Zero Carb Protein, along with flavouring agents, cocoa powder, whey protein powder, fat powder and maltodextrin powder. The accused have been booked under the relevant sections of BNS and Copyright Act.¹³

All in all, it is evident that while India has the regulatory framework to counter counterfeit food and beverages through the Trademark Act, BNS and FSSAI, there are gaps in enforcement which need to be addressed, as per usual. Not only that, these frameworks largely operate in isolation. The March 2026 protein supplement case illustrates this fact. Despite being a clear instance of brand counterfeiting, the accused were booked under the BNS and Copyright Act, with the Trademarks Act and FSSAI notably absent from the response. The influx of counterfeit food and beverages in a country already grappling with laxity in enforcement of hygiene standards puts public health in a precarious position. It is crucial that law enforcement agencies work in tandem with organisations like FSSAI and IP enforcement bodies like CGPDTM to spread awareness about food fraud, the health risks attached to it, keep a strict check on circulation of food products in the market and crack down on miscreants. A formal channel for joint action may be introduced instead of relying on ad-hoc invocation of whichever statute is

¹²TNN, *15 Tonnes of Fake Masala Seized; Wood Dust, Acid Used in Them*, Times of India (May 6, 2024), Fake Masala: 15 tonnes of fake masala made with wood dust, chemicals, and rotten rice seized | - The Times of India

¹³Jignasa Sinha, *Delhi Police Bust Fake Protein Powder Racket; 7,000 Kg Sold Across NCR in Two Years*, Hindustan Times (Mar. 12, 2026), Delhi Police bust fake protein powder racket; 7,000 kg sold across NCR in two years | Latest News Delhi

most readily available to the police at the time of a raid.

V. CONCLUSION: WAY FORWARD

To tackle the influx of counterfeit food and beverages, it is crucial that countries move beyond the fragmented enforcement approach and move towards a more cohesive structural approach where law agencies as well as food regulatory authorities and IP enforcement authorities cooperate and work together to clamp down illegal counterfeiting activities (much like the EU).

Consumers need to be made aware of counterfeit products and the health risks that they pose. Educational Campaigns should be started by food regulatory authorities to make the general populace more mindful of the products they consume and to flag any irregularities immediately so these issues are tackled head-on.

A major reason why food fraud is still attractive to criminal enterprises since the potential rewards are very tempting and penalties remain low. Thus, it is important that there should be some deterrence for such fraudulent activities. This may include imposing hefty sanctions in line with the seriousness of the offence and withdrawal of licenses. Positive reinforcements also include improving the training and equipment of enforcement authorities; increasing the number of food inspectors, appointing laboratories and testing facilities to research on the issue of adulterated food and beverages and development of strict guidelines on what constitutes food fraud, how it can be reported and what are the legal consequences of the same.

Governments must invest in traceable packaging technologies like QR codes, tamper-evident holograms, and mobile-based authentication systems. These tools not only empower consumers and help oversee any inconsistencies in the supply chain but also help enforcement agencies identify and counter counterfeit products quickly and efficiently.

Additionally, a Public-Private Partnership framework can be developed to facilitate regular collaboration between industry and government. This framework should include mechanisms for sharing best practices, resources, and technological innovations.

Finally, countries need to collaborate with each other since counterfeit food and beverages is as much a global issue, as it is a country-specific issue. International Organisations like the World Intellectual Property Organisation (WIPO) should take a more active role in facilitating cross-border coordination, training, and data-sharing to tackle food counterfeiting. This could include

developing guidelines for packaging authentication, offering technical assistance to developing countries, and encouraging harmonised enforcement standards among member states.