
BRAND PIRACY AND PUBLIC HEALTH: AN INTELLECTUAL PROPERTY RIGHTS PERSPECTIVE ON PHARMACEUTICALS AND COSMETICS

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ABSTRACT

Brand piracy, particularly in the pharmaceutical and cosmetic sectors, has emerged as a critical global concern, undermining public health, consumer safety, and the integrity of intellectual property rights (IPR). Counterfeit pharmaceuticals, including antibiotics, antimalarial drugs, and vaccines, often fail to meet safety and efficacy standards, leading to treatment failures, the emergence of drug-resistant strains, and, in extreme cases, mortality. Similarly, counterfeit cosmetic products, such as skin-lightening creams, hair-straightening products, and personal care items, frequently contain toxic or unregulated substances, resulting in allergic reactions, chemical burns, and long-term health complications. The proliferation of these counterfeit products is driven by high consumer demand, insufficient regulatory oversight, and weaknesses in enforcement mechanisms, both nationally and internationally. The study focuses on patents, trademarks, and design rights as legal instruments that not only protect commercial interests but also serve as deterrents against the circulation of unsafe counterfeit goods. By analyzing selected case studies from India and other jurisdictions, the paper highlights the real-world consequences of counterfeit pharmaceuticals and cosmetics, demonstrating the tangible risks to public health. Reports from global organizations, including the World Health Organization (WHO) and the World Intellectual Property Organization (WIPO), are also examined to provide a comprehensive understanding of enforcement challenges and policy responses. Comparative analysis of enforcement practices in different jurisdictions aims to identify best practices and lessons that can be adapted to strengthen IPR protection in India. The findings underscore the critical link between robust IPR enforcement and public health outcomes, illustrating that effective protection of trademarks and patents can significantly reduce the circulation of counterfeit products.

Introduction

Brand piracy, commonly referred to as the unauthorized replication or imitation of registered trademarks, patents, or designs, has become a pervasive challenge in the global market. While its economic implications such as loss of revenue and diminished brand value are widely acknowledged, the consequences for public health are equally profound, particularly in the pharmaceutical and cosmetic industries. Counterfeit drugs and cosmetic products often bypass established quality standards, contain substandard or toxic ingredients, and fail to deliver the intended therapeutic or cosmetic benefits. In the context of pharmaceuticals, this can result in treatment failures, exacerbation of diseases, development of drug-resistant pathogens, and, in extreme cases, fatalities. Similarly, counterfeit cosmetic products may cause skin disorders, allergic reactions, chemical burns, or long-term health hazards due to harmful ingredients like mercury, hydroquinone, and unregulated preservatives.¹ The increasing prevalence of brand piracy thus represents a critical intersection between intellectual property violations and public health risks. Intellectual Property Rights (IPR). Patents, trademarks, and design rights are not only mechanisms to safeguard commercial innovation but also instruments to ensure the authenticity, quality, and safety of products available to consumers. For instance, trademarks allow consumers to identify and trust legitimate brands, thereby reducing the likelihood of consuming counterfeit goods. Patents incentivize pharmaceutical innovation while providing legal mechanisms to prevent unauthorized production of drugs that could compromise efficacy and safety. Despite the existence of robust IPR frameworks in India and globally, enforcement challenges, regulatory loopholes, and the rapid growth of e-commerce platforms have facilitated the circulation of counterfeit products, often with severe public health implications.² In recent years, the proliferation of counterfeit drugs has emerged as a pressing concern in both developing and developed nations. According to the World Health Organization (WHO), an estimated 10% of medicines circulating in low- and middle-income countries are substandard or falsified, disproportionately affecting vulnerable populations.³ In parallel, the cosmetic industry has witnessed a surge in counterfeit products, often sold online or through informal markets, where regulatory oversight is limited. These trends highlight the urgent need

¹ Personal Care Products Council, *Counterfeit Cosmetics* (last visited Jan. 4, 2026) (overview of industry efforts and safety concerns), <https://www.personalcarecouncil.org/issues/counterfeit-cosmetics/>.

² Nat'l Ass'n of Mfrs., *Countering Counterfeits: The Real Threat of Fake Products* (July 2020) (white paper on how counterfeit goods harm manufacturers, consumers, and public health), https://www.nam.org/wpcontent/uploads/2020/07/CounteringCounterfeits.vF_.pdf.

³ Substandard and Falsified Medical Products and Informal Markets, at 1 (World Health Org.) (executive summary), available at https://apps.who.int/gb/sf/pdf_files/MSM12/A_MS12_6-en.pdf

for a multidisciplinary approach that combines IPR enforcement, regulatory vigilance, technological solutions, and consumer awareness to mitigate the risks associated with brand piracy. This research aims to examine the complex relationship between brand piracy, intellectual property rights, and public health in the pharmaceutical and cosmetic sectors. It analyzing case studies, statutory provisions, judicial decisions, and international best practices, the study seeks to highlight the health risks posed by counterfeit products and evaluate the effectiveness of existing IPR mechanisms in preventing their circulation. Furthermore, the research will explore policy, legal, and technological interventions that can strengthen enforcement and safeguard public health. Through this approach, the study emphasizes that robust IPR protection is not only a matter of economic interest but also a critical tool for ensuring consumer safety and promoting public health outcomes.⁴

Brand piracy

It refers to the unauthorized use, imitation, or reproduction of a registered brand name, trademark, logo, or trade dress with the intention of misleading consumers and deriving unlawful commercial benefit. It commonly involves the manufacture and sale of counterfeit goods that closely resemble genuine products, thereby infringing intellectual property rights, particularly trademarks. Brand piracy not only causes significant economic losses to legitimate brand owners but also undermines consumer trust and market integrity. In sectors such as pharmaceuticals, cosmetics, electronics, and luxury goods, brand piracy poses serious risks by circulating substandard or unsafe products that do not comply with regulatory and quality standards.⁵ The growth of global trade, e-commerce platforms, and informal markets has further facilitated the spread of pirated brands across borders. From a legal perspective, brand piracy constitutes a violation of national trademark laws and international agreements such as the TRIPS Agreement, necessitating strong enforcement mechanisms to protect both intellectual property rights and public interest.

Pharmaceutical and cosmetic sectors on public health

The pharmaceutical and cosmetic sectors play a crucial role in safeguarding public health, as the products manufactured and distributed within these industries are directly linked

⁴ Ganesh Makam, *The Justification for Intellectual Property Rights* (Apr. 30, 2023) (unpublished manuscript), available at SSRN: <https://ssrn.com/abstract=4470033> or <http://dx.doi.org/10.2139/ssrn.4470033>

⁵ Mattos Filho, *Luxury Brands in Brazil: New Technologies, Opportunities and Precautions* (June 3, 2022), <https://www.mattosfilho.com.br/en/unico/luxury-brands-new-technologies/>

to human well-being, safety, and quality of life. Pharmaceuticals are essential for the prevention, diagnosis, treatment, and management of diseases, while cosmetic products, although not therapeutic in nature, significantly affect skin health, personal hygiene, and overall physical well-being. “Any compromise in the quality, safety, or authenticity of products in these sectors can therefore have serious and far-reaching public health consequences. where the Supreme Court interpreted **Section 3(d) of the Patents Act, 1970**”.⁶ The Court denied patent protection to Novartis for its cancer drug *Glivec*, holding that the modified form of a known substance must demonstrate enhanced therapeutic efficacy to qualify as an invention. This case is landmark for balancing patent protection with public health concerns, as it prevented “evergreening” of pharmaceutical patents and ensured access to affordable medicines. The judgment reinforced India’s commitment to public interest while remaining compliant with TRIPS obligations.⁷ In the pharmaceutical sector, public health is highly dependent on the availability of safe, effective, and quality-assured medicines. Substandard or counterfeit drugs may contain incorrect dosages, ineffective active ingredients, or harmful substances, leading to treatment failure, prolonged illness, or even death.⁸ One of the most serious consequences of counterfeit pharmaceuticals is the development of antimicrobial resistance (AMR), which occurs when patients consume ineffective antibiotics that fail to eliminate pathogens completely. This not only endangers individual patients but also poses a global public health threat by reducing the effectiveness of existing treatments. Vulnerable populations, particularly in low- and middle-income countries, are disproportionately affected due to limited regulatory oversight, lack of access to affordable medicines, and weak enforcement mechanisms.

The cosmetic sector also has significant public health implications, despite being regulated differently from pharmaceuticals. Cosmetic products such as skin-lightening creams, hair-straightening treatments, and personal care items are frequently used on a daily basis and often over long periods. Counterfeit or substandard cosmetics may contain toxic ingredients such as mercury, lead, hydroquinone, or unapproved preservatives, which can cause skin irritation, allergic reactions, chemical burns, hormonal disruptions, and long-term health complications. Prolonged exposure to such harmful substances may lead to chronic skin

⁶ Saipriya Balasubramanian, *Section 3(d): Hurdle Or Advantage To The Pharmaceutical Sector – An Indian Perspective*, Mondaq (July 21, 2017), <https://www.mondaq.com/india/patent/612674/section-3d-hurdle-oradvantage-to-the-pharmaceutical-sector-an-indian-perspective>

⁷ Novartis AG v. Union of India (2013)

⁸ World Health Org., *Substandard and Falsified Medical Products* (2023), <https://www.who.int/news-room/factsheets/detail/substandard-and-falsified-medical-products>

disorders, kidney damage, or neurological effects, thereby transforming cosmetic misuse into a public health concern. which upheld India's first compulsory license granted to Natco Pharma for Bayer's patented drug *Nexavar*.⁹ The Bombay High Court recognized that patent rights are not absolute and must serve public needs, particularly where drugs are priced beyond the reach of the public. This case established that compulsory licensing is a legitimate tool to promote public health and access to essential medicines.¹⁰ The rapid growth of e-commerce and informal markets has further exacerbated public health risks in both sectors. Online platforms often lack adequate verification mechanisms, allowing counterfeit pharmaceutical and cosmetic products to reach consumers with minimal scrutiny. Consumers may unknowingly purchase these products due to lower prices, misleading advertisements, or lack of awareness, increasing the likelihood of adverse health outcomes.¹¹ It pharmaceutical and cosmetic sectors are integral to public health protection, and any compromise in product quality due to counterfeiting or weak regulation can result in serious health risks. Strengthening regulatory frameworks, enhancing intellectual property enforcement, promoting consumer awareness, and adopting technological solutions for product authentication are essential measures to safeguard public health and ensure the safety and well-being of consumers.

Patents and Trademarks:

Intellectual Property Rights (IPR) are legal rights granted to protect creations of the human intellect, and among the most significant forms of IPR are patents and trademarks. Although both serve the purpose of protecting intangible assets, they differ substantially in nature, scope, and objectives.

A patent is a statutory right granted by the State to an inventor for an invention that is new, involves an inventive step, and is capable of industrial application. A patent confers upon the patentee the exclusive right to prevent others from making, using, selling, offering for sale, or importing the patented invention without authorization for a limited period, generally twenty years from the date of filing.¹² The primary objective of patent protection is to encourage

⁹ Rachit Garg, *Bayer Corporation vs Natco Pharma Ltd: A Case Analysis* (Mar. 25, 2023), iPleaders, <https://blog.ipleaders.in/bayer-corporation-vs-natco-pharma-ltd-a-case-analysis/>

¹⁰ Bayer Corporation v. Union of India (2014)

¹¹ Unknown Dangers Found in Consumer Products, One Eleuthera (Apr. 25, 2023), <https://oneeleuthera.org/unknown-dangers-found-in-consumer-products/>

¹² Patent Protection — an overview, ScienceDirect Topics (Engineering), <https://www.sciencedirect.com/topics/engineering/patent-protection>

innovation by rewarding inventors for their intellectual effort and investment while ensuring public disclosure of technological knowledge. In exchange for this exclusive right, the inventor must disclose the invention in sufficient detail so that it can be reproduced by a person skilled in the art. Patents in sectors such as pharmaceuticals, biotechnology, engineering, and information technology, where research and development involve substantial financial and intellectual investment. Importantly, patent rights are territorial in nature, meaning protection is limited to the jurisdiction in which the patent is granted.

A trademark, on the other hand, is a distinctive sign, symbol, word, logo, slogan, shape, or combination thereof used to identify and distinguish the goods or services of one enterprise from those of others in the marketplace.¹³ Trademark protection aims to prevent consumer confusion and protect the goodwill and reputation associated with a brand. Unlike patents, trademarks do not protect functional or technical innovations but rather safeguard brand identity and commercial source. Trademarks may be registered or unregistered, though registration provides stronger legal protection and exclusive rights. Once registered, a trademark can be renewed indefinitely, provided it continues to be used in commerce and renewal fees are paid periodically. Trademarks are especially important in competitive markets, as they help consumers make informed choices by signaling quality, origin, and authenticity of products or services.

IPR enforcement mechanisms and regulatory frameworks

Intellectual Property Rights (IPR) enforcement and regulatory frameworks are designed to protect creators, innovators, and consumers by ensuring that unauthorized use, reproduction, or imitation of protected works does not occur. Globally, these frameworks are grounded in both national laws and international agreements, which establish standards, remedies, and procedures for addressing IPR violations. “An international foundation is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization. TRIPS requires member states to provide minimum standards for IPR protection and enforcement, including civil and criminal remedies, border measures, and judicial review procedures, aimed at balancing rights and social welfare while contributing to innovation and public interest.” Within India, the statutory framework spans a range of specialized legislations,

¹³ Trademarks Examples: Types & Legal Insights, The Legal School (Jan. 2026), <https://thelegalschool.in/blog/trademark-examples>

each targeting specific forms of intellectual property. These include the Patents Act, 1970 (for inventions), the Trade Marks Act, 1999 (for brand identifiers), the Copyright Act, 1957 (for creative works), the Designs Act, 2000 (for industrial designs), and the Geographical Indications of Goods (Registration and Protection) Act, 1999 (for region-specific product identities). Enforcement mechanisms under these statutes involve civil courts, criminal law provisions, and administrative actions to deter infringement and remedy harm to rights holders.¹⁴

Judicial enforcement remains a cornerstone of IPR protection.

Rights holders may approach civil courts to seek injunctions, damages, account of profits, and delivery up of infringing goods. *The Commercial Courts Act (2015, amended in 2018) was introduced to expedite IPR litigation through dedicated commercial benches, though their reach remains limited and uneven across jurisdictions.*¹⁵ With the abolition of the Intellectual Property Appellate Board (IPAB) in 2021, appeals against patent and trademark decisions are now handled by High Courts, increasing the judicial workload but also creating specialized IP divisions in some High Courts to improve case handling. Criminal remedies supplement civil enforcement, particularly for counterfeiting and piracy. Under the Trade Marks Act and Copyright Act, trademark infringement and copyright piracy can attract imprisonment and fines, and courts may employ tools.

The Customs Act, 1962, along with the Intellectual Property Rights (Imported Goods) Enforcement Rules 2007, empowers Indian Customs authorities to detain, seize, and destroy imported goods suspected of IPR infringement. Rights holders can record their trademarks, copyrights, designs, and geographical indications with customs via the Automated Recordation and Targeting System, enabling proactive interception of counterfeit products before they enter the domestic market.¹⁶ However, patents are excluded from this customs enforcement scope due to their technical complexity. Despite these mechanisms, enforcement faces practical

¹⁴ MarkShield, *Intellectual Property Rights in India* (explaining that patents provide creators of inventive and unique inventions with monopoly protection under Indian law and that the Patents Act has been amended to comply with international standards), <https://markshield.in/intellectual-property-rights-in-india/> (last visited Jan. 4, 2026).

¹⁵ Commercial Courts Act and CPC: Transforming Trademark Dispute Resolution in India, Company360 (blog post), <https://company360.in/blog/commercial-courts-act-and-cpc-transforming-trademark-dispute-resolution-in-india/> (last visited Jan. 4, 2026).

¹⁶ Protecting IP Rights in India Through Customs Enforcement, Lexology (IAM) (Nov. 19, 2024), <https://www.lexology.com/library/detail.aspx?g=efd2fba7-3a1b-457e-b5c7-1e42d2121c52>

challenges. Institutional and resource constraints, procedural delays, uneven judicial expertise, and limited enforcement training hinder effective action on the ground. These issues have contributed to India being placed on the Priority Watch List in the United States Trade Representative's annual Special 301 Report, which flags countries perceived as having inadequate or inconsistent IPR protection and enforcement.

The National IPR Policy, 2016, established the Cell for IPR Promotion and Management (CIPAM) under the Department for Promotion of Industry and Internal Trade (DPIIT), which leads efforts to streamline IP processes, raise awareness, and enhance enforcement capacity.¹⁷ Public-private partnerships, such as the Maharashtra IP Crime Unit, support law enforcement by facilitating industry collaboration to combat digital piracy and counterfeit distribution. Additionally, enforcement is adapting to digital marketplace challenges. With the rise of ecommerce platforms, notice-and-takedown procedures, dynamic injunctions, and platform accountability measures are increasingly employed to address online infringements. While Indian law continues to evolve in this domain, rights holders often pursue judicial orders requiring intermediaries to remove or block access to infringing content or products.

Strengthening intellectual property rights (IPR)

Protection is essential not only for safeguarding the interests of innovators and brand owners but also for protecting public health, particularly in sensitive sectors such as pharmaceuticals and cosmetics. Effective IPR enforcement acts as a preventive mechanism against the manufacture and circulation of counterfeit and substandard products, which pose serious risks to human health and safety. When patents and trademarks are adequately protected and enforced, they help ensure that only authorized and quality-compliant products reach consumers, thereby reducing the likelihood of exposure to harmful substances or ineffective medicines. Specialized intellectual property benches in courts, fast-track dispute resolution mechanisms, and stricter penalties for counterfeiting can significantly deter infringements. Criminal sanctions, including imprisonment and substantial fines, should be effectively implemented in cases involving counterfeit pharmaceuticals and cosmetics due to their direct

¹⁷ National IPR Policy 2016, FortuneIASCircle (noting that the National Intellectual Property Rights Policy was adopted in May 2016 to unify all forms of IP Department of Industrial Policy & Promotion with support from the Cell for IPR Promotion & Management (CIPAM)), https://fortuneiascircle.com/backgrounder/national_ipr_policy_2016

impact on public health.¹⁸ Additionally, empowering regulatory authorities with enhanced investigative and enforcement powers can improve coordination between intellectual property enforcement agencies and public health regulators.

Border control measures also play a crucial role in safeguarding public health. Strengthening customs surveillance and expanding the scope of intellectual property recordation systems can prevent the entry of counterfeit goods at ports of entry. Collaboration between customs authorities, rights holders, and international enforcement agencies can improve intelligence sharing and early detection of infringing products. Technological tools such as serialization, track-and-trace systems, and blockchain-based authentication can further enhance supply chain transparency and prevent counterfeit infiltration.¹⁹

Public awareness and consumer education are equally important in strengthening IPR protection and protecting public health. Many consumers unknowingly purchase counterfeit pharmaceuticals or cosmetics due to lower prices or misleading advertisements. Awareness campaigns highlighting the health risks associated with counterfeit products and educating consumers on identifying genuine products can significantly reduce demand. Informed consumers serve as the first line of defense against brand piracy. A balanced policy approach that integrates intellectual property protection with public health objectives is crucial. Governments must ensure that IPR laws do not solely focus on commercial interests but also prioritize consumer safety and public welfare. Strengthening inter-agency coordination, promoting international cooperation, and investing in regulatory capacity building can create a comprehensive framework that effectively curbs counterfeiting. By reinforcing IPR protection mechanisms and aligning them with public health goals, states can protect innovation, maintain market integrity, and ensure the health and safety of the population.

Preventing the Circulation of Pirated Brands in the Context of Brand Piracy and Public Health

Preventing the circulation of pirated brands, particularly in the pharmaceutical and

¹⁸ WIPO Arbitration and Mediation Center (AMC), *Fast-Track Intellectual Property Dispute Resolution Procedure for SingEx Trade and/or Consumer Fairs*
<https://www.wipo.int/amc/en/center/specificsectors/tradefairs/singex/>

¹⁹ Peter Allwright, *Developing a Robust Framework to Fight Sanctions Evasion*, Suntera Forensics (Sept. 18, 2024) <https://www.suntera.com/our-expert-commentary/developing-a-robust-framework-to-fightsanctions-evasion/>

cosmetic sectors, is a matter of paramount public health importance as well as intellectual property enforcement.²⁰ Pirated or counterfeit branded products in these sectors are not merely commercial infringements; they pose direct threats to human life and safety by circumventing regulatory standards governing composition, manufacturing, labelling, and quality control. From an intellectual property rights perspective, trademark law serves as a critical preventive mechanism, as trademarks function as indicators of origin, quality, and accountability. When pirated brands enter the market, consumers are deceived into purchasing substandard or harmful products under the false belief that they originate from a legitimate and regulated source. Indian courts have consistently recognized this public health dimension of brand piracy. In the Supreme Court emphasized that in cases involving medicinal products, even a slight possibility of confusion or deception must be avoided, as the consequences may be disastrous. The Court held that stricter standards must apply to trademark infringement and passing off in pharmaceuticals because consumer confusion can directly endanger health and life. This judgment reinforces the preventive role of trademark law by prioritizing public interest over purely commercial considerations. By adopting a higher threshold of protection, courts seek to curb the circulation of deceptively similar or pirated drug brands at an early stage.²¹

Similarly, in the Delhi High Court reiterated that the protection of trademarks in medicinal products is intrinsically linked to public health. The Court restrained the defendant from using a deceptively similar mark, observing that confusion in drug names could lead to incorrect prescriptions and consumption, thereby posing serious health risks. Such judicial injunctions operate as preventive tools by immediately removing pirated brands from circulation and deterring future violations.²² In the cosmetics sector, courts have adopted a comparable approach, recognizing that substandard or counterfeit cosmetic products can cause long-term dermatological and systemic harm. In the Delhi High Court passed a permanent injunction against the sale of counterfeit cosmetic products bearing the plaintiff's trademark. The Court acknowledged that counterfeit cosmetics often contain hazardous substances and evade safety testing, making their circulation a serious public health concern.²³ By ordering seizure and

²⁰ Authena, *Why Is Real-Time Tracking Important to Avoid Product Diversion and Increase Cosmetic Safety in the Industry*, <https://authena.io/why-is-real-time-tracking-important-to-avoid-product-diversion-and-increase-cosmetic-safety-in-the-industry/>

²¹ In *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* (2001) 5 SCC 73

²² *Sun Pharmaceutical Industries Ltd. v. Wyeth Holdings Corporation* (2007 SCC OnLine Del 1329)

²³ *L'Oréal SA v. V. K. Abhishek* (2014 SCC OnLine Del 241)

destruction of infringing goods, the Court reinforced the preventive function of trademark enforcement beyond mere protection of brand value.

Conclusion

Brand piracy in the pharmaceutical and cosmetic sectors presents a serious challenge that goes beyond mere commercial infringement and directly threatens public health, consumer safety, and regulatory integrity. From an intellectual property rights (IPR) perspective, the unauthorized use of trademarks, trade dress, and packaging not only undermines the goodwill and innovation incentives of legitimate manufacturers but also facilitates the circulation of substandard, counterfeit, and potentially hazardous products. In pharmaceuticals, brand piracy can result in ineffective treatment, antimicrobial resistance, and even loss of life, while in cosmetics it may cause severe dermatological and systemic health risks. Thus, the intersection of brand protection and public health necessitates a more holistic legal and policy response.

From a policy standpoint, there is a need to harmonize trademark law with public health regulations so that IPR enforcement does not remain purely rights-centric but also consumer-centric. International cooperation, especially through mechanisms under TRIPS, WHO, and WIPO, should be strengthened to combat cross-border brand piracy networks. At the domestic level, clearer statutory provisions linking brand infringement with public health offences, along with stricter penalties, can act as effective deterrents.

Finally, sustained public awareness campaigns are essential to educate consumers about the risks of counterfeit medicines and cosmetics and the importance of purchasing from authorized sources. Empowering consumers, combined with robust legal enforcement and technological safeguards, can ensure that brand protection serves its broader purpose—protecting public health, promoting innovation, and maintaining trust in healthcare and cosmetic markets. In this way, future legal and policy developments must balance private IPR enforcement with the overarching goal of safeguarding public welfare.