

# Should India Follow the Kenyan Model to Stop Counterfeiting in the Indian Fashion Industry?

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# Economics Behind Counterfeiting in the Fashion Industry

**The demand side of counterfeiting** considers the reasons why consumers demand counterfeit fashion. Look-alike products at a lesser price is why consumers turn to counterfeit products.

Etsy.com

Peechyboo.com

Upenmeghastore.com

**Supply-side of counterfeiting** fashion designs considers the loss of brand value of the original fashion brands rather than considering the monetary or consumer base losses.

# Reasons behind Consumers Purchasing Counterfeit Luxury Fashion Goods

- Psychographic factors
- Value consciousness
- Lower integrity
- Status Consumption
- ● Products defined success
- Appearance of the product
- Past Consumption

# Counterfeiting in the Luxury Fashion Industry

- **Christian Louboutin - Red heeled heels**

To legally protect his creation, he filed trademark applications in the U.S., Mexico, the Philippines, New Zealand, and Australia.

However, what happened after the registration was a series of trademark infringement cases filed by him in the U.S., France, India, and Poland.

“I do not monopolize a colour, I have put a colour at a place where nobody has put it, and became iconic, as a trademark. At one point, it makes part of your identity. It is my trademark.”

# Extent of Counterfeiting in the Indian Fashion Industry

The United States Trade Representative in 2021 considered Palika Bazar of Delhi, India Mart (an online shopping website), Heera Panna of Mumbai, Kidderpore of Kolkata, Tank Road of New Delhi are categorised as **‘Notorious markets’** due to the extensive counterfeiting business.

Association Chambers of Commerce and Industry of India has estimated that the market for luxury goods might touch 6,000 crores. Delhi is currently the hub of counterfeit goods in India. One of the reasons why India has found its place in the **U.S. Priority Watchlist** in 2021 and 2022 is because of the lack of counterfeiting laws.

## Contd....

- Bridal lehengas of Bollywood actresses
- Cannes festival
- Paris Fashion week
- Luxury fashion brand counterfeits

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C2coffer.com

24thspoke.com

Indiamart.com

royalanarkali.com

# Counterfeiting Fashion in India on the online websites

Online websites can be created and destroyed easily, without leaving any trace about the creator of such websites.

Online shopping websites acts merely as an intermediary between the buyers and sellers.

They can claim 'safe harbour' defence under section 79 of the Information and Technology Act 2002 and thus not liable.

# Indian Laws regulating Counterfeiting in the Fashion Industry

Although counterfeit is now illegal under sections 103 and 104 of the Trademarks Act, 1999, the term "counterfeit" is not defined by the Act. But the term "counterfeit" is defined in section 28 of the IPC.

- Section 103 - false trademarks
- Section 104 - false description of goods



<p>India - The Trademarks Act, 1999</p>	<p>First offence - 50,000 - 2 lakhs</p> <p>Subsequent offence - not less than one lakh which can extend up to two lakhs</p>	<p>First offence - Six months - 2 years</p> <p>Subsequent offence - not less than one year which can extend up to three years</p>
<p>The Customs Act, 1962</p>	<p>Not less than the value of the goods or INR 5000, whichever is greater.</p>	

# Shortcomings under the Indian Laws

- Definition of counterfeiting is not provided under the Trademarks Act 1999
- Criminal sanctions are not deterrent enough
- Customs Act 1962 - applies only to imports and exports

— The Customs Act 1962 penalises counterfeiting based on the value of the goods, unlike the Trademarks Act 1999

# KENYA - Counterfeiting Laws

- (i) enacted specific anti-counterfeit legislation, the Anti-Counterfeit Act No. 13 of 2008;
- (ii) established an anti-counterfeiting organisation, the Anti-Counterfeit Authority (ACA); and
- (iii) implemented an ACA recordation mechanism.

# Non Legal Solutions

The ACA's "Fagia Bandia" ("Sweep the Counterfeits") campaign, launched in 2016.

According to the ACA, the campaign reached over 20 million individuals across the country, and there was a considerable increase in the number of counterfeit product reports.

NGOs could work with the government to stop counterfeiting.

# Suggestions/Lessons to learn from Kenya

- Define ‘counterfeiting’ under the Trademarks Act, 1999.
- Increase the punishment for counterfeiting under the Trademarks Act, 1999. Like Kenya penalty should be based on the retail price of counterfeited goods and not predetermined fine. Penalty for counterfeit should be proportionate with the goods counterfeited.
- Exclusive authority to fight against counterfeiting of goods like in Kenya.

