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Cracks in Consumer Protection: Unmasking the Sale of Spurious Goods in India

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The term 'spurious goods sale' refers to the practice where a seller conceals the true nature of a product, marketing it as an original item when it is, in fact, a duplicate or a lower-quality copy. While this was initially observed in physical markets, the rise of e-commerce has allowed the same deceptive practices to flourish online, making it increasingly challenging for consumers to identify genuine products from imitations. According to the Consumer Protection Act, 2019, spurious goods are defined under section 2 (43), and this type of sale falls under the umbrella of Unfair Trade Practices as outlined in section 2(47) of the Act. This section addresses issues such as misleading representations and the false portrayal of goods' standards. Additionally, the Consumer Protection (E-Commerce) Rules, 2020, specifically rules 6 and 7, offer remedies for consumers affected by the sale of spurious goods. Consumers facing such deceptive practices often find their rights limited. This research paper aims to analyse the current landscape surrounding spurious goods sales, focusing primarily on the remedies available to consumers. It will explore relevant provisions, illustrate with examples, and reference case laws that clarify the concept of spurious goods sales.

Keywords: *spurious goods, misleading representation, fraud.*

INTRODUCTION

The issue of spurious goods sales is prevalent in our everyday lives, particularly in the realm of online shopping. Spurious goods refer to duplicate products that are marketed by sellers as if they were original. This often occurs when consumers make purchases through websites that lack clear return policies, leaving them vulnerable to deception. While the Consumer Protection Act of 2019 includes provisions that impose penalties on manufacturers of spurious goods, it notably lacks specific penalties for those who sell such goods. However, consumers do have recourse through provisions related to unfair trade practices, which allow them to file complaints against such sales and seek redress. To fully understand the implications of spurious goods sales, it's essential to clarify certain concepts, including the definition of a product, the identification of a consumer, what constitutes a defect, and how spurious goods are legally defined. This foundational knowledge will help illuminate the rights consumers possess when facing these deceptive practices.

In the world of digitisation, we are facing several challenges, as the sale of spurious goods is very easy due to the use of social media platforms. Lots of people facing such an issue that they see the ads and order something consider it original but in reality, when he receives the product, he got to know that it is fake or else it is not the product which he/she was ordered but now he/she don't have any option because the company don't have any policy of return also don't have any number for further contact. For securing the public from this kind of fraud, there is no law in place yet, so it is easy to commit such a crime without hesitation. We want a strict law for better prevention of such kind of crimes so that it cannot hamper the economy of the country, and consumers feel safe when buying anything online.

STATEMENT OF THE PROBLEM

Despite the increasing prevalence of spurious goods in the digital marketplace, especially through online platforms and social media, current legal frameworks in India remain inadequate to effectively curb this deceptive practice. While the Consumer Protection Act, 2019, penalises manufacturers of spurious goods, it does not explicitly penalise sellers or online vendors who facilitate their distribution. Consumers often fall victim to counterfeit products advertised as genuine, with no means for redress due to the absence of return policies or contact mechanisms. This regulatory gap leaves consumers vulnerable and

undermines trust in e-commerce, highlighting the urgent need for comprehensive legal provisions and stricter enforcement mechanisms to deter the sale of spurious goods and safeguard consumer rights in the digital age.

RESEARCH OBJECTIVES

1. To analyse the current Consumer Protection Laws regarding the sale of Spurious Goods.
2. To understand the gap in the current laws and suggest some remedies for better prevention.
3. To examine the reason behind the increase in such types of crime with the help of a social media platform.
4. To determine the impact on consumer behaviour who are victims of such crime.

RESEARCH QUESTIONS

1. Why are people who sell fake or spurious products, especially online, not held accountable under the current Consumer Protection Act, 2019?
2. What legal gaps exist in addressing the sale of counterfeit products on digital and social media platforms, and how do these gaps enable fraudulent sellers to operate freely?
3. In what ways can existing consumer protection laws be strengthened to ensure accountability of online sellers and protect consumers from deceptive trade practices?
4. What kind of impact does the growing problem of spurious goods have on people's trust in online shopping and on our country's digital economy?

RESEARCH METHODOLOGY

In this research article, the researcher will employ a comprehensive approach by integrating the doctrinal method of research. The doctrinal method plays a crucial role in delving into the complex interplay between the sale of goods and the sale of spurious goods by using social media platforms alongside the increasing number of crimes in the modern world. This exploration will involve an in-depth analysis of seminal works by influential authors as well as critical articles published, thereby providing a rich tapestry of insights into the crime and

consumers' response to it. This method is also useful to collect data that shows the lack of the Consumer Protection Act, 2019.

HYPOTHESIS

H₀: There is no significant relationship between the absence of strict legal provisions against sellers of spurious goods and the rising number of counterfeit product cases in online shopping.

H₁: The lack of specific legal penalties for online sellers of spurious goods under existing consumer protection laws significantly contributes to the increase in deceptive online sales.

H₂: Strengthening legal mechanisms and enforcement against sellers of spurious goods will significantly improve consumer trust and safety in online shopping platforms.

LITERATURE REVIEW

The Consumer Protection Act 2019:¹ The Consumer Protection Act 2019 is crucial for understanding the legal framework concerning the sale of spurious goods. It highlights existing loopholes in the legislation and emphasises the need for effective remedies for customers affected by such incidents. To enhance the protection of consumers, it would be beneficial to suggest amendments that focus on better prevention of such crimes and provide more efficient avenues for redressal. This will not only safeguard consumer interests but also promote accountability among sellers.

Spurious and Counterfeit Drugs: A Growing Industry in the Developing World:² Spurious and counterfeit drugs are a significant issue in developing countries, driven by poverty, lack of regulation, and light penalties. This industry poses serious health risks, including therapeutic failure and drug resistance, necessitating strong regulatory measures and international cooperation.

¹ The Consumer Protection Act 2019

² C S Gautam et al., 'Spurious and counterfeit drugs: a growing industry in the developing world' (2009) 85 Postgraduate Medical Journal <<https://scispace.com/papers/spurious-and-counterfeit-drugs-a-growing-industry-in-the-2jjei3z2gs>> accessed 10 February 2025

Determinants Affecting Consumer Behaviour about Counterfeit Products:³ Counterfeiting is the practice of manufacturing, importing/exporting, distributing, selling or otherwise dealing in goods, often of inferior quality, under a trademark that is identical to or substantially indistinguishable from a registered trademark, without the approval or oversight of the registered trademark owner. Counterfeits are most commonly called fake goods or knock-offs. Many well-known and successful brands, spanning various industries, are victims of counterfeiting. The production and sale of counterfeit goods is a global, multi-billion-dollar problem and one that has serious economic and health ramifications for Governments, businesses and consumers.

The Role of Spurious Products in Rural Retailing - A Study:⁴ The authors attempt to identify various issues relating to spurious products by examining previously published research in conjunction with the data collected in rural Karnataka state, relying on survey data collected from 310 retailers and 1,620 rural consumers across Karnataka state, the authors find that multi-brand wholesalers, suppliers are the key players behind the whole issue and examine the various methods to reform situations by offering various suggestions based on this research. Rural marketers can use this detailed discussion to fight effectively against counterfeits and pass-offs.

SCOPE

This study focuses on the legal and regulatory landscape concerning the sale of spurious goods in India, especially via online platforms and social media. It analyses consumer protection laws, identifies gaps in penal provisions against sellers, and evaluates the impact of counterfeit sales on consumer trust and digital commerce. The study emphasises doctrinal research, including statutory analysis and relevant case law, to suggest effective reforms aimed at strengthening consumer rights and enhancing accountability in digital marketplaces.

³ Amrita Dhaliwal, 'Determinants Affecting Consumer Behaviour With Regard To Counterfeit Products' (2016) 4(6) International Journal of Scientific Research and Management

<<https://ijsrm.net/index.php/ijsrm/article/download/344/297/575>> accessed 10 February 2025

⁴ S. Sathyanarayana, 'The Role of Spurious Products in Rural Retailing - A Study' (2017) 8 International Journal of Business <<https://www.semanticscholar.org/paper/The-Role-of-Spurious-Products-in-Rural-Retailing-A-Sathyanarayana/c00928688da3f5f81b305059ce58164727452700>> accessed 10 February 2025

PRODUCT

The Consumer Protection Act, 2019, under section 2 (33)⁵ Describe product as product means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs. According to this definition product includes:

1. Any article or goods (like Books, Mobile, statue, shoes, etc.
2. Substance
3. Raw material
4. Extended cycle of such a product (which may be gaseous, liquid, or solid)
5. Any part, or
6. Any assembled goods.

CONSUMER

According to Section 2(7)⁶ Of the Consumer Protection Act, 2019. Consumer means any person who;

1. buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
2. hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and

⁵ The Consumer Protection Act 2019, s 2(33)

⁶ The Consumer Protection Act 2019, s 2(7)

includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation - For this clause

- a) The expression commercial purpose does not include use by a person of goods bought and used by him exclusively to earn his livelihood, using self-employment.
- b) The expressions buy any goods and hire or avail any services include offline or online transactions through electronic means or by teleshopping or direct selling, or multi-level marketing.

In the 2019 Consumer Protection Act, the definition is expanded to include the ambit of consumer and includes any goods bought and hire any services through electronic means, also a consumer.

DEFECT

According to section 2(10)⁷ of Consumer Protection Act, 2019 defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever about any goods or product and the expression defective shall be construed accordingly.

In this definition, the main part which is important in this context is quality and standard, which is affected when any second-hand or duplicate item is sold to any consumer under the name of the original.

Section 2(43)⁸ defines the meaning of 'Spurious Goods', which means such goods which are falsely claimed to be genuine. This type of situation, when it arises, is called an unfair trade practice because, according to section 2(47)⁹ of the Consumer Protection Act, 2019,

⁷ The Consumer Protection Act 2019, s 2(10)

⁸ The Consumer Protection Act 2019, s 2(43)

⁹ The Consumer Protection Act 2019, s 2(47)

unfair trade practice includes:

Making any statement, whether orally or in writing or by visible representation, including using an electronic record, which:

1. falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
2. falsely represents any rebuilt, second-hand, renovated, reconditioned or old goods as new goods;

STATISTICS RELATING TO THE SALE OF SPURIOUS GOODS

According to the report by the Organisation for Economic Cooperation and Development in 2016, spurious goods sales accounted for \$460 billion in world trade.¹⁰ The report of the State of counterfeiting in India- 2021 stated that from January 2018 to December 2020 sale of spurious goods cases have increased rapidly/consistently in recent years, according to the research. In the last three years, there has been a 20 per cent increase in the number of such sales occurrences reported (from January 2018 to December 2020). In comparison to 2019, the number of recorded occurrences has grown by 17% in 2020.¹¹

There are various types in which these kinds of fraud take place. Spurious goods sale is also known as counterfeit consumer goods. Spurious goods sale is a type of fraud that isn't restricted to high-end luxury goods. Criminals have increasingly reported the sale of spurious goods, commonly in everyday commodities such as cumin seeds, mustard cooking oil, ghee, hair oil, soaps, infant care, chocolates, and medicine.

WHAT CAN BE SOLD AS SPURIOUS GOODS AND HOW?

Online Sales: In modern times, online sales are increasing day by day, especially due to COVID-19, which has elevated the importance of e-commerce platforms. People are purchasing essential items and various other products from online platforms like Flipkart,

¹⁰ 'The inclusion of counterfeit unsafe products in 'The European Commission's New Consumer Agenda & the General Product Safety Directive' (*International Trademark Association*, 15 October 2020) <<https://www.inta.org/wp-content/uploads/public-files/advocacy/testimony-submissions/INTA-Paper-New-EU-Consumer-Agenda-GPSD-October-2020-final.pdf>> accessed 10 March 2025

¹¹ Authentication Solution Providers' Association, *The State of Counterfeiting in India* (2021)

Amazon, eBay, Myntra, Walmart, Paytm, and others. Numerous websites offer a wide range of products at lower costs, claiming they are original while selling first or second copies at heavy discounts. Sellers can showcase genuine goods on their sites but may ship counterfeit or substandard products to consumers, making it challenging for buyers to determine the authenticity of the products they receive.

Apparel and Accessories: Ray-Ban, Rolex, Supreme, Louis Vuitton, and CK are among the most copied brands worldwide, with Nike being the most counterfeited. Counterfeit products, including clothing, shoes, jewellery, and handbags from these designer brands, vary in quality. Some counterfeiters aim to deceive unsuspecting buyers who focus solely on the label without knowing the real product details, while others dedicate significant effort to replicating fashion nuances accurately.

Numerous illegal e-boutiques operate online, utilising platforms like eBay, Instagram, and Amazon to sell counterfeit items. Some even run their websites with untraceable IP addresses that are frequently changed. This complexity allows for seamless transactions that are difficult to track, especially since payments are processed through third parties.

Electronics: Various electronic devices, such as circuits, cable assemblies, mobile phones, iPods, and other electronic items, are readily available in the Indian market. Many of these products have been reverse-engineered – often referred to as a Chinese Blueprint due to its common practice in China – to create items that look identical to the originals and perform similarly, passing both physical and electrical tests. A prime example is the numerous websites selling iPhones at significantly lower prices, claiming these phones are cheap because they are imported from other countries. In reality, these are often first copies or products manufactured in China that mimic the original designs.

Toys: Spurious toy goods expose children to potentially toxic chemicals and choking hazards. In 2017, it was estimated that 10 to 12 per cent of toys sold in the UK were counterfeit, with a significant influx of these goods originating from China. Trading Standards, a UK safety organisation, regularly seizes tens of thousands of toys each month to prevent children from coming into contact with unsafe products, as reported by the British

Toy and Hobby Association (BTHA).¹² Many developed countries face similar issues, and one can only imagine the situation in India, where the toy market is vast and lacks legislation to maintain safety standards for the supply and sale of toys.

Pharmaceuticals: According to the U.S. FBI, counterfeiting of pharmaceuticals accounts for an estimated \$600 billion in global trade and may be described as the crime of the 21st century. It poses significant health risks and economic consequences for individuals and corporations alike.¹³ The United States Trade Representative reports that in India, nearly 20% of all pharmaceutical products sold are duplicates. Such practices not only jeopardise individual health but also have a detrimental impact on the country's economy.

Food: Spurious and duplicate food products are rapidly infiltrating the Indian market, particularly in recent times. A notable example is the Bisleri company, which supplies packaged drinking water. However, many brands with similar names, such as Bislari and Bislari, are also selling water bottles, making it difficult for consumers to distinguish between the original and counterfeit products. A few years ago, there was a significant case involving the sale of spurious Maggi products in the market, where people struggled to identify whether they were purchasing duplicates or the original product. This not only poses a risk to consumer safety but also undermines brand integrity.

Clothes and Shoes: According to a News18 survey, more than 60% of the sports goods available online are not genuine, while at least 40% of apparel listings come from duplicate manufacturers. An investigation revealed that counterfeit sellers and spurious manufacturers are exploiting loopholes in the Information Technology Act. In the meantime, online retailers are often shirking responsibility by claiming to serve merely as intermediaries. Several cases have been registered concerning the sale of such counterfeit goods, highlighting the ongoing challenges in ensuring product authenticity in the online marketplace.

¹² Katie Grant, 'A deluge of counterfeit toys is leaving children exposed to toxic chemicals, safety experts warn' *The Paper* (23 January 2018) < <https://inews.co.uk/news/deluge-counterfeit-toys-leaving-children-exposed-toxic-chemicals-safety-experts-warn-119785> > accessed 28 January 2025

¹³ *Ibid*



Watch: The market for first copy watches in India is substantial, with nearly every city hosting specific markets where shoppers can find replicas of luxurious brands like Rolex, Rado, Gucci, and Armani. Some watch retailers even sell these items as originals, charging higher prices under pretences. This practice constitutes fraud, raising concerns about the rights of consumers who purchase such goods. In today's digital age, many of these transactions occur online, often through fake websites that are challenging to trace. Almost every luxury item available in the market has its first copy or duplicate version offered at a significantly lower price, creating a complex landscape for consumers trying to navigate authenticity and value.

PROTECTION UNDER THE CONSUMER PROTECTION ACT 2019

Section 91¹⁴ addresses the punishment for manufacturing, storing, selling, distributing, or importing spurious goods. It outlines specific penalties based on the severity of harm caused:

1. For causing injury that does not amount to grievous hurt, the offender may face up to one year of imprisonment and a fine of up to three lakh rupees.
2. For causing grievous hurt, the punishment may extend to seven years and a fine of up to five lakh rupees.
3. In cases where the spurious goods result in death, the imprisonment shall be no less than seven years and can extend to life imprisonment, with a fine of no less than ten

¹⁴ The Consumer Protection Act 2019, s 91

lakh rupees.

While this section and the broader act focus on the manufacturing of spurious goods, they do not explicitly address the responsibilities or liabilities of individuals selling such goods to consumers. Although consumers can file criminal complaints for fraud or misrepresentation, these processes can be lengthy and cumbersome.

In this paper, the researcher argues for the inclusion of specific provisions in the Consumer Protection Act to address the sale of spurious goods and to define punishments for sellers engaged in such practices. Currently, consumers can file complaints under unfair trade practices, but having clear penalties for sellers would strengthen consumer rights.

Under the Consumer Protection Act of 2019, there are three forums in which consumers can file complaints related to violations of their rights, providing a formal avenue for seeking justice.

District Commission: In every district state government, by notification, establishes a District Consumer Dispute Redressal Commission to be known as the District Commission, which consists of a president and not less than 2 other members, and the qualification of members is defined by the rules published by the central government. The District Commission has the power to deal with the complaint where the value of the goods or services paid as consideration does not exceed fifty lakh rupees.

State Commission: In every state, the state government, by notification, establish a State Consumer Dispute Redressal Commission to be known as the State Commission, which has the power to deal with complaint where the value of the goods or services paid as consideration exceed 50 lakhs but does not exceed 2 crores.

National Commission: At the central level, the central government, by notification, establishes the National Consumer Dispute Redressal Commission to be known as the National Commission, which has the power to deal with complaint where the value of the goods or services paid as consideration exceed 2 crores. There were no cases relating to such practices because, till 2019, there was no provision for such manufacture of spurious goods, but the Consumer Protection Act, 2019, under section 91, provides punishment for the manufacturer of spurious goods. But the Act does not have a provision which defines

punishment for the sale of spurious goods.

Different countries, like Japan, the United States, signed the Anti-Counterfeiting Trade Agreement (ACTA), which is designed to help protect intellectual property rights, especially costly copyright and trademark theft. The signing took place a year after diligent negotiations among 11 governments: Australia, Canada, the European Union, Japan, the Republic of Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States. The EU, Mexico, Switzerland and China have not yet signed the agreement.¹⁵ In the US, the bill was proposed in 2011, named the Stop Online Piracy Act, but was not passed by the law enforcement agencies.

Till now the researcher is failed to find any case relating to sale of spurious act where consumer file complaint against such sale, there are several cases file by original company against the company who manufacture such spurious goods and also certain cases file under trademark Act and Copyright Act by the original company for violation of their right.

Some of the cases filed by the company against the manufacturer are:

Adidas India Marketing Pvt. Ltd. v Kumar Garments, 27 August 2020: The Delhi District Court granted an ex parte injunction against the defendant for selling spurious products bearing the well-known ADIDAS trademark. The court held that Kumar Garments had infringed Adidas's intellectual property rights by using its mark without authorisation. Recognising the deliberate and dishonest conduct, the court imposed punitive damages of ₹5,00,000. This case reinforced the protection of reputed trademarks and the legal consequences of dealing in counterfeit or spurious goods.

Union of India v Ashok Kumar Sharma:¹⁶ The Supreme Court addressed the issue of prosecuting offences involving spurious drugs under the Drugs and Cosmetics Act, 1940. The Court held that only designated authorities like Drug Inspectors can initiate action under Section 32 of the Act, and police cannot register FIRs for such offences. The judgment clarified that dealing in spurious goods like counterfeit medicines requires strict adherence to the Act's special procedure, reinforcing that general criminal procedures under CrPC do not

¹⁵ Anti-Counterfeiting Trade Agreement 2011

¹⁶ *Union Of India v Ashok Kumar Sharma* (2020) Crim App No 200/2020

apply unless explicitly provided by the statute.

CONCLUSION

The rise of spurious goods in both physical and digital marketplaces represents a significant threat to consumer rights, public health, and economic integrity. While the Consumer Protection Act, 2019, has introduced stronger definitions and remedies for unfair trade practices, there remains a critical legislative gap regarding the explicit penalisation of selling, rather than just manufacturing, counterfeit goods.

Section 91 of the Act does address the punishment for producing spurious products, but it does not hold sellers accountable, especially in the context of online transactions where fraudulent sales are becoming more common and difficult to trace. As a result, consumers often have to rely on general provisions related to unfair trade practices or file criminal complaints under broader laws like the Indian Penal Code. Unfortunately, these options tend to be time-consuming, cumbersome, and do not provide adequate protection, particularly in a digital-first economy where deceptive sales practices can easily occur with minimal traceability.

The analysis, including case studies, data trends, and global comparisons presented in this paper, highlights the urgent need for specific legal measures to criminalise the sale of spurious goods. Additionally, there is a pressing need for faster grievance redressal mechanisms and to establish accountability for online marketplaces that facilitate such transactions. Strengthening enforcement, raising public awareness, and pursuing legislative reform are essential steps to ensure that consumer rights are not merely theoretical but are actively protected in light of evolving market dynamics.

RECOMMENDATIONS

Legislative Amendments: Introduce specific legal provisions within the Consumer Protection Act that criminalise the sale of counterfeit goods. This would ensure direct accountability for sellers and deter fraudulent activities.

Stricter Regulations for Online Marketplaces: Implement regulations that require online platforms to verify the authenticity of products sold through their sites. Sellers should be mandated to disclose product origin and certifications, making it easier for consumers to

assess the legitimacy of goods.

Enhance Grievance Redressal Mechanisms: Establish a streamlined, user-friendly grievance redressal system specifically for cases involving counterfeit products. This system should facilitate faster complaint resolutions and provide consumers with real-time updates on the status of their complaints.

Public Awareness Campaigns: Conduct nationwide public awareness campaigns to educate consumers about the risks associated with spurious goods, how to identify them, and the proper channels for reporting fraudulent sales.

Collaboration with Technology Firms: Foster partnerships between government bodies, law enforcement, and technology companies to develop advanced tracking and verification systems that can identify counterfeit goods in the digital marketplace more effectively.

Strengthen Enforcement: Enhance the resources and training available to regulatory agencies tasked with investigating and prosecuting sellers of counterfeit products, ensuring they are well-equipped to tackle the challenges of modern commerce.

To truly fortify consumer rights, it is imperative to implement these recommendations alongside enhancing enforcement measures and raising public awareness. By actively pursuing necessary legislative reforms, we can ensure that consumer rights are robustly protected amidst the rapidly changing landscape of modern commerce.

The researcher wants to give certain recommendations for making laws efficient and proactive:

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