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WITNESS

Volume 11 Issue 9 | April 2020

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COVID-19 Special Issue.



Gearing Up for A Fresh Start?

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expert speak

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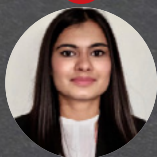


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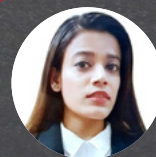
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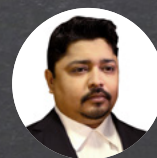


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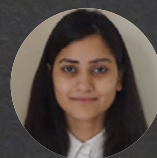
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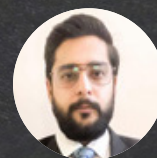
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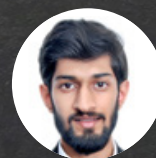
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Gearing Up for A Fresh Start?

Proliferation of Counterfeits during COVID-19

"I am writing to bring to your notice the danger of substandard counterfeit products flooding our markets during the COVID-19 lockdown and beyond, potentially causing a mammoth health and safety challenge" – K. Vikram Singh, Chairman, Association of Professional Detectives and Investigators (APDI) in a letter to Hon'ble PM Modi in April¹

■ Priya Adlakha & Isheta Srivastava

INTRODUCTION

'Counterfeiter' – a very well-known species of criminals, it wouldn't be wrong in terming them to be one of the biggest troublemakers of all times. They leave no stone unturned to utilize every possible situation in their favor. The outbreak of COVID-19 pandemic has been another opportunity to make a quick buck for them. But if we go deeper, we see that it is just not a quick buck, but an entire industry that is working to fleece on the reputation of the genuine brands. As per economics, scarcity is a situation where there is limited availability of a commodity. Currently the situation is such that the demand of certain commodities such as cleansing supplies, sanitizers, safety kits, masks, etc are at its peak, whereas there is shortage in supply. This is what is being cashed upon.

To understand the problem of counterfeiting or counterfeit goods, we can simply say that a counterfeit product is one that is intended to deceive consumers into buying a fake or

fraudulent product by misappropriating someone else's registered trademark or one that is deceptively similar to the said trademark without authorization and in order to gain illegal profits by riding on the reputation and goodwill associated with the trademark. The menace of counterfeiting has penetrated in every nook and corner of India and causing loss of revenue to brand owners and the Government at a large scale.

With COVID-19 afflicting the world at an alarming pace, the menace of counterfeiting appears to be manifesting itself not only as a threat to legitimate brand owners, but also is posing a major risk to the health issues which in turn is adding up the medical emergency that the countries is facing due to the sudden pandemic outbreak.

HOW BIG IS THE PROBLEM OF COUNTERFEITING?

Before COVID-19 Outbreak

In September 2019, the Authentication Solution Providers' Association (ASPA) has reported that India suffers a loss of over one lakh crore rupees per annum owing to the

sale/purchase of counterfeit goods by consumers across all sectors. According to ASPA's president Mr. Nakul Pasricha, counterfeiting in India is most prevalent in the pharmaceutical industry. Given that counterfeiting in the pharma/medicine sector poses a major threat to public health and safety, Mr. Pasricha has urged the government to take adequate steps to mitigate such risks. He further stresses on the need for proper implementation of authentication solutions, enforcement, awareness and monitoring and envisages reducing counterfeiting in India by 50%, which would mean saving fifty thousand crore rupees per annum. Quoting from a report of the Organization for Economic Co-operation and Development, Mr. Pasricha states that unfortunately in India, trade in counterfeit goods has risen steadily in the last few years globally with trade volumes in fake products now standing at 3.3 % of total global trade, thereby causing brand owners to suffer huge losses in revenue.²

After COVID-19 Outbreak

With regards to COVID 19, the World Health Organization has recently warned against a surge in fake medicines, notably in the developing world, and Interpol's global pharmaceutical crime fighting unit, Operation Pangea, has reportedly made 121 arrests across 90 countries in just seven days, resulting in the seizure of dangerous pharmaceuticals worth over \$14m³.

As per Interpol 'Compared to the week of action in 2018, this latest edition of the Operation - Operation Pangea in March 2020, reported an increase of about 18 per cent in seizures of unauthorized antiviral medication, and an increase of more than 100 per cent in seizures of unauthorized chloroquine



(an antimalarial medication), which could also be connected to the COVID-19 outbreak. The seizure of more than 34,000 counterfeit and substandard masks, "corona spray", "coronavirus packages" or "coronavirus medicine" reveals only the tip of the iceberg regarding this new trend in counterfeiting. In addition, the operation discovered 2,000 online links advertising COVID-19 related items, and seized more than 34,000 counterfeit and substandard masks, as well as medicines advertised as "corona sprays, "coronavirus packages" and "coronavirus medicines."⁴

ARE COUNTERFEITERS CASHING ON THE SITUATION THAT HAS ARISEN DUE TO OUTBREAK OF COVID-19?

The answer to this question is YES. In one-line, counterfeiters are preying on a worried global population. There is a spike in the numbers related to counterfeiting. According to Interpol 'the outbreak of the coronavirus disease

has offered an opportunity for fast cash, as criminals take advantage of the high market demand for personal protection and hygiene products.⁵

In the context of the COVID-19 pandemic, counterfeiters particularly have focused on goods used in the fight against the pandemic including:⁶

- medical equipment (especially face masks, fake corona test kits, disposable latex gloves, etc.);
- sanitisers and disinfectants (alcohol-based gels, soaps, disinfectant cleaning wipes, etc.);
- pharmaceuticals (antivirals, medication for arthritis and malaria, herbal remedies, etc.)

In fact, a thing to worry about is that as per Europol's report on 'Viral Marketing - Counterfeits, Substandard

FIG: Posts on Twitter referencing both counterfeit goods and COVID-19 (Source: Europol information)⁸

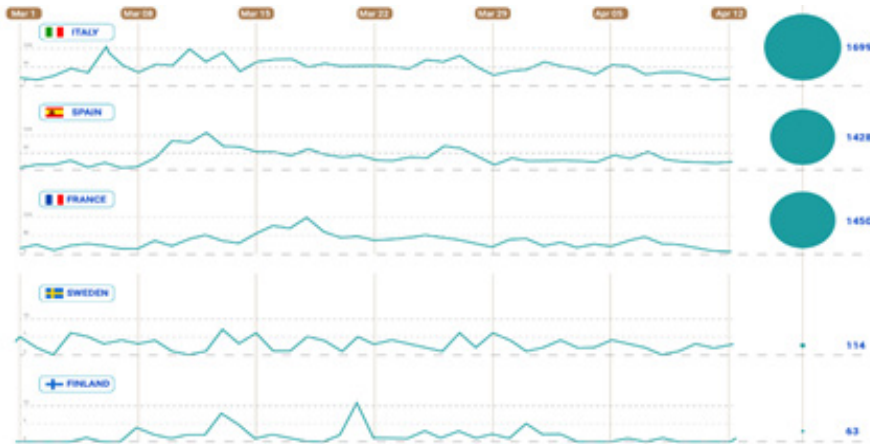
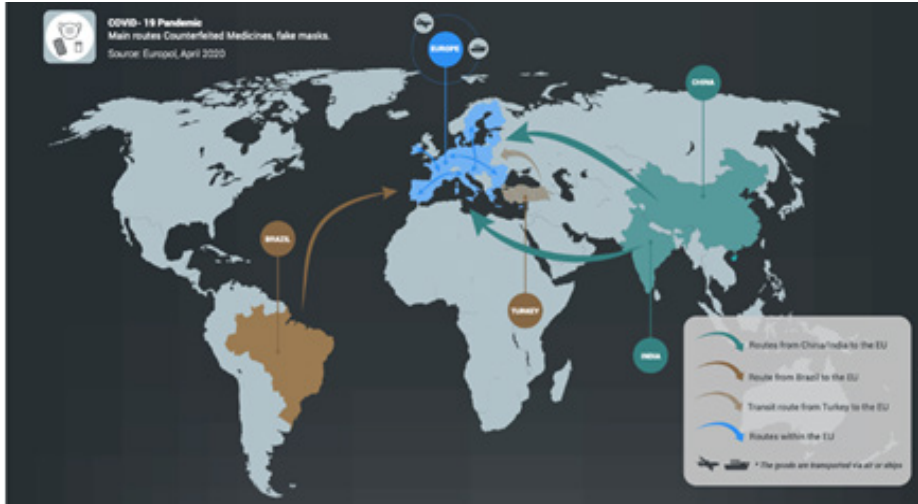


FIG: Main routes for counterfeit pharmaceutical and healthcare products trafficked to the EU (Source: Europol information)⁹



Goods And Intellectual Property Crime In The Covid-19 Pandemic' it is suspected that the majority of counterfeit pharmaceutical products and active ingredients sold in the EU originate from China and India, which both host significant licit and illicit pharmaceutical and chemical industries.⁷

FIG: Main routes for counterfeit pharmaceutical and healthcare products trafficked to the EU (Source: Europol information)

Additionally, Interpol has put all member-countries on alert against fake or counterfeit products including disposable

surgical masks, hand sanitisers, anti-viral and anti-malarial medication, vaccines and test kits for the COVID-19¹⁰.

ARE THERE ANY REPORTED COUNTERFEITING INSTANCES?

In past few days, several counterfeiting instances have been reported across the globe.

- In one of many instances, an unlicensed company in Noida, was ready to ship spurious hand sanitizers and inferior quality face masks before they were shut down by the Authorities and over 10,000 of such sanitizer bottles were seized.¹¹

- An investigation conducted by a popular news channel revealed sweatshops cum PPE factories churning out make-shift medical equipment using blazer covers and carry bags.¹²

- Economic Offences Wing (EOW) of Central Crime Branch's (CCB) Bangalore on March 20 seized fake hand sanitisers worth Rs 56 lakh during raids at two factories in Bengaluru.¹³

- In another incident, Mumbai Police seized 4 lakh face masks worth around Rs 1 crore from a godown near Mumbai Airport Cargo Terminal.¹⁴

- The customs of New Delhi airport has stopped shipments of over 5 lakh masks and nearly 1000 bottles of sanitisers and PPE kits at its terminal that were being smuggled into countries including the China, US, UK and UAE.¹⁵

- In fact, in USA a man was arrested by London Police who was charged with making fake kits which claimed to treat COVID-19. The kits allegedly contained




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BIG BRANDS ARE ALSO DOING THEIR BIT. FOR EXAMPLE:

• Amazon, in particular, has specifically informed sellers that they “prohibit the listing or sale of products that are marketed as unapproved or unregistered medical devices.”¹⁹ As of March 4th, of this year, Amazon reported that they removed more than one million counterfeit products with bogus corona virus claims and cures.²⁰ Google has also taken steps to crackdown on fake or misleading advertising as fraudulent ads and counterfeits surge during the COVID-19 pandemic. The tech giant revealed in a post recently that it would be extending its identity verification policy from political ads to all advertising on its platforms, in a bid to improve transparency. “As part of this initiative, advertisers will be required to complete a verification program in order to buy ads on our network,” explained director of product management, John Canfield. “Advertisers will need to

submit personal identification, business incorporation documents or other information that proves who they are and the country in which they operate.” By hovering over an ad listing, users will soon be able to see the name, location and other information about the advertiser.²¹

• In order to help combat with the counterfeiters, UL Brand Protection has launched a dedicated anti-counterfeiting initiative entitled Project Cerberus. This initiative will focus operational efforts on identifying counterfeit UL marked healthcare and life safety type products, removing these from the marketplace and holding offenders accountable for their illegal actions.

An important thing to remember is we are all in this together! and we must do our bit to find a solution and combat the menace of counterfeiting. 



Isheta Srivastava is an Associate Advocate at S.S. Rana & Co. She is a registered Advocate with Bar Council of India in 2017. She has completed her graduation from Symbiosis Law School, Noida and has done her Masters in Intellectual and Technology Law from National University of Singapore. She is skilled in Research and her areas of focus are Intellectual Property Rights, Innovation and Information policy. She has previously worked with WHO on a project titled ‘IP related challenges to Public Health’ and with UNESCO on a project titled ‘Mainstreaming Conservation & Sustainable Use of Plant Diversity in Uttarakhand’. In the firm, she is a part of Legal Advocacy and Research Department for over 2 years now and regularly focuses on niche legal areas in which to provide significant research value. Having exceptional researching skills, she is involved in researching for ongoing cases and regularly participate in research projects with leading industry associations for the firms.

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¹²Europol's report on ‘VIRAL MARKETING - COUNTERFEITS, SUBSTANDARD GOODS AND INTELLECTUAL PROPERTY CRIME IN THE COVID-19 PANDEMIC’ available at <https://www.europol.europa.eu/publications-documents/viral-marketing-counterfeits-substandard-goods-and-intellectual-property-crime-in-covid-19-pandemic>

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