

Consumer awareness and adequate enforcement needed to deter counterfeiting and smuggling in India

It is important that consumers today understand the multi-faceted complexities of counterfeit and smuggled markets. It's economic impact on businesses, the magnitude and scale of operations, and the consequent adverse impact on consumer health and safety. Manufacturing, altering or distributing a product that is of lesser value than the genuine product with the intention of misleading the buyer about the genuineness of product is unlawful. Fake medicines, food, toys, auto parts and health products can be dangerous and can potentially harm or even kill unsuspecting consumers.

The Indian Consumer Protection Act, 2019 provides for six rights of a Consumer. The new Act has a slew of measures and tightens the existing rules to further safeguard consumer rights. The government has set up a three tier institution (NCDRC, SCDRC and DCDRC) to address an important right of a consumer, that is, Dispute Redressal between a buyer and a seller. Out of the remaining five rights, two (educating a consumer about a particular product or service and hearing consumer complaints promptly) come within the exclusive domain of the brands and the industry. Trust that a brand builds with its consumers is consumer empowerment through education and quick learning (accessible brand promoter to hear consumer complaints and provide for speedy redressal). Remaining three rights of a consumer, namely, safety; information and choice of a product or service could be a combined effort of the Governments (including Voluntary Consumer Associations) and brands (Industry Associations).

While the Consumer Protection Act is a stepping-stone towards empowering the consumers; the consumers must also act responsibly and cautiously while making any purchase to avoid being duped by illegal sellers. India needs to focus on two things, namely, consumer awareness and aggressive enforcement. FICCI CASCADE (Committee Against Smuggling and Counterfeiting Activities Destroying the Economy) has been at the forefront of generating awareness amongst consumers and sensitizing enforcement agencies on the ill impacts of such practices. Consumer awareness in India is still in its infancy. Government of India has a multimedia campaign "Jago Grahak Jago" to empower consumers about their rights and duties. What is required is an impetus to this campaign with reference to fake, smuggled and spurious products. However, brands also need to supplement the efforts of the Government (both national and subnational) on consumer awareness, as it is not possible for the Governments alone to carry out this campaign exclusively for industry.

The first step to solving a problem is acknowledging that there is a problem, and this shows that we are on the right path. Although there are enough laws that deal with counterfeits and how to tackle them, improvement in terms of implementation is required, as these laws need to evolve with an ever-involving environment. Government of India have done good work on its various initiatives including the national IPR policy in 2016; IPR enforcement rules at the border or the establishment of a Cell for IPR Promotion and Management (CIPAM) for spreading awareness and upgrading the understanding environment amongst enforcement authorities.

Having said that, industry and brand owners often face challenge on enforcement issues with cases related to counterfeiting and smuggling. Currently, this matter lacks the desired attention from policy makers and lack of coordination amongst the various departments in the government. A nodal agency, perhaps, could be the answer, where there is seamless flow of information and where enforcement

agencies can come together (regulatory, the customs, the law & enforcement) to talk to each other for speedy enforcement so that the issue at hand can be handled efficiently and speedily.

Although CIPAM and industry bodies have been conducting awareness sessions amongst enforcement officers, brand owners indicate that they do not get enough and prompt support from the police in certain cities as solving such crimes fall much below in the priority list of the police. The number of police officers to handle such cases is invariably inadequate and they are tied up in public law & order cases, safety and security of citizens. What is needed is feeding into the police that such crimes are also getting into larger issues of terrorism, trafficking and other illegal activities. In this context it is a fit case to raise a tech savvy Central IP Security Force (CIPSF), to be funded by a corpus contributed by leading brand owners and administered by the Central Government. Also, a provision to reward the police officers for dealing with crimes relating to counterfeiting could be instituted, which may act as an incentive for the authorities to take this up more seriously.

It has been proven statistically and through studies such as the Interpol that counterfeiters and smugglers are hardened criminals. Though there are provisions in the law and actions are taken against the criminals but many times it is seen that these criminals go back and carry on the illegal activity, which proves that the punishment is not deterrent enough. It would be pertinent to bring in rigorous imprisonment, stringent monetary penalties, expeditious investigating of cases and ensuring prosecution in a time bound manner to prevent the resultant damage to brand owners and consumers.

While, laws will evolve to deter this menace, continuous investment on brand protection strategies and anti-counterfeiting activity is required and successful brands, in fact, do that. The problem will not go away, because advanced technology is widely available which helps in copying and making replicas. For brands, market intelligence is also a key area to focus on. It is about knowing the market, the supply chain, understanding where the notorious markets are, profile the likely suspects and develop a strategy of intelligence gathering and enable required action. Hence, in order to protect a brand, brand owners have to make investment; educate and create awareness across the supply chain; use tested service providers; and work in close partnership with the Government, industry associations and other brand owners.

In an age of circular economy (resource efficiency) and artificial intelligence, it is imperative that brand security strategies in the field are robust and dynamic. Challenges in enforcement will always remain a work in progress. However, consumer awareness and empowerment will be the key. A trusted consumer could be the best bet in securing a brand or an industry. Counterfeits and illegal products cannot exist if consumers reject them.

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