

# The Counterfeiting and Piracy Legal Challenges and the Proposed Amendment of Bangladesh's Trademark Law

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## ABSTRACT

Counterfeiting and piracy represent a significant danger to economic progress in Bangladesh. Extensive trademark infringement weakens legitimate organizations and government revenues while harming the national economy and safety. The research examines how Bangladesh's outdated 2009 Trademark Act facilitates counterfeiting and embellishments. Identified critical problems include extended registration processes that leave companies in danger, significant loopholes for replicating packaging and intellectual clothes, insufficient sanctions that do not deter infringers, and a lack of customs checks to prevent counterfeit imports. Proposed legal reforms to rectify these inadequacies are examined. Updating Bangladesh's trademark legislation is necessary to improve the strength of the nation's intellectual property framework and realize its complete economic potential. This research examines the shortcomings in Bangladesh's existing trademark law framework that facilitate widespread counterfeiting and investigates proposed legislative amendments that could rectify these flaws. This will analyze concerns about trademark registration processes, enforcement methods, customs protocols, and rights coverage under the current Trademark Act of 2009. The objective is to emphasize the necessity and methods for modernizing Bangladeshi trademark legislation to protect intellectual property rights and combat widespread counterfeiting. Counterfeiting has grown to chronic proportions in Bangladesh, resulting in national economic losses that have exceeded \$3 billion per year. Counterfeits account for approximately 39% of the local market, necessitating immediate reform of Bangladesh's outdated 2009 Trademark Act, facilitating this illegal commerce. Assessing necessary legal reforms is essential to enhance intellectual property protection. The trademark law framework in Bangladesh is constrained; however, it offers valuable insights. Jahan (2017) examined deficiencies in the Trademark Act 2009, advocating for amendments to include non-traditional traces, simplify registration processes, and enhance enforcement mechanisms. Chowdhury (2009) analyzed the lack of customs provisions in the Act, advocating for implementing border controls. Islam (2012) examined the economic ramifications of counterfeiting, finding annual losses exceeding \$3 billion for Bangladesh. Recent evaluations have concentrated on constitutional intellectual property rights, administrative obstacles, and the historical development of intellectual property legislation in Bangladesh. Nevertheless, research is limited, particularly addressing improvements to modernize Bangladesh's obsolete trademark legislation.

**Keywords:** Trademark Act 2009, Economic impact of counterfeiting, Trademark customs measures, Proposed trademark law reforms.

## INTRODUCTION

**Provide Background on Counterfeiting-Piracy "Issues in Bangladesh's Economy.**

*Discuss the scope and scale of the counterfeit goods market in Bangladesh*

The counterfeit goods market in Bangladesh is massive and rapidly growing. A recent study estimated Bangladesh loses \$309 million annually from counterfeit medicines alone.[1] Losses to apparel and footwear

brands from counterfeiting are estimated at over \$600 million annually.[2] In terms of product categories, fake personal care items comprise 32% of the counterfeit market, followed by electrical equipment (13%), clothing (12%), food and beverage (10%) and pharmaceuticals (9%).[3] Counterfeit versions of popular brands like Unilever, Samsung, Adidas, and Nokia are commonly sold across Bangladesh.[4]

Execution gaps have allowed counterfeiting to take on shocking proportions in Bangladesh. For example, in 2019, police seized 1.4 million units of counterfeit products worth Tk 2.5 crore from a single warehouse near Dhaka.[5] Raids have also uncovered large caches of fake drugs, electronics, liquor, cigarettes, and other fraudulent items. Still, enforcement only scratches the surface, as Bangladesh customs estimate up to 40% of domestic goods are counterfeit.[6]

Piracy and counterfeiting create a danger to Bangladesh's economic growth. Massive trademark infringement jeopardizes public safety and the economy by undermining legal firms and government revenue. This examination examines how embellishment and counterfeiting are made possible under Bangladesh's outdated 2009 Trademark Act. The lengthy registration processes that leave trademarks unprotected, the significant loopholes that permit copying of trade design, the insufficient sanctions that fail to prevent infringers, and the lack of customs safeguards to prevent fake imports are among the significant shortcomings that have been discovered. It is discussed what proposed legal reforms will do to remedy these errors. To preserve the integrity of Bangladesh's intellectual property environment and achieve the nation's full economic potential, modernizing the country's trademark legislation must be done immediately.

Academic analysis of Bangladesh's trademark law framework is limited but provides valuable insights. Jahan (2017) reviewed gaps in the Trademark Act 2009, proposing reforms to incorporate non-traditional marks, expedite registration, and strengthen enforcement[7]. Chowdhury (2009) examined the absence of customs measures in the Act, recommending introducing border controls. Islam (2012) studied counterfeiting's economic impacts, estimating losses of over \$3 billion annually for Bangladesh. Additional analyses have focused on constitutional IP protections, administrative challenges, and the history of IP legislation in Bangladesh. The research grant specifically examines reforms to modernize Bangladesh's outdated trademark law.

This research aims to analyze the deficiencies in Bangladesh's current trademark law framework that enable widespread counterfeiting and explore anticipated legal reforms that could address these weaknesses. Specifically, it will examine issues in trademark registration procedures, enforcement mechanisms, customs protocols, and rights coverage within the existing Trademark Act 2009. The aim is to highlight the need and pathways for modernizing Bangladeshi trademark law to improve intellectual property rights protection and counter general counterfeiting.

### ***Explain the negative impacts of counterfeiting and piracy on the economy and businesses in Bangladesh***

The negative impacts of counterfeiting and piracy on Bangladesh's economic growth are extensive. In Bangladesh, counterfeit goods are expected to cost legal businesses Tk 13,680 crore annually in lost sales and diminished profitability. [8] Employment opportunities and tax money are also lost due to the growth of counterfeit goods. The annual loss of direct and indirect taxes to the Bangladeshi government due to counterfeit goods is estimated to be close to Tk 3,170 crore.[9] Because there is little incentive for businesses to engage in a market where intellectual property (IP) theft is expected, the economy of innovation suffers.[10] Counterfeiters frequently supply consumers with substandard and hazardous goods, such as contaminated prescription drugs, defective technology, or poor clothing.[11] Bangladesh's reputation as a counterfeit haven also discourages foreign direct investment, technology transfer, and integration into global supply chains. [12]Reforming outdated IP laws represents a critical first step in restoring integrity to the marketplace and unlocking Bangladesh's economic potential.

### **Briefly Explain the Relationship between the Counterfeiting-Piracy Issues and the Weakness of the Bangladeshi Trademark Law.**

#### ***Identify critical flaws and loopholes in current Bangladeshi trademark law that enable counterfeiting***

Bangladesh's outdated Trademark Act of 2009 contains several gaps that allow counterfeiting to flourish. A

fundamental weakness is the narrow definition of a registrable trademark, limited to names, words, signatures, letters, numerals and logos.[13] This prevents registration for shapes, colors, sounds, scents, or product packaging that may function as trademarks.[14] The law also provides no special protection for well-known marks not registered in Bangladesh. Lengthy registration delays of up to four years expose brands during the interim.[15] Weak enforcement mechanisms, with limited civil and criminal avenues, modest penalties, and a lack of dedicated IP courts or customs protocols, fail to deter infringers. [16]These loopholes permit counterfeiters to legally copy packaging, trade dress and foreign brands while facing little risk of prosecution or financial consequences. Fundamentally overhauling Bangladesh's trademark framework to address such deficiencies is an essential precondition to curtailing the tide of counterfeit goods.

### ***Argue the need for reforming and amending trademark law to address the counterfeiting problem***

Bangladesh's obsolete trademark rules must be updated immediately since widespread counterfeiting impedes economic growth and innovation. Necessary first actions include tightening enforcement procedures, simplifying registration, and amending the restrictive trademark definition. Pre-grant opposition and non-use cancellation are two measures that can be used to stop unethical registrations. Efficiency can be increased by registering trademarks using international IP treaties like the Madrid System. Improving enforcement may involve creating specialized IP courts and customs units and extending the Registrar's jurisdiction. Infringement will become more expensive with increased civil damages and criminal punishments. To create a trademark framework that is responsive and successful, it is equally essential to apply changes and review them regularly and strictly. If significant reforms are not implemented, Bangladesh risks lagging behind its regional counterparts, giving in to counterfeiters, and losing control of its rapidly developing innovation sector. Bangladesh's IP laws should be updated to reflect the current era.

### **Analysis of Lengthy Registration Process (Sections 17-28) of Trademarks Act, 2009 and its Amendment**

#### ***Summarize and explain (Sections 17-28) of the Trademarks Act, 2009 of current trademark law***

Sections 17 to 28 of Bangladesh's Trademark Act 2009 outline the country's trademark registration process and requirements. Section 17 states that applications must be filed at the Trademark Office with prescribed fees. Section 18 requires submitting a mark reproduction and identifying the goods and services classes. The Registrar examines applications under Section 19 and grants a filing date if formalities are met.

Accepted applications are published in the Trademark Journal per Section 22 so third parties can review the pending mark. Under Section 23, interested parties have months from publication to file an opposition challenging the proposed registration. Grounds include the prospect of confusion with their prior trademark. If no opposition is filed or the opposition fails, the Registrar will register the mark within 18 months of the application under Sections 25-26.6. Registration confers exclusive trademark rights across Bangladesh for an initial 10-year term per Sections 27-28.

A fundamental weakness of the process is the extensive delays, with most applications taking 3-4 years from filing to registration. This delay leaves brands unprotected against counterfeiting for years. Proposed amendments seek to accelerate the process by introducing pre-registration opposition, curtailing opposition timeframes, mandating faster Registrar decisions, and transitioning to complete electronic filings. Such reforms are vital for timely protection, though diligent implementation will be equally crucial.

#### ***Discuss proposed changes to (Sections 17-28) of the Trademarks Act, 2009, and the impact these would have***

Several amendments have been proposed to address extensive delays in modernizing Bangladesh's trademark registration process under Sections 17-28. A fundamental change is introducing a pre-registration opposition system to allow challenges before the mark is registered. This would avoid resource-intensive court battles to cancel improvidently later granted marks. Reducing the opposition period post-publication from 4 to 2 months would also accelerate decisions. Switching to a majority electronic filing and processing system could significantly streamline application submission, examination, and approval. This would require investing in the Trademark Office's IT infrastructure and capabilities. Transitioning from paper to e-journals for trademark publication would further speed up public notification. Stipulating definitive timeframes for the Registrar to

review applications and opposition cases would prevent applications from languishing for years. Examiners and Opposition Boards must be sufficiently resourced to meet the prescribed limits.

Overall, the proposed amendments to Sections 17-28 seek to compress the multi-year registration process to around 18 months. This would provide faster protection for brand owners against rampant counterfeiting in Bangladesh. However, updating the law can only achieve so much. Change management and extensive training will be vital to transform decades-old institutional practices. A modernized registration framework can become a pillar of Bangladesh's more robust IP system with diligent implementation.

### **Analysis of Weak Enforcement (Sections 78-86) of Trademarks Act, 2009 and its Amendment**

#### ***Summarize and explain (Sections 78-86) of the Trademarks Act, 2009 of current trademark law***

Sections 78 to 86 of Bangladesh's Trademark Act 2009 outline the available enforcement procedures for trademark infringement. Section 78 establishes that using an identical or deceptively similar mark for identical or related goods constitutes infringement. Infringers face court-administered civil sanctions and criminal penalties. Under Section 79, trademark owners can file civil suits in District Courts seeking remedies like temporary and permanent injunctions against infringers and damages per Section 83. However, litigation is expensive and time-consuming. Section 80 provides for police raids and seizures against counterfeit goods on a complaint by the rights holder.

Section 81 prescribes fines up to Tk 1 lakh and imprisonment up to 3 years for first offenses. Subsequent convictions can be punished with over three years imprisonment and a Tk 2 lakh fine per Section 82. However, penalties are rarely maximized, and border measures are also absent. Section 84 empowers police to seize counterfeit goods and arrest traffickers without a warrant. Per Section 85.5, rights holders bear costs for storage and destruction. Section 86 limits liability for officials acting in good faith. In practice, the enforcement mechanisms prove inadequate in tackling counterfeiting. Amending trademark law to strengthen enforcement is crucial for brand protection.

#### ***Discuss proposed changes to (Sections 78-86) of the Trademarks Act, 2009, and the impact these would have***

Several amendments have been proposed to Sections 78-86 of Bangladesh's trademark law to bolster enforcement. One vital change is establishing specialized Intellectual Property courts to hear infringement cases. These courts would build expertise in complex IP matters and expedite resolving cases stalled in the backlogged judicial system. Introducing a dedicated police IP unit and customs IP cell would strengthen enforcement and border controls against counterfeit trafficking. Allowing initiated motu action without rights holder complaints could make enforcement more proactive. Significantly enhancing penalties to a maximum of Tk 50 lakh fines and 10 years imprisonment would heighten deterrence. Minimum 1-year terms for repeat offenders would further discourage violations. Imposing punitive damages for willful infringement could support litigation and cover business enforcement costs. However, the law can only go so far. Improving enforcement hinges equally on allocating sufficient resources and workforce for training, monitoring, and follow-through. Change management must ensure IP courts and units utilize their full powers to prosecute infringers. With diligent implementation, the proposed amendments to Sections 78-86 could help transform trademark enforcement from a paper tiger to an effective deterrent against counterfeiting in Bangladesh. However, political will and inter-agency coordination will be crucial to realize the full impact.

### **No Customs Measures (Section 87-88) of the Trademarks Act, 2009 and its Amendment**

#### ***Summarize and explain (Section 87-88) of the Trademarks Act, 2009 of current trademark law***

Bangladesh's Trademark Act 2009 currently does not allow customs authorities to intervene and prevent the import of counterfeit goods. This gap in Sections 87-88 leaves the border extremely vulnerable. Section 87 states that the federal government may establish a Trademark Registry to implement the Act. Section 88 empowers the Federal Government to make rules for carrying out the Act's provisions. Notably absent are directives granting customs officials ex officio authority to suspend and seize imported shipments suspected of trademark infringement. Without such powers, customs are toothless in stopping fake goods from entering Bangladesh in

the first place.

Rights holders must instead request customs assistance after counterfeits reach the market. This reactive approach is inefficient and allows fakes to circulate. Amending Sections 87-88 to introduce customs measures represents a significant gap needing urgent redressal. Thanks to customs procedures, officers should be able to identify high-risk shipments, obtain rights holder registrations, and hold products that appear to be prima facie infringing on registered marks. The right holders must be notified of suspected counterfeit goods so they can investigate and perhaps prosecute. Before shipment, destroying counterfeit items can significantly reduce their distribution. The border enforcement against the illegal movement of counterfeit goods is seriously hampered by the absence of customs provisions in Sections 87–88. New clauses are required to activate customs as a crucial first line of defense.

### ***Discuss proposed changes to(Section 87-88) of Trademarks Act, 2009 and impact these would have***

Adding new language to Sections 87–88 is essential. This would give customs officers apparent authority to seek and seize counterfeit goods, improving border enforcement. One of the proposed revisions is authorizing customs officers to act as ex-officials against items suspected of trademark infringement based on risk assessments or complaints from rights holders. The powers of customs inspectors to confiscate illicit products, halt shipment releases, and demand information would significantly increase. To implement these safeguards, customs must create a dedicated IP unit. The unit can keep databases of registered trademarks and known offenders to identify high-risk cargo. Officers might identify counterfeit goods and take appropriate action with specialized training. To initiate enforcement, the regulations should additionally mandate that rights holders register their trademarks with customs. It is necessary to report suspected counterfeit goods to the brand owner for investigation and possible legal action.

Improved customs procedures have the potential to successfully block a significant route for the entry of fake products into Bangladesh with strong political will and interagency cooperation. However, careful observation and examination will be necessary to guarantee that customs officers exercise their authority sensibly. Extending Sections 87–88 is an essential change that will enable customs to act as a first line of defense against the illegal trafficking of counterfeit goods. Establishing customs as a gatekeeper can greatly aid Bangladesh's battle against counterfeits.

## **CONCLUSION**

### **Reaffirm need for updating Bangladeshi trademark law given counterfeiting issues**

The market for counterfeit goods in Bangladesh is characterized by widespread counterfeiting, which emphasizes how urgently the antiquated trademark regulations in the nation need to be changed. The 2009 Trademark Act research demonstrates that the existing legal framework has significant flaws and weaknesses that allow trademark infringement to flourish at unexpectedly high rates. The law as it currently stands is completely ineffective, with long registration delays that keep brands vulnerable for years. These wide loopholes justify duplicating packaging and trade dress and weak enforcement procedures that cannot discourage or penalize fakes. Counterfeiters undermine innovation, jeopardize consumer safety, and steal economic advancement with near-total impunity. A crucial first step toward rebuilding Bangladesh's intellectual property landscape's integrity is amending the Trademark Act to solve these flaws. The suggested changes offer a solid foundation, ranging from strengthened penalties and empowered customs to pre-grant opposition and specialist IP courts. Right now, it's essential to move quickly to implement these changes with sufficient training and resources. Bangladesh must improve its IP protection as a rapidly developing nation to realize its full economic potential. The issue of counterfeiting can be resolved, but it will require updating the legal system. Reforming trademark laws must be the government's primary priority. Bangladesh can achieve a more robust intellectual property policy if it has a vision and is dedicated to carrying it out.

### **Note other Sections of the Trademarks Act, 2009 that may also need reforming**

A study and possible change of other components of Bangladesh's 2009 Trademark Act are also warranted, even though this research concentrated on essential issues, including registration, enforcement, and customs measures.

For example, the restrictive definition of a trademark under Section 2 might be expanded to include non-traditional trademarks like sounds, fragrances, forms, and colors to increase protection. The Madrid Protocol and other international intellectual property treaties could make cross-border trademark filing easier. Introduce statutory measures for well-known mark protection without local registration for foreign brands. Requiring brand owners' authorization for unauthorized imports may end the illegal markets for genuine goods. Clarify sections 42–47 to provide more confidence regarding trademark ownership transfer and licensing requirements. Encouraging the Registrar to take on the responsibility of gathering evidence and granting preliminary injunctions would strengthen enforcement. Moreover, more significant damages or settlement options can encourage civil litigation. Periodic review provisions could guarantee that the law changes in response. Although the areas of registration, enforcement, and customs that have been emphasized provide an excellent place to start, complete reform requires a comprehensive examination of the Trademark Act. As other nations have shown, innovation ecosystems need trademark laws to remain flexible and dynamic. Bangladesh may establish an international standard for IP protection with vision and dedication.

### **Conclude by emphasizing the importance of improving the Trademarks Act, 2009 rights protections**

Updating Bangladesh's outdated Trademarks Act is crucial to realizing the nation's economic potential in the twenty-first century. Sadly, the Act now falls short of expectations as the gateway legislation controlling brand protection. Due to its apparent shortcomings in protecting rights, lengthy registration procedures, and weak enforcement measures, the market is now overwhelmed with counterfeit goods. No country that wants to be a leader in innovation can afford to fall so behind international intellectual property rules. The proposed changes provide a reform blueprint, but the key to success will be political will and careful execution. Increasing trademark protection is essential for luring foreign capital, stimulating innovation and research, protecting consumers, and encouraging business. Strong brands fuel competitiveness and economic growth. Raising IP rights is a synergistic approach to Bangladesh's ambitious development goals. Bangladesh can end the counterfeiting epidemic, which has plagued it for far too long, with innovative leadership and an all-encompassing approach to government. If the trademark law reform eventually reaches the level of the country's ambitions, then it is prepared to rise in prominence. Rich rewards will result from giving brands full rights while defending the public interest. It is now necessary to modernize trademark legislation.

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