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Import of Counterfeited Products Versus Enforcement of Intellectual Property Rights in Pakistan

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Abstract

Protection of intellectual property rights is a great concern in the modern economies and its scope has increased from national to global level. Pakistan Customs service has transformed itself to protect national frontiers against the violations of Intellectual property rights at the import and export stage of the goods to play its dynamic role in socioeconomic development of the country. Previously conducted research on the intellectual property rights did not address the role of Pakistan Custom Service adequately. This article tried to fill in the gaps by highlighting the role of Pakistan Customs Service in countering the violations of the Intellectual property rights. This study is conducted by employing qualitative research method. Officials of Pakistan customs service perform their duties under certain prevalent laws for the enforcement of intellectual property rights. But like all other public organization Pakistan customs also face some challenges and limitation in the performance of their duties. However these challenges can be addressed through effective awareness campaigns and amending the existing legislature to cater the changing needs of the intellectual property rights violations.

Keywords: Counterfeit, Pirated goods, Infringement, Pakistan Customs Service, Directorate General of Intellectual Property Rights Enforcement, Intellectual Property Rights, Socioeconomic Development.



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Introduction

In this age of global interlinked economies and ever changing trade practices, the matter of intellectual property rights (IPR) protection is the emerging public policy issue. Intellectual property rights are the rights reserved on the creation of the one's unique, original and genuine products by employing one's own creativity, (Ahmad. N, et al. 2021). Protection of intellectual property rights is a window for individuals and commercial entities to reap financial benefits from the uniqueness of their creativity. There are certain types of creative innovations on which property rights can be claimed like, copyright, trademark, engineering and industrial products, patents and trade secrets. Frequent piracies, counterfeiting and violations of the intellectual property rights are usually protected through an effective and robust legal frame work. (Janjua. Z et al, 2019). As per the reports of European Union Intellectual office, the quantum of counterfeited trade around the world is almost 2.5% of the total trade which is worth of half a trillion of US dollars (OECD/EUIPO Report, 2021). Developing countries have in placed laws and rules to counter the menace of counterfeiting. However, its rigorous implementation is still a huge challenge for these countries. Pakistan stands at 88th at Global Innovative Index among 132 nations while 104th on the ranking of Intellectual property rights index in 2023 out of 125 countries globally (WIPO, 2023). This ranking depicts the poor state of IP rights protection in the Pakistan. Intellectual property organization of Pakistan is responsible for the protection of the intellectual property rights of the individuals and merchandise enterprises through registration of the IP claims and enforcement of the relevant laws in case of violations at national level. However, the scope of the counterfeited products is not limited to locally pirated goods. It has now given rise to an emerging economy of imported fake products into the country. China and Thailand are major producers of the variety of the counterfeited products. The role of Pakistan Customs in countering this phenomenon cannot be undermined in this regard. This paper intends to appraise the role of Pakistan customs in the implementation and enforcement of the intellectual property rights in Pakistan especially at import stage of the goods. Abysmal state of IP right violations has given birth to multiple economic and social challenges in Pakistan. Fervent violations discourage creativity and innovations, retards foreign investment, impede economic growth, pose health and safety risks and brings a bad name on the reputation of the country (Ahmad.N et al, 2021). This paper also evaluates the challenges faced by Pakistan customs in the enforcement of IP laws at Import stage and propose some recommendations for the policy makers.

1. Significance of Study

The protection of intellectual property rights generates opportunities and space for innovation and creativity. The due legal protection of property rights supports economic development through foreign investment and promote new avenues of business & trade development. The study of the role of Pakistan Customs in protecting the Intellectual Property rights carries importance on numerous grounds.

Firstly, it provides an idea of the role and responsibilities of Pakistan Customs in protecting the intellectual property rights of the right holder against counterfeited and pirated goods in the country.

Secondly, this research paper examines the prevalent laws, rules and enforcement procedures under which Pakistan Customs take actions to curb the plague of counterfeited and fake imported products.

Thirdly, this paper also discussed in detail the social and economic impacts of the import of counterfeited products in the country. It will also highlight the aspects which are facilitating IP laws violation at a gigantic volume.

Fourthly, it provides an insight into the legal and practical limitations and challenges which the organization face during the enforcement operations against the fake and counterfeited goods. This will help to identify the gaps in the existing legal frame work for IP laws enforcement and help policy makers to review their stance on the IP protection on more stringent basis.

Lastly, this study also proposes suggestions to protect the intellectual property rights and to promote innovation and novelty in the country. This study also emphasis on the promotion of IP laws to raise public awareness so that the staggering economy of the country may be accelerated in the upward direction.

2. Literature Review

Protection of Intellectual property rights is paramount for the economic progression of the country by promoting industrial growth and for individual welfare of the intellectuals through encouraging healthy competition (Saha CN, Bhattacharya S, 2011). Fake products are being traded globally at an alarming volume which is increasing day by day. In contemporary world, counterfeited products have penetrated into all product categories and industries threatening customer health, global competition and economic prosperity (Giudici.E, 2023). The scope of counterfeited market has expanded from developing to develop states around the globe.

The role of custom service has been revolutionized over the years by transforming its job nature from revenue collection agency to more efficient and effective force responsible for the monitoring of the cross border movements of the goods through border management (Widdoson, 2007).

As enforcement agency, Customs officials have their presence at sea, land and air borders of the country, and with evolution of modern trade practices across the globe, its role in the protection of intellectual property rights has gained immense significance. (Zakir, Khan & Ali, 2023).

Illicit trade in Pakistan comprising of counterfeit, under invoicing and smuggling is not only responsible for causing billions of rupees' loss to national economy but also held liable for the abysmal low foreign direct investment in the country over the past few years. As per Transnational Alliance on Combating Illicit Trade (TRACIT), on the ranking of "Global Illicit Trade Environment Index Pakistan ranked 72nd among 84 countries (Salman.A, 2024)

Under the legal provisions of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, Director General of Intellectual Property Rights Enforcement was established in 2015 to counter the menace of import and export of the counterfeited, fake and pirated goods across the frontiers of the country. (Vellani & V, 2015)

The enforcement aspect of IPR regarding customs remained unaddressed and largely ignored due to the lack of awareness and ambiguity of the laws. SRO 170(i)/2017 were issued to empower customs authorities to detain and seize imported counterfeit products at ports on receiving a formal complaint from the right holder. (Daudpota.F, 2021)

The literature reveals that socio-culture environment of a country pose a great challenge in the enforcement and protection of the IP rights. Poverty stricken Pakistani population does not acknowledge the use of counterfeited or cheap replicas of certain products as unethical. Due to limited buying powers people have accepted the intentional purchase of pirated products as a norm. (Hussain.A, 2023).

Rising inflation, decreasing per capita income, illiteracy, increasing tariff and tax rates on various essential items have forced people to explore some cheaper alternatives which boosts the demand of the pirated and fake products. (OECD, 2023).

Further study of the literature exposed that through e-commerce it has become very easy for the traders to attract customer for the sale of counterfeited products having deceptive logos of original products with different tempting deals and offers. Concerning this, use of social media handles is quiet supportive to the business of counterfeit items ranging from luxury goods to the essentials supplies of the daily life. (“Pakistan: fake products’ sale”,2018)

Literature review demonstrates that around half of the medicines and pesticides available in the market are counterfeited and even hazardous for the human consumption. (Haider.M 2024). Moreover, elaborated review of the literature exhibits that weak enforcement of laws, lack of resources and inadequate knowledge facilitated the cross border smuggling of pirated and fake goods from the neighboring countries especially Iran and Afghanistan, at an alarming level. (TRACIT, 2024)

Furthermore, literature identifies the lack of coordination among different agencies for the implementation of the IP rights in letter and spirit. It can be inferring that a more synchronized and comprehensive strategy is the need of the hour to counter the menace of the counterfeited products, not only for general consumer products about also with special focus on the products falling under the category of health and safety hazards. (Majeed, 2018)

3. Research Method

The study is conducted by applying qualitative method of research. For this purpose, in-depth interview of a stakeholder is carried out to extract detail information about the topic under consideration for study purpose.

3.1. Research Questions

1. Why was the Directorate General of Intellectual Property Rights Enforcement (IPRE) of Customs created?
2. How many field formations are working under the Directorate General of IPRE? Do the sub-offices have been established all over the country?
3. What is Role of Directorate General of IPRE in countering the cross border movement of counterfeited goods?
4. What are the legal provisions to protect the rights of the right holder against the violation of IP rights?
5. What is the quantum of import of the counterfeited goods in Pakistan? How it impacting the socio-economic development of the country?
6. What are top countries of origin for the import of the counterfeited goods in Pakistan?
7. What are the major categories of counterfeited items imported in the Pakistan?
8. What are the steps/measures taken by the Directorate General of IPRE to counter the import and export of counterfeited goods?
9. How much Directorate General of IPRE is successful in countering the import and export of counterfeited products?
10. What are the challenges which Directorate General of IPRE is facing while performing its core functions?

4. Findings

To understand the role of Pakistan Customs in combating the phenomenon of Intellectual property rights violation, an in depth interview of the senior officer of the directorate General of Intellectual Property Rights Enforcement has been conducted. The interviewed officer has ample experience of working with Intellectual property enforcement of the Customs and was well conversant with relevant rules and laws. The officer was enquired about the various aspects of the violations of the intellectual property rights with which customs officer encounter during their working. His response to the above stated question was very helpful in comprehending the nature of the responsibilities of the customs officers in their fight against the smuggling and trade of counterfeited and fake products of various kinds.

The first question of the interview was about the necessity of the creation of the Directorate General of the IPRE. The respondent replied that the purpose of creating this organization was to comply with the regulation of the TRIPS agreement to stop the movement and trade of counterfeited and fake products across international borders. This formation is also assigned with the responsibility to establish coordination between Government of Pakistan and International organization to counter the menace of smuggling and trade of counterfeited products. Furthermore, in response to next question about the number of field formations working under the jurisdiction of Directorate General of IPRE, he added that a Directorate General is established at Karachi, along with two directorates at Lahore and Islamabad to address the complaints regarding IPR violations at regional level. On question regarding the role IPRE in countering the cross border movement of the goods, the officer replied that IPRE counters the import of counterfeited goods on receiving complaint from the right holder. If the imported goods have been found in violation of the any provision of the relevant IP laws, the subject goods would be seized and confiscated for destruction.

Regarding legal provision to protect the rights of the right holder against IP violation at import and export stage of the goods, the interviewed person elaborated the provisions of the relevant laws and rules. He added that the prevalent laws allow the right holder to file a written complaint with the regional office of the IPRE along with an indemnity bond in case of the violation of his/her IP rights. Moreover, IPRE officer can take own motion notice in case of the import of the goods posing health and safety hazards for the general public. Furthermore, the impugned goods have to be examined in the presence of all stakeholders and if found in violation of the IP rights of the right holder, the goods shall be seized and confiscated and the case shall be referred for legal proceedings to appropriate judicial forum.

For the next question, respondent stated that there does hardly exists any comprehensive study which can calibrate the exact volume of the trade in counterfeited goods across the border in a country where volume of shadow economy is almost 40% of the total GDP. Researchers in Pakistan are still unable to account for all the trade which is happening through informal channels or smuggling from the regional neighboring countries including trade in both genuine and pirated goods. However, the impact of trade in infringing goods is very detrimental. It is discouraging the foreign investment in many key sectors of manufacturing and services. Besides this it is demoralizing the people with innate talent to innovate and dispiriting the creativity which is major source of economic development in the develop countries. Likewise, people with creative capabilities are leaving the country resulting in brain drain and dependency of the poverty stricken population on the infringing goods is increasing which is nurturing their demand in the market.

All the above stated factors are interlinked with each other for the sound economic development of a country. By the same token, import of low quality and cheap counterfeited product is extremely adverse for the local industry resulting in the collapse of local manufacturing sector and promoting unemployment in the country.

Concerning the origin of the counterfeited products, the senior official replied that “Most of the counterfeited products around the world sold are originating from China. China is our regional trade partner and for major proportion of trade, as a country we are relying on china, so most of fake and pirated products imported in Pakistan are being manufactured by China. But now there are some other economies as like Thailand, India and Turkey which are also involved in the manufacturing and trade of counterfeited products with Pakistan through formal and informal channels”.

On question in relation to the major product types being imported into country in counterfeited form, the officer named some categories including make-up products, lubricants, mosquito repellants, variety of hand bags and shoes, branded watches, apparels of renowned brands, medicines, sun glasses and accessories of automotive vehicles. The next query was the preventive measures or steps taken by the Directorate General of IPRE to fight the peril of the import and export of counterfeited products. The concerned person elaborated that “We are working to create awareness among the public and all stake holders through interactive session like seminars and conferences. Likewise, to improve the enforcement mechanism, training session has been conducted by all offices of IPRE for the staff of the field formation within their jurisdiction which helped them to identify the pirated products from the original ones. In addition to this, trade bodies, multinational corporations and other allied organizations like Intellectual Property Organization are also engaged in enhancing the scope of IPR enforcement and awareness among general population on the importance of IP rights and their protection by publishing pamphlets & brochures and through active media campaign. Moreover, our dedicated teams are monitoring the import of the products through Weboc login ID system at various dry ports, sea ports and airports within their specified jurisdictions”.

The response of the person interviewed on the question about the outcomes of the efforts in countering the trade of the fake products was not very encouraging. The officer expounded that IPRE is performing its key role in deterring the import and export of fake and pirated goods but despite investing earnest efforts, unfortunately organization of the IPRE could not reap its full potential till today. Since 2017 Directorate General of IPRE has received a total of 400 complaints in all 03 offices, out of which around 50% disposed of by relevant legal forums with a decision to forfeit the goods in the favor of the department. He further elaborated that as an organization we are trying to improve enforcement mechanism and to deepen our reach at all the points of entry and exit in the country but with limited human and material resources, the task is not easily achievable.

In relation to challenges faced by the IPRE officials and officers while performing duties, he added that, poor knowledge about the IP rights and their importance among general public, lack of human and material resources, poor training of field examiners and appraising officer with regard to IPR, low number of complaints recorded by the public, smuggling of counterfeited products through informal channels and poor buying capacity of the public are namely the few factors which are influencing the performance of the IPRE organization. He further elaborated that due to unmonitored large scale influx of counterfeited products in the local markets, poverty and diminishing purchasing power of the public, counterfeited products has been accepted as a norm in the country. Moreover, rampant IP violations and weak enforcement of relevant laws led a large

number of international brands and multi-national corporations to not get them registered with the Intellectual property organizations which further facilitates the IP violators and discouraged the number of complaints to be lodged with IPRE.

5. Discussion

It is natural human instinct to be praised and rewarded for the uniqueness of its intellect. Enforcement of the intellectual property rights is a way to protect innovation and creativity of human minds, but enforcement aspect of the IP rights must not interfere with the international trade by creating undue barriers. In the pursuance of the TRIPS agreement, member countries of World Intellectual Property Organization are bound to enforce the IP rights along with the facilitation of the genuine cargo in speedy and efficient way. Pakistan Customs is the guardian of the economic frontiers of the state and has a pivotal role in safeguarding the society against the plague of IPR infringement at the borders. To meet the domestic demands of the various supplies, Pakistan's economy is dependent on the import of the goods. Under the provisions of the section 15 of the Customs Act 1969, statutory regulatory ordinance (SRO) 170(1)/ 2017, has been issued to establish directorate general of Intellectual property rights enforcement, with the responsibility to enforce the IP rights of the right holder at the import and export stage of the goods to Pakistan Customs.

Customs response on the complaints received is usually proactive but the formal procedure to address the complaints is not very illustrative and varies depending upon the nature of the complaint. The action on the complaint is usually initiated on the formal receipt of the complaint on the prescribed parameters as defined in the relevant SRO. On the basis of the complaint, the counterfeited goods can be seized and confiscated. Further, in the absence of any appeal by the infringer in any court of law against the infringing goods, the goods can be destroyed by the customs itself, without any compensation to the infringer. On the other hand, customs authorities have powers to seize and destroy those counterfeit goods which pose any health and safety hazard, without any formal written complaint from any party.

Extensive study of the data reveals that, counterfeited products drain huge loss to the global economy. While over the years, scope of the penetration of counterfeited drugs have massively grown and left indelible mark on the business culture on worldwide scale making it a mammoth trillion-dollar industry. Rampant violation of the intellectual property rights cause significant loss to the right holders and their business which in the longer run create a bad reputation and discourage foreign investment at national level. As per the International Property Rights Index 2023 report, Pakistan stands 104/125 at global level for the protection of property rights. This dismal situation of the protection of IP rights made it very difficult for the Pakistan to secure foreign investment of renowned brands of different categories. In low and middle income countries, pirated and counterfeited products are imported through informal channels, promoting smuggling which result in the evasion of the duty and taxes, causing a huge revenue loss to the public exchequer. Evasion of duty and taxes effects government ability to fund various public services and research project of national interest. Adverse national environment for innovation and research has further aggravated the situation by creating demand for the pirated goods in the market.

It is also likely that individuals and companies involved in the import and distribution of fake products are not registered with national and local tax authorities and are linked with criminal activities. The range of criminal activities can be from tax evasion to money laundering and bribery to avoid any kind of legal action by the customs authorities. Counterfeited products usually

imported from China and other East Asian countries are low quality replicas of the original products which may cause severe health and safety hazards for the general public. General Pakistani population is unable to differentiate between genuine and pirated product and markets are flooded with such kind of counterfeited commodities. Retailers and wholesalers usually sold these fake products at low price as compare to genuine products which may appear appealing and affordable to the public at the cost of their health and safety. In addition to this, e-commerce through online shopping has further aggravated the phenomenon by deceiving the general population with deceptive trademarks of original products to lure them.

In the back drop of these stark economic and social effects of counterfeited products on the society, the findings of the report of the Transnational Alliance to Combat Illicit Trade on Pakistan are very alarming. As per the details of the reports, around 40 percent of the total medicines, pesticide and fertilizers available in the markets are either counterfeited or substandard which are posing serious health risks. In additions to this, tires, auto mobile lubricants, skin care and make up products are prone to cause safety risks.

Enforcement action at the end of customs is marred by many limitations. Under the prevalent law customs authorities cannot initiate action at their own self on such counterfeited goods which cannot be categorized under the list of health and safety hazards like watches, clothing, bags, and jewelry. Moreover, custom officials cannot assert their powers on the imported pirated goods which have crossed borders and entered into the domestic markets. Their powers are limited only the at border stage after which they have no legal jurisdiction to take action like many other countries of the develop world.

Poor public awareness and illiteracy made it difficult for a large number of Pakistani people to comprehend the difference between the original and fake products. Poor affording capacities of the public made it tempting for them to buy expensive branded goods as cheaper replicas. This culture of the import of fake products particularly from the China has eroded the trust of the international business ventures in Pakistan which is badly hampering the foreign direct investment in many significant sectors of the consumer goods. The great demand of counterfeited goods made it an alluring business for the mafias and due to stringent condition of furnishing an indemnity bond by the complainant, people are reluctant to report the violations of the Intellectual property rights.

Apart from this, Intellectual property rights are not internationally recognized and it is a domestic subject. Many eminent international brands are not registered in Pakistan and their rampant violation goes unreported due to absence of their right holders. Directorates of the intellectual property rights enforcement in Pakistan are under resourced and under staffed. These offices do not have any data bank of the registered right holders of various products. Even if some counterfeited product is detected at the import stage they remain unable to approach the right holder for the initiation of the enforcement action. In addition to this, staff of these directorates is not trained and skilled enough to even judge the genuineness of the products which may cause health and safety hazards otherwise.

6. Recommendations

6.1. E-filling of complaints

Customs related Intellectual Property Rights complaints are filed through manual application method. Directorate General of IPRE should update its application filing procedure and shift it from manual to online portal to save time and ensure complainant ease to file complaint from anywhere in the Pakistan.

6.2. Maintenance of Customs Record Database

Directorates IPRE should be provided with requisite human resource and infrastructure to establish and maintain database of the various rights holders to strengthen the working of the formation. Well maintained data bank facilitates in speedy contact with the right holders in case of suspicious goods and help in the early disposal of the cases.

6.3. Product Identification Guide

Through public private partnership, Directorate General of IPRE should prepare a product identification guide to help the IPRE field staff to determine the authenticity of the suspected products. This guide should be prepared by keeping in view the special aspects of the health and safety hazards the consumer goods.

6.4. Training Sessions

Training session for the field staff of the directorates of the intellectual property rights should be launched to make them proficient and enable to differentiate between pirated/fake goods and genuine products of various consumer item categories along with basic knowledge of the IPRE laws and procedure from the Customs perspective. In addition to this regular session should also be conducted for all field formation's working strength to impart them essential knowledge on IPRE laws and skills require for the detection of counterfeited goods at the examination stage of the imported goods. Such training courses shall help in the more stringent enforcement of the intellectual property rights of the right holders.

6.5. Awareness Campaign

Majority people in Pakistan are not aware of the importance of the protection of the economic, social and health aspects of the protection of the intellectual property rights. Massive awareness campaigns targeting all the stake holders including, traders, manufactures, business community and general population at large shall be helpful in broadening the scope of the enforcement of the IP rights. Awareness drives also generates a sense of reverence for the IP rights and promote compliance of relevant laws in this respect.

6.6. IPR Help Desk

All the directorates of the IPR of customs should establish help desk and call centers to facilitate the general public regarding the complaints and information on various aspects. This will not only generate awareness on IP related issues among general population but also helps in rigorous enforcement of the intellectual property rights. Moreover, it will also open a window for the public feedback on the working of the organization which helps to improve the performance and protect the local business from the influx of the fake/counterfeited imported goods.

6.7. Define Strategies to Counter Sale of Counterfeit Goods through E-Commerce

With the rising volume of trade through the employment of online media/links, these forums are also providing great opportunities for the sale of fake and infringing goods by tempting gullible public through different offers and deals. There is a dire need to enhance the vigilance on the goods traded through these forums. Pakistan Customs has no defined protocols and strategies to counter the effects of such nature of trade. Policy maker should consider this matter with due consideration and propose some remedies to counter this emerging threat.

6.8. Formation of the IPR Special Judicial Benches

Petition and appeals on the IP violation matters can be filed both in IP tribunals and civil courts. Availability of multiple legal forums creates a complex litigation environment and allows businesses to use them in their rivalries. Multiple forums create conflicting decisions that are problematic to implement. Litigation on the IP violation cases on imported goods should be allowed either in the Intellectual Property Tribunal or at Customs Appellate Tribunal. A hierarchy & detailed legal process flow needs to be designed for IPR cases as there are multiple options in the form of filing Civil Petitions in High courts and Intellectual Property Tribunal.

6.9 Strengthening Enforcement at Border Crossing Areas

Increase in enforcement and border control to counter the import of the counterfeited products from neighboring countries shall be helpful in creating deterrence against smuggling of counterfeited goods. It shall also provide a boost the local industry as well by protecting innovation and creativity.

7. Conclusion

Intellectual property rights protection is the emerging need of the contemporary world. Trade of counterfeited products draws a significant share in the global economy. Without efficient protection of the intellectual rights, economic and social progression of countries is not evitable in modern globalized world. Apart from loss to national economy counterfeited products many cause health and safety hazards. Unfortunately, under developed countries like Pakistan remain failed in protecting this basic right of their population which has not only cause a huge loss to state exchequer but also deter the foreign direct investment in the country. Pakistan Customs has a pivotal role in the protection of intellectual property rights in the country. This agency is responsible for the countering the import and export of the pirated and fake goods, but like all other public sector organization the function of this institution is also marred with some limitation. Lack of resources, legal lacunas in the prevalent laws, overlapping roles of the multiple agencies regarding protection of IP rights, illiteracy of the public, administrative barriers, flawed judicial proceeding are few of them. A multipronged approach addressing all the issues is required to efficiently implement the IP protection policy at all levels. Moreover, it demands collective efforts of all the concerned agencies for longstanding results in this aspect.

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