

# Anti-counterfeiting Enforcement Policy in India

## Developing a Pro-active Strategy to Curb Counterfeiting

FICCI

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# Detection of counterfeit alcohol

**A hand held gadget has been invented to detect counterfeit alcohol without opening the bottle. This device enables users to analyze contents of a bottle by using a beam of light...**

**This device has been used to test the authenticity of whisky but can be applied to any form of alcohol. It may require alcohol to have some colour to provide a certain result. Therefore the device when applied to vodka may not produce accurate results.**

# Issues

## Definition of Counterfeit

WHO

**Spurious/ falsely-labelled/ falsified/ counterfeit (SFFC) medicines are medicines that are deliberately and fraudulently mislabelled with respect to identity and/or source.**

**Use of SFFC medicines can result in treatment failure or even death.**

**Public confidence in health systems may be eroded following use and/or detection of SFFC medicines.**

# Issues

## Definition of Counterfeit

WHO

Both branded and generic products are subject to counterfeiting. All kinds of medicines have been counterfeited, from medicines for the treatment of life-threatening conditions to inexpensive generic versions of painkillers and antihistamines.

SFFC medicines may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient or too much active ingredient, or with fake packaging.

# Issues

## Definition of Counterfeit Black's Law Dictionary

### Counterfeit

To forge;

to copy or imitate,

**without authority or right, and with a view to deceive or defraud, by passing the copy or tiling forged for that which is original or genuine.**

**Most commonly applied to the fraudulent and criminal imitation of money.**

# Issues

## Definition of Counterfeit Black's Law Dictionary

**The term "counterfeit drug" may be used to describe a drug made by someone other than the genuine manufacturer, by copying or imitating an original product without authority or right, with a view to deceive or defraud, and then marketing the copied or forged drug as the original.**

## Definition of Counterfeit

TRIPS

F.N .14

For the purposes of this Agreement:

(a)"counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

# Issues

## Definition of Counterfeit

### ACTA

#### Article 5: Definitions

**(d) counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country in which the procedures set forth in Chapter II (Legal Framework for Enforcement of Intellectual Property Rights) are invoked;

# Issues

## Definition of Counterfeit

EC Regulation 1383/2003

Article 2 – Goods infringing an intellectual property right

### **Trademark**

*Unauthorisedly used*

*Symbol used unauthorisedly*

*Packaging material of counterfeit goods*

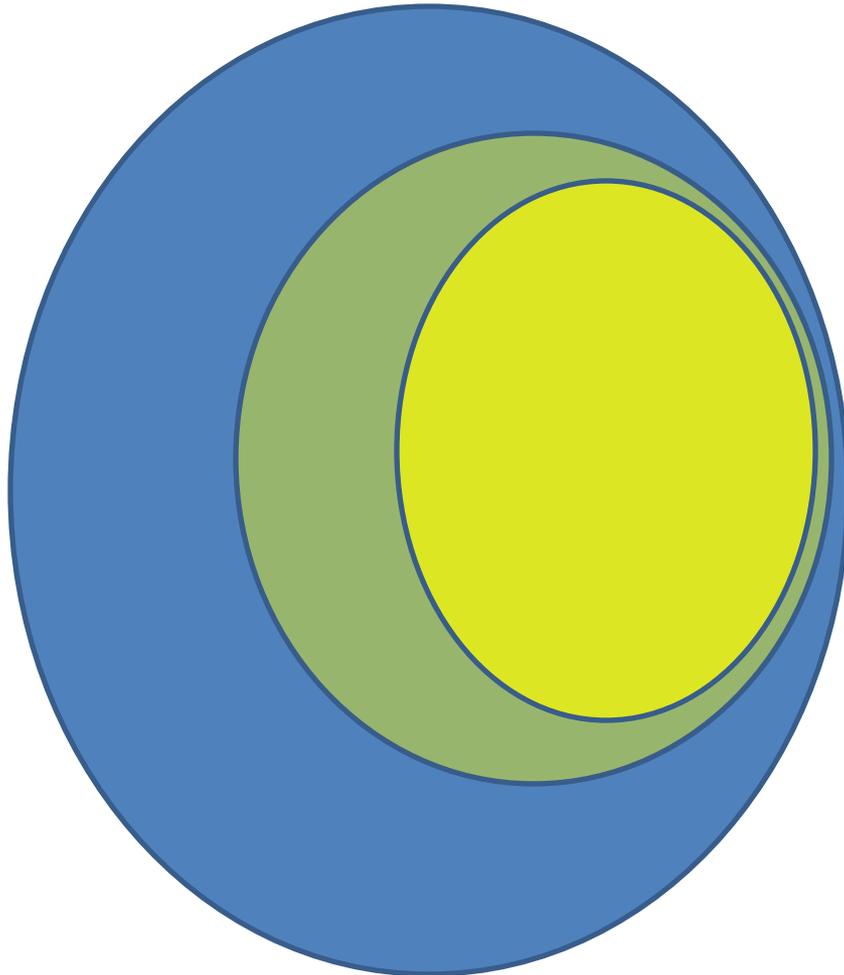
**Pirated Goods**

**Patent infringing goods**

**Goods infringing plant varieties**

**Goods infringing GIs**

# Counterfeit?

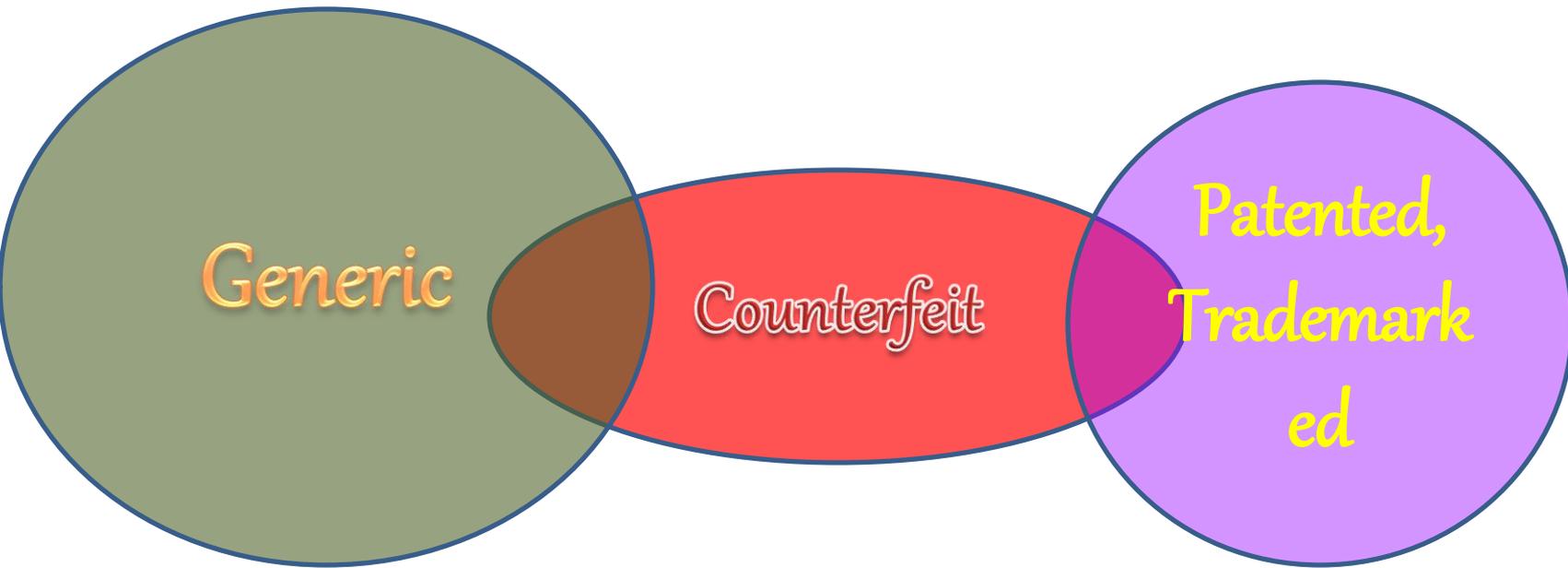


- Fake packaging**
- With correct ingredients**
- With wrong ingredients**
- With insufficient active ingredients**
- Without active ingredients**
- With too much active ingredients**

# Generic, Protected IP and

## Counterfeit Is there any distinction?

**Generic**— legally permitted and non-infringing  
**Can have IP protection outside patents**



**Counterfeiting can affect both generic and IPR protected goods**

# Fake and Spurious

## Black's Law Dictionary

### Spurious

Not proceeding from the true source; not genuine; counterfeited.

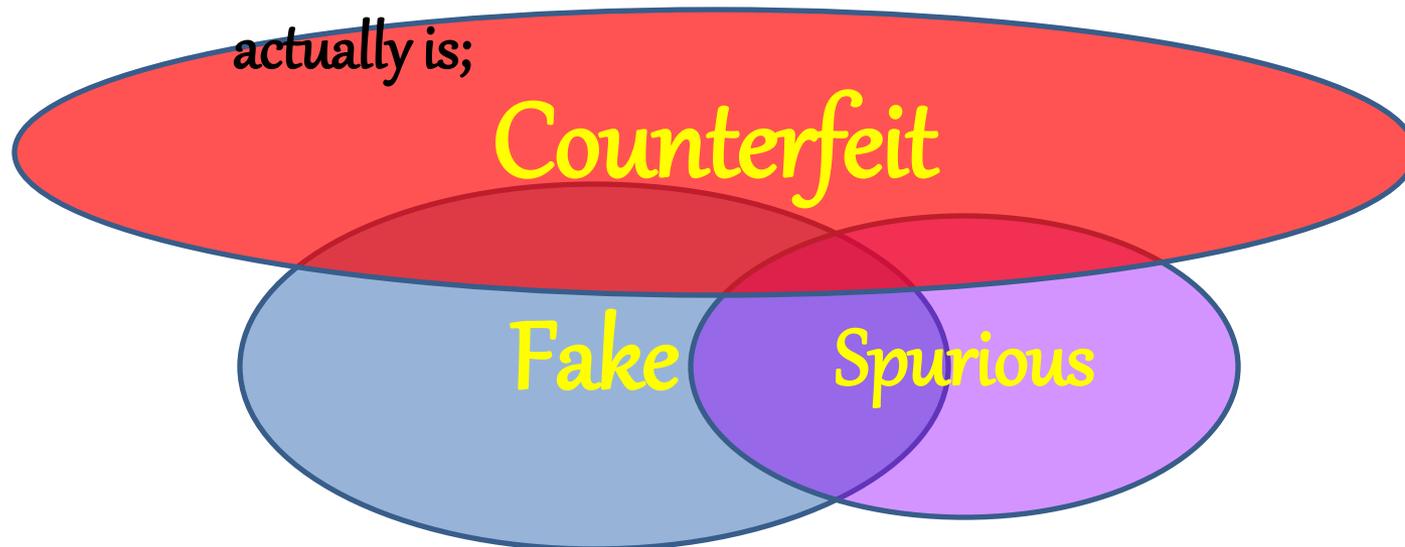
### Fake

anything made to appear otherwise than it actually is;

**Is there any distinction?**

**Spurious?**

**Fake?**



# Counterfeits and fakes and spurious

**There may be substantial overlap between  
them**

**Laws governing them are different**

**Fakes, dangerous and spurious products  
have a public safety angle**

**Counterfeits affect private rights of the  
rightholders**

# Enforcement Imperatives

**Need to distinguish between public and private rights**

**Limited resources for enforcement available**

**Need to prioritise between private and public interests**

**Legal system is overburdened**

**Continued counterfeiting/ faking can lead to**

**Loss of credibility of public health system**

**Loss of investor confidence**

**Destruction of market for genuine products**

# Enforcement Imperatives



*Need for balance  
at policy and  
implementation  
level*

# Thank you

*Madhukar Limba*