

# Counterfeit Cosmetics in India: Consumer Risks and Legal Responses

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## Abstract

Due to uncontrolled imports, fake production, and internet sales of inferior cosmetics, the illicit cosmetics trade in India has grown and now poses a serious threat to public health. Cosmetic safety is governed by the Drugs and Cosmetics Act of 1940, but it lacks strong enforcement tools, requirements for pre-market approval, and severe sanctions to stop counterfeiting. Unmonitored sales of counterfeit goods have been made easier by the growth of social media marketplaces and e-commerce platforms. Stronger border security, AI-powered tracking technologies, and improved cooperation between law enforcement, regulatory organizations like CDSCO, and customs are all necessary to address this problem. Campaigns to raise consumer awareness must also inform the public about the dangers fake cosmetics pose to their health and provide them with the tools to recognize genuine goods. India can reduce the dangers of fake cosmetics and guarantee public safety in the beauty sector by enacting stronger laws, utilizing technology, and encouraging consumer awareness.

**Keywords:** Counterfeit Cosmetics, Consumer Safety, E-Commerce Regulation, AI Tracking, Public Health Risks.

## 1. INTRODUCTION

Fake cosmetics are a major issue in India. This problem has negative effects on the economy in addition to people's health. Fake goods attempt to fool consumers by imitating well-known brands. They may include dangerous substances such as lead, arsenic, and even rodent urine. Many people believe they are getting the real thing when they purchase these fakes since they are less expensive. The IPO seeks to defend the rights of legitimate brands and combat these impersonations. The 'Counter Infringement Strategy 2022 to 2027' is their plan. These fake goods are available in markets, internet retailers, and even unlicensed clinics. Hazardous substances like steroids, lead, arsenic, and mercury are present in many of these counterfeit goods.<sup>1</sup> Fake products are being promoted by some social media celebrities as less expensive alternatives to genuine ones. The health, safety, and workplace issues that arise from creating these knockoffs are not frequently considered by them. They even divulge discount codes and hidden connections to dubious websites. Customers may be at danger from this tendency, which also harms legitimate firms who put a lot of effort into producing high-quality goods. The 1940 Drugs and

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<sup>1</sup> Euan Duncan, Counterfeit Cosmetics: What is really in your make up bag? MORTON FRASER MACROBERTS (Apr. 29, 2024), <https://www.mfmac.com>.

Cosmetics Act lays forth India's cosmetics regulations. However, it's challenging to stop counterfeit goods.<sup>2</sup> The penalties are not severe enough, there is insufficient enforcement, and online sales make matters more difficult. Cosmetics that are counterfeit are a major issue. They frequently include harmful substances including lead, mercury, and arsenic.

People who use these fake products can face skin rashes, allergies, infections, and serious long-term health issues like kidney trouble and nerve damage. These fake products also hurt real brands. When customers have bad experiences with knock-offs, they lose trust in genuine brands. This can lead to lower sales and a smaller market share. Luxury brands really feel the impact when knock-offs are everywhere. It damages their image of being special and high-quality. To tackle this issue, brands need to step up. They can use better packaging and run awareness campaigns. This helps keep customers safe and protects their own reputation.<sup>3</sup>

### Scope of the Study

This study will look at real problems like online shopping fraud, fake beauty clinics, and fake cosmetics being taken away. It will compare laws in India with those in the European Union and the U.S. Food and Drug Administration. We'll also check out what customers think, health problems that come up, and how tech helps find fake cosmetics. The findings will help make suggestions to improve consumer education, strengthen rules, and increase penalties.

## **2. UNDERSTANDING THE ILLICIT COSMETICS TRADE**

India's Cosmetics Rules from 2020 define a cosmetic as anything you put on your body to clean, beautify, or change your look. However, these products shouldn't treat, diagnose, or prevent any illness. The rules also say that cosmetics need to be made with good manufacturing practices and must be safety tested before they hit the shelves. In India, the Drugs and Cosmetics Act of 1940 and the 1945 regulations, along with guidelines from the Bureau of Indian Standards, control how cosmetic products are handled. Before any raw material can be used, it has to pass a heavy metals test. This is based on Indian standard 6608:2004. Rule 134 of the Drugs and Cosmetics Act specifies that there are extra rules in Schedule Q for things like colors, pigments, and dyes. These rules are in addition to what the Bureau of Indian Standards outlines. The U.S. Food and Drug Administration, or FDA, is in charge of cosmetics under the law called the Federal Food, Drug, and Cosmetic Act. But here's the thing: they don't approve cosmetic products or their ingredients before they hit the shelves. The only exception is color additives. That means it's up to cosmetic companies to make sure their products are safe, labeled properly, and free from banned ingredients. They also need to follow rules about certain chemicals.<sup>4</sup>

The FDA monitors already-sold items and has the authority to take action against those that are dangerous or improperly labeled. The FDA was granted more authority to regulate cosmetics in December 2022 by the Modernization of Cosmetics Regulation Act (MoCRA). Even with these guidelines, the FDA can't directly mandate a recall of cosmetic items. To lower the amount of lead in

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<sup>2</sup> Ibid

<sup>3</sup> Counterfeiting and Cosmetics - A Concern for Brands and Consumers, Ennoventure <https://ennoventure.com>.

<sup>4</sup> FDA Authority Over Cosmetics: How Cosmetics Are Not FDA-Approved, but Are FDA-Regulated, US Food & Drug Administration <https://www.fda.gov>.

their products, manufacturers should adhere to best practices. Lead acetate is currently prohibited in hair colors applied to the scalp.<sup>5</sup> When using traditional eye makeup like kohl, kajal, or surma, customers should use caution. The Drugs and Cosmetics Act, 1940, which governs the cosmetics sector in India, is frequently criticized for being antiquated and inadequate to handle the complexity of the contemporary cosmetics market. Furthermore, it is challenging for authorities to efficiently monitor and regulate the illegal trade due to India's large market and porous borders. Customers may look for less expensive alternatives out of a desire for branded goods, which are frequently linked to better social status and may unintentionally aid the illegal trade<sup>6</sup>

### **3. IMPACT OF THE ILLICIT COSMETICS TRADE:**

#### **(i) Public health and Safety Concerns**

Customers need to exercise caution. Dangerous substances are frequently found in counterfeit goods. In addition to harming consumers' health, counterfeit goods damage legitimate firms' reputations. Lee identifies two key factors that make counterfeiting problematic. First, people can conceal their identity online. Second, federal regulations governing online retailers are insufficient. They may cause long-term harm in certain situations. Real brands are frequently imitated by counterfeiters. Customers become confused as a result, and the brand's reputation suffers.<sup>7</sup> Cheap cosmetics that promise instant beauty cures appeal to a lot of individuals. For instance, lead is frequently present in illegal eyeliners and lipsticks. Lead can impair brain function and damage the neurological system. Children and expectant mothers are particularly at danger from this.<sup>8</sup>

Poisonous colors found in imitation lipsticks and eyeshadows have been linked to an increased risk of cancer due to prolonged exposure to carcinogenic chemicals. Many counterfeit skincare products include industrial-grade ingredients instead of cosmetic-grade ones, which can result in severe skin irritation and burns. Watch out for fraudulent beauty clinics. They may utilize fillers and diluted or out-of-date Botox. Approximately 32.1% applied lipstick, and 7.9% dyed their hair. There were also a lot of people near housekeepers. Hydroquinone is frequently overused in fake beauty serums and creams. This can cause your teeth to become extremely sensitive, burn your gums, and damage your enamel. Skin discolouration, severe burns, and permanent scarring can result from unauthorized beauty salons performing procedures like laser hair removal.<sup>9</sup>

Fake body lotions and deodorants can be risky. They might have bad stabilizers that mess with hormones and cause reproductive issues. Fake makeup, like foundation and concealers, can clog pores and lead to painful skin problems and acne. Some counterfeit powders might include talc contaminated with

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<sup>5</sup> Lead in Cosmetics, US Food & Drug Administration <https://www.fda.gov>

<sup>6</sup> Sanjana Kala & Paridhi Tyagi, Counterfeiting in Cosmetics Industry: Causes and Impact, SS Rana and Co. (Oct. 23, 2019), <https://ssrana.in>.

<sup>7</sup> Erica Nicole Lee, The Ugly Side of Beauty: Outdated Regulations Controlling the Growing and Evolving E-Commerce Counterfeit Cosmetics Market, 50 AIPLA QUARTERLY JOURNAL 31-83 (2022).

<sup>8</sup> Page Keeton, Products Liability-Some Observations About Allocation of Risks, 64 Michigan Law Review 1331-1343 (1966).

<sup>9</sup> Pınar Külahçı et al., Exposure of Pregnant Women to Chemicals and Cosmetic Products, 19 Journal of Education and Research in Nursing (2022).

asbestos. That's really dangerous and can lead to lung and ovarian issues. Using fake cosmetics with steroids for a long time can cause adrenal problems and make you feel tired and weak. Fake eyelash glue can have unauthorized cyanoacrylate. This stuff can cause allergic reactions, hurt your eyes, and even damage your corneas. It's important to be careful and know what you're using on your skin.

#### (ii) Economic Consequences

The government's finances are severely harmed by the illicit cosmetics trade. Fake goods do not pay taxes because they circumvent the regulations. Good companies are also harmed by this trade. Real brands lose sales and suffer damage to their reputation when counterfeit goods are sold. People may be duped by these knockoffs because they frequently retail for significantly less. As a result, consumer confidence in the market may progressively erode, making it harder for businesses to stay afloat. A comprehensive approach to the issue must include technological advancements for product tracking and verification, strict enforcement of intellectual property laws, and raised consumer awareness.<sup>10</sup> The illicit cosmetics trade in India has complicated and wide-ranging economic effects.

#### (iii) Social and Legal Implications

In India, the illegal cosmetics trade is a complicated problem with broad social and legal ramifications. In terms of society, the main worry is the possible health hazards connected to these fake or inferior goods. These products frequently include dangerous chemicals or out-of-date substances, which can cause infections, long-term health issues, and a variety of skin sensitivities. The Drugs and Cosmetics Act, 1940, which governs the production, distribution, and sale of cosmetics in India, is among the most pertinent laws. Intellectual property rights like copyrights and trademarks are violated by counterfeit cosmetics, and those who use them may face legal repercussions.

### **4. LEGAL FRAMEWORK GOVERNING COSMETICS IN INDIA:**

The primary legislative frameworks governing cosmetics in India are the Drugs and Cosmetics Act of 1940 and the Drugs and Cosmetics Rules of 1945. The Drugs and Cosmetics Act, 1940, is the primary law that regulates the manufacture, importation, distribution, and retailing of pharmaceuticals and cosmetics in India. All producers are required to obtain a license from state drug regulators. Imported cosmetics need to be registered with CDSCO. The FDA only prohibits eleven chemicals, including numerous vinyl chloride derivatives, bithionol, chloroform, and mercury compounds. Unlike the EU, the US does not require pre-market approval for most cosmetic ingredients.<sup>11</sup>

In July 2021, Hindustan Unilever Limited discovered that Vansh Cosmetic and other businesses were selling counterfeit "Lakmé" cosmetics. In July 2021, Johnson & Johnson voluntarily recalled four Neutrogena aerosol sunscreen products in the US after the carcinogen benzene was found in several samples. India's beauty and personal care market, valued at \$26 billion in 2023, is predicted to develop

<sup>10</sup> John Praveen & Thirumalai Velu Swaminathan, Cosmetovigilance: Emerging safety trends, Indian Journal of Pharmacy and Pharmacology <https://www.ijpp.org.in>

<sup>11</sup> The EU Banned 1328 Chemicals from Cosmetics but the US Banned Only 30, 100% Pure <https://www.100percentpure.com>.

at a compound annual growth rate (CAGR) of 8% due to rising consumer demand, digital influence, and premiumization tendencies. Imports and product compositions are subject to stricter controls under the 1940 Drugs and Cosmetics Act. During a raid on Nykaa E. Retail Pvt. Ltd. in Thane in November 2019, the FDA confiscated cosmetics worth ₹88 lakhs that were manufactured without the necessary licenses.<sup>12</sup>

Additionally, the Bureau of Indian Standards (BIS) has set standards for the quality and safety of cosmetics. The use of cosmetics comprising dyes, colors, and pigments other than those listed by the Bureau of Indian Standards (IS: 4707 Part 1 as amended) and Schedule Q is restricted by Rule 134 of the Drugs and Cosmetics Rules. Although testing have revealed that some fairness creams contain 4–5 parts per million (ppm) of arsenic, which exceeds safety levels and poses major health hazards, the legal limit for arsenic in cosmetics is 2 ppm. The EU, Japan, and Canada have severe limits on arsenic in cosmetics. More beauty product random testing has been conducted by CDSCO and the Bureau of Indian Standards (BIS).<sup>13</sup> A number of well-known fairness creams have come under fire for having levels of arsenic that are higher than safe. The allowed amounts of natural and synthetic organic colors in cosmetics cannot exceed 2 parts per million (ppm) of arsenic, which is determined by arsenic trioxide. Lead is calculated to be 20 parts per million. The number of heavy metals other than lead, measured as the sum of the individual metals, is 100 parts per million.<sup>14</sup>

The production of cosmetics using mercury compounds is forbidden by Rule 145D since mercury is a heavy metal that is extremely poisonous and detrimental to human health. This prohibition is extended to imported cosmetics by Rule 135A, which makes sure that goods containing mercury are not permitted to enter India. The World Health Organization (WHO) and the Food and Drug Administration (FDA) have released guidelines alerting people to the dangers of mercury in cosmetics. To protect consumers, the Bureau of Indian Standards (BIS) has also established acceptable limits for heavy metals in cosmetics.<sup>15</sup> The market is frequently filled with illegal and fake cosmetics that include lead, arsenic, or mercury in spite of these prohibitions.

Legal repercussions for breaking Rules 135, 135A, 145, and 145D may include fines, the revocation of manufacturing permits, and product recalls. To prevent exposure to dangerous substances, consumers are encouraged to read ingredient labels and choose cosmetics from reputable companies. In India, an estimated 2 million people suffer from skin irritation and allergic responses each year as a result of using inferior cosmetics. Consumer health concerns are alarmingly increasing as a result of the surge in the usage of fake and subpar beauty products. BIS standards for cosmetics are meant to guarantee product safety, however they are nevertheless difficult to implement, particularly when it comes to imported and

<sup>12</sup> Sandee LaMotte, Sunscreen recall: What the finding of a cancer-causing chemical means for you, CNN (July 17, 2021), <https://edition.cnn.com>.

<sup>13</sup> Mr. Ramakant Sahu et al., Heavy Metals in Cosmetics, Centre for Science and Environment <https://www.researchgate.net>.

<sup>14</sup> Regulations for cosmetics, Centre for Science and Environment <https://www.cseindia.org>.

<sup>15</sup> Anushka, Delhi High Court grants ex-parte ad-interim injunction in favour of Mankind Pharma Ltd. to restrain infringement of trade mark, SCC Online (Dec. 23, 2024), <https://www.sconline.com>.



fake goods. Although customers can file complaints against harmful items under the Consumer Protection Act of 2019, action frequently takes time.<sup>16</sup>

In India, a large number of herbal and organic cosmetic products have become safer substitutes by omitting harmful ingredients from their formulas. Government organizations carry out routine laboratory testing and inspections to make sure safety regulations are being followed in the cosmetics sector. To be sold lawfully in India, imported cosmetics must adhere to the same safety regulations as those made domestically.<sup>17</sup> Certain hair colors, sindoor, and kohl (surma) are examples of traditional beauty products that should be used carefully because they have historically contained lead or mercury.

Stricter regulatory restrictions on cosmetic formulas should be implemented, according to more than 70% of Indian dermatologists, in order to protect customers' health. The necessity for improved safety measures to guarantee that cosmetic products are safe, effective, and devoid of dangerous substances that could injure skin or cause long-term health problems is highlighted by this growing concern. Long-term usage of cosmetics that contain dangerous ingredients can cause contact dermatitis, eczema, irritation, and inflammation. While heavy metals like lead and arsenic can harm important organs like the kidneys and liver as well as cause neurological damage, substances like hydroquinone and formaldehyde have been connected to cancer.<sup>18</sup>

It is essential to maintain safe cosmetic items in the Indian market and safeguard the health of consumers by making sure that Rules 135, 135A, 145, and 145D are followed. A Notice in the Gazette In order to update the Drugs & Cosmetics Rules, 1945, which provide for the registration of cosmetic imports into the country, the Government of India released G.S.R 426(E) on May 19, 2010. This clause was supposed to take effect on April 1st, 2011. To register, send a Form-42 application to the Drugs Controller General (I), CDSCO, FDA headquarters in New Delhi, together with the necessary paperwork.<sup>19</sup> For cosmetics meant for importation into India, an application for a Registration Certificate must be submitted on a specific form, Form 42, by either

- the manufacturer,
- who has a registered office in India,
- his authorized agent,
- importer in India or by the manufacturer's approved Indian subsidiary

A registration certificate for the import of cosmetics is good for three years after it is issued. A license must be obtained from a licensing authority established by the state government in order to produce any of the cosmetics mentioned in Schedule M-II. The Drugs and Cosmetics Act 1940 and the Drug and

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<sup>16</sup> Emilie Brenaut et al., Sensitive Skin in the Indian Population: An Epidemiological Approach, 6 *Frontiers in Medicine* 3-5 (2019).

<sup>17</sup> Maha: FDA seizes diagnostic kits being sold without license, *ETHealthworld.com* (Aug. 4, 2022), <https://health.economictimes.indiatimes.com>.

<sup>18</sup> Sandeep Lahiry et al., medical device regulation in India: What dermatologists need to know, *Indian Journal of Dermatology, Venerology and Leprology* (Jan. 25, 2019), <https://ijdv1.com>.

<sup>19</sup> The Ugly Side of Beauty: The Cosmetics Industry's Plastic Packaging Problem, *plasticpollutioncoalition* (Jan. 25, 2022), <https://www.plasticpollutioncoalition.org>.

Cosmetic Rules 1945 have long regulated cosmetic products in India. The licensing and inspection procedure for the production of cosmetics is supervised by the State Licensing Authorities, who are selected by the various State Governments. The Central Drugs Standard Control Organization (CDSCO) uses a registration system to control the import of cosmetics into India in accordance with the Drugs and Cosmetics Act of 1940 and the Cosmetics Rules of 2020.

In order to comply with GMP and other laws, the applicant must self-report the registration application. Products manufactured outside of India are required to follow the Cosmetics Rules 2020 (formulation, label, and claims) and be registered on the e-Government platform (SUGAM). The Cosmetic Rules, 2020 replaced the old regulations under the Drugs and Cosmetics Rules, 1945, with a more structured and contemporary regulatory framework. The 1945 Drugs and Cosmetics Rules licenses remain valid for 18 months following the new rules' implementation or until they expire, whichever occurs first. It is anticipated that the global cosmetics market will reach USD 450 billion by 2025, growing at a compound annual growth rate (CAGR) of 4.3%.

Due to the increasing desire for personalized beauty products, companies are focusing on tailored skincare and haircare solutions. Importing cosmetics into India requires CDSCO registration certificates, the proper documentation, and compliance inspections. The D&C Act's Section 135 B prohibits the importation of cosmetics that have undergone animal testing in India. BIS A lack of Central Drug Standard Control Organization implementation guidelines, inconsistent licensing approvals across states, multiple and complex regulations under various bodies, issues with cosmetics that require standard development and amendment, and varying approaches by authorities in interpreting a particular issue are all issues that require attention.<sup>20</sup>

Every raw material must pass a heavy metals test in accordance with Indian standard 6608:2004 before it can be assessed and found to meet the following requirements. Chapter III of the Drug and Cosmetic Act addresses the importation of pharmaceuticals and cosmetics. Section 10 of the Act and regulations 134A, 135, and 135A of the Drug and Cosmetic Rules 1945 prohibit the importation of the following cosmetics:

- Any cosmetic that is not of Standard Quality;
- Any cosmetic that is spurious or misbranded.
- A cosmetic that contains a component that makes it dangerous, hurtful, or detrimental to use.
- Any makeup that contains hexachlorophene.
- Any cosmetic product that contains an arsenic or lead ingredient for coloring.
- Any cosmetic that has mercury compounds in it.

According to rule 43A, cosmetics can only be imported into India through the following ports.<sup>21</sup>

- Firozpur Cantonment and Amritsar Railway Stations.
- Chennai, Kolkata, Mumbai, Cochin, Nhava Sheva and Kandla by Sea route.
- Ahmedabad, Chennai, Delhi, Hyderabad, Kolkata, and Mumbai by Air.

<sup>20</sup> Nagalakshmi S et al., Regulatory Prototype for Cosmetics in India, 14 Asian Journal of Pharmaceutical and Clinical Research 13-15 (2021).

<sup>21</sup> Kavya & Himmat Singh Chawra, *Regulatory Provisions for Cosmetics in India*, 13 Research Journal of Topical and Cosmetic Sciences 15-19 (2022).

- Raxaul by Road/Railway lines connecting in India.

According to a survey, 60% of participants have purposefully bought fake cosmetics online, and 90% of them said they would be willing to do so again. The desire for fake cosmetics in the internet industry is highlighted by this behavior.<sup>22</sup>

CDSCO's main functions for cosmetic regulation include:

1. Modifying the New Cosmetics Rules 2020 and the Drugs & Cosmetics Rules 1945 in relation to import registration for cosmetics.
2. Reading and assessing cosmetics registration applications in accordance with the guidelines established by the New Cosmetics Rules 2020 and the Drugs and Cosmetics Act 1940 and Rules 1945.
3. Examining and assessing different NOC/clarification applications pertaining to the import of cosmetics.
4. Draft answers to questions about cosmetics posed by the Parliament, VIP requests, and RTI inquiries.
5. As needed, responding to BIS requests and government letters.
6. Helping the public with questions and hearings about cosmetic import registration and offering advice on the subject.
7. Respond to consumer forums, business associations, NGOs, and the general public's complaints regarding cosmetic standards.
8. The applicant's application for registration of cosmetic imports are pre-screened.
9. To take into account the most recent working practices, the pre-screening checklist and standard operating procedures for assessing cosmetic import and registration applications have been modified.

With the license granted by the licensing body designated by the State Government, any cosmetic product may be produced. Throughout the production process, the manufacturer must also make sure that a technical staff that is qualified and capable is available, and at least one of those staff members must meet the following educational requirements:

- A pharmacy registration under the Pharmacy Act of 1948, or
- a pharmacy diploma authorized by the Pharmacy Council of India under the Pharmacy Act of 1948 (8 of 1948); or
- Successfully completed an intermediate exam in which chemistry was one of the subjects, or any other comparable test approved by the licensing authority.

India uses the idea of a brand, which designates a particular product in the "product" column, to generate a listing for imported cosmetics. All of a product's variations, including color, tint, pack size, etc., will

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<sup>22</sup>Devansh Sharma, do your due diligence while shopping online: Third of ecommerce buyers get fake products, The Economic Times (Dec. 28, 2018), <https://economictimes.indiatimes.com>.



be included in its "brand." Manufacturers' product names will not be regarded as brands, nor will the business itself. Any number of brands produced at any number of locations by a single manufacturer for any number of trade names can be related to an application. The validity of registration certificates for the importing of cosmetics is five years from the date of issue.<sup>23</sup> The following must be on the original label of the suggested items (and any variations) in accordance with the New Cosmetic regulation 2020:

- Cosmetic Product Name: The product's maker and the nation in which it is produced must also be noted on the label. The name and address of the real manufacturer should appear on the label as "Made in..... (name of country)" if the product was not made in the manufacturer's plant.
- The manufacturer's name, the main place where the container was made, and the pin number must also be included if the address cannot be used to identify him.
- Use the Before/Exp. Date Instruction for Caution and Safe Use.
- Batch number - Manufacturing license number (if applicable)
- The name, address, and registration certificate number of the R.C. holder.
- Any more details pertaining to Chapter VI of the 2020 New Cosmetics Regulations

With its "Classification of Cosmetic Raw Materials and Adjuncts," a standard published by the Bureau of India Standards (BIS) lays out specifications for ingredients used in cosmetics. Due to the negative effects of fake cosmetics, the "Classification" divides these ingredients into two groups according to the absence of adequate rules or guidelines for cosmetic ingredients:

- GRASIS stands for generally regarded as safe,
- GNRAS stands for generally not recognized as safe.

## **5. CHALLENGES IN ENFORCING LEGAL AND REGULATORY FRAMEOWRKS:**

The 1940 Drugs and Cosmetics Act governs the manufacture, sale, and distribution of cosmetics, although its enforcement practices are often inadequate. Law enforcement and regulatory agencies like the Central Drugs Standard Control Organization (CDSCO) also don't coordinate well, which results in scattered enforcement efforts. The sale of counterfeit and subpar cosmetics has grown commonplace on social media and e-commerce platforms, making it more challenging to identify and apprehend the criminals. Furthermore, the increasing sophistication of counterfeit goods makes it difficult for consumers and even regulatory agencies to distinguish between genuine and fake goods. Customers may be reluctant to report unlawful activities due to ignorance, which makes it more difficult for law enforcement to identify and address the issue.

### **PROBLEMS PERSISTING IN OTHER COUNTRIES**

The European Union loses more than €3 billion annually in sales because of fake cosmetics, which accounts for 4.8% of total sales in the sector. About 66% of all Intellectual Property Rights (IPR) seizures undertaken by U.S. Customs and Border Protection in Fiscal Year 2023 occurred in China, and a significant portion of these seizures involved counterfeit cosmetics. For the cosmetics industry, the

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<sup>23</sup> Saurangi Shah, What Are the Cosmetic Regulations in India for Cosmetic License Approval? CliniExperts (Apr. 4, 2022), <https://cliniexperts.com>.

2018 Kylie Cosmetics counterfeit scandal in the US was a major wake-up call. The entire incident demonstrated how harmful counterfeit cosmetics can be to consumers' health and, more significantly, to a brand's reputation. Up to 20% of cosmetics sold online are fraudulent, according to the U.S. Food and Drug Administration (FDA), underscoring the risks associated with using unauthorized e-commerce sites.<sup>24</sup>

In Fiscal Year 2023, counterfeit pharmaceuticals and personal care products accounted for nearly half of all health and safety-related seizures at U.S. Customs and Border Protection. Many individuals are tricked into purchasing fake cosmetics because of the sophisticated packaging and branding reproduction, and many are unable to distinguish between genuine and fake products. Since 2013, the global trade in counterfeit cosmetics has been expanding significantly, and in 2016, the Organization for Economic Cooperation and Development (OECD) estimates that it was worth \$5.4 billion. The FDA received over 12,000 reports of adverse effects associated with cosmetics between January 2018 and March 2020, many of which were related to counterfeit products. 16% of customers blame the legitimate brand for the widespread availability of fake cosmetics on the internet, which could result in a decline in customer loyalty and confidence. Laboratory testing has revealed that fake cosmetics contain harmful amounts of germs and other harmful compounds, which puts users' health at considerable risk. In some areas, the absence of strict laws and enforcement measures encourages the production of fake cosmetics since criminals take advantage of these legal loopholes.

## **6. CASE STUDIES AND REAL-WORLD EXAMPLES:**

Allergies, severe skin responses, and other health problems can be caused by the hazardous chemicals and compounds utilized in counterfeit items. On rare occasions, these products have even been linked to serious illnesses and deaths. Authorities in Dubai dismantled a massive fake perfume business in 2021. Millions of dollars' worth of fake cosmetics and fragrances were discovered during a raid on a warehouse. This case demonstrated the extent of these smuggling rings for counterfeit cosmetics and the ways in which organized crime sustains the industry<sup>25</sup>. Busts like this have an impact on many nations because Dubai is such a bustling transit hub. For instance, India imports a lot of these counterfeit cosmetics. The illicit cosmetics trade has a major impact on many aspects of India's economy and society. Because they frequently contain dangerous compounds like lead, arsenic, and mercury, which can cause allergic reactions, skin damage, and even long-term health problems, counterfeit cosmetics pose serious health hazards.<sup>26</sup> The increased demand for premium brands and their high price tags are driving consumers to look for less expensive alternatives online and in local marketplaces, which in turn is fueling the proliferation of counterfeit cosmetic goods. Because vendors use sites like Instagram, WhatsApp, and Telegram to promote counterfeit branded cosmetics, the emergence of e-commerce has made the counterfeit trade worse.

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<sup>24</sup> \$700K Worth of Fake Kylie Jenner Cosmetics Products Seized In LA, Found to Contain Human Feces, Bacteria, CBS News (Apr. 13, 2018), <https://www.cbsnews.com>.

<sup>25</sup> AED 33 million in fake perfumes seized in RAK, dubaieye 103.8 (Nov. 13, 2019), <https://www.dubaieye1038.com>.

<sup>26</sup> Fake cosmetics goods worth Rs 1.4 cr seized, Times of India (June 10, 2023), <https://timesofindia.indiatimes.com>.

Although the Food Safety and Standards Authority of India (FSSAI) and the Drug Controller General of India (DCGI) oversee cosmetics, enforcement is still challenging due to the market's size and fragmentation. In 2021, hundreds of counterfeit products that were falsely branded as MAC, Lakmé, and Huda Beauty were seized by Delhi Police, who dismantled a sizable counterfeit cosmetics ring. Despite the risks, the demand for skin-whitening treatments is driven by social beauty standards, making it a lucrative market for counterfeiters. Many consumers unintentionally purchase counterfeit items from unregistered retailers and online vendors that offer offers that seem too good to be true.

The global counterfeit cosmetics industry is estimated to be worth billions of dollars, and one of the markets with the fastest growth rates for phony beauty items is India. Authorities have conducted awareness campaigns telling people to only buy cosmetics from authorized retailers and to verify the products' legitimacy before purchasing them. Due to consumer demand, lax enforcement of the law, and the ease with which fakes can be found both online and in-store, it is quickly becoming one of the fastest-growing locations for fake makeup.<sup>27</sup> Despite multiple crackdowns, the counterfeit trade continues to grow, with new tactics such as repackaging diluted or expired items under fraudulent labels. Influencers and social media marketers unintentionally contribute to the problem by promoting dubious beauty products, sometimes from unregistered vendors.

Consumer education remains essential in the battle against counterfeit cosmetics. Strengthening regulatory frameworks, enhancing cross-border cooperation, employing technology to track down counterfeit items, and educating consumers about the risks of fake cosmetics are all essential steps. As a result, legitimate companies can see a decline in revenue and market share. In order to prevent this illegal conduct, the government must also fund consumer protection and law enforcement initiatives. The illicit cosmetics trade also has significant economic repercussions. Additionally, the illicit trade may lead to job losses in the formal cosmetics industry. The scale of the Indian market and the intricate supply networks that make up the cosmetics industry make it difficult to monitor and regulate the trade.<sup>28</sup>

The government has also taken steps to improve coordination amongst the several agencies entrusted with combating the illicit cosmetics trade. The Maharashtra Food and Drug Administration (FDA) seized counterfeit cosmetics valued at ₹2.5 crore from a facility in south Mumbai. Among the counterfeit products were brands such as L'Oreal, Lakme, and Nivea. A massive cargo of counterfeit cosmetics, including body sprays and deodorants imported from China, valued at ₹2 crore was seized by customs officials in Chennai. Regulation must be adaptable and dynamic due to the industry's constant change and the frequent appearance of new goods and distribution strategies.<sup>29</sup>

A 2019 case study by the Confederation of Indian Industry (CII) claims that the illicit cosmetics trade costs the Indian government ₹1,000 crores annually. Six persons were arrested in Surat for selling poisoned face creams, shampoos, and tobacco products under false names belonging to well-known

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<sup>27</sup> India's massive untapped growth opportunity in luxury beauty, KEARNEY (Sept. 26, 2024), <https://www.kearney.com>.

<sup>28</sup> Fake cosmetics have scary side-effects on consumers and the brands, Neuro tags (Sept. 10, 2018), <https://www.neurotags.com>.

<sup>29</sup> Spurious Cosmetics, body sprays products from China seized at Chennai port, The Times of India (Nov. 27, 2009), <https://timesofindia.indiatimes.com>.

businesses. Raw and completed goods as well as packaging supplies worth ₹50.16 lakh were seized. In addition to putting customers' health at risk, these products harm the standing of reputable companies. The Delhi Police destroyed a factory that mass-produced counterfeit "Lakme" cosmetics. The factory owner was arrested when a sizable quantity of fake cosmetics was discovered.<sup>30</sup> Following raids on three cosmetic stores on Govind Mitra Road, counterfeit goods worth ₹10 lakh from well-known brands were seized. Two store proprietors were taken into custody.<sup>31</sup> Another significant case is the arrest of a gang involved in the manufacture and sale of counterfeit cosmetics in the city of Delhi in 2020. The study found that 20% of the cosmetics products available in the Indian market are either expired or spurious. The e-commerce platform, Amazon, has also been involved in a case related to the sale of counterfeit cosmetics in India. In 2020, the Delhi High Court ordered Amazon to remove all listings of counterfeit cosmetics from its platform.<sup>32</sup>

## **7. STATISTICAL ANALYSIS:**

According to a CSE analysis, cosmetics contain heavy metals.

A recent CSE study found that fairness creams contain mercury, whilst lipsticks include nickel and chromium. Mercury is not allowed to be used in cosmetics in India; its presence is illegal. The fairness creams, which are endorsed by some of the biggest Bollywood stars, may include mercury, an element that is well known to be extremely harmful. This is a startling finding from one of India's largest study projects on the prevalence of heavy metals in cosmetics. Of the fairness creams tested by the Pollution Monitoring Lab, mercury was found in 44% of them.<sup>33</sup>

The results of the CSE study

Heavy metals were detected in 73 cosmetic products in four categories: Mercury levels were checked in 32 fairness creams (six for males and 26 for women).

Lipsticks

- In 15 of the 30 lipsticks examined, chromium levels ranged from 0.45 ppm to 17.83 ppm. The color bar's Hearts & Tarts (080V) hue had the highest concentration.
- Of the 30 products tested, 13 had nickel levels between 0.57 and 9.18 ppm, with L'Oreal India Pvt. Ltd.'s LancomeLabsolu Nu-204 having the highest concentration.

Heavy metals were not detected by CSE in lip balms or anti-aging lotions. Additionally, it failed to identify cadmium and lead in lipsticks.

To what extent are these items safe?

CSE evaluated the quantities of heavy metals detected with their Acceptable Daily Intake (ADI) limits in order to assess the safety of the cosmetic products it examined. Since India has not established mercury ADI limits, CSE compared the mercury levels in fairness creams to the US Environmental Protection

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<sup>30</sup> Surat: Six arrested for selling adulterated shampoo, face cream, tobacco products with fake labels, The Indian Express (Apr. 11, 2024), <https://indianexpress.com>.

<sup>31</sup> Tanseem Haider, Fake branded cosmetics worth Rs 10 lakh seized, The Times of India (Apr. 28, 2013), <https://timesofindia.indiatimes.com>.

<sup>32</sup> Tanseem Haider, Delhi Police busts fake 'Lakme' cosmetics factory, owner arrested, INDIA TODAY (Aug. 8, 2021), <https://www.indiatoday.in>.

<sup>33</sup> *Unregulated and unlawful*, Centre for Science and Environment <https://www.cseindia.org>.

Agency's (USEPA) ADI. Mercury-related health hazards would rise in proportion. A neurotoxic is mercury. Fairness products include inorganic mercury, which can harm kidneys and result in skin discolouration, scarring, and rashes. Peripheral neuropathy, psychosis, depression, and anxiety can also result from it. When it came to chromium, CSE's measurements in lipsticks were significantly higher than ADI's. For a heavy user, 13 out of 30 lipsticks tested by CSE would cross the ADI.

Cosmetic products are regulated differently in different regions of the world. This makes it difficult to ensure compliance in all countries. For example, in the EU, the cosmetic regulatory framework is provided by Regulation (EC) No. 1223/2009 of the European Commission, which has overall responsibility for cosmetic legislation. The U.S. Food and Drug Administration (FDA) has issued a list of substances that are restricted or prohibited in cosmetics, such as bithionol, chloroform, and mercury. In addition, in the European Union, Annex II of the Cosmetic Products Regulation lists substances prohibited in cosmetic product.<sup>34</sup>

A list of some of the ingredients restricted or prohibited by the U.S. FDA and EU

SUBSTANCE	STATUS BY FDA REGULATION	STATUS BY EU REGULATION
Bithionol	Prohibited	Prohibited
Formaldehyde	-	Prohibited
Cadmium	-	Prohibited
Azo dyes, Rhodamine, Yellow Quinoline	Color additives are permitted in cosmetics only if the FDA has approved them for the intended use	-
Zirconium	Prohibited	Prohibited
Chloroform	Prohibited except as residual solvent or byproduct	Prohibited
Halogenated Salicylamides	Prohibited	Prohibited
Hexachlorophene	May be used only when no other preservative has been shown to be as effective and must not exceed 0.1%	Prohibited
Coumarin	-	Prohibited
Furocoumarin	-	Prohibited

<sup>34</sup>Rimadani Pratiwi et al., *Analysis of Prohibited and Restricted Ingredients in Cosmetics*, MDPI <https://www.mdpi.com>.



Mercury compound	Limited to eye area products. No more than 0.0065% In a trace amount of less than 0.0001% Permitted only if no other effective and safe preservative is available	Prohibited, except in special cases
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These products need to be free of potentially harmful ingredients because they come into frequent and intimate contact with the skin and mucous membranes. The use of many compounds is, however, limited because of their toxicity; they must be used below a specified concentration or limit. The possible long-term repercussions are among the other crucial factors that must be taken into account.

SUBSTANCE	ROLE IN COSMETIC	EFFECT ON THE BODY
Bithionol	Preservative	The substance may cause photocontact sensitization
Formaldehyde	Preservative	Dermal allergies, characterized by red spots, swelling, irritation, pain, and burning sensation
Cadmium	Pigments	Causes the kidneys to experience cadmium dysfunction
Color additives (certain dyes or pigment)	Color additives can be used to color the cosmetic product itself or used to give color to a part of the body such as the hair, skin, eyelashes, or nails	Azo dyes can have mutagenic, genotoxic, and carcinogenic effects. Yellow quinoline dye can be absorbed through the skin and cause genotoxic effects
Zirconium-containing complexes	Aerosol product	Toxic effects on the lungs of animals, as well as the formation of granulomas in humans
Chloroform	Ingredient and flavoring agent	Tests on laboratory animals show the carcinogenic potential of using chloroform as a cosmetic
Halogenated salicylamides	Antibacterial agent	May cause serious skin disorders
Hexachlorophene	Antibacterial agent	Due to its toxic effect and ability to penetrate human skin, it cannot be used in cosmetics applied to the mucous membranes, such as the lips
Coumarin	Fragrance	Skin sensitization and eczema through dermal administration
Furocoumarin	Fragrance	Phototoxicity, hyperpigmentation, erythematous rash, blisters, and sunburn if the user is exposed to UV-

		A radiation from the sun
Mercury compound	Whitening agent, preservative	Allergic reactions, skin irritation, or neurotoxic problems

Pure formaldehyde is rarely included to finished cosmetics these days. Rather, substances known as formaldehyde donors or releasers are introduced. These substances are made to gradually release trace amounts of formaldehyde through a series of hydrolysis reactions with water present. The primary cause of the formaldehyde releasers' antibacterial activity is most likely this release. Among the substances categorized as formaldehyde releasers are imidazolidinyl urea, diazolidinyl urea, 2-bromo-2-nitropropane-1,3-diol (Bronopol), 5-bromo-5-nitro-1,3-dioxane (Bronidox), and dimethylol dimethyl hydantoin (DMDM hydantoin). Although these substances are frequently found in cosmetics for skin care and washing, excessive usage of them may also result in allergies.<sup>35</sup> Up to 0.1% formaldehyde concentrations are permitted in cosmetics inside the European Union; however, if the concentration above 0.05% (500 mg/kg), the label must prominently mention that the product "contains formaldehyde." Because of its cytotoxicity and subsequent genotoxicity, formaldehyde can influence DNA protein crosslinking and cell proliferation. It can also cause nasal cancer in people and rats. Red patches, swelling, inflammation, soreness, and a burning feeling are all signs of dermal allergies, which are brought on by prolonged exposure to formaldehyde on the skin.

Cadmium is found naturally in the Earth's crust. It is usually considered a mineral when coupled with additional elements such as sulfur (cadmium sulfate, cadmium sulfide), chlorine (cadmium chloride), or oxygen (cadmium oxide). Certain metals are naturally present in pigments and other raw materials used to make cosmetics. The European Union's guidelines for banned ingredients in cosmetics, found in Annex II of the Cosmetic Products Regulation, place limitations on cadmium. The European Chemicals Agency classified the white pigment titanium dioxide as a possible carcinogen when inhaled, which led to changes in regulations. It has also been demonstrated that allergic reactions can occur in experimental animals such as rats, guinea pigs, and rabbits.<sup>36</sup>

In addition to being miscible with oils, ethanol, ether, and other organic solvents, chloroform is only weakly soluble in water. Chloroform is utilized as a flavoring ingredient in toothpaste formulations. It has been determined from earlier research that chloroform causes cancer in mice. A derivative of the salicylamide group, halogenated salicylanilides are known to possess antifungal and antiparasitic qualities. Halogenated salicylanilides are frequently employed as antibacterial agents in cosmetic preparations because of their antifungal and antiparasitic qualities. The powder form of hexachlorophene is white and odorless. Hexachlorophene is used as a surgical scrub in the medical industry. Its use has since expanded to acne-fighting skincare in the form of cleansers, creams, and lotions, as well as to liquid makeup, cake makeup, blush, and lipstick in the 1950s to 1960s. It was found that the absorption of hexachlorophene can occur in the skin, especially in infants, and can be lethal. Therefore, the use of hexachlorophene is only allowed if its safety has been tested.<sup>37</sup> Furocoumarin is contained in citrus

<sup>35</sup> Supra Note. 18

<sup>36</sup> Elisabeth Anderson et al., Titanium Dioxide & Regulatory Agencies, Center for Research on Ingredient Safety (June 12, 2023), <https://cris.msu.edu>.

<sup>37</sup> Supra Note 18

essential oil, which is often used as a fragrance in cosmetics with a liquid form such as perfume. Due to its adverse effects, such as phototoxicity, hyperpigmentation, erythematous rash, blisters, and sunburn if a user is exposed to UV-A radiation from the sun, the use of furocoumarin has been banned by the EU. In 2014, India became the first nation in South Asia to outlaw animal testing for cosmetic items. The employment of children as young as five in the mica mining industry brought the Indian mica industry into the spotlight in 2016. This demonstrated that the typical Indian consumer knows very little, if anything, about the sinister underbelly of the cosmetics industry. Any substance that is meant to be rubbed, poured, sprinkled, sprayed, introduced into, or applied in any other way to the human body or any part of it for the purposes of cleaning, beautifying, enhancing attractiveness, or changing appearance is considered "cosmetic." This includes any substance that is meant to be used as a component of cosmetics.

By adding a new clause as rule 135-B to the Drugs and Cosmetics (Fifth Amendment) Rules 2014, India outlawed the import of cosmetics that had undergone animal testing. Simply put, cruelty-free products ensure that no animals have been used in their development for a specific market. "Vegan" products don't contain any animal products or ingredients derived from animals, whereas "100% Vegetarian" products don't contain any animal parts but might contain animal-derived ingredients like honey, beeswax, albumen (egg whites), milk, etc. Any type of scientific experiment conducted on a living animal that has the potential to injure, distress, or hurt the test subjects is considered an animal test. Animals are frequently infected with infections, poisoned for toxicity testing, skin burned, maimed, left with brain damage, blinded, and subjected to several more intrusive treatments in an attempt to test specific items. China still views animal testing as the only way to test cosmetics, despite the European Union's 2013 ban on the practice, which was soon followed by bans in Canada, Taiwan, India, Norway, Argentina, and many other nations. In order to gain market share in China and to attract a sizable client base in India, major cosmetic brands like M.A.C., Unilever, and Estee Lauder continue to conduct animal testing. Therefore, it's critical that Indian consumers understand the policies of the cosmetic company they like. "Citizens (18-55) of major Indian cities who are literate and give some thought when making purchasing decisions for cosmetics for household or personal use" was the description of the sampling frame. They consist of people who actively participate in the process of buying cosmetics.

According to 2012 research, almost 60% of young British women felt uneasy about purchasing cosmetics that had undergone animal testing. Concern arose from the idea that, given the availability of substitute testing techniques, animal experimentation is needless, antiquated, and cruel. Mica, a key element in highlighters and eyeshadows, is frequently mined under abusive conditions, especially in Madagascar and India. By guaranteeing fair trade standards and locating substitutes for components originating from animals, ethical and sustainable cosmetic firms aim to prevent such problems. Customers may find truly cruelty-free products with the aid of certifications from groups like Leaping Bunny, PETA, and Cruelty-Free International. Nevertheless, some companies employ deceptive advertising strategies, mislabeling goods as cruelty-free while continuing their immoral business methods. A move toward more compassionate options is indicated by the prohibition of cosmetic animal experimentation in nations like Norway, Israel, and India. Animal research can be effectively replaced by cutting-edge scientific techniques like computer modeling and in-vitro testing. Consumer awareness is a major factor in encouraging businesses to implement sustainable and moral business practices.

Nowadays, a lot of buyers investigate businesses before making a purchase to make sure their goods reflect moral principles. Discussions around ethical beauty have increased due to social media, which has put pressure on companies to be more open about their policies. Companies that put an emphasis on ethical labor methods, cruelty-free formulas, and sustainability are able to outperform their competitors.<sup>38</sup> Making educated decisions is aided by knowing what constitutes a cosmetic item intended to improve or change look.

The most popular toothpaste brand is Colgate. The number of users for Pepsodent and Closeup is nearly identical. Particularly after the pandemic struck, Dettol appears to be the most popular brand. Nine cruelty-free, vegan, and ethical companies that were approved by PETA and were available in the Indian market were clearly visible. Wet n Wild, Medimix, Plum, The Body Shop, Earth Rhythm, Vicco Ayurvedic, Dabur, and Forrest Essentials were among these brands. In order to succeed in the rapidly expanding vegan and ethical makeup business, cosmetic brands need to invest time in educating their target audience about:

- Some of the current market participants engage in cruel, unethical, and destructive methods.
- How to tell labels apart and what they represent; what marking standards or emblems the consumer should look for on the container; and
- whether logos (such as the Leaping Bunny or Peta) are reliable.

Twenty to twenty-five percent of the Indian cosmetics market is thought to be made up of counterfeit or smuggled goods. From 2024 through 2030, the Indian cosmetics market is anticipated to increase at a compound annual growth rate (CAGR) of 8.7%, reaching USD 40.76 billion. In 2024, the Drugs Controller General of India (DCGI) mandated that importers provide detailed information on cosmetic shipments in an effort to curb the flow of illicit and counterfeit items. A 2022 survey found that 37% of young consumers (those aged 15 to 24) intentionally purchased at least one counterfeit product in the previous 12 months as a result of recommendations from social media.

Global supply systems are complicated, which has made it simpler for fake goods to get onto the market unnoticed. Due to their limited spending power and the impact of social media trends, young adults and teenagers are particularly vulnerable to buying fake cosmetics. The existence of fake goods has the potential to seriously harm well-known cosmetic firms' reputations and undermine consumer trust. Despite the existence of laws to prevent counterfeit goods, resource limitations and the intricate workings of counterfeit networks make enforcement extremely difficult. Trade relations and the nation's reputation in the international marketplace may be impacted when Indian marketplaces are mentioned in research on markets known for counterfeiting. An alarming statistic from the Directorate of Revenue Intelligence (DRI) indicates that smuggled cosmetics worth ₹2,000 crore were seized between 2019 and 2021. However, this represents only a fraction of the actual trade, as many counterfeit products evade detection and enter consumer markets unchecked. Hazardous materials like lead, arsenic, mercury, and other toxic chemicals that are present in excess of allowable limits are frequently found in illegal cosmetics. Health concerns such as skin allergies, infections, and long-term consequences like organ

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<sup>38</sup> Sakshi Yadav, Cruelty in Cruelty-Free Cosmetics: Is an Indian Consumer Contributing Towards Cruel, Unethical Cosmetic Companies? 8 International Journal of Creative Research Thoughts 1111-1116 (2020).

damage or cancer are made worse by a lack of safety testing and a failure to comply with regulatory criteria. Nearly 60% of tested counterfeit cosmetics had dangerous substances that were over safety limits, according to a 2021 study by the Indian Council of Medical Research (ICMR). Consumers are further put at risk by the lack of ingredient transparency and labeling, especially in rural and semi-urban areas where knowledge is low. Products with tamper-proof authentication tags saw a 30% decrease in counterfeiting, according to the ASPA research. Additionally, e-commerce sites are utilizing

The efficiency of AI algorithms to identify and eliminate fake listings varies based on platform restrictions and vendor compliance. Cross-border networks are frequently connected to the smuggling of cosmetics, especially with Bangladesh and China, two nearby nations. To disrupt these networks, international collaboration and border security must be strengthened. The 2020 case of *Directorate of Revenue Intelligence v. Rajesh Exports Ltd.*<sup>39</sup> showed how global smuggling syndicates smuggle fake goods by taking advantage of legal loopholes. Through historic decisions, the judiciary has significantly contributed to the fight against the illegal cosmetics trade. The judiciary has played a significant role in addressing the illicit cosmetics trade through landmark rulings. In *L'Oréal India Pvt. Ltd. v. Fakecosmetics.in (2019)*<sup>40</sup>, the court ordered the shutdown of a website selling counterfeit cosmetics, setting a precedent for addressing online counterfeiting. The judgment highlighted the need for stricter cyber laws and enforcement mechanisms to tackle e-commerce-related counterfeiting.

## **8. COMPARISON WITH INTERNATIONAL LEGAL AND REGULATORY FRAMEWORKS:**

### **CHINA**

China is the world's largest producer of counterfeit goods, and the great majority of them are made and shipped from that country. Seventy-five percent of the entire value of pirated and counterfeit goods seized by U.S. Customs and Border Protection in 2021 came from China and Hong Kong. Chinese authorities found two underground factories in Dongyang, Zhejiang Province, and confiscated over 100 million yuan, or about \$14.6 million, worth of fake cosmetics sold under the brands Clinique, L'Oreal, and Shiseido. In Ningbo, Zhejiang Province, customs officials seized more than 90,000 fake cosmetics that were headed for export.<sup>41</sup> With over 75% of all counterfeits coming from China, the country is acknowledged as the main global supplier of counterfeit goods. A substantial percentage of fake cosmetics are included in this. A network of counterfeit cosmetics manufacturers masquerading as luxury brands was broken up by Taizhou police, who confiscated items valued at more than 827 million yuan<sup>42</sup>. The value of the Chinese counterfeit products trade into Southeast Asia alone is estimated at \$35 billion USD. Chinese officials have stepped up their efforts to stop fake cosmetics in recent years. For example, a significant online cosmetics counterfeiting ring was busted in 2022, involving counterfeit

<sup>39</sup> The Directorate of Revenue Intelligence v. Rajesh Exports Ltd (2020) AIR ONLINE 2018 DEL 2038

<sup>40</sup> *L'Oréal India Pvt. Ltd. v. Fakecosmetics.in (2019)*

<sup>41</sup> Chinese police bust counterfeit ring, seize \$14.6 mln in fake brand-name cosmetics, [en.people.cn](http://en.people.cn) (June 26, 2017), <http://en.people.cn>.

<sup>42</sup> Chinese police catch fake cosmetics loot worth \$120m, FASHION NETWORK <https://in.fashionnetwork.com>.



goods valued at more over 250 million RMB. Even with these enforcement measures, the widespread use of fake cosmetics is still a major issue in China and around the world.<sup>43</sup>

#### HOW DOES CHINA ADDRESS THE PROBLEM:

China has adopted a multipronged strategy to counter the illegal cosmetics trade, emphasizing strict laws, enforcement measures, and public education initiatives. The Regulations on the Supervision and Administration of Cosmetics, which were introduced by the National Medical Products Administration (NMPA) in 2021, require that all cosmetics sold in China be registered or notified in order to guarantee adherence to safety and quality criteria.<sup>44</sup> In addition to requiring correct labeling, these restrictions forbid the use of medical terminology that could mislead customers and make deceptive promises. Chinese officials have dismantled networks of counterfeit cosmetics through a number of operations. For example, police in Zhejiang Province discovered two subterranean factories in 2017 that produced counterfeit cosmetics under the names Shiseido and L'Oreal. They seized goods valued at roughly 100 million yuan, or \$14.6 million. The operation led to the arrest of 76 individuals involved in the scheme.<sup>45</sup>

The global scope of the counterfeit trade was further demonstrated in 2019 when Ningbo customs officers stopped over 90,000 fake cosmetics that were headed for export. China has tightened its regulation of e-commerce in recognition of the part that internet platforms play in the dissemination of illegal cosmetics. Authorities dismantled a multimillion-dollar ring selling fake health and beauty products, including ChapStick and Johnson's Baby Oil.<sup>46</sup> If platforms do not take action against sellers selling counterfeit goods, they will be held liable under the E-Commerce Law. Platforms such as Pinduoduo, for instance, have been criticized for selling counterfeit goods and have been forced to improve its enforcement and monitoring procedures.

#### UNITED STATES AND INDIA:

With fake and unregulated cosmetics saturating the marketplace, the illegal cosmetics trade is becoming a bigger problem in both India and the United States. Counterfeit cosmetics in the United States frequently contain dangerous ingredients including lead, mercury, and arsenic, which can seriously impair one's health. Organized crime syndicates that produce and distribute counterfeit cosmetics have been detected by the Federal Bureau of Investigation (FBI).<sup>47</sup> In 2018, for instance, the LAPD confiscated \$700,000 worth of fake cosmetics that were contaminated with human waste and bacteria. Enforcement is challenging since the U.S. Food and Drug Administration (FDA) has less power to control cosmetics than it does drugs. The seized counterfeit cosmetics were found to contain dangerously high levels of bacteria and animal feces. In contrast, India has a greater problem with contaminated and counterfeit cosmetics because of its huge demand for low-cost goods and laxer

<sup>43</sup> Nick Redfearn, Cross-border Trade in Counterfeit Goods, ROUSE (Feb. 14, 2022), <https://rouse.com>.

<sup>44</sup> Chinese counterfeit products dominate the worldwide fakes industry, daxueconsulting (Feb. 9, 2023), <https://daxueconsulting.com>.

<sup>45</sup> Chinese police seize \$120 million of fake cosmetics, Reuters (Feb. 16, 2017), <https://www.reuters.com>.

<sup>46</sup> Adrienne Zulueta, Massive fake health and beauty supplies ring busted, CNN (Mar. 9, 2014), <https://edition.cnn.com>.

<sup>47</sup> Aliza Karetznick & Kelly Bonner, Counterfeit Cosmetics: Fake Beauty, Real Danger, Duane Morris (Apr. 25, 2018), <https://www.duanemorris.com>.

regulatory enforcement. In 2021, Delhi Police uncovered a significant counterfeit cosmetics ring and confiscated ₹50 lakh worth of counterfeit luxury brands.<sup>48</sup> In India, a lot of fake cosmetics include dangerous substances including steroids, hydroquinone, and too many heavy metals. Fake international brands are increasingly being offered for sale on e-commerce platforms as a result of the Indian beauty market's explosive growth, which is being driven by online sales. Social media influencers in the US and India unintentionally support counterfeit or inferior cosmetics, which feeds the illegal trade even more. Over 2,000 shipments of fake cosmetics were seized by U.S. Customs and Border Protection (CBP) in 2020.

Thousands of counterfeit goods imitating Lakmé, Maybelline, and L'Oréal have been seized by Indian police. The illegal cosmetics trade in the United States is frequently associated with broader organized crime networks that are engaged in human and drug trafficking. Some illegal cosmetic companies were also used as fronts for the distribution of drugs, according to the Drug Enforcement Administration (DEA). A 2022 instance in Bengaluru, India, revealed that salons were unintentionally providing their clients with phony high-end cosmetics<sup>49</sup>. By exploiting weaknesses in online retail, counterfeiters continue to sell illicit items despite the United States' stricter intellectual property rules. It is difficult for law enforcement to keep an eye on the activities of some manufacturers of counterfeit cosmetics since they operate out of unregistered locations.

## HOW DOES THE US ADDRESS THE PROBLEM?

In 2019, the Los Angeles Police Department (LAPD) confiscated \$700,000 worth of counterfeit cosmetics, including phony Kylie Cosmetics and MAC products, in one of the most notorious occurrences. In a similar vein, U.S. Customs and Border Protection (CBP) prevented potentially hazardous products from entering the market in 2022 when they intercepted a \$1.7 million shipment of fake designer cosmetics in Texas. To combat such dangers, the FDA has strengthened enforcement in the United States under the Modernization of Cosmetics Regulation Act (MoCRA) of 2022, which requires cosmetic manufacturers to register facilities, label ingredients, and report adverse effects.<sup>50</sup>

The Homeland Security Investigations' (HSI) Operation Plastic Beauty campaign, which aims to disrupt networks of fake cosmetics, is another important project. A counterfeit gang that was smuggling phony Juvederm and Botox fillers, which caused serious allergic responses in customers, was apprehended in 2021 as a result of the operation. Additionally, CBP officials have increased their checks at key ports, such as Miami, New York, and Los Angeles, where counterfeit cosmetics, skincare goods, and perfumes are regularly imported. The emergence of internet marketplaces such as Instagram, eBay, and Amazon have made policing much more difficult.<sup>51</sup>

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<sup>48</sup> Amanda Jackson, Police find animal waste in counterfeit makeup – so it's not such a bargain after all, CNN (Apr. 15, 2018), <https://edition.cnn.com>.

<sup>49</sup> Fake makeup can be an easy buy – and a health hazard, CBS News (Dec. 29, 2017), <https://www.cbsnews.com>.

<sup>50</sup> Modernization of Cosmetics Regulation Act of 2022 (MoCRA), US Food and Drug <https://www.fda.gov>.

<sup>51</sup> Miami CBP Seizes Over a Million Dollars in Fake Perfume, US Customs and Border Protection (Apr. 28, 2020), <https://www.cbp.gov>.

An NBC investigation in 2018 revealed that numerous Amazon third-party vendors were selling altered, expired, or counterfeit cosmetics, which resulted in complaints from customers concerning infections and skin burns. The National Intellectual Property Rights Coordination Center's Stop Counterfeit Cosmetics Campaign works with various platforms to track down illicit vendors and delete false ads. Despite these attempts, criminals still take use of social media, which has resulted in disasters like the 2015 New York counterfeit lip filler case, in which an unauthorized person injected phony filler, permanently disfiguring the recipient. <sup>52</sup>

Similar to this, officials in Florida discovered an illicit business in 2023 that was selling unlicensed whitening creams containing mercury, which resulted in several incidents of mercury poisoning. The FDA constantly warns the public about dubious goods and urges them to report adverse reactions through MedWatch in order to protect consumers.<sup>53</sup> Additionally, awareness efforts teach consumers how to spot fake products by looking for odd packaging, misspelled labels, and suspiciously cheap prices. Although U.S. regulations are changing, the black-market cosmetics business remains a chronic problem due to consumer demand for low-cost beauty items. Nonetheless, authorities hope to reduce the risks presented by illegal and counterfeit cosmetics in the nation through stronger laws, more stringent border controls, and public awareness campaigns.

### DUBAI AND INDIA

The Consumer Protection Department in Dubai teams up with Dubai Customs to check for fake stuff. They do over 500 inspections a year. In India, the Food and Drug Administration (FDA) didn't do so well, with less than 250 raids across the whole country in 2022, which shows they could be doing better at enforcing the rules. India last changed its cosmetics rules in 2020. Dubai, on the other hand updates its laws every year to keep up with new problems. Dubai uses AI to track down fake imports. India doesn't have that tech and mostly uses manual inspections. Looks like fake cosmetics are a problem. In India, 20% of makeup sold online is fake, and Dubai isn't much better at 15%. Social media is a big source, with over 60% of these dodgy beauty products in India being sold through Instagram, WhatsApp, and Facebook. Dubai sees about 50% sold there. A survey in the UK last year showed 17% of women knew they were buying fakes online. Seems like that happens in India and Dubai too. One e-commerce site in Dubai took down over 30,000 fake beauty listings in 2022. Amazon India got rid of 20,000+ accounts selling fakes.

Lab tests showed that more than 75% of fake makeup in India had nasty stuff like lead, arsenic, and mercury. Dubai wasn't much better, with 55% of their fakes containing similar junk. In 2022, people complained a lot about fake beauty products. Dubai had over 2,000 complaints, but India had even more, with over 5,500. About 60% of people in India who accidentally used fake makeup had skin problems like irritation, rashes, or allergies.<sup>54</sup> In Dubai, it was lower, around 35%. Store checks in big Indian cities

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<sup>52</sup> Mercury Poisoning Linked to Use of Skin-Lightening Creams from Mexico, California Department of Public Health <https://dhs.saccounty.gov>.

<sup>53</sup> Adrian Rabin, FDA wants proof Gilchrist & Soames soap-maker fixed contamination problems, CNN (Mar. 31, 2016), <https://edition.cnn.com>.

<sup>54</sup> Vaamanaa Sethi, Cosmetic products caused allergic reaction in 15% of Indian households: LocalCircles, The Economic Times (Dec. 20, 2022), <https://economictimes.indiatimes.com>.

like Delhi and Mumbai found that 80% of them were selling fake beauty items. Dubai's number was lower, at 45%, which suggests India has a wider problem with fake product distribution. Dubai uses AI to find fakes, but India still does things the old-fashioned way with manual checks. Because of this, India has a higher risk of fakes, around 70%.

#### HOW DOES DUBAI ADDRESS THE PROBLEM?

Fake cosmetics are a big issue in India and Dubai, and they can be bad for people's health and the economy. In India, you'll often find these fakes in local markets, online, and from sellers who aren't authorized. It's easy for these products to spread because the rules about trademarks aren't really enforced, and there are loopholes in the law. India has the Drugs and Cosmetics Act from 1940 to keep cosmetics in check, but it's not applied the same way everywhere. Dubai uses tech like blockchain and AI to keep fake products out. They also do regular checks and surprise raids to stop illegal cosmetics from being sold. Dubai works with international brands to make sure everything is real. India has laws, but because they're not well enforced, counterfeiters take advantage. If India made the rules stronger and enforced them better, it could really cut down on the fake cosmetics business. Dubai's way of doing things could be a good example for India to improve how they handle cosmetic sales.

#### **9. SUGGESTIONS FOR STRENGTHENING REGULATORY FRAMEWORK IN INDIA:**

- Authorities must tighten regulatory monitoring, increase consumer knowledge, and implement stronger enforcement measures in order to fortify India's regulatory system against the illegal cosmetics sector. Cosmetic safety is now governed by the Drugs and Cosmetics Act of 1940, although it does not have strong pre-market approval procedures or severe penalties for counterfeiters. The distribution of dangerous fake cosmetics can be reduced by strengthening the role of the Central Drugs Standard Control Organization (CDSCO) and enacting laws requiring product registration and ingredient disclosure, akin to the Modernization of Cosmetics Regulation Act (MoCRA), 2022, passed by the U.S. FDA.
- The Food and Drug Administration (FDA) of Maharashtra seized Rs. 10 crores worth of counterfeit cosmetics in 2018, including counterfeit Lakmé, MAC, and L'Oréal products, many of which included hazardous substances like lead and mercury. This was one concerning occurrence.
- Agencies like the Customs Department and the Directorate of Revenue Intelligence (DRI) need to step up surveillance at ports and airports, especially in Mumbai, Chennai, and Kolkata, which are important entry points for illegal cosmetic imports, in order to improve border control.
- Another crucial area is raising public awareness. Through a national campaign spearheaded by CDSCO, customers can learn about the risks associated with counterfeit beauty goods and how to spot fake cosmetics by looking for batch numbers, packaging flaws, and unusually low costs.
- To raise the bar for cosmetic safety, particularly for imported goods, India can work with international regulatory agencies like the US FDA and EU regulators.

#### **10. CONCLUSION:**

Enforcement of the Drugs and Cosmetics Act of 1940 remains weak due to deficiencies in import control, the lack of mandatory pre-market certifications, and inadequate penalties for violators. The increasing number of counterfeit cosmetics in India highlights the pressing need for reform. Customers

are regularly duped into purchasing harmful products by e-commerce sites such as Amazon, Flipkart, and Instagram shops that provide fake cosmetics at absurdly low costs. Stricter e-commerce laws should be imposed by the government, requiring vendors to confirm the legitimacy of their goods and holding them responsible for selling fake or illegal cosmetics. The government should set up special cosmetic safety tribunals to accelerate cases involving dangerous and counterfeit beauty procedures, and unlicensed beauty clinics must be closed right away.

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