

COUNTERFEIT DRUGS, TRADEMARK INFRINGEMENT, AND PUBLIC HEALTH RISKS: A CRITICAL APPRAISAL OF NIGERIA'S LEGAL RESPONSE IN THE AFRICAN CONTEXT

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Abstract

The proliferation of counterfeit pharmaceuticals in Nigeria and across Africa presents a grave threat to public health, economic development, and the integrity of intellectual property (IP) systems. This article critically examines the intersection between trademark law and the regulation of counterfeit drugs in Nigeria. It evaluates the effectiveness of statutory frameworks, institutional mechanisms, and judicial responses in combating pharmaceutical counterfeiting. The study situates Nigeria's approach within the broader African context and draws comparative insights from selected jurisdictions. It argues that while Nigeria has developed a relatively robust legal and institutional architecture, enforcement deficits—particularly in informal markets and at national borders—continue to undermine effectiveness. The article proposes reforms aimed at strengthening trademark enforcement, enhancing regulatory coordination, and integrating public health considerations into IP policy.

Keywords: Counterfeit drugs; Trademark infringement; Public health; Nigeria; Intellectual property; Africa.

1.0 INTRODUCTION

Counterfeit pharmaceuticals have emerged as a critical transnational problem, particularly in developing economies where regulatory capacity is often limited. In Nigeria, the scale of counterfeit drug

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circulation has reached alarming levels, with significant implications for mortality, treatment failure, and antimicrobial resistance.¹ These counterfeit products frequently bear trademarks identical or deceptively similar to legitimate pharmaceutical brands, thereby infringing intellectual property rights while simultaneously endangering consumers.² Beyond the immediate health risks, counterfeit drugs also distort market competition and erode consumer trust in legitimate pharmaceutical products.³ Scholars have argued that the presence of counterfeit medicines weakens healthcare systems by undermining confidence in drug efficacy and safety.² In Nigeria, where access to affordable healthcare is already constrained, the availability of counterfeit drugs exacerbates existing inequalities.⁴ Trademark law, traditionally concerned with consumer confusion and brand protection, now plays a vital role in public health protection, particularly within pharmaceutical markets.⁵ This article evaluates Nigeria's legal response through statutory, judicial, and institutional lenses while situating it within broader African realities.

2.0 LITERATURE REVIEW

The intersection between intellectual property law and public health has increasingly attracted scholarly attention, particularly in developing countries where weak regulatory frameworks facilitate the proliferation of counterfeit pharmaceuticals. While intellectual property law has traditionally been viewed as a mechanism for protecting private commercial interests, contemporary scholarship

¹ Olusegun Akiny, 'Counterfeit Drugs in Nigeria: A Threat to Public Health' (2013) 7 (36) *African Journal of Pharmacy and Pharmacology* 2571 – 2576.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Mark Davison and others, *Australian Intellectual Property Law* (Cambridge 2020).

recognizes its broader function in safeguarding consumer welfare and ensuring public health.

Ruth Okediji argues that ineffective intellectual property enforcement across African jurisdictions significantly contributes to the spread of counterfeit medicines.⁶ She observes that although international frameworks such as the TRIPS Agreement establish minimum standards, enforcement remains dependent on domestic institutional capacity. This disconnect between legal frameworks and practical enforcement enables counterfeit drug markets to flourish.

Adebambo Adewopo highlights structural deficiencies within Nigeria's intellectual property regime, noting weak enforcement capacity, inadequate funding, and poor inter-agency coordination.⁷ He emphasizes that informal markets undermine traditional trademark enforcement mechanisms, making it difficult to apply doctrines such as infringement and passing off effectively.

Innocent Opara situates counterfeit drugs within a broader public health crisis, linking them to increased mortality, treatment failure, and antimicrobial resistance.⁸ He advocates a multidisciplinary approach that integrates legal enforcement with public health strategies and technological interventions.

⁶ Ruth L Okediji, 'Africa and the Global Intellectual Property System: Beyond the Agency Model' in *African Yearbook of International Law Online / Annuaire Africain de droit international Online*, 12(1), 207-251.

⁷ Adebambo Adewopo, 'The Global Intellectual Property System and Sub-Saharan Africa - A Prognostic Reflection' (2001 – 2002) 33 *U. Tol. L. Rev.* 749.

⁸ Innocent Opara and Others, 'A Review on Mitigating Antimicrobial Resistance by Combating Falsified Medicines in the Global Pharmaceutical Supply Chain: Review Article' (2025) 3(5) *Journal of Pharma Insights and Research*

Global scholars such as Amir Attaran stress the transnational nature of counterfeit pharmaceuticals and the role of weak governance systems in facilitating their spread. WHO studies confirm that substandard medicines are prevalent across sub-Saharan Africa.⁹ Technological scholarship (Mackey and Nayyar) highlights digital authentication systems, such as SMS verification codes on drug packaging, as emerging solutions.¹⁰ In Nigeria, platforms like Mobile Authentication Service (MAS) have been introduced to help consumers verify drugs, though adoption remains uneven.¹¹ Despite extensive literature, there remains limited doctrinal focus on trademark law as a central enforcement mechanism in Nigeria, this article fills that gap.

3.0 CONCEPTUAL FRAMEWORK

3.1 Counterfeit Pharmaceuticals

Counterfeit drugs are fraudulently mislabeled medicines that may contain harmful or ineffective substances.¹² These drugs may include incorrect active ingredients, insufficient dosage, or no active ingredients at all. The consequences include treatment failure, drug resistance, and increased mortality.¹³ In Nigeria, counterfeit antimalarial and antibiotic drugs have been widely reported, contributing significantly to public health crises. The prevalence of

⁹ Amir Attaran and Others, 'Why and How to Make an International Crime of Medicine Counterfeiting' (2011) *Journal of International Criminal Justice* 1 -30.

¹⁰ Tim Ken Mackey, 'A Review of Existing and Emerging Digital Technologies to Combat the Global Trade in Fake Medicines' (2017) 16 (11) *Researchgate* https://www.researchgate.net/publication/315677218_A_review_of_existing_and_emerging_digital_technologies_to_combat_the_global_trade_in_fake_medicines Accessed 13th September 2026.

¹¹ Ibid.

¹² Ranjana Pathak and Others, 'Tackling Counterfeit Drugs: The Challenges and Possibilities' (2023) 37 *Pharmaceutical Medicine* 281 – 290.

¹³ Ibid.

such drugs demonstrates the urgent need for stronger regulatory and legal interventions.¹⁴

3.2 Trademark Law and Public Health

Trademarks serve as indicators of origin and quality. In pharmaceuticals, they signal regulatory approval and safety compliance.¹⁵ When counterfeiters imitate trademarks, they exploit consumer trust, thereby transforming a commercial infringement into a public health risk.¹⁶ Scholars argue that trademark law should be viewed not merely as a private right but as a public interest tool that protects consumers from harmful products.¹⁷

3.3 Passing Off Doctrine

Passing off protects goodwill and prevents misrepresentation. Nigerian courts apply the trinity test of goodwill, misrepresentation, and damage.¹⁸ In informal markets, where many businesses do not register trademarks, passing off remains a critical legal tool. However, proving goodwill and damage in such contexts is often challenging.¹⁹

¹⁴ Ibid.

¹⁵ Lilian George, 'The Role of Trademark Law in the Protection of Brand Identity in Nigeria' (2026) SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7348258 Accessed 11th September 2026.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Iliya Felix Akuandna and Others, 'Assessing the Legal and Institutional Challenges of Trademark Protection in Nigeria' (2025) 2(4) *Faculty of Natural and Applied Sciences Journal of Basic and Environmental Research* 105 -110

¹⁹ Ibid.

4.0 LEGAL FRAMEWORK IN NIGERIA

4.1 Trade Marks Act

The Trade Marks Act grants exclusive rights to trademark owners and provides remedies for infringement.²⁰ However, the Act is outdated and does not adequately address modern counterfeiting techniques such as online sales and cross-border trade.²¹

4.2 Counterfeit and Fake Drugs Act

This Act criminalizes counterfeit drug production and distribution. While the law provides a strong legal basis, enforcement has been inconsistent due to institutional challenges.²²

4.3 NAFDAC Act

NAFDAC regulates pharmaceuticals through inspection, licensing, and enforcement powers.²³ It has conducted numerous raids and seizures of counterfeit drugs, particularly in major markets.

4.4 Supplementary Laws

Additional frameworks include the Customs Act and Criminal Code. However, overlapping provisions often create enforcement inefficiencies.

²⁰ SS Dash, 'A Legal Review on Trademark Infringement in India' (2023) (5)2 *Indian J.L. & Legal Rsch.*

²¹ Ibid.

²² Zille Terpase Gbaeren, 'Addressing Counterfeiting and Piracy Challenges in Nigeria: The role of Intellectual Property Law' (2025) SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5451634 Accessed 13th September 2026. ; Counterfeit Drugs Act Cap C34 LFN 2004.

²³ NAFDAC Act Cap N1 LFN 2004.

5.0 INSTITUTIONAL FRAMEWORK

5.1 NAFDAC

NAFDAC plays a central role through enforcement operations, seizures, and public awareness campaigns.¹⁴ It has achieved notable successes, including large-scale destruction of counterfeit pharmaceuticals. However, limited funding and corruption challenges hinder its effectiveness.²⁴

5.2 Nigerian Customs Service

Responsible for border enforcement, though constrained by corruption, inadequate technology, and porous borders. The absence of advanced scanning systems reduces detection capacity.

5.3 Judiciary

Judicial delays and procedural inefficiencies weaken enforcement outcomes. Cases involving counterfeit drugs often take years, reducing deterrence.

6.0 JUDICIAL APPROACH AND CASE LAW

Nigerian courts have consistently upheld trademark protection principles. In *Niger Chemists Ltd v Nigeria Chemists*²⁵, the court emphasized consumer protection and prevention of confusion.

In *Ferodo Ltd v Ibeto Industries Ltd*²⁶, the Supreme Court reinforced trademark rights and clarified infringement standards.

Pharmaceutical-related disputes such as *Pfizer Inc v Chazmax Pharmaceuticals Ltd*²⁷ demonstrate judicial recognition of counterfeit

²⁴ Ibid.

²⁵(1961) All NLR 171

²⁶ (2004) LPELR-1275(SC); [5 NWLR (Pt. 866) 317]

²⁷ Pfizer Inc v Chazmax Pharmaceuticals Ltd (FHC).

drug risks. However, the relative scarcity of reported pharmaceutical-specific cases highlights the need for more robust litigation in this area.

7.0 ENFORCEMENT CHALLENGES

7.1 Informal Markets

Markets like Alaba and Onitsha serve as hubs for counterfeit distribution, with minimal regulatory oversight. These markets operate largely outside formal systems, making enforcement difficult.

7.2 Border Porosity

Weak border control enables counterfeit drug importation. Many drugs enter through unofficial routes.

7.3 Weak Penalties

Low penalties fail to deter offenders, as profits from counterfeiting outweigh risks.

7.4 Institutional Weaknesses

Poor coordination among agencies reduces enforcement effectiveness.

7.5 Corruption and Consumer Behavior

Corruption and low awareness sustain counterfeit markets. Consumers often prioritize affordability over authenticity.

8. COMPARATIVE AFRICAN PERSPECTIVE

8.1 South Africa

South Africa has stronger enforcement mechanisms, including specialized anti-counterfeit units.

8.2 Kenya

Kenya's Anti-Counterfeit Authority provides centralized enforcement coordination.

8.3 Regional Integration

AfCFTA offers opportunities for harmonized IP enforcement and cross-border collaboration.

9. POLICY RECOMMENDATIONS

- i. Reform outdated IP laws to reflect modern realities
- ii. Strengthen inter-agency cooperation
- iii. Increase penalties for counterfeit drug offences
- iv. Adopt technological verification systems
- v. Promote regional collaboration within Africa

10. CONCLUSION

Counterfeit pharmaceuticals represent a critical intersection of trademark law and public health. While Nigeria has established a comprehensive legal and institutional framework, enforcement remains the weakest link. Informal markets, porous borders, weak penalties, and institutional inefficiencies continue to undermine progress. To address these challenges, Nigeria must adopt a holistic approach that integrates legal reform, institutional strengthening, technological innovation, and public awareness. Trademark law must be reconceptualized not merely as a commercial tool but as a mechanism for protecting public health. Ultimately, effective regulation of counterfeit drugs will require sustained political will, regional cooperation, and continuous adaptation to emerging threats. Strengthening Nigeria's response will not only protect consumers but also enhance confidence in the pharmaceutical sector and promote economic development.