

## The Crime Of Counterfeiting Commercial Brands From The Perspective Of Islamic Jurisprudence And Its Impact On Sustainable Development And Health

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### ABSTRACT

The research aims to define commercial brands, examine the ruling on counterfeiting them from the perspective of Islamic jurisprudence, analyse the consequences of brand counterfeiting, determine the penalty for counterfeiting well-known trademarks and selling them as originals, and evaluate the legal and religious implications of such practices. The study adopts a descriptive methodology, relying on an analytical approach, and has led to several significant findings, the most notable of which are as follows:

A commercial brand refers to the identity of a company or product that distinguishes it from competitors. It represents the reputation and image of the company in the minds of customers and the public. A trade name refers to the designation used by a merchant as a distinctive mark for their business, allowing consumers to identify a particular type of goods, service, or quality. A brand is broader and more comprehensive than a trade name, as it encompasses reputation, marketing, corporate image, and influence, rather than just the name itself. The concept of the crime of counterfeiting commercial brands from the perspective of Islamic jurisprudence refers to the act of producing an imitation of an original product with lower quality, with the intention of deceiving, defrauding, falsifying, and exploiting consumers for quick financial gain. Its punishment falls under commercial fraud under Saudi law. Among the means of proving this crime is reporting the counterfeit product to the Ministry with all relevant details. The penalty for counterfeiting commercial brands is classified under fraud, trademark infringement, and brand counterfeiting, which are considered financial offences. Any individual who commits such an offence is subject to a fine not exceeding five hundred thousand (500,000) Saudi Riyals, imprisonment for a period not exceeding two years, or both penalties combined. Counterfeiting and fraudulent use of commercial brands have a negative impact on sustainable development and economic growth.

### RECOMMENDATIONS

- Respecting fair competition between companies.
- Ensuring care for all economic systems that support sustainable development.

**Keywords:** Crime; Counterfeiting; Brands; Jurisprudence; Health

### 1. INTRODUCTION

All praise is due to Allah, who guides whomever He wills to seek knowledge in religion and leads whomever He pleases to His straight path. I bear witness that there is no deity worthy of worship except Allah alone, without partner, and I bear witness that Muhammad is His servant, His messenger, His chosen one among His creation, and His beloved. May Allah be pleased with his companions, his wives, his family, and all those who righteously follow them until the Day of Judgment.

The Kingdom of Saudi Arabia seeks to achieve excellence in global commerce. Its accession to the World Trade Organization (WTO) necessitates its contribution to combating the phenomenon of brand counterfeiting, which it considers a practice that undermines the principles of creativity and innovation. This research examines a set of legal and jurisprudential regulations in light of this context.

**Research Problem:** The research problem can be formulated in the following primary question: What is the reality of crimes resulting from the counterfeiting of commercial brands from the perspective of Islamic jurisprudence? What are their elements, punishments, and Causes for Exemption?

**Research Objectives:** Based on the aforementioned questions, the objectives of the study can be outlined as follows:

- Defining commercial brands.
- Establishing the jurisprudential basis for counterfeiting commercial brands.
- Examining the penalties related to brand counterfeiting crimes under Islamic jurisprudence and Saudi law.
- Identifying the Causes for Exemption from punishment for brand counterfeiting crimes.

**Research Methodology:** The study adopts an inductive approach, wherein the subject matter is examined through specialised literature that has addressed the issue with analysis and discussion.

**Research Plan:** The study consists of an introduction, two topics, a conclusion, and a list of references:

**Introduction:** This section addresses the research problem, objectives, significance, methodology, and structure. It includes two topics, a conclusion, and a list of references.

**Topic One: Definition of the Crime of Counterfeiting Commercial Brands, Its Elements, and Means of Proof.**

**Topic Two: Punishment for the Crime of Counterfeiting Commercial Brands and Causes for Exemption.**

**Topic One: Definition of the Crime of Counterfeiting Commercial Brands**

**First: Definition of Crime**

In linguistic terms, "crime" is derived from the Arabic term *jurm*, meaning transgression, and *jurm* also signifies sin, with its plural forms being *ajrām* and *jurūm*. In the Hadith it is stated: *"The worst of the Muslims in terms of crime is the one who asks about something that was not forbidden, so that it becomes forbidden because of his inquiry."* The phrase "tajarrama alayya fulan" means: "Someone falsely accused me of a crime I did not commit." The criminal is the offender. [4]

Crime is defined in Islamic law as a prohibited act for which Allah has prescribed either a fixed penalty (*ḥadd*) or a discretionary penalty (*ta'zīr*). [20] In legal terminology, a crime is defined as a voluntary act prohibited by law for which the perpetrator is subject to criminal penalty. [21]

**Second: Definition of the Term "Commercial Brand":** The term "commercial brand" refers to: A trademark or trade name; the identity of a company or product, distinguishing it from competitors; and the reputation and image of the company in the minds of customers and the public. [1]

**Definition of Trade Name:** The trade name refers to the designation used by a merchant as a distinctive mark for their business, allowing consumers to identify a particular type of goods, service, or quality. [5]

**Difference Between a Brand and a Trade Name:** A brand is broader and more comprehensive than a trade name. A brand focuses more on reputation, marketing, corporate image, and influence, whereas a trade name primarily serves as a commercial designation. [19]

**Third: General Concept of the Crime of Counterfeiting Commercial Brands**

From the perspective of Islamic jurisprudence, the crime of counterfeiting commercial brands is defined as: *"The act of producing an imitation of an original product with lower quality, with the intention of deceiving, defrauding, and exploiting consumers for quick financial gain."* [8]

From the perspective of Saudi law, the crime of counterfeiting commercial brands falls under commercial fraud. Royal Decree No. (M/19), dated 23rd Rabi' al-Thani 1429 AH, defines a fraudulent product as: *"Any product that has undergone modification or tampering in a manner that diminishes its material or moral value, whether through addition, reduction, manufacturing, or otherwise, affecting its nature, type, form, components, characteristics, requirements, source, or quantity, including weight, volume, measurement, number, or capacity."* [18]

## 2. ELEMENTS OF THE CRIME OF COUNTERFEITING COMMERCIAL BRANDS

- **The Counterfeiter:** The manufacturer who engages in counterfeiting and fraud.

**The Original Brand:** The product being counterfeited.

**The Counterfeit Brand:** The imitation product that is marketed and sold to consumers as if it were genuine. [2]

### 3. MEANS OF PROVING THE CRIME OF COUNTERFEITING COMMERCIAL BRANDS

Among the means of proving this crime is reporting the counterfeit product to the relevant ministry with all necessary details. Additionally, the criminal legislator has recognised the following as key methods of proving crimes: Witness testimony, Confession, Inspection, Expert reports, Documentary evidence, Circumstantial evidence, Oath-taking, and Other legally recognised means [6]

#### Topic Two: The Jurisprudential Basis of the Crime of Counterfeiting Commercial Brands

##### Islamic Ruling on Counterfeiting Commercial Brands

Brands, trade names, and trademarks are private rights of their owners. They have acquired recognised financial value in contemporary custom, as people rely on them for trade and financial transactions. These rights are acknowledged under Islamic law, and it is impermissible to infringe upon them. [5]

##### Evidence Prohibiting the Counterfeiting of Commercial Brands

- In a sacred Hadith, Abu Dharr Al-Ghifari (may Allah be pleased with him) narrated that the Prophet (peace and blessings be upon him) conveyed from Jibreel (peace be upon him), who narrated from Allah the Exalted: *"O My servants, I have forbidden injustice for Myself and have made it forbidden among you."* [17]

This Hadith prohibits injustice in all its forms, including violations of the established conditions and requirements for legitimate commercial transactions such as buying and selling.

Abu Hurairah (may Allah be pleased with him) narrated that the Messenger of Allah (peace and blessings be upon him) said: *"Whoever cheats is not one of us."* [17]

**Ibn Hajar Al-Haytami stated:** *"The prohibited form of fraud is when a seller or buyer is aware of a defect in the product, which, if the buyer knew about, they would not have agreed to the price."* [16]

**Rational Arguments Prohibiting the Counterfeiting of Commercial Brands:** The first argument: A brand reflects the value of a trademark, the reputation of a company, and its identity. A brand represents the commitments a company makes to its customers. Therefore, counterfeiting commercial brands constitutes an infringement upon trademark rights, which are classified as financial rights. Additionally, it is a clear act of fraud and deception against consumers. [13]

**The second argument:** Counterfeiting brands falls under exploitative fraud, as consumers of counterfeit brands are deceived due to recklessness or overwhelming desire, preventing them from distinguishing between genuine and counterfeit products. [10]

### 4. PENALTY FOR COUNTERFEITING COMMERCIAL BRANDS UNDER SAUDI LAW

The penalty for counterfeiting commercial brands falls under trademark fraud. A person found guilty of this crime shall be subject to a fine not exceeding five hundred thousand Saudi Riyals (SAR 500,000), imprisonment for a period not exceeding two years, or both penalties combined. This applies to anyone who commits any of the violations stipulated in Article (2) of this law, which include: Deceiving or attempting to deceive consumers in any way concerning any of the following: the identity of the product, its nature, its gender, its type, its components, and its essential characteristics; **and** importing, manufacturing, printing, possessing, selling, or offering for sale any packaging, labelling, or printed materials used for fraud. [2]

It may be appropriate in the coming periods to expand the use of technology to support this field (Ahmed, Alharbi, & Elfeky, 2022; Elbyaly & Elfeky, 2023a, 2023c, 2023e, 2023f, 2023g, 2023h, 2023i; A. Elfeky, 2017; A. I. M. Elfeky & Elbyaly, 2016, 2019, 2023a, 2023b, 2023c, 2023e, 2023f, 2023g; A. I. M. Elfeky, Najmi, & Elbyaly, 2023, 2024a, 2024b; Elfekyand, 2016; Masada, 2017; Masadeh & Elfeky, 2016).

##### Causes for Exemption from the Crime of Counterfeiting Commercial Brands

There are four reasons under Islamic jurisprudence that lead to the exemption from punishment for this crime: Death, Repentance, Pardon, and Statute of Limitations. Under statutory law, the reasons for exemption from punishment are three: The Death of the Convicted Individual, Pardon and Statute of Limitations. It is evident that statutory law aligns with Islamic jurisprudence in not waiving financial penalties upon the convict's death, as such penalties are collected from the deceased's estate. Similarly, statutory law agrees with Islamic jurisprudence that the ruler (Wali Al-Amr) has the authority to pardon the convicted individual. [4]

##### Impact of the Crime of Counterfeiting Commercial Brands on Health, the Economy, and Sustainable Development

Sustainable development is the enhancement of production levels through the adoption of optimal methods for achieving the

best investment in clean technology industries. These industries are based on minimising energy consumption while ensuring consideration for the well-being of future generations and their health. [3] This requires a high degree of integrity in trade, the avoidance of fraud, and the prevention of exploitative deception against both citizens and others; this is what keeps them healthy.

## 5. CONCLUSION

**The study has led to several significant findings, the most notable of which are:**

- A commercial brand refers to the identity of a company or product that distinguishes it from competitors. It represents the reputation and image of the company in the minds of customers and the public.
- A trade name is the designation used by a merchant as a distinctive mark for their business, allowing consumers to identify a particular type of goods, service, or quality.
- The difference between a brand and a trade name: A brand is broader and more comprehensive than a trade name, as it encompasses reputation, marketing, corporate image, and influence, rather than just the name itself.
- The concept of the crime of counterfeiting commercial brands from the perspective of Islamic jurisprudence: It is the act of producing an imitation of an original product with lower quality, with the intention of deceiving, defrauding, and exploiting consumers for quick financial gain.
- The ruling on counterfeiting brands falls under clear commercial fraud and forgery under both Islamic jurisprudence and Saudi law.
- One of the means of proving the crime of counterfeiting commercial brands is reporting the counterfeit product to the Ministry with all relevant details.
- Counterfeiting commercial brands constitutes an infringement upon trademark rights, which are classified as financial rights.
- The penalty for counterfeiting commercial brands includes: a fine not exceeding five hundred thousand (500,000) Saudi Riyals, imprisonment for a period not exceeding two years, or both penalties combined.
- The counterfeiting and fraudulent use of commercial brands negatively impact sustainable development and economic growth.

## 6. RECOMMENDATIONS

- Respecting fair competition between companies.
- Ensuring care for all economic systems that support sustainable development.

## 7. ACKNOWLEDGMENT

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