INTELLECTUAL PROPERTY LAW
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Parallel Importation in Nigeria: Hidden Threats to Brand Integrity and Intellectual Property Rights

1. Introduction

The movement of goods across borders often collides with the territorial nature of intellectual property (IP) rights, giving rise to complex legal questions about ownership, control, and consumer access. One of the most underexplored issues in this context is the doctrine of exhaustion of IP rights, a legal principle that determines whether the rights of an IP holder are extinguished after the first authorised sale of a product. This principle directly impacts the legality of parallel imports, which include genuine goods that are imported into a country without the consent of the local IP rights holder.[2]

Parallel importation, the importation of genuine goods into a country without the consent of the intellectual property (IP) owner, has become an increasingly complex issue in Nigeria's evolving marketplace. Although such imports often benefit consumers through lower prices and wider product availability, they also pose significant risks to brand integrity, market structure, and the enforcement of IP rights.

In Nigeria, the absence of a clear statutory position on parallel importation has created uncertainty for rights holders and regulators alike. This legal ambiguity often leads to tension between protecting IP owners' exclusive rights and promoting free market competition. The resulting challenges affect not only trademark proprietors and

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[2] The Law Institute 'Parallel Imports and Principle of Exhaustion: Impacts on Global Trade and IP' available at: <https://thelaw.institute/trade-secrets-competition-law-and-protection-of-tce/parallel-imports-exhaustion-impact-global-trade> accessed, 14th September, 2025.

authorised distributors but also consumers who may unknowingly purchase products outside official quality and warranty controls.[3]

This article explores the hidden dangers of parallel importation within the Nigerian context, examining how it undermines intellectual property protection, disrupts established distribution networks, and weakens consumer confidence in branded goods. It also highlights the urgent need for a balanced regulatory approach that safeguards both brand value and consumer interests in an increasingly globalized economy.

2. Understanding Parallel Imports[4]

Parallel imports (or "grey market goods") are genuine products legally produced and sold in one country, then imported into another country without the authorisation of the IP rights holder in the importing country. Unlike counterfeit goods, parallel imports are authentic but sold outside the manufacturer's authorised distribution channels.

The goods have been manufactured by or under license of the brand owner and therefore are not counterfeit, but they may have been formulated or packaged for a particular jurisdiction and are imported into a different jurisdiction, in contradiction to the brand owner's intention (e.g., mobile phones intended for sale in Nigeria being sold in the United Kingdom).[5] Parallel importation becomes relevant when the same product is priced differently across countries. Importers exploit this price differential to bring in cheaper goods, sometimes undermining the IP owner's local pricing strategy or market segmentation.

The debate on parallel importation revolves around balancing intellectual property rights, which protect brand owners' control, with the benefits of increased market competition and consumer access to affordable products, while managing risks to product quality and consumer protection.

At its core, parallel importation presents a dilemma of competing interests.[6]

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[3] Banwo & Ighodolo, 'Fair Trade, Monopoly and Competitiveness: appraising the Legal Rights of Franchisees against Parallel Imports in Nigeria' available at: <https://www.banwo-ighodalo.com/media-files> accessed on 4th November, 2025.

[4] Bao Tran, 'Understanding Parallel Imports and Their Effect on IP Enforcement' available at: <https://patentpc.com/blog/understanding-parallel-imports-and-their-effect-on-ip-enforcement> accessed, 14th September, 2025.

[5] Somnath De, 'Navigating the Complexities of Parallel Imports and Intellectual Property Rights' available at: <https://astrealegal.com/publications/parallel-import-intellectual-property-rights/> accessed on 28th October 2025.

[6] *Ibid*.

i. From the trademark owner's perspective, it threatens brand control, pricing strategies, and product consistency across markets.

ii. From the consumer and competition standpoint, it promotes market access, price reduction, and the principles of free trade.

iii. Meanwhile, gaps in international trade frameworks, particularly the ambiguity of the exhaustion principle under the World Trade Organisation (WTO's) TRIPS Agreement, leave countries to define their own boundaries creating inconsistencies that fuel ongoing disputes.

In Nigeria, this subject remains a grey area in Intellectual Property (IP) law, mainly due to the lack of clear statutory provisions on the doctrine of exhaustion of rights, which refers to the point at which a rights holder's control over a product ends. While trademark[7] and Nigeria copyright laws[8] prohibit unauthorised use or reproduction, they are largely silent on whether IP owners can restrict the resale or re-importation of genuine products once sold elsewhere. This legal ambiguity has caused tension between rights holders wanting to control product distribution and traders exploiting cross-border markets to offer lower prices to consumers.

3. The Legal Doctrines Behind Parallel Importation (Territoriality and Exhaustion)

Most parallel import controversies revolve around the exclusive territorial rights of trademark owners and the principle that such rights may be exhausted after an initial lawful sale. On one hand, the principle of territoriality emphasises that trademark rights are confined to national borders, giving owners the power to regulate use of their marks within each jurisdiction. On the other hand, the exhaustion of rights principle questions whether those rights should continue after the first authorised sale of a product, and if so, whether that exhaustion applies only domestically or across international markets. These two doctrines form the legal foundation for understanding and resolving disputes involving the importation and resale of genuine branded goods outside an authorized distribution channel.

3.1 The Principle of Territoriality in Trademark Rights

The principle of territoriality is a foundation of trademark law. It means that trademark rights are confined to the jurisdiction in which they are granted. Each country has its own legal guidelines for registration, enforcement, and protection of trademarks, and those rights do not automatically extend beyond its borders. This means that a

[7] Section 5(2) *Trade Marks Act*, Cap. T13, LFN 2004.
[8] Section 9, *Copyright Act*, 2022.

trademark registered in Nigeria protects the mark only within Nigeria, and its owner cannot rely on that registration to prevent use or registration of the same mark in another country unless a separate application is made there.

When applied to parallel importation, the principle of territoriality raises important legal questions:

i. Can a trademark owner who lawfully places goods on the market in one country prevent those goods from being imported into another country where they also own the trademark?

ii. Does the act of importation and sale in another jurisdiction amount to infringement, even if the goods are genuine?

From a traditional territoriality standpoint, the answer would be in the affirmative. The trademark owner's exclusive right to control the mark within their territory extends to deciding how and through whom genuine goods enter that market. This position prioritises the trademark owner's control over distribution networks and pricing strategies within each country. However, globalisation and liberal trade policies have increasingly challenged the strict application of territoriality, giving rise to the competing exhaustion of rights principles.

3.2 <u>The Exhaustion of Rights Principle</u>

The exhaustion of rights (or first sale doctrine) limits the extent to which a trademark owner can control goods after they have been lawfully placed on the market. It essentially determines when the trademark owner's exclusive rights over a product end. Once the owner (or someone with the owner's consent) sells a product bearing the trademark, the right to control the resale or further distribution of that particular item may be considered "exhausted." However, the scope of this exhaustion varies among jurisdictions, creating three main models:

3.2.1 National Exhaustion

Under the national exhaustion regime, a trademark owner's rights are exhausted only within the domestic market. This means that goods lawfully sold in another country cannot be imported and resold in the domestic market without the owner's consent. This allows brand owners to maintain distinct pricing, quality control, and distribution policies per territory.

3.2.2 Regional Exhaustion

Under regional exhaustion, once goods are lawfully placed on the market within a specific regional bloc, the trademark rights are exhausted throughout that region. For instance, the European Union, where trademark rights are exhausted once goods are first sold anywhere within the EU or European Economic Area (EEA).

Under the African Continental Free Trade Area (AfCFTA) IP Protocol, formally the Protocol to the Agreement Establishing the African Continental Free Trade Area on Intellectual Property Rights, the issue of exhaustion of intellectual property rights is addressed. The Protocol[9] provides for the rights conferred by intellectual property to be exhausted when a product covered by or incorporating an intellectual property right has been introduced on the AfCFTA market by the rights-holder or with the rights-holder's consent. It further provides conditions for the applicability of exhaustion of a specific intellectual property right.

The Protocol adopts a regional exhaustion approach. Once a product covered by IP is lawfully introduced into the AfCFTA market (by or with consent of the rights-holder), further distribution within that market cannot be prevented by asserting the IP right. For example: if a patented product is sold in one AfCFTA member state, the patent owner cannot simply block its resale in another AfCFTA state under that same patent right (subject to conditions and any Annex stipulations).

3.2.3 **International Exhaustion**

Under international exhaustion, once goods are lawfully sold anywhere in the world by the trademark owner or with their consent, the owner's rights over those goods are exhausted globally. Parallel importation of genuine goods cannot be prevented, as the product has already entered legitimate commerce. This model promotes free trade, competition, and consumer access to genuine goods at lower prices.

For instance, if a cosmetic company in Mexico sells a batch of its genuine product (Luxura cream) in Brazil through its authorised distributor, the IP rights are considered "exhausted", and importers in Nigeria can bring the genuine

[9] Article 7, 'African Continental Free Trade Area on Intellectual Property Rights Legislation as of 19th February 2023' available at <https://africanlii.org/en/akn/aa-> accessed, November 13th, 2025.

products (Luxura cream) into Nigeria for resale without Luxura's direct authorisation for the Nigerian market.

In such a situation, Luxura cannot prevent the resale or importation of those genuine creams into Nigeria based solely on trademark rights because the trademark owner or its authorised distributor already placed the goods into the global market with consent.

3.3 Key Factors Behind Parallel Imports[10]

Parallel importation does not occur in isolation; it is driven by a combination of economic, commercial, and consumer-related factors that shape global trade dynamics. The most prominent of these include price differentials, product variations, consumer demand, and arbitrage opportunities.

Parallel importation arises mainly from price disparities, market-specific product variations, consumer demand, and arbitrage opportunities. Multinational companies often adopt differential pricing across markets, allowing traders to buy genuine goods cheaply in one country and resell them in another at higher prices. Differences in packaging, labelling, or warranty terms between markets can also lead to compliance and consumer protection issues when such goods are imported. In many developing countries, strong consumer demand for affordable and diverse products fuels parallel imports, especially where official distribution is limited. Traders further exploit international price gaps to profit from arbitrage, though this can weaken trademark owners' control over quality, marketing, and brand image.

Notably, international conventions like the Berne and Paris Conventions do not prohibit parallel importation, leaving its regulation to individual jurisdictions.[11]

3.4 Legal Framework for Parallel Import in Nigeria

[10] Trevor Jones, Jesus Vazquez, et al., 'Parallel Import and Exhaustion Doctrine' *Journal of International Commercial Law and Technology* (2022) Volume 3: Issue 1: pages 1- 4.

[11] Madhavi T, Dr P. R. L. Rajavenkatesan, 'International Agreements on Parallel Imports' *International Journal of Advanced Research in Education and Technology* (2004) Volume 11: Issue 6: pages 3224-3231.

The Nigerian IP regime is governed by several statutes which include the *Trade Marks Act*,[12] the *Merchandise Marks Act*,[13] the *Copyright Act*,[14] the *Trade Malpractices (Miscellaneous Offences) Act*[15] and the *Patents and Designs Act*.[16]

These statutes provide the legal framework for the ownership, proprietorship, and authorship of patentable inventions and registrable brands, and, in certain instances, criminalise acts that infringe or undermine registered proprietary rights, such as counterfeiting, false representation, or other forms of IP violation. However, they remain largely silent on the extent to which an IP owner, or an authorised licensee may lawfully restrict the distribution and sale of branded products by unlicensed importers or traders within the market. Generally, the laws grant IP owners the exclusive right to use and control their intellectual property, excluding third parties except where express authorisation has been granted.

Although Nigerian courts have made several pronouncements on related cases, these decisions are not regarded as leading authorities on the doctrine of exhaustion or parallel importation. Nevertheless, their factual backgrounds and reasoning have been frequently cited in academic and legal commentary discussing the implications of parallel importation in Nigeria. Examples are the cases of *The Honda Place Limited v. Globe.Motors Holdings Nigeria Limited*. and *Pfizer Specialities Limited v Chyzob Pharmacy Limited.*

In *Honda Place Ltd v. Globe Motors Holdings Nigeria Limited*[17] ("Honda Place"), a car dealer, was appointed by Honda (Japan) to import and market Honda cars in Nigeria. The dealer entered into a *s*ub-dealership agreement with Globe Motors, giving Globe Motors the right to import and sell 45% of the units allocated to Honda Place. A dispute arose, resulting in litigation which was later settled by consent judgment. Among the settlement terms, Globe Motors was restrained from importing Honda cars from the United States, the Middle East, or any other source other than Japan.

While parallel importation formed part of the factual premise of the case and probably informed the decision of the High Court directing the defendant to cease from importing Honda cars from the United States or any other country other than Japan by importing

[12] Cap. T13, LFN 2004.
[13] Cap. M10, LFN 2004.
[14] The *Copyright Act*, 2022 Act No 8, 2023 No. 8A 177, Federal Republic of Nigeria Official Gazette No. 56.
[15] Cap. T12, LFN 2004.
[16] Cap. P2, LFN 2004.
[17] (2005) 14 NWLR (Pt.945) 273.

Honda cars from the United States instead of Japan, the court did not establish a broad legal rule about whether parallel importation (in general) is illegal in Nigeria.

Also, the Court of Appeal in *Pfizer Specialities Limited v Chyzob Pharmacy Limited*[18] held that parallel importation is a foreign doctrine, and not actionable under Nigerian law because there is no statutory or judicial basis in Nigeria that expressly prohibits or recognises the importation of genuine goods through unofficial channels and therefore could not be used as a standalone basis for liability. Although the primary issue in *Pfizer's* case was not the legality of parallel importation, the facts provide useful background on the practice. The court did not make a definitive pronouncement on whether parallel importation is permissible under Nigerian law; however, the circumstances leading to the dispute reflect a situation commonly associated with parallel import activities.

In the instant case, the authorised distributor in Nigeria, Pfizer Specialities sued Chyzob Pharmacy for selling its genuine products sourced outside the authorised distribution network. While the case focused on intellectual property infringement and unlawful interference with business rather than the legality of parallel importation, the facts reflect the commercial tensions that parallel imports can create, particularly for brand owners who rely on controlled distribution to ensure product quality, pricing, and regulatory compliance. The case thus provides useful context for understanding the broader implications of parallel importation in Nigeria.

3.5 **Benefits of Parallel Import of IP-Protected Goods**[19]

Parallel importation supports free trade and fair competition by allowing consumers to access genuine goods at lower prices through alternative distribution channels. In developing markets like Nigeria, it enhances affordability, widens product availability, and curbs monopolistic control by multinational enterprises. When clearly labeled, such imports do not mislead consumers and can increase overall market efficiency. While these advantages highlight the commercial appeal of parallel importation, the long-term implications for intellectual property protection and brand reputation in Nigeria are far more concerning.

3.6 **Dangers Caused by Parallel Import of IP-Protected Goods**

Parallel import is often referred to as the 'grey market'.[20] Grey products often resemble genuine goods but differ in quality or compliance with local safety standards, leading

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[19] *Ibid*.
[20] *Ibid* (n3).

to consumer dissatisfaction and damage to trademark goodwill. Allowing unauthorised importers to benefit from a brand's reputation without contributing to its development undermines the trademark owner's incentive to maintain high standards. Overall, parallel importation poses key risks, including loss of brand integrity, reputational harm, and disruption of established commercial relationships.

3.6.1 Disruption of Trademark Control and Brand Consistency

By allowing third parties to sell genuine goods without authorization, parallel importation interferes with established distribution systems and pricing structures. This weakens brand consistency, quality control, and the overall value of the trademark as a trusted symbol.

3.6.2 Infringement of Intellectual Property and Contractual Interests

Parallel imports often violate territorial and contractual limits set by IP owners, leading to potential breaches of license agreements and loss of economic benefits. Such actions expose brand owners to reputational harm and diminish the exclusivity of their rights.[21]

3.6.3 Brand Dilution and Reputational Risk

Parallel imports often vary in packaging, labeling, or product specifications for different markets. When consumers encounter these differences, they may perceive them as flaws in the brand itself. This can lead to loss of confidence, weaken brand distinctiveness, and damage the reputation that trademark protection seeks to preserve.

3.6.4 Loss of After-Sales and Warranty Control

Parallel imports bypass official service and warranty structures, leaving consumers without authorized support. When issues arise, brand owners often face misplaced complaints, resulting in damaged reputation and weakened consumer confidence.

3.6.5 Discouraging Investment and Weakening Distribution Networks

The influx of cheaper parallel imports undermines the efforts and investments of authorized distributors, discouraging further spending on marketing and

[21] *Ibid*.

compliance. Over time, this reduces brand presence, innovation, and job creation within the local market.

3.6.6 **Regulatory and Compliance Risks**

Products imported through parallel channels may not meet local labelling, safety, or regulatory requirements. Even though the goods are genuine, they can expose the trademark owner to liability, product recalls, or regulatory sanctions, especially in sectors like pharmaceuticals, food, or electronics.

4. Policy Implications and Recommendations

The issue of parallel importation in Nigeria sits at the intersection of intellectual property protection, consumer welfare, and trade policy. The absence of a clear legislative position on the *exhaustion of rights* principle under the IP regimes creates uncertainty for both rights holders and importers. This ambiguity has left enforcement authorities, including the Nigerian Customs Service (NCC) and the Federal Competition and Consumer Protection Commission (FCCPC) to operate within grey areas, where the legality of parallel imports often depends on discretionary interpretation rather than explicit statutory guidance.

To achieve a balance between market access and intellectual property protection, Nigeria's policymakers must address several key policy considerations:

4.1 Amendment of IP Laws

Nigeria's current legal framework, such as the *Trade Marks Act* and the *Copyright Act* do not explicitly state whether Nigeria follows a national, regional, or international exhaustion regime. This gap fuels disputes and weakens IP enforcement with regards to exhaustion of rights. A legislative amendment to the different IP laws should clearly define the country's exhaustion policy. Adopting a national exhaustion regime would give trademark owners greater control over how their products enter the Nigerian market. This approach strengthens consumer protection flowing from quality control regulatory compliance, and IP enforcement mechanisms

The existing Trade Marks Act and the *Industrial Property Commission (IPCOM) Bill* are silent on the exhaustion of rights with respect to trademarks. However, the IPCOM Bill introduces important clarity in other areas. The Bill[22] expressly adopts an international exhaustion principle for patents and industrial designs. These provisions state that the rights conferred by a patent or design do not extend to "*an act done in respect of a*

[22] Sections 112(3)(f) and 114(2)(b) of the *Industrial Property Commission (IPCOM) Bill.*

product covered by a patent (or design) after the product has been lawfully sold in any country." This language is significantly clearer and more progressive than what is found in the current *Patents and Designs Act*, which is widely interpreted as adopting a domestic or territorial exhaustion approach.[23]

Passing the Bill into law would therefore promote legal certainty, support stronger IP enforcement, and create a more competitive and investor-friendly business environment.

4.2 Foster Stronger Collaboration Between Agencies

Effective control of parallel imports requires coordination between key agencies, notably the Trade Marks Registry, Federal Competition and Consumer Protection Commission (FCCPC), Nigerian Customs Service (NCS) National Agency for Food and Drugs Administration and Control (NAFDAC), and Standards Organisation of Nigeria (SON). These bodies should develop joint operational guidelines for handling suspected cases of unauthorised importation, ensuring both consumer protection and IP enforcement are considered.

4.3 Enhance Border Enforcement Systems

The Nigerian Customs Service plays a crucial role in preventing the unauthorised entry of goods that infringe IP rights. However, in practice, customs officers often distinguish only between counterfeit and genuine goods, not between authorised and unauthorised imports. Customs regulations should be revised to allow Customs to detain parallel imports pending verification. This system, already used in several jurisdictions, would help brand owners protect their distribution networks more effectively.

However, for this system to function effectively in Nigeria, a formal IP rights recordation or prior-notification mechanism would be required. IP owners would need to register their trademarks with Customs and provide details of authorised distributors, approved supply chains, and product identifiers. This information would enable Customs officers

[23] John Onyido, and Others, 'The Industrial Property Commission Bill (IPCOM) and the New Trade Marks Bill: Highlights, Issues and Recommendations' *Global Law Experts* available at <https://globallawexperts.com/the-industrial-property-commission-bill-ipcom-and-the-new-trade->, accessed, 18th November 2025.

to quickly assess whether an incoming shipment is authorised or potentially a parallel import. Such recordation systems are already operational in several jurisdictions and have proven effective in helping brand owners protect their distribution networks and maintain market integrity. Implementing a similar framework in Nigeria would significantly strengthen border enforcement and reduce the prevalence of parallel imports.

While there is no provision for formal customs recordal in Nigeria, rights holders engage in informal customs recordal, which includes training customs officers on how to identify genuine products and distinguish them from counterfeits as well as depositing relevant materials with the customs officers to aid in identifying counterfeit goods.[24]

4.4 Advocating Strategic Brand Protection Among IP Owners

IP owners and distributors should go beyond relying solely on statutory protection. They are advised to register their marks in all relevant classes to cover product variations, actively monitor their supply chains, and collaborate with third-party logistics providers to identify unauthorised distribution channels. In addition, they should educate consumers about the risks associated with parallel imports, particularly in relation to product quality, warranty coverage, and after-sales support.

5. Conclusion

While safeguarding the rights of brand owners remains essential, regulators must also ensure that enforcement measures do not hinder market competition or lead to excessive pricing. A balanced policy approach that curbs harmful parallel imports but permits reasonable market access in the interest of consumers will foster a more equitable and sustainable commercial environment. Clear legislative guidance, effective regulatory mechanisms, and stakeholder collaboration are key to achieving this equilibrium, ensuring that Nigeria's market remains competitive, transparent, and aligned with international best practices.

Nigeria should adopt a national exhaustion policy for trademarks and copyrights, under which IP rights are exhausted only after the first domestic sale. This would enable rights holders to control distribution, maintain product quality, and prevent distortions from unauthorised imports. While the IPCOM Bill proposes international exhaustion for patents and designs, a national exhaustion approach for trademarks and copyrights

[24] European Union Intellectual Property Helpdesk. (n.d.). *IP Country Fiche: Nigeria*. European IP Helpdesk. Available at: European IP Helpdesk website, available at https://intellectual-property-helpdesk.ec.europa.eu/system/files/2022-02/IP-Country- accessed on 24th November 2025.

better suits Nigeria's market, where enforcement gaps and parallel imports are prevalent. It ensures brand integrity, protects domestic distribution, and allows consumers continued access to genuine, high-quality goods.

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