ASIAN PATENT ATTORNEYS ASSOCIATION
ANTI-COUNTERFEITING STANDING COMMITTEE

SPECIAL TOPIC REPORT – PAKISTAN GROUP
PROTECTION OF PRODUCT SHAPES / CONFIGURATIONS

Position stated as at 30 October 2026

EXECUTIVE SUMMARY

Pakistan affords several potentially overlapping, but not interchangeable routes for protecting product shapes: registered industrial designs, registered shape marks, copyright in qualifying artistic expression, passing off, and deceptive-marketing proceedings for fraudulent imitation of packaging or trade dress. A mere resemblance in the shape of a commercial article is not automatically unlawful. The claimant must establish a subsisting right or conduct that misrepresents commercial origin or satisfies the applicable statutory test.

The gap identified by the Committee requires one important qualification in Pakistan: section 3(3) of the Registered Designs Ordinance, 2000 provides a 12-month grace period for disclosures attributable to the applicant/predecessor, or third-party abuse, subject to the statutory conditions and supporting evidence. Thus, a post-launch design filing may still be possible within the protected window; it is not available indefinitely.

Where that window has passed and the product's bare shape has not become distinctive, the strongest alternative is often a fact-specific passing-off claim or a complaint under section 10(2)(d) of the Competition Act, 2010 concerning confusing packaging/get-up, rather than asserting a monopoly over a utilitarian product configuration. Copyright can assist only if original artistic subject matter survives the industrial-design interface, particularly the more-than-50 industrial reproductions limitation in section 12 of the Copyright Ordinance, 1962.

1. PROTECTION UNDER COPYRIGHT, UNFAIR COMPETITION AND PASSING OFF

1.1 Registered designs and shape marks: the starting point

Registered designs. Sections 2, 3, 7 and 8 of the Registered Designs Ordinance, 2000 protect new or original visual features of shape, configuration, pattern or ornament applied to articles. Features dictated solely by technical and functional considerations are excluded. Prior publication anywhere in the world ordinarily defeats novelty, subject to the 12-month exception in section 3(3). Registration lasts ten years and may be extended for two further ten-year periods (up to 30 years in all). The Registered Designs Rules, 2023 permit multiple representations, including three-dimensional modelling; rule 11(1)(f), however, excludes "Trademark and trade-dress" as such from design registration. The application must therefore identify the protectable industrial design, not merely claim trade dress.

Three-dimensional trademarks. A shape can in principle function as a trademark where it is capable of graphical representation and distinguishes one undertaking's goods or services. Section 14(1) of the Trademarks Ordinance, 2001 recognizes acquired distinctiveness as a possible answer to specified objections. Section 14(2) independently prohibits registration of shapes resulting from the nature of the goods, necessary to obtain a technical result, or giving substantial value to the goods. In practice, a shape unaccompanied by a badge of origin may require substantial evidence that Pakistani buyers perceive the shape itself as indicating source; a registered label or word mark does not automatically confer exclusivity over the unregistered physical shape.

1.2 Copyright in the artistic features of a product

Section 2(c) of the Copyright Ordinance, 1962 includes sculptures, drawings and works of artistic craftsmanship in "artistic work"; the legislation does not create a general, freestanding copyright in every useful product shape. Copyright may subsist in an original sculptural form, decorative artwork, surface pattern, or independently protectable artistic element, irrespective of whether the finished article is useful. Copyright arises without compulsory registration, although registration can assist proof of authorship and ownership. Purely functional contours, mechanical solutions or common configurations should not be assumed copyrightable.

Important industrial-reproduction qualification. Section 12(1) excludes copyright in designs registered under the former Patents and Designs Act, 1911; section 12(2) provides for cessation of copyright where a design capable of registration but unregistered has been reproduced more than 50 times by an industrial process with the owner's authorisation. The statutory text continues to refer to the 1911 Act despite the later Registered Designs Ordinance, 2000. Accordingly, the precise interaction between the old wording and current design regime should be tested in a particular dispute, but section 12 is a substantial risk to relying on copyright over mass-produced commercial shapes. Rule 11(3) of the Registered Designs Rules, 2023 expressly addresses the industrial-multiplication concept.

1.3 Passing off and unfair competition

Passing off: The common-law action survives under section 46(3) of the Trademarks Ordinance, 2001, and section 17(4)(a) recognises prior passing-off rights in opposing registration. A rights holder may pursue a distinctive unregistered get-up, including packaging shape, if it can prove goodwill or reputation attaching to that presentation in Pakistan, a misleading representation by the defendant and actual or probable resulting damage. Evidence of the product's market presence, consumer recognition and the overall visual impression is critical. Passing off does not protect a novel idea or shape simply because it was copied.

Competition Act: Section 10(2)(d) of the Competition Act, 2010 prohibits deceptive marketing through the fraudulent use of another undertaking's trademark, firm name or product labelling or packaging. The Competition Commission of Pakistan (CCP) interprets this to encompass confusingly similar trade dress and packaging. The Supreme Court has confirmed that the phrase is not limited to exact copying, and a registered trademark is not indispensable for the statutory prohibition.

2. ENFORCEABILITY: ADMINISTRATIVE, CIVIL AND CRIMINAL ROUTES

Legal ground	Administrative/regulatory	Civil proceedings	Criminal proceedings
Artistic copyright	Customs route where an enforceable copyright claim meets the border criteria; platform IP notice.	IP Tribunal: injunction, damages/account of profits; urgent protective/evidence orders where justified.	Knowing infringement may attract section 66 of the Copyright Ordinance; mere functional shape copying does not.
Passing off / get-up	No general registration-based "shape copying" offence. CCP may act where deceptive packaging is proved.	Passing-off relief for goodwill, misrepresentation and damage; damages and interim/permanent injunctions.	Passing off by itself is ordinarily civil; separate deceit/mark offences require their own elements.
Section 10(2)(d), Competition Act	CCP inquiry and orders to cease/modify deceptive marketing; regulatory penalties following statutory process.	Does not itself confer a design monopoly; other civil rights may be pursued in their proper forum.	A CCP order is regulatory, not an automatic criminal conviction for imitating a shape.
Registered	Customs assistance depends	Designs: section 8;	Trademark/false-trade-

design / 3D mark	on a valid enforceable right and the applicable procedural route.	registered trademarks: sections 39–46, including injunction/damages.	description offences where statutory requirements are met; design copying alone is not generally a stand-alone criminal offence.

Forum and proof:

(a) The Intellectual Property Organization of Pakistan Act, 2012 establishes IP Tribunals for civil IP infringement proceedings and offences under IP laws (sections 15–18).
(b) CCP enforcement remains within its separate statutory framework.
(c) For copyright, sections 56, 60, 60A and 66 of the Copyright Ordinance set out infringement, civil, urgent and penal mechanisms respectively.
(d) For passing off, an appropriate court must be satisfied that the claim concerns misrepresentation and goodwill, rather than an attempt to restore an expired or unregistered design right.

3. RELEVANT PAKISTANI PRECEDENTS

3.1 A. Rahim Foods (Pvt.) Ltd. v K&N's Foods (Pvt.) Ltd. – PLD 2023 SC 516

The Supreme Court (10 May 2023; Civil Appeals Nos. 444 and 445 of 2017) examined packaging and labelling alleged to imitate the complainant's frozen-food products. Interpreting section 10(2)(d), the Court held that "fraudulent use" extends to deceptively similar, as distinct from only identical, labelling or packaging, and that the provision reflects passing-off principles. The Court also explained that absence of trademark registration did not preclude protection under this provision. This is the clearest reported Supreme Court authority for a post-launch challenge to copycat packaging; it should not be extended into a rule that any copied three-dimensional product body is unlawful.

3.2 Mehran Ghee Mills v Chiltan Ghee Mills – 2001 SCMR 967

The Supreme Court recognized that passing off may be brought independently of trademark infringement, whether or not the sign is registered. The inquiry includes whether the defendant's mark, name or get-up leads the public to take its goods for those of the claimant. The decision assists a claimant whose containers or overall presentation have acquired source-identifying significance even where a standalone shape registration is unavailable.

3.3 Hilal Foods v Danpak Food Industries – 2022 CLD 511 (Sindh High Court)

In an injunction dispute over FRESH UP and GET FRESH bubble-gum packaging (order dated 16 August 2021), the Court did not treat similar colour schemes as dispositive: elements associated with common flavour conventions had limited source-identifying force. This illustrates the danger of presenting generic product colours or commonplace packaging features as exclusive trade dress.

3.4 Dabur India / Asian Consumer Care Pakistan v F.S. Cosmetics – CCP order of 19 December 2025

The CCP dismissed a deceptive-marketing allegation concerning Layla Amla and Dabur Amla hair-oil packaging, identifying material differences in leading presentation characteristics. The order is reported as 2026 CLD 708 but was decided in December 2025. It is a useful counter-example: lookalike allegations require an evidence-based comparison of overall get-up and consumer confusion, not an inference of liability from a shared product category or some similar features.

Scope of precedent. The reported authorities above principally concern packaging, signs or the overall "get-up", not an unbranded chair, bottle, puzzle or other utilitarian product geometry in isolation. No verified reported Pakistani decision was identified in this review establishing a general right to prevent copying of such an unregistered product shape on copyright, passing-off or competition grounds alone.

4. CUSTOMS AND E-COMMERCE ENFORCEMENT

4.1 Customs / imports

The Pakistan Customs Directorate General of IPR Enforcement operates within the Customs Act, 1969 and the Customs Rules, 2001. S.R.O. 170(I)/2017 inserted Chapter XXVIII (rules 678–686): its definition of infringing goods includes copyright, trademarks and registered designs, but rule 680(1) provides the direct application procedure for copyright and trademarks; rule 680(2) refers design and patent claims to the course prescribed in their respective laws. Rule 678 excludes parallel/grey-market imports and de minimis non-commercial consignments.

For the direct right-holder application under rule 680, a properly documented complaint, notarised undertaking and a bank guarantee (PKR 500,000 or 25% of the suspected goods' value, whichever is higher, under the cited rule) are required. Customs also has a prescribed referral mechanism under rule 682. The Sindh High Court in Suit No. 676 of 2019 (order dated 2 August 2019) held an irregular detention and seizure unlawful where mandatory steps were not followed; its analysis reinforces the need for timely, properly documented complaints.

Accordingly, border intervention is strongest where the imitation carries a registered source-identifying mark or protected packaging copyright, coupled with clear genuine-versus-counterfeit comparison material. Where the only allegation is similarity of an unprotected, unbranded shape, detention is considerably less secure.

4.2 Online marketplaces and digital listings

Pakistan does not have a single dedicated statutory "notice and stay-down" mechanism tailored to imitation of unregistered physical shapes. Marketplace-operated IP complaint systems may nevertheless remove infringing listings. For example, Daraz Pakistan states that claims concerning infringement can be lodged through its IP protection form or at ipr@daraz.com, with identification of the claimant, infringing listing and supporting evidence. Daraz's seller terms also prohibit counterfeit products and infringement of third-party IP. This is a private-platform procedure and not a judicial finding of infringement.

Practical notices should identify the precise right relied upon (registered mark, artistic copyright, registered design or demonstrable passing off), supply registration certificates or dated creation/ownership evidence, side-by-side photos, URLs, seller IDs and test-purchase records. A platform may decline a bare assertion that an unregistered shape has been copied where no recognised IP right or misleading trade dress is shown. Policy recommendations on counterfeit goods in Pakistan's e-commerce policy documents should not be presented as freestanding mandatory infringement rules.

5. STRATEGIES WHERE A PRODUCT IS ALREADY ON THE MARKET

Step 1 – Audit the design deadline. Establish the earliest global publication and Pakistani or priority filing date. Examine whether the 12-month disclosure exception in section 3(3) remains open and preserve evidence of authorship, first disclosure and who made it. If so, file a design application promptly identifying non-functional visual features. Do not assume commercial use destroys novelty immediately.

Step 2 – Separate shape from indicators of origin. Register the product/house word marks, logos and distinctive packaging elements independently. Consider a shape mark only when the shape itself can be shown to identify a single commercial source and no section 14(2) functional/nature/substantial-value

exclusion applies. Use consumer surveys, historical packaging, retail and promotional evidence, sales, advertising and trade testimony to demonstrate secondary meaning.

Step 3 – Preserve any artistic work. Audit original ornamental elements, patterns, drawings or sculptural works and document first ownership, assignments and manufacturing quantities. Where reliance is placed on copyright in a mass-produced design, analyse section 12 before threats or enforcement.

Step 4 – Build a deception-focused case. For a copycat product, compare total appearance including silhouette, packaging, text, colours, layout, placement of distinctive details and sales channel. Obtain side-by-side physical specimens, receipts, consumer statements, trade evidence and evidence of actual confusion where available. Invoke passing off and/or CCP section 10 where the facts show misleading commercial origin or fraudulent copying of packaging, not merely product similarity.

Step 5 – Parallel channel interventions. File targeted marketplace notices and send evidence packs to authorised customs contacts when the necessary rights and procedural conditions are satisfied. Where fraud, fake marks or knowing copyright infringement is separately evidenced, consider the corresponding criminal provisions; otherwise prioritise civil/regulatory relief rather than over-pleading a criminal shape-copying offence.

6. DIFFICULTIES EVEN WHERE DESIGN OR 3D TRADEMARK RIGHTS EXIST

A valid design is not self-enforcing. The rights holder must establish that the impugned article carries the registered design, or one not substantially different, on the relevant article and within the registered term. Differences in the overall visual impression, a narrow registration drawing, technical/functionality objections, challenge to novelty or ownership, and compliance with the section 8 temporary-injunction threshold can impede relief. Registration does not convert functional engineering into exclusive design subject matter.

A shape-mark registration is also subject to its defined representation and statutory scope. Functional/natural/value-adding shape exclusions under section 14(2), proof of actual shape-as-mark use, questions of confusion or association and generic/commonplace features complicate enforcement. Combining the shape with a label may make the composite mark registrable or enforceable without necessarily securing exclusivity over the bare geometry.

There is a further conceptual difference between a design claim (visual novelty and defined registration) and passing off/competition claims (consumer confusion, misrepresentation or fraudulent packaging use). A claimant cannot bypass the requirements of one regime simply by relabelling a failed design claim as unfair competition. Conversely, a competing product with a different name may still raise a passing-off issue if its overall presentation deceptively conveys the same commercial origin.

7. APPLICATION TO THE COMMITTEE'S ILLUSTRATIVE PRODUCTS

Illustration from committee brief	Most realistic Pakistan analysis
Beverage / cosmetic bottle	Design rights for ornamental contours if new/grace period; shape mark if proven as source indicator; passing off/CCP for confusing bottle-plus-label get-up.
Chair / handbag / cooler	Original non-functional aesthetic shape may support design protection; distinctive fabric patterns or artistic details may support copyright subject to section 12; a bare utilitarian profile remains difficult.
Cube puzzle / eraser	Mechanical or functional geometry is weak for design/shape-mark exclusivity; protect source-identifying branding, artwork or a distinctive non-functional presentation.
Watch / motorcycle	Caution with technical and standardised parts; consider ornamental aspects,

	composite trade dress, branding and protected promotional imagery.
Service-related 3D symbol	Must function as a trademark for services; protection does not arise merely because the object is three-dimensional.

8. CONCLUSION

For Pakistan, the principal bridge across the design-to-trade-mark protection gap is evidence-based passing off and section 10(2)(d) action against deceptive get-up. It is strongest where a recognisable commercial presentation is copied and weakest where the rival reproduces only the ordinary or functional contours of a product. Rights holders should treat the statutory 12-month grace period, artistic-copyright limitations, the distinction between product configuration and source identification, and the formal requirements for border enforcement as central elements of their anti-counterfeiting strategy.