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Re: 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List). Docket Number: USTR-2022-0010

Submitted electronically at: www.regulations.gov

TRACIT is an independent, private sector initiative to drive change to mitigate the economic and social damages of illicit trade by strengthening government enforcement mechanisms and mobilizing businesses across industry sectors most impacted by illicit trade. Our members are multinational companies.

The Transnational Alliance to Combat Illicit Trade (TRACIT) commends the U.S. Trade Representative (USTR) for continuing its in depth annual review of Notorious Markets for Counterfeiting and Piracy. Your reports shine a spotlight on online and physical markets that facilitate the trade of fake and substandard goods that threaten consumers' health and safety; exploit workers who are manufacturing and distributing counterfeit and illicit products; deprive legitimate businesses of sales revenues that could be invested in jobs and innovation and harms their reputations with look-alike fake products; rob governments of tax revenues that could be invested in necessary government and community services; and line the pockets of criminal organizations.

It is noteworthy that the 2021 Notorious Markets Report (Report) identified 42 online markets that had been reported to engage in or facilitate substantial trademark counterfeiting or copyright piracy, up from 39 reported in 2020. Since USTR began publishing the list in 2016, the list of platforms is getting longer, not shorter.

These Reports drive change. Our members' experiences are that some platforms identified as a Notorious Market will engage in a flurry of activity to improve their procedures, along with public relations campaigns to help shape a vision that significant progress is made to address concerns raised in the Report.

For some on the 2021 list, some improvements are significant, but are not enough to stem the flow of counterfeit and illicit products into American homes. **We urge USTR to list the online marketplaces presented in these comments in its 2022 Report to keep the pressure on these ecommerce and social media platforms to better vet their sellers and bar bad actors, disclose more information about third-party sellers to online shoppers, quickly remove counterfeit and stolen product listings, and work with brand owners and law enforcement to pursue violators. Noteworthy, Amazon, Facebook and Instagram are prime hotspots for counterfeiters and should be added to this year's list.**

TRACIT has joined many companies pursuing Congressional passage of the SHOP SAFE Act and INFORM Consumers Act to establish better and uniform rules for secure and safe conduct of e-commerce in the United States (US) and hold online marketplaces accountable for keeping bad actors and fraudulent products off their shopping malls. It is past time to stop relying on voluntary policies and inadequate enforcement that varies amongst ecommerce sites.

Growth in counterfeiting on Social Media

In 2020, Social Media as a channel for e-commerce had unprecedented growth fueled by the pandemic; consumers used social media to make purchases driving \$475 billion in revenue. This trend continues to gain traction and is estimated to reach \$3 trillion by 2028.

Fraudulent advertising on social media platforms, e.g., Facebook Marketplace and Instagram, is a devious form of online fraud intended to route social media users to rogue websites set up to sell counterfeits, cultivate bait and switch scams, steal personal financial information or otherwise put at risk the internet's growing population of social media users. **These may American based platforms, but they serve over 1.4 billion users worldwide, equivalent to over 3 times the entire population of the US.**

In an effort to warn consumers, educate policymakers and encourage online platforms to improve system weaknesses, the Transnational Alliance to Combat Illicit Trade (TRACIT) and the American Apparel and Footwear Association (AAFA) published in July 2020 the first public report documenting the emergence of fraudulent advertising on popular online social networking platforms: *Fraudulent Advertising Online-Emerging Risks and Consumer Fraud* ([TRACIT Report: Fraudulent Advertising Online Emerging Risks and Consumer Fraud - Transnational Alliance to Combat Illicit Trade](#)).

The 2020 Fraudulent Ad Report showed that fraudulent advertisements on Instagram and Facebook targeted more than 70 major international brands, some of which received up to a quarter of a million views before they were detected.

Published in the midst of the COVID-19 pandemic, the report came at a critical time because circumstances around the pandemic amplified risks to online consumers.

1. Lock-down consumers were going online to shop or socialize more than ever before.

2. Social media was becoming more significant as a commercial tool, with more than half of online consumers reporting that their purchasing decisions were influenced by advertising on social media.

On this backdrop, criminal actors were publishing fraudulent advertising on social media platforms that were growing both in the number of users and the influence they held on purchasing decisions. Exposure to online fraud rose as consumers—unaware that their personal, social media feeds had been hijacked—followed fraudulent adverts to websites established for the sole purpose of selling fakes.

Unsurprisingly then, the US Federal Trade Commission reported that the number of social media related scams had more than tripled, with online shopping topping the list.¹ Similar trends were emerging in the UK, where it was reported that online shopping scams, including people unknowingly buying from rogue websites selling fakes, jumped by 65% over the year to April 2021, as criminal actors took advantage of the fact that locked-down consumers were buying more items via the internet.

The 2020 Fraudulent Ad Report generated some attention by government agency watchdogs in the US, EU and UK, who flagged the problem as a risk to consumers. In doing so, they committed to monitor counterfeits being advertised and sold on social media and even suggested some remedies for platforms to eliminate scam advertisements. There were also some legislative initiatives, such as the one put forward by US Senator Warner to bring greater transparency to the shadowy world of online advertising, including fraudulent advertising on popular social media platforms.

Nonetheless, these efforts and those of TRACIT, AAFA and affiliated companies to fight fraudulent advertising have not been enough. Two years later, companies are reporting an epidemic of fraudulent advertising, with the problem showing no signs of slowing down. The number of brands impacted by fraudulent advertising listed in the 2020 Report has increased by nearly 50 percent, from 70 to 100. Moreover, companies have discovered that fraudulent adverts are spreading beyond just Facebook and Instagram to virtually all the main platforms, including Google, Yahoo, Bing, LinkedIn, Douyin, WeChat, Baidu, YouTube and TikTok.

In the coming months, TRACIT will publish an update to the 2020 Report and will reiterate the urgent need to block fraudulent advertising, by showing the continued growth in the incidence of the problem, sharing renewed views from companies, consumer groups and government watchdogs who have become more acutely aware of the problem, and to refresh the recommendations for action by social media platforms.

Our assertions are as salient now as they were in 2020:

The lack of adequate policies and procedures to verify an advertiser/user's true identity and to conduct the necessary vetting and due diligence during the onboarding process is a system weakness across multiple Internet-based platforms for social networking. This enables infiltration of social media accounts by fraudulent advertisers and exploitation of social media users. There is also little protection from repeat offenders.

Recommendations:

- Enhance “Know Your Business Customer” protocols by gathering and verifying the identity of advertisers, especially when collecting revenue from the advertisement.
- Perform a (more) rigorous review of each advertisement prior to publication, to ensure that it meets terms of service conditions and is not fraudulent.
- Implement (more) effective reactive measures against fraudulent advertisers to prevent further exploitation by the same criminal actors and to prevent republication of the same advertisements.
- Improve methods for consumers and rights holders to report and share information about fraudulent advertisers.
- Establish requirements for an e-business license for advertisers. Advertising has long been regulated by governments to ensure that messages are truthful and do not mislead consumers. The same controls should be applied to online advertising.

In addition to these recommended actions for social media platforms, legislators should establish clear requirements for platform managers and set forth accountability measures. In this way, legislation and enforcement actions by social platforms can complement each other, with platforms taking the necessary action knowing that they will be held accountable if they fail to do so. The five recommendations above can certainly provide a basis. Similarly, proposed legislation in the US calling for greater transparency and verification of online sellers could be extended to advertisers.

Unfortunately, the systemic weakness that enables today’s problem with fraudulent advertising appears to have been around since at least 2012, when in a regulatory filing Facebook reported that 83 million accounts, or 8.7% of its users, were fake. The filing described three categories of fake accounts: duplicate, misclassified and “undesirable.” The 14.3 million accounts that were classified “undesirable” were defined as those that participate in illicit or offensive activity such as scams, spam or crime.

We urge USTR to add Facebook and Instagram to the 2022 Notorious Markets Report

Notably, TRACIT is not alone in this position, and we take this opportunity to remind USTR of other trade associations, which also nominated Facebook and Instagram for inclusion in the 2021 USTR Notorious Markets List. Arguments common to multiple submissions included: the high numbers of counterfeits available/offered on these platforms, the lack of proactive measures, and the lack of seller vetting. Below is a selection of comments taken from the submissions of these organizations, all of which point to an increasing number of counterfeits and frauds:

1. The American Apparel and Footwear Association (AAFA):

“Over the last year, AAFA brands report that the volume of counterfeits across the platform has not decreased. In fact, members report that they are still submitting just as many take down notices – often in the thousands – to Facebook every month. One member stresses:

“We continue to report approximately 3,000 notices – whether that is sellers, groups, pages, marketplace listings, infringing ads, dupe influencers – every month. It is unclear, given that our reporting notices have not decreased, whether the platform’s programs are effective at reducing the number of offered counterfeits and removal of counterfeiters from the platform.”

2. International Anti-Counterfeiting Coalition (IACC):

“Unfortunately, the volume of illicit traffic seen on the platform appears to be significantly increasing, a fact borne out by rights-holders’ own investigations and by the volume of complaints they’re seeing from consumers who have been duped into buying fakes. While Facebook professes to have a zero-tolerance policy against counterfeits; in practice the platform appears to do little or no advanced screening of sellers, takes a largely reactive approach to ongoing monitoring for violations, and is overly reliant on rights-holders’ own efforts to monitor and report on illegal activity.”

3. Anti-Counterfeiting Educational Foundation (ACEF):

“Separate and apart from the pop-up ads, Facebook’s social media website hosts its Facebook Marketplace, an online marketplace service that enables Facebook users to buy and sell property to each other. Facebook Marketplace had one billion active users as of Q1 2021. Based on its work with law enforcement officials ACEF believes that unsuspecting victims have lost millions of dollars in purchasing fake collectible and bullion coins and bars permitted to be listed on Facebook Marketplace. Facebook routinely allows these misleading listings to be posted on its website even though distribution of illegal replica coins not marked “COPY” is in violation of the Hobby Protection Act as amended by the Collectible Coin Protection Act. If Facebook’s legal and compliance staff (or its artificial intelligence technology perused these listings, telltale signs of counterfeiting would be abundantly clear, and the trail would lead to only a handful of the bad actors who pay Facebook to enable their criminal activities.”

4. Intellectual Property Owner’s Association:

“There has been extensive media coverage of fake accounts on Facebook, particularly following Facebook’s January 2021 announcement that it removed 2.2 billion fake accounts pushing misinformation. But Facebook, particularly outside the U.S., also has a large and growing problem with the sale of fake products. By its own estimates, there are one billion active users on Facebook Marketplace, making it among the largest online marketplaces in the world. IPO members report that Facebook Marketplace is overrun with counterfeit sales, including both goods explicitly being sold as counterfeits and counterfeit goods being passed off as the real thing. Our members report increasing numbers of complaints from consumers who have been duped on Facebook Marketplace.”

5. Union de Fabricants (Unifab, France):

“...the quantity of products is still high and there are limits on the process as: issues related to look-alikes pages using trademarks; use of logos and images without pre-authorization of right holders; issues of trademark violation; time consuming copyright reports requiring original source URL for each infringement; issues related to Sponsored Ads; etc. It is to be

highlighted that brand owners want more proactive measures, transparency on Facebook’s processes and more effective reporting tools.”

Recommendations for 2022 USTR Notorious Markets List

The following are TRACIT’s recommendations for the 2022 Report. Some platforms have made improvements, as noted, but remain on our list. We have added Amazon, Facebook, Instagram, Mercado Libre and Wildberries.

Name of Platform	Offense	Where
Facebook	#1 source for B2C sales; made improvements over years but still ranks high in sale of counterfeit goods via FB Marketplace. Cyber criminals and organized retail crime gangs choose the platform for same reason legitimate businesses do	Owned by Meta, based in the US; global reach. Has 2,934 billion users, 1.968 billion daily (Meta Platform Inc, Investor earnings report for 2Q 2022 – July 2022); 500,000 sellers (Forbes) in the US; generated about \$27.38 billion in 3 rd -party sales in Q2 2022; Average daily sales of \$1.29 billion (Statista) FB Marketplace is available in 150+ countries and territories
Instagram	Counterfeit and illicit products are sold via influencers and celebrities; fraudulent ads linking to websites with counterfeits	Owned by Meta, based on its global advertising audience reach numbers, has 200 million business accounts; 1.44 billion active users each month
Amazon	Amazon has invested to improve vetting 3 rd -party sellers, remove counterfeits, communicate with brand owners and law enforcement but more progress is necessary.	Based in the US, but is effectively a worldwide marketplace with many national operating subsidiaries. This makes Amazon as much a foreign marketplace as it is American, facilitating cross-border trade of counterfeits into markets around the world, not just the US. Features over 9 million

		sellers worldwide; Insider investigation cite 3 rd party sellers generated \$390 billion in sales on Amazon in 2021 – over half of Amazon’s total retail revenue
Mercado Libre	Mercado Libre continues to take significant steps to better vet its sellers and keep counterfeit products off its platform but there is continued work to be done	Based in Uruguay, is largest ecommerce platform in Latin America, is known as the “Amazon of Latin America”; traffic across all of its domains in the region totaled almost 447 million visits (Statista)
INDIAMART	2 nd largest B2B ecommerce market allowing 3 rd party counterfeiters	India, reach is worldwide
ALIEXPRESS	Has Alibaba tools; increase in known counterfeiters are sellers, lenient penalty system must be improved	Owned by Alibaba, based in China. Has 25 million site visits in Latin America (Statista)
Shopee	Ecommerce marketplace with high level of counterfeits, ineffective counter measures	Owned by Sea, headquartered in Singapore with country-focused platforms serving Southeast Asia, Taiwan, Latin America, Europe; doesn’t ship directly to UK, US but offers a third-party mail forwarder; 1 billion euros in turnover; in second quarter 2021, generated \$15 million for its third-party sellers (Ecommerce News Europe)
WECHAT (WEIXIN) Ecommerce Ecosystem	Largest platform for counterfeit products; lacks effective controls	China
Wildberries	50,000 brands; 780,000 are placed daily by 7 million visitors; 27+ million regular customers; 100 million	Based in Russia; operates in 19 countries, including US, UK, Germany, France, Italy, Latvia, Belarus, Poland,

	<p>goods stored in warehouses and may be delivered to 7,500 delivery points; (World Trademark Review, Aug. 2021); high level of counterfeits; lacks brand protection policy and controls; slow to take down fake products</p>	<p>Slovakia, Armenia, Israel, Kazakhstan,</p>
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Workers are Exploited to Make Counterfeit Goods Sold in Online and Physical Marketplaces

We also commend the USTR for recognizing the serious dangers to workers who are exploited and forced to create, manufacture and distribute counterfeit and illicit products. As noted in your 2021 Report, TRACIT conducted a study and produced a report in December 2021: *The Human Cost of Illicit Trade: Exposing Demand for Forced Labor in the Dark Corners of the Economy* ([Featured Report: The human cost of illicit trade - Transnational Alliance to Combat Illicit Trade \(tracit.org\)](#)). TRACIT outlined how criminal organizations utilize forced labor in dangerous working conditions to manufacture and distribute counterfeit and illicit products outside the purview of labor regulations and government oversight.

The 2021 USTR Report devotes six pages to this human rights crisis and calls for more investigation and data on the adverse impact of the use of forced labor and child labor in the global production of counterfeits. Ending these human rights abuses will only be possible by eradicating counterfeiting and other forms of illicit trade. The Report also called for additional data to improve the understanding of how illicit supply networks operate, as well as how they recruit, use, and abuse their labor force.

The USTR is right: governments must actively gather more and better data on the incidence of forced labor in illicit operations to improve the evidence-base for national and international policy-making and standard setting. Governments must also strengthen investigative techniques to address human rights abuses in illicit trade and dismantle the organized criminal networks behind illicit trade.

- Since data is limited, and governments have not yet been successful in closing this gap, additional data collected in the field is needed to improve the understanding of how illicit supply networks operate, and how they recruit, use and abuse their labor force.
- Governments should support and build upon private sector initiatives – such as that undertaken by TRACIT – to collect intelligence from private sector investigations, raids, seizures and other measures along illicit supply chains operating in parallel to their legal equivalents.

- Game-changing technological innovations that can improve discovery and traceability of illicitly sourced product inputs need to be catalyzed. A predictive model that red flags sectors and regions at risk of labor abuse in illicit trade needs to be developed and built with the goal of strengthening law enforcement’s ability to detect, disrupt and dismantle these networks.
- Governments should build and share access to a database of known entities that engage in illicit trade of counterfeits and other products to help importers, ecommerce providers, brands, brokers, transporters, distributors, payment processors to stop the flow of illicit products at the point of origination. Starving these entities from revenues will deny the key incentive to exploit labor.

Governments must require e-commerce platforms and others in the ecosystem involved in the facilitation of the movement of counterfeit and illicit products into the homes and hands of consumers to do their part in stopping the demand for illicit products that are derived from forced labor.

TRACIT calls on the US government to renew political leadership to more effectively enforce existing international legal frameworks and to ensure the inclusion of anti-illicit trade policies in national plans to combat forced labor. Operationally, governments will need to strengthen inter-agency and interdepartmental cooperation at the national level, particularly by improving law enforcement capacities. Increased coordination across agencies responsible for law enforcement, labor, health, economy, security, finance, border control and trade will be critical for addressing the intersection between forced labor and illicit trade. Sharing information and commitments across countries on a regional and global basis will be critical to target, isolate and combat the exploitation of forced labor.

Impact on Workers and American Jobs

Below are links to excellent reports that provide statistics regarding the impact of counterfeiting on the US economy and US jobs.

US Patent and Trademark Office - [Intellectual property and the U.S. economy: Third edition | USPTO](#)

In 2019, intellectual property (IP)-intensive entities supported 62.5 million US jobs, representing 44 % of US employment. IP-intensive entities accounted directly for more than 47 million U.S. jobs; another 15.5 million jobs in other industries support IP-intensive entities to supply goods and services.

The Recording Industry Association of America – *The True Cost of Sound Recording Piracy to the US Economy*, Institute for Policy Innovation (IPI) [https://www.riaa.com/reports/the-true-cost-of-sound-recording-piracy-to-the-u-s-economy/#:~:text=The%20U.S.%20economy%20loses%20\\$12.5,and%20in%20downstream%20retail%20industries..](https://www.riaa.com/reports/the-true-cost-of-sound-recording-piracy-to-the-u-s-economy/#:~:text=The%20U.S.%20economy%20loses%20$12.5,and%20in%20downstream%20retail%20industries..)

Among its key findings: “The U.S. economy loses \$12.5 billion in total output annually as a consequence of music theft. Sound recording piracy leads to the loss of 71,060 jobs to the

U.S. economy. Music theft also leads to the loss of \$2.7 billion in earnings annually in both the sound recording industry and in downstream retail industries. U.S. federal, state and local governments lose a minimum of \$422 million in tax revenues annually due to piracy. “

US Chamber of Commerce Global Innovation Policy Center – *Impacts of Digital Piracy on the U.S. Economy*, NERA Economic Consulting, June 2019

<https://www.theglobalipcenter.com/report/digital-video-piracy/>

On-line digital piracy costs the U.S. economy almost \$30 billion and 230,000 to 560,000 U.S. jobs annually. The report finds 80% of digital piracy is attributable to streaming services.

Buy Safe America – *The Counterfeit Silk Road – Impact of Counterfeit Consumer Products Smuggled into the U.S.*, John Dunham and Associates, 2021 [Counterfeits Put Consumers at Risk, Cost Economy Billions \(buysafeamerica.org\)](https://buysafeamerica.org)

39,860 jobs in the wholesale sector and 283,400 in the retail sector were lost due to the importation of counterfeit products.

“All told, the sale of counterfeit items is expected to cost the wholesale and retail sectors of the US economy nearly 653,450 full-time equivalent jobs, that pay over \$33.6 billion in wages and benefits to US workers.

Over the last decade, two powerful trends have combined to present alarming new risks to consumers:

- Retail eCommerce is showing a 265% growth rate, from \$1.3 trillion in 2014 to \$4.9 trillion in 2021. Reports show a future of steady upward growth with no signs of decline.
- Trade in fake products has grown by 154% from \$200 billion in 2005 to over \$500 billion in 2016. Similar information collected by the U.S. Customs and Border Patrol shows that seizures of counterfeits and other illicit products at U.S. borders has increased ten-fold.

Consequently, eCommerce platforms have become vulnerable to misuse and consumers are unwittingly buying fake, substandard, unregulated, and potentially dangerous products including medicines and supplements; alcoholic beverages; cosmetics and beauty products; auto parts; cell phones and printers and accessories; chemicals and pesticides; luxury handbags and jewelry; toys; name brand clothing and accessories; and food and beverages.

Moreover, it is the poorest, most disadvantaged consumers who are most vulnerable to illicit products — but it is also these consumers who tend to be the most vulnerable to fraud and other forms of illegal activities online.

Alliance for Safe Online Pharmacies – *ASOP Global China Internet Study*, LegitScript, 2019 [Microsoft Word - The Chinese Internet Pharmacy Market \(2019\).docx \(buysaferx.pharmacy\)](#)

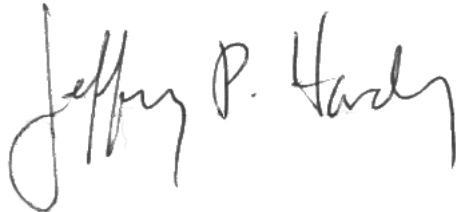
In this report, ASOP analyzes the threat of the Chinese online pharmacy market. ASOP notes 95 % of 35,000 online pharmacies operate globally, allow consumers to buy without

prescriptions, operate without a license, offer substandard, falsified and counterfeit drugs that are produced in an unregulated environment.

National Association of Manufacturers – *Countering Counterfeits: the Real Threat of Fake Products*, 2020 [CounteringCounterfeits.vF .pdf \(nam.org\)](#)

“With counterfeits making up 3.3% of total merchandise trade, the U.S. economic impacts are staggering. For 2019, counterfeiting would have subtracted nearly \$131 billion from the U.S. economy, including direct, indirect and induced economic impacts. That means \$22.3 billion of lost labor income, 325,542 fewer jobs, \$5.6 billion of lost federal tax revenues and nearly \$4 billion less in state and local tax collections.”

Sincerely yours,



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