



Transnational Alliance to Combat Illicit Trade
Statement Submitted for the Record
House Energy and Commerce Committee
Subcommittee on Consumer Protection and Commerce Hearing
on
“Buyer Beware: Fake and Unsafe Products on Online Marketplaces”
March 4, 2020

The Transnational Alliance to Combat Illicit Trade (TRACIT) applauds the House Energy and Commerce Committee’s Subcommittee on Consumer Protection and Commerce for holding today’s hearing focused on the need to safeguard consumers from fraud, exploitation and risks in an increasingly interconnected and digital world.

We respectfully request this statement be entered into the hearing record.

Who we are. TRACIT is an independent, non-profit business association driving change to mitigate the economic and social damages of illicit trade by strengthening government enforcement mechanisms and mobilizing business across 11 industry sectors most impacted by illicit trade, including human and wildlife trafficking.

Illicit traders are engaged in counterfeiting and piracy, smuggling, corruption and bribery, money laundering and tax evasion; they plunder natural resources, abuse supply chains and expose consumers to fake and potential harmful products. They violate intellectual property laws by providing fake goods under legitimate brand names; they lie and mis-label their products.

Sellers of fake and substandard products exploit the same vulnerabilities in regulatory governance and in the global supply chain – including online platforms, small package distributors including the U.S. Postal Service, transporters and payment facilitators.

Illicit trade must be stopped. It harms consumers, robs businesses and governments of revenues that could be invested in jobs and critical services, and lines the pockets of criminal and terrorist organizations.

What has changed. 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 Protection 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 phone, 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 susceptible 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.

We represent rightsholders who make it their priority to ensure that their customers have a safe and secure shopping experience — offline and online, in the U.S. and internationally. Stopping online counterfeiting is our top priority and, despite the efforts of platform operators and other intermediaries, the availability of counterfeits online is outpacing the solutions.

Culpability can be found in every corner and wildly different viewpoints have blocked progress. Arguments range from platforms aren't doing enough, to the problem is too big to control, or that regulations are outdated, and the current legal structure precludes information sharing, disincentivizes responsibility and misplaces liability.

In any case, the status quo is no longer acceptable, and a paradigm shift is necessary; new rules must be compulsory.

What must be done. There is an urgent need to address the prevalence of illicit products including counterfeits available to online consumers, and to put in place protections to safeguard them from fraud, exploitation and a variety of new online risks.

TRACIT urges Congress to build upon the work presented in the U.S. Department of Homeland Security's Report of January 24, 2020, *Combating Trafficking in Counterfeit and Pirated Goods*.

Although several of the larger online platforms have engaged in some self-regulatory approaches and have instituted programs for brand owners to enforce their intellectual property rights, they are not achieving the desired results. It is time to consider and move forward with legislative protections governing online commercial activity.

TRACIT recommends the following principles guide the development of a legislative/regulatory agenda to assure consumers buying products online are as safe as when they purchase products in brick and mortar stores.

- Online sellers must comply with the same, long-established federal health and safety regulations that govern all commercial transactions.
- Consumers are entitled to an online shopping experience that is safe and secure from fraud.
- Commercial activity connecting people through online platforms goes together with protecting those being connected.
- Profitability and responsibility must go hand in hand. Responsible business practices, combined with collaboration and innovation, can bring about powerful change in markets and societies. For example, investments by e-commerce platforms to grow marketplaces for third party suppliers must also include the research into and development of mechanisms to ensure the integrity of the marketplaces.

With respect to your Memorandum of February 28, 2020, outlining the Hearing on “Buyer Beware: Fake and Unsafe Products on Online Marketplaces,” **we wish to address discussion topic IIB, Vetting of Sellers,** and we encourage your consideration of the following:

- Require an **e-business license** for sellers engaging in intra- and inter-state commerce.
- Require online marketplaces to **perform verification** of (i) financial disclosures that can be corroborated by third parties (e.g., bank statements), (ii) physical location information that can be supported by government records or trusted third parties.
- Establish a **central registry** (ideally, managed by a highly secure, disinterested party or industry group) to maintain the licenses.
- Establish a **Foreign Supplier Verification Program (FSVP)**, such as that mandated by the U.S. Food Safety Modernization Act (FSMA), including requirements for documentation, verification, indemnity and recourse.
- **Standardize notice and takedown programs** across different marketplaces and the jurisdiction in which they are based.
- Establish a new **rewards program to incentivize online marketplaces to improve customer awareness** of documented and certified vendors that have received accreditation, such as the US Energy Star program.¹
- Legislate clear provisions to **incentivize online marketplaces to protect their customers** from counterfeit and pirated products. These requirements should outline stringent penalties and liabilities for online marketplaces that knowingly take possession of and stock counterfeit products; facilitate payments for those products; package, ship, and

¹ <https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/earn-recognition/energy-star-certification>

handle administration for selling counterfeit products; and profit from the sale of counterfeits.

- Require online marketplaces to **implement a “three strike” or similar system** that permanently bans bad actors from conducting illicit business on their platforms.
- Take into consideration the **U.S. Department of Homeland Security’s Report of January 24, 2020, “Combating Trafficking in Counterfeit and Pirated Goods,”**² which delineates several recommendations for e-Commerce platforms to undertake to tighten controls on third-party marketplaces:
 - Comprehensive "Terms of Service" Agreements
 - Significantly Enhanced Vetting of Third-Party Sellers
 - Limitations on High Risk Products
 - Rapid Notice and Takedown Procedures
 - Enhanced Post-Discovery Actions
 - Indemnity Requirements for Foreign Sellers
 - Clear Transactions Through Banks that Comply with U.S. Enforcement Requests for Information (RFI)
 - Pre-Sale Identification of Third-Party Sellers
 - Establish Marketplace Seller ID
 - Clearly Identifiable Country of Origin Disclosures

While we believe that all four of the identified topics merit discussion, we respectfully suggest that a fifth topic be added for discussion either at the Hearing or in the future: **Fraudulent online advertising: the risk to consumers, brands and advertisers.**

- Scam sponsored (paid) advertisements appearing on legitimate websites and social media platforms, are diverting consumers to illegal websites. These advertisements typically use well-known trademarks, as well as unauthorized images which are protected by copyright, templates and fake offers, to attract consumers to criminal websites selling counterfeit items or simply to defraud the unsuspecting. These ads are often hyper-targeted at relevant consumers based on specific interests, location and demographics making detection and remedy by rights holders extremely problematic.
- This situation is partly because most websites and social media platforms accept advertising without proper controls over the source of the advertiser. Without robust due diligence checks verifying the identity of who is advertising on the platform, such as

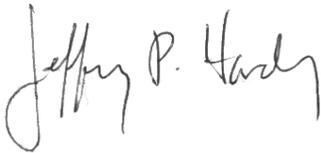
² https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf

verification of contact information (corporate registration, real name and street address), bank details, any linked or previously excluded profiles or accounts it is not certain that adverts placed will ensure a safe and secure consumer experience.

- Platforms need to confirm that any data provided by an advertiser is complete, correct and not bot-generated; and enhanced verification needs to be undertaken on the target external websites.
- Much work needs to be done to control the supply chain of online advertising, and it should be done in collaboration with the advertising industry, platforms and websites. In the meantime, focus should be given to the threat of consumer fraud posed by such scam advertising.

TRACIT stands ready to work with all stakeholders and Congress to protect online consumers. We look forward to working with you and your staff through the legislative process.

Respectfully submitted,



Jeffrey Hardy
Director-General
Transnational Alliance to Combat Illicit Trade
jeff.hardy@TRACIT.org
+1.239.935.9839