



OFFICE OF THE DIRECTOR-GENERAL

WRITTEN STATEMENT OF THE TRANSNATIONAL ALLIANCE TO COMBAT ILLICIT TRADE  
BEFORE THE HOUSE SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY  
AND THE INTERNET

“THE SHOP SAFE ACT: STEMMING THE RISING TIDE OF UNSAFE COUNTERFEIT PRODUCTS  
ONLINE”

MAY 27, 2021

On behalf of the Transnational Alliance to Combat Illicit Trade (TRACIT), I submit for the hearing record our written statement strongly supporting the *Stopping Online Harmful Offers on Platforms by Screening Against Fakes* (Shop Safe) Act. Mr. Chairman, we applaud you, along with Chairman of the House Judiciary Committee Jerrold Nadler, Congressmen Darrell Issa, Henry C. “Hank” Johnson and Ben Cline for stepping forward to protect consumers with legislation that provides incentives and incorporates best practices to keep counterfeiters and illicit traders from exploiting ecommerce marketplaces.

The exponential growth of ecommerce during the pandemic is a harbinger of consumer retail markets of the future – and the significant, ever-increasing market shares that ecommerce companies will command. This development has intensified the mandate of the Shop Safe Act: to ensure that the business practices of ecommerce platforms sufficiently prevent bad actors from selling unregulated, unsafe or otherwise fraudulent products to American consumers. Consequently, we are pleased that:

- The Shop Safe Act uniquely limits safe harbor from contributory liability to those ecommerce platforms that earn such protections through proactive steps to keep sellers of fraudulent products from setting up shop in their ecommerce marketplaces.
- The Shop Safe Act shines a bright light on the illicit traders—the people behind the crimes—and requires them to supply identification credentials similar for conducting any sort of business transaction in the United States—online or offline. By concentrating on “who,” this Bill will immediately crack down on the relatively small number of sellers who are responsible for posting billions of fake listings. In terms of operational feasibility, this approach targets the more manageable number of sellers instead of policing billions of product listings that have already gone online.
- This legislation also for the first time would require foreign sellers to set up a registered seller in the US or otherwise have a US address, which could help significantly to reduce the number of fly-by-night sellers that traditionally hide from responsibility and consumer or legal recourse.

We are concerned, however, about the scope of the bill being limited to goods that implicate safety and health, for several reasons:

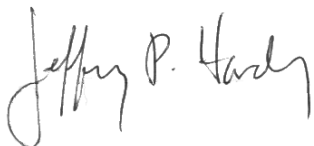
- Legislation should avoid creating categories that may ultimately require the judicial system to undertake lengthy and contentious processes to establish parameters around the vague concept of “safety and health.” For example, fraudulent printer ink may not be found to affect the health of the consumer, but consumers should be protected from damage to their printers caused by the counterfeit product.
- Consumers should be protected from all forms of counterfeit fraud, especially opaque online fraud, not just products that might fit the safety and health definition.

Consequently, the scope of the SHOP SAFE Act should be expanded to include the wider category of counterfeit products that violates or contravenes U.S. trademark law. Referencing the DHS report, “*Harmful Offers*” on platforms go beyond products that carry consumer product safety risks. There are far deeper harms to America from illegal sales of counterfeits that cause widespread damage to U.S. economic competitiveness and compound threats to national security and public safety.<sup>1</sup> *It would be irresponsible to only address one form of intellectual property crime, while permitting the balance of counterfeiting (and associated fraud) to persist on e-commerce platforms.*

Given the ground-breaking nature of this legislation, we also encourage you to minimize vague and abstract provisions—such as the recurrent use of the word “reasonable”—that may push resolution of any contest to the judicial system. *The seminal value of SHOP SAFE is that it establishes clear rules that obviate much of the need for judicial interpretation of future litigation.*

We look forward to working with you.

Respectfully submitted,



Jeffrey P. Hardy, Director-General

*The Transnational Alliance to Combat Illicit Trade (TRACIT) is an independent, non-profit business trade association 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. TRACIT works across 11 industry sectors and addresses human and wildlife trafficking. For more information, please visit [www.TRACIT.org](http://www.TRACIT.org)*

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<sup>1</sup> US Department of Homeland Security, Combating Trafficking in Counterfeit and Pirated Goods, Report to the President of the United States, January 24, 2020