

February 29, 2019

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
United States House of Representatives

The Honorable Doug Collins  
Ranking Member  
Committee on the Judiciary  
United States House of Representatives

Dear Chairman Nadler and Ranking Member Collins:

On behalf of the undersigned organizations representing U.S. intellectual property (IP) rights holders, manufacturers and consumer and public health organizations, both large and small, we would like to thank the House Judiciary Committee for its vigorous efforts to stem the sale of unsafe counterfeits on ecommerce marketplaces.

While ecommerce platforms have generated many opportunities for legitimate companies to grow and reach new consumers and expanded consumer choice and convenience, their current structures are vulnerable to exploitation and are contributing significantly to a disturbing rise in illicit trade. The current online marketplace structure incentivizes a “hands off” approach to ensuring the quality, safety and authenticity of the products sold. The drive to quickly provide more products at cheaper prices has come at a significant cost—counterfeit products damage businesses, disregard regulatory protection and, at worst, threaten consumer health and safety.

To effectively combat this growing trend, we encourage the committee to pursue legislation that would change the incentive structure by holding marketplaces to the same liability standard as brick-and-mortar stores in an effort to ensure the compliance of products sold on their sites.

As identified in a recent Organisation for Economic Cooperation and Development (OECD) report, trade in fake goods has grown steadily by 154% from \$200 billion in 2005 to over \$500 billion in 2016, accounting for 3.3% of global trade.<sup>1</sup> Similar information collected by US Customs and Border Protection and US Immigration and Customs Enforcement during 2000 to 2018 shows that seizures of infringing goods at US borders has increased ten-fold, from 3,244 to 33,810. In this environment, even the most robust efforts to address the sale of illicit goods have thus far been ineffective. Barring significant changes, marketplaces will continue to be rife with unsafe knockoffs that threaten U.S. consumers and businesses.

The illegal sales of counterfeits, knockoffs, falsified products and other intellectual property infringing items not only damages legitimate U.S. businesses, but also fuels other illicit crimes and poses significant safety risks for U.S. consumers. That’s why any solution must extend beyond merely addressing the trade in fakes and encompass measures that ensure the quality of the products we, as consumers, purchase every day. Consumers should have the same assurance that the products they purchase are compliant regardless of whether they are bought online or in a brick and mortar store. Indeed, legitimate products and retail sites listed alongside (even after) counterfeits and illicit retail sites create confusion for consumers that are trained to trust top search results. As a result, consumers think they are purchasing genuine products but receive counterfeits instead. We represent companies that invest substantial resources to ensure the safety and quality of the

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<sup>1</sup> OECD/EUIPO, Trends in Trade in Counterfeit and Pirated Goods, Illicit Trade, OECD Publishing, Paris/ European Union Intellectual Property Office, (Mar. 18, 2019), <https://doi.org/10.1787/g2g9f533-en>.

## Multi Association Letter on Online Marketplaces

products they sell, and U.S. laws hold our members accountable to do so. It's time to even the playing field.

To that end, we encourage Congress to establish a system that promotes accountability. Under the current "hands off" legal regime, rights owners are forced to spend substantial time and resources policing their brands on these separate ecommerce marketplaces under infrastructure and policies that the marketplaces set. And, in most cases, these policies are not always transparent for rights owners. We join together to support legislation that makes third party intermediaries, including online marketplaces, liable for ensuring that products sold on their platforms comply with U.S. laws and regulations. We also encourage Congress to increase the requirements necessary for third party sellers on ecommerce marketplaces by establishing a minimum threshold for submission and validation of identification, banking, and product authentication documentation. In tandem, these solutions would result in a greater assurance that the products U.S. consumers are purchasing are authentic and, more importantly, safe.

Moreover, many online marketplaces at present do not enforce effective policies for repeat infringers, including termination of sellers and all their related accounts and listings. For this reason, we also ask that Congress explore having online marketplaces implement a "three strike" or similar transparent system that permanently bans bad actors from conducting illicit business on their platforms.

We are ready to work with you and members of the Committee to further raise awareness and develop solutions to combat the sale of counterfeits online. Please feel free to reach out to any one of the associations listed below to discuss how we can support this effort.

Sincerely,

Alliance for Safe Online Pharmacies  
American Apparel & Footwear Association  
Association of Home Appliance Manufacturers  
Automotive Anti-Counterfeiting Council  
Consumer Healthcare Products Association  
Communications Cable & Connectivity Association  
Fashion Accessories Shippers Association  
Fashion Jewelry and Accessories Trade Association  
Footwear Distributors and Retailers of America  
Gemini Shippers  
Halloween & Costume Association  
Household & Commercial Products Association  
Juvenile Products Manufacturers Association  
Personal Care Products Council  
The Toy Association  
TIC Council Americas  
Transnational Alliance to Combat Illicit Trade  
Travel Goods Association

cc: Senate Judiciary Chairman Lindsey Graham and Ranking Member Dianne Feinstein