#### WHY CRITICAL CONSUMER AND IP PROTECTIONS ARE NEEDED NOW

#### **OVERALL RESOURCES**

- <u>Senate Hearing</u> "Cleaning Up Online Marketplaces: Protecting Against Stolen, Counterfeit, and Unsafe Goods" discusses INFORM + SHOP SAFE
- <u>House Hearing</u> "The SHOP SAFE Act: Stemming the Rising Tide of Unsafe Counterfeit Products Online"
- House Hearing "Holding Big Tech Accountable: Legislation to Protect Online Users"
- <u>Fact Sheet</u>: Critical Consumer and IP Protections Support American Innovation, Jobs and Competitiveness
- FAQ: Frequently Asked Questions
- Resource Website

#### STUDIES/ REPORTS/ CONGRESSIONAL TESTIMONY



"Investigative reports and agency investigations have repeatedly surfaced unsafe, untested, counterfeit, and even recalled products across Amazon, Facebook Marketplace, craigslist, and a variety of e-commerce platforms. Most gallingly, these often concern products with crucial safety implications, ranging from faulty carbon monoxide detectors to baby products and bike helmets that fail to meet safety standards. Meanwhile, adding insult to injury, consumers bear the consequences for e-commerce's well-documented fake reviews problem. For years, a variety of platforms failed—and continue to fail— to take seriously the spread of misinformation, hate speech, and harassment of marginalized communities, contributing to the growth of offline extremism, violence.

These failures offer signposts to policymakers, indicating where legal incentives driving accountability may be worth either reinforcing or adjusting. And where online platforms clearly fail to take reasonable baseline steps to ensure their products are designed and managed responsibly, where they repeatedly choose engagement, profitability, or minimized operational costs, over harms to livelihoods, public health, and consumer well-being, there should be opportunity for recourse. Platforms should not be able to launch new products and features affecting billions of consumers without having built out the ability to reasonably enforce their own community guidelines or terms of service. Further, consumers should be able to expect that platforms have considered—and taken reasonable steps to mitigate—clearly foreseeable harms that such launches could compound or accelerate."

FINAL CR Lehman 3122 CPC Hearing Written (house.gov) (March 1, 2022)

### Office of the United States Trade Representative executive of the president

"Reflecting the Biden-Harris Administration's worker-centered trade policy, the 2021 Notorious Markets List's issue focus section examines the adverse impact of counterfeiting on workers involved with the manufacture of counterfeit goods. The section describes how the illicit nature of counterfeiting requires coordination between relevant actors in order to effectively uncover and combat labor violations in counterfeiting operations across the globe." <a href="USTR Releases 2021 Review of Notorious Markets for Counterfeiting and Piracy | United States Trade Representative">USTR Releases 2021 Review of Notorious Markets for Counterfeiting and Piracy | United States Trade Representative (February 17, 2022)</a>



"IP is considered important to U.S. innovation, economic growth, and comparative advantage internationally. A range of U.S. industries rely on IPR protection.... Quantifying IPR infringement is difficult, given its illicit nature, although some estimates of trade in counterfeit and pirated goods are in the hundreds of billions of dollars per year worldwide. Innovation can be costly and time-consuming, but IPR infringement often may see relatively low risk of penalties and high profits. The digital environment heightens enforcement challenges. In FY2020, U.S. Customs and Border Protection (CBP) reported making 26,503 seizures of IPR-infringing goods valued at \$1.3 billion, with China as the largest source" <a href="IF10033">IF10033</a> (congress.gov) (Feb 7, 2022)



"Aaron Muderick, founder and president of Crazy Aaron's Puttyworld and vice chairperson of The Toy Association's Board of Directors, testified at a Senate Judiciary Committee hearing, "Cleaning Up Online Marketplaces: Protecting Against Stolen, Counterfeit, and Unsafe Goods."... Muderick stated that over the past several years there has been "a tidal wave of intellectual property infringing versions of product being sold online through third-party sellers," such as his company's magnetic putty. While he was finally able to beat back infringers of his trademarks and copyrights (spending significant time and resources in doing so), he became "increasingly concerned that almost every one of the competing products did not comply with mandatory federal safety standards." (November 2021) Toy Association Member Aaron Muderick Testifies at Senate Hearing on Counterfeits



"Additionally, there has been discussion that this bill would negatively impact small business owners.[26] In my opinion, this is no more burdensome, and perhaps less so, than any paperwork that might be required for a small business to operate in a brick-and-mortar setting and in the long run can protect a small business, particularly with just a few product lines or trademarks whose business line could be destroyed very quickly by counterfeits." (2021) Revisiting the SHOP SAFE Act after Markup – Center for Anti-Counterfeiting and Product Protection (msu.edu)

Written Statement
Submitted by Kari Kammel
Assistant Director, Center for Anti-Counterfeiting and Product Protection
Michigan State University

"The operators of online marketplaces can significantly mitigate opportunities for the sale of counterfeit goods on their platforms by acting as guardians or controllers, engaging in proactive activities and implementing policies that target motivated sellers of counterfeit goods and suitable targets. With regard to addressing motivated sellers of counterfeits, platforms have the ability to identify potentially infringing listings and proactively embargo or reject these listings. These activities can disrupt the opportunity for third party sellers to sell counterfeits to consumers." Senate Judiciary Testimony of Kari Kammel, November 2021



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#### IV. CONCLUSION

By proposing the SANTA Act, the SHOP SAFE Act of 2020, and the INFORM Consumers Act, Congress has taken an important first step to protecting consumers from third-party sellers who would use e-commerce platforms to sell counterfeit and other illicit goods. As e-commerce continues to explode in growth, Congress must take the next step of enacting a comprehensive, technology neutral Act that motivates e-commerce platforms to take the proactive steps necessary to identify third-party sellers and detecting counterfeit goods *before* third-party sellers have the chance to use their platforms for illicit purposes.

Congress's Proposed E-Commerce Legislation for Regulation of Third-Party Sellers: Why It's Needed and How Congress Should Make It Better by John H. Zacharia and Kari Kammel (February 8, 2021)



"e-commerce sales have contributed to large volumes of low-value packages imported into the United States. In FY 2020, there were 184 million express shipments and 356 million international mail shipments. Many of these shipments contain counterfeit goods that pose the same health, safety, and economic security risks as containerized shipments. Over 90 percent of all intellectual property seizures occur in the international mail and express environments. The ongoing e-commerce revolution drove a 28 percent increase in low-value shipments and a 219 percent increase in air cargo in Fiscal Year 2020." Border Protection's Intellectual Property Rights Seizure Statistics Report for FY 2020



"Consumer Reports warned if shopping for a bicycle helmet, consumers might assume that the products under consideration have met some basic standards for safety. But a recent investigation found that potentially unsafe helmets are widely available online.

To be legally sold in the U.S., bicycle helmets are supposed to meet standards set by the Consumer Product Safety Commission (CPSC). Those standards require a certain level of protection from skull fracture and a detailed label with information demonstrating compliance with CPSC standards.

When purchasing products online, however - even regulated products like helmets — it can be difficult to know if a product purchased is truly certified as safe.

On e-commerce marketplaces around the globe, there may be thousands of listings for helmets that are not properly certified for safety or are counterfeit versions of real products, says Andrew Love, head of brand security for helmet maker Specialized Bicycles. It's hard to know exactly how many consumers end up buying counterfeit helmets or helmets that are potentially unsafe knock-off versions of brand-name helmets, says Thom Parks, the senior director of product safety for Bell and Giro.

Helmets aren't the only products being counterfeited and mislabeled. According to IPR Center Director Steve Francis a flood of cheap, potentially uncertified products like counterfeit pharmaceuticals and computer chargers or adaptors—which can catch fire if not properly made—can also be produced en masse, then sold through online marketplaces with few built-in safeguards." Counterfeit Goods: A Danger to Public Safety | ICE





Report to the Chairman, Committee on Finance, U.S. Senate

"In an attempt to understand the frequency with which consumers may unknowingly encounter counterfeit products online, we purchased a nongeneralizable sample of four types of consumer products—shoes, travel mugs, cosmetics, and phone chargers—from third-party sellers on five popular e-commerce websites. According to CBP data and officials, CBP often seizes IPR-infringing counterfeits of these types of products... the rights holders for the four selected products determined 20 of the 47 items we purchased to be counterfeit." Intellectual Property: Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market, GAO 18-216 (Jan 2018)



"The illicit economy, whether in the form of human trafficking, arms smuggling, counterfeiting, money laundering, cybercrime, or illegal wildlife trade, is a force stealing stability from communities, causing corruption, impacting national security, and destabilizing the lives of so many around the globe. As nefarious actors continue to evolve and expand the interconnected web of illicit economies, it is clear that not one government, international body, or private institution can combat this threat to peace, and economic prosperity with a siloed approach. Only through collective efforts with the public and private sectors together with civil society will we have a chance to effectively implement global solutions to combat the interconnected illicit economies." (2020-2021) International Dialogues to Fight Illicit Economies | Meridian International Center

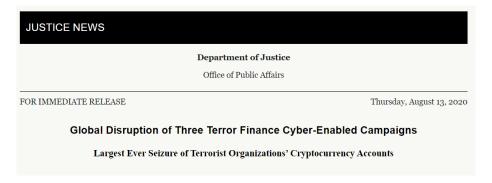




"...counterfeit automotive parts continue to be manufactured by unauthorized third parties, and marketed and sold as though they are genuine parts. Counterfeit parts are not made to the specifications of the original manufacturer; are not subject to quality control tests or application of industry safety measures; do not abide by existing laws and regulations; and often fail to perform as designed. In the most tragic cases, counterfeit parts result in catastrophic failures with fatal consequences. The increasing prevalence of counterfeit parts sold online is of utmost concern to public health and safety." <a href="https://example.com/A2C2\_WHITEPAPER\_FINAL(Nov2020).pdf">A2C2\_WHITEPAPER\_FINAL(Nov2020).pdf</a> (November 2020)

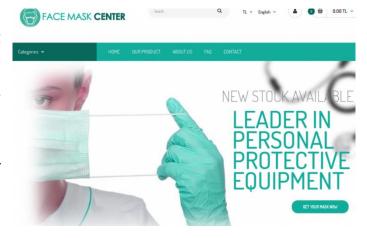


"At the FTC's request, a federal court in Ohio has issued a temporary restraining order against 25 counterfeit websites that have been playing on consumers' COVID-19 pandemic fears to trick them into paying for brand-name Clorox and Lysol cleaning products that the defendants never deliver. The FTC complaint alleges that none of the defendants' websites are owned by, affiliated with, or authorized by the companies that make Clorox and Lysol, and that none of the consumers who paid for cleaning and disinfecting products ever received what they ordered online." <a href="International Monthly: November 2020">International Monthly: November 2020</a> | Federal Trade Commission (ftc.gov) (November 2020)



"The final complaint combines the Department's [U.S. Department of Justice] initiatives of combatting COVID-19 related fraud with combatting terrorism financing. The complaint highlights a scheme by Murat Cakar, an ISIS facilitator who is responsible for managing select ISIS hacking operations, to sell fake personal protective equipment via FaceMaskCenter.com (displayed below)

The website claimed to sell FDA approved N95 respirator masks, when in fact the items were not FDA approved. Site administrators claimed to have near unlimited supplies of the masks, in spite of such items being officially-designated as scarce. The site administrators offered to sell these items to customers across the globe, including a customer in the United States who sought to purchase N95 masks and other protective equipment for hospitals, nursing homes, and fire departments.



The unsealed forfeiture complaint seized Cakar's website as well as four related Facebook pages used to facilitate the scheme. With this third action, the United States has averted the further victimization of those seeking COVID-19 protective gear, and disrupted the continued funding of ISIS." Global Disruption of Three Terror Finance Cyber-Enabled Campaigns | OPA | Department of Justice (August 2020)

# Countering Counterfeits: The Real Threat of Fake Products

How Fake Products Harm Manufacturers, Consumers and Public Health—and How to Solve This Problem

"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.." The National Association of Manufacturers (July 2020)



"Because of the high value associated with IPR, infringement of those rights is a lucrative criminal activity with a relatively low level of risk in terms of likelihood of detection and punishment if detected. OCGs [organised crime groups] are heavily involved in counterfeiting and piracy, and IP crime is often combined with other types of crime such as money laundering, human trafficking and occasionally forced labour, as documented in two joint Europol-EUIPO reports, the IP Crime Threat Assessment 2019 (which even reported one case in the EU with links to a terrorist organisation) and the report on polycriminality published in June 2020. The modus operandi of the OCGs is becoming increasingly complex as technology and distribution channels evolve hand in hand with the range of products being counterfeited." Status Report on Infringement (europa.eu) (June 2020)

### Combating Trafficking in Counterfeit and Pirated Goods

Report to the President of the United States

January 24, 2020

"Despite public and private efforts to-date, the online availability of counterfeit and pirated goods continues to increase. Strong government action is necessary to fundamentally realign incentive structures and thereby encourage the private sector to increase self-policing efforts and focus more innovation and expertise on this vital problem." Combating Trafficking in Counterfeit and Pirated Goods (dhs.gov) (January 2020)



"Trade in counterfeit and pirated goods has risen steadily in the last few years – even as overall trade volumes stagnated – and now stands at 3.3% of global trade, according to a new report by the OECD... Counterfeit trade takes away revenues from firms and governments and feed other criminal activities. It can also jeopardise consumers' health and safety," said OECD Public Governance Director Marcos Bonturi, launching the report with the Director of the EU Observatory on IPR infringements at the EUIPO, Paul Maier, and the EU Ambassador to the OECD Rupert Schlegelmilch. "Counterfeiters thrive where there is poor governance. It is vital that we do more to protect intellectual property and address corruption." Trade in fake goods is now 3.3% of world trade and rising - OECD (March 2019)

#### **NEWS**



"E-commerce and social media platforms can, and should, prioritize and establish algorithms to protect consumers from the promotion and sale of counterfeits online. Luckily, policymakers have an opportunity to make real and impactful changes to protect consumers and brands.

Two complementary bills are in front of Congress to combat counterfeits—the SHOP SAFE Act (SHOP SAFE) and the INFORM Consumers Act. Both bills are bicameral, bipartisan, and have generated a wide range of support." We owe it to consumers to stop counterfeits in their tracks | TheHill (February 18, 2022)



"Legislation that House Speaker Nancy Pelosi says would help undercut mass retail thefts passed the House on Friday and has a shot at becoming law. Instead of going after the thieves directly, however, the bills would target how the theft rings make money — fleecing the goods online... Both measures would focus on online marketplaces, requiring verification of goods sold there and increasing liability of online retailers for what third parties sell on their sites." Congress looks to stem mass retail thefts by cracking down on online marketplaces | Security Info Watch (Feb 16, 2022)



"It identified more than 26,000 active counterfeiters' accounts operating on Facebook in a June-October 2021 study, the first time its counterfeit research had focused on Meta's flagship app, and it found more than 20,000 active counterfeiters' accounts on Instagram, up from its count the previous year but down from a 2019 peak when they identified about 56,000 accounts. About 65% of the accounts found in 2021 were based in China, followed by 14% in Russia and 7.5% in Turkey." Facebook, Instagram are hot spots for fake Louis Vuitton, Gucci and Chanel | Reuters



"Online marketplace Etsy has come under fire over the last few months, as a significant number of products sold there have turned out to be fake... Last year Etsy received almost 4 million reports of potentially non-compliant listings. That's a 400% increase over 2019's complaints." Etsy cracking down on fake products - What to stay away from (komando.com) (May 5, 2021)

### **BuzzFeed**

"Okay, shade aside... These are some really important reasons why you should click "report" rather than "buy" the next time you see someone peddling fake Gucci wallets on TikTok....

- Child Labor and Forced Labor: Counterfeiters often use child and coerced labor
- Quality: Counterfeits are usually of lowest quality
- Materials: "Replica" goods use inferior materials
- Legality: Yes, buying and selling counterfeit items is illegal
- Cost: Fakes may be cheaper, but they don't hold value
- Environmental: The manufacturing process of counterfeits is bad for the environment" What's Wrong With Buying Designer "Dupes"? (buzzfeed.com) (April 4, 2021)

### **Forbes**

"Because the closure of physical stores will not diminish consumer demand, counterfeiters stand poised to take advantage of the growing number of people who will be shopping online. This will bring increasingly greater numbers of consumers into online marketplaces, which are the very places where counterfeiters are most active. What has resulted from the loss of physical retail spaces is a virtual funneling effect that is sending consumers right into product counterfeiters' webs... Over time... we can expect to see greater and greater numbers of product counterfeiters using e-commerce platforms to reach consumers." Shoppers, Beware: The Online Shopping Boom Could Usher In A Rise In Counterfeits (forbes.com) (June 22, 2020)

### **©** Wirecutter

"A major Wall Street Journal investigation recently revealed that Amazon has listed 'thousands of banned, unsafe, or mislabeled products,' from dangerous children's products to electronics with fake certifications... Because of the proliferation of counterfeits and what Birkenstock describes as Amazon's unwillingness to help it fight them, Birkenstock won't sell on Amazon anymore. Nike announced that it is also pulling out of Amazon. 'Many consumers are ... unaware of the significant probabilities they face of being defrauded by counterfeiters when they shop on e-commerce platforms,' reads a January 2020 Department of Homeland Security report." Welcome to the Era of Fake Products | Wirecutter (nytimes.com) (Feb 11, 2020).

### **Forbes**

"A 2017 study found that 39% of all unwitting purchases of counterfeit goods were bought through online third-party marketplaces... The U.S. Department of Homeland Security (DHS) released a document last week, Combating Trafficking in Counterfeit and Pirated Goods, which pushes for reform in the e-commerce ecosystem. The report actually goes a step further and calls out "Third Party Marketplaces" as facilitating counterfeiters: "Third-party online marketplaces can quickly and easily establish attractive 'store-fronts' to compete with legitimate businesses. On some platforms, little identifying information is necessary to begin selling."" <a href="Marketplaces Facilitate Counterfeiting">Amazon And Other Online Marketplaces Facilitate Counterfeiting, U.S. Says (forbes.com)</a> (Jan 29, 2020)



### Fake and dangerous kids products are turning up for sale on Amazon

"Listed for \$299, this copycat was \$200 cheaper than a real Doona. It was also potentially dangerous for children. The car seat broke into pieces in a 30 mph crash test commissioned by CNN, failing to meet the basic standards set by US regulators... CNN bought the copycat Doona and had it crash-tested at the University of Michigan Transportation Research Institute as part of a months-long investigation into the sale of counterfeit and patent-infringing children's products on Amazon. Seven different business owners told CNN their products were being actively targeted by counterfeiters using Amazon's marketplace for third-party vendors. The businesses said Amazon put the onus on them to report suspicious listings and that this often amounted to a game of 'whack-a-mole,' in which new listings appeared almost as soon as flagged ones were taken down." CNN (Dec 23, 2019)



"Some big brands shun Amazon's platform, where fakes flourish and unauthorized sellers undercut prices -- a recipe that diminishes the value of sought-after labels. The unraveling of the Nike arrangement threatens to reinforce retailers' unease" Nike Pulling Its Products From Amazon in E-Commerce Pivot - Bloomberg (Nov. 13, 2019)

### THE WALL STREET JOURNAL.

"A Wall Street Journal investigation found 4,152 items for sale on Amazon.com Inc.'s site that have been declared unsafe by federal agencies, are deceptively labeled or are banned by federal regulators—items that big-box retailers' policies would bar from their shelves. Among those items, at least 2,000 listings for toys and medications lacked warnings about health risks to children. The Journal identified at least 157 items for sale that Amazon had said it banned, including sleeping mats the Food and Drug Administration warns can suffocate infants." <a href="Manazon Has Ceded Control of Its Site.">Amazon Has Ceded Control of Its Site.</a> The Result: Thousands of Banned, Unsafe or Mislabeled Products - WSJ (August 23, 2019)



"Fake designer make-up and perfume may contain toxic cyanide, arsenic, urine or even rat droppings, Valentine's bargain hunters have been warned....Detectives issued the advice after more than 500 suspected counterfeit items estimated to be worth over \$51,400 were seized in a raid on a fake perfume factory in London." <a href="Knockoff perfume">Knockoff perfume</a>, cosmetics may contain arsenic, rat poison, detectives warn | Fox News (February 12, 2019)

### The Atlantic

"E-commerce sales through third-party platforms have resulted in 'a sharp increase' of small packages being shipped to the United States, which has also led to a rise in knockoffs, according to the Department of Homeland Security. In 2007, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement recorded 13,657 seizures of goods that violated intellectual property rights. Last year, the agencies recorded 34,143 seizures. Courts have yet to find Amazon liable for selling counterfeit products on its site, because the company has been able to argue that it is a platform for sellers, rather than a seller itself" Amazon May Have a Counterfeit Problem - The Atlantic (April 20, 2018)

#### **DOCUMENTARIES/ PODCASTS/ VIDEO**

## A-CAPP CENTER

Center for Anti-Counterfeiting and Product Protection

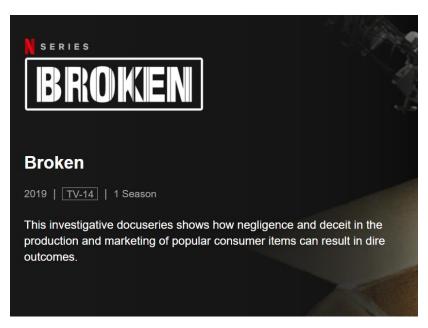
Full Podcast: <u>Brand Protection Stories Podcast – Episode 1 – Center for Anti-Counterfeiting and</u> Product Protection (msu.edu)

Transcript: <u>Transcript: Brand Protection Stories Episode 1 – Center for Anti-Counterfeiting and Product Protection (msu.edu)</u>

**Brad Greenberg**: That's correct. When you look at counterfeit goods. It has no boundaries, and it has no parallels. Because smugglers will do whatever they can to make money. This is about money. And the reason that individuals like counterfeit is because, more often than not, it's a lesser of a crime than that of smuggling people or narcotics. So it's a lot easier to smuggle in counterfeit goods, than it is to smuggle in kilos of heroin or cocaine. But you'll see parallels to all sorts of crimes. And that typically individuals who are involved in one crime, either associate or are involved with individuals who are in involved with other crimes, because at the end of the day, it goes back to the almighty fine dollar, and it's how can we make money quickly.

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Leah Evert-Burks: Yeah, I mean from t-shirts that maybe sound like you know a little bit low, low risk to military technology that gives you an idea of the wide swath of what activities, they're engaging in and again, as you said, the bottom line is, is to make the money. Whatever moves the money. There were a large amount of funds that were generated by these criminal rings, and I think that they use some unique methods of getting them out of getting the money out of the country and also going undetected when they did deposits in the US.



Netflix: Broken



Watch Trafficked with Mariana van Zeller Documentary | Nat Geo TV on Hulu

#### **NEW EPISODES MONDAY 10P**

# BLACK MARKET

In his most personal project to date, Michael K. Williams journeys into the dangerous world of illicit trade.



#### Black Market - VICE TV

"...because fakes fund terror. Fake trainers on the streets of Paris, fake cigarettes in West Africa, and pirate music CDs in the USA have all gone on to fund trips to training camps, bought weapons and ammunition, or the ingredients for explosives. In June 2014, the French security services stopped monitoring the communications of Said and Cherif Kouachi, the two brothers who had been on a terror watch list for three years. But that summer, they were only picking up that Cherif was buying fake trainers from China, so it signaled a shift away from extremism into what was considered a low-level petty crime. "Alastair Gray: How fake handbags fund terrorism and organized crime | TED Talk



"In comparing genuine versus counterfeit airbags, all of the counterfeits failed to deploy in a proper manner. This shows how ineffective these potentially life-saving devices can be when counterfeited." Counterfeit Parts Testing | Automotive Anti-Counterfeiting Council (a2c2.com)



"You want to make sure that it passed safety regulation testing and that it's safer for somebody to consume or to place on their body. I mean, we found human feces, rat feces and carcinogens in some of the counterfeit makeup, and there's been recent news reports where there's been kind of like Ponds face lightening cream that contained mercury, "Kris Bucker to Jordon Harbinger. "Generally, if you're buying a counterfeit luxury good, these people will probably tell you that it's a counterfeit, but when you're buying these counterfeit cancer meds and these other items, they're not telling you it's counterfeit. You're not making, the patient's not making a conscious choice" Kris Buckner: Who Does Counterfeiting Really Hurt? | TJHS Ep. 308 (FULL)