



October 6, 2023

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Re: 2023 Review of Notorious Markets for Counterfeiting and Piracy

USTR-2023-0009

The Transnational Alliance to Combat Illicit Trade (TRACIT) is an independent, private sector initiative to drive change to mitigate the economic and social damages of illicit trade, including counterfeiting and piracy, by strengthening government enforcement mechanisms and mobilizing businesses across industry sectors most impacted by illicit trade. TRACIT is headquartered in the United States (US). Our members are multinational companies.

The pandemic-driven escalation of ecommerce continues to be fueled by a number of factors: the convenience of shopping for practically anything anywhere and the almost instant gratification of quick delivery to our homes or businesses – wherever we happen to be – and the ease of returns. It is simple and convenient to buy from whatever media you are engaged in at any given moment.

We at TRACIT are tracking and responding to this consumer protection issue with a wide lens. This isn't just about Trademark violation – as important as that is to our Brands and innovation. This is also about all the ancillary crimes that are financed by the sale of counterfeit goods and the potential harms to consumers.

TRACIT was founded by members who recognized that bad actors use the same techniques and routes to dupe consumers across industries. Bad actors are engaged in other crimes – corruption; money laundering; terrorism; organized crime; and exploiting labor, online marketplaces, transportation and package delivery modes.

TRACIT applauds the Office of the US Trade Representative for continuing to spotlight the critical importance of protecting consumers, legitimate businesses and our workers from the exploitation of ecommerce marketplaces and social media platforms by organized criminals, counterfeiters and bad actors.

USTR Notorious Markets List drives change

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.

The USTR Notorious Markets Reports make a difference and drive change. Almost every platform that TRACIT named in its 2022 Comments has reached out to tout the changes they have implemented to respond to concerns raised by parties and by your 2022 Review. Several online marketplaces have summarized their efforts in Annual Reports, a practice that should be encouraged for all platforms. There must be increased transparency and more focus on keeping counterfeits off the platforms from the beginning.

Today, we report that while change is happening, consumers and legitimate businesses are still at risk. Online marketplaces and social media platforms globally must continue to do more to better vet their third-party sellers; proactively remove bad listings expeditiously; bounce and prevent repetitive offenders from getting back on their platforms, including through different names; and provide more information to brand owners and consumers. Brand owners are investing significantly in human and technology resources to monitor their brands online, work with the platforms when counterfeit products are found and work with law enforcement to pursue bad actors.

As USTR noted in its 2022 Review, social media platforms are increasingly hotbeds for counterfeit products. Fraudulent advertising containing links to fake websites mislead users into unknowingly purchase counterfeit products through both ecommerce and social media platforms. The Review also noted the increase in influencers who promote and link to counterfeits. TRACIT and AAFA produced a report in 2020 demonstrating the breadth of the problem. Fraudulent advertising continues to thrive today and poses a significant threat to consumers and legitimate businesses.

TRACIT continues to work with policymakers, stakeholders, and law enforcement globally to develop and implement policies and best practices for making ecommerce safe for consumers. We supported the passage of and vigorous enforcement of the INFORM Consumers Act in the last Congress. TRACIT supports passage of the bipartisan SHOP SAFE Act of 2023 to hold online marketplaces accountable for keeping bad actors and product listings off their online shelves. SHOP SAFE establishes a safe harbor from liability to those online marketplaces that proactively implement best practices to better protect consumers from harmful counterfeits, including barring repeat infringers from selling on their platforms and expeditiously removing bad product listings. It is past time to stop relying on voluntary policies that vary by platform and are inadequately enforced.

Counterfeit Products with Potential Health and Safety Risks

All counterfeits present an absolute product safety risk. They are manufactured outside legal frameworks, are unregulated and do not comply with safety standards that are prescribed either internationally or locally within a country. If a counterfeit product is ingested, applied to the body or used as a safety device, the risks become even greater. The list of products presenting exposure to health and safety risks is endless, starting with the products listed here:

Product Categories	Examples of Product Types	Associated Risks
Beauty Products	Shampoo, conditioner, cosmetics, hair styling products, soaps, lotions, moisturizers, deodorants, perfume, razors (manual and electric)	Bacterial contamination; inadequate or missing preservative systems; toxic/hazardous ingredients (chemical and biological hazards, heavy metals); non-disclosed or high levels of allergens; presence of banned ingredients; presence of mold; absence or decreased levels of drug and/or sanitizing/disinfectant active ingredients; electrical and/or burn hazards
Disinfecting/sanitizing Products	Liquid hand sanitizers, wipes, surface sprays, etc.	
Feminine Care Products	Tampons, Menstrual cups, sanitary pads, adult incontinence products	
Food and Beverages	Groceries, fresh products (cheese, eggs, etc.), hard liquor	
Medicines	Prescription and over-the-counter drugs, supplements, vaccines, products containing sunscreens	
Oral Care Products	Toothpaste, teeth whitening, mouth rinse, denture adhesives and/or cleaners, dental floss, toothbrushes (manual and electric)	
Pet Products	Food, toys, medications, grooming items, etc.	
Children's Products	Diapers, car seats, strollers, mattresses, toys, bedding, cribs, bottles, rattles, etc.	Noncompliance with safety standards; toxic/hazardous/flammable ingredients
Cleaning/Laundry products	Detergents (laundry, dish), hard surface cleaners, etc.	Toxic/hazardous/banned ingredients

Construction Products	Power tools, building supplies (supports, engineered joists, flooring, plumbing, etc.)	Fire/electrical hazards; critical engineering failures
Digital/Communication Products, Replacement Parts/Equipment or Networks	Laptops, cell phones, digital device chargers, batteries (rechargeable, alkaline, lithium, etc.), routers, modems, cabling (HDMI, VGA, LAN, indoor/outdoor), software	Fire/electrical hazards; noncompliance with manufacturing/safety standards; failure at critical moments
Electrical appliances/equipment and replacement parts	Refrigerators, water filters, ovens, dishwashers, microwaves, water heaters, washing machines, dryers, clothing irons, fire detectors, home safety/security equipment, etc.	Noncompliance with manufacturing/safety standards; fire/electrical hazards; toxic/hazardous chemicals
Furniture	Tables, chairs, mattresses, sofas, shelving, etc.	Noncompliance with manufacturing/safety standards; toxic/hazardous/flammable ingredients
Jewelry, Luxury Goods, Textiles	Clothing, belts, accessories, purses, jewelry, etc.	Allergic reactions; treated with chemicals that can be hazardous, flammable, toxic
Nicotine containing products	Cigarettes, cigars, pipe tobacco, chewing tobacco, e-cigarettes/vaping	Toxic/hazardous/banned ingredients
Office supplies	Printer ink/toner cartridges	Toxic/hazardous chemicals; equipment damage
Health Care Equipment, Medical Devices	Wheelchairs, hospital beds, thermometers, blood pressure monitors, in-vitro diagnostic kits, bandages, etc. Pacemakers, artificial joints, stents, breast implants, laser hair removal equipment, syringes, surgical utensils, etc.	Noncompliance with safety standards; fail at critical moments; long term health effects due to toxic/hazardous/flammable ingredients (chemical, biological, bacterial, heavy metals)
Personal Protective Equipment (PPE)	Face masks, eye protection, gloves, gowns, ear plugs, respirators, etc.	
Product Packaging	Tubes, jars, cans, buckets, cartons, tubs, bottles, etc.	

Pesticides	Bug sprays (crop maintenance, home usage)	Toxic/hazardous chemicals; environmental impact
Sports equipment	Footwear, protective gear (helmets, safety pads/guards, life jackets, etc.), camping gear, golf clubs, sports balls (baseball, basketball, softball, golf, etc.), hiking gear, etc.	Noncompliance with safety standards; fail at critical moments; toxic/hazardous ingredients
Transportation and replacement parts	Automobiles, planes, trains, hoverboards, pedestrian powered modes of transportation (Bikes, scooters, skates, skateboards, etc.)	Fire hazards, system severely impacted; compromised data transmission of confidential/critical, Personal identifiable, healthcare related, educational, military information

Other instructive reports on unsafe counterfeits

The Organization for Economic Cooperation and Development (OECD) and the European Union Intellectual Property Office have jointly conducted research and have published two very informative reports focused on dangerous counterfeits. [Dangerous Fakes - Observatory \(europa.eu\)](#) estimated illicit trade in fakes costs \$460 billion annually. The study found that apparel products, automotive spare parts, optical and medical devices as well as pharmaceuticals are the most frequently produced dangerous counterfeits. The report also finds China and Hong Kong are the largest exporters of dangerous counterfeits, accounting for more than three-quarters of seizures. Postal parcels – driven by the rising popularity of e-commerce – are the most common method of shipping dangerous fakes, significantly complicating screening and detection processes and lowering the risk of detection and penalties. 60% of dangerous goods seized were shipped by postal services.

Trade in Counterfeit Pharmaceutical Products

The second OECD/ EUIPO Report, [Trade in Counterfeit Pharmaceutical Products - Observatory \(europa.eu\)](#), finds illicit markets for counterfeit pharmaceuticals are attractive for counterfeiters given their high profit margins, low risks of detection and prosecution, weak penalties, and the ease with which consumers may be deceived into believing that the counterfeit products are genuine. Counterfeits imply not only possible economic damages for this sector, but also significant health threats, since fake medicines are often not properly formulated and may contain dangerous ingredients.

Fake medicines for serious diseases, including malaria, HIV/AIDS and cancer are available online, along with counterfeit antibiotics, lifestyle treatments, pain killers, diabetes treatments and central nervous system medicines.

The OECD Report assess the scale is huge! In 2016, international trade in counterfeit pharmaceuticals reached \$4.4 billion. This does not include a very large volume of domestically produced and consumed

illicit pharmaceuticals. While China and India are the primary producers of fake medicines, the United Arab Emirates, Singapore, and Hong Kong (China) serve as transit economies.

Recommendations for 2023 USTR Notorious Markets List

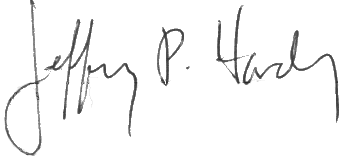
Despite several organizations including TRACIT submitting comments to USTR the last several years urging that Amazon, Facebook and Instagram should be included in the Notorious Markets List, USTR has determined not to place US-headquartered platforms on the Notorious Markets List. These platforms are global in reach and they continue to facilitate and profit from the sale of counterfeits. We note that Amazon has made many improvements and we commend the company for investing more resources and publishing annual reports stating their experience. The fact remains, however, that counterfeits continue to be available on their sites and more must be done to protect consumers.

The following are TRACIT’s recommendations for the 2023 Notorious Markets List, based on input from our members.

Name of Platform	Issues	Where
SHOPEE	Poor level of engagement with rightsholders. Despite the launch of a new brand protection portal, it is still faster to submit complaints via email rather than through the portal. In particular in Brazil, SHOPEE shows little interest in enforcing or removing illegal listings from its platform.	Indonesia Brazil
PINDUODUO	Difficult to get support to pursue offline investigations against counterfeit suppliers and manufacturers.	China
WECHAT	Sellers being penalized by account blocking are reemerging after 60 days using different WeChat IDs. Difficult to get support to pursue offline investigation against counterfeit suppliers and manufacturers.	China
ALIBABA.COM	Lots of scam listings which distracts rights holders’ limited investigation resources.	Global
TAOBAO/1688.COM	Some members report that they have worked with Alibaba and have been members of the AACA for many years. They submit data to the AACA and Alibaba reports back on their proactive takedown results. However, their online test purchase programs continue to find up to 80% of the product bought from the first three pages on Taobao is counterfeit. Something is clearly not working here.	China

TIKTOK/DOUYIN	Counterfeiters are using livestream to advertise and sell counterfeits. However, the platform has a good level of engagement with rightsholders, and some members report a complaint success rate at 100%.	China
META	Complex process to enroll in Brand Protection & IP tools and lack of support in the process. Low level to no of engagement with right holders. Not enough enforcement of Community Guidelines for certain types of products, e.g., alcohol, tobacco. Meta policies do not allow the sale of alcohol on Facebook or Instagram but there is no evidence of these policies being proactively enforced.	Global

Respectfully submitted,



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 For more information, please visit www.TRACIT.org