TRACIT's submission to the US Department of Commerce, Patent and Trademark Office

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Future Strategies in Anticounterfeiting and Antipiracy

1. Please identify current anticounterfeiting and antipiracy strategies and any trends you see in how often these practices are guiding the public's plans for addressing these issues in the future.

Presented below are several widely recognized technological solutions that companies incorporate within their larger anti-counterfeiting strategies. It is important to note that TRACIT provides an overview of established strategies, and we refrain from making any remarks regarding the effectiveness of these approaches.

Anticounterfeiting strategies

Overt tools

- **Holograms and security labels:** Many products, especially high-value items like electronics and luxury goods, use holograms and security labels. These labels often contain unique patterns, colors and features that are hard to replicate, but not impossible.

- **QR codes and NFC technology:** QR codes or near-field communication (NFC) technology enable customers to verify product authenticity through their smartphones. Scanning the code or tapping the product with an NFC-enabled device provides information about the product's origin.

- **Certification:** Certification does not guarantee that a certain supply chain has not or will not be abused for illicit trade purposes. Rather, it provides an assurance that high/optimal levels of controls over those supply chains are being implemented. In addition to reducing the risk of illicit trade affecting their manufacturing and

distribution processes, companies see certification as a tool that can help them increase consumer trust.

- **Microprinting and nano-tagging:** Tiny, difficult-to-duplicate markings or tags can be embedded in products or packaging, allowing verification using specialized tools.

Covert tools

- **Specialized inks and dyes:** Some industries employ specialized inks and dyes with unique properties that are difficult to replicate. These inks can include color-shifting, fluorescent, or invisible elements that are only detectable under specific conditions or using specialized tools. Incorporating these inks into product packaging, labels, or markings provide an additional layer of authentication, making it challenging for counterfeiters to replicate the visual appearance of genuine products.

Track and trace

- **Blockchain technology:** Blockchain's decentralized, and tamper-resistant nature can be used to track the entire supply chain of products, making it difficult for counterfeit goods to enter the market unnoticed. However, companies report that the full potential of using blockchain to secure supply chains has not been achieved yet.

- **AI-powered authentication:** AI technology is being utilized to develop advanced authentication solutions. Machine learning algorithms can analyze intricate details of genuine products, such as product packaging, logos, and features, creating a comprehensive database. This database is then used to compare and verify product authenticity, aiding consumers and enforcement agencies in distinguishing genuine products from counterfeits with greater accuracy.

Cooperation and monitoring:

- **Cooperation with intermediaries:** Over the past few years, various intermediaries in the physical and virtual world (e.g., service providers, logistics companies, financial institutions, online platforms) have stepped up their efforts to ensure that the segments of the supply chain that they control are not exploited for illicit trade purposes. Private sector associations engage with intermediaries such as transporters, often by signing MoUs, to commit to greater accountability and responsibility in tackling counterfeits in their supply chains.

- **Cooperation with law enforcement:** In addition to providing support to law enforcement agencies, private sector stakeholders have reported active cooperative arrangements in place with a variety of institutional bodies that exercise functions related to illicit trade prevention.

- **Online supply chain monitoring/policing:** Companies invest significant resources in carrying out online investigations aimed to detect rogue websites/ads and have them removed. Some have entered into collective or bilateral partnerships with online platforms to proactively monitor for counterfeits of their brands.

Trends and future directions

- **Enhanced platform vigilance:** Increasingly online intermediaries are cognizant that they need to do more to protect consumers from access to illicit content on their sites. However, there is still a lot of work remaining. The responsibility lies with e-commerce platforms and online intermediaries to enhance their vigilance by further investing in automated algorithms and artificial intelligence to detect and remove illicit content and better verify sellers and authenticate seller information. Further, there is an increasing requirement from online intermediaries including ecommerce and social media platforms to ensure that illicit content once removed stays down to prevent its resurgence as a different listing offering the same unauthorized product.

- **Legislative focus on e-commerce regulation:** With the rise of e-commerce and digital content distribution, there is a growing emphasis on regulating online platforms to prevent the sale of counterfeit goods and unauthorized content. In response to the challenges posed by counterfeits and unauthorized goods on online platforms, several countries, including the US (in the form of INFORM and SHOP Safe Act) and regions such as the EU (Digital Services Act), have introduced legislation to enhance the accountability and responsibilities of e-commerce platforms. These measures aim to establish clearer laws for preventing illicit content, improving transparency, and holding platforms accountable for maintaining a safe marketplace. This legislative trend is prompting other countries to explore similar frameworks to hold online intermediaries accountable for the services that they provide.

- **Mitigation of illicit small parcels:** The surge in online shopping has led to an increase in illicit goods being trafficked through small parcels. In response, there is a growing focus on implementing advanced detection technologies, a call to increase proper and verified data to be relayed as electronic advance data (EAD) from origin to destination posts and thereafter shared with destination customs to allow them to better detect and deter illicit parcels.

2. **Please identify the types of harms you have observed from sales of counterfeited and pirated goods.**

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. But 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,	Fire/electrical hazards; critical engineering failures

	engineered joists, flooring, plumbing, etc.)	
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	Noncompliance with safety standards; fail at critical moments; long term health effects due to toxic/hazardous/flammable ingredients (chemical,

	equipment, syringes, surgical utensils, etc.	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

3. **Please indicate how consumers are educated about the harms and dangers that may result from the use and sale of counterfeited or pirated products.**

- **Awareness campaigns:** Industries affected by counterfeiting and piracy often run national, regional or global awareness campaigns to educate consumers about the risks. These awareness campaigns are run by national governments, IGOs, associations that have a mandate on anti-counterfeiting, sector specific bodies and companies as part of their ESG. These campaigns use various channels, including social media, newsletters or television to highlight the negative impacts on consumer health and safety and the socio-economic risks. Popular awareness campaigns include those by Europol, INTA, UNIFAB, FICCI to name a few.

- **Education of school children:** Increasingly, national governments and industries are educating children in school by including IPR as part of their curriculum to raise awareness on the importance of protecting IPRs and the related risks from infringement. For example, UL introduced a program named LifeSmarts aimed at students to learn more about counterfeit goods.

4. **Please describe current anticounterfeiting and antipiracy strategies that may be available, identifying which elements have proven successful and those that have not. Your answer should identify the targets of anticounterfeiting and antipiracy efforts, such as ecommerce platforms, physical markets, and social media.**

   - **Online-to-offline investigations:** While challenging due to limited accurate seller data from e-commerce platforms and low prioritization of IPR crimes by law enforcement, when successful online-to-offline investigations can lead to significant results. These investigations can uncover the source of counterfeit manufacturing and the retail shops storing substantial quantities of counterfeit goods. By identifying and disrupting these sources, law enforcement can curtail the production and distribution of counterfeit products at their roots.

   - **Legislation:** In response to the proliferation of counterfeits on online platforms, a handful of countries are enacting legislation that holds e-commerce platforms accountable. Legislation can set clear standards for platform behavior, necessitating proactive measures to prevent counterfeit listings and conduct better Know-Your-Customer (KYC) protocols. Successful legislative frameworks establish penalties for non-compliance, encouraging platforms to take their responsibilities seriously.

   - **Private/public sector/law enforcement cooperation:** This approach recognizes that the problem extends beyond individual sectors and requires a holistic effort. Private companies often provide valuable insights, expertise and data that can assist in detecting criminal networks engaged in counterfeit goods. Law enforcement agencies leverage this information to conduct targeted investigations and seizures. Public-private partnerships allow for the exchange of resources, expertise, and data, resulting in more effective enforcement actions.

   - **Whole of government approach:** A comprehensive approach to addressing counterfeiting and piracy involves adopting a "whole of government" strategy. This would encompass a range of government agencies beyond those directly responsible for IPR enforcement, including customs, law enforcement, cybersecurity, consumer protection, trade, and finance authorities. By aligning efforts and sharing intelligence, governments can address the full spectrum of crimes associated with counterfeiting and piracy. This includes tackling issues like human trafficking and forced labour, money laundering, tax evasion, and organized crime networks that often profit from these activities.

- **Inter-governmental organizations (IGOs) multilateral cooperation:** Efforts by the Organization for Economic Co-operation and Development (OECD), World Trade Organization (WTO), World Customs Organization (WCO), and World Intellectual Property Organization (WIPO) need to be enhanced to connect the dots and establish international frameworks to combat counterfeiting, strengthening international cooperation and national capacities against the global problem These organizations can and must do better to facilitate information exchange, best practice sharing, capacity building, and the development of standards that member countries can adopt.

5. **Please identify the challenges you anticipate in the ongoing fight to prevent counterfeited and pirated goods from entering the stream of commerce and reaching the hands of consumers. Please add information on how those challenges might be addressed.**

   Some key challenges:

   - **Accountability of online intermediaries:** Achieving meaningful progress in combating counterfeiting will remain a challenge until online intermediaries are held liable and accountable for the presence of counterfeit products and other illicit content on their platforms. Implementing robust legislation that establishes clear responsibilities for online platforms and enforces accountability.

   - **Increasing prevalence of counterfeits on social media:** Social media platforms like Instagram and TikTok present challenges in monitoring and taking down counterfeit products. Increasingly influencers are promoting "affordable dupes", making it socially trendy and acceptable to purchase fakes. Additionally, the transient nature of "Stories" that stay active for only 24 hours complicates tracking and prosecution efforts. Developing AI-powered algorithms that can identify and flag content promoting counterfeit products is essential. Further, holding such influencers accountable with social media platforms banning their accounts or pursuing lawsuits with proper sanctions imposed against them may assist in raising awareness of the problem and the related repercussions.

   - **Trafficking in small parcels:** Detection of illicit goods trafficked via small parcels is exceedingly difficult due to the massive volume and limited oversight. Counterfeiters capitalize on the anonymity afforded by the lack of proper due diligence conducted by mail carriers (postal and express) at the point of drop off. Implementing advanced scanning technologies, collaboration between postal services and law enforcement, and strengthening customs regulations are crucial steps to intercept and prevent the trafficking of counterfeit and illegal goods within small parcels.

   - **Resource limitations:** Law enforcement budgets and manpower were already strained, and the COVID-19 pandemic coupled with slow economic growth is creating additional constraints that affect their ability to prioritize IPR enforcement

among other competing priorities. Advocacy for greater allocation of resources and specialized training for law enforcement personnel in recognizing and dealing with counterfeit and pirated goods is necessary.

6. What patterns and trends have you observed in counterfeiting and piracy during the COVID–19 pandemic? Do you anticipate that these patterns and trends will continue past the pandemic?

During the COVID-19 pandemic, there has been an observed increase in counterfeiting and piracy, driven by various factors. One notable trend has been the accelerated shift towards online shopping due to lockdowns and restrictions, leading to a surge in e-commerce transactions. This convenience of shopping from home has provided counterfeiters and pirates with new opportunities to exploit consumer demand for various products. For example, the pandemic has disrupted supply chains and hindered regular inspections, making it easier for counterfeiters to infiltrate markets with fake goods. The urgency for medical supplies and personal protective equipment has been exploited by counterfeiters, endangering public health.

Another example is that crisis-driven COVID-19 related prohibitions on alcoholic beverages have generated a number of negative health-related externalities and promoted the development of parallel illicit markets. The TRACIT report, [Prohibition, Illicit Alcohol and Lessons Learned from Lockdown](#), analyzes the economic and social impacts of strict restrictions on the production and/or consumption of alcohol (dry laws) during the early stages of the COVID19 outbreak, with a specific focus on the consequences associated with illicit trade.

7. What patterns and trends have you observed in counterfeiting and piracy due to shifts in the economy? Do you anticipate that these patterns and trends will continue? And if so, what impact will they have on any current and future strategic plans to combat counterfeiting and piracy?

Amidst the highest inflation rates since 2008, the global economy faces a cost-of-living crisis. Inflation has surged in numerous countries, driven by factors like post-COVID economics and geopolitical events. The consequences ripple into illicit trade dynamics as reduced purchasing power due to inflation affects consumer affordability. This linkage between high inflation, decreased purchasing power, and increased poverty underlines illicit trade's reliance on consumer affordability.

To demonstrate this correlation, TRACIT developed a report titled "[Inflation, Product Affordability and Illicit Trade: Spotlight on Turkiye](#)". It evidences how inflation is driving demand and supply of illicit goods in Turkey.

8. Please indicate whether any strategic plans to combat counterfeiting and piracy might include collaboration with private or public parties, and if a strategic plan is not collaborative, please explain why not. If a strategic plan does include collaboration, please describe the anticounterfeiting and antipiracy strategies employed in the collaboration.

9. Are you considering new collaborative efforts to combat counterfeiting and piracy? What factors will affect your decision? How might those future collaborations be comprised?

   Yes, we are actively emphasizing the interconnection between IP crimes and other illicit trade activities. Criminals often exploit shared networks, resources, and proceeds to engage in multiple forms of illegal trade. Our current efforts involve collaborating with diverse sectors and stakeholders to analyze successful strategies deployed in one area and assessing their adaptability to other sectors. The goal is to leverage effective practices across industries, minimizing illicit trade's impact in each sector through cross-sector knowledge exchange and implementation.

10. Please identify effective technologies for use in the fight to prevent counterfeited and pirated goods from entering the stream of commerce and reaching the hands of consumers, such as counterfeited product identification devices or advanced algorithms to secure supply chains and identify counterfeited goods online. Please explain how any anticipated strategies will improve an overall anticounterfeiting and antipiracy strategy.

11. Please describe how online enforcement activities intersect with trademark and copyright laws or procedures. Do online enforcement strategies include employing existing trademark laws to combat online counterfeiting? Do online enforcement strategies use existing copyright laws to combat online piracy? If so, please describe in detail those activities, and provide any suggestions for maximizing these practices.

12. Please describe any fraudulent documentation or materials you have observed in the furtherance of online counterfeiting and piracy activity. For example, after reporting infringements to platforms, have you seen fraudulent materials attached to a counternotification?

13. Please provide any data you have on counterfeiting and piracy, including any data showing how the activities may adversely or disproportionately affect certain industries or companies.

14. Please share your thoughts on what more the USPTO or government and private parties can do to ensure entities, including under-resourced individuals and small businesses, can readily enforce their intellectual property rights against counterfeited or pirated goods. What other solutions have you seen or can you envision?