

November 6, 2020

Mr. Jacob Ewerdt
Director for Innovation and Intellectual Property
Office of the United States Trade Representative
600 17 Street NW
Washington, D.C. 20508

*RE: 2020 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List).
Docket Number: USTR-2020-0035*

Submitted electronically at: www.regulations.gov

Dear Mr. Ewerdt:

- The Transnational Alliance to Combat Illicit Trade (www.TRACIT.org) welcomes the opportunity to contribute our views to the the United States Trade Representative's (USTR) 2020 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List).
- TRACIT is an independent, private sector initiative to drive change and 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.
- Our views necessarily reflect the interconnected nature of illicit trade. It is well-documented that Intellectual Property Rights (IPR) infringements, particularly trademark counterfeiting and copyright piracy, are significant elements of global illicit trade and seriously harm US businesses and put consumers at risk for fraudulent and harmful products.¹

Publication of new report on Fraudulent Advertising Online

- On 22 July 2020, TRACIT and the American Apparel and Footwear Association (AAFA) published a report that shows that 70 major international brands were targeted by fraudulent advertisements on **Instagram** and **Facebook** since 2017, some of which received up to a quarter of a million views before they were detected.
- Millions of consumers have been exposed to fraudulent advertisements all over social media networks like Facebook and Instagram, or other popular websites like YouTube or Google, where people were not expecting fraud. These adverts took the consumer

¹ <http://www.oecd.org/gov/risk/trade-in-counterfeit-products-and-uk-economy-report-update-2019.pdf>

to illegitimate e-commerce websites that defraud and/or sell counterfeit products and deceitful services.

Requests for Inclusion

To the extent that the USTR Notorious Markets List (NML) highlights prominent and illustrative examples of online and physical markets that reportedly engage in or facilitate substantial piracy or counterfeiting, we recommend that you consider including www.Facebook.com and www.Instagram.com.

This recommendation is based on findings from a report published (July 22, 2020) by the Transnational Alliance to Combat Illicit Trade (TRACIT) and the American Apparel and Footwear Association (AAFA).

This report provides evidence (screen shots, customer complaints) that 70 major international brands were targeted by fraudulent advertisements on **Instagram** and **Facebook** since 2017, some of which received up to a quarter of a million views before they were detected.

Figure 1.²

| | | | |
|--------------------|--------------------|------------------------|-------------------------------------|
| 1. Adidas | 21. Dewalt | 41. Moncler | 57. Skechers |
| 2. Apple | 22. Dr. Martens | 42. MontBlanc | 58. Stone Island |
| 3. Arc'teryx | 23. Emporio Armani | 43. Monsoon and | 59. Superdry |
| 4. Ariat | 24. Fila | Accessorize | 60. Supreme |
| 5. Balenciaga | 25. Fjällräven | 44. Muck Boots | 61. The North Face |
| 6. Berluti | 26. Geox | (Honeywell) | 62. Timberland |
| 7. Bose | 27. Gym Shark | 45. National Football | 63. Tommy Hilfiger |
| 8. Braun | 28. HP (laptops) | League (US NFL) | 64. Tony Bianco |
| 9. Breville | 29. Hugo Boss | 46. National Hockey | 65. Trek (bikes) |
| 10. Brooks Sports | 30. Husqvarna | League (US NHL) | 66. TUMI |
| 11. Calvin Klein | 31. JBL | 47. New Balance | 67. UEFA Football Club jerseys |
| 12. Camper | 32. Keen | 48. Nike | (including Juventus F.C., Liverpool |
| 13. Canada Goose | 33. Kenzo | 49. Nintendo | F.C., Real Madrid C.F. and |
| 14. Canon | 34. Kipling | 50. Off-White | Tottenham Hotspur F.C.) |
| 15. Carhaart | 35. Lacoste | 51. Patagonia | 68. Ugg/Deckers |
| 16. Cartier | 36. Lego | 52. PlayStation (Sony) | 69. Van Cleef |
| 17. Chanel | 37. Levis | 53. Ralph Lauren | 70. Vans |
| 18. Clarks (Shoes) | 38. Louis Vuitton | 54. Ray Ban | 71. Vasque |
| 19. Converse | 39. Makita | 55. Salomon | 72. Weber |
| 20. DeLonghi | 40. Michael Kors | 56. Saucony | 73. XBOX (Microsoft) |

The actual number is likely to be significantly higher, as these advertisers target brands indiscriminately across multiple sectors. Given the size, scope and number of brands affected, the scale of the deception and fraud occurring on social media platforms cannot be underestimated.

² Screenshot captures of the identified fraudulent ads and the destination websites are available upon request.

Fraudulent advertising is of such professional quality that they easily deceive consumers, and when they are directed to a site from an advert on well-known and familiar website or app, they are more likely to regard the destination site as legitimate and trustworthy than if they had found it via a search engine or accidentally.

In our view, fraudulent advertising is rapidly emerging as a new risk to consumers shopping online, presenting a new gateway to the persisting problem of massive counterfeiting and piracy available throughout the Internet.

In closing,

- We hope that the findings of our report shine light on the vulnerabilities of social media platforms that enable fraudulent advertising to facilitate illicit trade in counterfeit and pirate products.
- These factors combine to place extra responsibility on platforms that host and provide optimization for advertising or receive payment for doing so. Consequently, their inclusion on the NML may provide motivation for appropriate actions to protect the platforms and their users from fraud.
- In addition to the evidence provided in our report, screenshot captures of the identified fraudulent ads and some destination websites are available upon request.
- TRACIT and AAFA's report is available at: <https://www.tracit.org/featured-report-fraudulent-advertising-online.html>

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