

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HONG KONG YU'EN E-COMMERCE CO.
LIMITED,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,
LIMITED LIABILITY COMPANIES,
PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED IN SCHEDULE "A" HERETO,

Defendants.

Case No.: 1:25-cv-11535-LCJ

**FIRST AMENDED COMPLAINT FOR
TRADEMARK INFRINGEMENT**

JURY TRIAL DEMANDED

HONG KONG YU'EN E-COMMERCE CO. LIMITED, ("Plaintiff"), by and through its counsel, the Bayramoglu Law Offices, LLC, submits the following Complaint Defendant Number 12 in the Original Complaint [DE 1] and Exhibit 2 to the Complaint, a modified version is attached hereto as **Exhibit 2** listing the Defendant and hereby alleges as follows:

INTRODUCTION

1. Plaintiff established its brand (the "Brand") in 2017, which focuses on women's fashion apparel and serves consumers in the United States and worldwide. Since launching the Brand, Plaintiff has invested significant time, financial resources, and corporate efforts to promote, market, develop, and position the Brand as a high-quality and reputable source for women's fashion apparel, accessories, and related products.

2. As part of its brand promotion, development, and marketing efforts, Plaintiff obtained federal registration from the United States Patent and Trademark Office (the "USPTO") for multiple trademarks related to its brand (the "Brand Trademarks"). Attached as **Exhibit 1** is a

true and accurate copy of the United States Registration Certificate issued by the USPTO for the Brand Trademark.

3. The Brand Trademark is valid, subsisting, and in full force and effect. Furthermore, the Brand Trademark has been used exclusively and continuously by the Plaintiff, some for many years, and has never been abandoned. The registration of the Brand Trademark serves as *prima facie* evidence of its validity and of the Plaintiff's exclusive right to use the Brand Trademark pursuant to 15 U.S.C. § 1057(b).

4. Plaintiff has filed this action to address e-commerce store operators who exploit the Plaintiff's reputation and goodwill by offering for sale and selling products, including clothing, accessories, and other merchandise, through the unauthorized use of the Brand Trademark (the "Counterfeit Products").

5. Defendant set up an e-commerce store operating under a Seller Alias which advertises, offers for sale, and sells Counterfeit Products to unsuspecting consumers through the unauthorized use, employment, digital incorporation, or other online display of the Brand Trademark. The infringing conduct of the Defendants occurred on Amazon.com (the "Platform").

6. Defendants deceived consumers into believing that the products they purchased were genuine goods made by the Plaintiff. They did this by using the Brand Trademark without permission and supplying Counterfeit Products.

7. In addition, Defendant has attempted to avoid and mitigate its liability by operating under one or more Seller Aliases to conceal its identity and the full scope and interworking of their counterfeiting operation.

8. Counterfeiters like Defendant monitor and post updates on any attempts by a company to enforce its intellectual property rights on the website www.SellerDefense.CN, which

has been recognized by numerous courts in this judicial district as a platform used by alleged infringers to report, disclose information related to, and advise infringers of the need to liquidate online platform accounts facing enforcement actions.

9. This is not Plaintiff's first action commenced in this judicial district to enforce the Brand Trademark. Plaintiff has done so to combat Defendants' unauthorized use of the Brand Trademark to promote its sales of Counterfeit Products.

10. Plaintiff has also initiated this action to protect the consumer and business goodwill linked to its Brand.

11. Plaintiff has also filed this case to safeguard unknowing and/or unsophisticated consumers, including those in Illinois and within this judicial district, from purchasing Counterfeit Products that are used with the Brand Trademark without permission.

12. Allowing defendant to continue using the Brand Trademark without authorization to promote and sell the counterfeit products has already caused and will continue to cause irreparable harm to Plaintiff through consumer confusion, dilution, loss of goodwill, and damage to the value and viability of the Brand Trademark. This entitles the plaintiff to seek both injunctive relief and monetary damages.

JURISDICTION AND VENUE

13. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, *et seq.*, 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391

15. This Court may properly exercise personal jurisdiction over Defendant since Defendant directly targets business activities toward consumers in the United States, including in

Illinois, through at least the fully interactive e-commerce store (the “Online Marketplace”) operating under a seller alias (the “Seller Alias”).

16. Defendant has targeted sales to consumers in Illinois by setting up and operating the Online Marketplace using a Seller Alias displaying the Brand Trademark without authorization to incite purchases of the Counterfeit Products in Illinois.

17. Defendant accepts payment for purchases in United States currency and/or funds from United States bank accounts.

18. Defendant has sold Counterfeit Products to residents of Illinois.

19. Each of the Defendants is committing tortious acts within this judicial district by engaging in interstate commerce that causes significant harm in Illinois.

THE PARTIES

20. Plaintiff is organized under the laws of the People’s Republic of China.

21. The true identity of the Defendant is not yet known because they operate under the Seller Alias listed in Schedule A.

22. Based on information and belief, Defendant resides and/or operates in the People’s Republic of China or another related foreign jurisdiction.

23. The methods used by Defendant to conceal its identity and the full scope of its operations make it nearly impossible for Plaintiff to uncover Defendant’s true identities and how their counterfeit network operates.

24. If the Defendant provides additional credible information about its identity, the Plaintiff will take the necessary steps to amend the Complaint and proceed accordingly.

THE VALUE OF PLAINTIFF’S BRAND TRADEMARKS

25. The Brand Trademark is exclusive to Plaintiff and appears prominently in

Plaintiff's marketing and promotional materials for the Brand.

26. The Brand has long been popular globally

27. Plaintiff has spent millions of dollars each year on advertising, promoting, and marketing the Brand and the Brand Trademark.

28. The Brand products have garnered extensive unsolicited publicity due to their high quality and innovative designs.

29. The Brand and its trademark have gained widespread recognition across the United States, including in Illinois.

30. Plaintiff operates an e-commerce website where it promotes and sells authentic Brand products at BrandName.com. Sales of genuine Brand products through Plaintiff's website constitute a significant part of the company's business.

31. The Brand Trademark is distinctive when applied to the company's Brand-identified products, which signifies to the purchaser that such products come from Plaintiff, are genuine merchandise offered for sale by the company, and are manufactured to the company's quality standards.

32. The Brand Trademark has gained fame and recognition, which has only increased its inherent distinctiveness. Therefore, the goodwill associated with the Brand Trademark is of immeasurable and priceless value to Plaintiff.

33. No Defendant is authorized or licensed to use the Brand Trademark in connection with offering for sale or the sale of any products, including the Counterfeit Products.

34. Plaintiff is forced to hire and compensate the below-signed counsel to enforce its Trademark.

DEFENDANTS' UNLAWFUL CONDUCT

35. The success of the Brand has resulted in significant counterfeiting of the Brand Trademark.

36. In recent years, Plaintiff has identified many fully interactive e-commerce stores offering counterfeit products on online marketplace platforms such as Walmart, Amazon, eBay, AliExpress, Alibaba, Wish.com, Walmart, Etsy, DHgate, and Temu, including the one operated by the Defendant.

37. The Defendant targets consumers in Illinois, within this judicial district, and across the United States.

38. According to a U.S. Customs and Border Protection (CBP) report, in 2021, CBP seized over 27,000 goods with intellectual property rights (IPR) violations, totaling over \$3.3 billion—a \$2.0 billion increase from 2020. The report, titled "*Intellectual Property Rights Seizure Statistics, Fiscal Year 2021*, U.S. Customs and Border Protection," is attached as **Exhibit 4**.

39. Of the 27,000 IPR seizures, over 24,000 involved international mail and express courier services, rather than containers, with most originating from China and Hong Kong.

40. Third-party service providers like those used by Defendants do not sufficiently verify new sellers' identities, enabling counterfeiters to “routinely use false or inaccurate names and addresses when registering with these e-commerce platforms.” *see* report on “Combating Trafficking in Counterfeit and Pirated Goods” prepared by the U.S. Department of Homeland Security’s Office of Strategy, Policy, and Plans (Jan. 24, 2020)(attached hereto as **Exhibit 5**) (on “at least some e-commerce platforms, little identifying information is necessary for a counterfeiter to begin selling” and recommending that “[s]ignificantly enhanced vetting of third-party sellers” is necessary.)

41. Counterfeiters reduce the risk of getting caught and their websites being removed from an e-commerce platform by setting up multiple virtual storefronts in advance.

42. Since platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, counterfeiters can create multiple profiles that may seem unrelated, even though they are often owned and operated by the same entity.

43. E-commerce platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of counterfeits and counterfeiters.

44. Defendant facilitates sales by falsely claiming the appearance of an authorized seller of the Brand Trademark.

45. Defendant appears sophisticated and accepts payment in United States currency and/or funds from United States bank accounts via credit cards, Alipay, Amazon Pay, Walmart Pay, and/or PayPal.

46. Defendant's store includes content and images that make it very difficult for consumers to distinguish such stores from an authorized retailer.

47. Plaintiff has not licensed or authorized Defendant to use the Brand Trademark.

48. Defendant is not authorized to sell or resell authentic Brand products.

49. Defendant deceives unaware consumers by using the Brand Trademark without permission within their content, text, Search Engine Optimization ("SEO") terms, and/or meta tags on its Online Marketplace.

50. E-commerce store operators like the Defendant often commit fraud when creating identities, such as Seller Aliases, by providing false, misleading, or incomplete information to e-commerce platforms to hide their real identities and the scope of their activities.

51. E-commerce store operators like the Defendant are constantly communicating

with each other and regularly participating in qq.com chat rooms and on websites such as www.SellerDefense.cn and kuajingvs.com to discuss tactics for managing multiple accounts, avoiding detection, the status of ongoing intellectual property cases, and potential new enforcement lawsuits.

52. Counterfeiters like Defendant often use multiple Seller Aliases and payment accounts to continue their operations despite Plaintiff's enforcement efforts.

53. E-commerce store operators like Defendant maintain offshore accounts and regularly transfer funds from their U.S. financial accounts to offshore accounts outside this Court's jurisdiction to avoid paying any monetary judgment awarded to the Plaintiff.

54. Analysis of transaction logs from similar cases indicates that offshore counterfeiters frequently transfer funds from U.S.-based accounts to offshore accounts beyond this Court's jurisdiction.

55. Defendant, without any authorization or license from Plaintiff, is knowingly and willfully using and continues to use the Brand Trademark in connection with advertising, distributing, offering for sale, and selling Counterfeit Products into the United States via the Internet.

56. Defendants' unauthorized use of the Brand Trademark in connection with advertising, distributing, offering for sale, and selling Counterfeit Products has caused, and is likely to cause, confusion, mistake, and deception among consumers. It also irreparably harms Plaintiff by damaging the company's goodwill, reputation, and the value of its Brand Trademark.

COUNT I

TRADEMARK INFRINGEMENT AND COUNTERFEITING (15 U.S.C. § 1114)

57. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth

in the Paragraphs 1 through 56, above.

58. This is a trademark infringement action brought against Defendant for its unauthorized use in commerce of Plaintiff's Brand Trademark in connection with offering for sale, sale, distribution, and/or advertising the Counterfeit Products.

59. Plaintiff's Brand Trademark is a highly distinctive mark. Consumers have come to expect the highest quality from products offered, sold, or marketed bearing Plaintiff's Brand and/or the Brand Trademark.

60. Plaintiff is the exclusive owner of the Brand Trademark. Plaintiff's Registration issued by the USPTO is valid, current, and in full force and effect. Attached hereto as **Exhibit 1** is a true and correct copy of the United States Registration Certificate issued by the USPTO for the Brand Trademark. Attached hereto as **Exhibit 3** provides links to infringing uses of the Modlily Trademark on each of the Defendants' Online Stores.

61. Defendant has sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising the Counterfeit Products using the Brand Trademark without Plaintiff's authorization, license, or permission to do so.

62. The Defendant is aware of the Plaintiff's rights in the Brand Trademark and is intentionally infringing by using the Brand Trademark to sell, promote, distribute, and offer for sale the Counterfeit Products.

63. Defendant's deliberate, intentional, and unauthorized use of the Brand Trademark can be inferred from their sale of the Counterfeit Products, which closely resemble authentic Brand products offered by Plaintiff but are sold at a lower price and are of inferior quality.

64. The deliberate and intentional use of the Brand Trademark to sell, promote, distribute, and offer for sale the Counterfeit Products is likely to cause confusion, mistake, and

deception about the origin and quality of the Counterfeit Products among the public and consumers seeking authentic Brand products from Plaintiff.

65. Defendants' activities constitute willful trademark infringement and counterfeiting under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

66. Plaintiff has no adequate remedy at law, and if the Defendant's actions are not stopped, the Plaintiff will continue to suffer irreparable harm to its reputation and the goodwill associated with its well-known Brand Trademarks.

67. The injuries and damages suffered by Plaintiff have been directly and proximally caused by Defendant's unauthorized use, advertisement, promotion, offer to sell, and sale of the Brand Trademarks in connection with the Counterfeit Products.

68. Based on the foregoing, Plaintiff is entitled to actual damages, disgorgement of the Defendant's profits, and the costs of the suit.

69. Plaintiff is also entitled to entry of temporary, preliminary, and permanent injunctive relief against Defendant.

70. To the extent authorized under the Lanham Act, an award of statutory damages for Defendant's sale of the Counterfeit Products using the Brand Trademark intentionally and willfully without Plaintiff's authorization.

71. Additionally, the Plaintiff is entitled to recover attorneys' fees and costs due to the Defendant's intentional and willful infringement of the Brand Trademark, making it an exceptional case.

COUNT II

UNFAIR COMPETITION (15 U.S.C. § 1125(a))

72. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in

the Paragraphs 1 through 56, above.

73. Plaintiff is the exclusive owner of the Brand Trademark.

74. Defendant has sold, offered to sell, marketed, distributed, and advertised, and is still selling, offering to sell, marketing, distributing, and advertising the Counterfeit Products using the Brand Trademark without Plaintiff's authorization, license, or permission to do so.

75. Based on information and belief, Defendant is aware of Plaintiff's rights in the Brand Trademark. Defendant is knowingly infringing and intentionally using the Brand Trademark to sell, advertise, distribute, and offer for sale the Counterfeit Products.

76. The defendant's deliberate, intentional, and unauthorized use of the Brand Trademark can be inferred from their sale of the Counterfeit Products, which closely resemble authentic Brand products offered by the plaintiff but are sold at a lower price and are of inferior quality.

77. Defendants' willful, intentional, and unauthorized use of the Brand Trademark to sell, advertise, distribute, and offer for sale the Counterfeit Products is likely to cause confusion, mistake, and deception about the origin and quality of the Counterfeit Products among the public and consumers who want to buy genuine Brand products from the Plaintiff.

78. Defendant's conduct amounts to unfair competition in violation of 15 U.S.C. § 1125(a)(1)(B).

79. Plaintiff has no adequate remedy at law, and if the Defendant's actions are not enjoined, the Plaintiff will continue to suffer irreparable harm to its reputation and the goodwill associated with its well-known Brand Trademarks.

80. The injuries and damages experienced by Plaintiff were directly and proximately caused by Defendant's unauthorized use, advertisement, promotion, offer to sell, and sale of the

Brand Trademark in connection with the Counterfeit Products.

81. Based on the foregoing, Plaintiff is entitled to actual damages, disgorgement of the Defendant's profits, and the costs of the suit.

82. Plaintiff is also entitled to entry of temporary, preliminary, and permanent injunctive relief against Defendant.

83. Additionally, Plaintiff is entitled to recover attorneys' fees and costs as an exceptional case due to Defendant's intentional, willful violation of the rights granted in and to the Brand Trademarks.

COUNT III

FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

84. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the Paragraphs 1 through 56, above.

85. The defendant's promotion, marketing, offering for sale, and sale of counterfeit products using the Brand Trademark without authorization has caused and continues to cause a likelihood of confusion, mistake, and deception among the public regarding their affiliation, connection, or association with the plaintiff, or the origin, sponsorship, or approval of the defendant's counterfeit products by the plaintiff.

86. By using the Brand Trademark with the sale of counterfeit products, the defendant created a false designation of origin and a misleading representation of fact concerning the origin and sponsorship of the counterfeit items.

87. The defendant's false designation of origin and misrepresentation of fact regarding the origin and/or sponsorship of the Counterfeit Products to the public constitute a deliberate violation of 15 U.S.C. § 1125(a)(1)(B).

88. The injuries and damages suffered by Plaintiff were, and continue to be, directly and proximately caused by Defendant's unauthorized use, advertisement, promotion, offer to sell, and sale of the Brand Trademark in connection with the Counterfeit Products.

89. Plaintiff has no adequate legal remedy, and if the Defendant's actions are not stopped, Plaintiff will continue to suffer irreparable damage to its reputation and the goodwill associated with its well-known Brand Trademark.

90. Based on the foregoing, Plaintiff is entitled to actual damages, disgorgement of the Defendant's profits, and the costs of the suit.

91. Plaintiff is also entitled to entry of temporary, preliminary, and permanent injunctive relief against Defendant.

92. Plaintiff is entitled to recover attorneys' fees and costs because this case is exceptional, due to Defendant's intentional and willful violation of the rights granted by and to the Brand Trademarks.

COUNT IV

VIOLATION OF ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT (815 ILCS § 510/1, et seq.)

93. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the Paragraphs 1 through 56, above.

94. Defendant has engaged in acts violating Illinois law, including, but not limited to, passing its knockoff products as those of Plaintiff's Brand products through the unauthorized use of the Brand Trademark.

95. Passing off Counterfeit Products causes confusion or misunderstanding about the source of the goods, creates a false impression of an affiliation, connection, or association with genuine Brand products, falsely claims that their products are approved by the Plaintiff when they

are not, and involves other conduct that promotes confusion or misunderstanding among the public.

96. Defendant's actions were done intentionally, willfully, and with knowledge of Plaintiff's rights in and to the Brand Trademark.

97. The ongoing actions of the Defendant's intentionally violate the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/1, et seq.

98. Plaintiff has no adequate legal remedy, and Defendant's actions have caused damage to its Brand's reputation and goodwill. Unless the Court issues an injunction, Plaintiff will continue to suffer future irreparable harm caused by the Defendant's unlawful conduct.

99. Based on the foregoing, Plaintiff is entitled to entry of temporary, preliminary, and permanent injunctive relief against Defendant.

100. Plaintiff is entitled to recover attorneys' fees and costs due to the Defendants' intentional and willful violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/1, et seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant and each of them as follows:

1. That Defendant, its affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under, or in active concert with them be temporarily, preliminarily, and permanently enjoined and restrained from:

a. using Plaintiff's Brand Trademark or any reproductions, counterfeit copies, or colorable imitations thereof in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product, including within the content, text, SEO terms, and/or meta tags for their Online Marketplaces, that is not a genuine Brand product or is not

authorized by Plaintiff to be sold in connection with its registered Brand Trademark;

b. passing off, inducing, or enabling others to sell or pass off any product as a genuine Brand product or any other product produced by Plaintiff by using the Brand Trademark to sell and offer for sale such products that are not Plaintiff's or not produced under the authorization, control, or supervision of Plaintiff and approved by Plaintiff;

c. committing any acts calculated to cause consumers to believe that Defendants' inferior products are those sold under the authorization, control, or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff or its Brand;

d. further infringing the Brand Trademarks and damaging Plaintiff's Brand's reputation and goodwill;

e. otherwise competing unfairly with Plaintiff through the unauthorized use of the Brand Trademark in any manner;

f. shipping, delivering, holding for sale, transferring, or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory sold or offered for sale through the unauthorized use of the Brand Trademark;

g. using, linking to, transferring, selling, exercising control over, or otherwise owning the Defendants' stores on Defendants' Online Marketplaces or the Platform, or any other domain name or online marketplace account that is being used to sell or is the means by which Defendant could continue to sell knockoff Brand products through the unauthorized use of the Brand Trademark; and

h. operating and/or hosting websites at the Defendant's Online Marketplaces and any other domain names registered or operated by Defendant that are involved with the distribution, marketing, advertising, offering for sale, or sale of any product through the unauthorized use of

the Brand Trademark.

2. That the Defendant, within fourteen (14) days after service of judgment with notice of entry thereof upon them, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth in detail the manner and form in which Defendant has complied with paragraph 1 above;

3. Entry of an Order that, upon Plaintiff's request, those in privity with Defendant and those with notice of the injunction, including AliExpress, Walmart, Amazon, DHgate, eBay, Temu, and Wish, social media platforms such as Facebook, YouTube, LinkedIn, Twitter, Internet search engines such as Google, Bing and Yahoo, web hosts for the Defendant's Online Stores, and domain name registrar, shall:

a. disable and cease providing services for any accounts through which Defendant engages in the sale of knockoff Brand products by using, without authorization, the Brand Trademark, including any accounts associated with the Defendant;

b. disable and cease displaying any advertisements used by or associated with Defendant that display the Brand Trademark; and

c. take all necessary steps to prevent links to Defendant's Online Marketplaces identified on Schedule "A" from displaying in search results, including, but not limited to, removing links to Defendant's domain names from any search index.

4. That Defendant account for and pay to Plaintiff all profits realized by them through the unauthorized use of the Brand Trademark.

5. An award of Plaintiff's actual damages.

6. An award of statutory damages against Defendant for its intentional and willful violation of the Lanham Act through their sale of the Counterfeit Products using Plaintiff's Brand

Trademark to do so without authorization.

7. An award of enhanced statutory damages for Defendant's intentional and willful violation of the Lanham Act.

8. That Plaintiff be awarded its reasonable attorneys' fees based on this being an exceptional case under the Lanham Act and/or for the intentional and willful violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/1, et seq.

9. An award of Plaintiff's costs associated with commencing this action.

10. An award of pre-judgment and post-judgment interest as permitted by rule, statute, law, or otherwise.

11. Award such other relief that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Dated: September 30th, 2025

Respectfully Submitted,

By: /s/ Joshua H. Sheskin
Joshua H. Sheskin (FL Bar No. 6299408)
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EXHIBIT 1

United States of America

United States Patent and Trademark Office

modlily

Reg. No. 5,994,759

Registered Feb. 25, 2020

New Cert. Apr. 01, 2025

Int. Cl.: 25

Trademark

Principal Register

HONGKONG YU'EN E-COMMERCE CO., LIMITED (HONG KONG LIMITED COMPANY)
FLAT/RM 511 5/F MING SANG INDUSTRIAL BUILDING 19-21 HING YIP ST KWUN TONG KL HONGKONG, HONG KONG 999077

CLASS 25: Aprons; Bathrobes; Belts for clothing; Bikinis; Blazers; Blouses; Boots; Bras; Bustiers; Camisoles; Capes; Children's and infant's apparel, namely, jumpers, overall sleepwear, pajamas, rompers and one-piece garments; Coats; Dresses; Gloves; Hats; Heels; Jackets; Jumpers; Jumpsuits; Kimonos; Knitwear, namely, knit tops, knit bottoms; Leggings; Lingerie; Negligees; Night gowns; Pajamas; Pants; Parkas; Pumps as footwear; Rainwear; Sandals; Scarves; Shawls; Shirts; Shoes; Short trousers; Socks; Sweaters; Sweatshirts; Swimwear; T-shirts; Tank tops; Vests; Women's shoes, namely, foldable flats

FIRST USE 10-11-2014; IN COMMERCE 10-11-2014

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

The wording "MODLILY" has no meaning in a foreign language.

SER. NO. 88-489,042, FILED 06-25-2019



Coke Moya-Snead

Acting Director of the United States Patent and Trademark Office



REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

EXHIBIT 2

Hong Kong Yu'en E-Commerce Co. Limited v. The Individuals, Corporations, Limited Liability Companies, Partnerships and Unincorporated Associations Identified in Schedule A

Schedule A

Defendant No.	Seller's Name	Link to Seller's Website
1	ShapebuS	https://www.amazon.com/sp?ie=UTF8&seller=AEEVQX2I0NDGH&asin=B0F8VRLXQB&ref_=dp_merchant_link&isAmazonFulfilled=1

EXHIBIT 3

Defendant	Links to Infringement with Trademark
<p>No. 1 ShapebuS 15 Infringements</p>	 <p> https://www.amazon.com/SHAPEBUS-Swimsuit-Waisted-Bikini-Swimsuits/dp/B0F8VRLXQB/ref=sr_1_318?crid=2GE3OB3K32XJS&dib=eyJ2IjoiMSJ9.of4Rt4hik26B0uYxOOYisYNNaZoz2v6ZJxvwyjTnc9xsQXmCbuTX1H5Vak6Rqe_Jpb57bL_JudkCNS5HH657Tm0aDIhgqmJDTkCREdeII7GCqKAZ_xLGvTD5TuW1t-CGED2ZmfBSLSLtpkPszjpoKilM5QblcRKdQOVVuD6ESKdbqzflXBgKbSt3usxrBWjUOO DDVY-qJle8OrliWuio0T_6BPzxvzbHSIf2OKaRX_BgmPC2qhGQI7HAfit0SHMO7SJEZiqkMigaZDJnY74s6A.xsujp-68P-nwbzzQcAd16u4vvg-Goo1PSdcBGwfp7aY&dib_tag=se&keywords=modlily&qid=1755148505&sprefix=%2Caps%2C238&sr=8-318&xpj=jJ6K4bvS72am&th=1&pvc=1 </p> <p> https://www.amazon.com/SHAPEBUS-Swimsuit-Waisted-Bikini-Swimsuits/dp/B0F8VRHST5/ref=sr_1_318?crid=2GE3OB3K32XJS&dib=eyJ2IjoiMSJ9.of4Rt4hik26B0uYxOOYisYNNaZoz2v6ZJxvwyjTnc9xsQXmCbuTX1H5Vak6Rqe_Jpb57bL_JudkCNS5HH657Tm0aDIhgqmJDTkCREdeII7GCqKAZ_xLGvTD5TuW1t-CGED2ZmfBSLSLtpkPszjpoKilM5QblcRKdQOVVuD6ESKdbqzflXBgKbSt3usxrBWjUOO DDVY-qJle8OrliWuio0T_6BPzxvzbHSIf2OKaRX_BgmPC2qhGQI7HAfit0SHMO7SJEZiqkMigaZDJnY74s6A.xsujp-68P-nwbzzQcAd16u4vvg-Goo1PSdcBGwfp7aY&dib_tag=se&keywords=modlily&qid=1755148505&sprefix=%2Caps%2C238&sr=8-318&xpj=jJ6K4bvS72am&th=1&pvc=1 </p> <p> https://www.amazon.com/SHAPEBUS-Swimsuit-Waisted-Bikini-Swimsuits/dp/B0F8VTJLV1/ref=sr_1_318?crid=2GE3OB3K32XJS&dib=eyJ2IjoiMSJ9.of4Rt4hik26B0uYxOOYisYNNaZoz2v6ZJxvwyjTnc9xsQXmCbuTX1H5Vak6Rqe_Jpb57bL_JudkCNS5HH657Tm0aDIhgqmJDTkCREdeII7GCqKAZ_xLGvTD5TuW1t-CGED2ZmfBSLSLtpkPszjpoKilM5QblcRKdQOVVuD6ESKdbqzflXBgKbSt3usxrBWjUOO DDVY-qJle8OrliWuio0T_6BPzxvzbHSIf2OKaRX_BgmPC2qhGQI7HAfit0SHMO7SJEZiqkMigaZDJnY74s6A.xsujp-68P-nwbzzQcAd16u4vvg-Goo1PSdcBGwfp7aY&dib_tag=se&keywords=modlily&qid=1755148505&sprefix=%2Caps%2C238&sr=8-318&xpj=jJ6K4bvS72am&th=1&pvc=1 </p>

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EXHIBIT 4

Intellectual Property Rights Seizure Statistics



U.S. Customs and
Border Protection

Fiscal Year
2021



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Disclaimer: The information contained in this report does not constitute the official trade statistics of the United States. The statistics, and the projections based upon those statistics, are not intended to be used for economic analysis, and are provided for the purpose of establishing U.S. Department of Homeland Security workload.



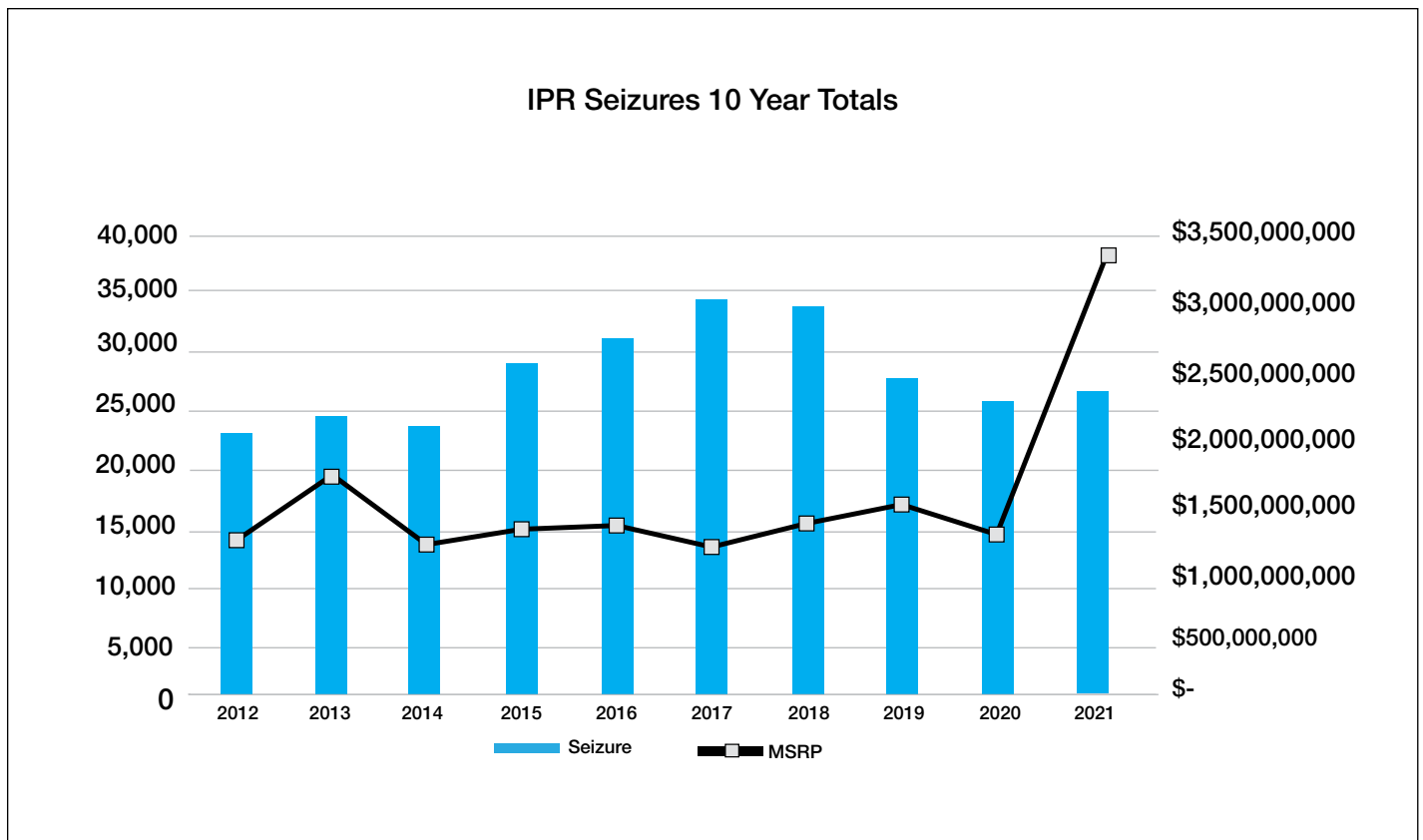
Executive Summary

U.S. Customs and Border Protection focuses its trade enforcement efforts on seven Priority Trade Issues (PTI). PTIs represent high-risk areas that can cause significant revenue loss, harm the U.S. economy, or threaten the health and safety of the American people. Current PTIs include **Intellectual Property Rights (IPR)**, which protect American Intellectual Property by interdicting violative goods and leveraging enhanced enforcement authorities.

Trade in illegitimate goods is associated with smuggling and other criminal activities, and often funds criminal enterprises. CBP protects the intellectual property rights of American businesses, safeguarding them from unfair competition and

use for malicious intent while upholding American innovation and ingenuity. CBP works with many partner government agencies and the trade community to mitigate the risks posed by imports of such illicit goods.

FY 2021 was another successful year for IPR enforcement. CBP made over 27,000 seizures (i.e., 102,490 seizure lines) with an estimated manufacturer's suggested retail price (MSRP) of over \$3.3 billion, which represents an increase of 152% over the previous Fiscal Year, when goods valued at \$1.3 billion MSRP were seized for IPR violations. CBP also received and responded to **711** inquiries from the field concerning IPR enforcement in **FY 2021**.



Counterfeit Commodity Spotlight – Cell Phones and Accessories

Almost all of Americans now own a cell phone of some kind¹. The percentage of Americans that own a smartphone is now 85%, up from just 35% in Pew Research Center’s survey of smartphone ownership first conducted in 2011². Production of goods such as smartphones, smartphone batteries, and chargers, is knowledge intensive and the industry relies heavily on technologies that are IPR-protected. Thus, the growing prevalence of such items not only intensifies IP dependence, but also makes it a lucrative target



for counterfeiters. The Organisation for Economic Co-operation and Development’s report in 2017 found that nearly one in five mobile phones shipped internationally is fake³. Mobile phones, their accessories and components are among the top categories of fake goods seized by customs authorities and sold in great numbers during sales events such as Black Friday and Cyber Monday⁴. In addition, such counterfeits have been recently exploiting the global supply shortage in semiconductor chips. It is worth noting that the global shortage of semiconductor chips is linked to the high demand for digital services and manufacturing problems emerged during the COVID-19 pandemic⁵. Counterfeiters can exploit this demand and shortage in supply by using counterfeit semiconductors such as diodes in the market. As semiconductors are integral in many areas, e.g., healthcare, transport, and defense, the risk of private electronics such as mobile phones and accessories being affected is also high⁶.

In FY 2021, CBP seized over **1,895** shipments of counterfeit cell phones and accessories. The seized merchandise is estimated to have a Manufacturer’s Suggested Retail Price of over **\$64 million**. A closer look at CBP statistics shows that most of the counterfeits originated from Hong Kong and China.

Further, the number of seizures occurred in the express consignment and cargo environment combined accounted for more than 90 percent of the total IPR seizures of cell phones and accessories for FY 2021.

In addition to the negative economic impacts that such counterfeit mobile phones and accessories pose to the public, there are also notable non-economic impacts that negatively impact society. First, counterfeit mobile phones pose significant health and safety risks. Such devices may contain levels of chemicals such as lead and cadmium that often exceed established safety standards. In some cases, the values were 35-40 times higher than the globally accepted limits for lead⁷. CBP, citing an investigation conducted by the Government Accountability Office, previously reported a 99 percent failure rate in 400 counterfeit adapters tested for safety,

¹ Pew Research Center, “Mobile Fact Sheet,” <https://www.pewresearch.org/internet/fact-sheet/mobile/>, April 7, 2021.

² *Id.*

³ “One in five mobile phones shipped abroad is fake,” Organization for Economic Co-operation and Development, March 28, 2017, [One in five mobile phones shipped abroad is fake - OECD](https://www.oecd.org/one-in-five-mobile-phones-shipped-abroad-is-fake/) and accompanying Report (OECD 2017 Report).

⁴ “Counterfeit and pirated goods get boost from pandemic, new report confirms,” European Union Agency for Law Enforcement and Cooperation (Europol), March 7, 2022, <https://www.europol.europa.eu/media-press/newsroom/news/counterfeit-and-pirated-goods-get-boost-pandemic-new-report-confirms> and accompanying report (EUROPOL 2022 IPR Threat Report).

Counterfeit Commodity Spotlight – Cell Phones and Accessories

fire, and shock hazards, and found that 12 of such adapters posed a risk of lethal electrocution to the user⁵. In addition, counterfeit electronic devices may also include malware and other harmful software, adding the risk of data theft⁹.

To avert such dangers, consumers should purchase from reputable sources and professional resellers should be aware that counterfeit parts may be part of the supply chain.

FY 2021 IPR Seizures – Cell Phones and Accessories

Source Country	Seizure Lines	% of Total
Hong Kong	1,118	59.0%
China	606	32.0%
South Africa	33	1.7%
Malaysia	18	0.9%
United States	17	0.9%
All Other Countries	103	5.4%
Grand Total	1,895	100.0%

FY 2021 MSRP of IPR Seizures – Cell Phones and Accessories

Source Country	MSRP	% of Total
China	\$ 39,183,693	60.7%
Hong Kong	\$ 22,105,010	34.2%
Malaysia	\$ 2,005,387	3.1%
United Arab Emirates	\$ 432,091	0.7%
Vietnam	\$ 236,485	0.4%
All Other Countries	\$ 623,225	1.0%
Grand Total	\$64,585,891	100.0%



⁵ See EUROPOL 2022 IPR Threat Report at 12.

⁶ *Id.*

⁷ "International Telecommunication Union's ITU-T Technical Report," International Telecommunication Union, December 11, 2015, https://www.itu.int/dms_pub/itu-t/opb/tut/T-TUT-CCICT-2015-PDF-E.pdf, at 10.

⁸ "Combatting Trafficking in Counterfeit and Pirated Goods," CBP, January 24, 2020, https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf, at 10.

⁹ See EUROPOL 2022 IPR Threat Report at 12.



COVID-19 Spotlight

In FY 2021, CBP continued to target and seize illegal imports of counterfeit, unapproved, or otherwise substandard COVID-19 related products that threatened the health and safety of American consumers. These seizures included 38,154 Food and Drug Administration-prohibited COVID-19 test kits, just over 35 million counterfeit face masks and 8,677 Food and Drug Administration-prohibited hydroxychloroquine tablets. Fifty-three percent of the seizures occurred in the express consignment environment, 18 percent were discovered in incoming mail and roughly 31 percent originated in China. CBP also collaborated with partner government agencies to expedite medical supplies and personal protective equipment through the customs clearance process, while working to identify and intercept fraudulent, unapproved, or otherwise substandard material

FY 2021 Overall COVID-19 Related Seizure Totals As of 10/1/2021

Product	Total Seizures	Quantity
Covid-19 Test Kits	53	38,154
Antibody Test Kits	9	1,063
Masks	670	35,092,178
Chloroquine	10	1,810
Hydroxychloroquine	59	8,677
Azithromycin	32	2,141
Lianhua Qingwen	17	17,567
Respirator/Ventilator	1	27
Hand Sanitizers	2	150,001
Virus Shut-Out Lanyards	1	30,000
Vaccination Cards	734	21,314

CBP's COVID-19 Cargo Resolution Team (CCRT), is comprised of a network of subject matter experts from across the agency. The CCRT triaged incoming requests from importers and customers; coordinated with federal,

state, and local government agencies; facilitated inbound shipments through ports of entry; expedited importation of critical medical supplies; and responded directly to inquiries about the importation of personal protective equipment, COVID-19 test kits, ventilators, and other medical supplies.

In FY 2021, the CCRT was responsible for expediting shipments of the COVID-19 vaccine and related vaccine materials. The CCRT worked closely with several importers and other government agencies to ensure the vaccine and vaccine materials were released with minimal delay. During the FY 2021, the CCRT also responded to 939 questions from the trade community and facilitated the clearance of 788 Operation Warp Speed (OWS) shipments.

To read more about CBP's efforts during the pandemic, please visit <https://www.cbp.gov/newsroom/coronavirus>





Operational and Enforcement Highlights

Components of CBP's Integrated Trade Targeting Network conducted 4 national level IPR Trade Special Operations and 76 local IPR Trade Special Operations in FY 2021. These operations targeted high-risk shipments at seaports, airports, rail facilities, international mail facilities and express carrier hubs across the United States. The IPR Trade Special Operation is an important tactic used by CBP to gather intelligence on how counterfeiters are shipping product to the U.S. The operations also disrupt these nefarious supply chains and lead to criminal investigations by Homeland Security Investigations.



In FY 2021, IPR Trade Special Operations resulted in seizures worth an estimated \$21 million dollars in MSRP. Importantly, Trade Special Operations often result in seizures of products that may be both counterfeits and violations of other import safety laws. Examples are prohibited food products and unapproved pharmaceuticals.

IPR Enforcement Training

Part of the Office of Trade's responsibilities include training CBP field personnel in identifying suspect imports, making infringement determinations, and following proper IP border enforcement procedures. In FY 2021, despite the travel restrictions caused by the COVID-19 pandemic, the Office of Trade conducted more advanced IP enforcement training sessions than in FY 2020, reaching 8 out of the 10 Centers of Excellence and Expertise, including the Pharmaceutical, Health and Chemical CEE, to which Regulations and Rulings provided instruction on IP enforcement relating to COVID-19 specific products, and to CBP officers (CBPO) stationed at the ports of entry with the highest volume of trade. The training continues to raise the profile of IPR issues: from FY 2019 to FY 2020 the number of requests from CBP Officers and Importer Specialists for pre-seizure IPR enforcement advice



from attorney-advisors in the Regulations and Rulings Directorate increased by 20% compared to FY 2019. In FY 2021 the number of pre-seizure requests rose even more steeply, increasing 57% from FY 2020, totaling over 700 requests.

CBP Partnerships

CBP works with partner government agencies to facilitate legitimate trade that supports economic growth and shields the American public and businesses from unsafe products, intellectual property theft, and unfair trade practices.

Immigration and Customs Enforcement (ICE) – Homeland Security Investigations (HSI)

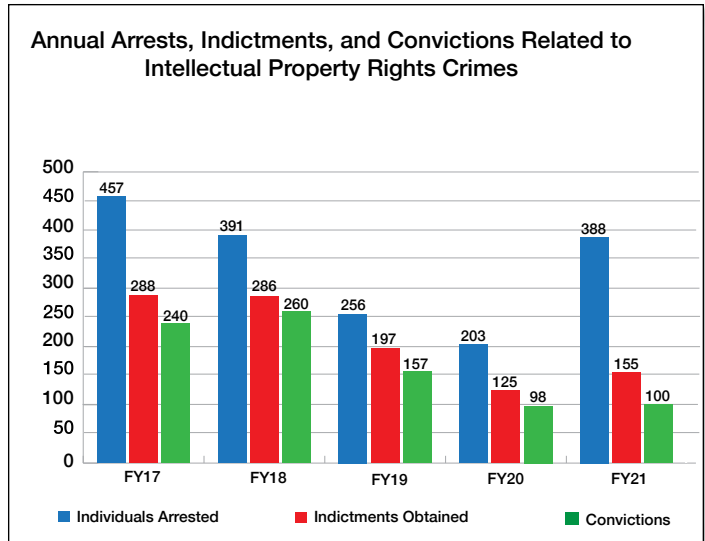
CBP and ICE-HSI identify cases in which third-party intermediaries have demonstrably directed, assisted financially, or aided and abetted the importation of counterfeit merchandise. In coordination with the Department of Justice, CBP and ICE-HSI seek all available statutory authorities to pursue civil fines and other penalties against these entities, including remedies under 19 U.S.C. § 1526(f), as appropriate.

CBP and ICE-HSI mitigate the welfare and financial risks posed by imports of illicit products. In FY 2021, ICE-HSI arrested 388 individuals, obtained 155 indictments, and received 100 convictions related to intellectual property crimes.

Collaboration Spotlight: In partnership with CBP, HSI launched *Operation Stolen Promise* (OSP) in April 2020 to protect the Homeland from the increasing and evolving threat posed by COVID-19- related fraud and criminal activity. As part of OSP, CBP Officers and HSI special agents have opened investigations nationwide, seized millions of dollars in illicit proceeds; made multiple arrests; and shut down thousands of fraudulent websites. Specifically, OSP during its year aimed to focus on three areas: combating the illegal import and sale of counterfeit and substandard products; detecting and deterring financial fraud scams; and preventing the exploitation of relief and stimulus programs.

One year after its inception in April 2020, OSP has yielded significant results, both statistically and in terms of the impact the initiative has on protecting the health and safety of the American public. This work has kept counterfeit and substandard goods out of the medical and consumer supply chains while ensuring violators are held accountable for their criminal efforts to exploit the pandemic for profit.

In total, this operation has yielded 3,131 COVID-19 related seizures that included prohibited COVID-19 Test Kits, Prohibited Pharmaceuticals, Counterfeit Masks and more. OSP has resulted in 362 Criminal Arrests,



31 Convictions, and a total of \$54.7 million USD of illicit proceeds seized. The operation has also led to 110 seizures of counterfeit vaccines, with 49 cases initiated and 15 criminal arrests made.

As the public demand for access to vaccines and treatments grow, so do illegal attempts to introduce counterfeit versions of these items into U.S. marketplace. As such, *Operation Stolen Promise 2.0* has been launched to expand the focus of OSP to address the emerging public health threat of counterfeit versions of COVID-19 vaccines and treatments entering the marketplace. OSP 2.0 will focus on tackling new and evolving public health threats posed by the sale and distribution of counterfeit and/or unauthorized vaccines and treatments.

HSI will continue to partner with CBP to seize mislabeled, fraudulent, unauthorized, and prohibited COVID-19 test kits, treatment kits, homeopathic remedies, and personal protective equipment (PPE).



CBP Partnerships



CBP Partnerships

The United States Postal Service (USPS)

USPS is responsible for presenting mail and providing electronic data (AED) to CBP for arriving international mail parcels. USPS and CBP have worked to target and identify 31 violations imported through international mail. Both agencies are implementing new strategies for leveraging the AED already available to identify offending merchandise.

Collaboration Spotlight: *Operation Mega Flex* is a CBP-led, interagency effort that was initiated in July 2019 to ensure compliance and assess illicit networks in the international mail environment through periodic enhanced inspections. CBP conducts Mega Flex operations in close coordination with ICE, the U.S. Postal Inspection Service, and the U.S. Food and Drug Administration (FDA) to detect, intercept, and seize illicit goods arriving in small parcels from China.

For example, most seizures out of Memphis were counterfeit drivers' licenses. These shipments originated from China and were shipped to various locations throughout the United States. CBP learned that many of the shipments were smuggled in the bottom of boxes containing tassels, clothing, and even bundles of synthetic hair¹⁰. Further, in just one day in October 2020, CBPOs in LAX International Mail Facility (IMF) intercepted 812 shipments containing counterfeit footwear, handbags, wearing apparel, prohibited plant and animal products, and other items that threaten the health and safety of American consumers and undermine the competitiveness of U.S. businesses¹¹. Similarly, CBP's New York Field Office, home to two IMF's, John F. Kennedy International Airport (the largest IMF in the United States), and the Port of New York/Newark, and its partners also inspected more than 4,000 shipments and seized 127 shipments for IPR violations¹².

On average, CBP processes more than 420,000 parcels of mail from China each day. Throughout *Operation Mega Flex*, CBP found that more than 13 percent of targeted shipments contain counterfeit goods or contraband items.



10 See <https://www.cbp.gov/newsroom/local-media-release/cbp-memphis-seizes-nearly-200-shipments-through-operation-mega-flex>.

11 See <https://www.cbp.gov/newsroom/local-media-release/operation-mega-flex-stops-hundreds-illicit-made-china-shipments-lax>.

12 See <https://www.cbp.gov/newsroom/local-media-release/cbp-new-york-field-office-seizes-127-ipr-violations-during-operation>.

CBP Partnerships

The National Intellectual Property Rights Coordination Center (IPR Center)

The IPR Center, in collaboration with CBP, stands at the forefront of the United States government's response to combatting global intellectual property (IP) theft and enforcement of its international trade laws.

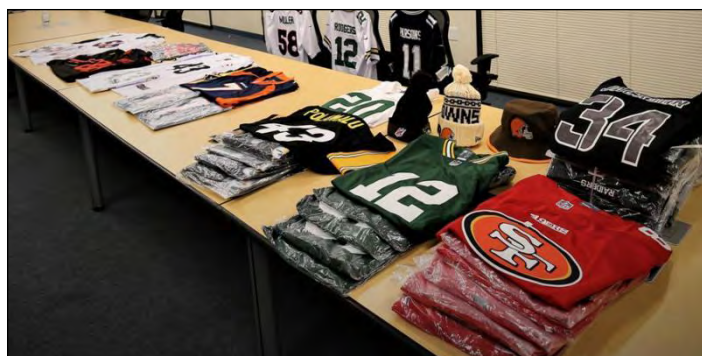
Collaboration Spotlight: *Operation Team Player* is an ongoing annual operation that begins after every Super Bowl and continues through the next one, targeting international shipments of counterfeit sports merchandise into the United States. This operation is run by the IPR Center in collaboration with CBP, the National Football League, and other major sports leagues to prevent the illegal importation and distribution of counterfeit sports merchandise.

Super Bowl LV was played on February 7, 2021, at Raymond James Stadium in Tampa, Florida. CBP and ICE HSI announced the seizure of more than 267,511 counterfeit sports-related items, worth an estimated \$97.8 million manufacturer's suggested retail price (MSRP), through a collaborative enforcement operation targeting international shipments of counterfeit merchandise into the United States. They seized items such as fake jerseys, hats, rings, t-shirts, jackets, tickets, souvenirs, and thousands of other sports related memorabilia prepared to be marked as legitimate and authentic items.

Due to COVID-19, much of the illegal activity moved online, which refocused partner government agency efforts more towards commercial websites engaged in the illegal sale and distribution of counterfeit goods.

Commercial Customs Operations Advisory Committee (COAC)

The private sector plays an instrumental role in the global economy and has a unique opportunity to lend



their considerable expertise to CBP. By partnering with industry leaders, CBP links our processes with modern business practices, which results in enhanced compliance with trade laws, improves our facilitation and enforcement efforts, and assists the U.S. economy. CBP's engagement with its federal advisory committee, the COAC, is a key component in evaluating and adapting CBP policies and getting feedback about significant proposed changes.

CBP has been able to adopt and implement recommendations presented by the COAC IPRWG. As of January 2021, CBP began concurrently issuing the notice of seizure (NOS) and initiating publication of the notice of intent to forfeit on all seized shipments with a domestic value less than \$2,500. Although publication is advanced, all interested parties are afforded the same opportunity to respond to the NOS as they had under previously existing procedures. Additionally, CBP announced that effective June 7, 2021, NOS will be emailed to rights holders via the email addresses provided to CBP through the IPR e-Recordation program. Delivery of seizure notices via email allows for instantaneous notification to the rights holder. Issuing electronic NOS has increased the speed at which the trade community received the necessary information and allowed for instantaneous sharing of the information with the rights holder. It has also benefited CBP as it reduced the cost of mailing such notices. This paperless approach aligns with CBP's continuous effort to improve resource efficiency. CBP looks forward to further engagement with the COAC.





Help CBP Protect American Ingenuity

Donations Acceptance Program

Pursuant to Section 308(d) of the *Trade Facilitation and Trade Enforcement Act of 2015*, P.L. 114-125, CBP enacted regulations at 19 C.F.R. §133.61, setting forth policies and procedures for accepting donations from private sector parties of hardware, software, equipment, and technologies for IPR enforcement purposes. These regulations are consistent with the CBP Commissioner's FY 2021 priority to identify, detect, and interdict high-risk shipments through partnerships.

Since 19 C.F.R. §133.61 went into effect in January 2018, DAP has fully executed five formal IPR enforcement partnerships with Procter & Gamble, Otter Products, Cisco Systems, Apple Inc., and Nike Inc. To date, 214 product authentication tools have been deployed to 70 locations. More importantly, these partnerships are demonstrably benefiting CBP's frontline and yielding a positive return on investment for its partners.

Intellectual Property Rights e-Recordation

CBP concentrates its IPR border enforcement on federally registered trademarks and copyrights that have been recorded with CBP by their owners using the Intellectual Property Rights e-Recordation (IPRR) system, <https://iprr.cbp.gov/>. All trademark and copyright recordations are contained in a secure proprietary database accessible by CBP personnel at all 328 ports of entry. Product ID manuals provided by rights holders are also linked to the database and used by CBP in making IPR border enforcement determinations. In FY21, CBP added over 2,000 recordations to their enforcement database. As of September 30, 2021, CBP was enforcing 20,758 active recorded copyrights and trademarks.

Intellectual Property Rights e-Allegations

Information on potential IPR infringements can be submitted to CBP using the e-Allegations Online Trade

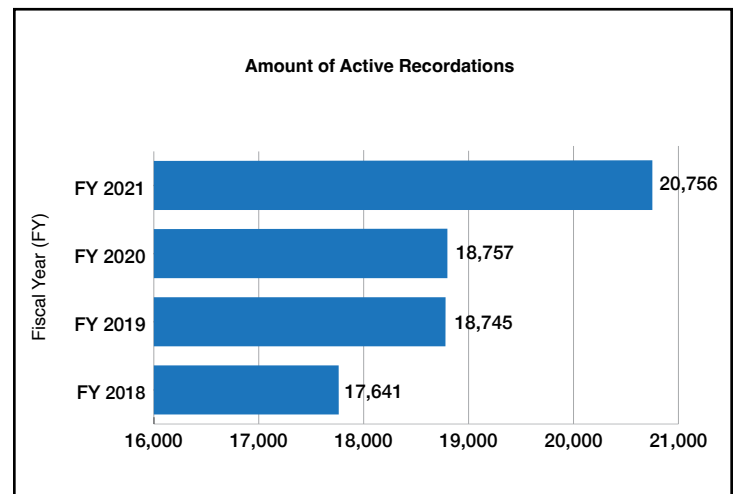
Violation Reporting System at <https://eallegations.cbp.gov/s/> or by calling 1-800-BE-ALERT.

The e-Allegation program provides an electronic portal through which the trade community and the public can report suspected trade violations to CBP. The e-Allegation process enables CBP, in collaboration with the partners, to protect our economy from the effects of unfair trade practices and guard against the entry of products that could pose a threat to health and safety.

In addition to IPR violations, there are other types of trade violations, such as forced labor violations, duty evasion violations, and shipping violations. For more information on various types of trade violations, visit <https://www.cbp.gov/trade/e-allegations>.

Intellectual Property Rights Search

CBP works closely with rights holders in making IPR enforcement determinations. A public database of both active and inactive recordations is available using a search engine called the Intellectual Property Rights Search (IPRS) at <http://iprs.cbp.gov/>.



e-Allegations by Fiscal Year (FY)		
Fiscal Year (FY)	Amount of IPR (Counterfeit Trademark & Piratical Copyright) e-Allegations	Total Number of e-Allegations received that FY
2018	324	1,162
2019	264	1,252
2020	360	1,290
2021	407	1,743

DON'T TOY AROUND WITH COUNTERFEITS.

COUNTERFEITS ARE UNSAFE. ONLY TRUST REPUTABLE SOURCES.

The risks of shopping online aren't always obvious. Be informed about the dangers of counterfeit goods.

**Fake
Goods.
Real
Dangers.**

www.CBP.gov/fakegoodsrealdangers



U.S. Customs and
Border Protection

Exclusion Orders and Outreach

Exclusion Orders

CBP enforces exclusion orders issued by the International Trade Commission (ITC). Most ITC exclusion orders are patent based. The ITC issues both limited and general exclusion orders. Limited exclusion orders apply only to infringing articles of named respondents. General exclusion orders bar the entry of infringing articles by all.

Exclusion orders prohibit the entry of all covered articles, even if they were not specifically accused and found to infringe by the ITC. Once excluded, subsequent importations of the same articles by the same importer are subject to seizure.

- » Exclusion Orders – for FY 2021:
 - Seizures correctly citing 19 USC 1337(i): 81 cases
 - Seizure Est. MSRP: \$1,930,683.
 - Total Active Exclusion Orders: “At the end of FY 2021, CBP was administering 128 active exclusion orders issued by the U.S. International Trade Commission following investigations of unfair import practices in the importation of articles into the United States in violation of 19 U.S.C. § 1337.”

Public Awareness Campaign

In FY 2021, CBP continued the *Truth Behind Counterfeits* IPR Public Awareness Campaign intended to educate the public of many harms associated with the purchase of counterfeit goods. The goal of the campaign is to increase consumer conscientiousness by making people aware that buying counterfeits is not a victimless crime

and to encourage them to shop from legitimate and trustworthy sources. Due to COVID-19, CBP pivoted its consumer education campaign to leverage existing digital platforms and utilize relationships with trade associations to bring awareness to the dangers of counterfeit goods. This included the use of traditional media avenues as well as CBP’s social media presence (Twitter, Facebook, and Instagram) and updating CBP’s IPR website (<https://www.cbp.gov/trade/priority-issues/ipr>) and the *Truth Behind Counterfeits* standalone webpage (<https://cbp.gov/trade/fakegoodsrealdangers>).

Asia Pacific Economic Cooperation

In February 2021, at the Asia Pacific Economic Cooperation (APEC) Subcommittee on Customs Procedures (SCCP) meeting that was hosted virtually by New Zealand, CBP presented the results of the COVID-19 joint enforcement effort that took place from November 10 to December 10, 2020. This operation helped participating economies with the identification, interdiction, and deterrence of counterfeit COVID-19 related items and had participation from eight APEC economies (Australia, Japan, Mexico, New Zealand, Papua New Guinea, Peru, Thailand, and the United States). Following on this effort, the United States and Peru conducted a joint enforcement COVID-19 focused operation in June 2021 to assess IPR trends since the previous operation. Both the U.S. and Peru presented their results to the APEC SCCP at the virtual meeting held in August 2021.



**DON'T BARK UP
THE WRONG
TREE.**

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TRUST REPUTABLE SOURCES.

The risks of shopping online aren't always obvious. Be informed about the dangers of counterfeit goods.

**Fake Goods.
Real Dangers.**

www.CBP.gov/fakegoodsrealdangers



U.S. Customs and
Border Protection

Outreach: CBP/U.S. Chamber of Commerce Memorandum of Understanding

On May 26, 2021, CBP entered a novel memorandum of understanding (MOU) with the U.S. Chamber of Commerce (Chamber) that outlines general terms of connecting resources and sharing information to stop the flow of counterfeit goods. This memorandum of understanding establishes a first-of-its-kind framework for public-private collaboration on combatting counterfeit and pirated goods. The MOU consists of four pillars:

- 1. Outreach:** CBP and the Chamber agreed to support outreach efforts related to bringing awareness to the public about the dangers of counterfeit goods. During the holiday season of 2021, CBP and the Chamber participated in a joint holiday campaign, the Shop Smart Campaign, which included a media blitz that reached an audience of over 83 million people.
- 2. CBP IPR Statistics Data Sharing:** CBP provides exclusive IPR seizure statistics on a quarterly basis to the Chamber. CBP has provided all the FY2021 Quarterly IPR statistics.
- 3. Training:** CBP and the Chamber have agreed to provide bi-directional training to each of their relevant personnel/members.
- 4. Data Pilot:** CBP is conducting a data sharing pilot with three of the Chamber's member companies, with the hopes of expanding the pilot to include other companies in the future. The current pilot serves as an opportunity to establish best practices for IPR data sharing with the private sector. It also offers CBP the ability to test the viability of data sharing with major brands to better target and seize imports of counterfeit and pirated goods and other IPR violative merchandise.

Information sharing between CBP and the U.S. Chamber of Commerce strengthens CBP's ability to defend intellectual property standards that generate American jobs, save lives, and enhance our economic prosperity. The MOU enhances CBP's abilities to effectively target and intercept substandard, illegitimate goods and protect American ingenuity.



Outreach: The Year of the Small and Medium Sized Enterprises Webinar Series



In FY 2021 CBP launched a webinar series directed to small and medium enterprises entitled 'The Year of the Small and Medium Sized Enterprises (SME)'. <https://www.cbp.gov/trade/priority-issues/ipr/cbp-year-sme>. The series of webinars focused on topics concerning how SMEs can work with CBP to help prevent imports of merchandise that infringes their IPR. During FY 2021, CBP hosted four webinars that reached 1200 members of the SME trade community. These webinars focused on

how SMEs could protect their ingenuity from infringing imports, what to do after registering your mark with CBP, and e-commerce businesses.

Due to this outreach, CBP has seen a rise in the number of recordation applications by trademark and copyright owners of small and medium sized businesses. This has reinforced that the CBP recordation program is a powerful tool for SMEs in combatting infringing importations.



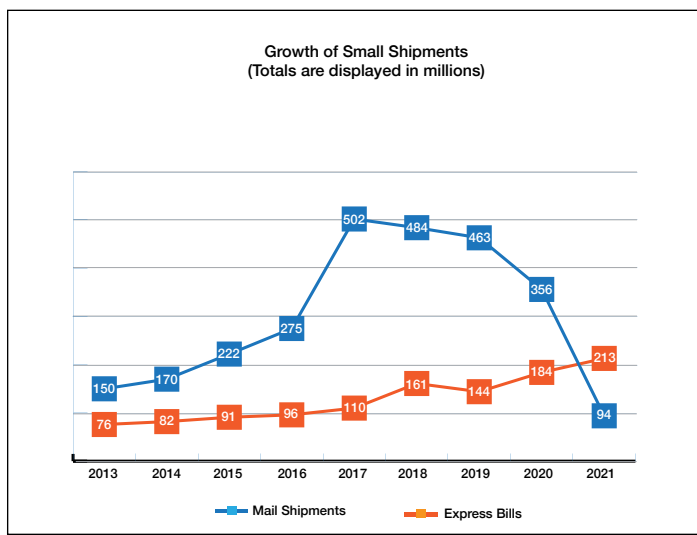
CAUTION
CONVEYOR OPERATES
AUTOMATICALLY
KEEP AWAY



E-commerce is a growing segment of the economy of the U.S. It made up 10.7% of the total retail sales in 2019 at \$578.5 billion U.S. dollars (USD) and subsequently accounted for 14% of the total retail sales in 2020 amounting to \$792 billion USD¹³. In 2020 alone, e-commerce sales in the U.S. grew over 40% and reached \$791.8 billion USD in value¹⁴.

During the second quarter of 2021, the U.S. retail e-commerce sales were estimated at \$222.5 billion, an increase of 3.3 percent from the first quarter of 2021¹⁵. The second quarter 2021 e-commerce estimate increased at 9.1 percent from the second quarter of 2020. E-commerce sales in the second quarter of 2021 accounted for 13.3 percent of total sales¹⁶. In FY 2021, CBP processed 213 million express shipments and 94 million international mail shipments.

Such growing trends comes with many challenges. While e-commerce shipments pose the same health, safety, and economic security risks as containerized shipments, due to the complex and dynamic nature of the industry, CBP lacks full visibility into the e-commerce supply chain. The overwhelming volume of small packages also makes CBP's ability to identify and interdict high risk packages difficult. Further, vague and inaccurate electronic data provided by certain trade entities poses significant challenge when targeting shipments.



¹³ "2019 E-Stats Report: Measuring the Electronic Economy," U.S. Census Bureau, August 5, 2021, <https://www.census.gov/newsroom/press-releases/2021/e-estats-report-electronic-economy.html>.

¹⁴ "Monthly Retail Trade," U.S. Census Bureau, <https://www.census.gov/retail/index.html>.

¹⁵ "Quarterly Retail E-Commerce Sales – 2nd Quarter 2021," U.S. Census Bureau, August 19, 2021, https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf.

¹⁶ *Id.*

In response to the increasing challenges in the e-commerce environment, CBP has been focusing its effort to improve trade risk management by working closely with the trade community. Going into its second year, CBP continues to operate two test pilot programs, the Section 321 Data Pilot and the Entry Type 86 Test and is now looking to formalize the success of these two pilot programs.

Section 321 Data Pilot

Initiated in 2019, the Section 321 Data Pilot is a voluntary collaboration with online marketplaces, carriers, technology firms, and logistics providers to secure e-commerce supply chains and protect American consumers. CBP is conducting this test for two reasons: the first is to determine the feasibility of requiring advance data from different types of parties; and the second is to determine the feasibility of requiring additional data that is generally not required under current regulations to effectively identify and target high-risk shipments in the e-commerce environment. To further evaluate the Section 321 Data Pilot program and the risks associated with Section 321 *de minimis* shipments, in August 2021, CBP announced in the *Federal Register* its plan to extend the current test program through August 2023.

Since the establishment of the program in 2019, CBP has experienced significant operational benefits. Specifically, along with the administrative ruling issued in July 2020¹⁷, this pilot program better positions CBP to identify duty evasions and other abuses consistent with current statutory authorities and helps create a more predictable enforcement environment for trade. This ruling also provides CBP with important foreign seller information with which to target and interdict counterfeit products, consumer safety violations, and other threats before they enter the U.S. For the owner or purchaser to qualify as the "person" under Section 321, importers are required to provide the first and last name of the owner or purchaser, or the name of the business.

Entry Type 86 Test

In September 2019, CBP also launched a voluntary test of a Section 321 *de minimis* commercial entry process

IPR and E-Commerce

through the creation of the new Entry Type 86. The Entry Type 86 Test allows customs brokers and self-filers to electronically submit *de minimis* entries through the Automated Broker Interface, including those subjects to partner government agency (PGA) data requirements for clearance. This new entry type aimed to improve import safety and security by providing greater visibility into low value shipments for both CBP and PGAs while ensuring regulatory requirements are met. Creation of the new informal entry type 86 allows for customs brokers and self-filers to electronically submit entries with a limited data set that is exempt from duty, taxes and fees.



Documented Benefits of Section 321 Data Pilot and Entry Type 86 Test

In FY 2021, CBP received 524 million filings on *de minimis* shipments (182 million Section 321 Data Pilot; 342 million Entry Type 86). In the fourth quarter of fiscal year 2020, CBP received Section 321 Data Pilot data on nearly 25% of all non-mail *de minimis* shipments. Similarly, Entry Type 86 filings accounted for almost 50% of all non-mail *de minimis* shipments. The two pilot programs have also shown significant operational benefits when pilot participants provided seller information, product pictures, and other transactional details. First, the programs led to more predictable and consistent enforcement environment for low-risk shipments and trusted trade partners. Second, obtaining advance data elements significantly reduced CBP workload with same-day clearance compared to the previous six- to eight-day wait times. Further, advance information led to fewer CBP holds and improved overall security, including mitigating risks associated with the importation

of potential counterfeit test kits, medical devices, and personal protective equipment related to COVID-19.

Pilot participants also experienced fewer holds. One platform experienced 97% fewer holds from when they first began transmitting data. Another platform also experienced 90% fewer holds. In addition to such operational benefits, feedback received in a CBP survey revealed that pilot participants saw an estimated \$2 billion USD in time and cost savings associated with the Entry Type 86 Test.

Informed Compliance Efforts

While administering the two pilot programs, CBP has made significant efforts to engage with the trade community and to inform stakeholders of the Section 321 administrative ruling and its implications. In addition to engaging with the ETF, CBP's E-commerce Branch and Office of Trade Relations actively connect with the trade community in various fora. For example, CBP holds quarterly public meeting with the Advisory Committee on Commercial Operations (COAC), a group of private sector stakeholders selected to advise the Secretaries of the Department of Treasury and the Department of Homeland Security on the commercial operations of CBP (recordings of part meetings: <https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings>). To reach wider foreign sellers and shippers and inform them of the administrative ruling issued in July 2020, the branch also translated and issued the ruling in Chinese (<https://www.cbp.gov/sites/default/files/assets/documents/2021-Apr/1%20Administrative%20Ruling%20One-Pager%20Mandarin%20Translation.pdf>). Lastly, CBP participated in numerous webinars and online trainings to inform the public the latest regulations and available resources (<https://www.cbp.gov/trade/stakeholder-engagement>).

CBP understands the importance of working closely with the trade community to achieve its objectives, especially when implementing new administrative rulings. CBP has been engaged with the trade community throughout this dynamic process and will continue to work with not only the traditional players, but also foreign stakeholders who will be affected by the Section 321 administrative ruling.

17 CBP issued an administrative ruling that clarified whether importations made by a nonresident importer in one day and sent to a U.S. fulfillment facility or warehouse may qualify for informal duty-free entry under 19 U.S.C. § 1321(a)(2)(c). The administrative ruling when into effect on July 28, 2020 and was published in the Customs Rulings Online Search System (CROSS) on July 31, 2020. See <https://rulings.cbp.gov/search?term=H290219&collection=ALL&sortBy=RELEVANCE&pageSize=30&page=1>.

Centers of Excellence and Expertise Spotlight

CBP has 10 Centers of Excellence and Expertise (Centers) to focus CBP's trade expertise on industry-specific issues through account-based processing on a national scale. The Centers, managed from strategic locations around the country, have national authority to make trade decisions at all ports of entry in an effort to meet the goals of strengthening America's economic competitiveness, enhancing industry knowledge and expertise, developing innovative trade processing procedures, applying strategic and impactful trade enforcement actions, and leveraging available trade

intelligence. The Centers are the operational entity of CBP responsible for identifying, assessing and prioritizing risks within their respective industries with a focus on CBP's priority trade issues. The Centers also administer the collection of trade remedies as well as lead and carry out operations to detect and deter unlawful trade activities.

To learn more about the Centers, visit <https://www.cbp.gov/trade/centers-excellence-and-expertise-information>.





Mode of Transportation and Top Product Commodities

SEIZURES BY MODE OF TRANSPORTATION

16,926
EXPRESS



7,293
MAIL



2,274 CARGO

ALL OTHERS 622

TOP PRODUCTS SEIZED BY NUMBER OF SEIZURE LINES



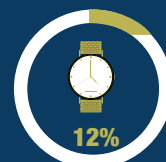
30%
WEARING APPAREL/
ACCESSORIES



28%
HANDBAGS/
WALLETS



13%
FOOTWEAR



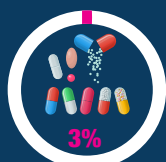
12%
WATCHES/
JEWELRY



5%
CONSUMER
ELECTRONICS



4%
CONSUMER
PRODUCTS



3%
PHARMACEUTICAL/
PERSONAL CARE



1%
AUTOMOBILE/
AEROSPACE



1%
LABEL
TAGS

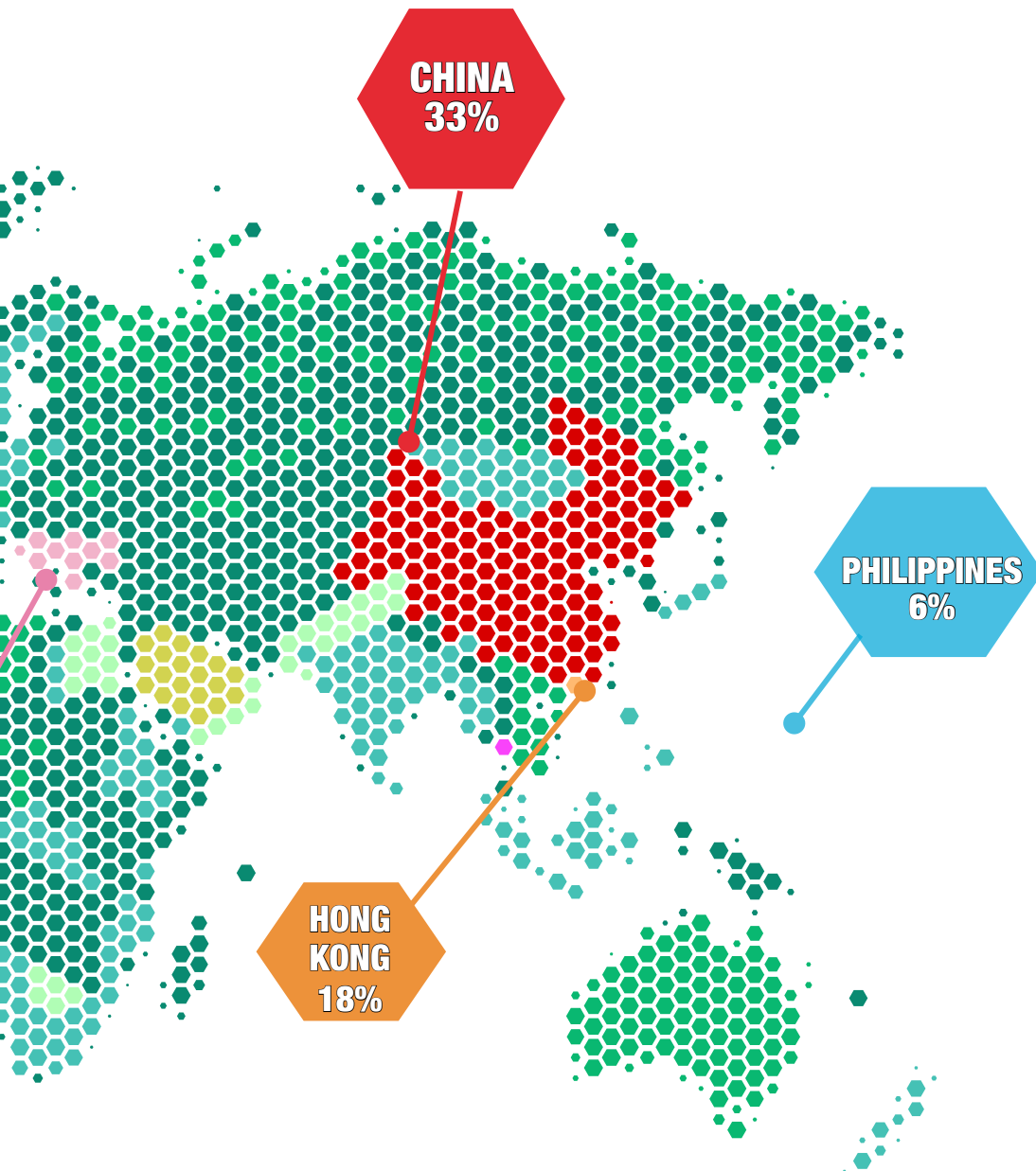
ALL
OTHER
COMMODITIES
4%

Seizure World Map



FY 2021 TOTALS
NUMBER OF SEIZURE LINES: 102,490
MSRP: \$3.3 Billion

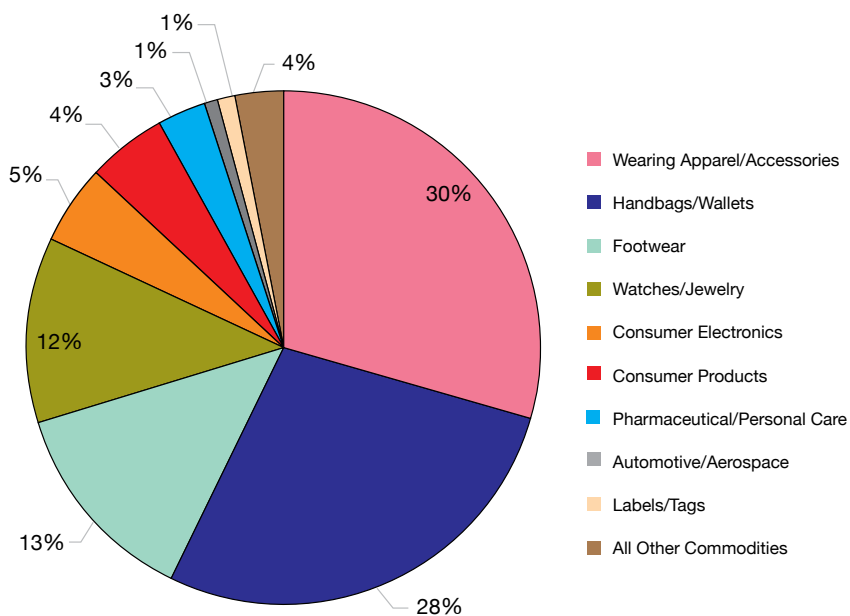
Seizure World Map



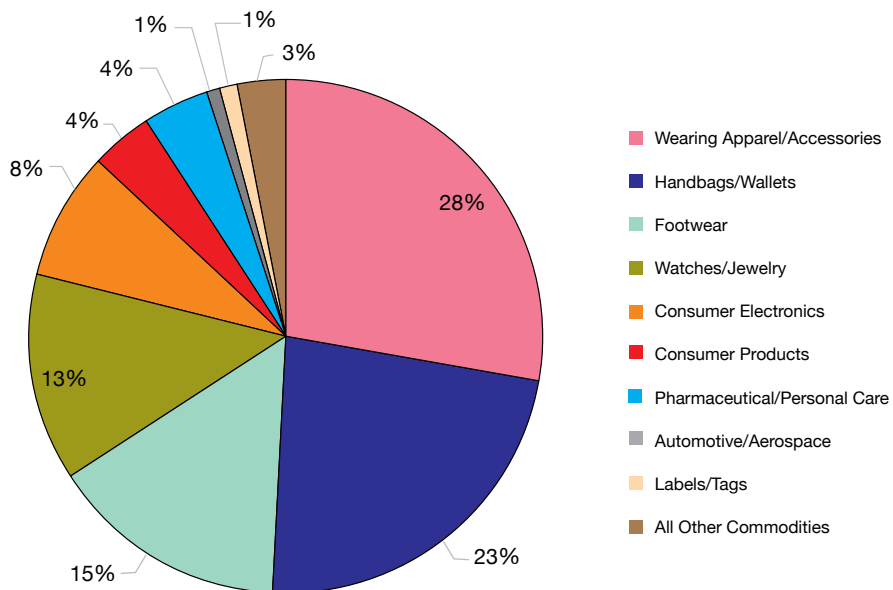
ALL OTHER COUNTRIES 27%

Number of Seizures

Number of Seizures Lines by Fiscal Year 2021



Number of Seizures Lines by Fiscal Year 2020



Number of Seizures

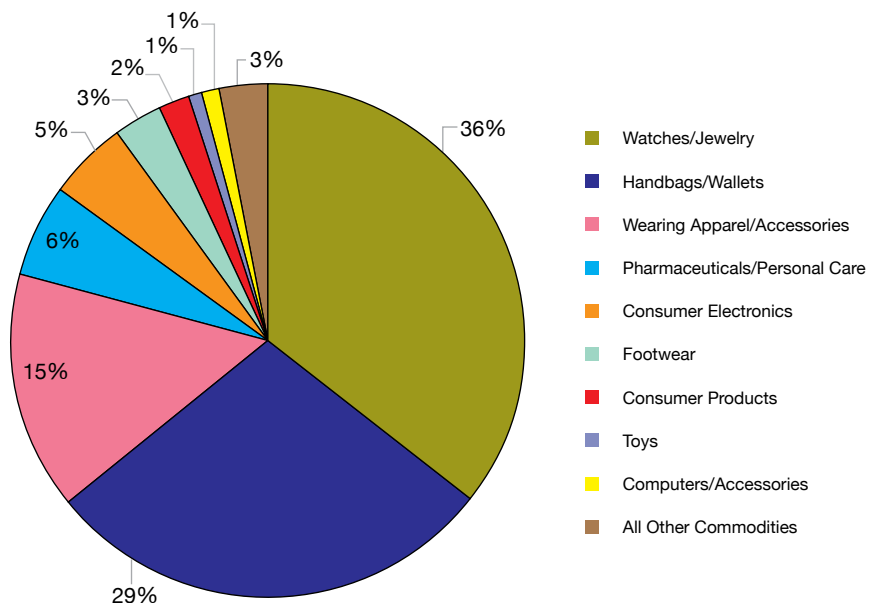
Number of Seizure Lines by Product – FY 2021		
Products	Seizure Lines	Percentage
Wearing Apparel/Accessories	30,681	30%
Handbags/Wallets	28,331	28%
Footwear	13,355	13%
Watches/Jewelry	12,313	12%
Consumer Electronics	5,380	5%
Consumer Products	3,721	4%
Pharmaceuticals/Personal Care	3,155	3%
Automotive/Aerospace	1,303	1%
Labels/Tags	641	1%
All Other Commodities	3,610	4%
Number of Seizure Lines	102,490	100%

Number of Seizure Lines by Product – FY 2020		
Products	Seizure Lines	% of Total
Wearing Apparel/Accessories	20,386	28%
Handbags/Wallets	16,554	23%
Footwear	10,868	15%
Watches/Jewelry	9,405	13%
Consumer Electronics	5,534	8%
Consumer Products	2,940	4%
Pharmaceuticals/Personal Care	2,819	4%
Automotive/Aerospace	968	1%
Labels/Tags	470	1%
All Other Products	2,413	3%
Number of Seizure Lines	72,357	100%

* In an effort to streamline DHS reporting, we are now reporting seized by seizure lines and not seizures. This will allow for greater specificity, especially for those seizures which contain more than one type of commodity. Shipments with multiple products are categorized as All Other Commodities. Because the individual percentage figures are rounded, in some cases, the sum of the rounded percentages for a given fiscal year is slightly higher or lower than 100 percent.

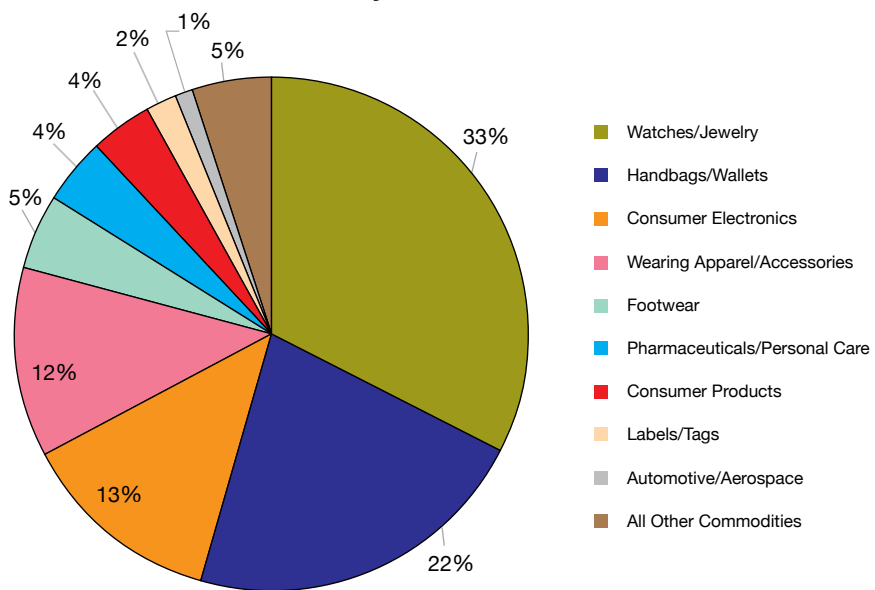
Products Seized by MSRP

MSRP By Product FY 2021



Total FY 2021 MSRP \$3,330,037,350

MSRP By Product FY 2020



Total FY 2020 MSRP \$1,309,156,510

Products Seized by MSRP

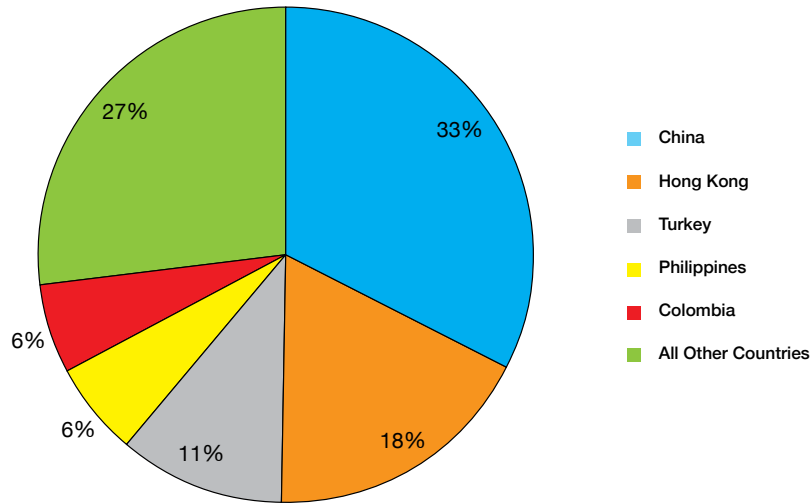
MSRP By Product – FY 2021		
Products	MSRP	Percentage
Watches/Jewelry	\$1,186,747,146	36%
Handbags/Wallets	\$972,495,390	29%
Wearing Apparel/Accessories	\$487,370,983	15%
Pharmaceuticals/Personal Care	\$185,043,493	6%
Consumer Electronics	\$171,010,749	5%
Footwear	\$96,690,708	3%
Consumer Products	\$72,075,495	2%
Toys	\$25,420,514	1%
Computers/Accessories	\$24,553,282	1%
All Other Products	\$108,629,590	3%
Grand Total	\$3,330,037,350	100%
Number of Seizure Lines	102,490	

MSRP By Product – FY 2020		
Products	MSRP	Percentage
Watches/Jewelry	\$435,249,467	33%
Handbags/Wallets	\$282,702,448	22%
Consumer Electronics	\$173,829,670	13%
Wearing Apparel/Accessories	\$157,226,661	12%
Footwear	\$63,146,456	5%
Pharmaceuticals/Personal Care	\$56,190,152	4%
Consumer Products	\$49,695,611	4%
Labels/Tags	\$19,823,791	2%
Automotive/Aerospace	\$11,063,561	1%
All Other Products	\$60,228,693	5%
Grand Total	\$1,309,156,510	100%
Number of Seizure Lines	72,537	

* In an effort to streamline DHS reporting, we are now reporting seized by seizure lines and not seizures. This will allow for greater specificity, especially for those seizures which contain more than one type of commodity. Shipments with multiple products are categorized as All Other Commodities. Because the individual percentage figures are rounded, in some cases, the sum of the rounded percentages for a given fiscal year is slightly higher or lower than 100 percent.

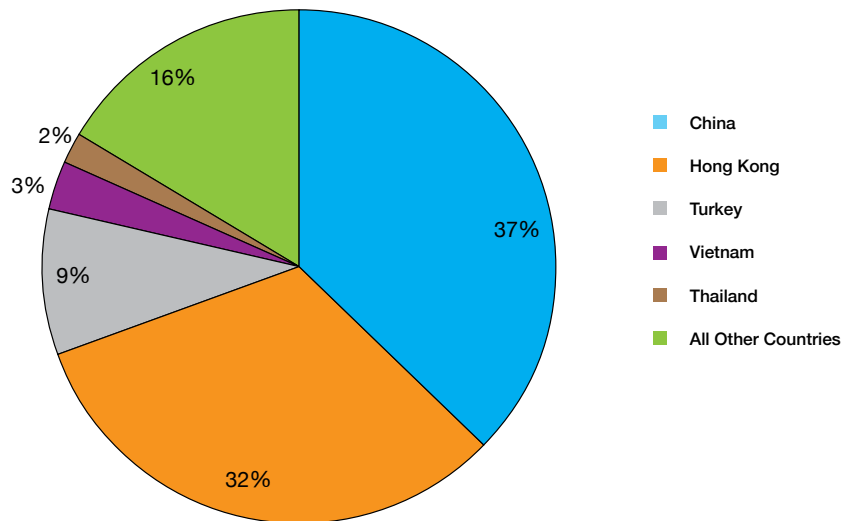
Total Seizure Lines and MSRP Seized by Economy

Seizure Lines By Economy FY 2021



Number of Seizure Lines: 102,490

Seizure Lines By Economy FY 2020



Number of Seizure Lines: 72,357

Total Seizure Lines and MSRP Seized by Economy

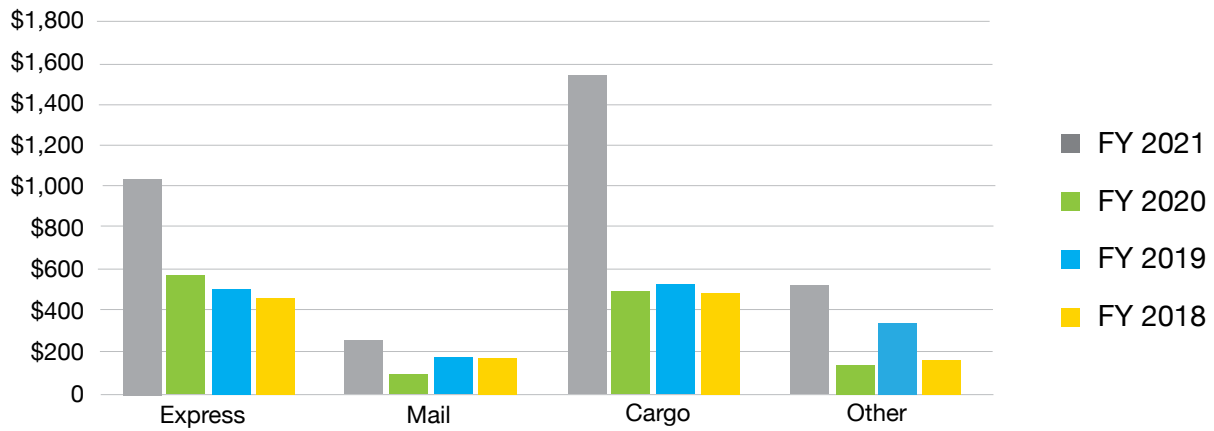
Seizures Lines and Related MSRP by Economy – FY 2021			
Trading Partner	Seizure Lines	% of Total	MSRP
China	33,323	33%	\$1,888,298,761
Hong Kong	18,466	18%	\$613,462,655
Turkey	10,781	11%	\$60,347,048
Philippines	6,416	6%	\$45,692,010
Colombia	5,912	6%	\$23,980,798
All Other Countries	27,592	27%	\$698,256,079
Total	102,490	100%	\$3,330,037,350

Seizures Lines and Related MSRP by Economy – FY 2020			
Trading Partner	Seizure Lines	% of Total	MSRP
China	26,985	37%	\$660,767,476
Hong Kong	23,493	32%	\$428,961,694
Turkey	6,831	9%	\$31,237,035
Vietnam	2,123	3%	\$25,803,755
Thailand	1,445	2%	\$12,601,807
All Other Countries	11,480	16%	\$149,784,743
Grand Total	72,357	100%	\$1,309,156,510

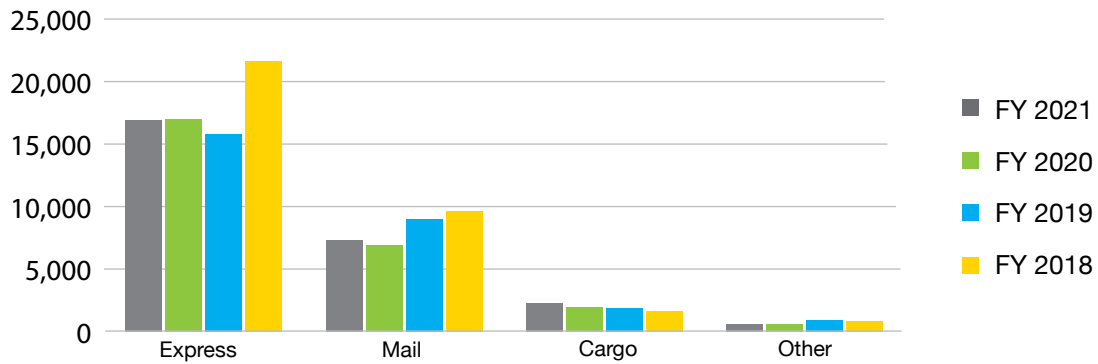
* The aggregate seizure data reflect the reported country of origin, not necessarily where the seized goods were produced. Because the individual percentage figures are rounded, in some cases, the sum of the rounded percentages for a given fiscal year is slightly higher or lower than 100 percent.

Seizures by Mode of Transportation

Modes of Transportation by MSRP (in millions)



Modes of Transportation by Seizures



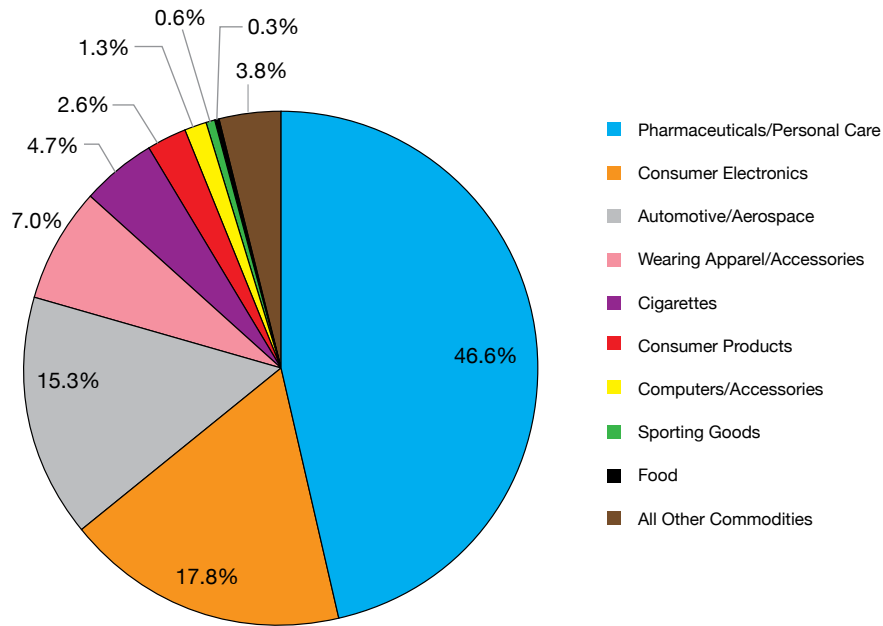
Seizures by Mode of Transportation

	Modes of Transport			
	Estimated MSRP (in Millions)			
	FY 2021	FY 2020	FY 2019	FY 2018
Express	\$1,036.1	\$589.1	\$553.5	\$549.2
Mail	\$231.5	\$98.1	\$175.6	\$197.3
Cargo	\$1,575.7	\$463.4	\$488.2	\$447.9
Other	\$486.7	\$158.5	\$337.9	\$205.4
TOTAL	\$3,330.0	\$1,309.1	\$1,555.2	\$1,399.8

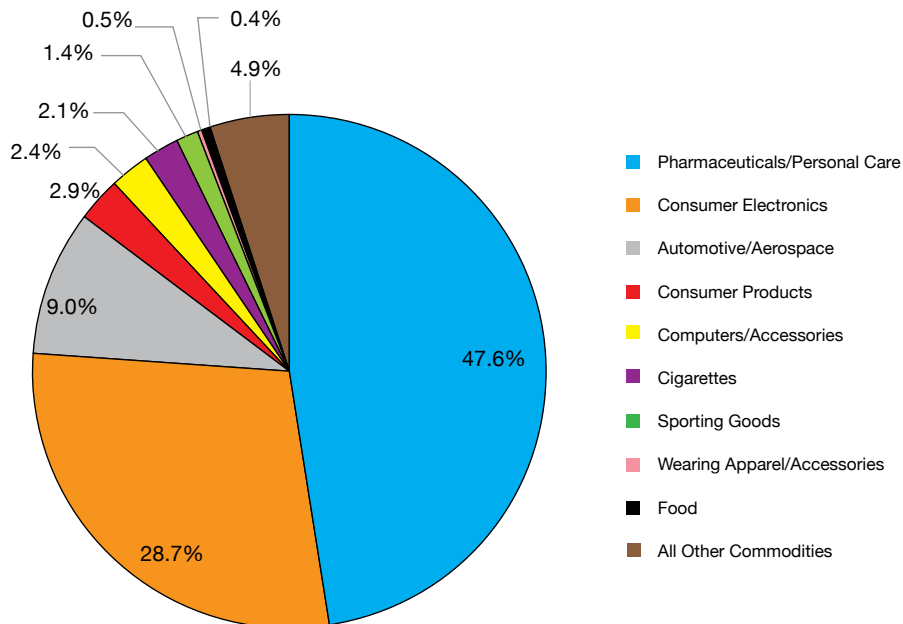
	Modes of Transport			
	Seizures			
	FY 2021	FY 2020	FY 2019	FY 2018
Express	16,926	17,001	15,811	21,632
Mail	7,293	6,886	8,982	9,643
Cargo	2,274	1,993	1,903	1,673
Other	622	623	903	862
TOTAL	27,115	26,503	27,599	33,810

Health, Safety, and Security (HSS) by Product

Health, Safety, and Security (HSS) by Commodity FY 2021



Health, Safety, and Security (HSS) by Commodity FY 2020



Health, Safety, and Security (HSS) by Product

Health, Safety, and Security (HSS) by Commodity – FY 2021		
Health, Safety, and Security	Seizure Lines	% of Total
Pharmaceuticals/Personal Care	3,041	46.6%
Consumer Electronics	1,165	17.8%
Automotive/Aerospace	1,002	15.3%
Wearing Apparel/Accessories	457	7.0%
Cigarettes	309	4.7%
Consumer Products	170	2.6%
Computers/Accessories	84	1.3%
Sporting Goods	38	0.6%
Food	19	0.3%
All Other Commodities	247	3.8%
Number of Seizure Lines	6,532	100%

Health, Safety, and Security (HSS) by Commodity – FY 2020		
Health, Safety, and Security	Seizure Lines	% of Total
Pharmaceuticals/Personal Care	2,706	47.6%
Consumer Electronics	1,630	28.7%
Automotive/Aerospace	511	9.0%
Consumer Products	165	2.9%
Computers/Accessories	139	2.4%
Cigarettes	119	2.1%
Sporting Goods	81	1.4%
Wearing Apparel/Accessories	30	0.5%
Food	21	0.4%
All Other Commodities	277	4.9%
Number of Seizure Lines	5,679	100%

* In an effort to streamline DHS reporting, we are now reporting seized by seizure lines and not seizures. This will allow for greater specificity, especially for those seizures which contain more than one type of commodity. Shipments with multiple products are categorized as All Other Commodities. Because the individual percentage figures are rounded, in some cases, the sum of the rounded percentages for a given fiscal year is slightly higher or lower than 100 percent.

MSRP by Centers of Excellence and Expertise

MSRP by Center of Excellence				
Fiscal Year	FY 2021		FY 2020	
Center Name	MSRP	% of Total MSRP	MSRP	%
Consumer Products and Mass Merchandising	\$2,358,989,573	70.84%	\$841,588,271	
Apparel, Footwear and Textiles	\$588,394,332	17.67%	\$231,915,396	
Electronics	\$196,173,287	5.89%	\$170,643,120	
Pharmaceuticals, Health and Chemicals	\$138,605,159	4.16%	\$21,024,365	
Automotive and Aerospace	\$21,168,082	0.64%	\$10,857,996	
Agriculture and Prepared Products	\$9,284,046	0.28%	\$893,941	
Industrial and Manufacturing Materials	\$5,514,953	0.17%	\$3,260,622	
Machinery	\$10,741,371	0.32%	\$22,860,881	
Base Metals	\$1,166,547	0.04%	\$6,111,920	
Total	\$3,330,037,350	100%	\$1,309,156,510	

MSRP by Centers of Excellence and Expertise

Centers of Excellence and Expertise (CEEs)				
	FY 2019		FY 2018	
% of Total MSRP	MSRP	% of Total MSRP	MSRP	% of Total MSRP
64.28%	\$1,000,628,016	64.34%	\$1,037,183,326	74.09%
17.71%	\$383,694,303	24.67%	\$192,996,007	13.79%
13.03%	\$117,028,274	7.52%	\$121,609,130	8.69%
1.61%	\$9,234,202	0.59%	\$8,896,989	0.64%
0.83%	\$9,868,483	0.63%	\$14,638,119	1.05%
0.07%	\$3,882,013	0.25%	\$4,578,951	0.33%
0.25%	\$1,225,896	0.08%	\$951,393	0.07%
1.75%	\$27,810,170	1.79%	\$11,475,793	0.82%
0.47%	\$1,897,700	0.12%	\$7,544,135	0.54%
100%	\$1,555,269,057	100%	\$1,399,873,842	100%

CBP IPR Points of Contact

Questions? Contact the IPR Help Desk For Assistance

Monday through Friday to answer questions on IPR. For questions, contact the IPR Help Desk via email at IPRHELPDESK@cbp.dhs.gov.

Regulations, Rulings, and Recordation

– For questions regarding Regulations and Rulings (RR) at [hqiprbranch](https://www.cbp.gov/hq/rr) or the e-Recordation program, contact iprrquestion@cbp.dhs.gov. For questions regarding articles potentially subject to an ITC exclusion or ITC Rulings at Rulings@cbp.dhs.gov.

Guidance on CBP IPR Policy and Programs

- The IPR Division coordinates with rights holders, members of the IPR community, U.S. and foreign agencies, and foreign governments in developing IPR policy and programs. To contact the IPR Division, visit <https://www.cbp.gov/ipr>.

e-Allegations

- If you are aware of or suspect a trade violation, please report the trade violation using CBP's e-Allegation System at <https://eallegations.cbp.gov/s/>. Trade Violation Reporting System (TVRS) 1-800-BE-ALERT.

National Intellectual Property Rights Coordination Center

- For questions regarding Intellectual Property Rights, including counterfeit goods, contact the National Intellectual Property Rights Coordination Center at <https://www.iprcenter.gov>.

CBP IPR Points of Contact

Assistance - CBP's IPR Help Desk is staffed for IPR enforcement. Contact the IPR Help Desk

Questions about CBP's IP enforcement regime, contact enforcement@cbp.dhs.gov. For information concerning IPR enforcement, contact enforcement@cbp.dhs.gov. Ruling requests regarding IPR enforcement may be submitted to EOEBranch.ITC337.

The IPR and E-Commerce Division (IPR Division) works with the trade community, CBP staff, other Federal agencies, and implementing the Agency's IPR strategy. For more information, email iprhelpdesk@cbp.dhs.gov.

If a company or individual is committing IPR crime, contact the Allegations Online Trade Violation Reporting System. Violations can also be reported by calling

Information Center - To Report Violations of Intellectual Property Rights, including trademark and piracy, contact the National IPR Center at www.iprcenter.gov/referral/ or telephone 1-866-IPR-2060.



U.S. Customs and Border Protection

EXHIBIT 5



Combating Trafficking in Counterfeit and Pirated Goods

Report to the President of the United States

January 24, 2020



Homeland
Security

Office of Strategy, Policy & Plans

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Foreword/Message from the Acting Secretary of Homeland Security

The rapid growth of e-commerce has revolutionized the way goods are bought and sold, allowing for counterfeit and pirated goods to flood our borders and penetrate our communities and homes. Illicit goods trafficked to American consumers by e-commerce platforms and online third-party marketplaces threaten public health and safety, as well as national security. This illicit activity impacts American innovation and erodes the competitiveness of U.S. manufacturers and workers.

Consumers must be confident in the safety, quality, and authenticity of the products they purchase online. DHS is committed to combating counterfeiters and pirates with the help of our U.S. Government partners and private sector stakeholders - who are critical to helping secure supply chains to stem the tide of counterfeit and pirated goods.



“Combating Trafficking in Counterfeit and Pirated Goods,” has been prepared by the U.S. Department of Homeland Security’s Office of Strategy, Policy, and Plans. The report uses available data, substantial public input, and other information to develop a deeper understanding of how e-commerce platforms, online third-party marketplaces, and other third-party intermediaries facilitate the importation and sale of massive amounts of counterfeit and pirated goods. The report identifies appropriate administrative, statutory, regulatory, and other actions, including enhanced enforcement measures, modernization of legal and liability frameworks, and best practices for private sector stakeholders. These strong actions can be implemented swiftly to substantially reduce trafficking in counterfeit and pirated goods while promoting a safer America.

This report was prepared pursuant to President Donald J. Trump’s April 3, 2019, *Memorandum on Combating Trafficking in Counterfeit and Pirated Goods*. The President’s historic memorandum provides a much warranted and long overdue call to action in the U.S. Government’s fight against a massive form of illicit trade that is inflicting significant harm on American consumers and businesses. This illicit trade must be stopped in its tracks.

This report was prepared in coordination with the Secretaries of Commerce and State, the Attorney General, the Office of Management and Budget, the Intellectual Property Enforcement Coordinator, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for Trade and Manufacturing Policy, and with other partners in the U.S. Government. The report also benefitted from extensive engagement with the private sector.

Sincerely,

Chad Wolf
Acting Secretary,
U.S. Department of Homeland Security

1. Executive Summary

The President’s April 3, 2019, *Memorandum on Combating Trafficking in Counterfeit and Pirated Goods* calls prompt attention to illicit trade that erodes U.S. economic competitiveness and catalyzes compounding threats to national security and public safety.

Counterfeiting is no longer confined to street-corners and flea markets. The problem has intensified to staggering levels, as shown by a recent Organisation for Economic Cooperation and Development (OECD) report, which details a 154 percent increase in counterfeits traded internationally — from \$200 billion in 2005 to \$509 billion in 2016. Similar information collected by the U.S. Department of Homeland Security (DHS) between 2000 and 2018 shows that seizures of infringing goods at U.S. borders have increased 10-fold, from 3,244 seizures per year to 33,810.

Relevant to the President’s inquiry into the linkages between e-commerce and counterfeiting, OECD reports that “E-commerce platforms represent ideal storefronts for counterfeits and provide powerful platform[s] for counterfeiters and pirates to engage large numbers of potential consumers.”¹ Similarly, the U.S. Government Accountability Office (GAO) found that e-commerce has contributed to a shift in the sale of counterfeit goods in the United States, with consumers increasingly purchasing goods online and counterfeiters producing a wider variety of goods that may be sold on websites alongside authentic products.

Respondents to the July 10, 2019, Federal Register Notice issued by the Department of Commerce echoed these observations.² Perhaps most notably, the International Anti-Counterfeiting Coalition (IACC) reports that the trafficking of counterfeit and pirated goods in e-commerce is a top priority for every sector of its membership — comprised of more than 200 corporations, including many of the world’s best-known brands in the apparel, automotive, electronics, entertainment, luxury goods, pharmaceutical, personal care and software sectors. The IACC submission goes on to say:

Across every sector of the IACC’s membership, the need to address the trafficking of counterfeit and pirated goods in e-commerce has been cited as a top priority. The vast amounts of resources our members must dedicate to ensuring the safety and vitality of the online marketplace, bears out the truth of the issue highlighted by Peter Navarro, Assistant to the President for Trade and Manufacturing Policy, in his April 3, 2019 Op-Ed piece in The Wall Street Journal - that the sale of counterfeit brand-name goods presents a pervasive and ever-growing threat in the online space. One IACC member reported making

¹ OECD (2018), *Governance Frameworks to Counter Illicit Trade*, Illicit Trade, OECD Publishing, Paris, <https://doi.org/10.1787/9789264291652-en>.

² Under Federal Register Notice (84 FR 32861), the Department of Commerce sought “comments from intellectual property rights holders, online third-party marketplaces and other third-party intermediaries, and other private-sector stakeholders on the state of counterfeit and pirated goods trafficking through online third-party marketplaces and recommendations for curbing the trafficking in such counterfeit and pirated goods.”

hundreds of investigative online test purchases over the past year, with a nearly 80% successfully resulting in the receipt of a counterfeit item.³

The scale of counterfeit activity online is evidenced as well by the significant efforts e-commerce platforms themselves have had to undertake. A major e-commerce platform reports that its proactive efforts prevented over 1 million suspected bad actors from publishing a single product for sale through its platform and blocked over 3 billion suspected counterfeit listings from being published to their marketplace. Despite efforts such as these, private sector actions have not been sufficient to prevent the importation and sale of a wide variety and large volume of counterfeit and pirated goods to the American public.

The projected growth of e-commerce fuels mounting fears that the scale of the problem will only increase, especially under a business-as-usual scenario. Consequently, an effective and meaningful response to the President’s memorandum is a matter of national import.

Actions to be Taken by DHS and the U.S. Government

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. Therefore, DHS will immediately undertake the following actions and make recommendations for other departments and agencies to combat the trafficking of counterfeit and pirated goods.

Immediate Actions by DHS and Recommendations for the U.S. Government
1. Ensure Entities with Financial Interests in Imports Bear Responsibility
2. Increase Scrutiny of Section 321 Environment
3. Suspend and Debar Repeat Offenders; Act Against Non-Compliant International Posts
4. Apply Civil Fines, Penalties and Injunctive Actions for Violative Imported Products
5. Leverage Advance Electronic Data for Mail Mode
6. Anti-Counterfeiting Consortium to Identify Online Nefarious Actors (ACTION) Plan
7. Analyze Enforcement Resources
8. Create Modernized E-Commerce Enforcement Framework
9. Assess Contributory Trademark Infringement Liability for Platforms
10. Re-Examine the Legal Framework Surrounding Non-Resident Importers
11. Establish a National Consumer Awareness Campaign

³ International Anti-Counterfeiting Coalition’s comments made on the Department of Commerce, International Trade Administration, Office of Intellectual Property Rights’, Report on the State of Counterfeit and Pirated Goods Trafficking Recommendations, 29 July 2019. Posted on 6 August 2019. <https://www.regulations.gov/document?D=DOC-2019-0003-0072>

Best Practices for E-Commerce Platforms and Third-Party Marketplaces

Government action alone is not enough to bring about the needed paradigm shift and ultimately stem the tide of counterfeit and pirated goods. All relevant private-sector stakeholders have critical roles to play and must adopt identified best practices, while redoubling efforts to police their own businesses and supply chains.

While the U.S. brick-and-mortar retail store economy has a well-developed regime for licensing, monitoring, and otherwise ensuring the protections of intellectual property rights (IPR), a comparable regime is largely non-existent for international e-commerce sellers. The following table catalogs a set of high priority “best practices” that shall be communicated to all relevant private sector stakeholders by the National Intellectual Property Rights Coordination Center. It shall be the Center’s duty to monitor and report on the adoption of these best practices within the scope of the legal authority of DHS and the Federal government.

<i>Best Practices for E-Commerce Platforms and Third-Party Marketplaces</i>
1. Comprehensive "Terms of Service" Agreements
2. Significantly Enhanced Vetting of Third-Party Sellers
3. Limitations on High Risk Products
4. Rapid Notice and Takedown Procedures
5. Enhanced Post-Discovery Actions
6. Indemnity Requirements for Foreign Sellers
7. Clear Transactions Through Banks that Comply with U.S. Enforcement Requests for Information (RFI)
8. Pre-Sale Identification of Third-Party Sellers
9. Establish Marketplace Seller ID
10. Clearly Identifiable Country of Origin Disclosures

Foremost among these best practices is the idea that e-commerce platforms, online third-party marketplaces, and other third-party intermediaries such as customs brokers and express consignment carriers must take a more active role in monitoring, detecting, and preventing trafficking in counterfeit and pirated goods.

2. Introduction

E-commerce platforms represent ideal storefronts for counterfeits...and provide powerful platform[s] for counterfeiters and pirates to engage large numbers of potential consumers.

- Organisation for Economic Cooperation and Development⁴

The rapid growth of e-commerce platforms, further catalyzed by third-party online marketplaces connected to the platforms, has revolutionized the way products are bought and sold. “Online third-party marketplace” means any web-based platform that includes features primarily designed for arranging the sale, purchase, payment, or shipping of goods, or that enables sellers not directly affiliated with an operator of such platforms to sell physical goods to consumers located in the United States.

In the United States, e-commerce year-over-year retail sales grew by 13.3 percent in the second quarter of 2019 while total retail sales increased by only 3.2 percent as brick-and-mortar retail continued its relative decline.⁵ For example, Amazon reports third-party sales on its marketplace grew from \$100 million in 1999 to \$160 billion in 2018.⁶ In 2018 alone, Walmart experienced an e-commerce sales increase of 40 percent.⁷

Counterfeits threaten national security and public safety directly when introduced into government and critical infrastructure supply chains, and indirectly if used to generate revenue for transnational criminal organizations. Counterfeits also pose risks to human health and safety, erode U.S. economic competitiveness and diminish the reputations and trustworthiness of U.S. products and producers. Across all sectors of the economy, counterfeit goods unfairly compete with legitimate products and reduce the incentives to innovate, both in the United States and abroad.

While the expansion of e-commerce has led to greater trade facilitation, its overall growth—especially the growth of certain related business models—has facilitated online trafficking in counterfeit and pirated goods. American consumers shopping on e-commerce platforms and online third-party marketplaces now face a significant risk of purchasing counterfeit or pirated goods. This risk continues to rise despite current efforts across e-commerce supply chains to reduce such trafficking.

⁴ OECD (2018), *Governance Frameworks to Counter Illicit Trade*, Illicit Trade, OECD Publishing, Paris, <https://doi.org/10.1787/9789264291652-en>.

⁵ Department of Commerce, U.S. Census Bureau, Economic Indicators Division, “Quarterly Retail E-Commerce Sales 2nd Quarter 2019,” 19 August 2019. <https://www2.census.gov/retail/releases/historical/ecom/19q2.pdf>

⁶ Jeff Bezos, “2018 Letter to Shareholders,” *The Amazon Blog*. 11 April 2019. <https://blog.aboutamazon.com/company-news/2018-letter-to-shareholders>

⁷ Note: Walmart does not separate out the percentage of third-party vendor sales. More information can be found, *here*, Jaiswal, Abhishek, “Getting Started Selling on Walmart in 2019: An Insider’s Guide to Success,” *BigCommerce*.

<https://www.bigcommerce.com/blog/selling-on-walmart-marketplace/#millennials-are-the-drivers-of-legacy-brand-change-including-walmart>. See also, “Walmart Marketplace: Frequently Asked Questions,” *Walmart*. <https://marketplace.walmart.com/resources/#1525808821038-8edf332b-5ba2>.

The OECD reports international trade in counterfeit and pirated goods amounted to as much as \$509 billion in 2016. This represents a 3.3 percent increase from 2013 as a proportion of world trade. From 2003⁸ through 2018, seizures of infringing goods by the U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) increased from 6,500 to 33,810 while the domestic value of seized merchandise — as measured by manufacturer’s suggested retail price of the legitimate good (MSRP) — increased from \$94 million in 2003 to \$1.4 billion in 2018.⁹

The rise in consumer use of third-party marketplaces significantly increases the risks and uncertainty for U.S. producers when creating new products. It is no longer enough for a small business to develop a product with significant local consumer demand and then use that revenue to grow the business regionally, nationally, and internationally with the brand protection efforts expanding in step. Instead, with the international scope of e-commerce platforms, once a small business exposes itself to the benefits of placing products online — which creates a geographic scope far greater than its more limited brand protection efforts can handle — it begins to face increased foreign infringement threat.

Moreover, as costs to enter the online market have come down, such market entry is happening earlier and earlier in the product cycle, further enhancing risk. If a new product is a success, counterfeiters will attempt, often immediately, to outcompete the original seller with lower-cost counterfeit and pirated versions while avoiding the initial investment into research and design.

In other words, on these platforms, the counterfeit and pirated goods compete unfairly and fraudulently against the genuine items. While counterfeit and pirated goods have been sold for years on street corners, alleys, and from the trunks of cars, these illicit goods are now marketed to consumers in their homes through increasingly mainstream e-commerce platforms and third party online marketplaces that convey an air of legitimacy.

With the rise of e-commerce, the problem of counterfeit trafficking has intensified. The OECD documents a 154 percent increase in counterfeits traded internationally, from \$200 billion in 2005 to \$509 billion in 2016.¹⁰ Data collected by CBP between 2000 and 2018 shows that seizures of infringing goods at U.S. borders, much of it trafficked through e-commerce, has increased ten-fold. Over 85 percent of the contraband seized by CBP arrived from China and Hong Kong. These high rates of seizures are consistent with a key OECD finding.

Counterfeit and pirated products come from many economies, with China appearing as the single largest producing market. These illegal products are frequently found in a range of industries, from luxury items (e.g. fashion apparel or deluxe watches), via intermediary products (such as machines, spare parts or

⁸ https://www.cbp.gov/sites/default/files/documents/FY2003%20IPR%20Seizure%20Statistics_0.pdf.

⁹ https://www.cbp.gov/sites/default/files/assets/documents/2019-Aug/IPR_Annual-Report-FY-2018.pdf

¹⁰ OECD/EUIPO (2016), Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, OECD Publishing, Paris. <https://www.oecd-ilibrary.org/docserver/9789264252653-en.pdf?expires=1576509401&id=id&accname=id5723&checksum=576BF246D4E50234EAF5E8EDF7F08147>

chemicals) to consumer goods that have an impact on personal health and safety (such as pharmaceuticals, food and drink, medical equipment, or toys).¹¹

Operation Mega Flex

In 2019, in response to the alarmingly high rates of contraband uncovered by DHS and a request from the White House Office of Trade and Manufacturing Policy (OTMP), CBP initiated Operation Mega Flex. This operation uses enhanced inspection and monitoring efforts to identify high-risk violators that are shipping and receiving illicit contraband through international mail facilities and express consignment hubs.

The periodic “blitz operations” conducted under the auspices of Operation Mega Flex examine thousands of parcels from China and Hong Kong and carefully catalog the range of contraband seized. To date, such operations have included visits to seven of CBP’s international mail facilities and four express consignment hubs and the completion of over 20,000 additional inspections. The following table summarizes the findings of three Mega Flex blitzes conducted between July and September of 2019.

Results of Operation Mega Flex (2019)				
	Blitz I <i>July 16 & 17</i>	Blitz II <i>August 21</i>	Blitz III <i>September 18</i>	Total
Inspections	9,705	5,757	5,399	20,861
Discrepancies	1,145	1,010	735	2,890
Discrepancy Rate	11.8%	17.5%	13.6%	13.9%
Counterfeits	212	467	382	1,061
Counterfeit Rate	2.2%	8.1%	7.1%	5.1%

Source: U.S. Customs and Border Protection

Among the discrepancies uncovered by Operation Mega Flex were 1,061 shipments of counterfeit products. These counterfeits range from fake name brand items, like Louis Vuitton bags to sports equipment made with faulty parts. Other contraband included drug paraphernalia, deadly opioids, and counterfeit drivers’ licenses.¹² In all, counterfeits constituted more than one of every three discrepancies uncovered by inspectors.¹³

¹¹ OECD/EUIPO (2016), Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, OECD Publishing, Paris. <https://www.oecd-ilibrary.org/docserver/9789264252653-en.pdf?expires=1576509401&id=id&accname=id5723&checksum=576BF246D4E50234EAF5E8EDF7F08147>

¹² Oren Fliegelman, “Made in China: Fake IDs,” *The New York Times*. 6 February 2015.

<https://www.nytimes.com/2015/02/08/education/edlife/fake-ids-or-why-would-a-student-order-a-tea-set.html>

¹³ Among the near 3,000 discrepancies, 20% of them were agricultural violations, such as bad meat, fruit, or produce, unsafe for the American consumer. These agricultural discrepancies are dangerous to the United States because they may contain diseases or pests that can greatly impact agriculture. For example, on October 16, 2018, CBP seized nearly 900 pounds of mitten crabs from an incoming Chinese freight. In Asia, mitten crabs are considered a seasonal delicacy; however, they have a disastrous impact on other global habitats and are labeled as an invasive species. See, Department of Homeland Security, U.S. Customs and Border Protection, “CBP Prevents Smuggling of Nearly 900 Pounds of Invasive Mitten Crabs,” 31 October 2018. <https://www.cbp.gov/newsroom/national-media-release/cbp-prevents-smuggling-nearly-900-pounds-invasive-mitten-crabs>.

Authorities also seized 174 controlled or prohibited substances, including: recreational drugs like LSD, cocaine, DMT, ecstasy, marijuana, mushrooms, and poppy pods as well as steroids and highly addictive painkillers like Tramadol.

It is not just a rise in the volume of counterfeits we are witnessing. GAO notes that counterfeiters are increasingly producing a “wider variety of goods that may be sold on websites alongside authentic products.”¹⁴

DHS finds the current state of e-commerce to be an intolerable and dangerous situation that must be addressed firmly and swiftly by strong actions within the Department and across other relevant agencies of the U.S. Government (USG). These include: The Federal Bureau of Investigation and the Department of Justice, the Department of Commerce, and the Department of the Treasury. This report provides a blueprint for swift and constructive changes and sets forth several actions for immediate implementation.

3. Overview of Counterfeit and Pirated Goods Trafficking

While most e-commerce transactions involve legitimate sellers and products, far too many involve the trafficking of counterfeit and pirated goods and expose legitimate businesses and consumers to substantial risks. This is a global phenomenon; the OECD reports international trade in counterfeit and pirated goods amounted to as much as half a trillion dollars in 2016.¹⁵

Key Drivers of Counterfeiting and Piracy in E-Commerce

Historically, many counterfeits were distributed through swap meets and individual sellers located on street corners. Today, counterfeits are being trafficked through vast e-commerce supply chains in concert with marketing, sales, and distribution networks. The ability of e-commerce platforms to aggregate information and reduce transportation and search costs for consumers provides a big advantage over brick-and-mortar retailers. Because of this, sellers on digital platforms have consumer visibility well beyond the seller’s natural geographical sales area.

Selling counterfeit and pirated goods through e-commerce is a highly profitable activity: production costs are low, millions of potential customers are available online, transactions are convenient, and listing on well-branded e-commerce platforms provides an air of legitimacy.

Other discrepancies found by CBP in the blitz operations included 13 weapon modifications and gun parts, 3 occurrences of drug paraphernalia, and 3 pill presses. For full summary of findings, see, Department of Homeland Security, U.S. Customs and Border Protection, Operation Mega Flex I, II and III Summaries, 2019.

¹⁴U.S. Government Accountability Office Report to the Chairman, Committee on Finance, U.S. Senate: *Intellectual Property: Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market*, GAO-18-216, Washington, DC: Government Accountability Office, January 2018. <https://www.gao.gov/assets/690/689713.pdf>

¹⁵See OECD, Trends in Trade in Counterfeit and Pirated Goods (March 2019), available at <https://www.oecd.org/governance/risk/trends-in-trade-in-counterfeit-and-pirated-goods-g2g9f533-en.htm>

¹⁵See Parker et al. 2016

When sellers of illicit goods are in another country, they are largely outside the jurisdiction for criminal prosecution or civil liability from U.S. law enforcement and private parties.

The Role of Online Third-Party Marketplaces

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 counterfeiter seeking to distribute fake products will typically set up one or more accounts on online third-party marketplaces. The ability to rapidly proliferate third-party online marketplaces greatly complicates enforcement efforts, especially for intellectual property rights holders. Rapid proliferation also allows counterfeiters to hop from one profile to the next even if the original site is taken down or blocked. On these sites, online counterfeiters can misrepresent products by posting pictures of authentic goods while simultaneously selling and shipping counterfeit versions.

Counterfeiters have taken full advantage of the aura of authenticity and trust that online platforms provide. While e-commerce has supported the launch of thousands of legitimate businesses, their models have also enabled counterfeiters to easily establish attractive “store-fronts” to compete with legitimate businesses.

Platforms use their third-party marketplace functions to leverage “two-sided” network effects to increase profitability for the platform by adding both more sellers and more buyers. Because sellers benefit with each additional buyer using the platform (more consumers to sell to), and buyers are more likely to join/use the platform with each additional seller (more sellers to buy from), there can be diminished internal resistance to adding lower quality sellers.

Platforms that recognize this strategy may incentivize seller listings to stimulate further growth and increase profits but do so without adequate scrutiny. As just one incentive, many platforms create “frictionless entry” by reducing the costs for sellers and buyers to join, thereby increasing the likelihood that the platform will reach an efficient and highly profitable scale.

Platforms also generate value by opening previously unused (or less frequently used) markets. In addition, online platforms reduce transaction costs by streamlining the actual transaction; for example, buyers and sellers use a standardized transaction method that simplifies interactions with buyers and reduces the risk that the buyer will not pay.

For example, before the rise of e-commerce, secondhand products could be sold at garage sales or in classified newspaper advertisements. E-commerce created a process for allowing buyers and sellers to trade goods digitally, reducing transaction costs and creating a global marketplace for used, but too often counterfeit, products.

Another way platforms generate value is by aggregating information and reducing search costs. A buyer may search for a product, either by keyword or product category, at lower search cost than visiting brick-and-mortar stores. Because of this, sellers on digital platforms have consumer visibility well beyond the seller’s natural geographical sales area.

In addition, consumers who have made a purchase may use tools provided by the marketplace to rate the product and the seller involved. These ratings create an important mechanism to facilitate future consumer trust in an otherwise unknown seller.

In principle, such a rating system provides a key to overcoming a common economic problem that might otherwise preclude sales: without a low-cost trust building feature that also communicates quality, and in a market with significant numbers of low-quality products, buyers may refuse to purchase any product at all, or would demand a lower price to reflect the uncertainty. One frequent result is that low cost counterfeits drive out high quality, trusted brands from the online marketplace. In practice, even the ratings systems across platforms have been gamed, and the proliferation of fake reviews and counterfeit goods on third-party marketplaces now threatens the trust mechanism itself.

Lower Startup and Production Costs

The relative ease of setting up and maintaining e-commerce websites makes online marketplaces a prime locale for the retailing of counterfeit and pirated goods. E-commerce retailers enjoy low fixed costs of setting up and maintaining web businesses and lower costs for carrying out normal business operations such as managing merchant accounts. These ventures can be set up quickly without much sophistication or specialized skills.

Some online platforms allow retailers to use pre-made templates to create their stores while other platforms only require that a seller create an account. These businesses face much lower overhead costs than traditional brick-and-mortar sellers because there is no need to rent retail space or to hire in-person customer-facing staff. Not only can counterfeiters set up their virtual storefronts quickly and easily, but they can also set up new virtual storefronts when their existing storefronts are shut down by either law enforcement or through voluntary initiatives set up by other stakeholders such as market platforms, advertisers, or payment processors.

In the production stage, counterfeiters keep costs low by stealing product secrets or technological knowledge, exploiting new production technologies, and distributing operations across jurisdictions. One method involves employees who sell trade secrets to a third party who, in turn, develops and sells counterfeit products based on the stolen secrets. Another method relies on an intermediary to steal a firm's product or technology. The use of intermediaries reduces the traceability to the counterfeiter.

Counterfeiting and piracy operations also take advantage of new low-cost production technologies. For example, the technological advances in modeling, printing and scanning technologies such as 3D printing reduce the barriers for reverse engineering and the costs of manufacturing counterfeit products.

Lower production costs can also be achieved through distributed production operations. One method involves manufacturing the counterfeit good in a foreign market to lower the chances of detection and to minimize legal liability if prosecuted. This can be combined with importation of

the counterfeit labels separately from the items, with the labels being applied to the products after both items arrive in the U.S.

In addition, it is much cheaper to manufacture illicit goods because counterfeit and pirated goods are often produced in unsafe workplaces with substandard and unsafe materials by workers who are often paid little—and sometimes nothing in the case of forced labor. Moreover, in the case of goods governed by Federal health and safety regulations, it often costs much less to produce counterfeit versions that do not meet these health and safety standards.

Lower Marketing Costs

Businesses that use only an internet presence as their consumer-facing aspect typically enjoy lower costs of designing, editing, and distributing marketing materials. Counterfeiters also benefit from greater anonymity on digital platforms and web sites and greater ease to retarget or remarket to customers. For example, counterfeiters use legitimate images and descriptions on online platforms to confuse customers, and they open multiple seller accounts on the platform so that if one account is identified and removed, the counterfeiter can simply use another.

The popularity of social media also helps reduce the costs of advertising counterfeit products. The nature of social media platforms has aided in the proliferation of counterfeits across all e-commerce sites. Instagram users, for example, can take advantage of connectivity algorithms by using the names of luxury brands in hashtags. Followers can search by hashtag and unwittingly find counterfeit products, which are comingled and difficult to differentiate from legitimate products and sellers.

Lower Distribution Costs

Traditionally, many counterfeit goods were distributed through swap meets and individual sellers located on street corners. With the rise of online platforms for shopping, customers can have products delivered to them directly.

Foreign entities that traffic in counterfeits understand how to leverage newer distribution methods better suited to e-commerce than the traditional trade paradigm (i.e., imports arriving via large cargo containers with domestic distribution networks). Today, mail parcel shipments, including through express consignments, account for more than 500 million packages each year.¹⁶ Seizures in the small package environment made up 93 percent of all seizures in 2018, a 6 percent increase over 2017. From 2012 to 2016, the number of seizures from express consignment carriers increased by 105 percent, and the MSRP of those seizures had a 337 percent increase.¹⁷ In contrast, seizures from cargo decreased by 36 percent from FY17 to FY18.

¹⁶<https://www.cbp.gov/sites/default/files/assets/documents/2019-Apr/FY%202017%20Seizure%20Stats%20Booklet%20-%2020508%20Compliant.pdf> p. 14

¹⁷https://www.gao.gov/assets/690/689713.pdf?mod=article_inline p. 14

The International Chamber of Commerce found that counterfeiters use international air packages because the high volume of these packages makes enforcement more difficult.¹⁸ A recent report by the OECD points out that distributing counterfeits across a series of small packages spreads the risk of detection, and lowers the loss from having one or more shipments seized, suggesting that losses to the counterfeiter on an ongoing basis would be within a tolerable range.¹⁹

The OECD report also notes that it is harder for authorities to detect counterfeits in small parcels than in shipping containers because cargo containers making entry at a maritime port provide customs officials with more information, well in advance of arrival. Moreover, the effort required for CBP to seize a shipment does not vary by size of the shipment, meaning that a package of a few infringing goods requires the same resources to seize as a cargo container with hundreds of infringing goods.

Section 321 of the Tariff Act of 1930 has likewise encouraged counterfeiters to favor smaller parcel delivery. Under Section 321, a foreign good valued at or less than \$800 and imported by one person on one day is not subject to the same formal customs entry procedures and rigorous data requirements as higher-value packages entering the United States. This reduced level of scrutiny is an open invitation to exploit Section 321 rules to transport and distribute counterfeits.

Rules set by the Universal Postal Union (UPU) have historically contributed to the distortion in rates for delivery of international e-commerce purchases to the United States.²⁰ UPU reimbursement rates have underpriced domestic postage rates for small parcels. This market distortion made it cheaper for small package exports to the United States from certain countries than would otherwise be economically feasible and has encouraged the use of the international postal mode over other shipment channels. The United States recently scored a historic victory when the UPU overhauled its terminal dues system²¹, effectively eliminating this outdated policy.²²

Consumer Attitudes and Perceptions

The sale of counterfeits away from so-called “underground” or secondary markets (e.g. street corners, flea markets) to e-commerce platforms is reshaping consumer attitudes and perceptions. Where in the past, consumers could identify products by relying on “red flag” indicators—such as a suspicious location of the seller, poor quality packaging, or discount pricing—consumers are now regularly exposed to counterfeit products in settings and under conditions where the articles appear genuine.

While the risks of receiving a counterfeit may have been obvious to a consumer purchasing items on street corners, with the rise of online platforms, it is not so obvious anymore. For example, it is

¹⁸<https://cdn.iccwbo.org/content/uploads/sites/3/2015/03/ICC-BASCAP-Roles-and-Responsibilities-of-Intermediaries.pdf> p. 32

¹⁹OECD/EUIPO (2018), *Misuse of Small Parcels for Trade in Counterfeit Goods: Facts and Trends, Illicit Trade*, OECD Publishing, Paris. <https://doi.org/10.1787/9789264307858-en> p. 77

²⁰The UPU is a specialized agency of the United Nations that coordinates postal policies between 190 countries. Importantly, these treaties determine the cost of shipping between the various countries and offers low rates to mail originating from abroad, as compared to domestic postage rates.

²¹ Universal Postal Union (2019), *Decisions of the 2019 Geneva Extraordinary Congress*,

http://www.upu.int/uploads/tx_sbdownloader/actsActsOfTheExtraordinaryCongressGenevaEn.pdf

²² <https://www.nytimes.com/2019/09/25/business/universal-postal-union-withdraw.html>

unlikely that anyone would set out to purchase a counterfeit bicycle helmet given the potential safety risks; however, such items are readily available to unsuspecting consumers on e-commerce websites.

Reports indicate that some third-party marketplace listings falsely claim to have certifications with health and safety standards or offer items banned by federal regulators or even the platforms themselves. Coupled with the inability of buyers to accurately determine the manufacturer or the origin of the product, it is challenging for buyers to make informed decisions in the e-commerce environment.

In 2017, MarkMonitor found that 39 percent of all unwitting purchases of counterfeit goods were bought through online third-party marketplaces.²³ Sellers on large well-known platforms rely on the trust that those platforms hosting of the marketplace elicits. The results of this survey indicate that bad actors selling counterfeit goods on legitimate online platforms erodes trust in both the brands and the platforms themselves.

In 2018, Incopro conducted a survey focusing on United Kingdom (UK) consumers who had unwittingly purchased counterfeit goods and how their perceptions of online marketplaces were affected as a result.²⁴ The results of this survey show that 26 percent of respondents reported that they had unwittingly purchased counterfeits. Of these, 41 percent reported that they had never received a refund after reporting a seller to online marketplaces.

In addition, roughly one-third of respondents reported that they would be less likely to buy a widely counterfeited product from an online marketplace while 46 percent reported no longer using a particular online marketplace after receiving counterfeit goods. Respondents also reported that, when trying to differentiate between genuine and counterfeit products, they consider online reviews along with the reputation of online marketplaces.

These recent findings, against the larger backdrop of the e-commerce environment, demonstrate the immediacy of the problem as consumer confidence and brand integrity continue to suffer in the realm of online third-party marketplaces.

Top Products Prone to Counterfeiting and Piracy

Counterfeiters sell fake goods as authentic goods — for example, a copy of a Louis Vuitton bag or Rolex watch fraudulently sold as the “real thing.” Counterfeiters use identical copies of registered trademarks without the authorization of the rightful owner.

Piracy typically refers to the act of copying a protected work (such as a book, movie, or music) without the consent of the rights holder or person duly authorized by the rights holder.

²³MarkMonitor (2017). *MarkMonitor Online Barometer: Global online shopping survey 2017 – consumer goods*. Downloaded from https://www.markmonitor.com/download/report/MarkMonitor_Online_Shopping_Report-2017-UK.pdf, p. 6

²⁴INCOPRO, 2018. Counterfeit Products are Endemic – and it is damaging brand value: INCOPRO Market Research Report available at https://www.incoproip.com/cms/wp-content/uploads/2018/11/2018_Incopro_Market-Research-report.pdf.

were between 2 million and 2.6 million jobs in 2013, with job displacement expected to double by 2022.

Counterfeit goods also damage the value of legitimate brands. When brand owners lose the ability to collect a price premium for branded goods, it leads to diminished innovation as brand owners are less likely to invest in creating innovative products. Legitimate companies, and particularly small businesses, report devastating impacts due to the abundance of competing online counterfeits and pirated goods. Moreover, while e-commerce platforms can benefit legitimate businesses by helping them to reach customers with a new product, the same process and technology also makes it easier for unscrupulous firms to identify popular new products, produce infringing versions of them, and sell these illicit goods to the business's potential customers.

As previously noted, the speed at which counterfeiters can steal intellectual property through e-commerce can be very rapid. If a new product is a success, counterfeiters may attempt to immediately outcompete the original seller with lower-cost counterfeit versions — while avoiding research and development costs. The result: counterfeiters may have a significant competitive advantage in a very short period of time over those who sell trusted brands.

Such fast-track counterfeiting poses unique and serious problems for small businesses, which do not have the same financial resources as major brands to protect their intellectual property. Lacking the ability to invest in brand-protection activities, such as continually monitoring e-commerce platforms to identify illicit goods, perform test buys, and send takedown notices to the platforms, smaller businesses are more likely to experience revenue losses as customers purchase counterfeit versions of the branded products.

In many cases, American enterprises have little recourse aside from initiating legal action against a particular vendor. Such legal action can be extremely difficult. Many e-commerce sellers of infringing products are located outside the jurisdiction of the United States, often in China; existing laws and regulations largely shield foreign counterfeiters from any accountability.

Organized Crime and Terrorism

The impact of counterfeit and pirated goods is broader than just unfair competition. Law enforcement officials have uncovered intricate links between the sale of counterfeit goods and transnational organized crime. A study by the Better Business Bureau notes that the financial operations supporting counterfeit goods typically require central coordination, making these activities attractive for organized crime, with groups such as the Mafia and the Japanese Yakuza heavily involved.³³ Criminal organizations use coerced and child labor to manufacture and sell counterfeit goods. In some cases, the proceeds from counterfeit sales may be supporting terrorism and dictatorships throughout the world.³⁴

³³https://www.bbb.org/globalassets/local-bbbs/st-louis-mo-142/st_louis_mo_142/studies/counterfeit-goods/BBB-Study-of-Counterfeit-Goods-Sold-Online.pdf

³⁴United Nations Office of Drugs and Crime (UNODC), *Focus On: The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime*, available at: https://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf

National Security

One of the greatest threats counterfeits pose to national security is their entry into the supply chain of America's defense industrial base. This defense industrial base includes both private sector contractors and government agencies, particularly the Department of Defense.

In FY 2018, 12 percent of DHS seizures included counterfeit versions of critical technological components, automotive and aerospace parts, batteries, and machinery. Each of these industrial sectors have been identified as critical to the defense industrial base, and thus critical to national security. One example drawn from a 2018 study by the Bureau of Industry and Security within the Department of Commerce featured the import of counterfeit semiconductors or "Trojan chips" for use in defense manufacturing and operations³⁵. Such Trojan chips can carry viruses or malware that infiltrate and weaken American national security. The problem of counterfeit chips has become so pervasive that the Department of Defense has referred to it as an "invasion." Companies from China are the primary producers of counterfeit electronics.³⁶

5. How E-Commerce Facilitates Counterfeit Trafficking

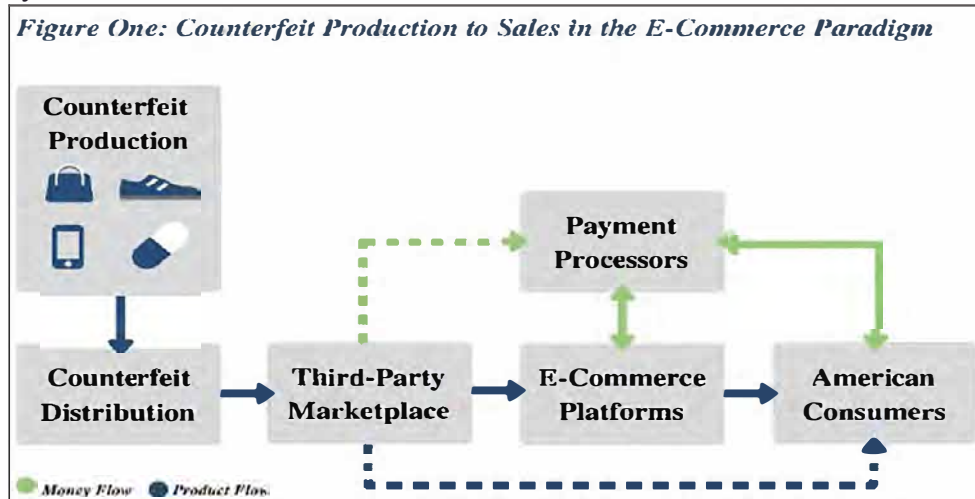
While e-commerce has supported the launch of thousands of legitimate businesses, e-commerce platforms, third-party marketplaces, and their supporting intermediaries have also served as powerful stimulants for the trafficking of counterfeit and pirated goods. The central economic driver of such trafficking is this basic reality: Selling counterfeit and pirated goods through e-commerce platforms and related online third-party marketplaces is a highly profitable venture.

For counterfeiters, production costs are low, millions of potential customers are available online, transactions are convenient, and listing goods on well-known platforms provides an air of legitimacy. When sellers of illicit goods are in another country, they are also exposed to relatively little risk of criminal prosecution or civil liability under current law enforcement and regulatory practices. It is critical that immediate action be taken to protect American consumers and other stakeholders against the harm and losses inflicted by counterfeiters.

³⁵<https://www.bis.doc.gov/index.php/documents/technology-evaluation/37-defense-industrial-base-assessment-of-counterfeit-electronics-2010/file>

³⁶Saunders, Gregory and Tim Koczanski, "Counterfeits," *Defense Standardization Program Journal*, October/December 2013. <https://www.dsp.dla.mil/Portals/26/Documents/Publications/Journal/131001-DSPJ.pdf>

Figure One provides a simplified overview of how counterfeit products move from production by counterfeiters to sales to American consumers:



Counterfeit Production and Distribution

The counterfeit sales process begins with some type of production capability for the counterfeit good. In this stage, counterfeiters enjoy enormous production cost advantages relative to legitimate businesses. Counterfeits are often produced in unsafe workplaces, with substandard and unsafe materials, by workers who are often paid little or sometimes nothing in the case of forced labor.

In the case of goods subject to federal health and safety regulations, it costs much less to produce counterfeit versions that do not meet these health and safety requirements that make the legitimate products so safe.

Counterfeiters likewise minimize the need for incurring significant research and development expenditures by stealing intellectual property, technologies, and trade secrets. They also shave production costs using inferior ingredients or components.

For example, a common way for counterfeiters to produce *fake* prescription opioids like Oxycontin, or a prescription drug like Viagra, is to start with the *real* pills as a basic ingredient. These real pills are then ground up into a powder, diluted with some type of (sometimes toxic) powder filler, and then “spiked” with an illegal and deadly narcotic like fentanyl, in the case of fake opioids, or illegal and deadly amphetamines or strychnine, in the case of Viagra.

In the case of apparel, such as running shoes, employees from a legitimate branded company may leave the company and set up their own facility. These employees have the expertise to manufacture identical-looking shoes; but they will typically do so with cheaper, inferior components. The result: the shoes may fail during activity, injure the user with an inferior insole, or, at a minimum, wear out faster than the real product.³⁷

³⁷Department of Homeland Security, U.S. Customs and Border Protection, “CBP Seizes Over \$2.2 Million worth of Fake Nike Shoes at LA/Long Beach Seaport,” 9 October 2019. <https://www.cbp.gov/newsroom/local-media-release/cbp-seizes-over-22-million-worth-fake-nike-shoes-lalong-beach-seaport>

The technological advances in modeling, printing, and scanning technologies such as 3D printing, have also significantly reduced the barriers for reverse engineering and the costs of manufacturing counterfeit products. Again, one problem that may arise may be the use of inferior production inputs that lead to product failure.

These are just a few of the many ways counterfeits begin their long journey into American households. There is often no way for legitimate businesses to compete, on a production cost basis, with counterfeiters. There is also often no way for a consumer to tell the difference between a counterfeit and legitimate good.

Third-Party Marketplaces and Counterfeiter Websites

A counterfeiter seeking to distribute fake products will typically set up one or more accounts on third-party marketplaces, and these accounts can often be set up quickly and without much sophistication or many specialized skills. Under such circumstances, it is axiomatic that online retailers face much lower overhead costs than traditional brick-and-mortar sellers. There is no need to rent retail space or to hire in-person, customer-facing staff.

In a common scenario, third-party marketplace websites contain photos of the real product, fake reviews of the counterfeit product, and other such disinformation designed to mislead or fool the consumer into believing the legitimacy of the product. The proliferation of such disinformation is the hallmark of the successful online counterfeiter. Such deception not only provides counterfeiters with an enormous competitive advantage over their brick-and-mortar counterparts; legitimate sellers on the internet are harmed as well.

In some cases, counterfeiters hedge against the risk of being caught and their websites taken down from an e-commerce platform by preemptively establishing multiple virtual store-fronts. A key underlying problem here is that on at least some e-commerce platforms, little identifying information is necessary for a counterfeiter to begin selling. In the absence of full transparency, counterfeiters can quickly and easily move to a new virtual store if their original third-party marketplace is taken down.

The popularity of social media also helps proliferate counterfeits across various e-commerce platforms. Instagram users, for example, can take advantage of connectivity algorithms by using the names of luxury brands in hashtags. Followers can search by hashtag and unwittingly find counterfeit products, which are comingled and difficult to differentiate from legitimate products and sellers.

According to a 2019 report, *Instagram and Counterfeiting*, nearly 20 percent of the posts analyzed about fashion products on Instagram featured counterfeit or illicit products.³⁸ More than 50,000 Instagram accounts were identified as promoting and selling counterfeits, a 171 percent increase from a prior 2016 analysis. Instagram's Story feature, where content disappears in twenty-four hours, was singled out as particularly effective for counterfeit sellers.

³⁸Stroppa, Andrea, *et al.*, "Instagram and counterfeiting in 2019: new features, old problems," *Ghost Data*, 9 April 2019. Rome, New York. https://ghostdata.io/report/Instagram_Counterfeiting_GD.pdf

A more recent development on social media is the proliferation of “hidden listings” for the sale of counterfeits. Social media is used to provide direct hyperlinks in private groups or chats to listings for counterfeit goods that purport to be selling unrelated legitimate items. By accessing the link, buyers are brought to an e-commerce platform which advertises an unrelated legitimate item for the same price as the counterfeit item identified in the private group or chat. The buyer is directed to purchase the unrelated item in the listing but will receive the sought-after counterfeit item instead.

Order Fulfillment in E-Commerce

The foreign counterfeiter must first choose between sending a package either by express consignment carrier or through the international post. As a general proposition, express consignment shippers — such as DHL Express, Federal Express, and the United Parcel Service — were subject to data requirements before they were extended to the international posts.

In the next step along the delivery chain, a parcel will arrive at a port of entry under the authority of CBP. Millions of parcels arrive daily, and it is impossible to inspect more than a very small fraction.

Although ocean shipping is still a major mode of transport for counterfeits, the rapid growth of other modes, such as truck and air parcel delivery, threaten to upend established enforcement efforts, and as such, is increasingly used by international counterfeiters. This continued shift from bulk cargo delivery to other modes by counterfeiters is illustrated in the trends in seizure statistics.

It is clear from these observations that counterfeit traffickers have learned how to leverage newer air parcel distribution methods that vary from the traditional brick-and-mortar retail model (for example, imports arriving via large cargo containers with domestic distribution networks). This is an issue that must be directly addressed by firm actions from CBP.

Section 321 De Minimis Exemption and Counterfeit Trafficking

Under Section 321 of the Tariff Act of 1930, as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), articles with a value of \$800 or less, imported by one person on one day, can be admitted free of duty and taxes. Under 19 CFR § 10.151 and 19 CFR part 143, Subpart C, those importations are often not subject to the same formal customs procedures and rigorous data requirements as higher-value packages entering the United States. Instead, the low-value shipments can be admitted into U.S. commerce with the presentation of a bill of lading or a manifest listing each bill of lading and a limited data set. The relatively limited nature of the data requirements complicates the identification of high-risk goods by CBP and other enforcement agencies. Under 19 CFR § 143.22, CBP has existing authority to require formal entry (and the complete data set for any shipment) for any merchandise, if deemed necessary for import admissibility enforcement purposes; revenue protection; or the efficient conduct of customs business.

9. Assess Contributory Trademark Infringement Liability for E-Commerce

Online platforms have avoided civil liability for contributory trademark infringement in several cases. Given the advance and expansion of e-commerce, DHS recommends that the Department of Commerce consider the following measures:

- Assess the state of liability for trademark infringement considering recent judicial opinions, and the impact of this report—including platforms’ implementation of the best practices directed herein.
- Seek input from the private sector and other stakeholders as to the application of the traditional doctrines of trademark infringement to the e-commerce setting, including whether to pursue changes in the application of the contributory and/or vicarious infringement standards to platforms.

10. Re-Examine the Legal Framework Surrounding Non-Resident Importers

Currently, non-resident importers can legally enter goods into the United States provided they have a “resident agent” as defined in regulation. In practice, it can be difficult to compel non-resident importers to pay civil penalties and respond to other enforcement actions available to the USG. With this in mind, DHS should reevaluate the legal framework for allowing non-resident importers in the Section 321 *de minimis* low-value shipment environment.

11. Establish a National Consumer Awareness Campaign

Given the critical role that consumers can play in the battle against online counterfeiting, DHS recommends the development of a national public-private awareness campaign. The national public awareness campaign recommended by DHS should involve platforms, rights holders, and the applicable government agencies to provide education for consumers regarding the risks of counterfeits as well as the various ways consumers can use to spot counterfeit products. At present, many consumers remain uninformed as to the risks of buying counterfeit and pirated products online. These risks are both direct to them (e.g., tainted baby food), as well as indirect (e.g., sales revenues can fund terrorism).

Many consumers are also unaware of the significant probabilities they face of being defrauded by counterfeiters when they shop on e-commerce platforms. As this report has documented, these probabilities are unacceptably high and appear to be rising. Even those consumers motivated to conduct research and stay informed might lack the specialized knowledge and efficient user tools to make diligent online buying decisions.

A strong and ongoing national campaign to increase public awareness about the risks of counterfeits in an e-commerce world should help alert consumers about the potential dangers of some online purchases. To the extent e-commerce platforms empower their consumers to participate in the monitoring and detection of counterfeits, e.g., by implementing several of the best practices recommended in this report, this will also help in the fight against the trafficking in counterfeit and pirated goods.

This effort could use technology as well as provide online education. For example, online marketplaces could prominently display messages on their home pages, as well as on high-risk item pages, warning customers about the dangers of counterfeits and urging respect for intellectual property rights. Additionally, the campaign could be paired with technologically-enabled assurances of authenticity. Such an approach would provide commercial advantages to the platforms that adopt it while also benefiting consumers and rights holders through reliable methods to identify and certify the authenticity of branded products across online platforms.

8. Private Sector Best Practices

The following table catalogs a set of high priority “best practices” that should be swiftly adopted by e-commerce platforms that operate third-party marketplaces, and other third-party intermediaries. Under the authority of the Secretary of the Department of Homeland Security, these best practices shall be recommended and communicated to all relevant private sector stakeholders by the ICE/HSI-led IPR Center.

It shall be a duty of the IPR Center to encourage, monitor, and report on the adoption of, and the progress and effectiveness of, these best practices, through all means necessary within the scope of the legal authority of DHS and the Federal Government.

<i>Best Practices for E-Commerce Platforms and Third-Party Marketplaces</i>
1. Comprehensive "Terms of Service" Agreements
2. Significantly Enhanced Vetting of Third-Party Sellers
3. Limitations on High Risk Products
4. Efficient Notice and Takedown Procedures
5. Enhanced Post-Discovery Actions
6. Indemnity Requirements for Foreign Sellers
7. Clear Transactions Through Banks that Comply with U.S. Enforcement Requests
8. Pre-Sale Identification of Third-Party Sellers
9. Establish Marketplace Seller IDs
10. Clearly Identifiable Country of Origin Disclosures

1. Comprehensive “Terms of Service” Agreements

It is critical that platforms require all third-party sellers to sign comprehensive and stringent terms of service agreements that maximize the authorities of the platforms to combat counterfeit

trafficking. Terms of service agreements will provide platforms with an important legal means to combat counterfeit trafficking

Most obviously, these terms of service should incorporate explicit prohibitions on selling counterfeit and pirated goods. Once the platform has affirmatively detected infringement on a seller profile, the actions listed below under the category of “post-discovery actions” should be allowed under the terms and taken swiftly.

The terms of service should also list the potential repercussions sellers face for violations. Generally, these repercussions should allow platforms to impose sanctions such as suspension, termination, and debarment without waiting for a determination by a court for sellers who violate the terms of the agreement. The terms should include escalating capabilities to suspend, terminate, and debar counterfeit traffickers and their affiliates.

Specifically, they should allow the platform to conduct, at a minimum, the following actions in response to violations or identified risk factors in the seller’s profile and product postings without waiting for a determination by a court:

- (1) terminate or suspend a seller account based on the use or reference to a username that is confusingly similar to a registered trademark;
- (2) take down or suspend and keep down individual product postings based on the misuse of photographs, logos, external links to infringing content, certain coded messages with actual intellectual property references removed, or imbedded offers to manufacture; and
- (3) allow for an escalating enforcement structure that results in (for major infractions and/or repeat minor infractions) permanent removal of the seller, and any known related seller profiles, from the marketplace feature of the platform and further results in forfeiture and destruction of all offending goods in warehouses or fulfillment centers operated by, or under the control of, the platform.

To maximize platform authorities, and as explained further below, such terms of service should also allow platforms to impose appropriate limitations on products listed, require clearly identifiable country of origin disclosures, impose U.S. banking and indemnity requirements, and significantly improve pre-sale identification of third-party sellers.

2. Significantly Enhanced Vetting of Third-Party Sellers

Significantly enhanced vetting of third-party sellers is one of the most effective forms of due diligence platforms can engage in to reduce the risk of counterfeits entering the e-commerce stream. Platforms should have a uniform and articulable vetting regime to determine if a seller will be allowed to list products for sale.

To facilitate enhanced vetting, platforms should, at a minimum, require the following:

- (1) sufficient identification of the seller, its accounts and listings, and its business locations prior to allowing the seller to list products on the platform;
- (2) certification from the seller as to whether it, or related persons, have been banned or removed from any major e-commerce platforms, or otherwise implicated in selling counterfeit or pirated products online; and
- (3) acknowledgment, where applicable, that the seller is offering trademarked products for which the seller does not own the rights (either because they are a reseller or seller of used products).

Information provided by potential sellers should also be vetted for accuracy, including through the following efforts:

- (1) use of technological tools, as well as analyses of historical and public data, to assess risk of sellers and products; and
- (2) establishment of an audit program for sellers, concentrating on repeat offenders and those sellers exhibiting higher risk characteristics.

Any failure to provide accurate and responsive information should result in a determination to decline the seller account and/or to hold the seller in violation of the platform's terms of service.

3. Limitations on High Risk Products

Platforms should have in place protocols and procedures to place limitations on the sale of products that have a higher risk of being counterfeited or pirated and/or pose a higher risk to the public health and safety. For example, some of the major platforms completely prohibit the sale of prescription medications by third-party sellers in their marketplaces. Many platforms also ban the sale of products that are known to be particularly vulnerable to counterfeiting and that pose a safety risk when sold online. Examples include car airbag components, infant formula, and new batteries for cellular phones.

Platforms can also place other types of restrictions on third-party sellers before certain high-risk categories of goods may be sold. For example, some platforms require prior approval for items such as automotive parts, jewelry, art, food, computers, sports collectibles, DVDs, and watches that are particularly prone to counterfeiting.

Platforms should prominently publish a list of items that may not be sold on third-party marketplaces under any circumstances (prohibited), as well as a list of items that can only be sold when accompanied by independent third-party certification (restricted). In constructing these lists, platforms should consider, among other things, whether a counterfeit version of the underlying product presents increased risks to the health and safety of U.S. residents or the national security of the United States. When a seller claims their merchandise has an independent third-party certification, and this certification is required in order for the product to be legally offered for sale

in the United States, platforms should make good-faith efforts to verify the authenticity of these certifications.

4. Efficient Notice and Takedown Procedures

Notice and takedown is the most common method of removing counterfeit listings from third-party marketplaces and e-commerce platforms. This noticing process can be particularly time-consuming and resource-intensive for rights holders who currently bear a highly disproportionate share of the burden of identifying the counterfeit listings for noticing.

These rights holders must invest significant resources to scour millions of listings across multiple platforms to identify potentially counterfeit listings and notify the third-party marketplace or e-commerce platform. This kind of comprehensive policing of e-commerce often is not possible for smaller enterprises.

As a further burden, some third-party marketplaces require rights holders to buy the suspected products from the sellers to verify that they are in fact counterfeit. There often is a delay of a day or longer between the time that notice is provided, and the time listing is removed. During this period, counterfeiters may continue to defraud American consumers.

To address these abuses — and assume a much greater share of responsibility for the policing of e-commerce — platforms should create and maintain clear, precise, and objective criteria that allow for quick and efficient notice and takedowns of infringing seller profiles and product listings. An effective regime should include, at a minimum, the following: (1) minimal registration requirements for an interested party to participate in the notice and takedown process; (2) reasonable rules that treat profile owners offering large quantities of goods on consumer-to-consumer platforms as businesses; and (3) transparency to the rights holders as to how complaints are resolved along with relevant information on other sales activity by the seller that has been implicated.

5. Enhanced Post-Discovery Actions

Upon discovery that counterfeit or pirated goods have been sold, platforms should conduct a series of “post-discovery” actions to remediate the fraud. These should include:

- (1) notification to any buyer(s) likely to have purchased the goods in question with the offer of a full refund;
- (2) notification to implicated rights holders, with details of the infringing goods, and information as to any remaining stock of the counterfeit and pirated goods held in warehouses;
- (3) implementation of practices that result in the removal of counterfeit and pirated goods within the platform’s effective control and in a manner that prevents such goods from re-entering the U.S. or being diverted to other markets; and

(4) immediate engagement with law enforcement to provide intelligence and to determine further courses of action.

6. Indemnification Requirements for Foreign Sellers

For a large portion of e-commerce, foreign sellers do not provide security or protection against a loss or other financial burden associated with the products they sell in the United States. Because these sellers are located outside the United States, they also may not be subject to the jurisdiction of U.S. courts in civil litigation or government enforcement actions. Further adding to this liability gap, there is this: while e-commerce platforms generally have a U.S. presence and are under U.S. jurisdiction, under the current interpretations of American laws and regulations, they are often found not to be liable for harm caused by the products they sell or distribute.

The result of this jurisdictional and liability gap is that consumers and rights holders do not have an efficient or predictable form of legal recourse when they are harmed by foreign products sold on third-party marketplaces. Accordingly, e-commerce platforms should require foreign sellers to provide some form of security in cases where a foreign product is sold to a U.S. consumer. Such form of security should be specifically designed to cover the potential types and scope of harm to consumers and rights holders from counterfeit or pirated products.

Note that there are several ways that platforms might flexibly achieve this goal. For example, requiring proof of insurance would provide a form of security for any reasonably foreseeable damages to consumers that might flow from the use of the product. Rights holders could also be compensated in cases of infringement.

7. Clear Transactions Through Banks that Comply with U.S. Enforcement Requests

Many foreign sellers on third-party marketplaces do not have a financial nexus to the United States, making it difficult to obtain financial information and to subject all parts of the transaction to U.S. law enforcement efforts.

Platforms should close this loophole by encouraging all sellers to clear transactions only with banks and payment providers that comply with U.S. law enforcement requests for information and laws related to (relevant to) the financing of counterfeit activity.

8. Pre-Sale Identification of Third-Party Sellers

Stakeholders have, at times, reported that buyers have been surprised to discover upon completion of an online sales transaction, that the order will be fulfilled by an unknown third-party seller and *not* the platform itself. Without addressing the separate legal question of whether this comprises deceptive action *per se*, at least some buyers may have made different purchasing decisions if they

had known, prior to purchase, the identity of the third-party “storefront” owner, and/or the party ultimately responsible for fulfilling the transaction.

To increase transparency on this issue, platforms should significantly improve their pre-sale identification of third-party sellers so that buyers can make informed decisions, potentially factoring in the likelihood of being sold a counterfeit or IPR infringing merchandise. Platforms should implement additional measures to inform consumers, prior to the completion of a transaction, of the identity of storefront owners and/or those responsible for fulfilling a transaction, as well as any allegations of counterfeits being sold by a particular seller. On the converse, if a particular seller is a licensed reseller of the product, this information should also be provided.

Even if this information may be currently available, firm steps should be taken to ensure that this information is featured prominently in product listings. This will prompt greater consumer awareness and lead to more informed decision-making.

9. Establish Marketplace Seller IDs

Platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, nor to link one seller profile to other profiles owned by that same business, or by related businesses and owners. In addition, the party that appears as the seller on the invoice and the business or profile that appears on the platform to be the seller, may not always be the same. This lack of transparency allows one business to have many different profiles that can appear unrelated. It also allows a business to create and dissolve profiles with greater ease, which can obfuscate the main mechanism that consumers use to judge seller credibility, namely reviews by other buyers.

Platforms should require sellers to provide the names of their underlying business or businesses (if applicable), as well as any other related seller profiles owned or controlled by that seller or that clear transactions through the same merchant account. Platforms can use this seller ID information in three helpful ways:

First, to communicate to the consumer a more holistic view of “who” is selling the goods, allowing the consumer to inspect, and consult reviews of, all related seller profiles to determine trustworthiness. Second, linking all related sellers together will assist rights holders in monitoring who is selling goods that they believe to be infringing. Third, the platform can use the connections to other seller profiles to better conduct its own internal risk assessment, and make risk mitigation decisions (e.g., requiring cash deposits or insurance) as appropriate based on the volume and sophistication of the seller.

10. Clearly Identifiable Country of Origin Disclosures

Brick-and-mortar retail stores are required to have labels on their products that clearly identify the country or countries of origin. No such requirement applies to online e-commerce.