



October 11, 2021

The Honorable Katherine C. Tai
U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th St. N.W.
Washington, D.C. 20508

Via regulations.gov

Dear Ambassador Tai:

Intellectual Property Owners Association (IPO) appreciates the opportunity to provide comments on the 2021 Notorious Markets List.

IPO is an international trade association representing a "big tent" of diverse companies, law firms, service providers, and individuals in all industries and fields of technology that own, or are interested in, intellectual property rights. IPO advocates for effective, affordable, and balanced IP rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; and disseminating information to the public on the importance of intellectual property. IPO's mission is to promote high quality and enforceable IP rights and predictable legal systems for all industries and technologies. Our vision is the global acceleration of innovation, creativity, and investment necessary to improve lives. services; and disseminating information to the public on the importance of IP rights.

USTR's Federal Register notice requested written comments identifying physical and online marketplaces that "engage in and facilitate substantial copyright piracy or trademark counterfeiting." 86 Fed. Reg. 48464 (Aug. 20, 2021). Below please find IPO's comments on physical marketplaces and online marketplaces that, based upon reports from the IPO membership, should be added to the Notorious Markets List.

We do not have information to justify removing any of the markets listed on the 2020 Notorious Markets List. The comments below are intended as additions to that prior list.

PHYSICAL MARKETS

Throughout the world, the COVID-19 pandemic has had a significant impact on physical markets. Government responses to try to control spread of the disease have led to limitations on businesses and individuals in every corner of the globe. These mandates have resulted in months of reduced operation and limited foot traffic, lack of travel/tourism, and an overall shrinking of operations and impact of physical markets that are notorious for counterfeit trade. At the same time, our members have noticed a significant increase in online sales of counterfeit goods, and a general movement by these counterfeit sellers to online platforms. Many counterfeit sellers now operating online are located in the same geographic areas as the notorious physical markets.

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We include these physical markets in our submission as a reminder that although the pandemic has pushed many counterfeiters online, we expect that these markets will return to pre-pandemic volumes and operations once the COVID-19 crisis resolves.

Asia-Pacific Region

China

Huaqiangbei (HQB) – Long Sheng Communications Market, Shenzhen

Shenzhen (and greater Guangdong Province) is the electronics capital of the world and responsible for the manufacture of most of the world's electronics goods, both genuine and counterfeit. The Huaqiangbei (HQB) district in Shenzhen has been the epicenter for the counterfeit electronics trade and home to dozens of tech malls like the notorious Longsheng Communications Market (龙胜通讯市场) that serve as a central distribution hub for counterfeit consumer electronics sold all over the world. With the advent of the COVID-19 pandemic, members have seen a shift in trade in HQB, and it appears that much of the brick-and-mortar trade once seen in HQB has moved online. It is too early to determine whether these changes are temporary, due to the changing circumstances of the pandemic, or whether this will be a permanent shift.

Shenyang, Liaoning Province, China – Xiaobei Market

Shenyang, an important industrial center, serves as the transportation and commercial hub of China's northeast—particularly with Japan, Russia and Korea.

We understand that Shenyang Xiaobei Market (小北市场) is the biggest marketplace for counterfeit electronic/digital products in Northeast China and that, in addition to shops that sell products, the market is home to numerous third-party repair and refurbishing shops that rely on counterfeit parts. Past criminal enforcement efforts have not been effective. It has been reported to IPO that, even when local authorities can be persuaded to conduct enforcement actions, local protectionism prevents effective criminal prosecution and cases are dropped with no reason.

Thailand

Bangkok – MBK Center

We understand that the MBK Center in Bangkok, a massive 8-story complex, houses over 2,000 shops selling a plethora of counterfeit products, including electronics, electronic parts, luxury goods, apparel, and footwear. There is a lack of meaningful criminal counterfeiting prosecution. Due to its notoriety, MBK Center has become a key target for Thai enforcement agencies, including the Economic Crimes Suppression Division of the Police and the Department of Intellectual Property (DIP). DIP regularly performs surveillance sweeps and has set up an “IP Enforcement Center” within MBK Center itself to facilitate such enforcement actions. But members report that these efforts are largely cosmetic and have in no way reduced counterfeit sales.

Vietnam**Lang Son – Tan Thanh Market**

Lang Son, a northern province that borders China's Guangxi province, is a major entry point for China-made counterfeits. Tan Thanh Market sits near the Lang Son border gate. Members report that this market houses numerous sellers offering a wide variety of counterfeit products, including electronics, toys, and clothing, and that although the Vietnamese government has conducted training for enforcement agencies to be on the lookout for counterfeit goods coming into to Lang Son from China, there has been no effective enforcement.

Americas**Brazil****Sao Palo – “25 de Marco Street” Market**

IPO concurs with the inclusion 25 de Marco Street in the 2019 and 2020 Notorious Markets reports and believes it should again be included in this year's report. 25 de Marco Street and the surrounding areas including Galeria Pagé Mall, Shopping 25 de Marco and the neighborhoods of Bras and Santa Efigenia make up one the largest wholesale and retail counterfeit markets in all of Brazil and Latin America. This massive area comprises thousands of shops selling counterfeits of all kinds, including consumer electronics, clothing, footwear and toys. Members report that corruption and protectionism by local officials have made enforcement at 25 de Marco difficult. While there has been some enforcement activity at the market in the past years, members report it has been limited and been ineffective at deterring the widespread counterfeiting at the market.

Canada**Ontario – Pacific Mall**

Pacific Mall, a large shopping center located about an hour outside of Toronto, previously appeared on the Notorious Markets List but has not appeared in recent years after the 2018 report cited positive enforcement activities. We recommend that Pacific Mall again be included on the list. Members report that, despite enforcement efforts, the mall remains open and counterfeit vendors continue to operate with impunity.

Paraguay**Ciudad del Este**

IPO concurs with the inclusion of Ciudad del Este in the 2019 and 2020 Notorious Markets reports and believes it should again be included in this year's report. Ciudad del Este sits at the border of Brazil, Argentina and Paraguay, and the area serves as a large distribution and smuggling point with hundreds of wholesale shops selling counterfeits of all kinds. It has been on the Notorious Markets List and/or the Special 301 Report for over 18 years, and members continue to report that counterfeiting in the region remains widespread.

Europe, Middle East and Africa (EMEA)**Russia****Moscow – Gorbushkin Dvor**

The Gorbushkin Dvor market in Moscow is one of the largest and most popular shopping malls in Russia for consumer electronics products. We understand that it is a hotbed of counterfeit activity, with traders displaying unauthorized signage from major electronics manufacturers and falsely claiming to be authorized resellers, as well as numerous repair shops that use counterfeit products. Local protectionism, links to criminal organizations, and corruption are believed to make the market functionally “untouchable” for enforcement activity.

Spain**Madrid – Fuenlabrada Area**

Fuenlabrada is a large industrial estate on the outskirts of Madrid that houses numerous traders who have been reported to sell counterfeit products. Historically, there has been limited enforcement in this area, although the Spanish Police now seem to be starting to take the issue more seriously.

Turkey**Istanbul – Tahtakale District**

Turkey’s geographic location makes it a major transit hub for counterfeit goods coming from China into the European and Middle Eastern markets. We understand that Istanbul’s Tahtakale District contains the largest concentration of counterfeit consumer electronics traders in the city, despite police raids and pending prosecutions of several traders.

United Arab Emirates**Dubai – Deira District**

It has been reported to IPO that in addition to numerous Free Zones in Dubai, where investigating and enforcing against counterfeiters is often impossible, the Deira District is the center of counterfeit trade in Dubai, particularly in the Naif and Al Murar areas. Members report that despite regular raids the counterfeit trade shows in Deira show no signs of abating. Enforcement is further complicated by the proximity of Dubai airport and the widespread use of private residences to store counterfeit products.

United Kingdom

Manchester – Cheetham Hill

The Cheetham Hill area of Manchester is widely regarded as the epicenter of counterfeit trade in the UK, particularly for consumer electronics. Cheetham Hill has historically been a challenging enforcement environment because of the close communal relationship between the traders and the lack of law enforcement support. There have been improvements in enforcement, however, as well as a greater willingness on the part of local landlords to evict tenants storing and selling counterfeit products. Despite these improvements, members report that counterfeiting activity is still widespread in Cheetham Hill.

ONLINE MARKETPLACES

Generally, any online service providing a platform for unvetted third-party sellers has the potential to be a source of copyright piracy and/or trademark counterfeiting. Some of the most significant sources of copyright piracy and trademark counterfeiting experienced by IPO members arise from online marketplaces (including U.S.-based marketplaces) that are widely used and trusted by consumers as sources of genuine products. As IPO recently noted in comments submitted to the International Trade Administration of the U.S. Department of Commerce, “[c]ounterfeiters increasingly depend on the reputation of established online marketplaces as sources of legitimate products.” The comments also noted that online marketplaces could improve their screening processes when it comes to onboarding sellers. Because there are a number of online marketplaces that likely merit inclusion on the Notorious Markets List, we highlight only the following as being particularly egregious and meriting inclusion.

Weixin (Chinese entity) & WeChat (International entity) (collectively, “WeChat”)

IPO recommends WeChat’s inclusion, given the vast amount of counterfeit goods being sold via WeChat and WeChat’s lack of attention to the issue. WeChat claims it is merely a social media app, but it has become one of the largest online black markets in China for the sale of counterfeit products. WeChat allows counterfeiting rings to perform every aspect of their illicit businesses on its platform, including direct marketing to consumers to the sale of counterfeits via WeChat’s “shopping cart” function. These wide-ranging commercial functions are in sharp contrast to WeChat’s self-professed restrictions on investigating counterfeit sales due to privacy concerns. Some brands have reported receiving large numbers of complaints from Chinese consumers who were tricked into buying counterfeit products from WeChat sellers. These WeChat sellers are permitted to remain anonymous, so there is little recourse for deceived consumers.

WeChat does not investigate or facilitate brand-led investigations into these complaints, which means that brands are mostly unable to pursue further investigations or action against bad actors operating on WeChat. At most, brands report that WeChat users caught selling counterfeits will be temporarily suspended from posting for a few days or weeks, rather than terminated. And in instances where user accounts are terminated, WeChat makes it easy for sellers to re-register, even using the same mobile phone number. Members report that WeChat’s brand-protection portal is overly bureaucratic and ineffectual. WeChat proclaims willingness to support law enforcement and brand owners in criminal investigations of counterfeit sellers on WeChat. However, we understand

from members that developing criminal cases against counterfeit sellers on WeChat is nearly impossible because WeChat will not provide basic seller and sales information required for law enforcement to investigate. WeChat maintains that it may not provide even limited information about users and counterfeit sales due to privacy concerns, but it is the norm for other China-based and global platforms to provide this information to in cases of criminal counterfeiting.

AliExpress

Alibaba Group's online marketplace Taobao has been on the USTR Notorious Markets List since 2016, but IPO believes that another Alibaba Group platform, AliExpress, is far more deserving of classification as a notorious market. While Taobao is intended primarily for China-based consumers, AliExpress connects China-based merchants with buyers in 220 countries around the world including in the U.S. AliExpress is a hotbed of counterfeits. Sellers openly sell branded goods as counterfeits and '1:1 clones.' In addition, undercover buys by IPO members and the media show that a large prevalence of branded products being sold on AliExpress as 'genuine' are counterfeit. Sales on AliExpress factor into other types of downstream counterfeit sales, with buyers purchasing fakes in wholesale quantities on AliExpress, importing into the U.S. and other countries, then reselling these counterfeits on local platforms like eBay and Mercari. It is also common for drop-shippers to use AliExpress to fulfill orders. Small sellers caught selling counterfeits frequently cite AliExpress as their source of supply. For its part, AliExpress controls listings, payments and fulfillment but apparently does little, if anything, to vet sellers to ensure they are legitimate businesses selling genuine goods. In addition, members report significant repeat infringer issues, with bad actors remaining on the site even after multiple reports of infringing listings. These sellers frequently operate multiple stores, so if one is closed they can keep selling through other accounts.

Facebook - International Facebook Marketplaces

There has been extensive media coverage of fake accounts on Facebook, particularly following Facebook's January 2021 announcement that it removed 2.2 billion fake accounts pushing misinformation. But Facebook, particularly outside the U.S., also has a large and growing problem with the sale of fake products. By its own estimates, there are one billion active users on Facebook Marketplace, making it among the largest online marketplaces in the world. IPO members report that Facebook Marketplace is overrun with counterfeit sales, including both goods explicitly being sold as counterfeits and counterfeit goods being passed off as the real thing. Our members report increasing numbers of complaints from consumers who have been duped on Facebook Marketplace.

Members also report extensive counterfeit and clone sales on Instagram. Facebook professes to have a zero-tolerance policy against counterfeits but appears to do little to vet or screen sellers. According to members, Facebook's tools for reporting and removing infringements are rudimentary and make it more difficult to monitor and report fakes than other online marketplaces. These issues will become even more pronounced if Facebook does not beef up its policies and enforcement.

Allegro

Allegro is the major online marketplace in Poland, with approximately 20 million customers visiting each month—equivalent to 80% of all Internet users in Poland. While Allegro has a brand protection program called 'WOP' (Współpraca w Ochronie Praw) with over 1,500 Polish and global brand

owners registered, members report a high volume of obvious counterfeits consistently being offered for sale on Allegro. Allegro appears to do little to vet sellers and members report that removed listings frequently reappear.

Avito

Avito, a Russian classified advertisements platform with more than 10.3 million unique daily visitors, features sections devoted to the sale of general goods, jobs, real estate, vehicles, and services. Members report large volumes of counterfeit products being offered for sale. Despite the high level of clear infringements detected on the platform, members report that Avito has stringent requirements for removal. Detailed evidence of infringements such as a direct comparison between genuine products and reported goods is required. Avito has lax repeat infringer rules, so even listings that eventually are removed reappear almost immediately. This makes enforcement by rights owners an exercise in futility.

Bukalapak

Bukalapak, one of the largest online marketplace platforms in Indonesia, is projected to grow further following recent investment. IPO supports Bukalapak's inclusion on last year's Notorious Markets List. Members report a high volume of counterfeits, with many openly described as replicas. Bukalapak is notorious for its delay in response time, particularly with the regular processing of takedown notices taking up to 6 weeks. In addition, takedowns are largely ineffective because Bukalapak fails to address repeat offenders, who frequently re-list after removal.

eBay – European Marketplaces

Members report that eBay's European marketplaces continue to be a haven for online sellers of counterfeit Apple products. eBay appears to do little seller vetting. Although eBay's Verified Rights Owner (VeRO) program will quickly remove specific infringing listings, these takedowns have had little impact due to a lax repeat infringer policy that allows reported sellers to simply relist and continue selling the same counterfeit products. Indeed, members report that extensive test buys of branded goods sold as 'genuine' consistently show an extremely high counterfeit rate. They also report years of direct engagement with eBay to improved, but little progress.

Lazada

Launched in 2012, Lazada is one of the leading e-commerce platforms operating in different regions of Southeast Asia consisting of Malaysia, Thailand, Singapore, the Philippines, Viet Nam, and Indonesia. The platform was acquired by the Alibaba group in 2016 and is reported to have over 50 million active buyers annually. IPO members report high volumes of counterfeit products being offered on the platform, including high rates of counterfeits passed off to consumers as genuine goods. Members report that Lazada has a lax repeat infringer policy and that sellers are able to re-upload previously removed listings. Members report stringent takedown requirements. For example., Lazada requires detailed supporting documents as proof of infringement such as direct image comparisons and pricelists. Lazada's guidelines for complaint submissions are not clear or detailed enough, leading to rejections of many notices.

Prom

Prom (Part of the EVO.business) is a leading marketplace in Ukraine, with 57,000 registered businesses, more than 97 million products sold annually on the platform, and 48 million monthly users. Members report high volumes of counterfeit sales, including many openly sold as “replicas” of genuine brands, almost saturating the platform. Prom has lax repeat infringer policies and sellers of removed listings often re-post an infringing item after removing references to the infringed brand, which does nothing to stop the actual counterfeit sale. As a result, infringers continue their activity without repercussions.

Shopee

Shopee is an e-commerce platform originating from Singapore in 2015. The platform has rapidly expanded to other regions of Southeast Asia (Malaysia, Thailand, Indonesia, Viet Nam, and the Philippines) as well as Taiwan and Brazil. Due to the rising popularity of the platform, a high volume of counterfeit listings has been observed on all regions of the marketplace. Members report that Shopee’s lack of responsiveness, inconsistent reporting and removal requirements, and poor communication hinder enforcement of blatant infringements. Members also report non-existent repeat offender policies.

Americanas

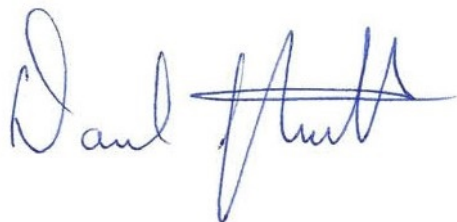
Americanas is a leading marketplace in Brazil, launched by the brick-and-mortar retail chain Lojas Americanas. Online, Americanas covers the entire range, offering automotive goods, phones and phone plans, toys, TVs, computers, tablets, audio and home theatre equipment, fashion, games, furniture, etc. Owned by B2W Digital Group, which also owns other top 10 brands including Shoptime and Submarino, Americanas is currently the number one Brazilian e-commerce store. Due to the rising popularity of the platform, a high volume of counterfeit listings has been observed. Although Americanas does have a Brand Protection Program, members report high volumes of counterfeit sales, including many openly sold as “replicas” of genuine brands.

Tokopedia

Tokopedia, the largest online marketplace platform in Indonesia, continues to pose threats similar to those described in 2020’s Review of Notorious Markets. Members observe a consistent high volume of counterfeit listings on Tokopedia, with many explicitly advertising products as counterfeit. Tokopedia does not appear to have a repeat offender policy. Re-offenders, instead of facing penalties, are able quickly to re-upload the same or similar infringing goods. It is also highly probable that infringers dominate the platform with multiple accounts dedicated to counterfeit sales. However, they do not appear to be subject to sanctions. Despite the clear and persistent proliferation of counterfeits on the platform, Tokopedia relies on reactive measures only and does not engage with rights holders seeking more effective longer-term solutions. Moreover, brands in the technology sector highlight the platform’s lack of understanding of software copyright and its failure to cover a broad range of IP violation issues appropriately.

We again thank you for the opportunity to submit comments and would welcome further dialogue and any opportunities to provide additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel J. Staudt". The signature is written in a cursive style with a prominent horizontal stroke across the middle.

Daniel J. Staudt
President