



September 25, 2023

The Honorable Kathi Vidal  
Under Secretary of Commerce for Intellectual Property  
and Director U.S. Patent and Trademark Office  
600 Dulany St.  
Alexandria, VA 22314

Submitted via: <http://www.regulations.gov/>

## Subject: Future Strategies in Anticounterfeiting and Antipiracy

Dear Director Vidal:

Intellectual Property Owners Association (IPO), appreciates the opportunity to respond to the Request for Comments on “Future Strategies in Anticounterfeiting and Antipiracy.” 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 membership includes over 125 companies and spans over 30 countries. IPO advocates for effective and affordable IP ownership 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; supporting and advocating for diversity, equity, and inclusion in IP and innovation; and disseminating information to the public on the importance of IP rights.

IPO’s vision is the global acceleration of innovation, creativity, and investment necessary to improve lives. The Board of Directors has adopted a strategic objective to foster diverse engagement in the innovation ecosystem and to integrate diversity, equity, and inclusion in all its work to complement IPO’s mission of promoting high quality and enforceable IP rights and predictable legal systems for all industries and technologies.

IPO appreciates the USPTO’s attention to this subject. The sale of counterfeit goods results in a multitude of harms suffered by intellectual property owners and their customers, including:

- Risks to Public Safety and Health:
  - Commonly counterfeited goods often lack the safety features and quality controls of genuine items. Such goods include medical devices, drugs, and health-care products that would normally be the subject of strict quality controls and standards. However, counterfeit goods carry the risk of malfunction or injury. For example, counterfeit goods can contain adulterated, substandard, or inoperable materials (e.g., non-compliant resins for seals) or otherwise harmful ingredients (e.g., carcinogenic substances, lead, etc.), that will be used by unsuspecting consumers.

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- As noted in the USPTO's *Federal Register* notice, the COVID-19 pandemic provided fertile ground for an increase in the sale and distribution of counterfeit goods, especially those that are health-related or intended for safety or personal protection equipment. A prime example is the proliferation of counterfeit respirators during the pandemic. 3M Company, a leading provider of respirators, established hotlines worldwide to help its end users and purchasers identify authentic respirators and ensure products were provided by authorized distributors. The company investigated over 18,600 reports of fraud or counterfeiting and dedicated significant resources to educating law enforcement and pursuing infringers through lawsuits and other actions to combat widespread counterfeiting of its respirator products.
- Lack of Regulatory Oversight: The availability of counterfeit products in the market allows unscrupulous infringers to evade regulatory controls designed to ensure product safety. This circumvention includes blatant misrepresentation of safety certifications (e.g., counterfeit testing, inspection, or auditing and validation certification indicating safety tests were performed when they were not). This can undermine confidence in laws and regulations designed to protect consumers.
- Competitive Disadvantages for IP Owners:
  - Counterfeit and pirated goods cause significant revenue losses for legitimate businesses and industries. This distorts normal market conditions and diverts revenue from lawful companies to counterfeiters.
  - Because producers of counterfeit goods largely operate outside regulated commerce, counterfeiters can unfairly compete with law-abiding intellectual property owners who ensure their goods and services comply with applicable laws and regulations.
  - Introduction of counterfeit products into company supply chains can disrupt the flow of products and genuine components and materials, whether to ultimate purchasers or within a company's own manufacturing processes.
  - The existence and availability of counterfeit goods threatens to erode consumer confidence in legitimate brands. Consumers who have encountered counterfeit products believing them to be genuine may leave negative reviews for legitimate brand-owners' goods. The existence of inferior counterfeit goods diminishes the goodwill associated with brand owners' intellectual property, thereby impacting the reputation, value, and competitiveness of legitimate businesses.

Methods of promoting and offering counterfeit goods are constantly changing to avoid detection and enforcement efforts. For example, IPO members have observed a recent trend of offering counterfeit goods via online livestreams, which makes it difficult to track down infringers and obtain evidence of the conduct. And enforcement efforts become challenging where counterfeit activities span multiple jurisdictions, allowing bad actors to evade oversight, legal consequences, or financial penalties.

We endeavor to monitor emerging trends and to make recommendations regarding potential policies or legislative action where appropriate. Our Anti-counterfeiting & Anti-piracy Committee has met with spokespersons from several online platforms to discuss and learn more about their anticounterfeiting measures. We file comments annually with the U.S. Trade Representative concerning physical and online marketplaces that “engage in and facilitate substantial copyright piracy or trademark counterfeiting” based on reports from IPO members and that we recommend should be identified in USTR’s Notorious Markets List.

IPO also has supported in principle legislation such as the INFORM Consumers Act, which requires online marketplaces to take reasonable steps to collect, verify, and disclose information regarding third party sellers of tangible property to inform consumers, and the SHOP SAFE Act, which would amend the Lanham Act to permit contributory liability against electronic commerce platforms that permit improper use of a trademark by a third party on or in connection with goods that implicate health or safety. As we identify additional harms, trends, or potential recommendations for consideration, we will bring them to the attention of the USPTO.

Thank you for your attention to these comments. We welcome further dialogue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karen Cochran', is written over a light gray, textured rectangular background.

Karen Cochran  
President