



October 7, 2022

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

Submitted via regulations.gov

Dear Ambassador Tai:

Intellectual Property Owners Association (IPO) appreciates the opportunity to provide comments on the 2023 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 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.

USTR's Federal Register notice requested written comments identifying marketplaces that "engage in and facilitate substantial copyright piracy or trademark counterfeiting." 88 Fed. Reg. 58055 (Aug. 24, 2023). Below please find IPO's comments on online and physical marketplaces that, based upon reports from IPO members, should be included in the Notorious Markets List.

ONLINE MARKETPLACES

Generally, any online service providing a platform for unvetted third-party sellers has the potential to be a source of trademark counterfeiting. Some of the most significant sources of trademark counterfeiting experienced by IPO members arise from online marketplaces that are widely used and trusted by consumers as sources of genuine products. Because there are numerous online marketplaces that might merit inclusion on the Notorious Markets List, we highlight the following particularly egregious examples.

AliExpress

IPO agrees with USTR's inclusion of AliExpress on last year's Notorious Markets List and recommends its inclusion again, given persistent counterfeiting issues due to the lack of controls the marketplace has in place to prevent illicit sales. AliExpress connects China-based merchants with an estimated 150 million active buyers in 220 countries around the world, including in the U.S. AliExpress is a dominant upstream distributor of counterfeit goods, allowing buyers to

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source wholesale quantities of counterfeit goods, ship them into the U.S. and other countries, and then resell these counterfeits on local online marketplaces like eBay and Facebook Marketplace.

AliExpress does not have adequate seller vetting or repeat infringer controls, making it easy for illicit sellers to operate unimpeded on the marketplace. Although AliExpress requires its sellers to present a valid business license, IPO members report that it is a common scam for counterfeit sellers to provide a valid business license for an unrelated company that has nothing to do with the seller's business to meet this requirement, allowing the seller to remain effectively anonymous. In addition, members report significant repeat infringer issues, with bad actors remaining on the site even after multiple reports of infringing listings. It is common for sophisticated counterfeiters to operate multiple AliExpress stores so that if one is closed, they can continue selling through other accounts.

DHgate

IPO agrees with USTR's inclusion of DHgate on last year's Notorious Markets List and recommends that it remain on the list this year. IPO members report that the platform continues to be rife with counterfeit products. DHgate's business model still appears to be connecting China-based counterfeit sellers with wholesale buyers in the U.S. and worldwide, who then sell these fakes at retail to unknowing consumers. IPO members also report some sellers have evolved and are offering counterfeits in a more subtle manner, such as blurring logos and posting partial photos that do not include marks and using code words to assure buyers that they will receive counterfeits. IPO members report that DHgate continues to show little willingness to provide seller and sales information from verified counterfeit sales and that when it does the information is often obviously fake. Finally, IPO members report DHgate continues to have a lax repeat infringer policy.

Noon

Noon is one of the largest online marketplaces in the Middle East and is particularly popular in the UAE, Saudi Arabia, and Egypt. IPO members report seeing many counterfeits offered on Noon and that Noon does little to remove those listings and vet sellers. Although some counterfeit listings reported to Noon are eventually removed, IPO members report that they are often reinstated without explanation shortly thereafter.

Pinduoduo (PDD)

IPO agrees with USTR's inclusion of PDD on last year's Notorious Markets List and recommends that PDD remain on the list this year. IPO members report that PDD is generally unresponsive to widespread counterfeit sales on its platform. PDD's business model relies on selling counterfeits to consumers in China's provincial towns and rural areas, and "parasite" or "Shanzai" brands abound on PDD. In addition, IPO members report that many products sold as "genuine" on the platform are counterfeit. IPO members have not seen any meaningful or effective action on PDD's part to reduce counterfeits on the platform. Compounding the problem, IPO members report PDD makes it easy for counterfeit sellers to appear to be authorized sellers when they are not by using special badging and product images provided by PDD.

In addition to counterfeits, IPO members report that identical-copy product knockoffs abound on PDD and that PDD's process for removing such products is highly inefficient, requiring brand owners to submit six side-by-side comparison images for each offer, a nearly impossible task, given the volume of knockoffs on the platform.

Finally, IPO members report PDD is unwilling to support brand owners in investigations against confirmed counterfeiters and will not provide seller information for confirmed counterfeit sellers. PDD bases its refusal on privacy grounds, even though it is the norm for China-based and global platforms to provide seller and sales information for counterfeit sellers. IPO members report having identified several potential criminal counterfeiting rings operating on PDD and brought this information to the attention of the marketplace. PDD has, thus far, refused to take action.

Temu

IPO also recommends adding Temu, PDD's international marketplace, to this year's Notorious Markets list. Temu's business model appears to focus on providing Chinese sellers with a platform for selling inexpensive, poorly made products to consumers in the EU, UK, Southeast Asia, and North America. IPO members report PDD does not appear to have vetting or screening processes to prevent the sale of large volumes of identical-copy knockoffs. IPO members report that Temu generally refuses to acknowledge or engage on IP issues and does not take meaningful action against reported infringers. Nor does it have safeguards in place to block repeat infringers, and recidivism is rampant on the platform. Temu does remove specifically reported listings, but the counterfeit sellers remain active and are able to relist. In addition, IPO members report Temu's notice and takedown tool is rudimentary and extremely limited, making it challenging to provide notice for large numbers of infringements.

Weixin (Chinese entity) & WeChat (International entity) (collectively, "WeChat")

IPO agrees with USTR's inclusion of WeChat on last year's Notorious Markets List and recommends that it remain on the list this year, given the vast amount of counterfeit goods sold on WeChat. WeChat claims it is a social media app instead of a "marketplace," but it has become one of the largest online markets in China for the sale of counterfeit products. IPO members report that test buys demonstrate high rates of counterfeit sales on WeChat. Counterfeiters can easily register and begin selling fake goods on WeChat. WeChat allows counterfeiting rings to perform every aspect of their illicit business on its platform, including direct marketing to consumers and sales transactions using WeChat's "shopping cart" function.

Further, in 2020, Tencent launched "Channels," a new, short video platform within WeChat that lets users create and share short video clips and photos through their own "Channel." After its introduction, Channels became a popular marketplace for counterfeit sales. Channels can be operated by a private or public account, and no public information is available for brand owners to connect the Channel operators with their WeChat accounts, making it almost impossible to conduct investigations of illicit sellers.

IPO members note that WeChat has started to do more to investigate or facilitate attempts to investigate complaints, but many still go unenforced. WeChat has also implemented some changes to its brand-protection portal to make it more user-friendly, and the platform has established a clearer and more effective IPR infringement policy and takedown process. However, the number of enforcement actions taken by WeChat is small compared to the massive number of counterfeit operators on the site and compared to the enforcement actions taken by other major online marketplaces operating in China.

In addition, the most frequent consequence for WeChat users caught selling counterfeits is account termination, but there is little to prevent terminated users from re-registering. It is extremely difficult for brand owners or law enforcement to obtain basic seller or sales information or to

remove bad actors from the platform, particularly if the sales are made through “personal/private accounts.” WeChat maintains that it cannot provide even limited information about users and counterfeit sales conducted on personal accounts due to privacy concerns, but it is the norm for other China-based and global platforms to provide such information about criminal counterfeiting rings to brand owners and enforcement authorities.

PHYSICAL MARKETS

The lasting effects of the COVID-19 pandemic continue to shape how counterfeit products are distributed globally, pushing sales from physical markets to online platforms. Over the past two years, much of the trade in these physical markets has reemerged. Still, we are increasingly seeing a hybrid model where brick-and-mortar sellers also sell their goods online. We have highlighted some of the more egregious international physical marketplaces below.

Americas

Brazil

25 de Marco Street Market, Sao Palo

IPO agrees with the inclusion of 25 de Marco Street in the 2019-2022 Notorious Markets Lists and suggests it should 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 the largest wholesale and retail counterfeit markets in all of Brazil and Latin America. This massive area comprises thousands of shops selling a wide range of counterfeits, including consumer electronics, clothing, footwear, and toys. IPO members report that corruption and protectionism by local officials have made enforcement at 25 de Marco difficult. Although there has been some enforcement activity at the market in recent years, our members report that it has been limited and ultimately ineffective at deterring widespread counterfeiting.

Canada

Pacific Mall, Ontario

IPO agrees with the inclusion of Pacific Mall on the 2018 and 2020-2022 Notorious Markets Lists and believes it should be included in this year’s list. The sale of counterfeits in the mall is widespread and open. IPO members report sending thousands of cease & desist letters to vendors, requesting assistance from law enforcement, and attempting to evict known counterfeiters, with no discernable impact on counterfeit trade. The mall remains open and counterfeit vendors continue to operate with impunity and without concern regarding enforcement.

Mexico

Tepito, Mexico City

IPO agrees with the inclusion of Tepito in the 2019-2022 Notorious Markets Lists and believes it should be again included in this year’s report. Tepito is a massive market in the middle of Mexico City full of merchants/stores selling counterfeits. IPO members report Mexican authorities have done little to curb counterfeit sales at Tepito. Further, IPO members agree with the statement from the 2021 and 2022 reports that enforcement in the market is hazardous, making it nearly impossible

for brands to enforce their rights. IPO encourages Mexican authorities to look closely at the landlords controlling the market and pursue cases against them.

Paraguay

Ciudad del Este

IPO concurs with the inclusion of Ciudad del Este in the 2019-2022 Notorious Markets Lists 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 all kinds of counterfeit products. It has been on the Notorious Markets List and/or the Special 301 Report for over 20 years, and IPO members continue to report that counterfeiting in the region remains widespread.

Asia-Pacific Region

China

Huaqiangbei (HQB), Shenzhen, and its satellite cities including Dongguan, Guangzhou, Foshan and Maoming

IPO agrees with including Huaqiangbei (HQB) in the 2022 and previous Notorious Markets Lists and believes it should again be included in this year's report. Shenzhen is the electronics capital of the world and is responsible for the manufacture of most of the world's electronics goods, both genuine and counterfeit. In recent years, the production of counterfeit electronics has spread to satellite cities like Dongguan, Guangzhou, Foshan, and Maoming in the greater Guangdong Province. Nearly all counterfeit electronics are produced in Shenzhen and these satellite cities. The HQB district in Shenzhen has long been the epicenter of the counterfeit electronics trade and home to over 30 tech malls—multi-story complexes filled with thousands of small distributor shops—that serve as a central distribution hub for counterfeit consumer electronics products sold all over the world. IPO members report seeing a shift in trade in HQB arising from COVID-19 restrictions. Notably, many tech malls have changed their business models and moved away from selling consumer electronics to cosmetics and foodstuffs. However, five markets continue to be a hub for selling and shipping large quantities of counterfeit consumer electronics:

Longsheng Communications Market (龙胜通讯市场), Tongtiandi Communication Market Feiyang Times (通天地通讯城飞扬时代), Yuanwang Digital Mall (远望数码商城), SEG Communication Market (赛格通信市场) and Taixing Communications Market (泰兴通信市). Increasingly, many of the traders in these markets are supplementing brick-and-mortar sales with online sales, further driving the increase of e-commerce in the counterfeit trade.

Chaoyang District, Shantou City

IPO agrees with including the Chaoyang District in the 2022 Notorious Markets List and believes it should be again included in this year's report. Shantou, on the eastern coast of Guangdong Province, is a manufacturing center for electronics and toys. IPO members have observed that Shantou's Chaoyang District (潮阳) has numerous underground factories and dens hidden in local villages and residential buildings manufacturing "high quality" counterfeit electronics. Local protectionism is rampant in Shantou, and local law enforcement is often unwilling to assist rights owners in investigations and criminal actions. This is true even when law enforcement from

another city is willing to travel to Shantou to conduct a raid. In the past year, IPO members report improved cooperation and willingness from local law enforcement to conduct investigations and pursue criminal actions against counterfeiters, but more improvements are needed.

Foreign Trading Warehouses, Yiwu City

Yiwu is one of the biggest international distribution centers for small products in China. Counterfeit goods are shipped from the port worldwide and it provides an important link between counterfeit manufacturers and distributors. IPO members report that local authorities have conducted regular raids and seizures at warehouses in Yiwu and levied penalties against infringers, but the efforts have not been successful in meaningfully reducing the large volume of counterfeits exported from Yiwu. More rigorous enforcement is needed, and the threshold for criminal prosecution in Yiwu is often too high for effective action.

India

Gaffar Market, Delhi and Sadar Patrapa (SP) Road Market, Bengaluru

IPO supports the continued inclusion of SP Road Market in the Notorious Markets List and recommends the inclusion of the Gaffar Market. The Gaffar Market in the Karol Bagh district of New Delhi and the SP Road Market in Bengaluru (Bangalore) are both well-known across the region as hotbeds of counterfeit activity, and both are densely packed and attract large numbers of customers. Although IPO members report that local police are sometimes willing to conduct raids, they are constrained by conflicting policing priorities and concerns over public safety. Moreover, given the sheer number of counterfeit shops in the markets, the raids have had no lasting impact.

Indonesia

ITC Roxy Mas, Jakarta

IPO agrees with USTR's inclusion of Mangga Dua Market on previous Notorious Markets Lists and recommends that ITC Roxy Mas also be included. ITC Roxy Mas in Jakarta is a large tech mall comprising five floors of approximately 900 shops/stalls/booths selling counterfeit consumer electronics. Mobile phone repair services are also offered, typically using counterfeit parts. IPO members report that the same obstacles that make IP enforcement difficult in Indonesia—namely corruption, local protectionism, and lack of meaningful criminal counterfeiting prosecution—also make enforcement at ITC Roxy Mas extremely difficult. Even when local authorities can be persuaded to conduct enforcement actions, corrupt police are rumored to accept bribes from shop owners to suspend or delay criminal prosecution.

Vietnam

Viet Trung Trade Centre, Lang Son

IPO agrees with USTR's inclusion of Ben Thanh Market in previous Notorious Markets Lists and recommends that Viet Trung Trade Centre in Lang Son also be included on this year's list. Lang Son is a province in northern Vietnam that borders the Guangxi province in China and is a significant entry point for China-made counterfeits to come into Vietnam. Viet Trung Trade Centre, a large wholesale market near the Lang Son border gate, is filled with a variety of counterfeit products. IPO members report that although the Vietnamese government trains

enforcement agencies to look for counterfeit goods coming into Lang Son from China, corruption and local protectionism often prevent effective enforcement at Viet Trung Trade Centre.

Europe, Middle East and Africa (EMEA)

Kyrgyz Republic

Dordoi Bazaar

IPO agrees with the inclusion of the Dordoi Bazar on the 2021-2022 Notorious Markets Lists and believes it should be included in this year's report. Kyrgyzstan shares a porous land border with China that serves as a major distribution route for counterfeit products shipped from China to Eastern Europe and beyond. The Dordoi Bazaar, also known as "Container City," near Bishkek, the capital of Kyrgyzstan, has long been associated with counterfeits. The market is made up entirely of shipping containers and is a major distribution hub for counterfeit products smuggled into the country from China. Corruption makes enforcement essentially impossible. Furthermore, as Kyrgyzstan is part of the Eurasian Customs Union, there are effectively no border checks for goods shipped from Kyrgyzstan to Russia and other members of the Union.

Morocco

Derb Ghallef, Casablanca

IPO recommends adding Derb Ghallef market in Morocco, largely a mobile phone and accessories market located in Casablanca, to this year's Notorious Markets List. Derb Ghallef has long been a central distribution hub for counterfeits, supplying shops in and around the city. Local law enforcement previously supported rights holders with enforcement, but IPO members report that in 2018 this support stopped due to public order concerns. Since then, political will to clean up the market has been lacking, in part due to the contribution the market makes to the local economy. As a result, counterfeits are widely available, and counterfeiters operate with impunity.

Russia

Gorbushkin Dvor, Moscow

IPO agrees with USTR's inclusion of Gorbushkin Dvor on last year's Notorious Markets List and recommends that it remain on the list this year. Due to the geopolitical situation in Russia, enforcement remains challenging and IPO members report that markets such as Gorbushkin Dvor in Moscow, which were already a problem, have become worse. Counterfeit products are widely available, and enforcement is impossible.

Spain

Fuenlabrada Area, Madrid

The Fuenlabrada area on the outskirts of Madrid contains a sizeable industrial estate that houses many merchants selling counterfeit electronics. Although law enforcement has conducted several raids over the last few years, the area remains a problem, and IPO members report that counterfeiters throughout Spain point to Fuenlabrada as the source of their products.

Turkey

Tahtakale District, Istanbul

IPO agrees with USTR's inclusion of the Tahtskale District on the 2021-2022 Notorious Markets List and recommends that it remain on the list this year. Turkey, particularly Istanbul, is a hub for counterfeit goods coming from China into Europe. Over the past few years, the Turkish Police have conducted regular raids, and several counterfeit traders have been prosecuted. However, the area remains a significant hub for counterfeit trade in Turkey, and despite sustained effort, counterfeit products remain widely available.

United Arab Emirates**Deira District, Dubai**

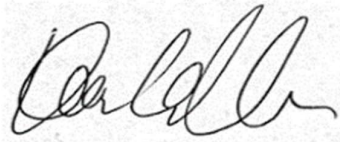
IPO agrees with USTR's inclusion of the Deira District on the 2021-2022 Notorious Markets Lists and recommends that it remain on the list this year. It has been reported to IPO that in addition to numerous Free Trade Zones in Dubai, where investigating and enforcing against counterfeiters is often impossible, the Deira District is the center of counterfeit trade, particularly in the Naif and Al Murar areas. Despite regular raids, the counterfeit trade in Deira shows no signs of abating. This is exacerbated by low criminal penalties for counterfeiting, which is frustrating given the introduction of new trademark laws in the UAE that allow for higher penalties, particularly for repeat infringers. IPO members report that higher penalties are not being imposed and law enforcement has not explained why. Finally, enforcement is further complicated by the district's proximity to the Dubai airport and the widespread use of private residences to store counterfeit products.

United Kingdom**Cheetham Hill, Manchester**

The Cheetham Hill area of Manchester is regarded as the epicenter of counterfeit trade in the UK, particularly for consumer electronics and fashion brands. Cheetham Hill historically has been a challenging enforcement environment because of the close communal relationship between the traders, but members report there have been improvements in enforcement, and they have received excellent support from both the Manchester Police and the Police IP Crime Unit (PICU) of the City of London Police and local landlords who have been willing to evict tenants who were using their premises to store and sell counterfeit products. Despite these improvements, counterfeiting activity is still widespread in Cheetham Hill.

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

Sincerely,



Karen Cochran
President