

American Apparel & Footwear Association Statement for the Record: “Consumers Beware: Increased Risks During the COVID-19 Pandemic”

House Committee on Energy and Commerce; Subcommittee on Consumer Protection and Commerce

July 9, 2020

On behalf of the member companies of the American Apparel & Footwear Association (AAFA), we appreciate this opportunity to submit a statement for the record for the Subcommittee on Consumer Protection and Commerce’s hearing on “Consumers Beware: Increased Risks During the COVID-19 Pandemic.”

AAFA is the national trade association representing apparel, footwear, travel goods, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands, AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its nearly four million U.S. workers, and its contribution of more than \$400 billion in annual U.S. retail sales.

As Americans have been spending more time at home during the last few months, there has been an uptick in activity on omnichannel outlets, most notably e-commerce. Now more than ever, it is important for American consumers to be aware of the products they are bringing into their homes. The proliferation of fake and unsafe products on e-commerce platforms and third-party marketplaces during the COVID-19 pandemic has highlighted that bad actors will take advantage of unsuspecting consumers, even amid a global health crisis.

AAFA’s Brand Protection Council vigorously pursues brand protection efforts, with a focus on the global war against counterfeit apparel, footwear, accessories, and other supplier products. AAFA has been particularly focused on drawing attention to the counterfeits that too often plague foreign and domestic online marketplaces. Unfortunately, consumers are learning the hard way that counterfeits affect more than lost sales for famous brands. They also expose purchasers of everyday basics and essentials to a range of quality concerns and product safety risks; this risk was highlighted in a March 2020 report by EUROPOL, which noted that “[t]he number of offers of counterfeit and sub-standard good[s] will continue to increase, particularly online”, a trend even more alarming when coupled with the fact that many of these counterfeit goods constitute healthcare, sanitary, and personal protective equipment products highly desired during the current global COVID-19 pandemic.

During the last six months, many of AAFA’s member companies have reported an increase in online counterfeiting on third-party marketplaces and social media platforms. Some members report that this increase is attributed to China-based sellers and listings. Alarming, many member companies note that there has been an increase in counterfeit masks branded with their company logos and trademarks.

It is essential that online marketplaces implement effective and proactive measures to prevent the sale of these illegal and unsafe goods to protect consumers, workers, and their families. The current legal framework—where online intermediaries are generally not liable for the products sold on their marketplaces or platforms by third parties—creates a disincentive for intermediaries to proactively stop the sale of counterfeit and other harmful products. Under the current status-quo, online marketplaces have a huge financial incentive to allow these sales without the risk of legal liability – they make money off of each sale, and they benefit from the “network effect” of scale that discourages robust seller vetting. It cannot be stressed enough that the new role of marketplaces in many cases is not simply as a retailer, but as facilitator of sales by handling the financial transaction between buyer and seller, and by referencing, sorting, optimizing and promoting offers for the sale of goods. Voluntary measures are ineffective because most players will not adopt them, and certainly will not invest in them at a level commensurate with the harms to IP rights holders. We believe that binding provisions are the only way to effectively encourage intermediaries to implement proactive measures.

Marketplaces must have some accountability in order to create pressure to effectively address the issue. AAFA recommends binding and horizontal legal obligations to proactively prevent the online sale of counterfeits. There is room to establish the standards and factors that would lead to liability, and to find the right compromise between the interests of the marketplaces and brand owners.

Thank you for your immediate attention to this important issue. AAFA looks forward to continuing the dialogue with the Subcommittee on consumer protection issues during the COVID-19 pandemic, and beyond.