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July 6, 2021

The Hon. Christopher A. Coons  
Chair  
Judiciary Subcommittee on  
Privacy, Technology, and the Law  
U.S. Senate  
218 Russell Senate Office Building  
Washington, D.C. 20510

The Hon. Thom Tillis  
Ranking Member  
Judiciary Subcommittee on  
Intellectual Property  
U.S. Senate  
113 Dirksen Senate Office Building  
Washington, D.C. 20510

**Re: S. 1843 - SHOP SAFE Act of 2021**

Dear Chairman Coons and Ranking Member Tillis:

I write on behalf of the American Bar Association Section of Intellectual Property Law (the "Section") to express our support for the Stopping Harmful Offers on Platforms by Screening Against Fakes in E-Commerce Act of 2021 (the "SHOP SAFE Act of 2021"), S. 1843 (117th Congress, introduced 5/20/2021). The views expressed herein are presented on behalf of the Section, have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and accordingly should not be construed as representing the positions of the Association.

Since 1894, the Section has advanced the development and improvement of intellectual property laws and their fair and just administration. As the forum for rich perspectives and balanced insight on the full spectrum of intellectual property law, the Section serves within the ABA as a highly respected voice within the intellectual property profession, before policy makers, and with the public.

**The SHOP SAFE Act of 2021 Will Provide Important and Necessary Protections for American Consumers and Brands**

The Section commends the introduction of the SHOP SAFE Act of 2021, which addresses not only the critically important needs of protecting American consumers who purchase goods from e-commerce platforms and the trademarks that may be infringed through those sales, but also many of the concerns we expressed in our August 25, 2020, letter to the Committee regarding the proposed SHOP SAFE Act of 2020.

The Section agrees that trafficking in counterfeit goods is a widespread and serious problem impacting the health and safety of American consumers. This is particularly so in online marketplaces, which give third parties a forum to conduct transactions with relative anonymity and low accountability, warranting Congress's attention. The Section believes that the SHOP SAFE Act of 2021 will be valuable in filling a void in policing counterfeits to provide greater safety for American consumers and more brand protection, especially with the significant growth in on-line shopping.

### **The SHOP SAFE Act of 2021 Requirements Are Likely to Facilitate Robust E-Commerce Platform Removal and Reporting of Counterfeit Products**

Sections 1114(4)(A)(i) through (vi) will reduce seller anonymity by mandating, within the defined limits of Section 1114(4)(C), that the sellers' names and addresses be verified and publicly disclosed. Sections 1114(4)(A)(viii) through (xii) provide mechanisms for requiring sellers to accurately depict the goods offered for sale and for disabling or removing offending sellers from the platform and preventing them from reappearing on the platform under a different seller identity or alias. The Section strongly supports these best practices, which should incentivize platforms to address the sale of counterfeit and unsafe products sold on-line-, substantially increasing protection for consumers.

While the Section has some concerns with the scope of the exemptions of Section 1114(4)(C), we applaud the Committee's efforts to deal with application of the protections to individual sellers and very small businesses found to be repeatedly using counterfeit marks in connection with the offering or sale of goods that implicate health or safety.

The Section believes it is critically important for e-commerce platforms to consistently apply advanced technology in the fight against counterfeits and, without expressing a view at this time on these particular requirements, supports the idea of mandating such action. For example, if new technologies provide new ways to determine the authenticity of an item by reviewing a scan of a photograph of the item, the Section believes there should be an adequate incentive for e-commerce platforms to adopt those technologies. The Section commends Congress's general efforts to incentivize the adoption of new technological measures designed to combat counterfeiting, and would support further incentivizing such measures.

### **Congress Should Consider Future Expansion of the Act to All Goods If Results Are Positive**

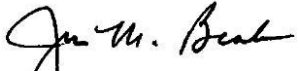
If the SHOP SAFE Act of 2021 proves to be an effective mechanism for reducing the importation and sale of counterfeit goods in the United States, the Section believes that Congress should consider expanding it to formally cover all goods – not just those impacting health and safety. To adequately measure success, the Section suggests that the legislation be amended to require annual reporting from relevant government

agencies and e-commerce platforms regarding the impact of the SHOP SAFE Act on third party sales of counterfeit goods on e-commerce platforms.

\* \* \*

We appreciate the opportunity to offer these comments. The Section supports the SHOP SAFE Act of 2021 and would be happy to work with Congress to help secure passage of the bill. Should you have any questions or would like to discuss these issues further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "June M. Besek". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

June M. Besek, Chair  
ABA Section of Intellectual Property Law