

May 13, 2024

The Honorable Darrell Issa  
Chair  
Subcommittee on Courts, Intellectual  
Property and the Internet  
Committee on the Judiciary  
U.S House of Representatives  
Washington, DC 20515

The Honorable Hank Johnson  
Ranking Member  
Subcommittee on Courts, Intellectual  
Property and the Internet  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Issa and Ranking Member Johnson:

Thank you for your continued bipartisan leadership to protect intellectual property (IP), foster American innovation, support domestic jobs, fight dangerous counterfeits, and deter illicit use of IP.

On behalf of the member companies of the American Apparel & Footwear Association (AAFA)<sup>1</sup>, we appreciate this opportunity to provide comments for the record for the Subcommittee on Courts, Intellectual Property and the Internet's hearing, "Intellectual Property: Enforcement Activities by the Executive Branch," from March 7, 2024.<sup>2</sup>

AAFA is the national trade association representing apparel, footwear and other sewn products companies and their suppliers, which compete in the global market. Representing more than 1,000 world famous brands, AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management, and shareholders, its more than 3.2 million U.S. workers, and its contribution of more than \$490 billion in annual U.S. retail sales.

Brand protection is a core strategic pillar for the association. AAFA's Brand Protection Council is charged with advocating for the protection of IP; building awareness of the dangers of counterfeits to businesses, consumers, workers, and the environment.<sup>3</sup>

We commend the subcommittee for acknowledging that platforms must do more to prohibit the sales of counterfeit products, bringing reprieve for U.S. enforcement agencies and helping to keep dangerous items from entering American homes. And we thank Ranking Member Jerry Nadler for his continued commitment with Chairman Darrell Issa to reintroduce the SHOP SAFE Act to reduce the number of dangerous counterfeits online before reaching consumers.<sup>4</sup> We call on Congress to quickly pass this legislation and send it to President Biden for his signature.

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<sup>1</sup> American Apparel & Footwear Association <https://www.aafaglobal.org>

<sup>2</sup> The Subcommittee on Courts, Intellectual Property and the "Internet Intellectual Property: Enforcement Activities by the Executive Branch" (May 7, 2024) <https://judiciary.house.gov/committee-activity/hearings/intellectual-property-enforcement-activities-executive-branch-1>

<sup>3</sup> AAFA's Brand Protection Council: [https://www.aafaglobal.org/AAFA/Priority/Brand\\_Protection.aspx](https://www.aafaglobal.org/AAFA/Priority/Brand_Protection.aspx)

<sup>4</sup> Ranking Member Nadler Opening Statement for House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet Hearing on "Intellectual Property: Enforcement Activities by the Executive Branch" (May 7, 2024) <https://nadler.house.gov/news/documentsingle.aspx?DocumentID=395160>

Counterfeiters base their businesses upon stealing another’s innovation and identity, so it is with little remorse that they exploit workers, engage in wage theft, employ shoddy factories, dump hazardous waste into rivers and lakes, and use dangerous chemicals. Counterfeiters negate all that brands do to build, train, and inspect supply chains to ensure that the clothes, shoes, and accessories bought and worn by American families are not only fashionable and affordable but are also ethically and sustainably sourced and made, and safe for consumers.

Without SHOP SAFE, online platforms are readily taking advantage of consumers due to little, or no, front-end verification and built-in anonymity. Never has the counterfeit problem been at the scale it is today, from dupe influencers, text messages, fraudulent advertisements, hidden links and fake websites to the actual counterfeit products being sold to unwitting consumers across platforms – this is a full online 'Digital Devalue Chain of Counterfeits'<sup>5</sup> with more than two-thirds of consumers being deceived to buy a counterfeit product online, according to the Global Anti-Counterfeiting Consumer Survey of 2023 by Michigan State University.<sup>6</sup> Furthermore, *the Guardian* recently reported that consumers are “duped into sharing card details and other sensitive personal data with a vast network of fake online designer shops” and don’t receive an item.<sup>7</sup>

AAFA works with members to quantify the abundance of counterfeits and chronicle the IP concerns for the annual U.S. Trade Representative (USTR) Notorious Markets Comments.<sup>8</sup> This issue impacts brands of all sizes and scale; however, it disproportionately impacts small businesses, especially businesses not selling on platforms as it is up to the small businesses to find the infringement, find a contact at the platform, work to remove the item, and often it is up again the next day on the same or a different platform. In 2022, AAFA worked with members to estimate the range of resources needed for brand protection with amounts ranging from \$1.7 million for global brand protection for one company to at least \$50,000 for a small 18-employee business.<sup>9</sup> These are valuable resources devoted to an ever-growing problem that brands can’t add more hours or dollars to address.

A study by the U.S. Global Value Chain Coalition stated that about 75% of the retail value of an apparel article imported from abroad and sold in the U.S. comes directly from American ingenuity.<sup>10</sup> This means that despite being physically sewn overseas, most of the value found in a T-shirt, jeans, dress, or suit was created by Americans and supported American jobs. Moreover, AAFA’s 2022 study found that out of 47 counterfeit products tested – including clothing, footwear, and other accessories – 17 products (or 36.2%)

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<sup>5</sup> AAFA “Digital Devalue Chain of Counterfeits” <https://www.aafaglobal.org/counterfeitdevaluechain>

<sup>6</sup> Alhabash, S., Kononova, A., Huddleston, P. Moldagaliyeva, M., & Lee, H. (2023). Global Anti-Counterfeiting Consumer Survey 2023: A 17 Country Study. East Lansing, MI: Center for Anti-Counterfeiting and Product Protection, Michigan State University. <https://a-capp.msu.edu/article/global-anti-counterfeiting-consumer-survey-2023>

<sup>7</sup> The Guardian "Chinese network behind one of world’s ‘largest online scams’" (May 8, 2024)

<https://www.theguardian.com/money/article/2024/may/08/chinese-network-behind-one-of-worlds-largest-online-scams>

<sup>8</sup> AAFA Files 2023 Notorious Markets Comments to USTR

<https://www.aafaglobal.org/AAFA/AAFA News/2023 Letters and Comments/AAFA Files 2023 Notorious Markets Comments USTR.aspx>

<sup>9</sup> AAFA Files 2022 Notorious Markets Comments to USTR

<https://www.aafaglobal.org/AAFA/AAFA News/2022 Letters and Comments/AAFA Files 2022 Notorious Markets Comments USTR.aspx>

<sup>10</sup> The U.S. Global Value Chain Coalition [https://img1.wsimg.com/blobby/go/f23cae5a-2434-44f6-91d1-3695bf2115a3/downloads/1btmo725c\\_680153.pdf](https://img1.wsimg.com/blobby/go/f23cae5a-2434-44f6-91d1-3695bf2115a3/downloads/1btmo725c_680153.pdf)

failed to comply with U.S. product safety standards with dangerous levels of arsenic, cadmium, phthalates, lead, and more.<sup>11</sup>

U.S. Consumer Product Safety Commission (CPSC) officials have called for online marketplaces to do more, including proactively finding and keeping hazardous products from being sold.<sup>12</sup> In the FY 21 report Customs and Border Protection (CBP) noted the voluntary collaboration around the Section 321 Data Pilot from online marketplaces has helped CBP with "significant operational benefits."<sup>13</sup> This program asks for several identification points from online marketplaces, including a product picture, listed price on the marketplace, marketplace seller identification number, and more.<sup>14</sup> In the May 7 hearing, CBP shared that CBP reviews close to four million small packages daily across the nation with 90% of the IP seizures in FY 23 in the small package environment. We understand that the cost of an IP seizure, in 2012, was calculated around \$2,000 - \$3,000 - irrespective of the type of shipment for any type of IP seizure. Thus, counterfeits are not just dangerous for consumers and national security<sup>15</sup>, but costing taxpayers, businesses,<sup>16</sup> and our government an alarming resource burden annually.

The United States has an opportunity to lead by getting to the root of the counterfeiting issue before items are posted for consumers across platforms to purchase. Online platforms must meet the same requirements, and face the same liabilities, as brick-and-mortar businesses when it comes to the restriction of counterfeit or illicit products that harm American consumers.

Thank you for your commitment to bringing awareness to these issues; we look forward to the future passage of the SHOP SAFE Act to bring reprieve for U.S. consumers from dangerous counterfeit products.

Sincerely,



Jennifer Hanks  
Senior Director, Brand Protection  
American Apparel & Footwear Association

cc: Congressional Members of the U.S. House Judiciary Committee

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<sup>11</sup> AAFA "Fashion Industry Study Reveals Dangerous Chemicals, Heavy Metals in Counterfeit Products"

[https://www.aafaglobal.org/AAFA/AAFA\\_News/2022\\_Press\\_Releases/Fashion\\_Industry\\_Study\\_Reveals\\_Dangerous\\_Chemicals\\_Heavy\\_Metals\\_Counterfeits.aspx](https://www.aafaglobal.org/AAFA/AAFA_News/2022_Press_Releases/Fashion_Industry_Study_Reveals_Dangerous_Chemicals_Heavy_Metals_Counterfeits.aspx)

<sup>12</sup> CPSC: CPSC Chair Alex Hoehn-Saric Remarks [American Apparel and Footwear Association \(AAFA\) 2024 Product Safety and Compliance Seminar | CPSC.gov](#)

<sup>13</sup> CBP FY 2021 Intellectual Property Rights (IPR) Seizure Statistics

<https://www.cbp.gov/sites/default/files/assets/documents/2022-Sep/202994%20-%20FY%202021%20IPR%20Seizure%20Statistics%20BOOK.5%20-%20FINAL%20%28508%29.pdf>

<sup>14</sup> Federal Register: Section 321 Data Pilot: Modification of Data Elements, Expansion of Pilot To Include Additional Test Participants, and Extension of Pilot (Feb 16, 2023) <https://www.federalregister.gov/documents/2023/02/16/2023-03279/section-321-data-pilot-modification-of-data-elements-expansion-of-pilot-to-include-additional-test>

<sup>15</sup> U.S. Department of Homeland Security: Combating Trafficking in Counterfeit and Pirated Goods <https://www.dhs.gov/publication/combating-trafficking-counterfeit-and-pirated-goods>

<sup>16</sup> The NAM: Countering Counterfeits: The Real Threat of Fake Products

[https://nam.org/wp-content/uploads/2020/07/CounteringCounterfeits.vF .pdf](https://nam.org/wp-content/uploads/2020/07/CounteringCounterfeits.vF.pdf)