

**U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Courts, Intellectual Property, and the Internet**

Hearing on “Counterfeits and Cluttering: Emerging Threats to the Integrity of the Trademark System and the Impact on American Consumers and Businesses”

Questions for the Record – Rep. Henry C. “Hank” Johnson, Jr., Chairman

Replies from Joseph Cammisio
President, Automotive Anti-Counterfeiting Council, Inc. (A2C2)

September 19, 2019

1. Under the current system, rights owners typically bear the burden of policing individual marketplaces for counterfeits and submitting takedown complaints, which rights holders consider resource-intensive and ineffective at scale. What incentives could Congress provide to meaningfully change this system to one where e-commerce platforms play a larger role in proactively addressing the proliferation of counterfeit goods?

Contained in my Written Statement submitted in advance of the hearing are six recommendations that A2C2 believes would help to reduce the proliferation of online counterfeit sales. To summarize, our recommendations are:

1) Increase consumer awareness about the dangers of counterfeit auto parts and how consumers can protect themselves

We propose that marketplaces promote consumer awareness and implement a simple way for consumers to report bad actors to those who can take proper actions.

2) Increase accountability and responsibility of e-commerce platforms in preventing sales of counterfeit goods

We propose that marketplaces develop common best practices and enforcement methods for the benefit of consumers, brand owners and marketplaces, alike.

3) Proactively share information about bad actors among industry and law enforcement, and notify online buyers of counterfeit auto parts from bad actors

We propose that an accountability model be developed to include methods for information sharing with stakeholders and notifications to consumers who may have purchased health-and-safety-related counterfeits, informing them of the potential associated risks and what they can or should do.

4) Increase seller, supplier and product vetting to combat the presence of bad actors online

We propose that marketplaces improve vetting of sellers, suppliers and products by implementing more stringent requirements that validate seller credentials and product authenticity. (Especially if associated with China, the source of approximately 90% of counterfeits, per Homeland Security Investigations.)

5) Strengthen penalties for repeat offenders of health and safety products (e.g. auto parts)

We propose that standardized parameters and more stringent penalties be imposed on sellers, especially those offering products like auto parts that impact health and public safety.

6) Policy Violations

We propose that marketplaces police their sites and address policy violations without brands needing to do it for them.

2. Are there changes to the statutory standard for liability in counterfeiting cases that Congress should consider to effectively address the proliferation of counterfeit goods?

Regarding increased liability for e-commerce marketplaces, we support efforts to remedy the impact that the Tiffany v. eBay case has had on brand owners' ability to hold platforms liable for contributory infringement. Placing the onus only on brand owners to prevent counterfeit sales has done little to resolve the problem and has caused brand owners to spend significant resources to police e-commerce marketplaces. Efforts to increase the accountability of e-commerce platforms for the sale of counterfeit goods should be considered.

Regarding increased liability for individuals found guilty of selling counterfeit auto parts, we support increased prison sentences, fines and penalties.

3. What specific measures should e-commerce platforms use to better vet sellers and products? Is there a role Congress can play in assisting or incentivizing these efforts?

We propose that marketplaces improve vetting of sellers, suppliers and products by implementing more stringent requirements that validate seller credentials and product authenticity. (Especially if associated with China, the source of approximately 90% of counterfeits, per Homeland Security Investigations.)



4. What is a rights holder's recourse when a third-party counterfeit seller cannot be accurately identified, located, or served with a complaint? Who, if anyone, should be liable in these instances?

Currently, rights holders have very little, if any, recourse available to them when a third-party counterfeit seller cannot be accurately identified, located, or served with a complaint. It is A2C2's belief that the platforms that facilitate these sales should be liable in these instances.

