

**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 on July 18, 2019

Written Statement
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July 16, 2019

The Automotive Anti-Counterfeiting Council, Inc. (A2C2), formed in 2015 and is comprised of 11 North American vehicle manufacturers. Together, A2C2 represents over 90 percent of the nation's auto industry. A2C2's mission is to collaborate among its automotive members and partners to strive to eliminate counterfeit automotive components that could harm U.S. consumers.

The Problem

Public Safety—The circulation of counterfeit automotive parts in the United States gives rise to serious public health and safety concerns. Counterfeit products are not made to the specifications of the original manufacturer, are not subject to quality control tests, and often fail to perform as intended, resulting in catastrophic failures with potentially fatal consequences. U.S. Customs seizure statistics reveal that counterfeit safety components like brake pads, air bags, wheels, and suspension parts are commonplace. Additional counterfeit parts reported to have been seized by law enforcement include: seat belts, oil and air filters, windshields, microchips, and spark plugs. Put simply, almost every type of auto part can be and has been counterfeited.

There are over 265 million vehicles on the roads in the United States. Nearly every citizen in this country either drives a car, is a passenger in a car, or is sometimes near a car that is being driven. Counterfeit auto parts are a threat to each.

Financial Impact—Using recent data from the Organisation for Economic Co-operation and Development (OECD), the estimated financial impact of counterfeit auto parts entering the U.S. exceeds \$1 billion for A2C2 members.

The collective members of A2C2 reported to marketplaces tens of thousands of infringing and counterfeit listings. There were tens of thousands of more listings that we were unable to evaluate and report because our resources do have limits. For those listings that were reported and removed by marketplaces, we don't know how many resulted in sales of counterfeit auto parts to unsuspecting consumers or repair shops. The fact is that we find counterfeit parts sold on-line everywhere we look. Unfortunately, we do not have the resources to look, nor enforce, everywhere.



Our Actions

Since forming in 2015, A2C2 has taken the following proactive measures to combat counterfeit auto parts:

- ✓ Trained almost 1,000 U.S. Customs and Border Protection officers
- ✓ Collaborated with Homeland Security Investigations (HSI) on dozens of civil and criminal investigations to catch bad actors
- ✓ Engaged major e-commerce platforms to increase counterfeit auto parts awareness and enforcement activities
- ✓ Enlisted the support of the Intellectual Property Enforcement Coordinator (IPEC) and the National Intellectual Property Rights Coordination Center (IPR Center) to increase awareness and maximize resources to combat counterfeit auto parts

Our Recommendations

Moving forward, we continue to face tough challenges and remain concerned with the level of counterfeit auto parts offered for sale through on-line marketplaces. We are still struggling with several problems.

We recommend support for the following ongoing industry and government efforts to stop online counterfeits sales:

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

In general, consumers are unaware of the extent of counterfeit products they're exposed to when shopping online, and to the dangers that these products pose. Educating consumers will enable them to make better purchasing decisions and avoid falling victim to counterfeit products.

We find little to no information on marketplaces promoting consumer awareness about counterfeits, nor a conspicuous way for them to report counterfeits either to the marketplace, the brand owner, or law enforcement.

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

Ultimately, it has largely been left to brand owners, big and small, to identify, understand, navigate and manage each marketplace individually. Marketplace business models differ, methods to report counterfeits vary, responses to reports are still inconsistent (what passes one day, may be questioned the next). Brand protection policies and programs range from the very simple to the very complex. Some programs are invitation only or are introduced as pilot tests. Some have restrictive terms and conditions that favor the marketplaces or result in additional cost or resource expenditure by brands.

While these anti-counterfeit programs offered by marketplaces have value, they are limited in their ability to adequately contain the proliferation and sale of counterfeit products online. Only when marketplaces are, ultimately, held accountable for the products they offer and sell, will solutions of proper scale and effectiveness be developed and implemented.

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

While marketplaces can share their proactive and reactive efforts which include the often-impressive impact of the tools that they are using to address counterfeits on their platforms, research indicates that the problem is worse than it has ever been and getting even worse still. Standards or requirements for these marketplace efforts do not appear to publicly exist and brands are left to take their reports at face value. No known protocol exists for consistently, and in a timely manner, sharing with law enforcement, US Customs or other stakeholders the actionable information about bad actors gathered through such marketplace efforts. Most importantly, it is not common for marketplaces to notify consumers who have been victimized by counterfeiters and in the case of counterfeit auto parts, they may not learn, until it's too late.

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

Automakers have relatively direct supply chains and we can demonstrate that we sell our parts only through authorized distributors and dealers. Yet we see our branded parts offered for sale on marketplaces coming from areas of the world outside our supply network, by nondescript and unidentifiable sellers. Some of us have even seen counterfeits offered by marketplaces themselves.

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 (i.e. auto parts)

We often see the evolution of seller behavior during the enforcement process. Once enforced, a seller will create a new seller account and relist the same item, they may alter the item description, alter photos, remove photos altogether, ultimately creating a generic listing that does not infringe a brand's IP, under which they continue to sell counterfeit auto parts.

Marketplaces should use intelligence to identify this behavior, connect the dots between any related seller accounts and stop it.

Each marketplace we've encountered explains that they have a process for disabling a seller account, seizing inventory, freezing funds, or otherwise penalizing bad actors and repeat offenders. The parameters for such actions seem to vary by marketplace, may be administered case by case and are rarely shared with brand owners making it difficult for us to understand what to expect and when to spend the time and effort required to escalate matters.

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

Brands are left to monitor on-line marketplaces for policy violations related to areas such as recalled auto parts, hazardous or prohibited items or replica products.

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

Conclusion

In recent years, marketplaces have effectively linked overseas and domestic counterfeiters with U.S. consumers. Online sales have grown significantly and are only expected to continue to grow in the years ahead. The burden of stopping these criminals should not fall on the brands that they are victimizing. Ultimately, marketplaces should be held accountable for the sale of dangerous products that they are currently profiting from.

Since our formation, the members of A2C2 have banded together as an industry to protect U.S. consumers from the dangers of counterfeit auto parts. In this effort, we have partnered with Homeland Security Investigations and other federal agencies through the Intellectual Property Rights Coordination Center and reached out to marketplaces, looking for ways to mitigate the growing threat to public health and safety posed by counterfeit auto parts. While at times this effort has been tiring and frustrating, we remain optimistic that effective measures can be implemented. We are excited to participate in the creation of a framework that will enact real and scalable solutions, and we are pleased to support this effort however we can.

