

**Submission of the**  
**International AntiCounterfeiting Coalition**  
**to the**  
**United States Trade Representative**  
**2021 Special 301**  
**Out-of-Cycle Review of Notorious Markets**  
**Request for Public Comment**  
**86 Fed. Reg. 48464 - 66 (August 30, 2021)**  
**Docket No. USTR-2021-0013**

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**October 11, 2021**

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Daniel Lee  
Assistant U.S. Trade Representative for Innovation and Intellectual Property (Acting)  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, DC 20508

RE: 2021 Out of Cycle Review of Notorious Markets

Dear Mr. Lee:

The International AntiCounterfeiting Coalition, Inc. (“IACC”) submits these comments to the Office of the United States Trade Representative (“USTR”), pursuant to a request for written submissions from the public identifying “online and physical markets that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting.”

The IACC is the world’s oldest and largest organization dedicated exclusively to combating trademark counterfeiting and copyright piracy. Founded in 1979, and based in Washington, D.C., the IACC represents approximately 200 corporations, trade associations, and professional firms, spanning a broad cross-section of industries. IACC members include many of the world’s best-known brands in the apparel, automotive, electronics, entertainment, luxury goods, pharmaceutical, software, and other consumer product sectors.

Central to the IACC’s mission is the education of both the general public and policy makers regarding the severity and scope of the harms caused by intellectual property crimes – not only to legitimate manufacturers and retailers, but also to consumers and governments worldwide. The IACC seeks to address these threats by promoting the adoption of legislative and regulatory regimes to effectively protect intellectual property rights, and to encourage the application of resources sufficient to implement and enforce those regimes.

Since its inception, the IACC has worked with both government officials and the private sector to identify, and to seek remedies to deficiencies and practical impediments to IP enforcement. In recent years, we’ve led the development of voluntary collaborative programs on a global scale to address key priorities in the online space, including our RogueBlock and IACC MarketSafe Programs.

The IACC continues to engage with a number of stakeholders in the e-commerce landscape to develop and encourage the adoption of best practices for the protection and enforcement of

intellectual property rights that go beyond the mere letter of the law. We welcome the support of USTR, and the Administration more broadly, in encouraging such industry-led solutions.

Whether measured in terms of lost sales to legitimate manufacturers, tax revenues and duties that go unpaid to governments, decreased employment, or diminished investment in capital improvements and research and development; counterfeiting is a significant drain on the U.S. and global economy. Further, the production and distribution of goods produced in an entirely unregulated supply chain, where the makers have every incentive to cut corners by using cheap, substandard components, and no incentive to abide by accepted standards of consumer health and safety, presents a clear threat to the health and well-being of consumers, and to the integrity of our national security infrastructure. We look forward to working with you to ensure the safety of consumers and the vitality of legitimate manufacturers and retailers impacted by the global trade in counterfeit and pirated goods.

The comments provided herein – particularly in the case of those markets that we’ve identified in prior submissions, or those that have already been cited as Notorious Markets by USTR – are intended as an update to past comments, highlighting rights-holders’ most recently provided feedback and current priorities. As such, the views provided herein should not be read as an exhaustive list of our members’ concerns.

We thank you for your work on these important issues, and for the opportunity to share our members’ experiences.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Travis D. Johnson". The signature is stylized and fluid, with a prominent initial "T" and "D".

Travis D. Johnson  
Vice President - Legislative Affairs, Senior Counsel

## **PHYSICAL MARKETPLACES**

The physical marketplaces discussed below were highlighted by IACC members this year during consultations related to USTR's Special 301 Out-of-Cycle Review of Notorious Markets. Unless noted otherwise, to the best of our knowledge, none of the markets identified herein are owned, operated, or otherwise affiliated with a government entity. The comments are organized alphabetically, by country.

### **ARGENTINA**

#### **La Salada, Buenos Aires**

La Salada remains the marketplace of greatest concern for rights-holders in Argentina, and indeed, one of their greatest concerns in all of Latin America.

Though closed for much of 2020, the market has reopened, and widespread sales of counterfeits are said to have returned as well. IACC members were hopeful that significant progress would materialize following a series of enforcement actions in 2017, including the arrest of Jorge Castillo, known as the "King of the Salada." Unfortunately, this has not been the case.

Respondents were unaware of any major enforcement actions in 2021, and reported no substantive improvement in the market's activity to combat illicit sales, nor any significant decrease in the volume of counterfeit sales.

### **BRAZIL**

#### **"25 de Marco Street" Market, Sao Paulo**

The IACC concurred with USTR's decision to include "25 de Marco" on the Notorious Markets List last year, given long-standing concerns with respect to the volume and variety of counterfeits on offer. We recommend its retention on the NML again this year.

Sales of counterfeit apparel, electronics, toys, and countless other products remain rampant at the markets, and despite past targeted enforcement actions by Brazilian authorities (with the cooperation of numerous brands) that have led to temporary closures, lasting improvements to the situation have yet to be seen. Rights-holders continue to cite concerns related to corruption and local protectionism, which are said to have contributed to the intractable nature of the problems faced there.

## **CANADA**

### **Pacific Mall, Ontario**

Following USTR's inclusion of the Pacific Mall on its 2017 Notorious Markets List, rights-holders were pleased to report increased enforcement against illicit sellers – both by the market's managers and by Canadian law enforcement. Regrettably, rights-holders have reported that the improvement was short-lived; and the consensus view of IACC members during this year's consultations was that the situation at the Pacific Mall has largely reverted to its former infamy.

One brand noted in its comments to the IACC that, over the past few years, it has sent “thousands of cease-and-desist letters, requested assistance from law enforcement, and sought to evict known counterfeiters, with no discernable impact” on the volume of illicit trade conducted at the Pacific Mall. Numerous product sectors are impacted, including apparel, electronics, cosmetics, and luxury goods. The managers of the mall have reportedly shown little interest in addressing the widespread sale of counterfeits during the past year.

## **CHINA**

### **Huaqiangbei (HQB)**

The IACC concurred with USTR's inclusion of Huaqiangbei on last year's Notorious Markets List, and recommends its retention on the list this year. As noted in prior years' comments, the Huaqiangbei (HQB) district in Shenzhen remains the epicenter of the counterfeit electronics trade, serving as a central distribution hub for fakes sold around the world.

## **INDIA**

### **Gaffar Market, Delhi SP Road Market, Bangalore**

IACC members noted their agreement with USTR's inclusion of Gaffar Market in New Delhi on last year's Notorious Markets List, and support its retention on the list this year. In addition, rights-holders also strongly recommended the addition of the SP Road Market in Bengaluru.

Both markets were cited as serious concerns for those in the consumer electronics sector, with brands underscoring the large number of shops dealing in computers, mobile phones, and related accessories. Included in those reports were shops offering repair services, which have been found to make use of counterfeit components.

While local police have provided some assistance, efforts at enforcement have had little impact

on the widespread availability of counterfeit goods on offer at either market.

## **MEXICO**

### **Tepito, Mexico City**

Tepito is viewed by many as the very definition of a “notorious market,” a fact that has led to its perennial appearances in the IACC’s comments to USTR. For countless years, IACC members have reported Tepito as a priority concern in Mexico, citing the massive volume of counterfeit and pirated goods on offer, along with the overwhelming difficulties they face when attempting to undertake enforcement there.

Rights-holders reported no significant changes to those previously voiced concerns during the past year, nor any appreciable increase in efforts by local authorities to address the long-standing problems faced by brands.

## **PARAGUAY**

### **Ciudad del Este**

The inclusion of Ciudad del Este in our recommendations this year will undoubtedly come as no surprise to USTR. Situated at the tri-border of Brazil, Argentina, and Paraguay, Ciudad del Este serves as a major center for the wholesale distribution of counterfeits destined for markets throughout Latin America. Rights-holders have also increasingly reported burgeoning manufacturing and “finishing” facilities in the region during recent years.

Despite the efforts of IACC members to engage with local enforcement authorities, brands from numerous sectors report no significant changes.

## **PHILIPPINES**

### **Greenhills Shopping Center, Metro Manila**

IACC members noted their support for the retention of Greenhills Shopping Center on the Notorious Markets List this year.

Despite some positive comments regarding the engagement of local law enforcement, the overall volume of counterfeit goods on offer remains very high.

## **RUSSIA**

### **Gorbushkin Dvor, Moscow Sadovod, Moscow**

IACC members agreed with USTR's inclusion of the Gorbushkin Dvor and Sadovod markets on last year's Notorious Markets List, and recommend their retention again this year.

Gorbushkin Dvor was cited as a continued hot spot for counterfeit electronics; illicit sales are conducted openly, with some shops even purporting to be authorized retailers of legitimate brands. Efforts at enforcement have historically been hindered by local protectionism, and although some rights-holders reported improved engagement with local law enforcement, no meaningful decrease in the level of trafficking has materialized.

## **THAILAND**

### **MBK Center, Bangkok**

MBK Center is described as a massive 8-story complex comprised of over 2,000 shops selling a wide variety of counterfeit goods including luxury goods, apparel, electronics, and footwear, among others.

Rights-holders reported that the MBK Center's notoriety as an outlet for counterfeit goods has made it a regular target for Thai authorities, with one noting that Department of Intellectual Property (DIP) has even established an "IP Enforcement Center" within the MBK Center itself, to facilitate enforcement actions. Regrettably, brands consulted during this year's process viewed the enforcement actions, to date, as largely ineffective – providing a cosmetic impact but no substantial reduction in the level of trafficking.

We would welcome USTR's addition of the MBK Center to its Notorious Markets List this year.

## **UKRAINE**

### **Seventh-Kilometer Market, Odessa**

The Seventh-Kilometer Market has made perennial appearances in the IACC's Notorious Markets recommendations to USTR for a number of years.

Rights-holders from a variety of product sectors continued to report widespread, open sales of counterfeits during the past year; unsurprisingly, given additional reports concerning the lack of enforcement actions taken against counterfeit sellers (or the market as a whole) by local police.

## **UNITED ARAB EMIRATES**

### **DragonMart and Ajman China Mall**

IACC members were pleased to report significant improvements at DragonMart at Ajman China Mall, following many years of complaints; rights-holders credited the progress to high-level engagement between the Ajman Executive Council, the Ajman Department of Economic Development, and other stakeholders. Those meetings were said to have led to significantly increased enforcement by the DED, and a substantial decrease in the volume and visibility of counterfeits on offer. One respondent described the markets as “cleaner [of illicit products] than ever before.”

Both the authorities in Ajman and the U.S. Patent and Trademark Office’s IP attaché for the region were singled out for praise by IACC brands during this year’s consultations.

In light of the positive feedback we’ve received, we believe DragonMart and Ajman China Mall should be removed from the Notorious Markets List this year.

### **Deira District, Dubai**

In contrast to the reports of IACC members concerning DragonMart and the Ajman China Mall, rights-holders expressed continuing concerns with the situation in Dubai’s Deira District. Despite countless raids and consistent efforts to root out illicit trafficking in recent years, Deira remains a major center for the counterfeit trade in Dubai. Accordingly, we would encourage USTR to retain the Deira District on the Notorious Markets List this year.

## **UNITED KINGDOM**

### **Cheetham Hill, Manchester**

Despite the efforts of law enforcement – including local police in Manchester, Trading Standards, and support from the City of London Police Intellectual Property Crime Unit (PIPCU) – Cheetham Hill is widely regarded as the epicenter of counterfeit trade in the UK.

Counterfeit sales were reported to impact brands from a variety of product sectors, including tobacco, jewelry, cosmetics, electronics, apparel, and footwear. One recent raid carried out by PIPCU resulted in the seizure of counterfeit goods valued at over 500 million Pounds.

While we applaud the continued efforts by law enforcement, the overall volume of the illicit trade and the range of brands impacted by that trafficking, lead us to reiterate last year’s recommendation that Cheetham Hill be added to the Notorious Markets List.



## ONLINE MARKETPLACES

As noted at the outset, the protection and enforcement of intellectual property in the online market has become vitally important to rights-holders large and small, across every product sector. The online marketplaces discussed below were highlighted by IACC members this year during consultations related to USTR's Special 301 Out-of-Cycle Review of Notorious Markets, but they do not constitute an exhaustive list of venues identified by rights-holders. We continue to work with a variety of stakeholders in the e-commerce space, and to facilitate direct engagement between such entities and our members where feasible. We welcome USTR's efforts at highlighting those areas where work remains to be done, or where further engagement is desirable.

To the best of our knowledge, none of the markets identified herein are owned, operated, or otherwise affiliated with a government entity. The comments are organized alphabetically, by platform name.

### **Bukalapak**

USTR named Bukalapak to last year's Notorious Markets List, citing sales of counterfeit goods across a variety of product sectors, and noting rights-holders' continuing concerns with the platform's "ineffective and burdensome" reporting mechanism, "excessive wait times" for takedown requests, and a lack of deterrence against repeat infringers. The IACC concurred with USTR's assessment, and had highlighted each of these concerns in its own comments, while also noting hopes for increased engagement.

During this year's consultations, rights-holders from a number of sectors including apparel, luxury goods, consumer electronics, and pharmaceuticals reiterated the concerns raised in last year's filing, and stressed the need for improved communication regarding the actions taken by the platform (whether proactively or in response to rights-holders' notices) and the underlying reasons for those decisions. The need for a clear, and effectively implemented, policy for policing repeat offenders was also identified as a priority by respondents.

And while some brands noted substantial improvements during latter part of 2020 with respect to speed with which complaints were being processed, that progress was reported to have diminished near the beginning of this year. One respondent described having to, at times, resubmit previously reported listings on multiple occasions in order to resolve the matter.

Rights-holders have likewise reported a growing concern with "free riding" scenarios, in which sellers use well-known brands in the "title" or "headline" of a listing as a means of attracting potential consumers, though the products on offer are in fact other brands or generic, unbranded goods. Enforcement against such "bait and switch" listings is said to be inconsistent. We would welcome clarification by the platform regarding its policies concerning

such practices which unfairly trade on rights-holders' goodwill and undoubtedly lead to consumer confusion.

Of particular concern were reports received from members in the pharmaceutical sector. One respondent reported that "illicit prescription pharmaceuticals are posted widely on the site despite their policy clearly indicating [that such sales] are in violation," while another cited instances of product tampering involving the alteration of expiration dates on product packaging. Those members encourage the adoption and enforcement of heightened safety precautions in both the onboarding of merchants and ongoing monitoring of listings involving goods which may have adverse impacts on consumers' health and safety.

Despite these ongoing concerns on the platform, we are pleased to report some positive interactions with Bukalapak this year, and some brands have expressed optimism concerning the platform's increased outreach and apparent desire to address the issues raised in last year's and this year's process. Bukalapak was, in fact, one of the first platforms to contact the IACC following our submission of comments to USTR last year, with an aim towards better understanding the challenges faced by our members.

We would welcome further collaboration to identify existing gaps in the platform's policies and procedures, to improve awareness about the legal and practical implications of counterfeit sales among sellers, and to educate Bukalapak's customers about the risks and harms associated with buying and using counterfeit items.

## **DHgate**

DHgate was retained on the Notorious Markets List last year, due in part to long-standing concerns involving the overall volume of counterfeit goods offered for sale through the platform, high levels of recidivism by sellers, and the site's reported reluctance to provide meaningful and timely assistance to rights-holders seeking to pursue "offline" follow-up investigations. The platform was urged by USTR "to continue improving its seller vetting, listing policies, transparency, and proactive monitoring to significantly decrease the availability of counterfeit goods." The IACC concurred with USTR's assessment and supported its retention on the Notorious Markets List.

Regrettably, IACC members across a number of sectors continued to report many of the same concerns during the past year, as were detailed in those prior. Despite touted improvements to pro-active screening efforts, respondents describe the platform as "rife with counterfeit products." Sellers on the platform are further said to have grown increasingly adept at evading detection, altering product images, blurring logos, and using code words to conceal the illicit nature of the goods on offer. As a result, IACC members failed to report any appreciable decrease in the volume of counterfeits available to consumers through the platform. And, as noted in past filings, rights-holders bemoaned insufficient steps to remove repeat infringers from the platform, despite numerous confirmed reports to DHgate in connection with the same sellers.

We've also received alarming reports this year from rights-holders within the pharmaceutical sector, describing an apparent unwillingness by the platform to enforce against sellers offering active pharmaceutical ingredients, in contrast to policies adopted by similarly situated platforms. The health and safety implications of such inaction raise obvious concerns.

Previously reported issues in connection with the platform's reluctance to share seller details or to facilitate self-help by affected brands remain pronounced, as do questions related to the sufficiency of seller verification and onboarding procedures currently in use.

While we do wish to acknowledge DHgate's significantly increased outreach to rights-holders during the past year, the consensus view among respondents during our consultations was that substantive progress has been slow to materialize, and that more effective pro-active enforcement is necessary to address the long-standing problems faced by rights-holders. Accordingly, we recommend DHgate's retention on the Notorious Markets List this year.

### **Etsy (International)**

Etsy describes itself as a "marketplace for crafters, artists, and collectors to sell their handmade creations, vintage goods (at least 20 years old), and both handmade and non-handmade crafting supplies." As reported by numerous IACC members during this year's consultations however, the sale of counterfeits across a variety of product sectors has become increasingly prevalent on the platform. Rights-holders' concerns ran the gamut of those seen elsewhere, ranging from insufficient seller vetting, to a lack of proactive screening for IP violations, and a lack of meaningful penalties for violations.

When sellers engage in the blatant, unauthorized use of well-known trademarks on the goods they're offering for sale, the distinction between "handmade" and "mass produced" is irrelevant; the goods are, by definition, counterfeit. A cursory search on the platform for any number of famous brands is all that's necessary to uncover countless examples of such counterfeit and unlicensed merchandise, a fact that leads many brands to question Etsy's commitment to addressing illicit sales, and the extent to which it has implemented even basic screening measures to prevent such traffic.

Respondents during this year's consultations repeatedly reported that despite efforts to engage with the platform, they've seen no progress in diminishing the volume of counterfeits on offer, nor any significant steps to rein in the trafficking. Attempts at seeking enforcement are described as "largely a whack-a-mole" effort, given the lack of pro-active screening or ongoing monitoring. Efforts to have sellers banned from the platform, even in the case of repeated, confirmed offenses of Etsy's stated prohibition on selling counterfeit goods, are said to be difficult and time-consuming. As a result, respondents viewed the platform's enforcement regime as inefficient, and ultimately, ineffective.

In light of these reports, and an apparent unwillingness to implement and enforce a framework sufficient to effectively address the sale of counterfeit goods on its platform, we recommend that Etsy be named to the Notorious Markets List this year.

## **Facebook (International)**

IACC members voiced rising concerns this year in connection with the proliferation of counterfeit and other illicit goods sold through Facebook – most notably on the platform’s Facebook Marketplace (which according to the platform’s own estimates has more than one billion active users around the world), though also via private groups, and individual user pages and advertisements which connect potential consumers to illicit offers off the platform. Rights-holders also highlighted growing apprehensions with respect to the latter issue in connection with the Facebook-owned Instagram app, which is seen to be increasingly leveraged by counterfeiters to market their illicit wares; and noted an increase in the use of the Facebook-owned WhatsApp service to facilitate communications and payments between sellers of counterfeit goods and their customers.

Unfortunately, the volume of illicit traffic seen on the platform appears to be significantly increasing, a fact borne out by rights-holders’ own investigations and by the volume of complaints they’re seeing from consumers who have been duped into buying fakes. While Facebook professes to have a zero-tolerance policy against counterfeits; in practice the platform appears to do little or no advanced screening of sellers, takes a largely reactive approach to ongoing monitoring for violations, and is overly-reliant on rights-holders’ own efforts to monitor and report on illegal activity. Those efforts by rights-holders are hampered though by Facebook’s “rudimentary” tools for reporting and removing fakes; enforcement is viewed by many as significantly more difficult than on other online marketplaces. These problems will undoubtedly become even more pronounced, absent significant changes to the platform’s policies and enforcement procedures.

A “lack of urgency” and “inefficiency” in responding to reported violations were cited as major components of rights-holders’ frustrations. Whereas, in the past, IP owners spoke highly of the level of cooperation they received in pursuing enforcement, respondents described a significant deterioration over the past year. The resolution of complaints, once measured in terms of hours, now frequently stretches to several days. And even those brands who’ve engaged with the platform for several years described having seen substantial increases in refusals by both Facebook and Instagram to remove clearly infringing listings; the reasons provided for such refusals are said to be vague or irrelevant to the listings at issue. As described by a pharmaceutical brand, “Takedown requests are almost always rejected despite the clear

advertisement of drugs for sale.” Appealing and escalating those refusals may take over a month to resolve.

Concerns about Facebook’s overall approach to enforcement are further exacerbated by a reported lack of transparency, its reluctance to share information regarding sellers confirmed to have committed violations, and its unwillingness to take effective remedial action against those sellers by removing them from the platform. One brand described the approach to enforcement as “piecemeal,” citing as an example Facebook’s “Ad and Commerce” tool which only permits the targeting of the reported incident, rather than trigger a holistic review of the account – or related accounts on Instagram and WhatsApp – for additional illicit activity. Others noted that even where they have provided overwhelming proof of illegal activity, they’ve been unable to have a counterfeiter’s WhatsApp account terminated. Many opined however that even were Facebook to take a more rigorous approach to punishing such offenses, violators would have little difficulty resuming their illicit activity, given the platform’s lack of proactive controls to verify users’ identities.

Facebook’s policies and approach to enforcement serve as an impediment to effectively stemming the widespread harm caused by the counterfeiters on its platforms. Absent significant changes to both, right-holders have little optimism that such harm will be diminished. As such, we recommend the platform’s addition to the Notorious Markets List this year.

## **IndiaMart**

Though not included in previous years’ filings, nor currently listed by USTR as a Notorious Market, we wish to draw attention to a number of troubling reports that we’ve received concerning IndiaMart during this year’s consultations. Rights-holders from several product sectors, most notably those in the pharmaceutical, apparel, and electronics sectors highlighted growing concerns about the overall volume of counterfeit goods on offer, the platform’s failure to undertake proactive monitoring for illicit sales, and in many cases, its failure to undertake any enforcement against sellers even after notifications by rights-holders.

Respondents characterized the platform as largely unresponsive to complaints related to IP violations; and where IndiaMart has taken steps to remove reported listings, the process is said to be extremely slow and imposes overly-burdensome evidentiary requirements. It also often fails to communicate with relevant rights-holders when actions are taken, and as a result, brands are left with few options aside from engaging in persistent monitoring of identified sellers and listings to ascertain the result of their complaints.

Because no funds are processed through the site itself, IndiaMart has frequently taken the position that it merely serves as a “message board” and that it bears no responsibility (or liability) for the content and listings posted on its site. As such, complaints may be rejected out of hand, and there is no transparent procedure for appealing or escalating such refusals.

Respondents from the pharmaceutical sector cite IndiaMart as the “largest export marketplace” impacting their sector, characterizing it as “over-run with illicit prescription pharmaceuticals, many of which are counterfeit.” Attempts at enforcement and engagement with the platform have borne few positive results, and the volume of goods on offer has remained consistently high for several years.

Given the range and severity of concerns reported by rights-holders during this year’s process, we strongly support USTR’s addition of IndiaMart to the Notorious Markets List.

## **Mercado Libre**

Last year, Mercado Libre was named by USTR as a Notorious Market due to continuing concerns about the availability of high volumes of counterfeit goods across its platforms – some of the most popular in all of Latin America. USTR noted with optimism that ML had taken steps to address these illicit sales; and indeed, some rights-holders have reported improvements stemming from the platform’s implementation of new processes and its launch of its Brand Protection Program in late 2019. Despite these steps however, many IACC members continue to report that further progress is needed; sales of counterfeits in a variety of sectors including apparel, luxury goods, software, pharmaceuticals, and others remain commonplace.

While the platform has generally been seen as responsive to rights-holders’ takedown notices in connection with listings for counterfeit or other illicit goods, notice-and-takedown regimes are widely seen as a “whack-a-mole” approach; it’s for this reason that the IACC has long encouraged platforms to focus greater attention on seller vetting and onboarding. In that respect, we believe there is significant room for improvement. Brands have raised concerns regarding inconsistent implementation of preventative measures including with respect to seller authorizations, pro-active screening of individual listings, and verification as to a seller’s ability to source legitimate goods. We’ve also heard particularly troubling reports of the platform’s authorization of sellers to open “official” stores, without taking appropriate steps to confirm the seller’s relationship (or lack thereof) with the rights-holder.

In the view of many rights-holders; these concerns are likely to persist, and the overall volume of counterfeit goods on offer through the platform is unlikely to significantly decrease, without a greater focus on proactive measures, and without greater coordination with brands to keep bad actors and bad products off the site in the first place. In light of the feedback received this year, we support Mercado Libre’s retention on the Notorious Markets List.

## **Pinduoduo**

In last year's report, USTR named Pinduoduo as a Notorious Market, pointing to "the significant proliferation of counterfeit goods ... even for brands that participate in Pinduoduo's Brand Care Program." The IACC fully agreed with USTR's assessment, citing rights-holders' reports of large volumes of counterfeits across numerous product sectors, delays and a lack of responsiveness and transparency in connection with the platform's takedown procedures, and serious questions as to the effectiveness of PDD's approach to onboarding sellers. These concerns – both from those participating in the Brand Care Program and others who were unable to avail themselves of those tools – continued to be heard during this year's process; accordingly, we recommend that USTR retain Pinduoduo on the Notorious Markets List again this year.

As described in the IACC's filing last year, many rights-holders described the enforcement process on PDD as "onerous," "expensive (in part, because test purchases are often required in order to verify a complaint)," "lacking transparency," and "generally ineffective." Rights-holders have reported difficulties in pursuing follow-on investigations of sellers due to the platform's reluctance to share seller information, which also hampers the ability to prioritize enforcement against large-scale sellers or networks of sellers who appear to be operating in concert.

Pinduoduo has touted its innovative approach to disciplining sellers of confirmed counterfeits by imposing a "10x penalty" for confirmed counterfeit sales and refunding the purchase price to the buyers of those goods. Some brands though have raised doubts about the platform's assertions, noting that despite numerous undercover purchases of goods from sellers who were subsequently confirmed to be distributing counterfeit items they've yet to realize the purported benefits (i.e., they have not been refunded the costs of their test purchases). Indeed, some have questioned whether the relevant policy is anything more than a public relations measure.

Despite the actions taken to date by the platform, respondents during this year's consultations report that the overall volume (and variety) of counterfeit goods available through Pinduoduo appears to be increasing. As such, we support its retention on the Notorious Markets List this year.

## **Shopee**

USTR retained Shopee on the Notorious Markets List during last year's review, citing the platform's onerous (and in some cases, nonexistent) takedown tools, and lacking procedures for seller vetting or dealing with recidivists, along with very high levels of counterfeit goods offered by sellers across its sites in Southeast Asia and Brazil. IACC members' assessment of the platform was consistent with USTR's final determination, as detailed in the written comments we provided last year. Rights-holders described no discernible improvement in Shopee's efforts to address these concerns over the past twelve months, with some noting even greater problems.

IACC members participating in this year's consultations expressed broad dissatisfaction with the "inefficient," "disorganized," and "inconsistent" enforcement processes across Shopee's platforms, citing the need to file repeated takedown requests before seeing results. This inefficiency is said to contribute to the "unacceptably high volume of counterfeits" which continue to plague rights-holders on the platform's various sites. One brand characterized Shopee as "one of the most prolific online sources for counterfeit versions of [their] products, and accounting for nearly 40% of the takedown requests the brand filed over the past year. Takedown notices often continue to be met with repeated, duplicative requests for documentation and evidence even in clear-cut cases. Rights-holders' frustrations are further exacerbated by the obstacles they face while seeking enforcement, in contrast to the relative ease with which sellers appear to operate across Shopee's sites.

Given Shopee's continued expansion, the reported lack of progress in addressing these fundamental impediments to effective IP enforcement is leading to increased concerns among the IACC's members. Accordingly, we support Shopee's retention on the Notorious Markets List this year.

## **Tokopedia**

Tokopedia was retained on the Notorious Markets List last year, with USTR citing high rates of counterfeits and pirated products across a "vast range of goods including clothes, electronics, textbooks ..." as well as cosmetics and other consumer items. IACC members in these product categories and others raised additional concerns in connection with the sufficiency and efficiency of the marketplace's takedown procedures, the need for a more proactive approach to enforcement, coordination and communications with relevant rights-holders, and enforcement against recidivists. Many of these issues continued to be raised by IACC members during this year's consultations; and we've heard similar concerns raised by brands in additional sectors such as footwear and pharmaceuticals.

While the overall volume of counterfeit goods on offer through the platform remains high, we were pleased to hear some positive reports from members this year noting an increased level of responsiveness and better communication about the resolution of complaints, along with a decreased turnaround time for actioning and resolving complaints (with listing removals taking no more than 48 hours). Tokopedia has also taken steps to increase its engagement with rights-holders, including its proactive outreach to brands (both directly, and via outreach to the IACC) to provide updates regarding their ongoing work to address illicit sales and to seek feedback on other improvements that are needed. We are also aware that Tokopedia has invested additional resources in building up its brand protection infrastructure, expanding its team, and establishing a Brand Alliance. All of these factors reflect positively on the platform's efforts.

Despite the reported progress however, the consensus view among respondents during this year's process was that the situation remains very much a "work in progress." Indeed, despite the above-discussed steps, some brands have reported an apparent increase in the volume of



counterfeit goods on offer. Such reports from rights-holders in the pharmaceutical sector (concerning both counterfeit and falsified prescription medicines) are particularly concerning given the health and safety risks posed by such products.

In addition, some rights-holders have continued to report a lack of responsiveness to their complaints, and citing the need for greater consistency. Others stress the need for greater clarity in the platform's rules with respect to sellers' unauthorized use of copyrighted product images in connection with their listings, and with respect to its approach to repeat offenders. In the latter instance, brands note that improvements in the platform's takedown procedures are unlikely to lead to real progress unless there is a more lasting deterrent. Absent real consequences – including permanent removal of recidivists from the platform – sellers of counterfeits will simply re-post the same items and go about their business as usual. Requiring sellers to complete training during the onboarding process regarding legal and platform rules governing the sale of counterfeit goods has also been suggested to improve compliance.

The overall assessment of participants during this year's process was that the implementation of a more proactive and strategic approach is necessary in order to achieve a significant reduction in the volume of counterfeits available for sale on the platform. And while we believe Tokopedia is heading in the right direction in terms of its efforts to identify and address existing gaps in its policies and procedures, more work remains to be done. We would welcome further engagement in the coming year to support those efforts.

## **VK**

The sale and distribution of counterfeit goods and pirated works through VK, and its role in advertising illicit sales via other outlets, has been a long-standing concern of rights-holders, as noted in numerous prior filings by the IACC and others. Those complaints were echoed by respondents during our consultations in connection with this year's Notorious Markets process. While described as "relatively compliant" and "generally responsive" to notifications from rights-holders, IACC members uniformly decried the platform's lack of preventative measures to protect IP rights, and its consistent failure to penalize or terminate the accounts of users who have repeatedly engaged in illegal activity.

The platform appears to take a largely "hands-off" approach to IP protection, resulting in the need for rights-holders to continuously monitor and report infringements, with little optimism for any substantive or long-term improvement in the situation. Given these continuing concerns, we support USTR's retention of VK on the Notorious Markets List this year.

## **WeChat / Weixin**

Last year, USTR named Weidian – “an e-commerce platform that allows individuals to open storefronts on its mobile app and WeChat Mini Program” – to the Notorious Markets List. Based on consultations with our members, the IACC last year recommended WeChat, a separate legal entity, for inclusion on the NML. In the view of respondents, the use of Weidian’s third-party software is simply one of the ways that bad actors use WeChat to traffic in counterfeits. Of greater concern is the broader platform and capabilities that WeChat itself provides, and its overall lack of enforcement.

As discussed in our submission to USTR last year, though it describes itself as merely a social media app, WeChat (along with the China-focused Weixin), is widely viewed as one of the largest outlets for counterfeit goods in China. Rights-holders cited a variety of concerns in that prior filing, among them a lack of transparency and cooperation in pursuing counterfeiters, an “overly bureaucratic and ineffectual” brand protection portal, and a consistent failure to impose any penalties that might serve as an effective deterrent to IP violations. These concerns, along with the incredible volume and variety of counterfeits on offer through the platform, were repeatedly voiced by brands during our current-year consultations.

A particular concern heard from rights-holders highlighted the relative ease with which counterfeit sellers are able to leverage the platform for virtually every aspect of their illicit business – from direct marketing to potential consumers all the way through to the sale of fake goods using WeChat’s “shopping cart” function. In contrast to the experience of those sellers and purchasers of counterfeits, the ability of IP owners to enforce their rights on the platform is described in starkly different terms. The platform is said to offer relatively little support to brands in pursuing investigations, and to appear disinterested in seeking out violators proactively. Rights-holders noted significant frustration with respect to the prevalence of “private groups” which offer safe harbors to counterfeiters, and they continue to bemoan the platform’s reluctance to share seller information when offenders have been identified. WeChat has historically raised concerns about the legality of providing that type of information to support rights-holders’ efforts; though as noted in our comments last year, other e-commerce platforms in China regularly provide such assistance. One respondent during this year’s process stated that its requests for assistance in pursuing counterfeiters were often rebuffed with a suggestion that they engage with administrative or criminal authorities, but noted that the Chinese authorities, likewise, are frequently unable to obtain the platform’s cooperation.

Where rights-holders have been able to enforce against counterfeiters, the “success” of such efforts is often pyrrhic and short-lived. The punishments meted out by WeChat when users are found to be selling counterfeits typically involve little more than a brief suspension. Account terminations are said to be a rarity, and difficult to obtain; and even those penalties are not seen as providing any real deterrence, as the sellers are able to re-register and resume their illicit business on the platform with relative ease. And that ease of registration (and re-registration) raises concerns with respect to the platform’s onboarding processes. One brand

highlighted its experiences regarding the reinstatement of sellers who had provided to the platform clearly fraudulent documentation to demonstrate the “authenticity” of the goods they were offering for sale. Though a simple call or email to the relevant brand would have refuted the sellers’ claims, no effort to do so was undertaken, and the sellers were allowed to resume their activity.

In past years, both in the context of the Notorious Markets Review and others, WeChat has sought to distinguish its business model from that of other e-commerce platforms, and has argued that those distinctions preclude it from providing the type and level of cooperation that rights-holders have come to expect from others in the e-commerce ecosystem. As a result, some have suggested that – assuming such statements are accurate, and WeChat truly cannot engage in the same types of brand protection initiatives, or provide the type of assistance that is seen as the norm among other China-based platforms – there is a relatively straightforward solution: WeChat should simply prohibit commercial sales on its platform.

Until such time as WeChat acknowledges its role and responsibility for policing the illegal activity of users on the platform that it created and operates, and takes necessary actions to ensure the compliance of its users – including the provision of reasonable support to rights-holders and enforcement bodies, and the imposition of meaningful, deterrent, and lasting penalties against known offenders – it should be listed as a Notorious Market by USTR.