

Submission of the
International AntiCounterfeiting Coalition
to the
United States Trade Representative
2022 Review of Notorious Markets
for Counterfeiting and Piracy
87 FR 52609 (August 26, 2022)
Docket No. USTR-2022-0010

October 7, 2022

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Daniel Lee
Assistant U.S. Trade Representative for Innovation and Intellectual Property
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

RE: 2022 Review of Notorious Markets for Counterfeiting and Piracy

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 “concerning examples of online and physical markets that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting that infringe on U.S. IP.”

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 necessary to effectively protect intellectual property rights, the development of best practices where statutes and regulations lag behind the practical realities of the marketplace, and the application of resources sufficient to implement those legal and voluntary regimes.

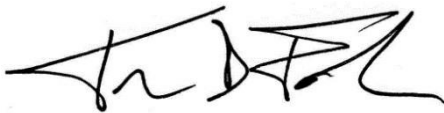
Whether measured in terms of lost sales to legitimate manufacturers, tax revenues and duties that go unpaid to governments, decreased employment, or diminished investment in capital improvements and research and development; counterfeiting is a significant drain on the U.S. and global economy. Further, 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.

As a final consideration, we wish to note that 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 with a large initial "T" and "J".

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. We wish to note at the outset that a significant number of the participants in this year’s consultations provided only abbreviated input regarding a number of physical markets whose infamy has resulted in perennial appearances in USTR’s final report – noting rights-holders’ well-known and long-standing concerns in those markets, and the lack of any substantive improvements seen during the past year, or in many prior years. Among these are Tepito (Mexico City), 25 de Marco (Sao Paulo), La Salada (Buenos Aires), Ciudad del Este, and Pacific Mall (Ontario).

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.

BRAZIL

“25 de Marco Street” Market, Sao Paulo

Repeatedly named by USTR in past years as a Notorious Market, “25 de Marco” – along with surrounding areas such as Galeria Page Mall and the neighborhoods of Bras and Santa Efigenia – remains a major concern for rights-holders across numerous product sectors, including apparel and footwear, toys, electronics, and other consumer goods. Enforcement in the market has been described consistently over the years as “exceedingly challenging;” that assessment remained unchanged in 2022, which some rights-holders attributed to apparent protectionism among local authorities. Despite repeated efforts in recent years to undertake large-scale raids, many resulting in the seizure of huge quantities of counterfeit goods; respondents described no lasting results, and sales of illicit products are said to continue unabated. Brands have expressed little optimism for improvement in the absence of criminal prosecution of the market’s landlord.

In light of the continuing concerns cited by IACC members, we recommend the retention of 25 de Marco on the Notorious Markets List again this year.

CANADA

Pacific Mall, Ontario

IACC members' comments concerning the Pacific Mall also remained largely unchanged over the past year, and we support its retention on the Notorious Markets List again this year. Rights-holders continue to express frustration regarding the continued sale of counterfeits in a variety of product sectors, perhaps most notably among luxury goods, cosmetics, electronics, and apparel. As described in our most recent Special 301 filing, Canadian law enforcement officials have consistently failed to prioritize IP enforcement. As a result, and perhaps not surprisingly, neither the owners of the Pacific Mall nor its vendors appear motivated to rein in the illicit sales.

As reported in prior years' submissions, cease and desist notices are largely ignored, and in the absence of any meaningful cooperation from the mall's management or from law enforcement and prosecutors, substantive improvement is unlikely to materialize. Accordingly, we support USTR's retention of the Pacific Mall on this year's Notorious Markets List.

CHINA

Huaqiangbei (HQB)

IACC members continued to support the retention of the Huaqiangbei Electronics Malls on the Notorious Markets List during this year's consultations. Five markets in particular are cited as priorities among rights-holders in the consumer electronics sector – Longsheng Communications Market (龙胜通讯市场), Tongtiandi Communication Market Feiyang Times (通天地通讯城飞扬时代), Yuanwang Digital Mall (远望数码商城), SEG Communication Market (赛格通信市场) and Taixing Communications Market (泰兴通信市场).

As noted in past submissions, these outlets are viewed as central hubs for the distribution of counterfeit goods in the domestic market and as a supplier for other such sellers globally. In response to COVID-related shutdowns, rights-holders noted a shift last year from brick-and-mortar sales by HQB-based sellers to online trafficking through standalone sites and e-commerce platforms. That trend is said to have continued over the past year.

Chaoyang District, Shantou City

Rights-holders this year voiced increasing concerns related to manufacturing and sales of counterfeit toys and electronics in the Chaoyang District of Shantou, on the eastern coast of Guangdong Province. Members have identified a number of "underground" factories operating

out of residential buildings and producing so-called “high-quality” counterfeit phones, along with components, replacement parts, and accessories. Efforts aimed at reining in this illicit activity have met significant resistance with local authorities said to be unwilling to pursue investigations, and in some cases, outright hostile to brands’ investigations and requests for assistance. One respondent described having sought help from more cooperative law enforcement in other locales, but those attempts have likewise been hampered by delays and interference by the Shantou authorities. The lack of criminal actions in the area is seen to preclude any meaningful protection of brands’ rights.

INDIA

Tank Road, Delhi

SP Road Market, Bangalore

IACC members concurred with USTR’s decision to include Tank Road as a Notorious Market in last year’s report. As noted by USTR, the Gaffar Market and others in the area are widely regarded as hot spots for wholesales of a wide variety of counterfeit products. That assessment remained largely unchanged during the past year, as the markets continue to attract significant numbers of both locals and tourists. Despite some willingness on the part of local police to address the widespread illicit sales, those efforts remain insufficient to bring about any substantial improvement.

Rights-holders’ comments with respect to the SP Road Market in Bengaluru largely mirrored those heard in connection with Tank Road, and we would similarly support that market’s addition to the Notorious Markets List this year.

INDONESIA

ITC Roxy Mas, Jakarta

While IACC members welcomed USTR’s inclusion of the Mangga Dua Market on last year’s Notorious Markets List, we would also suggest USTR’s consideration of ITC Roxy Mas during this year’s review. A large “tech mall” in Jakarta, with approximately 900 vendors spread across 5 floors, ITC Roxy Mas is an increasing source of concern for rights-holders in the consumer electronics sector. Respondents cited high volumes of counterfeit sales in multiple product categories, including (counterfeit) branded components and accessories. Efforts at enforcement have borne minimal success, and are thought to be hampered by local protectionism. The overall lack of enforcement, along with the relatively low penalties typically imposed for violations in Indonesia, are likewise seen as contributing to the apparent

disinterest on the part of the mall's operators to take necessary steps to curtail illicit sales by its vendors. We would welcome USTR's consideration of ITC Roxy Mas for inclusion on this year's Notorious Markets List.

KYRGYZ REPUBLIC

Dordoi Market, Bishkek

IACC members support the retention of the Dordoi Market on this year's Notorious Markets List. Respondents roundly concurred with USTR's assessment of the market in last year's report and underscored concerns related to the lack of effective border measures that have made the market a key stopover point for counterfeit goods en route from China to Russia, Europe and beyond. Enforcement in the so-called "Container City" is described as all but impossible, a fact attributed to both corruption and deficiencies in the country's legal regime.

In light of rights-holders' feedback during this year's consultations, we strongly encourage USTR's retention of the Dordoi Market on the Notorious Markets List.

MEXICO

Tepito, Mexico City

There is, perhaps, little to be said about Tepito that has not already been said in countless past years. The market has made perennial appearances on USTR's Notorious Markets List, and it remains in rights-holders' views, the very epitome of a notorious market. Sales of counterfeit goods across a variety of product sectors, as well as pirated goods impacting copyright owners, continue unabated in the market. As reported in prior submissions, law enforcement agencies and IP owners are often reluctant to even attempt enforcement in the market due to the dangers associated with doing so. Absent a concerted and sustained effort by the Mexican government to pursue criminal actions against those operating in the market however, rights-holders expressed little optimism that the situation will improve. Accordingly, we support Tepito's retention on the Notorious Markets List this year.

PERU

Gamarra, Lima

IACC members – particularly those in the apparel sector – encourage USTR’s retention of Gamarra on the Notorious Markets List this year. Despite increased enforcement activity during the past year – reportedly ten large-scale raids (versus the five identified last year), and the seizure of 15,000 items (versus 12,000 noted last year) – Gamarra remains a hot spot for the trafficking of counterfeit clothing.

Polvos Azules, Lima

Based on members’ feedback this year, the IACC would support the return of Polvos Azules to the Notorious Markets List this year. The popular shopping center located in the La Victoria district of Lima, encompasses approximately 16 thousand square meters, with over 2,000 stalls and a wide variety of counterfeit and pirated goods reportedly on offer including apparel, footwear, electronics, home appliances, toys, luxury goods, cosmetics, and digital media.

Enforcement at Polvos Azules is described as logistically challenging due to the size of the market and number of vendors; police support is said to be essential to ensure the safety of brand representatives seeking to enforce their rights. Criminal raids are described as “limited,” “infrequent,” and “insufficient to create any lasting deterrence.”

PARAGUAY

Ciudad del Este

Much like Tepito, Ciudad del Este has become, to many rights-holders, synonymous with the term “notorious market.” This should come as little surprise, given USTR’s highlighting the fact last year that “Ciudad del Este has been named in the NML or the Special 301 report for over 19 years.” Respondents during this year’s consultations continued to report large scale trafficking across numerous product sectors, including: apparel, footwear and fashion accessories, toys, electronics, luxury goods, and others. Ciudad del Este remains one of rights-holders’ most significant concerns in all of Latin America due to its role as a distribution hub supplying wholesale and retail counterfeiting operations throughout the region. Increasingly, in recent years, brands have voiced additional concerns regarding local manufacturing and finishing operations in the area, as well as the involvement of organized criminal groups in the trafficking. As noted in past submissions, rights-holders have also faced violent opposition from merchants in Ciudad del Este in response to enforcement actions.

Given the lack of any notable improvement over the past year, we support Ciudad del Este's retention on the Notorious Markets List this year.

PHILIPPINES

Greenhills Shopping Center, Metro Manila

IACC members have recommended the inclusion of Greenhills Shopping Center on the Notorious Markets list in numerous past submissions, and do so again this year. Rights-holders, particularly those in the apparel sector, continue to report widespread sales among vendors at Greenhills; and despite occasional "clean-up" efforts, sustained improvement has not been seen. Greenhills remains a popular outlet for counterfeit goods, and is well-known among tourists to the Philippines. Though brands have sought to engage on long-standing issues, and the operator of the market has in the past agreed to cooperate with government agencies and law enforcement, sales of counterfeits persist. In the absence of effective tools to impose liability on the owners/operators of Greenhills, there is little expectation that they will take the types of action necessary to root out illicit sales.

RUSSIA

Dubrovka Market, Moscow

Gorbushkin Dvor, Moscow

Sadovod, Moscow

IACC members concurred with USTR's inclusion of the Dubrovka, Gorbushkin Dvor and Sadovod markets on last year's Notorious Markets List, and recommend their retention again this year. Some rights-holders have reported an increasingly hostile climate for the protection and enforcement of IP rights, attributed to the ongoing military conflict with Ukraine and the related imposition of sanctions on Russia by Western countries. Actions taken by the Russian government in response – including de-prioritizing IP enforcement – are perceived as being aimed at punishing American and European companies. The more permissive approach taken by the Russian government has in turn allowed for a significant increase in the sale of counterfeit and pirated goods through well-known outlets such as Gorbushkin Dvor and Sadovod, which were already highly problematic.

Given these continuing, and increasing, concerns; the IACC supports USTR's retention of Gorbushkin Dvor and Sadovod on the Notorious Markets List this year.

SAUDI ARABIA

Mursalat and Al Batha Districts, Riyadh

Palestine Street, Jeddah

Respondents during this year's consultations highlighted growing concerns in the Mursalat and Al Batha Districts of Riyadh, related to a significant volume of counterfeit trafficking, particularly in the consumer electronics sector. Raids have resulted in a number of large seizures of counterfeit goods, as well as packaging. Similar concerns were voiced with respect to the market along Palestine (Falastin) Street, in Jeddah. Rights-holders noted that they've historically received robust cooperation from Saudi authorities in each of these areas, but the impact of that support has been limited by insufficient penalties that often fail to outweigh offenders' financial gains. As a result, these markets remain rife with counterfeit retailers and distributors. While we are hopeful that the Saudi Arabia Intellectual Property Office (SAIP), which has assumed enforcement responsibilities previously held by the Ministry of Commerce, will take additional steps to rein in this illicit trafficking, we would support USTR's inclusion of these markets on this year's Notorious Markets List.

TURKEY

Tahtakale District, Istanbul

IACC members responded positively to USTR's inclusion of the Tahtakale District on last year's Notorious Markets List, and we support its retention again on this year's list. For a number of years, the IACC has recommended Turkey's placement on USTR's annual Special 301 Watch List or Priority Watch List, citing a variety of challenges to effective IP enforcement. Tahtakale offers a clear example of many of those concerns, with counterfeit goods across numerous product sectors openly offered for sale; apparel, footwear, and electronics are seen as the most impacted sectors.

Though respondents commented positively with respect to recent increases in activity among local law enforcement, which has led to a number of raids and prosecutions, more sustained actions are necessary. While we are hopeful that the recent uptick in enforcement will bring about long-term improvements, at present, we support the retention of the Tahtakale District on the Notorious Markets List.

UNITED ARAB EMIRATES

Deira District, Dubai

The IACC recommended USTR's inclusion of the Deira District on last year's Notorious Markets List, citing continued concerns with the volume and variety of counterfeits on offer, in contrast to the significant improvement seen in other previously identified hot spots in the Emirates. With the possible exception of Dubai's free trade zones, in which IP enforcement remains challenging, if not impossible; the Deira District is viewed by many as the counterfeiting capital of Dubai. The areas of Naif and Al Murar were singled out by respondents as particularly problematic during this year's consultations; brands stated that despite frequent enforcement actions and large-scale seizures, the trafficking continues largely unabated. Counterfeiters operating in the Deira District are said to be undiscouraged by such actions, in part due to the relatively low penalties that they're likely to face for violations, even in cases involving repeat offenders. As noted in prior submissions, enforcement is also hampered by traders' use of residential buildings as storage facilities and the area's proximity to Dubai Airport through which much of the local traders' illicit goods are thought to enter the country.

In light of the feedback received from IACC members this year, we support the Deira District's retention on the Notorious Markets List.

UNITED KINGDOM

Cheetham Hill, Manchester

As noted in our submission to USTR last year, rights-holders have been pleased by the level of engagement and activity by law enforcement, especially that of the City of London Police Intellectual Property Crime Unit (PIPCU), with which the IACC has enjoyed a long-standing partnership. Respondent brands spoke positively concerning the assistance received by both Trading Standards, and the local police in Manchester. That support, along with that of some landlords in the area, remained consistent during the past year. Some rights-holders remain frustrated however, that even despite this cooperation, retail and wholesale distribution of counterfeits impacting a variety of product sectors remains widespread in Cheetham Hill.

VIETNAM

Tan Thanh Market, Lang Son

IACC members concurred with USTR's inclusion of Ben Thanh and Dong Xuan Markets in last year's Notorious Markets report; we would welcome consideration of the Tan Thanh Market in Lang Son as well this year. Situated in northern Vietnam along the country's border with

China's Guangxi province, Lang Son is seen as a major point of entry into Vietnam for Chinese-manufactured counterfeits. Located in close proximity to the Lang Son border gate, Tan Thanh Market is, perhaps unsurprisingly, inundated with counterfeit apparel, toys, and electronics arriving from the north.

Despite commendable efforts by the Vietnamese government in training customs and law enforcement personnel; to date, the flow of counterfeits into the country and into the Tan Thanh Market, continues at a steady pace. The widespread sale of counterfeits is said to be further exacerbated by local protectionism. Absent more intensified enforcement actions against the market's sellers and operators, the situation is unlikely to improve.

ONLINE MARKETPLACES

As noted in our introductory comments, the legal frameworks governing the protection of intellectual property have often lagged well behind the ever-evolving business models and distribution chains that typify e-commerce; the resulting legislative and regulatory gaps require urgent attention by national governments, both here and abroad. A continued failure to act threatens to undermine the very confidence in the market that trademarks are intended to provide, while also exposing consumers to the sort of heightened risks inherent in the trade of counterfeit goods.

As the online market has grown over the past two decades, the IACC has consistently underscored two ideas – first, that a safe and trusted e-commerce system is beneficial to all of the legitimate stakeholders who comprise it; and further, that protecting consumers and ensuring their continued confidence in the marketplace requires that rights-holders, legitimate retailers and platforms, payment and logistics service providers, and indeed, consumers themselves, work together toward that common goal. Stakeholders’ responsibilities cannot be defined in terms of mere compliance with often antiquated legal frameworks.

To that end, we have sought to engage directly with partners throughout the e-commerce landscape in the development of voluntary collaborative programs on a global scale to address key priorities in the online space, including our RogueBlock¹ and IACC MarketSafe Programs². We, likewise, continue to engage with a variety of other stakeholders 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.

The online marketplaces discussed below were highlighted by IACC members this year during our consultations related to USTR’s Special 301 Out-of-Cycle Review of Notorious Markets, but they do not constitute an exhaustive list of every venue identified by rights-holders. Our recommendations herein encompass a variety of factors including: the volume and variety of counterfeits on offer through the platforms, the relative threats posed by that trafficking to rights-holders and consumers, and the platforms’ efforts to engage with rights-holders, governments, and others to address that illicit trade, including their investments in technological tools and human capital.

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.

¹ See, <https://www.iacc.org/online-initiatives/rogueblock>.

² See, <https://www.iacc.org/online-initiatives/marketsafe>.

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

IACC members, including those in the apparel and footwear, luxury goods, consumer electronics, sporting goods, and pharmaceutical sectors, continued to report significant concerns with respect to the sale of counterfeit goods on Bukalapak's platform over the past year. Specific issues cited by respondents largely mirrored those highlighted in past IACC comments, as well as in USTR's most recent Notorious Markets Report. While we have had some positive interactions with the platform following past submissions, and are aware of efforts made by the platform to engage more closely with brands directly; the consensus view during this year's consultations was that substantive progress in addressing rights-holders' concerns remains slow to materialize. Accordingly, we recommend Bukalapak's retention on the Notorious Markets List this year.

As noted in past years' submissions, rights-holders reported high volumes of counterfeit items available on the platform, but perhaps more troublingly were the continued reports that we have received regarding Bukalapak's need to invest greater resources (including human capital), technological tools, and further develop policies to more effectively root out those illicit sales and the individuals who misuse the platform to repeatedly engage in such activity. Numerous respondents decried what they view as a reactive approach to enforcement, relying too heavily on complaints of infringement by rights-holders. A cursory review of the platform, entering well-known brand names in the site's search bar, demonstrates the ease with which one can find on offer goods that are clearly counterfeit. Such listings should be readily identifiable using rudimentary keyword filtering in conjunction with other relevant factors (e.g., pricing) to allow for automated removal and/or subsequent manual review.

While Bukalapak has an established notice and takedown procedure, the speed with which infringement claims are processed³, and the platform's communication to the relevant rights-holders regarding the resolution of such claims, likewise, remained common criticisms heard during this year's consultations. More frustrating, however, has been the platform's implementation of its repeat offender / recidivism policy. As set forth in Bukalapak's IP Protection Policy⁴, a "repeat infringer" is defined as a seller with more than three infringement reports submitted by the same brand. And although the policy states that repeat infringers "are eligible to be taken down," it appears from both the plain language and based on rights-holders'

³ Per Bukalapak's IP Policy page, the processing time for complaints is four days. See, <https://www.bukalapak.com/promo-campaign/ip-protection>.

⁴ <https://s4.bukalapak.com/attachment/493222/20211008 - Bukalapak%27s IP Protection Policy.pdf>

reported experiences that “eligible to be taken down” does not equate to “will be taken down.” Indeed, Bukalapak appears to shift the burden of oversight to the relevant brands, stating, “If you find any repeat infringer with at least three reports, you can report the infringer to us through infringement@bukalapak.com.”⁵

The policy also provides for the removal of a “Major Infringer,” defined as a seller who violates the rights of multiple rights-holders, but, again, the policy is unclear. As with repeat infringers, major infringers are only “eligible to be taken down.” Further, requests that a “major infringer” be removed from the site may only be submitted by associations representing the impacted brands. In practice though, many associations are not empowered to engage in enforcement activity on behalf of their individual members. In any case, the data concerning infringement complaints filed against a seller by one or more brands is already in the hands of the platform – i.e., Bukalapak has, or should have, visibility regarding whether a seller has multiple violations of one or more brands’ IP rights – so further identification and additional requests from the relevant brands for disciplinary action should not be required. Under the existing processes, brands continue to report the expenditure of significant efforts (as well as time and money) to police their rights, with minimal impact on the visibility of counterfeit goods available on the platform.

Given the continuing concerns reported by IACC members during this year’s consultations, we support Bukalapak’s retention on the Notorious Markets List.

DHgate

The IACC concurred with USTR’s decision last year to include DHgate on the Notorious Markets List, citing rights-holders’ complaints regarding the volume and variety of counterfeit goods on offer through the platform reportedly high levels of recidivism, and the need for a more transparent and proactive approach to IP protection. Respondents during this year’s consultations, including brands in the apparel and footwear, luxury goods, and consumer electronics sectors, reiterated some of those concerns. Despite some positive comments from brands noting improvements to the platform’s proactive enforcement efforts, counterfeit items remain readily available; and some brands stressed continuing concerns with respect to repeat infringers, raising questions regarding the sufficiency, in practice, of DHgate’s disciplinary and seller vetting processes.

As noted in prior submissions, online sellers have become far more subtle and sophisticated in their efforts to conceal their illicit activity, including the use of photo editing to obscure counterfeit logos and the use of “code words” to communicate to potential customers that the “unbranded” goods listed for sale are, in fact, counterfeit products. Respondents likewise repeated past complaints regarding the platform’s reluctance to share information related to

⁵ <https://www.bukalapak.com/promo-campaign/ip-protection>

sellers' identities and past sales to facilitate follow-up investigations and/or referrals to criminal authorities. Some again also noted that when DHgate is willing to share such information, the seller's information is quickly determined to be falsified or fraudulent, raising further questions about the platform's onboarding and vetting procedures.

Those concerns directly tie-in to rights-holders' frustrations regarding recidivism on the site; absent strong seller vetting policies, confirmed counterfeiter who have been identified and removed from the platform have been seen to re-emerge with new accounts to resume their illicit business.

Rights-holders would welcome increased engagement with DHgate to improve the platform's responsiveness to sellers' ever-evolving strategies to avoid detection, to implement stronger onboarding practices and oversight of merchants to ensure that follow-on investigations can be pursued against confirmed bad actors, and to keep those confirmed bad actors off the platform when they've previously been found to be engaged in the trafficking of counterfeit goods.

In light of the feedback that we've received from member companies during this year's consultations, we support DHgate's retention on the Notorious Markets List this year.

IndiaMart

IACC members applauded USTR's decision last year to include IndiaMart on the Notorious Markets List, given reports of counterfeit sales across numerous product sectors, a lack of effective monitoring or proactive measures to prevent such sales, and a violation reporting process described as both extremely slow and overly-burdensome.

Following USTR's publication of the Notorious Markets List in February of this year, IndiaMart responded with apparent surprise, stating, that "it was a 'law-abiding company' and had zero tolerance for any misuse of its website for illegitimate or illegal activities," asserting that USTR "did not give it a chance to respond to the allegations," and that it would "seek details of instances which led [USTR] to believe that our process is lax in this regard."⁶ While we were hopeful that that response signaled an interest in engagement on the issues raised in our submission last year, to date, we have received no such outreach from the platform.

We have, however, continued to hear many of the same complaints voiced last year by IACC members again during this year's consultations. Member brands from the pharmaceutical, consumer electronics and IT, luxury, and apparel and footwear sectors continue to be broadly impacted by sellers operating on the platform with relative impunity. Respondents were again

⁶ See, <https://economictimes.indiatimes.com/tech/newsletters/tech-top-5/us-flags-indiamart-on-fake-goods-firstcry-ipo-in-2022/articleshow/89667601.cms>.

critical of IndiaMart's laissez faire approach to oversight of the sellers doing business through its site, the average time involved in obtaining resolution of complaints, and resistance to delisting sellers who are clearly engaged in illicit activity.

Given the continued range and severity of concerns reported by rights-holders over the past year, we encourage USTR to retain IndiaMart on the Notorious Markets List.

Mercado Libre

IACC members offered mixed assessments of Mercado Libre over the past year, with some brands offering compliments regarding steps the platform has taken in recent years with respect to its policies and practices related to IP protection and enforcement and its willingness to engage with rights-holders on difficult issues. With respect to that latter point, we were pleased that Mercado Libre accepted an invitation to host two roundtable sessions at the IACC's annual conference this year, providing rights-holders with an opportunity to meet with, and raise concerns, directly with platform representatives. And while no formal collaboration or programs have yet materialized, we do wish to note that Mercado Libre has expressed interest in further engagement and the pursuit of such goals. Despite the noted progress however, respondents during this year's Notorious Markets consultations continued to report significant concerns related to the overall volume of counterfeit goods on offer through the platform, which continue to impact IP owners across a variety of product sectors.

Rights-holders in the apparel / footwear / fashion accessories sector described an apparent increase in the visibility of counterfeit goods on the site; others in the food and beverage, personal care, and pharmaceutical sectors noted no significant increase or decrease. And while most of the brands that offered feedback recognized the platform's responsiveness to reports of illicit activity, they indicated a desire for the implementation of more proactive measures. Furthermore, we heard a number of concerns regarding the sufficiency of Mercado Libre's approach to seller discipline, particularly with respect to repeat offenders. By way of example, respondents noted that, typically, multiple notifications of infringement against a seller submitted within a brief window are treated as a single violation. Doing so not only limits the severity of the penalties incurred by bad actors, but also leads to brands having to devote additional resources to monitor increasing numbers of sellers over an extended period of time.

As described by one rights-holder, the platform appears to express a strong preference toward "rehabilitat[ing] sellers, rather than punish[ing] them" for violations. While some sellers may, in fact, be unaware of the legal implications of selling counterfeit goods, or believe that the goods they're offering were sourced legitimately; in reality, such cases are largely outliers. In many instances, claims of ignorance or innocence by the sellers can be easily refuted on the basis of other evidence available in their product listings. Purported ignorance of the illegality or prohibition against sales of certain items is also viewed by some as indicative of deficiencies in the seller education and onboarding process. In short, any individual who is engaged in

commercial sales through any e-commerce platform should be expected to abide by that platform's promulgated rules – including prohibitions against the sale of counterfeit goods in violation of national laws in that jurisdiction. Where they do not, they should be held to account. Inconsistent enforcement of platform rules – also cited by brands during these discussions – contributes to greater uncertainty for brands, and encourages future “lapses” on the part of sellers.

While we wish to acknowledge the progress that Mercado Libre has made in addressing the concerns of rights-holders in recent years, based on the feedback that we've received from members during this year's process, we believe USTR should consider Mercado Libre's inclusion again on the Notorious Markets List.

Meta

During last year's Notorious Markets process, the IACC highlighted widespread concerns among its members regarding the proliferation of counterfeit sales through the online ecosystem's Facebook Marketplace, along with burgeoning apprehension related to Meta's Instagram app and the adoption by counterfeiters of its WhatsApp messaging service to facilitate illegal sales. Regrettably, we've heard many of those same concerns again this year (most notably throughout the Latin American region), and indeed considerably greater dismay as relates to the use of Instagram to promote and direct consumers to counterfeiters' wares. Rights-holders across a broad swath of product sectors voiced their complaints, including those in apparel and footwear, IT and consumer electronics, personal care and fast-moving consumer goods, food and beverage, pharmaceuticals, and others.

With over a billion active users, Facebook Marketplace is among the largest online marketplaces in the world. Unfortunately, in the eyes of rights-holders, it has also become a major outlet for the sale of counterfeits worldwide, a fact underscored by the ever-growing number of complaints received by IACC members from consumers who unwittingly purchased fake products through Marketplace. While Facebook has adopted policies explicitly prohibiting such sales, the consensus view among respondents in this year's consultations was that the implementation of those policies leaves much to be desired.

Brands point to a number of factors contributing to the availability of counterfeit products on Marketplace, including what many view as a largely reactive approach to enforcement that is overly-reliant upon rights-holders' active policing and reporting of violations. Vetting / screening of sellers was described by one respondent as “non-existent,” while some complained of insufficient policies and tools to prevent individuals from creating and operating multiple accounts or to address high-volume and recidivist sellers. Given the reliance on a notice-and-takedown approach, one service provider, who undertakes online enforcement on behalf of a number of brands, stressed the importance of quickly reviewing and removing links to counterfeit products; but they noted with disappointment that average response times to

NOCIs have grown considerably. Where actions were previously taken in no more than 24 – 48 hours, they’re now said to commonly take between three to five days.

Despite some relatively recent updates to Meta’s reporting tools, respondents described them as “rudimentary,” “poorly functioning,” and “more difficult to use than those available on other online marketplaces, particularly when attempting to monitor and report fakes at scale.”

Respondents made clear that the concerns cataloged above extend beyond the Facebook Marketplace, noting comparable, and in some cases more pronounced concerns on Meta’s Instagram platform. As was the case with Marketplace, rights-holders’ cited lax controls with respect to verifying account operators’ identities, slow response times to complaints of infringement (averaging 2 – 5 days according to respondents’ reports), inconsistent resolutions of complaints (including unexplained or poorly reasoned refusals to remove violative content), and a lack of effective proactive systems to identify and remove bad actors from the platform, or to keep them off the platform after confirmed and repeated violations.

With respect to Meta’s WhatsApp messaging service, rights-holders raised alarms regarding its widespread use to promote counterfeit sales and conclude transactions. The recent launch of commercial WhatsApp accounts is drawing additional attention from brands; as with Meta’s other products, they underscored the lack of proactive measures to prevent misuse of the service and the “extremely burdensome” nature of the existing tools for reporting illicit activity.

Given the global reach of Meta’s ecosystem and the growing concerns highlighted by IACC members during this year’s consultations, we would support Meta’s addition to the Notorious Markets List.

Pinduoduo

IACC members reserved some of their harshest criticisms during this year’s Notorious Markets consultations for Pinduoduo. Multiple brands stated that, “virtually all of the products sold under our brand on PDD are counterfeit,” with one adding that this is even the case where sellers explicitly state that the goods are genuine. Another simply stated, in reference to the platform’s IP enforcement regime, “Pinduoduo is, in our view, one of the worst online markets in all of China.” Yet another opined that, “PDD’s business model relies on selling counterfeits to consumers in China’s provincial towns and rural areas.” Such comments are in sharp contrast to more optimistic ones heard just a few years ago. While the platform once seemed willing to engage with rights-holders to address growing concerns related to their desire and ability to police illicit sales, that optimism (and PDD’s interest in working with rights-holders) appears to have all but vanished.

“Inefficient” and “ineffective,” were the words most commonly used to describe Pinduoduo’s enforcement efforts during discussions with brands in preparing these comments. The

platform was also frequently described as “unresponsive,” “uncooperative,” and “uncommunicative.” Where rights-holders were able to obtain action against bad actors, they bemoaned the slow resolution of their complaints.

Despite repeated efforts by brands to work with the platform, including undertaking large-scale test buys, providing analyses of the goods, and comprehensive evidence packages to Pinduoduo confirming counterfeit sales on the platform; rights-holders have consistently been rebuffed. PDD has likewise been said to be unwilling to support follow-on investigations by both brands and Chinese law enforcement related to counterfeit sellers identified on the platform, including refusals to provide details related to merchants’ identities and sales information. Such refusals are often couched in terms of “privacy considerations” despite the fact that the reporting brands regularly receive robust support from numerous other Chinese platforms. Even further, PDD is believed by some to not simply be passive in its lack of cooperation, but actively taking steps to thwart investigations into sellers on the platform.

All of these factors have led to increasing concerns among IACC members over the past year, and we strongly encourage that Pinduoduo be retained on the Notorious Markets List.

Shopee

The IACC recommended Shopee’s placement on the Notorious Markets List during last year’s process, citing member companies’ reported concerns including onerous and inconsistent enforcement processes, high volumes of counterfeit goods on offer across numerous product sectors, and a lack of discernible progress (and in some cases, deterioration) on issues raised in prior years’ submissions.

Rights-holders participating in this year’s consultations again reported significant and varied challenges in enforcing their rights on the platform. As in past years, most often these involved the inconsistent enforcement of policies, a lack of clear explanations when infringement complaints were rejected, and a reporting process that respondents viewed as being more time-intensive and requiring more detailed information than that required by other platforms. Another critique – and not an uncommon one among platforms that operate in multiple jurisdictions – related to disparate rules (or disparate implementation of rules) across country-specific platforms, and platform-specific disciplinary actions for violations.

With respect to that final issue, one respondent offered the following example. Where an individual / entity is selling counterfeit goods on multiple country-specific Shopee sites, e.g., shopee.vn, shopee.sg, shopee.ph, etc; they often simply “copy and paste” the identical listing on each of the country-specific sites. At present though, the relevant rights-holder must file complaints against that same listing on each site, resulting in unnecessary duplication of efforts while consuming additional time and resources. Shopee should be able to confirm with relative ease that the same individual / entity is operating each of the accounts, and in the view of most

rights-holders, disciplinary actions should be taken against each account regardless of on which country-specific site the violation was originally discovered. In other words, the reporting and disciplinary actions imposed should apply globally, rather than be segmented site by site.

On a more positive note, earlier this year, Shopee launched a new brand protection portal as part of a pilot program with a number of brands (including some IACC member companies). While still in relatively early stages, we have heard some positive feedback from participants, who described their onboarding and use of the portal to date as relatively easy. Complaints submitted as part of the pilot are also said to be promptly removed. We are hopeful that this engagement and the lessons derived therefrom will provide a scalable approach that can be expanded to benefit the full breadth of the rights-holder community.

Further, we would like to recognize Shopee's work to further build out its brand protection team, including its recent hiring of a global brand protection director with significant experience in the field. The platform has also increased engagement with the IACC in recent months, including in-person meetings in early-May and one forthcoming in October, as well as a number of "virtual" discussions. We've been exceedingly pleased with the Shopee team's candor and the sincerity of their commitment to addressing brands' long-standing concerns.

In addition to those steps already underway, we would encourage Shopee to focus further attention towards the implementation of proactive screening, enhancements to seller vetting and onboarding, and other industry standard practices to root out (and keep out) bad actors from their platforms. Doing so will undoubtedly foster greater trust among the rights-holder community and lead to more effective collaboration. While we support Shopee's retention on the Notorious Markets List this year, we are hopeful that the platform has turned a corner and will continue to demonstrate progress in the coming year.

Tokopedia

In each of the past several years, the IACC has recommended Tokopedia's placement on the Notorious Markets List, citing sales of high volumes of counterfeit goods across a variety of product sectors including apparel, footwear, electronics, cosmetics, and pharmaceuticals. Those past submissions underscored the need for a more proactive and strategic approach to addressing illicit sales, and included a variety of recommendations aimed at improving seller onboarding and education, increasing investments in technology and human capital, and encouraging increased engagement with rights-holders to more effectively identify gaps in enforcement.

Following our 2020 comments to USTR, representatives from the platform reached out to open a dialogue with the IACC, and, as noted in our filing last year, we were appreciative of both their acknowledgment of rights-holders' concerns and commitment to take actions aimed at addressing those issues. While members across a number of sectors – including those such as

pharmaceuticals which pose heightened threats to consumers' health and safety – continued to express concerns related to the volume of counterfeits on offer through the site this year, we also wish to recognize a number of areas in which Tokopedia has made admirable progress. These include its recent launch of a new IP Protection Portal to facilitate the submission and tracking of claims, additional seller education efforts, the incorporation of technological tools to enable better proactive monitoring of sellers' offerings, and the creation of a Brand Alliance Program. While that latter initiative was a subject of criticism when initially launched, due to a requirement that participating brands create an "official" store on the platform, we have recently been informed by Tokopedia that this requirement has been rescinded, and that the program is now open to any brands interested in participating.

In recent conversations with rights-holders, some have expressed interest in obtaining more information regarding the intricacies of the platform's "penalty points" system for imposing disciplinary actions including suspensions and permanent removals from the platform, as well as how Tokopedia aims to keep bad actors out of the system following such disciplinary actions. One respondent during this year's consultations offered anecdotally that they had identified nearly 400 repeat offenders trafficking in counterfeit goods involving the rights-holder's brands, including some for whom hundreds of listings had been reported. Recidivism among prior violators has historically been a priority concern on the platform, and effectively addressing those issues will be a key consideration in garnering the trust of rights-holders. We would welcome further conversations on these and other issues.

Despite the promising developments noted above, many brands clearly remain concerned by the overall volume of counterfeits available on the site. We will be closely monitoring the continued development and implementation of the reported enhancements to Tokopedia's enforcement regime, but are hopeful that the steps it is taking, and continuing engagement with stakeholders, will significantly decrease that volume.

VK

IACC members' feedback regarding VK remained largely unchanged from that recounted in past years' filings. As in those previous submissions, rights-holders continued to report high volumes of counterfeit goods on offer, as well as high levels of copyright piracy. While one respondent described VK's existing policy framework as "sufficient, in theory" and noted its responsiveness to takedown requests; in practice, it remains lacking. Members were critical of the lack of effective proactive measures, coupled with an over-reliance upon notice and takedown procedures, which ultimately provides little long-term impact. Listings often reappear as quickly as they are removed. IP owners further noted an apparent unwillingness on the part of VK to address recidivist activity; as a result, the burden of policing IP violations continues to fall squarely upon the rights-holder.

As has been seen among other platforms, users are increasingly making use of “private” accounts and messaging functionality to conceal illicit activity, contributing to greater difficulties in pursuing bad actors.

Given the lack of any notable progress reported during this year’s consultations, we support USTR’s retention of VK on the Notorious Markets List this year.

WECHAT (WEIXIN) E-COMMERCE ECOYSTEM

The IACC welcomed USTR’s decision last year to name WeChat/Weixin to the Notorious Markets List, citing a range of concerns highlighted by rights-holders, including insufficient vetting of sellers, high volumes of counterfeit sales, and a lack of transparent or deterrent penalties for IP violations. Regrettably, we continued to hear many of these same frustrations voiced by rights-holders again during this year’s consultations. As such, we support WeChat/Weixin’s retention on the Notorious Markets List again this year.

The overall volume of illicit sales conducted through the WeChat ecosystem was registered as a key concern by numerous rights-holders, along with service providers operating on behalf of multiple brands, across a variety of product sectors. According to one respondent, over 60% of their offline (i.e., physical / brick and mortar) investigations in China originated via leads generated from WeChat, demonstrating the service’s widespread use to advertise counterfeit goods and that, even where counterfeit sales are not taking place explicitly through WeChat’s own system, it has been widely adopted as a means of driving potential consumers to the ultimate place of purchase.

Rights-holders continue to describe efforts to enforce their rights in terms similar to those heard last year – “exceedingly challenging,” with an “overly bureaucratic and often prohibitively difficult process for registering our rights and submitting complaints,” while ultimately delivering “uncertain and insufficient” disciplinary actions against violators. A number of brands likewise continued to express frustration with the relative ease with which individuals can create an account through which to sell counterfeit goods, in contrast to the challenges involved in pursuing IP violations. And, as noted in past filings, rights-holders described with dismay the lenient penalties imposed for violations, which are viewed as doing little to discourage recidivism and diminishing the impact of the resources those brands have invested in pursuing bad actors.

Another priority, also highlighted in last year’s filing, concerns WeChat’s continued reluctance to provide even basic seller and sales information related to individuals that have been confirmed to be engaged in the sale of counterfeit goods. WeChat has stated in the past that it is constrained from providing such information to rights-holders, and in some cases even to enforcement authorities; despite the fact that IP owners (and enforcement authorities) have been provided with such assistance regularly by others in the e-commerce space in China. This

stance has served to greatly restrict the ability to pursue meaningful investigations, administrative actions, and/or criminal prosecutions of traffickers.

In addition to those issues raised by the IACC in past years' comments, we've also heard growing concerns from rights-holders related to the "Channels" short video functionality, which allows users to create and share video clips and photos. As with similar services offered by others in the online ecosystem, "Channels" is said to be an increasingly popular avenue for the advertisement of counterfeit goods. Channels can be operated by a personal or public account, and respondents have described difficulty in linking Channel operators with connected WeChat accounts, in turn making further investigations extremely challenging.

We have received some reports during this year's consultations describing an apparent increased willingness to engage with rights-holders on issues related to enforcement, and also wish to acknowledge the participation of (WeChat's parent entity) Tencent during two roundtable sessions at the IACC's recent Annual Conference in Washington, DC. And while we would certainly welcome further engagement, such discussions must be accompanied by concrete actions. Unfortunately, to date, substantive progress and proposals aimed at addressing rights-holders' long-standing concerns have failed to materialize in the wake of past engagement with Tencent / WeChat leadership.

In light of the continuing challenges registered by IACC members during this year's consultations however, we recommend that USTR retain WeChat/Weixin on the Notorious Markets List this year.