

Submission of the

International AntiCounterfeiting Coalition

to the

United States Trade Representative

2023 Review of Notorious Markets for

Counterfeiting and Piracy

88 FR 58055 (August 24, 2023)

Docket No. USTR-2023-0009

October 6, 2023

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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: 2023 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.”

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.

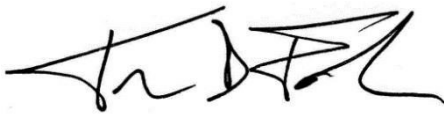
Whether measured in terms of lost sales to legitimate manufacturers, tax revenues and duties that go unpaid to governments, decreased employment, or diminished investment in capital improvements and research and development; counterfeiting is a significant drain on the U.S. and global economy. Further, 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 fluid and cursive, 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. 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. Rights-holders' concerns with respect to those markets are long-standing, and well-documented in filings during numerous past years. Unless otherwise noted, those previously registered concerns remain unchanged.

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

BRAZIL

25 de Marco Street Market, Sao Paulo

25 de Marco has been recommended by IACC members for inclusion on the Notorious Markets List for many years. In terms of both the volume, and variety, of counterfeit goods on offer, it continues to be viewed by many stakeholders as the "worst of the worst" among Brazilian markets. "25 de Marco," along with surrounding areas such as Galeria Page Mall and the neighborhoods of Bras and Santa Efigenia – remained the epicenter of the brick-and-mortar distribution of counterfeit apparel and footwear, toys, electronics, and other consumer goods in Brazil.

As noted in past years' submissions, enforcement against retailers and wholesalers operating out of the market has been hampered by local protectionism and corruption. Illicit sales continue largely unabated despite some successful large-scale enforcement actions; regrettably, however, such operations are widely seen as an end unto themselves. The lack of criminal prosecutions following raids and seizures sends a clear message that the trafficking is not taken seriously by the authorities, and civil litigation against targets operating in the market has been described as costly and time-consuming, while ultimately failing to effectively deter the counterfeiters or those who are facilitating their illegal activity. Rights-holders note that one of the market's major landlords / owners has reportedly been arrested numerous times for offenses including bribery and smuggling, yet continues to operate with relative impunity. As a result, most expressed little optimism for significant or long-term improvement in the situation at 25 de Marco.

Accordingly, we support USTR's retention of the 25 de Marco Street Market on the Notorious Markets List this year.

CANADA

Pacific Mall, Ontario

The IACC supports USTR’s retention of the Pacific Mall on this year’s Notorious Markets List, given the continued widespread sale of counterfeit goods – most notably in the apparel, electronics, and personal care sectors. While we were hopeful following the expressions of shock and dismay by Canadian authorities when the mall was first named as a Notorious Market several years ago, the initial uptick in enforcement against counterfeit sellers and increased oversight by the mall’s proprietors was short-lived. In the years since, rights-holders have seen little overall improvement, despite repeated efforts to engage with sellers, the landlord, or local law enforcement. This remained the case over the course of the past year; accordingly, we strongly encourage that USTR continue to list the Pacific Mall as a Notorious Market.

CHINA

Huaqiangbei (HQB), Shenzhen

The Huaqiangbei Electronics Malls have made annual appearances in IACC submissions, and in USTR’s final Notorious Markets List, dating back to the 2018 report. Regrettably, IACC members’ feedback concerning HQB during this year’s consultations remained largely consistent with that heard in prior years; as such, we support the Huaqiangbei Electronics Malls’ continued placement on the Notorious Markets List this year.

Investigations by rights-holders in the consumer electronics sector nearly always lead back to counterfeiting operations in Shenzhen. The volume of Shenzhen-sourced counterfeit electronics is said to have continued to grow in recent years, while also spreading to nearby cities such as Dongguan, Guangzhou, Foshan, and Maoming.

Respondents continue to describe the HQB district – home to dozens of “tech malls” housing thousands of retailers and wholesalers – as “the epicenter of the counterfeit electronics trade,” supplying illicit products for export around the world. As noted in prior submissions, the COVID pandemic led to some apparent diversification in the types of products on offer at some of these venues, and many sellers reportedly shifted towards an online distribution model. Several markets remain exceedingly problematic however, selling and shipping large volumes of counterfeits to buyers around the world. Among these are: 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). Given the lack of progress reported by rights-holders over the past year, we encourage USTR to retain the Huaqianbei Electronics Malls on the Notorious Markets List this year.

Chaoyang District, Shantou City

IACC members likewise support the retention of China's Chaoyang District on this year's Notorious Markets List. As discussed in last year's submission, this district in Shantou City, Guangdong Province, has been identified as a hotspot for the production of counterfeit electronics (including components and accessories) as well as toys. Enforcement in the Chaoyang District has been described by rights-holders as incredibly difficult, a fact attributed to obstruction and protectionism on the part of local law enforcement. Though some respondents noted modest improvements in their engagement with local authorities, the overall assessment remained consistent with that reported last year. Absent significantly greater cooperation from law enforcement, respondents expressed little optimism that the situation will improve.

Foreign Trading Warehouses, Yiwu City

Rights-holders also wished to highlight growing concerns in connection with Foreign Trading Warehouses in Yiwu, noting their critical role in the international distribution of counterfeit goods across a variety of product sectors. Despite regular raids and seizures by the local administrative authorities, current enforcement levels are deemed insufficient to create a noticeable or lasting impact. Unnecessarily high criminal prosecution thresholds – a point of frustration that we've raised for many years in our Special 301 filings – are seen as a contributing factor. Administrative fines have simply proven insufficient to deter bad actors from future violations. Some brands also voiced concerns related to protectionism as a frequent hindrance to their enforcement efforts.

INDIA

Tank Road, Delhi

Gaffar Market, Delhi

SP Road Market, Bangalore

IACC members' feedback regarding Tank Road, Gaffar Market, and SP Road Market remained almost entirely unchanged since last year's submission. Widespread wholesale and retail distribution of counterfeit goods across a wide array of product sectors has continued largely unchecked since last year, when USTR included Tank Road on the Notorious Markets List.

As described in past submissions, support from local authorities has been characterized as inconsistent (due in part to competing law enforcement priorities). Unfortunately, the lack of consistency is seen by many as fostering the perception that counterfeiting and other IP crimes are not serious offenses, exacerbating an already difficult situation for rights-holders.

In light of the feedback received during this year's consultations, we recommend Tank Road's retention on the Notorious Markets List this year, and the addition of both the Gaffar and SP Road Markets to the list.

INDONESIA

ITC Roxy Mas, Jakarta

IACC members again stated their support for ITC Roxy Mas' placement on the Notorious Markets List, citing high volumes of counterfeit sales across numerous product sectors. As noted in last year's submission by the IACC, these illicit sales appear most pronounced among the consumer electronics and IT sectors.

It will likely come as no surprise to USTR, given our Special 301 filings concerning Indonesia in recent years, that illicit sellers at the market operate largely with impunity. Assistance from law enforcement is said to be rarely forthcoming and criminal prosecutions remain rare – effective prosecutions resulting in the imposition of meaningful penalties even more so.

Similar to situations described elsewhere, the operators of ITC Roxy Mas appear either uninterested or unable to effectively monitor the mall's nearly 900 vendors. In the absence of that oversight, and given the above-mentioned lack of engagement by the authorities, rights-holders have little optimism for progress in addressing these long-standing problems. We would therefore welcome USTR's consideration of ITC Roxy Mas for inclusion on this year's Notorious Markets List.

KYRGYZ REPUBLIC

Dordoi Market, Bishkek

IACC members reported no substantive improvements with regard to the Dordoi Bazaar since last year's filing. "Container City," as it has become known, remains a major distribution hub for China-sourced counterfeit goods of all types. Rights-holders continue to cite the lack of effective border controls, systemic deficiencies in the Kyrgyz legal system, and ingrained corruption as aggravating factors. Enforcement is said to be "non-existent." Given this feedback, we strongly support USTR's retention of the Dordoi Market on the Notorious Markets List.

MEXICO

Tepito, Mexico City

As has been the case for countless years, Tepito remains the most notorious brick-and-mortar marketplace in Mexico. Indeed, it stands alongside Ciudad del Este and La Salada as one of the greatest concerns for rights-holders across all of Latin America.

Sales of counterfeits (and other illicit goods) remained rampant over the past year, impacting numerous product sectors. As detailed in numerous past submissions, enforcement against sellers in Tepito is viewed by many as a near-impossibility, with local law enforcement often showing reluctance to pursue targets in the market. This is perhaps unsurprising given past instances of violent resistance – described by one rights-holder as "near riots" – in response to civil or criminal raids, and due to the activity of organized criminal gangs in the market.

Absent greater efforts on the part of the Mexican authorities to root out the entrenched illegal activity that continues to take place in Tepito – including increased criminal prosecutions of counterfeiters and those who are facilitating their crimes – there is little expectation for improvement. Until such progress materializes, USTR should retain Tepito on the Notorious Markets List.

MOROCCO

Derb Ghallef, Casablanca

While not previously designated as a Notorious Market by USTR, some IACC members wished to register growing concerns with the Derb Ghallef market in Casablanca during this year's out-

of-cycle review. While a wide variety of counterfeit goods are reportedly on offer, Derb Ghallef has grown increasingly infamous as an outlet for counterfeit mobile phones and accessories. Stakeholders reported diminished cooperation from law enforcement beginning approximately five years ago, which is correlated with a significant increase in the volume of counterfeits in the market. Derb Ghallef is also said to serve as a distribution hub, supplying counterfeits to countless retail-level vendors throughout the city.

The government appears unmotivated to rein in the illicit activity, possibly due to the market's importance to the local economy. As a result, the situation appears likely to continue deteriorating. Accordingly, we would welcome USTR's consideration of Derb Ghallef as a Notorious Market this year.

PARAGUAY

Ciudad del Este

Located at the Tri-Border of Paraguay, Brazil, and Argentina, Ciudad del Este is one of the most significant distribution hubs for counterfeit goods entering the broader Latin American market. The many challenges faced by rights-holders in Ciudad del Este have been documented by USTR (and in the submissions of the IACC and others) for over two decades. Despite that awareness, and occasional efforts by the Paraguayan government to address the illicit trafficking, rights-holders continued to report little, if any, substantive improvement over the past year; stakeholders from nearly every sector of the IACC's membership cited Ciudad del Este as one of their greatest concerns in the region. In recent years, rights-holders have voiced growing frustrations in connection with an apparent increase in manufacturing and finishing operations, in addition to the long-standing concerns about Ciudad del Este's role as a hub for the distribution of counterfeit goods to markets throughout South America.

We would welcome greater attention from the government of Paraguay, as well as increased coordination with Brazilian and Argentinian authorities, to address these significant and long-standing concerns. Until such time as substantive improvements have materialized however, we support Ciudad del Este's retention on the Notorious Markets List.

PERU

Gamarra Emporium, Lima

Polvos Azules, Lima

Malvitec Gallery, Lima

IACC members highlighted significant concerns regarding three markets in Lima this year: Gamarra Emporium and Polvos Azules in the La Victoria district, and Malvitec Gallery in the city's downtown.

Gamarra, Peru's primary textile market, remains a well-known outlet for counterfeit apparel and footwear. Illicit sales are conducted openly from the mall's hundreds of stalls, and the availability of counterfeits is regularly mentioned on travel sites. The market also operates an e-commerce site through which consumers can purchase items – including counterfeits – from vendors. Unfortunately, that site has reportedly failed to implement even basic enforcement mechanisms (e.g., notice and takedown processes) or proactive measures to combat counterfeit sales.

Polvos Azules has made numerous appearances in past submissions by the IACC due to the prevalence of counterfeit goods on offer across a variety of product sectors. The overall size of the market, which is comprised of an estimated 2000 stalls is said to contribute to the difficulty in conducting enforcement, while the market's operators are seen as unwilling or unable to effectively oversee compliance by the many vendors.

Malvitec Gallery, meanwhile, was cited as a source of growing frustration among brands in the consumer electronics and IT sectors. Rights-holders specifically noted Malvitec's role in supplying inventory to numerous smaller shops dealing in counterfeits throughout the city in their support for including the market on this year's NML.

Despite occasional raids conducted by law enforcement at the venues, those actions appear to have provided little in the way of deterrence. As has been the case in countless other jurisdictions, the lack of consistent enforcement, coupled with a lack of meaningful prosecutions when enforcement actions do take place, has allowed the situation in each market to grow increasingly dire. Accordingly, we support USTR's placement of Gamarra, Polvos Azules and Malvitec Gallery on this year's Notorious Markets List.

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. Not surprisingly, given the current political climate amidst Russia's ongoing invasion of Ukraine, a number of rights-holders have experienced diminished levels of support for the enforcement of their rights in Russia. While some respondents noted occasional assistance from local law enforcement, the already difficult environment detailed in past submissions has further deteriorated. This is said to be the case, particularly, at Gorbushkin Dvor.

We believe strongly that all three of these markets should be retained on this year's Notorious Markets List.

TURKEY

Tahtakale District, Istanbul

The IACC supported USTR's retention of Istanbul's Tahtakale District in past years' Notorious Markets reports, citing long-standing concerns voiced by rights-holders in numerous sectors. Unfortunately, sales of large volumes of counterfeit apparel, footwear, and electronics have continued largely unabated throughout the past year.

And while rights-holders have noted an apparent decrease in the visibility of counterfeits on offer, presumably attributable to more frequent raids by the Turkish Police and subsequent prosecutions of counterfeiters, these occasional interventions have proven insufficient to deter the illicit distribution to any significant degree.

Tahtakale remains a major hub for the distribution of counterfeits, and should be retained on the Notorious Markets List again this year.

UNITED ARAB EMIRATES

Deira District, Dubai

IACC members' feedback concerning the large-scale trafficking of counterfeit goods in the Deira District of Dubai remained largely unchanged from those reports we've heard for the past several years, as detailed in numerous prior NML and Special 301 submissions.

Despite frequent (sometimes weekly), large-scale raids and seizures targeting bad actors in the district, particularly in the Naif and Al Murar areas; rights-holders remain frustrated by the lack of apparent progress. Indeed, the continued prevalence of counterfeiting activity, even with the increased enforcement activity by the police and DED seems to underscore how extensive and ingrained the illicit trafficking has been in recent years. As discussed in prior filings, the lack of deterrent penalties is seen to only exacerbate the problems; counterfeiters simply seem to have little concern that they'll face significant consequences even if they are caught.

The Deira District's proximity to the Dubai airport, and the historic lack of effective border enforcement of IP rights by Customs (particularly in the free trade zones) ensures a steady flow of counterfeit goods into the local market. Rights-holders remain pessimistic about the situation there, and support USTR's retention of the Deira District on this year's Notorious Markets List.

VIETNAM

Viet Trung Trade Centre, Lang Son

IACC members welcomed USTR's decision to include Tan Thanh market in last year's Notorious Markets report, in light of its role in the distribution of high volumes of counterfeits, impacting a wide variety of rights-holders. During this year's consultations, stakeholders also highlighted similar concerns at the Viet Trung Trade Centre, also located in Lang Son province.

Given its proximity to the Chinese border, it is perhaps not surprising that Viet Trung has also become a major outlet for counterfeit apparel, footwear, luxury goods, and consumer electronics. Enforcement is said to be hampered by those same problems described with respect to Tan Thanh – namely, local protectionism and corruption. While rights-holders spoke favorably regarding a large-scale raid of the Trade Centre that was conducted by the Economic Police in February of this year, the lasting impact of that action has been limited, and counterfeit sales remain rampant. Given the severity of the concerns expressed by rights-holders, we would support the placement of the Viet Trung Trade Centre on the Notorious Markets List this year.

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. 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. Accordingly, we wish to highlight some of the past and ongoing engagement the IACC has had with stakeholders in the e-commerce sector over the past year. These included:

- The IACC MarketSafe Program – Now in its 10th year of operation, the IACC’s long-running collaboration with the Alibaba Group has assisted approximately 200 rights-holders in their efforts to identify and remediate sales of counterfeit goods across all of Alibaba’s e-commerce sites. This collaboration has led to the removal of hundreds of thousands of listings for counterfeit goods, the removal of over 16,000 sellers from the platforms due to IP violations, and has facilitated the sharing of intelligence to support the implementation of new enforcement strategies, platform policies, online-to-offline investigations, and more.
- The IACC RogueBlock Program – For over a decade, the IACC has worked in close collaboration with the payments sector using a “follow the money” approach to target the misuse and abuse of legitimate payment services by bad actors, as a means to cutting off the ability of rogue sites to receive payments for their illicit goods.
- The IACC-Amazon Program – Beginning as a pilot program in 2018, the IACC continues to work with Amazon to escalate rights-holders’ concerns, to identify issues impacting rights-holders and which may be ripe for the adoption of new policies and strategies to enhance the platform’s brand protection efforts, and to facilitate greater engagement between stakeholders.
- In October of last year, the IACC and Lazada partnered on a four-month pilot engagement aimed at assessing the effectiveness of the platform’s existing enforcement framework, opportunities for enhancing or supplementing those tools, and ensuring

their accessibility to all rights-holders. That initiative was, in our view, a great success, with potential for expanded collaboration moving forward. As USTR is undoubtedly aware however, earlier this year (though subsequent to the conclusion of our pilot program), Lazada undertook a major reorganization of the platform's brand protection program, which included a considerable reduction in the team's headcount; not surprisingly, that announcement was met with great dismay by the broader rights-holder community. At present, we continue to have substantive discussions with their new leadership with the goal of both reinvigorating and further building upon the success we had during our prior engagement. We remain optimistic about the prospects for this collaboration.

- As in numerous past years, the IACC extended invitations to a number of e-commerce platforms to host roundtable sessions with stakeholders at our annual conference in April. Among those who participated in these small-group discussions to solicit feedback and share updates on their platforms' brand protection efforts were: Alibaba, Amazon, Lazada, Mercado Libre, TikTok, WeChat/Tencent, Shopee, Wish, and Walmart.

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 platform identified by rights-holders. Our comments and 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.

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 remain troubled by the lack of meaningful progress by Bukalapak in addressing long-standing concerns on the platform that have been detailed in our annual NML submissions over the past several years. Following our submission of comments to USTR in 2021, we were pleased to have received outreach from Bukalapak, indicating the platform's interest in engaging with the IACC and directly with our members. Unfortunately, despite some initial constructive discussions, the hoped-for improvements have yet to materialize.

Rights-holders across the apparel and footwear, luxury goods, consumer electronics, sporting goods, and pharmaceutical sectors, continue to face widespread sales of counterfeits, and Bukalapak's approach to identifying and remediating bad actors on the site remains far too reactive while also failing to deter repeat offenses.

Some respondents contrasted their experiences dealing with Bukalapak to those involving another Indonesian marketplace, Tokopedia. While rights-holders continue to face challenges on both marketplaces, the latter is viewed far more favorably, with stakeholders pointing to Tokopedia's significant investments in recent years – in terms of expanding their brand protection team, implementing more effective policies and procedures, incorporating new technological tools, and developing programs in coordination with IP owners to more effectively deal with illicit sales. The IACC has also welcomed Tokopedia's more regular communication and its brand protection team's willingness to engage in substantive dialogue. Conversely, we've seen little apparent interest on the part of Bukalapak to make similar investments.

While we have received some reports that Bukalapak's takedown procedures and the average timeline for responding to rights-holders' complaints has improved somewhat over the past year, there has been little noticeable impact on the availability of counterfeit goods on the platform. Rights-holders attribute this to the platform's continued failure to impose meaningful, deterrent penalties on violators (particularly repeat offenders).

Given the continued and severe challenges faced by rights-holders on the platform, the IACC recommends Bukalapak's retention on the Notorious Markets List this year.

DHgate

IACC members' feedback with respect to DHgate has remained largely consistent over the past several years; respondents during this year's consultations continued to express dismay over the volume and variety of counterfeit goods on offer, and the platform's lack of progress in addressing many long-standing concerns raised in numerous past submissions to USTR (or raised directly with the platform).

Brands reported no significant reductions in the number of listings for counterfeit products during 2023, while also noting concerns regarding counterfeiters' apparently increasing sophistication to evade enforcement efforts. Rights-holders described sellers' increased propensity to remove or obscure logos, their use of "code words" rather than explicitly using brands' registered trademarks, and other similar strategies designed to allow them to fly under the platform's radar or to enable them to feign ignorance when their listings were identified. DHgate's policies for addressing recidivism were described by some respondents as "extremely lax," and seen as contributing to the lack of long-term progress in cleaning up the site's offerings.

Others decried DHgate's continued reluctance to work collaboratively with rights-holders to pursue bad actors by, e.g., providing seller and sales information following confirmed violations. Brands have also called into question the platform's vetting of third-party sellers, noting that when DHgate has been willing to provide seller information, identification documents have often been demonstrably false.

While we are aware that DHgate has reportedly expanded its proactive screening efforts, rights-holders have reported negligible apparent progress. In light of the feedback received this year, we support DHgate's retention on the 2023 Notorious Markets List.

IndiaMart

IACC members' comments concerning their experiences with IndiaMart largely mirrored those detailed in past year's submissions, and we strongly support the platform's continued retention on the Notorious Markets List this year.

Stakeholders from across a variety of product sectors decried the lack of effective seller vetting and oversight – complaints that will likely come as no surprise given the comments filed by IndiaMart during last year's process. The platform consistently depicts itself as little more than a listing and match-making service for buyers and seller, and in doing so seems to disclaim any responsibility for the illegal acts perpetrated by individuals and entities operating on the site. IndiaMart's comments however seem to ignore the variety of additional services that it offers to sellers including its facilitation of payments between buyers and sellers, its paid "TrustSeal" certification – marketed to sellers as a way of cultivating buyers' trust, its "Maximiser" service which is touted as a means of increasing sellers' visibility to potential customers, and similar offerings. IndiaMart cannot reasonably disclaim its responsibility for vetting sellers and monitoring their compliance, while at the same time profiting from the sale of paid services ostensibly aimed at assuring consumers of those same sellers' legitimacy.

While IndiaMart has asserted that it already goes far beyond what it is legally obligated to do, and purports to act swiftly in addressing IP-related complaints, many rights-holders continue to question the effectiveness of the platform's current approach, as well as the sincerity of its commitment to addressing violations. An enforcement mechanism centered entirely around a

reactive notice-and-takedown approach is neither a scalable nor long-term solution to the high volumes of trafficking facilitated by the website. More, and more proactive, approaches to addressing illicit sales are needed. The rights-holders who participated in this year's consultations remained largely pessimistic about the prospects for significant improvements in the situation; accordingly, we continue to support IndiaMart's placement on the Notorious Markets List this year.

Mercado Libre

While IACC members continue to report high volumes of counterfeit goods on offer through Mercado Libre's platform serving jurisdictions throughout Latin America, we have been generally pleased with MeLi's increased level of engagement with the rights-holder community and a number of steps that the platform has taken in recent years to address concerns reported in past IACC submissions to USTR.

We are hopeful that this progress will be continue in 2024; we will be closely monitoring the platform's activity and seeking additional feedback from member brands to assess on an ongoing basis the effectiveness of Mercado Libre's efforts to ensure sellers' compliance and to identify and remediate illicit sales. At this time however, we make no formal recommendation for Mercado Libre's placement on the 2023 Notorious Markets List.

Meta (including Facebook, Facebook Marketplace, Instagram, WhatsApp)

IACC members again reported significant concerns related to the trafficking of counterfeit goods on the Meta platforms – most notably with respect to the Facebook Marketplace and “private” Facebook groups, along with the advertisement (via posts and stories) on Meta's Instagram platform aimed at driving traffic to sites both in and outside of the broader Meta ecosystem. The WhatsApp messaging service, likewise, continues to be a preferred tool of counterfeiters both for advertising and negotiating sales with potential customers. Similar concerns have been reported in past years' submissions, and rights-holders are becoming increasingly frustrated by the situation, noting an apparent uptick in such offerings, and little apparent commitment on the part of Meta to addressing the issues.

Stakeholders expressed dismay over slowed response times and inconsistent application of IP policies across the various Meta platforms, which are said to lead to uncertainty in enforcement outcomes. Many cited a lack of proactive efforts to identify and remove posts even where there are clear violations of the platforms' policies, decreased engagement with rights-holders, and a general failure to impose deterrent (and lasting) penalties in connection with violations. With respect to paid advertisements, one brand stated that each month they were identifying and requesting removals of thousands of paid advertisements for counterfeit goods impacting their brands – a year-over-year increase of over 50% from 2022. Unfortunately, those ads are often

said to reappear within hours of removal, highlighting the ephemeral nature of enforcement on the platform.

Rights-holder representatives across a variety of product sectors stressed their growing consternation with the use of Facebook groups to facilitate sales of counterfeit goods through the sharing of so-called "hidden links." Respondents have seen a significant increase in this strategy to obfuscate counterfeit sales, using Facebook groups to provide detailed, step-by-step instructions to direct potential customers to counterfeit items on other e-commerce platforms. By way of example, a prospective purchaser may be instructed to select a plain t-shirt in a particular size, color, or other options, offered by a particular seller, while including a specified code in the purchasing notes / delivery instructions. The options selected will, in turn, correspond to a particular type of illicit item (e.g., the customer submits an order for a green t-shirt, in a men's large size, knowing that when the order is fulfilled, they will receive a counterfeit luxury handbag, pirated software, or some other illicit item). The unbranded items are intended to raise no "red flags" with respect to potential IP violations on the platforms on which they're offered, enabling the sellers to operate with relative impunity. As reported by numerous respondents during this year's consultations, counterfeiters have become increasingly brazen in promoting their illicit wares and instructing consumers on how to purchase them via Facebook groups as a way of undermining e-commerce platforms' proactive brand protection measures. Unfortunately, despite the openness of this activity, Meta appears to be taking few, if any, steps to address the problem.

As noted in last year's submission, respondents continue to bemoan the apparent lack of vetting and oversight of individuals engaged in commercial activity on Meta's sites. While Meta purports to have a zero-tolerance policy against the sale of counterfeits, the platform appears to do little if any vetting or screening of Facebook Marketplace sellers. Even with regard to regulated goods (e.g., alcohol), the sale of which is explicitly prohibited by the site, some stakeholders questioned the extent to which those policies are being enforced. Some major brands noted that they submit tens of thousands of infringing listings for removal on an annual basis, with little apparent impact on the availability of counterfeits. Even where listings or accounts are actioned, sellers can easily continue operating multiple other accounts. And while Facebook Marketplace is supposedly intended for individuals selling within their local community, Meta allows, and even promotes, the use of Marketplace for commercial sales. By applying the same policies and practices to high-volume counterfeit sellers as it does to individual social media users, Facebook Marketplace creates a haven for rampant recidivism and large-scale counterfeit operations.

Last year, participants in our NML consultations described Meta's reporting tools 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;" feedback this year did not offer a rosier assessment. Equally troubling are reports that Meta is considering the adoption of policy changes which are likely to make enforcement even more difficult. For example, some brands have described recent pushback in response to takedown requests against individuals with accounts registered outside of the United States, absent proof

of the brand's ownership of trademark rights in that jurisdiction. While providing such evidence is not likely to be a "heavy lift" for major international brands, respondents questioned the need for such a showing – particularly where the seller at issue is offering to sell to consumers in the United States or other jurisdictions in which the brand has already provided existing registrations. They also questioned the apparent double-standard involved, as the relevant sellers do not appear to be subject to any oversight regarding their authority to sell trademarked goods in any jurisdiction, or any showing that they are, in fact, located in any particular jurisdiction.

While not entirely an IP / counterfeiting issue, a number of respondents also reported a dramatic increase in the number of phishing- and fraud-related concerns on the platform, including "fake influencer" scams targeting Facebook and Instagram users with spurious offers for modeling opportunities and "collaborations" with well-known brands. One major brand reported a 75% increase in the number of takedown requests submitted over the past year in connection with this type of fraudulent activity.

Until such time as Meta acknowledges these shortcomings and implements more effective policies and procedures for dealing with the illicit trafficking on its platforms, rights-holders have little optimism for improvement. Accordingly, we support Meta's placement on the 2023 Notorious Markets List.

PDD Holdings (Including both Pinduoduo and Temu)

In our comments last year, we noted that "IACC members reserved some of their harshest criticisms ... for Pinduoduo." Unfortunately, this remained the case during this year's NML consultations as well, with several respondents noting even further deterioration on the platform. In the words of one brand, "we are unaware of any meaningful or effective action PDD has taken [to address the sale of counterfeit goods on the platform]."

Brands bemoaned both the lack of proactive enforcement measures and the onerous documentation and evidence required by Pinduoduo to consider even clear-cut cases of counterfeit sales. Historically, many platforms have indicated that their ability to take a more proactive approach is limited by their lack of expertise to authenticate the literally thousands of brands' products on offer by sellers. This is not an unfair assertion; however, it is extremely concerning when a platform acknowledges its lack of expertise, but then also refuses to accept the recognized expert's (i.e., the relevant brand's) own assessment of the goods' authenticity. Pinduoduo's takedown procedures were described by stakeholders as "overly-burdensome," "byzantine," "exceedingly time-consuming," and "ultimately, ineffective." Rights-holders' complaints are said to have largely fallen on deaf ears, and the platform has shown little interest in working with IP owners to resolve these concerns.

Brands likewise expressed dismay over Pinduoduo’s provision of “authorized seller” labels to “sponsored sellers.” Such a designation undoubtedly leads consumers to believe that they are purchasing directly from the legitimate manufacturer or a licensed distributor.

IACC members described Pinduoduo – in contrast to other platforms in the region – as disinterested and unwilling to cooperate with “online-to offline” investigations of bad actors. As discussed in prior submissions, Pinduoduo has typically refused to provide identifying information about confirmed counterfeit sellers citing privacy concerns, despite such assistance being the norm for other China-based and global platforms.

Rights-holders also wished to express growing concerns regarding PDD Holdings’ international e-commerce platform, Temu. Brands from a variety of product sectors cited Temu as one of their most rapidly growing brand protection concerns, noting the proliferation of counterfeit items appearing on the site. This is perhaps unsurprising given the reported lack of seller vetting or screening, and the rudimentary enforcement mechanisms provided. One brand discussed its frustration at having to submit takedown requests via email, and the relatively protracted timeframe (approximately 3-5 days) for resolving even simple issues. This approach is simply not scalable to address the volume of illicit trafficking on the platform. In light of the feedback received from stakeholders during this year’s consultations, we encourage USTR to retain Pinduoduo and to add Temu to the Notorious Markets List this year.

Shopee

Shopee has established itself as one of the leading platforms throughout Southeast Asia and Latin America. Unfortunately, along with the rapid growth of the marketplace in recent years, rights-holders have also witnessed a proliferation of illicit trafficking on the platform, as detailed in prior IACC submissions to USTR. In response to our NML comments filed in late-2021, Shopee’s brand protection team reached out to discuss the concerns raised by IACC members, with an aim towards better understanding the breadth of rights-holders’ concerns, and to develop a more effective and strategic approach to resolving those issues.

In the period since those initial discussions, Shopee’s engagement with rights-holders has led to a number of policy and procedural changes, as well as the development of a pilot program (noted in last year’s submission) in which a number of IACC members have participated, and the launch of the Shopee Brand Protection Partnership program earlier this year. Initial feedback from rights-holders appears to be largely positive, and brands are reportedly seeing faster timelines for the removal of infringing listings, more proactive screening by Shopee to obviate the need for takedown requests, and follow-through on the platform’s commitments to invest greater resources to address the trafficking of counterfeit goods. One brand noted a 20 – 30% month-over-month decrease in the visibility of listings for counterfeit items.

And while Shopee is making commendable progress in addressing the illicit trafficking identified in past submissions; many rights-holders, across a variety of product sectors, continue to report troublingly high levels of counterfeit and pirated goods on offer. Accordingly, we look forward to a more comprehensive roll-out of the Brand Protection Partnership so that all brands can benefit from the lessons learned from Shopee’s efforts to date. To that end, we welcome further engagement with Shopee in the coming year and encourage the platform to continue building upon the work that has been done over the past two years.

Tokopedia

As discussed in our comments above with respect to Bukalapak, although rights-holders continue to express concerns over the volume of counterfeit goods that remain on offer via Tokopedia; IACC members offered a far more positive assessment of the latter platform. Those more optimistic appraisals of Tokopedia were generally tied to the above-discussed investment in developing a more robust IP enforcement regime and increased levels of direct engagement with rights-holders.

We do, however, wish to relay concerns raised by stakeholders in the pharmaceutical sector, which we believe are relevant to USTR’s determination of Tokopedia’s status this year. Some respondents in the sector have cited a growing number of “approved” pharmacies active on the platform, selling (prescription) human health products without requiring a valid prescription, and with minimal oversight by the platform to ensure the quality of the goods offered (including confirmation of the sellers’ sourcing and the provision of appropriate documentation). We would encourage the implementation of strong policies to ensure that - particularly in the case of highly-regulated products – third-party sellers are held to high standards and that reasonable precautions are taken to preclude unnecessary risks to consumers’ health and safety. We would welcome further engagement with Tokopedia on this issue.

Weixin (China) and WeChat (International) (collectively, “WeChat”)

The IACC concurred with USTR’s decision last year to include WeChat on its annual Notorious Markets List, citing the prevalence of counterfeit goods on offer and a variety of challenges related to their enforcement against bad actors. While we received some positive feedback from rights-holders during this year’s consultations, particularly with respect to WeChat’s pro-active outreach and willingness to engage with rights-holders, respondents expressed their continued support for WeChat’s inclusion on the 2023 Notorious Markets List.

IACC member brands commented positively with respect to changes to the platform’s brand protection portal, noting overall improvements in terms of user experience, as well as perceived

progress with respect to the clarity and effectiveness of policies related to IP violations and takedown procedures. But while rights-holders have welcomed reports that WeChat has increased the number of enforcement actions taken against violators, the overall volume of takedowns and the platform’s imposition of more significant penalties continues to be viewed as insufficient when compared to similar metrics among other major online marketplaces in China. This is largely attributed to the fact that much of the counterfeit trafficking occurs “out of sight” through more private features with less visibility to rights-holders (and indeed to WeChat itself). As a result, the ability to identify illicit offers is often contingent upon reports from users – whether directly to the relevant rights-holder or to WeChat – or else reliant upon the investment of considerable time and expense of investigations by brands’ own in-house or external investigative teams.

To its credit, WeChat has demonstrated its willingness to impose significant penalties – including account termination – against users found to have violated its prohibition on counterfeit sales; rights-holders continue to voice concerns though about the need for more rigorous onboarding and user-vetting procedures, pointing to the relative ease with which bad actors are able to rejoin the platform and resume the same activity that saw them banned previously.

In prior years’ submissions, rights-holders have described an apparent reluctance on the part of WeChat to provide user information essential to pursuing follow-on investigations, in contrast to the level of cooperation that is frequently provided by other platforms. Brands reiterated those complaints again this year, both in terms of pursuing “online to offline” cases, as well as with respect to assisting rights-holders in connecting personal accounts with others operating in the WeChat ecosystem. IP owners also continue to voice concerns about the prevalence of advertisements for counterfeit goods via WeChat’s “Channels” short video feature. Such concerns largely mirror those raised in connection with other short-video platforms, and rights-holders would welcome greater collaboration aimed at pursuing violators to their ultimate point of sale.

Rights-holders also continue to encourage WeChat to intensify its coordination with law enforcement, both in terms of providing more extensive information about users’ illegal activity, and – where information is not directly available or accessible to WeChat, by encouraging or obligating those entities engaged in commercial activity through the WeChat ecosystem to comply with law enforcement requests for data relevant to their investigations.

While we are encouraged by the progress reported by rights-holders over the past year, and by our own direct engagement with WeChat’s brand protection team, we continue to recommend WeChat’s retention on the Notorious Markets List this year.