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*Submitted Via: [www.regulations.gov](http://www.regulations.gov)*

Hon. Earl Comstock  
Director of the Office of Policy and Strategic Planning  
International Trade Administration  
Department of Commerce  
1401 Constitution Avenue, NW  
Washington, D.C. 20230

Re: Comments Request: Report on the State of Counterfeit and Pirated  
Goods Trafficking (July 10, 2019)  
Docket No. 190703544-9544-01

Honorable Sir:

The Imaging Supplies Coalition (<http://www.isc-ic.org>) (“ISC”) is a trade association comprised of the following six members: Brother International, Canon U.S.A., Inc., Epson America, Inc., Hewlett-Packard, Lexmark Corp. and Xerox Corp. Founded in 1994, the coalition is celebrating its 25th year of protecting its members’ customers from infringing and misrepresented products. Members of the Imaging Supplies Coalition have large U.S. investments in research, development, manufacturing, marketing, sales and related IPR. Since our founding, we have worked successfully with CBP, our channel partners and customers to limit imports of infringing printing supplies.

Despite the best efforts of industry and law enforcement, IP-infringing trade is growing at a much faster pace than the world economy. In 2016, a well-respected study by Frontier Economics published by BASCAP estimated that the total global economic value of IP-infringing products is as much as \$650 billion

every year and could ultimately reach \$1.77 trillion.<sup>1</sup> A more recent study by UIPO and OECD estimates the volume of international trade in counterfeit and pirated goods is 3.3 % of world trade (compared to 2.5 % in the earlier study) equivalent to \$509 billion<sup>2</sup>. These estimates do not include infringing products made and sold within the country of origin without being exported.

The imaging supplies industry has been substantially affected by IP-infringing and misrepresented products. The ISC estimates that approximately \$3 billion or 3.5% of the worldwide trade in imaging supplies is lost to counterfeiters. This does not even include the losses to patent-infringing products. The patent infringement problem continues to grow and is thought to be even larger than losses to counterfeiting. ISC member companies do all that they can to combat the problem by implementing significant brand protection programs. These programs are administered by our members with substantial cost in resources and dollars. In addition to these internal programs, ISC members have obtained US ITC General Exclusion Orders to enforce their patent rights and work closely with US CBP to train import specialists and CBP officers to recognize and intercept patent infringing product.

While many factors drive the size and growth of IPR infringement, we have concluded that there are two basic causes for this growth. Each requires increased focus and, unless there is action on both fronts, IPR infringement through e-commerce will continue to grow.

The two basic causes are:

- 1) Market accessibility through e-commerce marketplaces; and
- 2) Lack of consumer awareness.

### **Counterfeit Trade on E-commerce Sites**

Although much has been done on e-commerce websites to combat counterfeiting and to improve the takedown process for counterfeit items, the problem continues to grow.

Many brand owners complain that the efforts, while helpful, have done little to stem the tide and reduce the growth of counterfeiting on the internet, and that

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<sup>1</sup> <https://cms.iccwbo.org/content/uploads/sites/3/2017/02/ICC-BASCAP-Frontier-report-2016-Executive-Summary.pdf>

<sup>2</sup> <https://euipo.europa.eu/ohimportal/en/web/observatory/trends-in-trade-in-counterfeit-and-pirated-goods>

more work needs to be done. This creates a serious business challenge as both the customer experience and brand integrity can be negatively impacted.

E-commerce counterfeit issues are a problem that will continue to grow at a pace with the growth of e-commerce. Our members believe that two solutions are required to correct and control the counterfeiting issue.

First, e-commerce marketplaces must bear some legal responsibility for the counterfeit activity on the sites. A starting point could be to require the same level of accountability required of a brick and mortar landlord.

Second, through data analytics and rights holder involvement, much more can be done to keep infringing products from being listed in the first place.

Both of the above are controversial, complex and difficult to accomplish but they are certainly possible. The first item, above, may require legislative and/or executive action, because the judicial system is protective of e-commerce platforms and does not generally hold e-commerce platforms liable for their sale of counterfeit goods. See, Tiffany v. eBay, 600 F. 3d 93 (2<sup>nd</sup> Cir. 2010).

Moreover, if e-commerce platforms become more active in *preventing* the sale of infringing goods, it could lead to a constructive relationship between rights holders and e-commerce marketplaces and will help to protect customers from infringing and misrepresented products.

### **Consumer Awareness**

There would not be a counterfeit problem if there was not a demand for the product. Initially, it was thought that consumer demand was driven by a lack of awareness and that consumers did not realize they were purchasing counterfeit goods. However, recent evidence suggests that consumers are all too willing to purchase counterfeit products at lower prices even when they know the products are fake. This awareness changes the nature and scope of the demand problem. It is relatively easy to teach a consumer how to avoid a counterfeit product. It is much more difficult to convince a person that intentionally purchasing a counterfeit product is wrong and causes societal problems. This is, however, an effort that must be undertaken. We cannot allow society to accept an economy that does not respect and protect intellectual property rights. The changing of attitudes will require an education program of significant scope. Some of this must be undertaken by rights holders and by the e-commerce marketplaces. In addition, a focused consumer education program operated at the federal level would be of significant help.

## **Conclusion**

Intellectual property infringement continues to escalate with much of the increase driven by the growth of e-commerce and by a lack of customer education. While the war on intellectual property infringement may never be completely won, IP rights are fundamental to our economy and must be vigorously defended. We respectfully request the following:

1) There should be a focused debate on defining the legal responsibility of internet marketplaces for IP-infringing product sold through their sites followed by necessary legislative and executive action.

2) Develop a program to encourage or legally require e-commerce platforms to adopt better guidelines to prevent the listing of counterfeit/infringing products and to facilitate their takedown. This would include items such as:

- Improved gating procedures for sellers of products listed on the e-commerce platform. Look for and deny access to sellers with previous violations and those who import directly to fulfillment warehouses.
- Improved interfaces for takedowns that allow third-party software to integrate with marketplace databases and allow sellers and purchasers to send questions or objections directly to brand owners.
- More consistent takedowns of listings for deceptively described imaging supplies that are priced unfairly, such as products without retail packaging, grey market, stolen and black market, expired, damaged packaging, and unauthorized remanufactured goods.

3) Design and implement, through the appropriate federal agencies, a focused education program to increase consumer awareness of the problems caused by IPR infringement.

Thank you for your consideration.

Respectfully submitted,

Allen D. Westerfield

President, Imaging Supplies Coalition