



## THE FIGHT AGAINST FAKES REPORT

### OVERVIEW

On November 7, 2019, the Senate Finance Committee released a bipartisan report on its 17-month investigation of counterfeit goods sold online and their effect on American businesses and consumers. The report, [The Fight Against Fakes: How Statutory and Regulatory Barriers Prevent the Sharing of Information on Counterfeits](#), explores private and public sector challenges to combatting counterfeiting. Its recommendations focus on ways U.S. Customs and Border Protection (CBP) can be empowered to more effectively share information with private sector partners as they work together to identify and curtail counterfeit imports.

### WHY IT MATTERS

Knockoff goods are a growing problem for consumers and intellectual property rights holders in the global marketplace. Not only do they cause damage to brands and bottom lines, but they may also be dangerous to the health and safety of unsuspecting customers. E-commerce, which now accounts for 10 percent of total retail sales in the U.S., presents new exploitation opportunities for counterfeiters who can easily post misleading stock photos and operate with relative anonymity. Notably, in a precursor to this committee report, federal officials found that of 47 of their test buys from third party sellers on popular e-commerce platforms, 20 turned out to be counterfeit. The Senate Finance Committee identifies footwear as being among the top product categories targeted by counterfeiters online. FDRA's comments, included by the committee in its report, confirm this risk.

### PRIVATE SECTOR CHALLENGES

Major e-commerce platforms like Amazon, Alibaba, and eBay have preventative and reactive measures to fight counterfeiting. However, these platforms are not responsible for fakes sold on their sites. Policing against infringing products ultimately falls to the rights holder. Given the hundreds of third party listings, the burdens of making use of brand protection programs, and the varying degrees of cooperation by different platforms, battling piracy is a daunting, if not impossible, task.

The "Fight Against Fakes" report declares that platforms should do more to help rights holders. For example, the report suggests platforms simplify appeals processes, alert brands and consumers about counterfeit sellers, verify seller identities, respond quickly to known infringing listings, and provide more resources to help small and medium-sized enterprises.

### PUBLIC SECTOR CHALLENGES

Right holders, e-commerce platforms, common carriers, and payment processors all expressed varying perspectives during the committee's investigation, but a common refrain was that CBP could be better at providing these partners with more information that would be valuable in thwarting piracy. In statements to the committee, not only did CBP sound overwhelmed by the rapid increase in packages coming into the U.S., but the agency also believed it was prevented from further information-sharing by current regulations and laws.

On the regulatory front, the committee highlighted a hole in CBP rules limiting information-sharing for abandoned (rather than seized) goods. It also called attention to the problem of enforcement leads going cold during CBP's self-imposed 7-day wait period for importers to respond about detained goods.

Legislatively, the committee recommends Congress amend the Trade Facilitation and Trade Enforcement Act to allow CBP to share information from the "packing" of counterfeit products, rather than just "packaging and labels." In addition, new authority could be granted to CBP to ensure it does not violate the Trade Secrets Act when sharing identifying information with e-commerce platforms and common carriers about rights holder-confirmed counterfeits.

### STAY TUNED

The "Fighting the Fakes" report declares the long commitment of both Senate Finance Committee then-Chairman Chuck Grassley (R-Iowa) and Ranking Member Ron Wyden (D-Ore.) to upholding intellectual property rights. In addition, Grassley dedicated a Senate Floor speech to this matter on November 12. He declared, "Our investigation is but a first step."