

January 31, 2022

The Honorable Daniel Lee
Assistant U.S. Trade Representative for Innovation and Intellectual Property
Office of the United States Trade Representative
600 17th Street Northwest
Washington, D.C. 20508

Re: 2022 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974 (Docket No. USTR-2021-0021)

Dear Mr. Lee:

On behalf of the Footwear Distributors & Retailers of America (FDRA), thank you for the opportunity to participate in the 2022 Special 301 Review.

FDRA is the footwear industry's trade and business association, representing more than 500 footwear companies and brands across the U.S. This includes the majority of U.S. footwear manufacturers and over 95 percent of the industry. FDRA has served the footwear industry for more than 75 years, and our members include a broad and diverse cross section of the companies that make and sell shoes, from small family-owned businesses to global brands that reach consumers around the world.

Our member companies work hard to design, produce, and deliver shoes to U.S. consumers. Each year, approximately 2.3 billion pairs of shoes cross U.S. borders (or 7 pairs of shoes for every man, woman, and child in America). Many of our footwear companies also sell brands that reach consumers in markets all over the world. These companies manage supply chains that span the globe, so they understand the importance of protecting IP and innovation. The U.S. must work to address the failure of other nations to protect patents, trademarks, and copyright in both law and practice, because this supports U.S. footwear jobs and communities.

IP enforcement is also essential to consumer protection, safety, and trust. As just one recent example, some FDRA member companies have found bad actors making counterfeits of products that are designed and marketed as being made of recycled materials, one of the leading areas of innovation for the American footwear industry. This harms brands, damages consumer trust, and undermines important efforts to achieve greater sustainability in our industry.

Strengthening IP protection and enforcement is vital in 2022. With the COVID-19 pandemic, we are witnessing an unprecedented surge in e-commerce, and counterfeiting operations become more prevalent during times of economic uncertainty. As the Office of the United States Trade Representative (USTR) conducts its annual Special 301 Review for 2022, FDRA would like to highlight several global IP trends and country-specific issues of concern to our members.

General Comments on Global Trends

FDRA's concerns about global IP protection and enforcement trends fall into four categories:

1. **Challenges on E-Commerce Platforms:** With the significant rise of e-commerce over the past few years, footwear companies have seen a substantial and troubling increase in both unauthorized sales and counterfeiting, as bad actors use popular e-commerce sites to target unsuspecting consumers in the U.S. During the COVID-19 pandemic, e-commerce shipments have grown exponentially.
 - For online platforms, the seller contact information is not consistently verified and often found to be inaccurate. Even when contact information is available, platforms often do not share full and detailed data on violators with rightsholders.
 - Brands do not have the resources or ability to get in touch with every online seller suspected of selling counterfeit or infringing product to ask for additional information and pictures. FDRA member companies have also discovered that many individuals and entities selling counterfeit or infringing goods on these platforms use false identities, making it impossible for brands to identify the bad actors. Since individuals often provide cover for commercial activity on platforms, all sellers should be verified rather than select entities with sales over a certain threshold.
 - Information provided or displayed by platforms may be misleading to consumers, including fulfillment services provided by platforms, the ranking of a good based on sales, or the advertisement of the good on the platform. For example, the product images, reviews, and seller information can be inaccurate or hard to find, often hidden behind a link, and unrelated to the specific seller or product at issue, and references to "replicas" are often overlooked by consumers. Each of these techniques provides a false sense of legitimacy for counterfeit goods sold on platforms.
 - Under the current court-developed framework for notice and takedown procedures, platforms do not have sufficient motivation to detect and prevent counterfeiting and infringements. They often profit from both the individual sales and by the availability of a broad selection of third-party sellers' products, including counterfeit and infringing goods. In some cases, this encourages platforms to develop long and convoluted notice and takedown procedures for brand owners. Platforms should process the notices in a harmonized and effective way and should make it possible to notify several illegal listings in one notice. Notice and takedown procedures implemented by platforms should be harmonized and user friendly.
 - On an annual basis, FDRA member companies are forced to file trademark counterfeiting and infringement lawsuits against thousands of platform sellers alleging direct liability – not secondary liability – for selling counterfeit and infringing goods. These lawsuits are limited in their efficacy because (1) many of these sellers are located in China or other countries and have used false contact info to register with the marketplace; (2) these sellers almost never appear in court and simply default; and (3) the sellers have limited funds in their platform accounts – usually just a fraction of the amount of the judgment companies are awarded.

- For the 2022 Special 301 Report, FDRA encourages the Committee to closely examine the ways in which these current e-commerce challenges directly impact global IPR protection and enforcement.
2. **Inability of CBP to Seize Goods Based on Design Patent Infringement:** Bad actors currently take advantage of a loophole to evade U.S. Customs and Border Protection (CBP) and deliver counterfeit footwear to the U.S. market.
- Counterfeiters increasingly ship labels and trademark tags separately from infringing products and attach them to the infringing products once in the U.S. market in order to avoid seizure by CBP.
 - If the labels are seized by CBP, the more valuable fake shoes will still enter the U.S. Under current law, CBP is authorized to seize counterfeit trademarked shoes but cannot seize a shoe that is clearly a copy of a trademark shoe absent the presence of a logo or distinguishing tag.
 - A number of other countries, such as Mexico, India, Japan, South Korea, and the European Union (EU), already allow such design patent enforcement.
 - Bipartisan legislation (S. 2987, The Counterfeit Goods Seizure Act of 2019), introduced in the 116th Congress, would have directly addressed this current loophole by giving CBP authority to seize based on design patent infringement. We strongly encourage the reintroduction and enactment of this key legislation in 2022.
3. **Additional Enforcement Gaps:** There are a number of other areas that contribute to the surge of counterfeit footwear entering the U.S. market.
- Infringers often use express mail and postal services to deliver counterfeit goods in small packages, making it more challenging for enforcement officials to confiscate these goods. The sheer volume of small shipments makes it impossible for CBP to adequately screen or x-ray all incoming mail to detect such shipments. Almost two million small packages entered the U.S. through international mail each day, even before the COVID-19 pandemic exponentially increased the volume of shipments.
 - The quality of information available to CBP on small parcels is as important as the process used by port authorities to communicate with rightsholders. In order to increase the effectiveness of enforcement actions and the ability to track real importers and identify the bad actors, we recommend creating standards and automatization for information sharing between authorities and rightsholders. Of particular interest is a legislative proposal introduced by Senator Chuck Grassley (R-IA) that would give CBP greater authority to share information with rightsholders on suspected counterfeiting merchandise.
 - Customs officials may also lack sufficient training or knowledge to consider trade dress as a basis for seizure. In today's 21st century retail environment, the way that a brand presents a shoe – from its appearance to packaging – is a critical part of the customer experience. Companies devote significant resources to innovation in this area, which directly impacts a brand's reputation and the relationship it has built with the consumer.

4. **Inadequate Protections for U.S. Companies in Foreign Markets:** In numerous countries, legal and procedural obstacles exist to securing and enforcing trademark rights.

- Penalties are often inadequate to deter criminal enterprises from engaging in counterfeiting. In many countries, the penalties imposed on these enterprises are so low that they only add to the cost of doing business.
- Many countries need to establish or improve transparency and consistency in their administrative trademark registration procedures. Also, at times, the judicial systems in developing nations lack transparency and independence, making it difficult for rightsholders to pursue claims. The judicial systems in many countries also lack proper specialization and training on IP rights.
- Counterfeiters now commonly register domains that advertise and sell counterfeit goods. Many of these counterfeiters use a country code top-level domain (ccTLD) to prevent detection and avoid the reach of the U.S. judicial system. FDRA member companies face significant trademark infringement and lose valuable Internet traffic because of misleading and fraudulent domain names, and it can be hard for companies to find relief.
- The theft of trade secrets has become an increasingly important issue for global brands. For U.S. companies to grow and compete globally, they must have confidence in the legal protections provided to trade secrets domestically and around the world. At times, foreign governments are complicit in, and even participate in, the theft of trade secrets.

Country Specific Issues

As the U.S. works to strengthen IP protection and enforcement for American workers, businesses, and consumers, FDRA encourages the Administration to enter into new bilateral or multilateral trade agreements that will benefit U.S. footwear companies and consumers and include strong IP protections for a 21st century economy. For the 2022 Special 301 Report, we have divided our comments into two sections: major footwear sourcing countries and additional countries of interest. Fighting counterfeiting is particularly important in these key sourcing hubs, given the large volume of manufacturing, machinery, and footwear production knowledge in each of these countries.

Major Footwear Sourcing Countries

China

FDRA believes the Phase One trade agreement with China is an important first step, but the Administration should immediately work to negotiate a Phase Two agreement that fully eliminates footwear tariffs and further strengthens IP protection in China.

This is key for U.S. footwear companies, because China has a dynamic and growing market of footwear consumers eager to buy U.S. brands and it serves as a key footwear production hub. China has also integrated the use of technology and e-commerce at an incredible pace and scope

to deliver products to Chinese consumers. Today, this vast Chinese market involves nearly one fifth of the world's population.

China has made a number of significant improvements in its protection and enforcement of IP rights, and FDRA values the work the central government has done to raise the importance of IP. The term of a design patent has been extended from 10 years to 15 years. Partial design rights were approved in the Patent Law Review with an effective date of June 2021. Although rightsholders are allowed to initiate the application *process*, further regulatory guidance for practical implementation is still pending. The partial design applications that have been filed in China since the effective date will not be examined until after the revised implementation rules of the Patent Law are published, and applicants have not yet received feedback from the Chinese National Intellectual Property Administration.

More work still needs to be done on IP enforcement at the local and regional level. FDRA is hopeful that the Chinese government, both at the national and sub-national levels, will over time become increasingly aware of the value – both to Chinese consumers and to the Chinese economy – of vigorously protecting IP rights. FDRA looks forward to seeing continued progress on commitments made by the Chinese government as part of the Phase One trade agreement that seek to address a number of key issues highlighted below.

Continued Rise in Counterfeit Goods

Basic IP enforcement in China is inadequate. China is still the number one source of counterfeit and pirated goods imported into the U.S. Within China, local officials often turn a blind eye to counterfeiting activity. Knock-off footwear, purportedly from America's best-known sportswear brands, is commonly found in "brick and mortar" Chinese retailers and in well-trafficked markets such as the Jin Long Pan Foreign Trade Garment Market in Guangzhou, the Luohu Commercial Center in Shenzhen, the Chenghai District in Shantou, the Qi Pu Market in Shanghai, and the Silk Market in Beijing. The Provinces of Guangdong, Zhejiang, and Fujian pose particular challenges for footwear brands, because all three are major footwear hubs, producing both legitimate footwear as well as counterfeit products. Putien still remains the largest counterfeit manufacturing area and has become the "name shoe" origin for high-quality counterfeit shoes. Brand efforts have not been successful so far in addressing this issue in Putien.

In FDRA's view, input from the central government is needed to ensure that China's IP laws and regulations are consistently applied. IPR enforcement still does not represent a high priority for some local governments that might perceive it as an obstacle to boosting local economic development. The level of priority, awareness, and expertise of the law enforcement officials also varies in different provinces or cities, with opportunities to improve cross-territory enforcement.

An area that is particularly important to brands and consumers is increasing protection for designs and trade dress. Ensuring adequate protection for designs and trade dress drives the innovation and entrepreneurship that will improve conditions for those living in China, and it will help prevent bad actors from defrauding consumers with similar-looking products. Although China technically recognizes trade dress registration as an available protection, the standards of

review are unclear and unrealistically high. This makes it very difficult to obtain registration or protection for a nontraditional mark for trade dress. Brand owners would benefit from standards of review that allow rightsholders to respond, so that trade dress can be granted in practice.

Difficulties of the Legal Landscape

In addition to shortcomings in IP enforcement, China's complex legal landscape poses many challenges for U.S. brands. Because China is a first-to-file jurisdiction, well-established U.S. brands may discover that an unrelated Chinese party has already registered their trademark, seeking to exploit the reputation of the U.S. brand or to force the American company to pay a fee to "buy back" the rights to its own trademark. FDRA member companies have expressed concerns about the significant increase of trademark filings. While there has been a reduction in both filing fees and the average time for the government to review these filings, this high volume makes it easier for bad-faith trademarks to register and gain approval. Legitimate brand owners are forced to file opposition and invalidation actions, which consumes limited resources from brands and government, and drives up costs for American companies. There has been little progress on efforts to advance new regulations or legislation to contain bad faith trademark filers that continue to flood the trademark office.

U.S. rights holders that endeavor to "work within the system" by filing claims in Chinese courts can sometimes face a difficult, unpredictable, lengthy, and costly process, especially if they seek protection from local courts. At times, local courts demonstrate a bias for the local defendant and a lack of understanding of IP matters. As civil actions increase, China should provide IP training to judges and court officials in order to facilitate more consistent application of the law across China, and it should also increase funding and staff to ensure adequate resources are in place for criminal IP enforcement.

Current Challenges in Online Markets

The significant growth in e-commerce creates unprecedented challenges for American companies on both U.S.-based and global online platforms. Because of the vast size of its population and the integration of technology and e-commerce platforms to reach Chinese consumers, this issue poses a particular challenge in China.

All Chinese e-commerce platforms need to take a more proactive approach to counterfeit products – an approach that requires filtering and removing illicit products, rather than relying on brands to trigger time-intensive and expensive takedown processes. Pinduoduo (PDD) is one of the largest online platforms in China hosting counterfeit products from many international brands with a focus on Chinese consumers. Rightsholders often find it very challenging and costly to manage take down notices and complaints related to the platform. Some FDRA member companies have reported that the platform demonstrates a lack of cooperation with brands and differing reasons for declining rightsholders' notices. The take down rate is very low while the volume of counterfeit products and listings offered are extremely high, making it impracticable for brands to get effective results.

As noted in past FDRA Special 301 comments, Alibaba's numerous e-commerce sites have also served as a significant source of counterfeit goods sold to U.S. and global consumers. The company has taken steps to address this issue, including the hiring of a well-respected executive to tackle IP infringement challenges, bolstering its hiring of IP enforcement staff, and greater engagement with rightsholders. However, much more needs to be done, considering the enormous size of these markets, the incredible potential for abuse, and the exponential growth in counterfeit goods sold on the platforms.

Collecting evidence and tracing back from online to offline to nail down the source has been a major challenge, with a heavy burden placed on the rightsholders. The growth of social media makes this issue even more difficult. As online IP enforcement has increasingly become a priority in China, a large number of enforcement officials need to be trained.

Outbound small parcels from China, triggered by cross-border e-commerce, also create a huge challenge when it comes to counterfeiting. Customs enforcement in China needs to do more inspection on the small parcels and share information with rightsholders. FDRA recommends increased investigation in this space, including greater collaboration and information sharing between law enforcement authorities and rightsholders.

Overall, the adequate protection of IPR benefits not only rightsholders and their American workers; it also benefits legitimate Chinese manufacturers and Chinese consumers. Because of these shared benefits, FDRA and its member companies will continue to work with stakeholders within China to foster improvements in the IP regime.

Vietnam

Vietnam is on the right track to develop an IP system that allows for growth and development. Authorities are open and willing to make changes to harmonize with international standards.

Maintaining a strong IP environment in Vietnam is critical for U.S. companies, because of the number of U.S. brands that produce footwear in the country. As the second largest supplier of footwear to the U.S. market, in 2019 Vietnam provided the U.S. 23 percent of footwear by volume and 29 percent by value. Excluding China and Vietnam, the rest of the world provided the U.S. only 15.4 percent of footwear by volume and 29.7 percent by value. When the Trump Administration placed 301 tariffs on Chinese-made footwear, many companies moved production from China to Vietnam in an effort to avoid the new tariffs – accelerating a sourcing shift that had already started.

As more and more brands have shifted production to Vietnam, counterfeiters have moved manufacturing to the country as well, where they manufacture not only pure counterfeits but also look-alike knockoffs. It is critical that the Vietnamese government proactively work to fight the surge of counterfeiting. To this end, the recently passed E-commerce Decree should strengthen customs enforcement processes in Vietnam. With the increase in e-commerce transactions and small shipments, FDRA recommends additional support and regulations focused on IPR infringements using e-commerce. One area where Vietnam has excelled in its IP enforcement is its excellent program to control the transshipment of counterfeits from China via Vietnam to

Laos, Cambodia, or Thailand. This program has established an effective control of counterfeit goods in the Southeast region.

We recommend that Vietnam also focus on providing greater clarity in the current laws for the recognition of nontraditional marks or trade dress. The National Office of Intellectual Property of Vietnam (NOIP) allows applications, but further guidance is needed on both the examination process and enforcement. In order for applications to be effective, there must be more structural support and consistency. In addition, Vietnam should harmonize the approach to well-known mark status to make it consistent with international norms. So far, the process does not seem to confer to brand owners any of the enforcement benefits typically seen in other jurisdictions.

Indonesia

Today, Indonesia is the third largest supplier of footwear to the U.S. market, accounting for 5.5 percent of U.S. footwear imports by volume and 7.4 percent by value. As the fourth largest country by population, it also serves as a key market for U.S. brands. The Indonesian government and intellectual property authorities have recently shown an interest in promoting substantial changes to the local IP environment. It remains vital for brands to have consistency in the administration and protection of IPR.

Unfortunately, Indonesia does not have sufficient laws in place to protect rightsowners. The customs system lacks a thorough processes for detaining suspicious products and seizing counterfeits. The criteria for rightsholders often proves unworkable, resulting in only a small number of cases and placing a huge burden on bonds and guarantees requirements and other obligations. When brands are able to stop shipments of suspicious counterfeits, there is often a lack of transparency by law enforcement and the informal system reinforces local protection.

With the significant increase in local production of legitimate footwear, FDRA member companies have also seen an increase in the local manufacturing of counterfeit products. FDRA recommends Indonesia takes proactive steps to address the counterfeiting problem. This includes a special focus on e-commerce, where Indonesia has a large potential for growth. Indonesia currently lacks the legal framework to tackle the large number of counterfeit goods sold online.

In addition, FDRA recommends that Indonesia review its trademark opposition proceedings. The Indonesian trademark office continues to have a very narrow interpretation of trademark rights, and in opposition proceedings, generally only decides cases in instances where the parties' mark and goods are nearly identical. Improving these procedures is critical to preventing infringers and counterfeiters from obtaining "similar" but not quite identical trademark registrations. In addition, the trademark office should promote a thorough review of the current invalidation/cancellation/opposition appeals process. Today, once a decision is made in an opposition, the only additional recourse by the brand owner is to file costly and time-consuming civil litigation.

India

India continues to grow in terms of footwear production for the U.S. market, particularly for leather upper footwear. In 2021, India's volume share of U.S. leather footwear imports climbed to a record 4.4 percent of total footwear imports. In addition, India has the world's second largest population. With a growing economy, India will continue to become increasingly important as a key market of footwear consumers.

FDRA recommends that India focus its efforts on effectively implementing its IP laws and continuing to hire and train IP officials. Its trademark office (TMO) has an opportunity to modernize its manual procedures for IP protections. The TMO continues to require outdated modes of document authentication and signatures and still heavily relies on paper (as opposed to electronic) methods for pleadings and evidence submission. For example, due to the style of pleading and presentation of evidence, submissions are routinely 40 to 50 pages long. Per requirements of the TMO, each page of the submission must be signed for authentication (i.e., one filing, in one case, can easily require being signed 50 times).

Currently the 10-year trademark backlog at the courts effectively prevents brands from filing utility patents and trademarks in the country. The value of having the protection is lost during the long exam processing time. There is also an opportunity to elevate the protection for famous marks. There is a pilot program called "Famous Mark Registry" initiated by the TMO. However, the well-known status is granted only by enforcement decisions at the TMO or court decisions. The program would benefit from having rules, standards, and timelines established to allow for brands to effectively participate in the process.

Mexico

Mexico remains an important sourcing country for many brands, and Mexico's volume share of total U.S. footwear imports rebounded in 2021 to 0.9 percent of total footwear imports, an 18-year high. There are also positive developments in Mexico regarding the enforcement of IPR rights. First, Mexico continues to develop a strong environment that supports equal recognition and enforcement of trade dress rights, a key issue for many U.S. brands. In addition, the Mexican Institute of Industrial Property (IPMI) has been highly supportive of enforcement (oppositions and invalidations) in cases of recognized well-known marks.

At the same time, existing provisions in Mexico's Customs Law only provide authorities with *ex-officio* power to initiate border measures – not to make determinations, seize, and destroy IP infringing goods. For goods that are suspected of IPR infringement, an order must still be obtained from either the IMPI or the Attorney General's Office to initiate inspection and detainment. The administrative action is usually helpful when the infringer is a well-established business and there is a way of finding a domicile for notifications. The downside is that, as the proceeding is executed at trial, the costs are extremely high for rightsholders. As a result, the criminal option has become the preferred go-to action for rightsholders to enforce, especially through the AGO's Specialized Unit dedicated to investigating crimes against copyrights and industrial property. Nonetheless, recent budget cuts by the Mexican government have impacted the AGO's Specialized Unit activity, which results in less action towards infringing goods. We

encourage the Mexican government to advance its enforcement framework by adding power for Customs to seize and destroy counterfeit goods independently.

As we see the increase of e-commerce and the prevalence of small shipments, there is a strong need for the Mexican government to work with online platforms and rightsholders to implement preventive and proactive measures to tackle the increase in counterfeits online. This includes 1) implementing registration requirements for third-party sellers that allow the authentication of both seller and product; 2) blocking offers for suspicious counterfeit products; 3) banning repeat offenders; and 4) preventing banned offenders from re-registering on the platform.

Brazil

Brazil's volume share of total U.S. footwear imports has seen an increase, rebounding in 2021 to 0.6 percent of total footwear imports, an 11-year high. However, government support for IP enforcement against counterfeiting is slim in Brazil.

Efforts like the one of the São Paulo City Hall with Customs, Federal Revenue, and State Police call attention to the level of coordination and results in São Paulo downtown, one of the main hubs for distribution of counterfeit goods in the country. The task force seized tons of counterfeit products and pushed not only to close, but to maintain closure of, the malls. In addition to the work of this task force, the Federal Highway Police have done an excellent job seizing thousands of counterfeit products on the Brazilian roads.

The National Council against Piracy and Intellectual Property Crimes (CNCP), a public/private body created within the framework of the Ministry of Justice, in recent years has promoted coordinated work between platforms and rightsholders that resulted in the issuance of two relevant guides: (i) Best Practices Guide for Internet Platforms; and (ii) Guidelines for the implementation of anti-piracy measures by the Government, Right Holders, Payment Service Providers, and Intermediaries. Although these Guides are nonbinding, they have created a framework used to leverage the cooperation among some Internet platforms and rightsholders to establish best practices and collaborate to reduce the offer of counterfeits sold online.

Despite these positive efforts, Brazil lacks proper legislation to allow the effective protection of rightsholders against IP infringements. The Brazilian Industrial Property Law still has lower penalties for crimes against counterfeits than those applied to many other crimes. The bill number 333/1999 amends the Law n°. 9279/96 (Brazilian Industrial Property Law) to bring the authorized terms of imprisonment for crimes related to counterfeiting in line with those available for copyright offenses. The impact of this provision is to allow for the possibility of conducting criminal cases against offenders. The bill remains pending a final voting for approval at Congress, after having been approved by both the Senate and Lower House in the past legislatures.

Another area of attention is the need to clarify and harmonize customs procedures related to the seizure of counterfeit goods. Brazil should implement a system for registering trademarks at Customs ("Recordation System") to regulate existing standards in TRIPS, reduce costs, and

simplify the process. This would represent a great advancement and an effective tool to address issues of interpretation of Brazilian legislation regarding customs procedures.

In addition to the lack of proper IP legislation and a complex customs system, imported consumer goods in Brazil are often more highly priced than in other markets. These high prices fuel the local manufacturing and the smuggling of counterfeit goods onto the informal market. In fact, a very high percentage of the counterfeit goods sold in Brazil come from local manufacturing. Nova Serrana city, Minas Gerais State, counts more counterfeit factories than legitimate ones. FDRA members, which are amongst the more popular consumer brands in Brazil, must often bring their own civil actions to try to seize counterfeit goods with limited support from the government. The United States should pressure Brazil to combat the flagrant manufacturing and selling of counterfeit merchandise throughout the country.

Additional Countries of Interest

- **Algeria:** Algerian Customs was previously one of the most active anticounterfeiting authorities in Africa, but the situation has changed since 2018. Annaba port, the largest port in the country, remains the main destination of inbound and outbound counterfeit shipments. The port offers no follow-up system for rightsholders (online for instance). For this reason, rightsholders must travel from Algiers to the far port of Annaba to follow up or file the case's documents, resulting in a lengthy and demanding process. In addition, the process lacks transparency and often results in delays, because rightsholders must file complaints against each subject before the courts. Not only does this make the process burdensome; it could lead to information leakage. A system that allows information sharing between rightsholders and authorities is critical for brand protection.
- **European Union (EU):** Footwear companies have partnered well with EU-wide entities to coordinate IP policy and effectively crack down on trade in counterfeit goods. FDRA member companies have participated in the multi-stakeholder Observatory on Counterfeiting and worked with EU member states such as France and Italy on IP enforcement. We applaud the EU Commission's increased focus on IPR, and we are closely monitoring the developments of the unified patent system and the review of the Design Directive. Regarding enforcement, we encourage law enforcement and Customs throughout the EU to prioritize stopping illicit footwear at European ports. In addition, the EU should work to modernize and reinforce its legal framework to better combat online counterfeiting. These reforms should implement best practices to help platforms reduce the sale of counterfeits online, including: 1) seller identification; 2) information disclosure to consumers; 3) transparency and easy access of terms and conditions; 4) efficient "notice and take down" mechanisms, including deadlines; and 5) banning repeat offenders from using the platform.
- **Egypt:** Egypt is a significant market for Chinese counterfeit goods. Recently the Egyptian government took measures to prevent the importation of substandard goods, but the level of IP protection and enforcement has not changed. The current legal system should be reviewed to ensure that it aligns with international standards. The commercial courts in Egypt deal with IP cases amongst many others. FDRA members have observed

some developments in the court system (e.g. timeline of IP cases, decisions are rendered within 9 months). While decisions in the courts can provide some level of deterrents for counterfeiters, enforcement is not an easy process; enforcement might take years and cost more than what a rightsholder is awarded. In addition, rightsholders do not have visibility on actions taken by law enforcement agencies, especially Customs.

- **Japan:** As we have seen in numerous countries, the volume of small shipments imported creates challenges for IP enforcement. We are encouraged by the new regulation in Japan that withdraws the exemption to detain suspicious products at Customs based on being an item for personal use; we expect the new legislation to come into effect later in 2022. This will significantly strengthen enforcement in this area.
- **Morocco:** The Moroccan government has recently reintroduced the free trade zones as key motivators for the economy. As IP regulation and enforcement are non-existing in such areas, these zones have become attractive to illegitimate businesses and generated interest from Chinese counterfeiters. One important zone, the Tanger Free Zone, is used for exportation into Mauritania and Europe. In addition to these enforcement gaps in Morocco, the criminal courts take time to render decisions and lack sufficient damages to deter counterfeiting. On the other hand, when the cases are brought before the commercial courts (specialized IP courts), cases are judged in a reasonable time and damages reflect guidelines provided by the law in force. However, rightsholders do not have visibility on what happens to seizures. There is no formal destruction procedure, and rightsholders only occasionally receive notice of seizures and destructions.
- **Russia:** Massive markets of counterfeit goods, both physical and online, continue to flourish in Russia. Enforcement procedures are generally slow and inefficient. The procedure for the destruction of seized counterfeit goods does not provide an obligation to inform the rightsholders, and rightsholders are not invited to participate in the process and to verify whether the goods are actually destroyed. In addition, from the rightsholder perspective, the mandatory labeling implemented for products imported into Russia has not served the initial purpose to control counterfeits. The measure initially aimed to reduce the availability of counterfeits accessing the Russian markets, but it has in fact created a new issue for rightsholders, leaving brands and consumers vulnerable. The lack of a verification system and collaboration with rightsholders continues to allow codes to be applied to any product including counterfeit products, without control, since the labels became mandatory for products imported into the country.
- **Saudi Arabia:** Saudi Arabia has laws in place that allow for effective implementation processes for the protection of IPR. The country's shift of IP enforcement to the Saudi Authority for Intellectual Property (SAIP) has resulted in a dramatic increase in the number of cases of enforcement. These actions were previously handled by the Ministry of Commerce, with limited resources and a low interest in tackling counterfeits. SAIP has recently focused efforts on cleaning up Saudi markets. As enforcement grows, we recommend increasing transparency and information sharing with rightsholders. Customs seizures are usually destroyed within a few weeks of the notified action. However, on some occasions, seizures are re-exported. A system that could report the detention of suspicious products in a harmonized way could help prevent the re-exportation. The court

process is slow, and Saudi Arabia lacks IP specialized commercial courts. One positive aspect of the system is that rightsholders are not required to pay any government fees while bringing complaints or seeking enforcement against counterfeits.

- **South Korea:** The Korean Intellectual Property Office (KIPO) is one of the more progressive offices in terms of its recognition, having a continuous process to clarify and improve the rules. Courts have a strong process for IP with easy access, knowledgeable practitioners, and well-developed IP jurisprudence. It is one of the more advanced countries in terms of recognition and enforcement of non-traditional rights of registered and nonregistered marks. Korea's customs processes and efforts to partner with brands have resulted in an effective management of small parcels at the border. Korea Customs provides the best practices on the interception of small parcels. The Korean government has also been focused on ensuring a cleaner online marketplace with less counterfeits. The IP challenges in Korea remains around cross-border e-commerce that originates mostly in China or other countries without a physical location in Korea. As a next step, we recommend increasing law enforcement collaboration on cross-border issues.
- **Turkey:** Turkey has not effectively prioritized counterfeits, as crimes related to IP are generally perceived as minor crimes. The number of specialized courts has decreased. This requires applications for search warrants through the criminal court system, where evidence submitted by rightsholders is often challenged, despite rightsholders having robust evidence in many instances. Some public prosecutors' offices fail to request a seizure warrant from the courts for goods intercepted by Customs. There is also a failure to provide full protection of trademark rights for transit goods at Customs as well as a failure to apply the "quick destruction" of counterfeit goods despite provisions in Turkey's IP laws.
- **United Arab Emirates (UAE):** The level of IP protection and enforcement has remained stable in the UAE. We appreciate the government's outreach to stakeholders to discuss solutions to IP issues, especially in preparation for EXPO Dubai. Despite efforts by law enforcement to work with brands to combat counterfeits, rightsholders do not have visibility on what occurs to goods seized by the Dubai Economic Department and other government agencies. Products for seizures are still re-exported based on the UAE Federal Law 37/1992 that allows the re-exportation of the substandard/soiled goods only. While Dubai Customs has recently shown an increased interest in combatting counterfeits, we believe officials across the country should play a bigger role, given the large quantities of counterfeits entering the UAE. Almost 50 percent of counterfeits in the UAE are imported and sold by traders of the Ajman China mall. The Ajman government conducted a series of sweep actions against counterfeiters inside the mall for the first time since its opening. This has resulted in bringing the visibility of counterfeits to nearly zero, but illicit traders are still using some locked shops to store counterfeits and selling products only to their closed trusted groups of resellers.
- **United Kingdom (UK):** The UK government and UK Intellectual Property Office have started a review of its national IP legislation and recently opened a consultation on design legislation. FDRA member companies would like to see the fair and equal recognition of trade dress marks in the UK. We believe there is an opportunity for the UK to be a leader

in this space in the region. We also applaud the UK government for maintaining the IPR exhaustion regime between the EU and the UK, providing certainty for rightsholders.

Conclusion

FDRA appreciates the opportunity to submit comments on the challenges faced by our member companies around the world in the protection of their IP rights. As leading global innovators, our members are driving advancements in product design never before seen. Our industry stands on the cusp of innovations that will alter the way global footwear manufacturers produce footwear and consumers purchase footwear. Now more than ever it is vitally important that the U.S. government work to protect these innovations, designs, brands, and images worldwide.

We stand ready to work with USTR to bolster respect for, and enforcement of, IP by our trading partners. Doing so protects American jobs and benefits U.S. consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Priest".

Matt Priest
President & CEO
Footwear Distributors and Retailers of America