

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS-EASTERN DIVISION**

CONTI-BROS, INC.,)	
)	
)	
Plaintiff,)	
)	Civil Action No. 21-cv-2352
)	
v.)	
)	
)	
THE PARTNERSHIPS AND)	
UNINCORPORATED ASSOCIATIONS)	<u>DEMAND FOR JURY TRIAL</u>
IDENTIFIED IN SCHEDULE "A",)	
)	
)	
Defendants.)	

COMPLAINT

Plaintiff Conti-Bros, Inc. ("Plaintiff"), by and through its undersigned counsel, hereby files this Complaint against the partnerships and unincorporated associations identified in Schedule "A" (together, "Defendants"). In support thereof, Plaintiff states as follows:

I. JURISDICTION AND VENUE

1. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, et seq., 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331. This Court has jurisdiction over the claims in this action that arise under the laws of the State of Illinois pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendants, since each Defendant directly targets business activities toward consumers in the United States, including Illinois, through their

operation of or assistance in the operation of the fully interactive, commercial Internet stores operating under the Defendant domain names and/or the Defendant Internet Stores identified in Schedule A. Specifically, each of the Defendants are directly reaching out to do business with Illinois residents by operating or assisting in the operation of one or more commercial, interactive e-commerce stores that sell products using counterfeit versions of Plaintiff's federally registered trademarks directly to Illinois consumers. In short, each Defendant is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the state of Illinois.

II. INTRODUCTION

3. This action has been filed by Plaintiff to combat online counterfeiters and infringers who trade upon Plaintiff's reputation and goodwill by selling and/or offering for sale unauthorized and unlicensed counterfeit and infringing products, including magnetic organizational products, using counterfeit versions of Plaintiff's federally trademarked BottleLoft product (U.S. Reg. No. 5702004, attached as **Exhibit 1**). The Defendants create Internet stores ("the Defendant Internet Stores") by the dozens and design them to appear to be selling genuine copies of Plaintiff's BottleLoft product, while actually selling counterfeit versions to unknowing consumers.

4. The Defendant Internet Stores share unique identifiers, such as design elements and similarities of the counterfeit BottleLoft product offered for sale and, on information and belief, these similarities suggest that the Defendant Internet Stores share common manufacturing sources, thereby establishing that Defendants' counterfeiting and infringement operation arises out of the same transaction, occurrence, or series of transactions or occurrences. Defendants attempt to avoid liability by going to great lengths to conceal both their identities and the full

scope and interworking of their counterfeiting operation, including changing the names of their stores multiple times, opening new stores, helping their friends open stores, and making subtle changes to their products. Plaintiff is forced to file this action to combat Defendants' counterfeiting and willful infringement of Plaintiff's registered trademarks, as well as to protect unknowing consumers from purchasing counterfeit BottleLoft products over the Internet. Plaintiff has been and continues to be irreparably damaged through consumer confusion, dilution, and tarnishment of its valuable trademarks as a result of Defendants' actions and seek injunctive and monetary relief.

III. THE PARTIES

Plaintiff Conti-Bros, Inc.

5. Plaintiff is a North Carolina corporation and is the creator and seller of high-quality organizational magnetic products. Plaintiff sells these organizational magnetic products through its brand Strong Like Bull Magnets. Plaintiff's most unique product is the BottleLoft, which is an adhesive strip containing three specialized magnets which are the used to suspend bottles from the bottom of a refrigerator shelf, ceiling, or any surface from which conductive material facilitates suspension of items from the magnets in the strip.

6. Plaintiff started its brand Strong Like Bull Magnets and product BottleLoft through the Kickstarter fundraising platform in 2014. Plaintiff's founder and innovator created the unique BottleLoft design after finding a need to create more organization in a refrigerator and efficiently used traditionally unused refrigerator space.¹ The Kickstarter website page for initial product and brand funding details Plaintiff's founder's original design, idea, and inspiration behind the BottleLoft product. Plaintiff's unique product has been advertised with its federally

¹ Brian Conti, *bottleLoft... by Strong Like Bull Magnets*, KICKSTARTER (last updated Oct. 14, 2014), <https://www.kickstarter.com/projects/bc7/bottleloft-by-strong-like-bull-magnets>.

registered trademark for several years. Plaintiff continues to heavily advertise its unique BottleLoft product through advertisements demonstrating both its technology and trademarked name through several social media distribution channels. Its advertisements feature original content and reviews for the BottleLoft product.

7. BottleLoft is a recognized product that has been featured in nationally distributed media sources, such as Today,² Business Insider,³ and Good Housekeeping.⁴ Plaintiff's trademarked product BottleLoft is also regularly featured on "must buy" lists for unique gift ideas and other storage solutions from nationally distributed media sources, such as BuzzFeed,⁵ Thrillist,⁶ and Country Living.⁷ BottleLoft has been positively reviewed on numerous sites that sell its genuine and federally trademarked product.

8. Plaintiff is engaged in the business of manufacturing, distributing and retailing these high-quality magnetic organizational products, such as the BottleLoft, within the Northern District of Illinois under the Federally registered trademark BOTTLELOFT. Defendants' sales of the counterfeit BottleLoft product in violation of Plaintiff's intellectual property rights are irreparably damaging Plaintiff.

² Kerry Breen, *Fall-detection technology and 3 home gadgets that will improve your life*, TODAY (Jan. 25, 2019, 9:32 AM), <https://www.today.com/home/fall-detection-technology-3-home-gadgets-will-improve-your-life-t147366>.

³ Leon Siciliano, *These magnetic strips stop your beer rolling around the fridge*, BUSINESS INSIDER (Dec. 29, 2016, 9:55 AM), <https://www.businessinsider.com/bottleloft-magnetic-strips-free-up-space-fridge-beer-storage-food-hack-2016-12>.

⁴ Shannon Meglente, *9 Genius Ways to Get Your Most Organized Fridge Ever: Everything. In. Its. Place.*, GOOD HOUSEKEEPING (Jun. 7, 2019, last visited Apr. 12, 2021), <https://www.goodhousekeeping.com/home/organizing/g27785696/best-refrigerator-organizers/>.

⁵ Elizabeth Lilly, *21 Clever Ways To Keep Everything In Your Refrigerator Organized*, BUZZFEED (Apr. 4, 2020, last visited Apr. 12, 2021), <https://www.buzzfeed.com/elizabethlilly/clever-ways-to-keep-everything-in-your-refrigerator-2020>.

⁶ Laura Reilly, *The Best Gear to Organize Your Bar*, THRILLIST (Nov. 28, 2016, 6:29 PM), <https://www.thrillist.com/culture/diy-home-bar-plans-7-things-your-home-bar-absolutely-needs>.

⁷ Carmen Collins, *50 Best Gift Ideas for Men Who Claim They "Don't Need Anything"*, COUNTRY LIVING (Jan. 29, 2021, last visited Apr. 12, 2021), <https://www.countryliving.com/shopping/gifts/tips/g1528/gift-ideas-for-men/>.

9. Plaintiff's brand, symbolized by the BOTTLELOFT trademark, is a recognized brand of high-quality and unique organizational magnets. The BOTTLELOFT trademark is distinctive and identifies the merchandise as goods from Plaintiff. The registration for the BOTTLELOFT trademark constitutes prima facie evidence of its validity and of Plaintiff's exclusive right to use the BOTTLELOFT trademark pursuant to 15 U.S.C. § 1057(b). The BOTTLELOFT trademark has been continuously used and never abandoned since its 2019 registration.

10. Plaintiff uses the BOTTLELOFT trademark to identify its goods. The BOTTLELOFT trademark is distinct when it is applied to Plaintiff's organizational magnet product, signaling to the purchaser and consumer that the products are from Plaintiff and are made and manufactured to Plaintiff's original specificity and standards. Further, the use of the word elements "bottle" and "loft" together in advertising of the BottleLoft product are unique to Plaintiff.

11. Since its initial launch of the original BottleLoft product as of its claimed first use in commerce date of October 31, 2014, Plaintiff's trademark and works have been the subject of substantial and continuous marketing and promotion by the Plaintiff throughout the United States and, due to its strong internet presence, throughout the entire world. Plaintiff has and continues to widely promote and market its trademark to customers and the general public, and on Plaintiff's website.

12. Plaintiff has expended substantial time, money, and other resources in developing, advertising, and otherwise promoting the BOTTLELOFT trademark. As a result, customers and consumers recognize that products bearing the distinctive BOTTLELOFT trademark originate exclusively with Plaintiff.

THE DEFENDANTS

13. Defendants are individuals and entities who, upon information and belief, reside in the People's Republic of China or other foreign jurisdictions. Defendants conduct business throughout the United States, including within the state of Illinois and in this Judicial District, through the operation of the fully interactive commercial websites and online commercial marketplaces operating under the Defendant Internet Stores. Each Defendant targets the United States, including Illinois, and has offered to sell and, on information and belief, has sold and continues to sell counterfeit BottleLoft products to consumers within the United States, including Illinois and in this Judicial District.

14. Defendants are an interrelated group of counterfeiters and infringers, who create numerous Defendant Internet Stores and design these stores to appear to be selling genuine Plaintiff BottleLoft products, while they actually sell inferior imitations of Plaintiff's BottleLoft product. The Defendant Internet Stores share unique identifiers, such as common design elements, the same or similar counterfeit BottleLoft product that they offer for sale, similar counterfeit BottleLoft product descriptions, the same or substantially similar shopping cart platforms, accepted payment methods, check-out methods, lack of contact information, identically or similarly priced counterfeit BottleLoft product and volume sale discounts, establishing a logical relationship between them and suggesting that Defendants' illegal operations arise out of the same transaction or occurrence. Tactics used by Defendants to conceal their identities and the full scope of their counterfeiting operation make it virtually impossible for Plaintiff to learn the precise scope and the exact interworking of their counterfeit network. In the event that Defendants provide additional credible information regarding their identities, Plaintiff will take appropriate steps to amend the Complaint.

THE DEFENDANTS' UNLAWFUL CONDUCT

15. The success of Plaintiff's brand has resulted in significant counterfeiting and infringement. Consequently, Plaintiff has identified numerous marketplace listings on eCommerce platforms such as, but not limited to, eBay, WISH, Amazon, DHGate, AliExpress, Alibaba, and Newegg, including the Defendant Aliases, which have been offering for sale, selling, and exporting illegal products to consumers in this Judicial District and throughout the United States. Defendants have persisted in creating the Defendant Aliases. eCommerce sales, including eCommerce Internet Stores like those of Defendants, have resulted in a sharp increase in the shipment of unauthorized products into the United States. *See Exhibit 2*, Department of Homeland Security, *Fiscal Year 2019 Seizure Statistics Report*. According to Customs and Border Patrol's ("CBP") report, over 90% of all CBP intellectual property seizures were smaller international mail and express shipments (as opposed to large shipping containers). *Id.* Approximately 85% of CBP seizures originated from mainland China and Hong Kong. *Id.* Counterfeit and pirated products account for billions of dollars in economic losses, resulting in tens of thousands of lost jobs for legitimate businesses and broader economic losses, including lost tax revenue.

16. Counterfeiting rings are able to take advantage of the anonymity provided by the Internet which allows them to evade enforcement efforts to combat counterfeiting. For example, counterfeiters take advantage of the fact that marketplace platforms do not adequately subject new sellers to verification and confirmation of their identities, allowing counterfeiters to "routinely use false or inaccurate names and addresses when registering with these Internet platforms." *See Exhibit 3*, Daniel C.K. Chow, Alibaba, Amazon, and Counterfeiting in the Age of the Internet, 41 NW. J. INT'L. L. & BUS. 24 (2020). Additionally, "Internet commerce

platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of counterfeits and counterfeiters.” *Id.* at 25. Therefore, with the absence of regulation, Defendants may and do garner sales from Illinois residents by setting up and operating eCommerce Internet Stores that target United States consumers using one or more aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars, and, on information and belief, have sold counterfeit products to residents of Illinois.

17. Upon information and belief, at all times relevant hereto, the Defendants in this action have had full knowledge of Plaintiff’s ownership of the BOTTLELOFT trademark, including its exclusive right to use and license such intellectual property and the goodwill associated therewith. Defendants Internet Stores also use the same pictures to advertise their counterfeit BottleLoft product that Plaintiff uses on its webpage to sell and advertise its genuine and original BottleLoft product.

18. Defendants often go to great lengths to conceal their identities by using multiple fictitious names and addresses to register and operate their massive network of Defendant Internet Stores. Other Defendant domain names often use privacy services that conceal the owners’ identity and contact information. Upon information and belief, Defendants regularly create new websites and online marketplace accounts on various platforms using the identities listed in Schedule A of the Complaint, as well as other unknown fictitious names and addresses. Such Defendant Internet Store registration patterns are one of the many common tactics used by the Defendants to conceal their identities, the full scope and interworking of their massive counterfeiting operation, and to avoid being shut down.

19. The counterfeit BottleLoft products for sale in the Defendant Internet Stores bear similarities and indicia of being related to one another, suggesting that the counterfeit BottleLoft

products were manufactured by and come from a common source and that, upon information and belief, Defendants are interrelated.

20. Upon information and belief, Defendants also deceive unknowing customers by using the BOTTLELOFT trademark without authorization within the content, text, and/or meta tags of their websites to attract various search engines on the Internet looking for websites relevant to consumer searches for Plaintiff's BottleLoft product. Additionally, upon information and belief, Defendants use other unauthorized search engine optimization tactics and social media spamming to ensure that the Defendant Internet Stores listings show up at or near the top of relevant search results after others are shut down. As such, Plaintiff also seeks to disable Defendant domain names owned by Defendants that are the means by which the Defendants could continue to sell counterfeit BottleLoft products.

21. Defendants' use of the trademark on or in connection with the advertising, marketing, distribution, offering for sale, and sale of the counterfeit BottleLoft products is likely to cause and has caused confusion, mistake, and deception by and among consumers and is irreparably harming Plaintiff. Defendants have manufactured, imported, distributed, offered for sale, and sold counterfeit BottleLoft products using the BOTTLELOFT trademark and continue to do so.

22. Defendants, without authorization or license from Plaintiff, knowingly and willfully used and continue to use the BOTTLELOFT trademark in connection with the advertisement, offer for sale, and sale of the counterfeit BottleLoft products, through, inter alia, the Internet. The counterfeit BottleLoft products are not genuine BottleLoft products of the Plaintiff. The Plaintiff did not manufacture, inspect, or package the counterfeit BottleLoft products and did not approve the counterfeit BottleLoft products for sale or distribution. Each of

the Defendants Internet Stores offers shipping to the United States, including Illinois, and, on information and belief, each Defendant has sold counterfeit BottleLoft products into the United States, including Illinois.

23. Upon information and belief, Defendants will continue to register or acquire listings for the purpose of selling counterfeit BottleLoft products that infringe upon the BOTTLELOFT trademark unless preliminarily and permanently enjoined.

24. Defendants' use of the BOTTLELOFT trademark in connection with the advertising, distribution, offering for sale, and sale of counterfeit BottleLoft products, including the sale of counterfeit BottleLoft products into Illinois, is likely to cause and has caused confusion, mistake, and deception by and among consumers and is irreparably harming Plaintiff.

COUNT I
TRADEMARK INFRINGEMENT AND COUNTERFEITING (15 U.S.C. § 1114)

25. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 24.

26. This is a trademark infringement and counterfeit action against Defendants based on their unauthorized use in commerce of counterfeit imitations of the federally registered BOTTLELOFT Trademark in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. The BOTTLELOFT Trademark is a distinctive mark. Consumers have come to expect the highest quality from Plaintiff's products provided under Plaintiff's Trademark.

27. Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products in connection with Plaintiff's Trademark without Plaintiff's permission.

28. Plaintiff is the exclusive owner of Plaintiff's Trademark. Plaintiff's United States Registration for Plaintiff's Trademark (**Exhibit 1**) is in full force and effect. Upon information and belief, Defendants have knowledge of Plaintiff's rights in Plaintiff's Trademark and are willfully infringing and intentionally using counterfeits of Plaintiff's Trademark. Defendants' willful, intentional, and unauthorized use of Plaintiff's Trademark are likely to cause and is causing confusion, mistake, and deception as to the origin and quality of the counterfeit goods among the general consuming public.

29. Defendants' activities constitute willful trademark infringement and counterfeiting under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

30. Plaintiff has no adequate remedy at law, and if Defendants' actions are not enjoined, Plaintiff will continue to suffer irreparable harm to its reputation and the goodwill of its well-known Plaintiff's Trademark.

31. The injuries sustained by Plaintiff have been directly and proximately caused by Defendants' wrongful reproduction, use, advertisement, promotion, offering to sell, and sale of counterfeit Plaintiff's BottleLoft product.

COUNT II

FALSE DESIGNATION OF ORIGIN

32. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 31.

33. Defendants' promotion, marketing, offering for sale, and sale of infringing and counterfeit BottleLoft branded product has created and is creating a likelihood of confusion, mistake, and deception among the general public as to the affiliation, connection, or association with Plaintiff or the origin, sponsorship, or approval of Defendants' counterfeit version of Plaintiff's BottleLoft product.

34. By using Plaintiff's Trademark in connection with the sale of counterfeit BottleLoft product, Defendants create a false designation of origin and a misleading representation of the fact as to the origin and sponsorship of the counterfeit Plaintiff's BottleLoft product.

35. Defendants' false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the counterfeit BottleLoft product to the general public is a willful violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

36. Plaintiff has no adequate remedy at law and, if Defendants' actions are not enjoined, Plaintiff will continue to suffer irreparable harm to its reputation and the goodwill of its brand.

COUNT III
VIOLATION OF ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT
(815 ILCS § 510, et seq.)

37. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 36.

38. Defendants have engaged in acts violating Illinois law including, but not limited to, passing off their counterfeit BottleLoft product as those of Plaintiff, causing a likelihood of confusion and/or misunderstanding as to the source of their goods, causing a likelihood of confusion and/or misunderstanding as to an affiliation, connection, or association with Plaintiff's genuine BottleLoft product, representing that their products have Plaintiff's approval when they do not, and engaging in other conduct which creates a likelihood of confusion or misunderstanding among the public.

39. The foregoing Defendants' acts constitute a willful violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510, et seq.

40. Plaintiff has no adequate remedy at law, and Defendants' conduct has caused Plaintiff to suffer damage to its reputation and goodwill. Unless enjoined by this Court, Plaintiff will suffer future irreparable harm as a direct result of Defendants' unlawful activities.

COUNT IV
CIVIL CONSPIRACY

41. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 40.

42. Plaintiff is informed and believe and thereon alleges that Defendants knowingly and voluntarily entered into a scheme and agreement to engage in a combination of unlawful acts and misconduct including, without limitation, a concerted and collaborated effort to maintain the distribution, marketing, advertising, shipping, offering for sale, or sale of counterfeit BottleLoft products in violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510, et seq.

43. The intent, purpose, and objective of the conspiracy and the underlying combination of unlawful acts and misconduct committed by the Defendants was to undermine Plaintiff and its business by unfairly competing against it as described above.

44. The Defendants each understood and accepted the foregoing scheme and agreed to do their respective part, to further accomplish the foregoing intent, purpose, and objective. Thus, by entering into the conspiracy, each Defendant has deliberately, willfully, and maliciously permitted, encouraged, and/or induced all of the foregoing unlawful acts and misconduct.

45. As a direct and proximate cause of the unlawful acts and misconduct undertaken by each Defendant in furtherance of the conspiracy, Plaintiff has sustained, and unless each Defendant is restrained and enjoined, will continue to sustain severe, immediate, and irreparable harm, damage, and injury for which Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. That Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all other persons acting for, with, by, through, under, or in active concert with them be temporarily preliminary, and permanently enjoined and restrained from:

- a. Using Plaintiff's Trademark in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine Plaintiff's product, or is not authorized by Plaintiff to be sold in connection with Plaintiff's Trademark;
- b. Passing off, inducing, or enabling others to sell or pass off any product as a genuine Plaintiff's product or any other product produced by Plaintiff that is not Plaintiff's or not produced under the authority, control, or supervision of Plaintiff and approved by Plaintiff for sale under Plaintiff's Trademark and associated with or derived from Plaintiff's Trademark;
- c. Committing any acts calculated to cause consumers to believe that Defendants' counterfeit BottleLoft product is those sold under the authority, control, or supervision of Plaintiff, or are sponsored by, approved of, or otherwise connected with Plaintiff;
- d. Further infringing Plaintiff's Trademark and damaging Plaintiff's goodwill;
- e. Otherwise competing unfairly with Plaintiff in any manner;
- f. Shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiff, nor authorized by

Plaintiff to be sold or offered for sale, and which bear any Plaintiff's Trademark, or any reproductions, counterfeit copies, or colorable imitations thereof;

- g. Selling or transferring control of the Defendant Internet Stores, or any other domain name or online marketplace account that is being used to sell or is the means by which Defendants could continue to sell counterfeit BottleLoft product;
and,
- h. Offering for sale, or sale of any product bearing the Plaintiff's mark or reproduction, counterfeit copy or colorable imitation therefor that is not a genuine product or not authorized by Plaintiff to be sold in connection with the Plaintiff's mark; and,
- i. Registering any additional domain names that use or incorporate any of the Plaintiff's mark; and,

2. That Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by through, under, or in active concert with them be temporarily, preliminarily, and permanently enjoined and restrained from:

- i. Displaying images protected by the Plaintiff's trademark in connection with the distribution, advertising, offer for sale and/or sale of any product that is not a genuine product of Plaintiff's or is not authorized by Plaintiff to be sold in connection with the Plaintiff's trademark; and
- ii. Shipping, delivering, holding for same, distributing, returning, transferring, or otherwise moving, storing, or disposing of in any manner products or

inventory not manufactured by or for Plaintiff, not authorized by Plaintiff to be sold or offered for sale, and protected by the Plaintiff's trademark or any reproductions, counterfeit copies, or colorable imitations thereof; and,

3. That Defendants, within fourteen (14) days after service of judgment with notice of entry thereof upon them, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth in detail the manner and form in which Defendants have complied with any and all injunctive relief ordered by this Court;

4. Entry of an Order that, upon Plaintiff's request, those in privity with Defendants and those with notice of the injunction, including any online marketplaces such as: Amazon and Alibaba Group Holding Ltd., Alipay.com Co., Ltd. and any related Alibaba entities (collectively "Alibaba"); social media platforms such as: Facebook, YouTube, LinkedIn, Twitter; Internet search engines such as Google, Bing, and Yahoo; webhosts for the Defendants Domain Names, and domain name registrars, that are provided with notice of the injunction, cease facilitating access to any or all webstore product listings through which Defendants engage in the sale of counterfeit BottleLoft products using the Plaintiff's mark;

5. That Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged, and that the amount of damages for infringement of Plaintiff's Trademark be increased by a sum not exceeding three times the amount thereof as provided by 15 U.S.C. § 1117;

6. For Judgment in favor of Plaintiff against Defendants that they have: (a) willfully infringed Plaintiff's rights in its federal registered trademark pursuant to 15 U.S.C. § 1114; and (b) otherwise injured the business reputation and business of Plaintiff by Defendants' acts and conduct set forth in this Complaint;

7. For Judgment in favor of Plaintiff against Defendants for actual damages or statutory damages pursuant to 15 U.S.C. § 1117, at the election of Plaintiffs, in an amount to be determined at trial;

8. In the alternative, that Plaintiff be awarded statutory damages pursuant to 15 U.S.C. § 1117(c)(2) of \$2,000,000 for each and every use of Plaintiff's Trademark;

9. That Plaintiff be awarded its reasonable attorneys' fees and costs; and,

10. That Plaintiff be awarded any and all other relief that this Court deems equitable and just.

Dated: May 1, 2021

Respectfully submitted,

/s/James E. Judge/
Zareefa B. Flener (IL Bar No. 6281397)
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No.	Marketplace	DEFENDANTS
1	Alibaba	Xiamen Balin New Materials Co., Ltd.
2	Alibaba	Ningbo Bowin Trading Limited
3	Alibaba	Yiwu ChinaSKU I/E Co., Ltd.
4	Alibaba	Ningbo Crown Magnet Co., Ltd.
5	Alibaba	Ningbo Genesis Magnet Tech Co., Ltd.
6	Alibaba	Hawell Magnetism (Ningbo) Co., Ltd.
7	Alibaba	Hangzhou HS Magnetism Co., Ltd.
8	Alibaba	Dongguan Hj Tech Co., Ltd
9	Alibaba	Shenzhen Lechang Technology Co., Ltd.
10	Alibaba	Tommur Industry (Shanghai) Co., Ltd.
11	Alibaba	Dongguan Wow Good Precision Machinery Co., Ltd.
12	Alibaba	Hangzhou Uniwise Import And Export Co., Ltd.
13	Alibaba	Dongguan Wow Good Precision Machinery Co., Ltd
14	Aliexpress	Ningbo Hinta Plastic Factory
15	Aliexpress	YONGLE ZAHUO Store
16	Aliexpress	FATION JEWELRY STORE
17	Aliexpress	New Fashion Life Center
18	Aliexpress	Perfect House Fou U-99999
19	Aliexpress	living FUHO Store
20	Aliexpress	Zakk Store
21	Aliexpress	Intelligent Tool Store
22	Aliexpress	life is x fun Store
23	Aliexpress	Zoe's Little Store
24	Aliexpress	F Rhyme Store
25	Aliexpress	Relian Store
26	Aliexpress	LEFORU Store
27	Aliexpress	Daily Necessarys Store
28	Aliexpress	CHONGWU Store
29	Aliexpress	F-U-N-Y-Supplies Store
30	Aliexpress	Age department Store

No.	Marketplace	DEFENDANTS
31	Aliexpress	Bonjour LIFE Store
32	Aliexpress	Shop5081381 Store
33	Aliexpress	Ambiel Store
34	Aliexpress	First Living hall Store
35	Aliexpress	L-X-Y Store
36	Aliexpress	Sakuragi Store
37	Aliexpress	Dropshipping House Store
38	Aliexpress	Shop5259029 Store
39	Aliexpress	Louelly House Store
40	Aliexpress	MY Red Fire Store
41	Aliexpress	Still new house Store
42	Aliexpress	You are unparalleled Store
43	Aliexpress	Yasuo's Store
44	Aliexpress	Good Life Commodity Store Store
45	Aliexpress	HouseRear Store
46	Aliexpress	928Life Store
47	Aliexpress	1219upupday Store
48	Aliexpress	My groceries Store
49	Aliexpress	F daily Store
50	Aliexpress	MuMu Life Store
51	Aliexpress	BoCo Tools Store
52	Aliexpress	WZSS Store
53	Aliexpress	LUCK 9 Store
54	Aliexpress	Your life product Store
55	Aliexpress	AA78 Store
56	Aliexpress	Living products for you Store
57	Aliexpress	CHAO 6666 Store
58	Aliexpress	Specialist decoration Store
59	Aliexpress	Unlimited happiness Store
60	Aliexpress	Good Living Life Store

No.	Marketplace	DEFENDANTS
61	Aliexpress	Avni F-urniture Store
62	Aliexpress	For Your Convenience Store
63	Aliexpress	LuckyCorner Store
64	Aliexpress	E-njoy healthy lifestyle house Store
65	Aliexpress	Shop in Life Store
66	Aliexpress	Aliance56 Store
67	Aliexpress	Veryhome Decor Store
68	Aliexpress	Lifeon Store
69	Aliexpress	Daily-use Sundry Goods Store
70	Aliexpress	hanan life Store
71	Aliexpress	Shop910369429 Store
72	Aliexpress	Shop910450072 Store
73	Aliexpress	Hom-e Settlement Store
74	Aliexpress	Tifanni's Tool Store Store
75	Aliexpress	Dearhome Store
76	Aliexpress	House & Storage Store
77	Aliexpress	Shop910729111 Store
78	Aliexpress	Shop910731146 Store
79	Aliexpress	Shop910731152 Store
80	Aliexpress	My dearm HOUSE Store
81	Aliexpress	Shop910738177 Store
82	Aliexpress	Warm SevenHome Store
83	Aliexpress	Shop910742138 Store
84	Aliexpress	Wheats House Store
85	Aliexpress	AP kitchen supplies Store
86	Aliexpress	Angelia Ostrich Store
87	Aliexpress	Good luck 74 Store
88	Aliexpress	Fu Yeon Store
89	Aliexpress	Vegetarian small meatballs Store
90	Aliexpress	Shop911062212 Store

No.	Marketplace	DEFENDANTS
91	Aliexpress	Ayigge Store
92	Aliexpress	A002 wind Store
93	Aliexpress	Shop09 Store
94	Aliexpress	Decoration city Store
95	Aliexpress	Shop911186278 Store
96	Aliexpress	Comfortable Life & House Store Store
97	Aliexpress	Shop911262362 Store
98	Aliexpress	PINKKY Store
99	Aliexpress	F-Home Encyclopedia Store
100	Aliexpress	CHA-HOME Store
101	Amazon	yitaowei yuzhuanmaidian
102	Amazon	shuchenzhubao
103	Amazon	OwlLook
104	Amazon	tengdayingtongyongpindian
105	Amazon	Murasaki Trading Co., Ltd.
106	Amazon	yuanliwujinjiancaidian
107	Amazon	hrehrrg
108	Amazon	satydos99
109	Amazon	taiyanjichu
110	Amazon	qinhanxinchengqiaorongbaihuodian
111	Amazon	cangshenghongyeshangmaos
112	Amazon	Vobor
113	Amazon	Unilive
114	Amazon	Adelaide 9dong
115	Amazon	ngYeYuanZ
116	Amazon	fulijiariyongpin
117	Amazon	jiechujixieshebeizulinzhongxin
118	Amazon	muxiangwangluokeji
119	DHgate	rexbaby
120	eBay	2014gusci

No.	Marketplace	DEFENDANTS
121	eBay	buyermarket070
122	eBay	mindyshop777
123	eBay	nortonchoice
124	eBay	shhus-44
125	Newegg	Gino
126	Wish	Mer-tech
127	Wish	Cherish every time you meet
128	Wish	chenyunshop
129	Wish	YANGPEMHHUA
130	Wish	xianrzhu520**

No.	DEFENDANTS ONLINE MARKETPLACE				
1	https://balinmagnet.en.alibaba.com				
2	https://bowinchina.en.alibaba.com				
3	https://chinasku.en.alibaba.com				
4	https://crown-magnet.en.alibaba.com				
5	https://gemagnet.en.alibaba.com				
6	https://hawellmagnet.en.alibaba.com				
7	https://hsmagnet.en.alibaba.com				
8	https://huajie-hongkong.en.alibaba.com				
9	https://lechangkeji.en.alibaba.com				
10	https://luckeg.en.alibaba.com				
11	https://magnetices.en.alibaba.com				
12	https://uniwise.en.alibaba.com				
13	https://wowgood.en.alibaba.com				
14	https://www.aliexpress.com/store/205843				
15	https://www.aliexpress.com/store/725570				
16	https://www.aliexpress.com/store/1487452				
17	https://www.aliexpress.com/store/1746190				
18	https://www.aliexpress.com/store/1799097				
19	https://www.aliexpress.com/store/2346105				
20	https://www.aliexpress.com/store/2961267				
21	https://www.aliexpress.com/store/3097035				
22	https://www.aliexpress.com/store/3106013				
23	https://www.aliexpress.com/store/3135014				
24	https://www.aliexpress.com/store/3249041				
25	https://www.aliexpress.com/store/4377080				
26	https://www.aliexpress.com/store/4990124				
27	https://www.aliexpress.com/store/4999174				
28	https://www.aliexpress.com/store/5008428				
29	https://www.aliexpress.com/store/5009390				
30	https://www.aliexpress.com/store/5045389				

No.	DEFENDANTS ONLINE MARKETPLACE				
31	https://www.aliexpress.com/store/5067177				
32	https://www.aliexpress.com/store/5081381				
33	https://www.aliexpress.com/store/5082257				
34	https://www.aliexpress.com/store/5221024				
35	https://www.aliexpress.com/store/5222065				
36	https://www.aliexpress.com/store/5228032				
37	https://www.aliexpress.com/store/5229037				
38	https://www.aliexpress.com/store/5259029				
39	https://www.aliexpress.com/store/5424048				
40	https://www.aliexpress.com/store/5427034				
41	https://www.aliexpress.com/store/5431060				
42	https://www.aliexpress.com/store/5624383				
43	https://www.aliexpress.com/store/5633388				
44	https://www.aliexpress.com/store/5652019				
45	https://www.aliexpress.com/store/5659016				
46	https://www.aliexpress.com/store/5731201				
47	https://www.aliexpress.com/store/5732176				
48	https://www.aliexpress.com/store/5732221				
49	https://www.aliexpress.com/store/5747093				
50	https://www.aliexpress.com/store/5777160				
51	https://www.aliexpress.com/store/5777731				
52	https://www.aliexpress.com/store/5780934				
53	https://www.aliexpress.com/store/5786923				
54	https://www.aliexpress.com/store/5789658				
55	https://www.aliexpress.com/store/5789780				
56	https://www.aliexpress.com/store/5790679				
57	https://www.aliexpress.com/store/5795707				
58	https://www.aliexpress.com/store/5798190				
59	https://www.aliexpress.com/store/5800891				
60	https://www.aliexpress.com/store/5872569				

No.	DEFENDANTS ONLINE MARKETPLACE				
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62	https://www.aliexpress.com/store/5881839				
63	https://www.aliexpress.com/store/5882278				
64	https://www.aliexpress.com/store/5887278				
65	https://www.aliexpress.com/store/5892298				
66	https://www.aliexpress.com/store/5972412				
67	https://www.aliexpress.com/store/900233004				
68	https://www.aliexpress.com/store/900234001				
69	https://www.aliexpress.com/store/910316276				
70	https://www.aliexpress.com/store/910337052				
71	https://www.aliexpress.com/store/910369429				
72	https://www.aliexpress.com/store/910450072				
73	https://www.aliexpress.com/store/910528021				
74	https://www.aliexpress.com/store/910570350				
75	https://www.aliexpress.com/store/910722172				
76	https://www.aliexpress.com/store/910723161				
77	https://www.aliexpress.com/store/910729111				
78	https://www.aliexpress.com/store/910731146				
79	https://www.aliexpress.com/store/910731152				
80	https://www.aliexpress.com/store/910733133				
81	https://www.aliexpress.com/store/910738177				
82	https://www.aliexpress.com/store/910739143				
83	https://www.aliexpress.com/store/910742138				
84	https://www.aliexpress.com/store/910748106				
85	https://www.aliexpress.com/store/910748170				
86	https://www.aliexpress.com/store/910784045				
87	https://www.aliexpress.com/store/911043225				
88	https://www.aliexpress.com/store/911059247				
89	https://www.aliexpress.com/store/911060227				
90	https://www.aliexpress.com/store/911062212				

No.	DEFENDANTS ONLINE MARKETPLACE				
91	https://www.aliexpress.com/store/911062234				
92	https://www.aliexpress.com/store/911064213				
93	https://www.aliexpress.com/store/911066224				
94	https://www.aliexpress.com/store/911066225				
95	https://www.aliexpress.com/store/911186278				
96	https://www.aliexpress.com/store/911254293				
97	https://www.aliexpress.com/store/911262362				
98	https://www.aliexpress.com/store/911265307				
99	https://www.aliexpress.com/store/911282005				
100	https://www.aliexpress.com/store/911610784				
101	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=A13N1FFZHQQ2PF				
102	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=A18J8O0H3C58HE				
103	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=A1FAJNHQED2BWS				
104	https://www.amazon.ca/sp?_encoding=UTF8&marketplaceID=A2EUQ1WTGCTBG2&seller=A1MO2LYEI6B7PE				
105	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=A1ZNYVTNY1M1B0				
106	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=A20VWGGIUBWGPI				
107	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=A20WBSTRFXD6FN				
108	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=A2BSTY4CMHDXAZ				
109	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=A2DCH9GS1EAETT				
110	https://www.amazon.co.uk/sp?_encoding=UTF8&marketplaceID=A1F83G8C2ARO7P&seller=A2K8RN4NVM1YNO				
111	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=A2RAD8RARMMSVQ				
112	https://www.amazon.ca/sp?_encoding=UTF8&marketplaceID=A2EUQ1WTGCTBG2&seller=A32LQU5HPQYFHA				
113	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=A3E970HYG3KBBV				
114	https://www.amazon.ca/sp?_encoding=UTF8&marketplaceID=A2EUQ1WTGCTBG2&seller=A3NQSOA5KM8BA5				
115	https://www.amazon.co.uk/sp?_encoding=UTF8&marketplaceID=A1F83G8C2ARO7P&seller=A8NFM2HB72NQ3				
116	https://www.amazon.ca/sp?_encoding=UTF8&marketplaceID=A2EUQ1WTGCTBG2&seller=AH01GZ3CSMSWD				
117	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=AKZ8RFSX5CJFH				
118	https://www.amazon.com/sp?_encoding=UTF8&marketplaceID=ATVPDKIKX0DER&seller=APY46R7NPPUK9				
119	https://www.dhgate.com/store/20903293				
120	https://www.ebay.ca/usr/2014gusci				

No.	DEFENDANTS ONLINE MARKETPLACE				
121	https://www.ebay.com/usr/buyermarket070				
122	https://www.ebay.com/usr/mindyshop777				
123	https://www.ebay.ca/usr/nortonchoice				
123	https://www.ebay.com.au/usr/nortonchoice				
124	https://www.ebay.com/usr/shhus-44				
125	https://www.newegg.com/Gino/about				
126	https://www.wish.com/merchant/5850fd0dfef4097a708a3dda				
127	https://www.wish.com/merchant/5912a2575106083b38866f02				
128	https://www.wish.com/merchant/595253dd53ebe2227bca49af				
129	https://www.wish.com/merchant/5d5a4c3b560eca4252f25a6c				
130	https://www.wish.com/merchant/5e004df12198976d11031ae9				

EXHIBIT 1

United States of America

United States Patent and Trademark Office

BOTTLELOFT

Reg. No. 5,702,004

Registered Mar. 19, 2019

Int. Cl.: 9

Trademark

Principal Register

CONTI-BROS, INC. (NORTH CAROLINA CORPORATION)
Suite 2100, #236
2131 Woodruff Rd.
Greenville, SOUTH CAROLINA 29607

CLASS 9: Magnets, namely, magnetic fixture for suspending objects

FIRST USE 10-31-2014; IN COMMERCE 10-31-2014

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 88-043,473, FILED 07-18-2018



Andrei Iancu

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

EXHIBIT 2



Intellectual Property Rights

Fiscal Year 2019 Seizure Statistics

Prepared by

U.S. Customs and Border Protection
Office of Trade



Homeland
Security



INTELLECTUAL PROPERTY RIGHTS

Fiscal Year 2019 Seizure Statistics

Prepared by

U.S. Customs and Border Protection
Office of Trade



Homeland
Security



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Disclaimer: The information contained in this report does not constitute the official trade statistics of the United States. The statistics, and the projections based upon those statistics, are not intended to be used for economic analysis, and are provided for the purpose of establishing U.S. Department of Homeland Security workload.

Executive Summary

Products that infringe upon U.S. trademarks and copyrights or are subject to exclusion orders issued by the United States International Trade Commission (ITC) threaten the health and safety of American consumers and pose risks to our national interests. U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) - Homeland Security Investigations (HSI) mitigate the welfare and financial risks posed by imports of such illicit products.

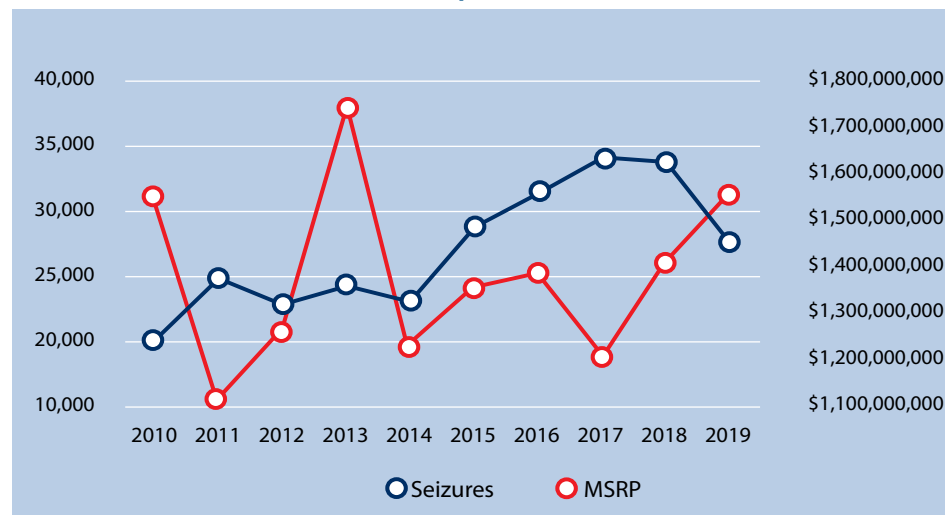
In fiscal year (FY) 2019, CBP processed \$2.7 trillion in imports, equating to 35.5 million entries and more than 28.7 million cargo containers. In addition, CBP processed more than 600 million express consignment and international mail shipments – approximately 1.8 million per day. Department of Homeland Security components remain vigilant in targeting shipments containing IPR-infringing goods, levying civil fines, and criminally investigating those who seek to violate our trade laws, harm our people, and damage our economy.

FY 2019 was another successful year for IPR enforcement. Due to the challenges at the Southern border and the one-month government shutdown, the total number of seizures decreased from 33,810 seizures in FY 2018 to 27,599 seizures in FY 2019. However, the total estimated manufacturer's suggested retail price (MSRP) of the seized goods, had they been genuine, was over \$1.5 billion, up from \$1.4 billion in FY 2018.

The information contained in this report does not constitute the official trade statistics of the United States. The statistics, and the projections based upon those statistics, are not intended to be used for economic analysis, and are provided for the purpose of establishing U.S. Department of Homeland Security workload.

Operational Highlights

IPR Seizure Totals by Fiscal Year



ICE-HSI arrested 256 individuals, obtained 197 indictments, and received 157 convictions related to intellectual property crimes.

CBP's Integrated Trade Targeting Network executed 136 IPR trade special operations. These trade special operations targeted high-risk shipments at seaports, airports, international mail facilities and express carrier hubs across the United States.

The National IPR Coordination Center and CBP conducted "Operation Team Player," in conjunction with Super Bowl LII. This operation focused on imports of counterfeit sports-related merchandise. These efforts resulted in the seizure of nearly 285,000 counterfeit sports-and entertainment-related items worth an estimated \$24.2 million, and 28 arrests with 21 convictions.

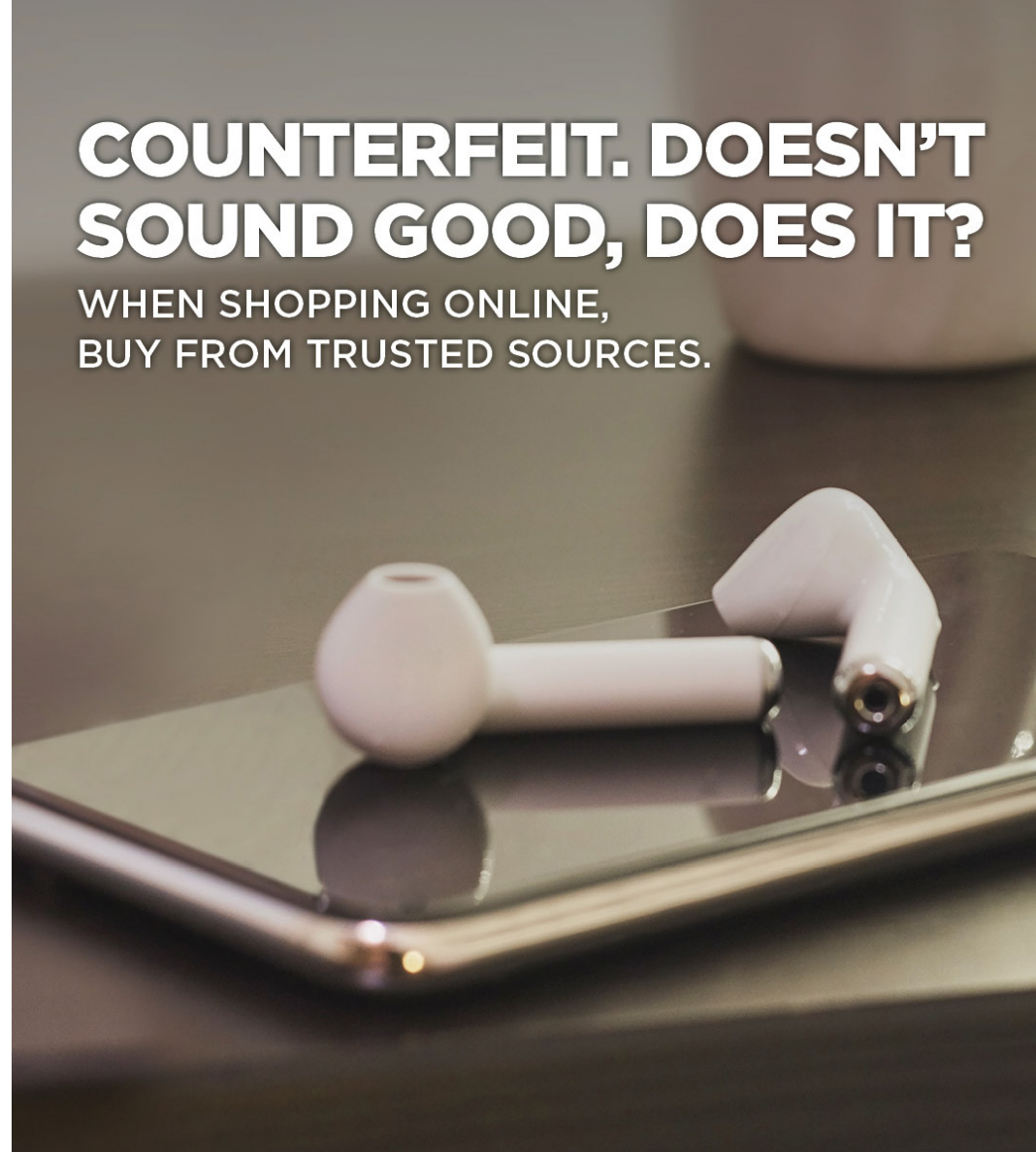
In FY 2019, CBP seized 372 shipments pursuant to seizure and forfeiture orders issued by the ITC.

On November 26, 2018, CBP announced a formal partnership with Cisco as a part of the Donations Acceptance Program, a program that enables CBP to accept private sector donations of equipment and technology for IPR enforcement. Through this program, Cisco donated barcode scanner devices as well as provided secure access to purpose-built tooling so that CBP officers and import specialists could quickly scan and verify the authenticity of Cisco merchandise entering the United States.

On August 27, 2019, CBP published a Federal Register notice of proposed rule making (NPRM) to amend regulations on disclosing information on merchandise bearing suspected counterfeit trademarks. This NPRM allows CBP to disclose information otherwise protected by the Trade Secrets Act to a trademark owner when merchandise bearing suspected counterfeit trademarks has been voluntarily abandoned. The deadline to submit comments on the proposed rule was November 15, 2019.

CBP continued its “Truth Behind Counterfeits” IPR public awareness campaign to educate the public about the potential harm of counterfeit goods, that buying counterfeits may support criminal activity, and to encourage people to shop from reputable sources. The campaign ran at major U.S. airports, including Atlanta, Detroit, Chicago, Raleigh, San Antonio, Tampa, Boston, New York, Fort Lauderdale, Dallas, Las Vegas, Baltimore, and Pittsburgh, during the busy 2018 holiday and 2019 summer travel times.

**COUNTERFEIT. DOESN'T
SOUND GOOD, DOES IT?**
WHEN SHOPPING ONLINE,
BUY FROM TRUSTED SOURCES.



The risks of shopping online aren't always obvious.
Be informed about the dangers of counterfeit goods.
Learn more at www.CBP.gov/fakegoodsrealdangers.

**Fake Goods.
Real Dangers.**

www.CBP.gov/FakeGoodsRealDangers



U.S. Customs and
Border Protection

The campaign included online ads on travel websites, in addition to large electronic bulletin board ads that were displayed at the airports. The campaign and its messages about responsible consumer behavior were viewed over 200 million times.

CBP also conducted five “Truth Behind Counterfeits” road show events. These events took place during summer 2019 at the Boston, New York, Dallas, Chicago, and Fort Lauderdale airports, where CBP personnel educated returning travelers about the hazards of counterfeit goods. For additional information about the “Truth Behind Counterfeits”, visit the following link: www.cbp.gov/fakegoodsrealdangers.

In August 2019, at the Asia Pacific Economic Cooperation (APEC) Subcommittee on Customs Procedures (SCCP) meeting held in Puerto Varas, Chile, CBP presented the 2019 SCCP IPR Enforcement Compendium of guidelines and practices. This document includes practical examples of engagement, education, and enforcement practices to assist economies in identifying, interdicting, and deterring IP violations. Twelve economies have provided input to the document: Australia, Chinese Taipei, Hong Kong, Japan, Mexico, New Zealand, Peru, the Philippines, Singapore, Thailand, the United States, and Vietnam.

During FY 2019, CBP collaborated with several industry partners to complete an IPR blockchain proof of concept test. The goal of the test was to assess the blockchain technology as a secure means to provide and receive business proprietary information that can be used for both facilitation and IPR enforcement purposes in real time.

CBP concentrates its IPR border enforcement on federally registered trademarks and copyrights that have been recorded with CBP by their owners using the Intellectual Property Rights e-Recordation (IPRR) system, <https://iprr.cbp.gov/>. CBP administers these recordations using a secure proprietary database. Product ID manuals provided by rights holders are also linked to the database and used by CBP in making IPR border enforcement determinations.

CBP works closely with rights holders in making IPR enforcement determinations. A public database of both active and inactive recordations is available using a search engine called the Intellectual Property Rights Search (IPRS) at <https://iprs.cbp.gov/>. Information on potential IPR infringements can be submitted to CBP using the e-Allegations Online Trade Violation Reporting System at <https://eallegations.cbp.gov/Home/Index2>.

At the close of FY 2019, CBP enforced over 18,735 active recordations.



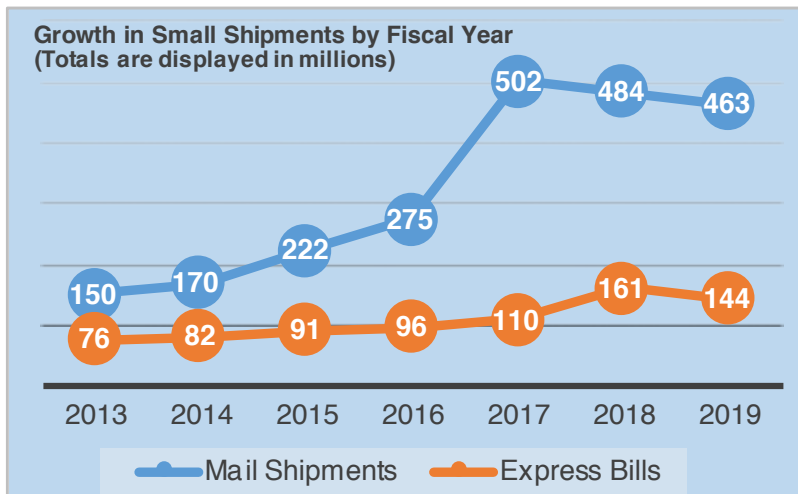
IPR & E-Commerce

E-Commerce sales have contributed to large volumes of low-value packages imported into the United States. In FY 2019, there were 144 million express shipments and 463 million international mail shipments. Over 90 percent of all intellectual property seizures occur in the international mail and express environments.

As part of executing CBP's overall e-commerce strategy, CBP announced a Section 321 Data Pilot in collaboration with online marketplaces, carriers, technology firms, and logistics providers to secure e-commerce supply chains and protect American consumers. The pilot will allow CBP to test whether receiving additional advance data, (beyond the current required manifest data) will enable effective targeting on Section 321 shipments.

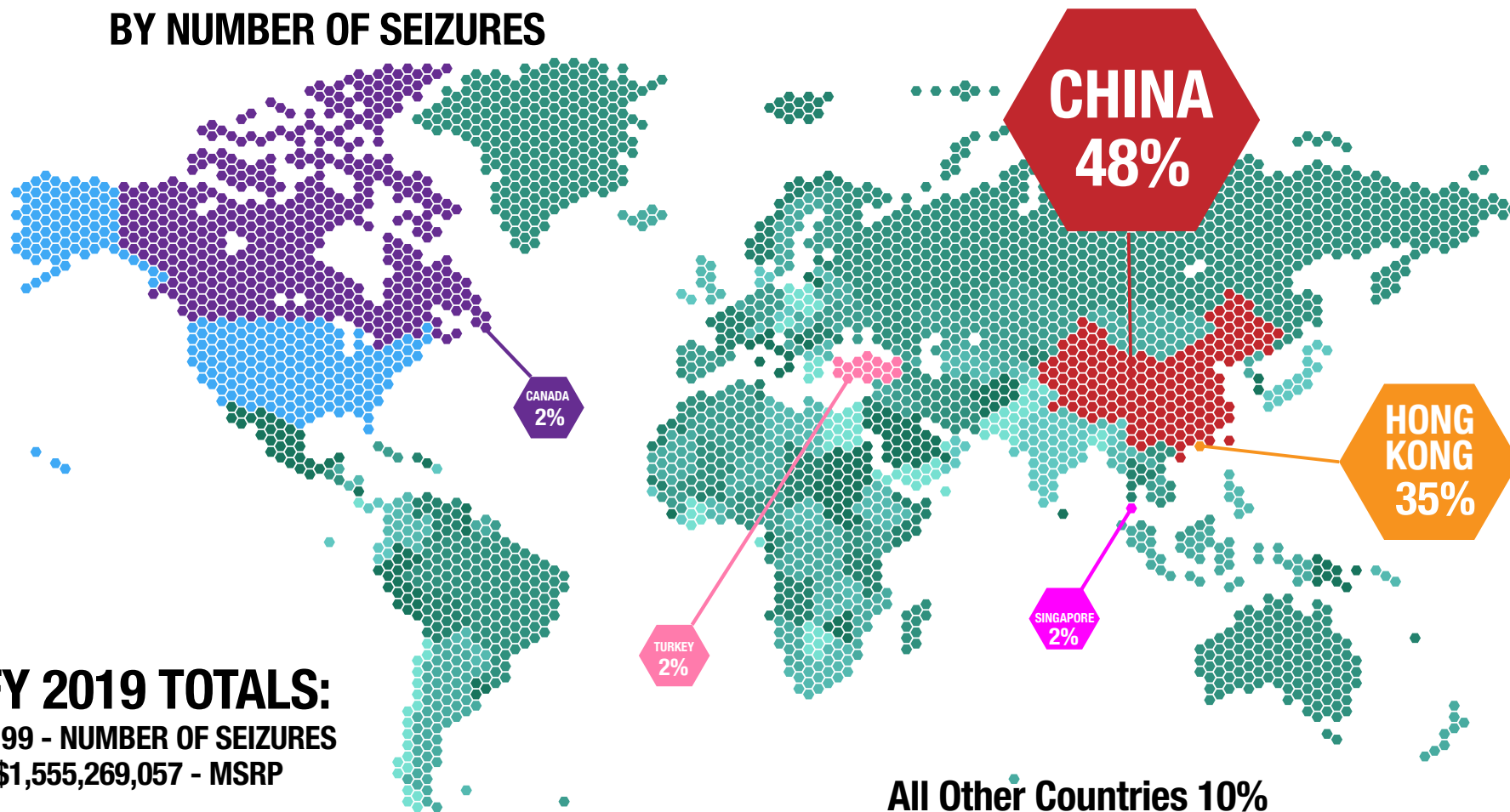
CBP also implemented the Entry Type 86 test to allow customs brokers and self-filers to transmit electronic *de minimis* entries, along with data required by other U.S. government agencies.

<https://www.cbp.gov/trade/basic-import-export/e-commerce>

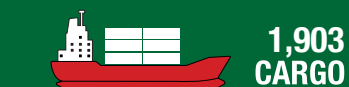


FISCAL YEAR 2019 IPR SEIZURE STATISTICS BY NUMBER OF SEIZURES

FY 2019 TOTALS:
27,599 - NUMBER OF SEIZURES
\$1,555,269,057 - MSRP

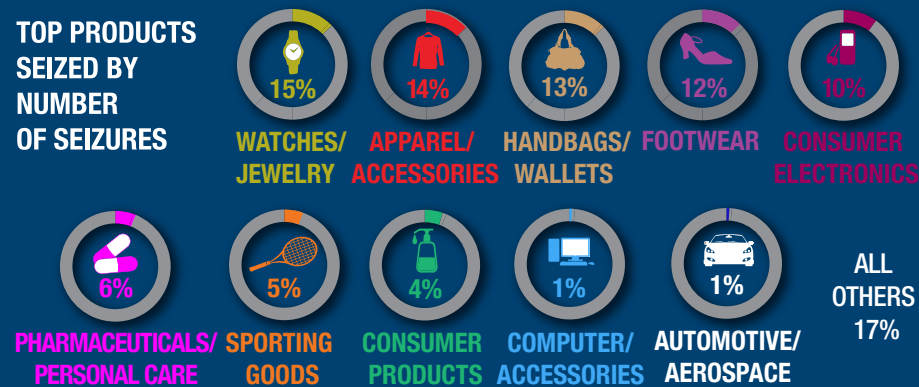


SEIZURES BY MODE OF TRANSPORTATION



ALL OTHERS 903

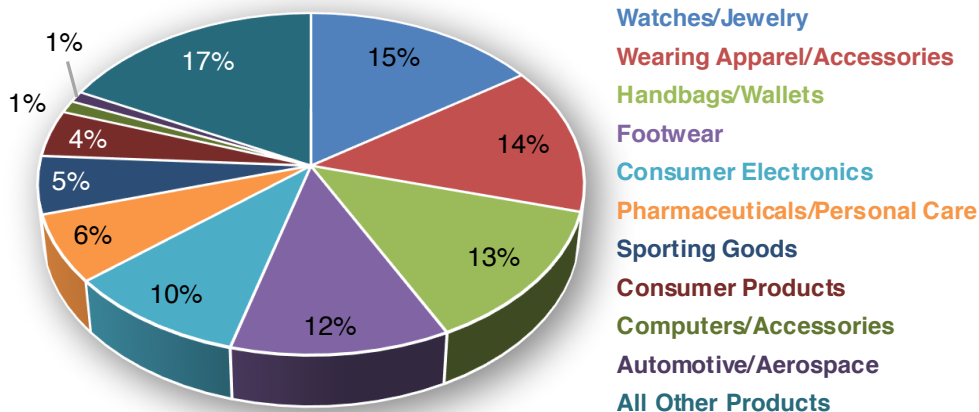
TOP PRODUCTS SEIZED BY NUMBER OF SEIZURES





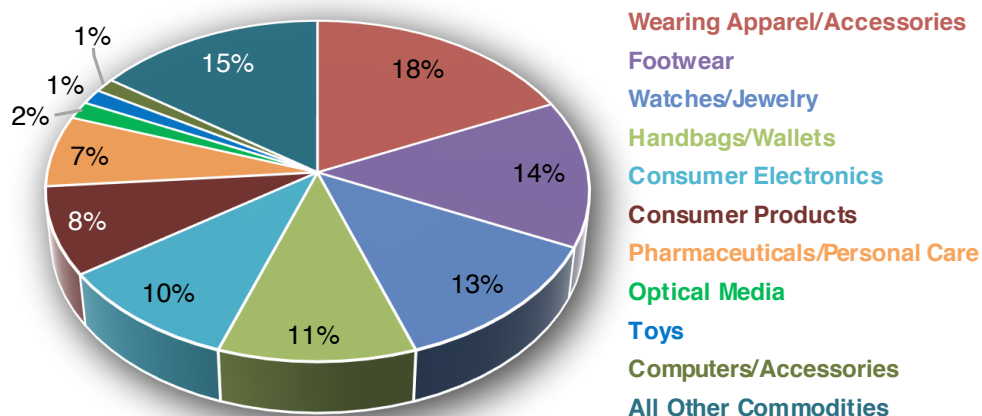
Number of Seizures

Fiscal Year 2019



Number of Seizures: 27,599

Fiscal Year 2018



Number of Seizures: 33,810

Fiscal Year 2019

Products	Seizures	% of Total*
Watches/Jewelry	4,242	15%
Wearing Apparel/Accessories	3,841	14%
Handbags/Wallets	3,653	13%
Footwear	3,249	12%
Consumer Electronics	2,681	10%
Pharmaceuticals/Personal Care	1,779	6%
Sporting Goods	1,510	5%
Consumer Products	1,219	4%
Computers/Accessories	318	1%
Automotive/Aerospace	287	1%
All Other Products	4,820	17%

Number of Seizures

27,599

Fiscal Year 2018

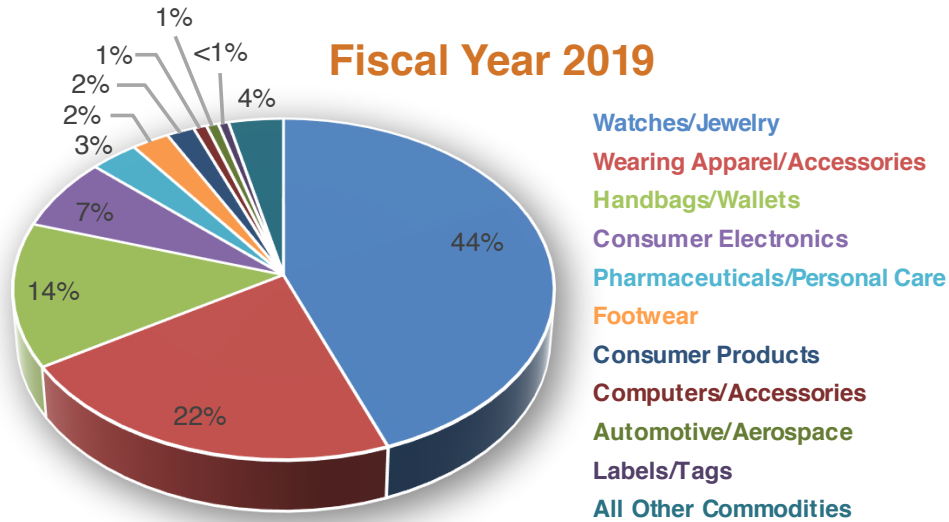
Products	Seizures	% of Total*
Wearing Apparel/Accessories	6,098	18%
Footwear	4,728	14%
Watches/Jewelry	4,291	13%
Handbags/Wallets	3,593	11%
Consumer Electronics	3,388	10%
Consumer Products	2,816	8%
Pharmaceuticals/Personal Care	2,293	7%
Optical Media	561	2%
Toys	487	1%
Computers/Accessories	450	1%
All Other Products	5,105	15%

Number of Seizures

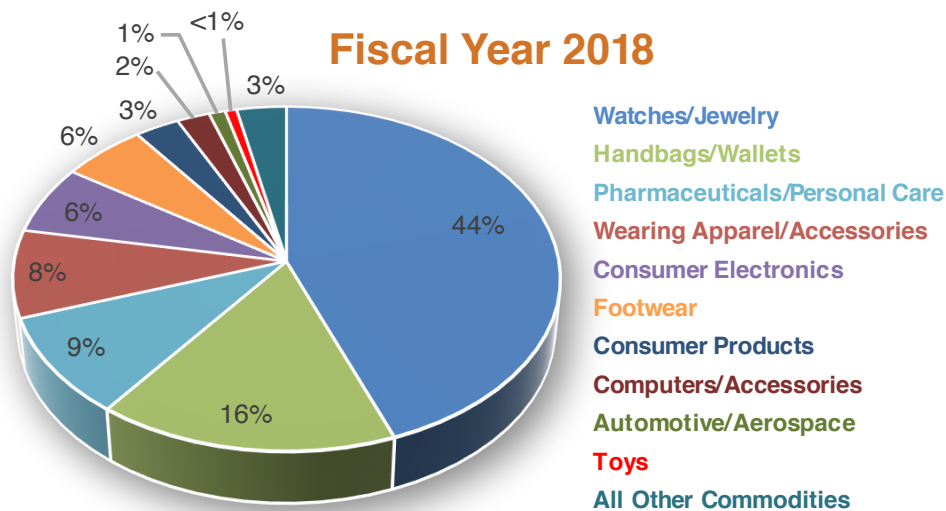
33,810

*Seizures involving multiple product categories are included in the "All Others" category. Because the individual percentage figures are rounded, in some cases, the sum of the rounded percentages for a given fiscal year is slightly higher or lower than 100 percent.

Products Seized by MSRP



Total FY 2019 MSRP \$1,555,269,057



Total FY 2018 MSRP \$1,399,873,842

Fiscal Year 2019

Products	MSRP	% of Total*
Watches/Jewelry	\$687,167,057	44%
Wearing Apparel/Accessories	\$343,732,063	22%
Handbags/Wallets	\$212,781,760	14%
Consumer Electronics	\$105,957,198	7%
Pharmaceuticals/Personal Care	\$48,771,870	3%
Footwear	\$37,994,046	2%
Consumer Products	\$27,907,721	2%
Computers/Accessories	\$13,216,628	1%
Automotive/Aerospace	\$12,142,621	1%
Labels/Tags	\$10,378,772	1%
All Other Commodities	\$55,219,321	4%

Total FY 2019 MSRP \$1,555,269,057

Number of Seizures 27,599

Fiscal Year 2018

Products	MSRP	% of Total*
Watches/Jewelry	\$618,166,688	44%
Handbags/Wallets	\$226,505,542	16%
Pharmaceuticals/Personal Care	\$131,457,724	9%
Wearing Apparel/Accessories	\$115,163,801	8%
Consumer Electronics	\$89,593,498	6%
Footwear	\$77,500,746	6%
Consumer Products	\$40,846,424	3%
Computers/Accessories	\$29,939,882	2%
Automotive/Aerospace	\$14,861,590	1%
Toys	\$10,590,281	1%
All Other Products	\$45,247,665	3%

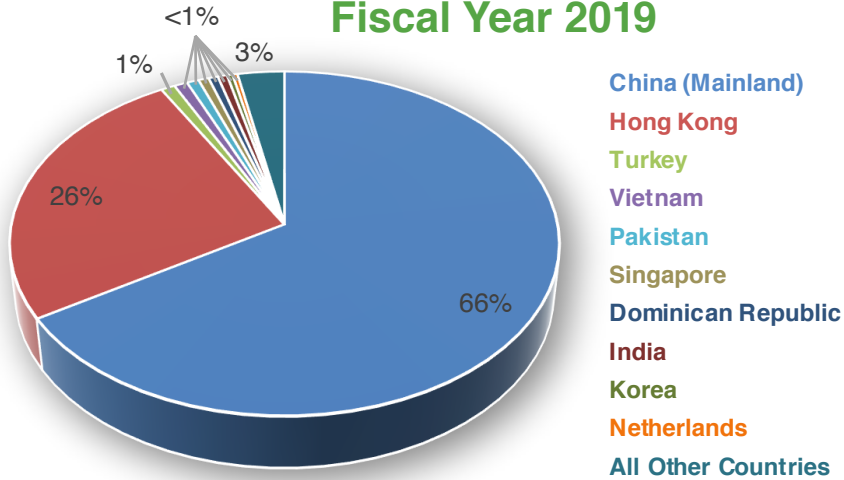
Total FY 2018 MSRP \$1,399,873,842

Number of Seizures 33,810

*Seizures involving multiple product categories are included in the "All Others" category. Because the individual percentage figures are rounded, in some cases, the sum of the rounded percentages for a given fiscal year is slightly higher or lower than 100 percent.

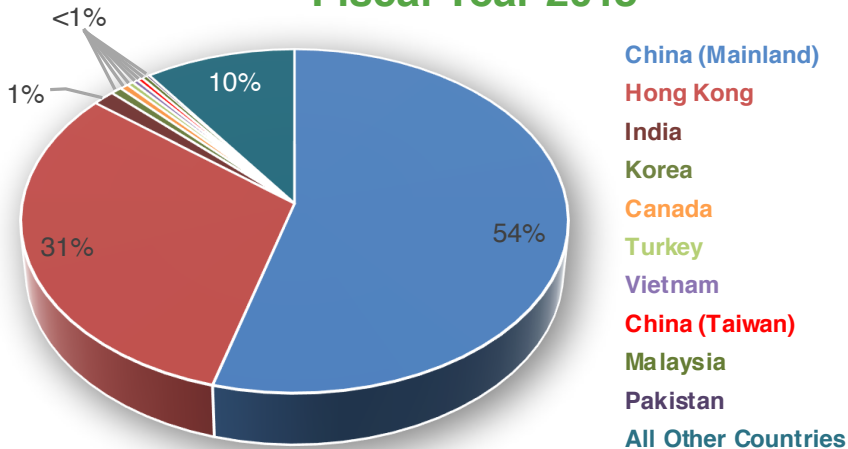
Total MSRP for Products Seized by Economy

Fiscal Year 2019



Total FY 2019 MSRP \$1,555,269,057

Fiscal Year 2018



Total FY 2018 MSRP \$1,399,873,842

Fiscal Year 2019

Trading Partner	MSRP	% of Total*
China (Mainland)	\$1,030,181,869	66%
Hong Kong	\$397,276,566	26%
Turkey	\$14,240,890	1%
Vietnam	\$13,556,034	0.9%
Pakistan	\$12,157,097	0.8%
Singapore	\$10,452,581	0.7%
Dominican Republic	\$9,542,456	0.6%
India	\$9,539,580	0.6%
Korea	\$5,633,115	0.4%
Netherlands	\$4,970,493	0.3%
All Other Countries	\$47,718,377	3%

Total FY 2019 MSRP

\$1,555,269,057

Number of Seizures

27,599

Fiscal Year 2018

Trading Partner	MSRP	% of Total*
China (Mainland)	\$761,115,429	54%
Hong Kong	\$440,344,663	31%
India	\$19,952,488	1%
Korea	\$10,135,531	0.7%
Canada	\$7,798,500	0.6%
Turkey	\$5,759,008	0.4%
Vietnam	\$5,192,261	0.4%
China (Taiwan)	\$5,008,077	0.4%
Malaysia	\$4,674,447	0.3%
Pakistan	\$2,779,413	0.2%
All Other Countries	\$137,114,027	10%

Total FY 2018 MSRP

1,399,873,842

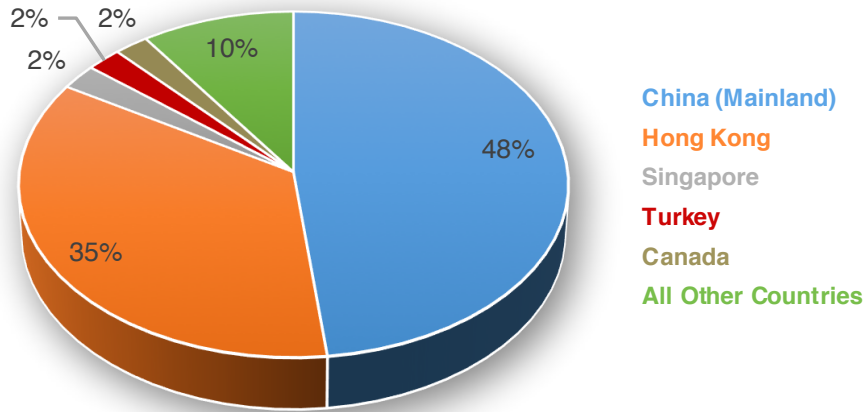
Number of Seizures

33,810

*The aggregate seizure data reflect the reported country of origin, not necessarily where the seized goods were produced. Because the individual percentage figures are rounded, in some cases, the sum of the rounded percentages for a given fiscal year is slightly higher or lower than 100 percent.

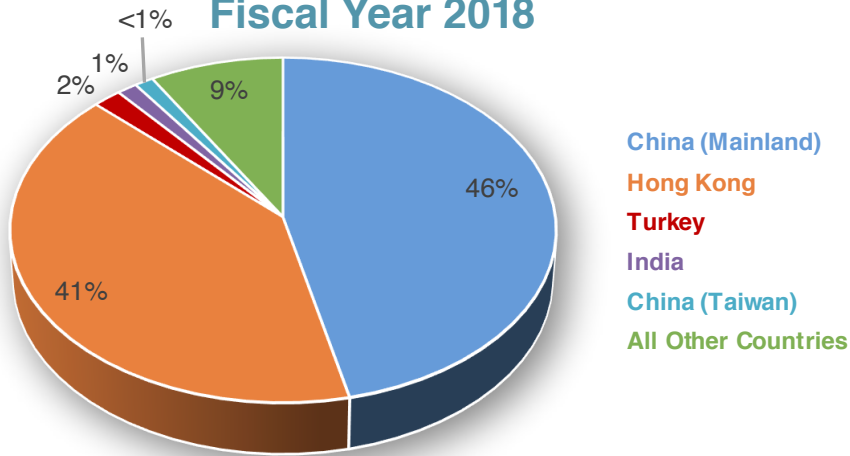
Seizures by Economy

Fiscal Year 2019



Number of Seizures: 27,599

Fiscal Year 2018



Number of Seizures: 33,810

Fiscal Year 2019

Trading Partner	Seizures	% of Total*
China (Mainland)	13,293	48%
Hong Kong	9,778	35%
Singapore	649	2%
Turkey	614	2%
Canada	598	2%
All Other Countries	2,667	10%

Number of Seizures 27,599

Fiscal Year 2018

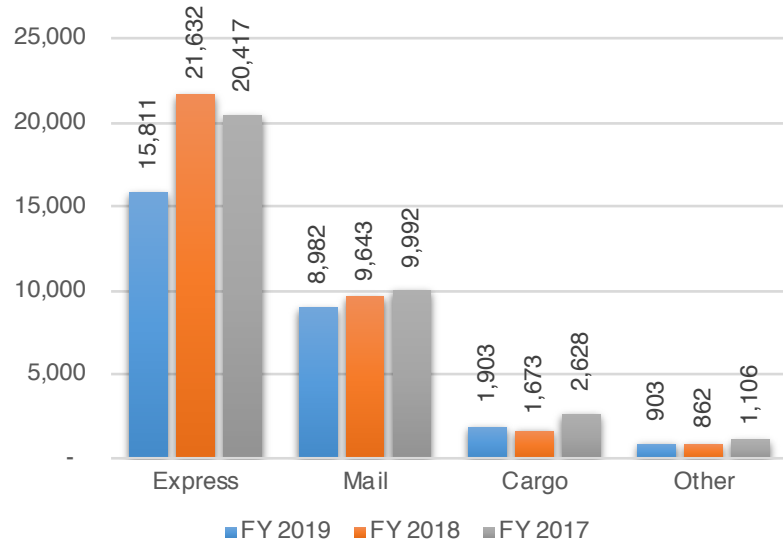
Trading Partner	Seizures	% of Total*
China (Mainland)	15,674	46%
Hong Kong	13,785	41%
Turkey	618	2%
India	439	1%
China (Taiwan)	408	1%
All Other Countries	2,886	9%

Number of Seizures 33,810

*The aggregate seizure data reflect the reported country of origin, not necessarily where the seized goods were produced. Because the individual percentage figures are rounded, in some cases, the sum of the rounded percentages for a given fiscal year is slightly higher or lower than 100 percent.

Seizures by Mode of Transportation

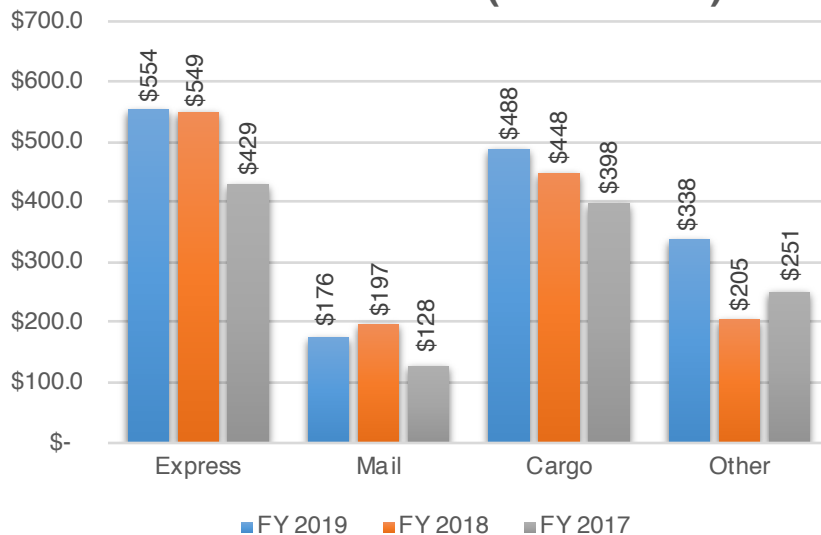
Seizures



Estimated Manufacturer's Suggested Retail Price (in millions)

Mode of Transport	FY 2019		FY 2018		FY 2017	
	MSRP	% of Total	MSRP	% of Total	MSRP	% of Total
Express	\$ 553.5	36%	\$ 549.2	39%	\$ 429.3	36%
Mail	\$ 175.6	11%	\$ 197.3	14%	\$ 128.4	11%
Cargo	\$ 488.2	31%	\$ 447.9	32%	\$ 397.5	33%
Other	\$ 337.9	22%	\$ 205.4	15%	\$ 251.1	21%
Total	\$ 1,555.2		\$ 1,399.8		\$ 1,206.3	

Estimated MSRP (in millions)

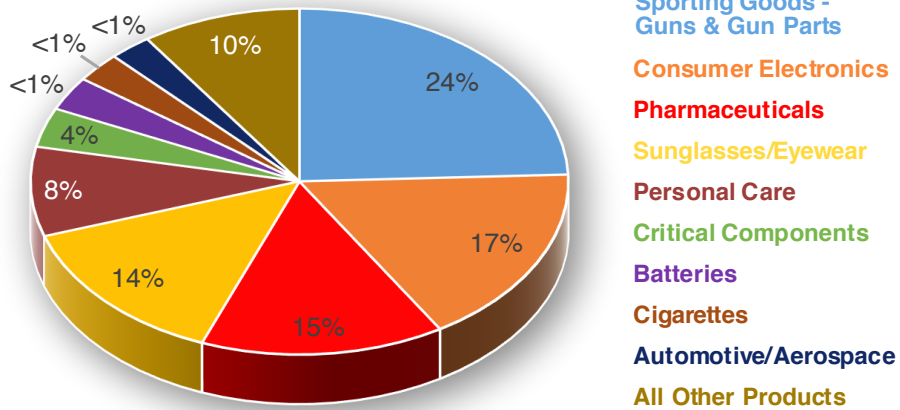


Seizures

Mode of Transport	FY 2019		FY 2018		FY 2017	
	Seizures	% of Total	Seizures	% of Total	Seizures	% of Total
Express	15,811	57%	21,632	64%	20,417	60%
Mail	8,982	33%	9,643	29%	9,992	29%
Cargo	1,903	7%	1,673	5%	2,628	8%
Other	903	3%	862	3%	1,106	3%
Total	27,599		33,810		34,143	

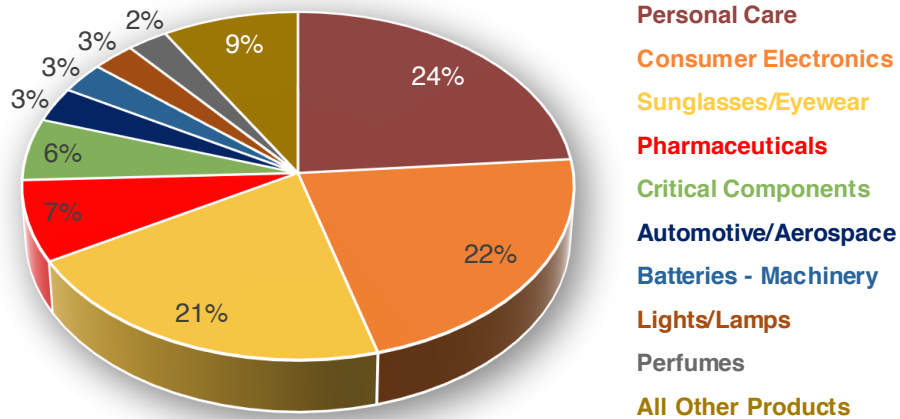
Health, Safety and Security

Fiscal Year 2019



Number of Seizures: 5,859

Fiscal Year 2018



Number of Seizures: 5,329

Fiscal Year 2019

Health, Safety and Security	Seizures	% of Total*
Sporting Goods - Guns & Gun Parts	1,428	24%
Consumer Electronics	989	17%
Pharmaceuticals	858	15%
Sunglasses/Eyewear	818	14%
Personal Care	490	8%
Critical Components	216	4%
Batteries	186	3%
Cigarettes	163	3%
Automotive/Aerospace	149	3%
All Other Products	562	10%

Number of Seizures

5,859

Fiscal Year 2018

Health, Safety and Security	Seizures	% of Total*
Personal Care	1,264	24%
Consumer Electronics	1,169	22%
Sunglasses/Eyewear	1,126	21%
Pharmaceuticals	403	8%
Critical Components	306	6%
Automotive/Aerospace	171	3%
Batteries - Machinery	152	3%
Lights/Lamps	144	3%
Perfumes	137	3%
All Other Commodities	457	9%

Number of Seizures

5,329

*Shipments with multiple types of products are included in the "All others" category. Because the individual percentage figures are rounded, in some cases, the sum of the rounded percentages for a given fiscal year is slightly higher or lower than 100 percent.

Exclusion Orders

CBP enforces exclusion orders issued by the ITC. The ITC issues both limited and general exclusion orders. Limited exclusion orders apply only to infringing articles of named respondents. General exclusion orders bar the entry of infringing articles by all. Most ITC exclusion orders are patent-based.

Exclusion orders prohibit the entry of all covered articles, even if they were not specifically accused and found to infringe by the ITC. Once excluded, subsequent importations of the same articles by the same importer are subject to seizure.

Fiscal Year 2019

Shipments Seized	Seizure Est. MSRP	New Exclusion Orders Issued	Total Active Exclusion Orders
372	\$3,664,553	15	114



Centers of Excellence and Expertise

Centers	Total MSRP	% of Total MSRP
Consumer Products & Mass Merchandising	\$1,000,628,016	64%
Apparel, Footwear & Textiles	\$383,694,303	25%
Electronics	\$117,028,274	8%
Machinery	\$27,810,170	2%
Pharmaceuticals, Health & Chemicals	\$9,234,202	1%
Automotive & Aerospace	\$9,868,483	1%
Agriculture & Prepared Products	\$3,882,013	0%
Industrial & Manufacturing Materials	\$1,225,896	0.1%
Base Metals	\$1,897,700	0.1%

Total FY 2019 MSRP

\$ 1,555,269,057

Centers	Total Seizures	% of Total Seizures
Consumer Products & Mass Merchandising	10,830	39%
Apparel, Footwear & Textiles	7,910	29%
Electronics	3,050	11%
Machinery	1,761	6%
Pharmaceuticals, Health & Chemicals	886	3%
Automotive & Aerospace	260	1%
Agriculture & Prepared Products	177	1%
Industrial & Manufacturing Materials	67	0%
Base Metals	8	0%
Seizures Involved More Than One Center	2,650	10%

Total FY 2019 Seizures

27,599



IPR Points of Contact

Questions? Contact the IPR Help Desk For Assistance - CBP's IPR Help Desk is staffed Monday through Friday to answer questions on IPR enforcement. Contact the IPR Help Desk via email at iprhelpdesk@cbp.dhs.gov.

Regulations, Rulings, and Recordation – Inquiries about CBP's IPR regulations may be addressed to Regulations and Rulings (RR) at hqiprbranch@cbp.dhs.gov. Ruling requests regarding articles potentially subject to an ITC exclusion order may be submitted to IPRBranch.ITC337.Rulings@cbp.dhs.gov. To request information on CBP's recordation program, please contact RR at iprrquestions@cbp.dhs.gov.

Guidance on CBP IPR Policy and Programs - The IPR and E-Commerce Division (IPR Division) coordinates with rights holders, members of the trade community, CBP staff, other Federal agencies, and foreign governments in developing and implementing the Agency's IPR strategy, policy and programs. To contact the IPR Division, email iprpolicyprograms@cbp.dhs.gov.

e-Allegations - If you are aware of or suspect a company or individual is committing IPR crime, please report the trade violation using CBP's e-Allegations Online Trade Violation Reporting System at <https://eallegations.cbp.gov/Home/Index2>. Trade violations can also be reported by calling 1-800-BE-ALERT.

National Intellectual Property Rights Coordination Center - To report violations of intellectual property rights, including counterfeiting and piracy, contact the National IPR Coordination Center at <https://www.iprcenter.gov/referral/> or telephone 1-866-IPR-2060.



Homeland
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CBP Publication # 1208-0820

EXHIBIT 3

Winter 2020

Alibaba, Amazon, and Counterfeiting in the Age of the Internet

Daniel C.K. Chow

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ALIBABA, AMAZON, AND COUNTERFEITING IN THE AGE OF THE INTERNET

*Daniel C.K. Chow**

Abstract:

The advent of e-commerce marketplaces such as Alibaba and Amazon in the new millennium has led to the proliferation of the sale of counterfeit goods around the world through the Internet. Brand owners find that Internet counterfeiters operating in the digital world present even more challenges than those using only brick-and-mortar operations. Internet counterfeiters have unprecedented access to consumers. They use false identities and addresses and vanish into cyberspace at the first sign of trouble. Brand owners seeking help from Alibaba and Amazon to remove listings of counterfeits have become frustrated by their convoluted and labyrinthine notice and take-down procedures. Even when these procedures are used successfully, brand owners find that the process can take months only to have the counterfeiter reappear in short order using a new false identity. Many brand owners find that dealing with Alibaba and Amazon only adds to their misery and believe that both tolerate counterfeits as they earn revenue from all sales, including sales of counterfeit goods.

This Article sets forth for the first time how brand owners can use a set of currently available information technology tools to help create an effective deterrent to counterfeits on the Internet. Using these tools, brand owners can force counterfeiters to abandon the subterfuge and disguise that they rely on so that brand owners can—without the assistance of e-commerce platforms—directly pursue counterfeiters in civil and criminal actions in China where most of the counterfeiters are located and in the United States. The proposed approach should help deter counterfeiters who always work in secrecy and disguise by

* B.A., JD, Yale University. Bazler Chair in Business Law, The Ohio State University Michael E. Moritz College of Law. The author lived and worked in China as head of the legal department for a multinational company in the consumer products business with serious counterfeiting issues. The author also helped to organize and served as the first executive secretary for the China Anti-Counterfeiting Coalition, a lobby group for multinationals in China (now known as the Quality Brands Protection Committee), and was the principal author of the white paper on counterfeiting in China commissioned by the PRC State Council. More recently, in addition to academic duties, the author served as an attorney and expert witness in U.S. litigation involving the sale of counterfeit cigarettes and internet e-commerce sites in China and the United States. The opinions expressed in this Article are the author's own but the author has profited from many discussions with colleagues. The author also thanks Natasha Landon, Moritz Law Librarian for her excellent research help.

exposing them to what they fear and loathe the most: transparency and accountability for their illegal actions.

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I. INTRODUCTION

The advent of internet commerce (e-commerce) in the early 2000s coincided with the unprecedented and historic rise of counterfeiting in the People's Republic of China (PRC or China) that had begun in the 1990s.¹ Although sales of counterfeits through brick-and-mortar establishments had already gained a substantial share of the market in China by the early 2000s,² the rise of the Internet in the new millennium has allowed counterfeiters in China unparalleled access to consumers not just in China but also in the United States and worldwide by transcending the physical limitations inherent in the use of brick-and-mortar operations.³ Recent studies show that counterfeits and infringing products have proliferated on the Internet and have reached levels of saturation that were unattainable by counterfeiters selling through brick-and-mortar distributors.⁴ For example, Xinhua, China's official news agency stated that more than 40% of all goods sold online through Chinese e-commerce platforms in a recent year were "counterfeits or of bad quality."⁵ Since Xinhua is controlled by the Communist Party of China (the Party) and would want to present China in the best light possible, the 40% figure might understate the severity of the problem. Most consumers in China believe that the likelihood of a product sold on the Internet is counterfeit is very high, and those who wish to buy genuine products avoid the use of the Internet altogether.⁶ This 40% figure cited by Xinhua is double the estimated 15-20% rate of counterfeits sold in brick-and-mortar establishments in China.⁷ In the United States, the U.S. General Accounting Office recently conducted a study and found that among a selection of 47 items belonging to four types of frequently counterfeited goods (i.e., sneakers, mugs, cosmetics, and phone chargers) purchased online, 27 were

¹ See Daniel C.K. Chow, *Counterfeiting in the People's Republic of China*, 78 WASH. U.L.Q. 1, 3 (2000).

² By the early 2000s, brand owners estimated that counterfeits comprised 15-20% of all goods sold on the market in China. See *id.* at 3 n.3 (citing Joseph T. Simone, *Countering Counterfeiters*, CHINA BUS. REV., Jan. 1, 1999, at 12).

³ See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-216, INTELLECTUAL PROPERTY: AGENCIES CAN IMPROVE EFFORTS TO ADDRESS RISKS POSED BY CHANGING COUNTERFEITS MARKET 11 (2018), <https://www.gao.gov/assets/690/689713.pdf> (discussing how the use of the internet allows counterfeiters to transcend limits of brick and mortar counterfeiting) [hereinafter GAO REPORT].

⁴ See *infra* Parts II.A & II.B.

⁵ *More than 40 Per Cent of China's Online Sales 'Counterfeits or Bad Quality'*, TELEGRAPH (Nov. 3, 2015), <https://www.telegraph.co.uk/news/worldnews/asia/china/11971401/More-than-40-per-cent-of-Chinas-online-sales-counterfeit-or-bad-quality.html>. Xinhua does not distinguish between counterfeits and products of poor quality; it is unclear whether Xinhua believes that these are two separate categories of goods or a single category as most counterfeits are of poor quality.

⁶ This observation is based upon the author's own experience living and working in China and on discussions with colleagues and associates.

⁷ See Chow, *supra* note 1, at 3 n.3.

authentic and 20 were counterfeit.⁸ After Seattle-based Amazon made efforts in 2015 to woo Chinese manufacturers to sell directly on its platform, complaints about counterfeits and infringing products sold on Amazon have risen sharply.⁹

Efforts by multinational companies (MNCs) that own trademarks (or brands), copyrights, and other intellectual property rights to stem the flow of counterfeits through the Internet have been largely unsuccessful, leading to anger and frustration.¹⁰ Under current legal regimes, e-commerce platforms are in general not liable for counterfeits sold by third-party online vendors using the site;¹¹ liability lies with the vendor itself, but many brand owners argue that Internet commerce sites facilitate the sales of counterfeits.¹² E-commerce platforms earn revenues from sales, including sales of counterfeits.¹³ Many brand owners argue that e-commerce platforms facilitate counterfeiting by allowing webpages or postings of counterfeit goods to remain on their sites despite the many protests of brand owners.¹⁴ Some of these offending webpages are removed after brand owners suffer through a long and convoluted notice and takedown procedure only to reappear under a new false name and address in short order.¹⁵ In China,

⁸ See GAO REPORT, *supra* note 3, at 15. The products were Nike Air Jordan shoes, Yeti travel mugs, Urban Decay cosmetics, and UL-certified phone chargers. *Id.*

⁹ Wade Shepard, *How Amazon's Wooing of Chinese Sellers Is Killing Small American Businesses*, FORBES (Feb. 14, 2017), <https://www.forbes.com/sites/wadeshepard/2017/02/14/how-amazons-wooning-of-chinese-sellers-is-hurting-american-innovation/#13af78741df2>.

¹⁰ See *infra* Parts II.B & II.D.

¹¹ See Digital Millennium Copyright Act of 1998 (DMCA), 17 U.S.C. § 512 (Westlaw through Pub. L. No. 116-68) (creating a “safe harbor” from vicarious liability for ISPs that upon notification remove infringing material expeditiously). For cases holding that the ISP is not vicariously liable for the sale by third party vendors, see generally *Milo & Gabby, LLC v. Amazon.com, Inc.*, 2015 WL 4394673 (W.D. Wash. July 16, 2015); *Perfect 10, Inc. v. Amazon.com, Inc.*, 2009 WL 1334364 (C.D. Cal. May 12, 2009); *Hendrickson v. Amazon.com, Inc.*, 298 F. Supp. 2d 914 (C.D. Cal. 2003).

¹² See *infra* Parts II.B, II.D & II.E.

¹³ See David Pierson, *Extra Inventory. More Sales. Lower Prices. How Counterfeits Benefit Amazon*, L.A. TIMES (Sept. 28, 2018), <https://www.latimes.com/business/technology/la-fi-tn-amazon-counterfeits-20180928-story.html> (“Not only has [Amazon] avoided any serious backlash for allowing the sale of fake goods, it’s actually thrived from it, say more than two dozen brand owners, e-commerce consultants, attorneys, investigators and public policy experts.”).

¹⁴ See *infra* Parts II.D & II.E.

¹⁵ See Pierson, *supra* note 13 (“[I]f Amazon shuts one store for selling knockoffs, the owner often shifts operations to another.”); Alana Semuels, *Amazon May Have a Counterfeit Problem*, THE ATLANTIC (Apr. 20, 2018), <https://www.theatlantic.com/technology/archive/2018/04/amazon-may-have-a-counterfeit-problem/558482/> (“These problems come up once a week.”). Cf. Jeff Bercovici, *Huge Counterfeiting Problem. This “Shark Tank” Company Is Fighting Back*, INC.COM (Apr. 2019), <https://www.inc.com/magazine/201904/jeff-bercovici/amazon-fake-copycat-knockoff-products-small-business.html> (“A recent Pointer report noted that Amazon is among the least responsive of all e-commerce platforms to takedown

MNCs have waged a decades-long struggle against Alibaba to stem the sale of counterfeits with few tangible results.¹⁶ Although Alibaba claims to have made many serious efforts in combatting the sale of counterfeit goods, many brand owners remain frustrated and dissatisfied.¹⁷ As in the case of Alibaba, brand owners in the United States are frustrated with what they perceive to be Amazon's half-hearted efforts to battle the flow of counterfeits.¹⁸ This Article examines counterfeiting on the Internet with a focus on Alibaba and Amazon, the largest e-commerce platforms in China and the United States respectively and in the world.¹⁹ The lessons learned can be immediately applied to other e-commerce platforms.

This Article focuses on why the sale of counterfeits on the Internet has exploded and allowed counterfeiters to penetrate markets that were previously unavailable when counterfeiters were limited to brick and mortar operations. Not only has the Internet given counterfeiters vast new opportunities for profit but it has also allowed them to operate in the digital world in the open, while simultaneously being able to use false cyber identities and addresses to evade detection and capture by brand owners and law enforcement authorities.²⁰ With the emergence of the Internet, counterfeiting and piracy—already a worldwide problem—have entered into a new and even more potent phase.²¹ Up to the present, MNCs have been frustrated by their inability to curtail the growth of counterfeits on the Internet.²²

Although the problems created by the Internet are daunting, this Article argues that a simple and effective deterrent exists in China but has been overlooked or ignored by MNCs and e-commerce platforms and explains how this deterrent can be used effectively. This Article sets forth for the first time how these remedial measures can be used to curtail the explosion of

notices, removing only 25 percent of infringing listings.”).

¹⁶ See *infra* Part II.D.

¹⁷ See *id.*

¹⁸ According to one brand owner representative, “Amazon is making money hand over fist from counterfeiters, and they’ve done about as little as possible for as long as possible to address the issue.” Ari Levy, *Amazon’s Chinese Counterfeit Problem Is Getting Worse*, CNBC (July 8, 2016), <https://www.cnbc.com/2016/07/08/amazons-chinese-counterfeit-problem-is-getting-worse.html>. See also Semuels, *supra* note 15 (describing Amazon’s low level of responsiveness to brand owner concerns).

¹⁹ Alibaba is the world’s largest e-commerce marketplace and Amazon is the second largest. See *infra* notes 103 & 107.

²⁰ See Pierson, *supra* note 13.

²¹ See BUS. ACTION TO STOP COUNTERFEITING AND PIRACY & INT’L CHAMBER OF COMMERCE, ROLES AND RESPONSIBILITIES OF INTERMEDIARIES: FIGHTING COUNTERFEITING AND PIRACY IN THE SUPPLY CHAIN 5 (2015), <https://iccwbo.org/publication/roles-responsibilities-intermediaries/> (“The Internet has been particularly vulnerable . . . to counterfeiters and other criminal capitalizing on the success (and intellectual property) of legitimate businesses while remaining anonymous and avoiding detection.”).

²² See *infra* Part III.

counterfeits on the Internet. In setting forth this analysis, this Article will underscore the following three major points that must be understood by all MNCs and other brand owners in modern e-commerce. First, the emergence of e-commerce platforms such as Alibaba and Amazon have given counterfeiters a vast new tool to reach end use consumers. Prior to the Internet, counterfeiters were subject to the physical limitations created by brick-and-mortar distribution and retail sites and were unable to penetrate distribution channels that would allow them to sell counterfeits in reputable retail outlets.²³ Consumers had to travel to less desirable locations to buy counterfeits as state-owned department stores and high end retailers in China and large reputable retail chains such as Walmart, Target, and Costco in the United States refused to deal with distributors of counterfeit goods.²⁴ Instead, consumers in China or the United States who wished to purchase counterfeits had to go to small discount stores, mom-and-pop stores, flea markets, street vendors, or private addresses in side streets, back alleys or other undesirable locations, a prospect that deterred many consumers.²⁵ The emergence of the Internet has now given what counterfeiters have always sought: a legitimate distribution channel that consumers can access at any time from their computers without having to travel to undesirable locations to buy counterfeits from brick-and-mortar sellers.²⁶ The Internet also gives counterfeiters the ability to disguise their identities and to disappear into the vastness of cyberspace at the first sign of trouble.²⁷ All counterfeiters and pirates, whether they sell in brick-and-mortar locations or through the Internet, are very fearful of detection and capture.²⁸ Counterfeiters that use brick-and-mortar establishments are subject to surprise raids and seizures by enforcement authorities,²⁹ but Internet counterfeiters have found ways to use false identities that are untraceable by brand owners; even when they are detected, Internet pirates that are shut down are able to immediately create new false identities and return to their illegal operations on the Internet.³⁰

Second, PRC enforcement officials have recently acknowledged in an

²³ See GAO REPORT, *supra* note 3, at 11.

²⁴ This observation is based on the author's own experience as an attorney working for U.S. brand owners in tracking the distribution channel of counterfeits.

²⁵ *Id.* See GAO REPORT, *supra* note 3, at 10 (counterfeits were traditionally sold in "underground" or secondary markets such as flea markets or sidewalk vendors).

²⁶ See GAO REPORT, *supra* note 3, at 11–12.

²⁷ See *id.*

²⁸ This observation is based on the author's firsthand experience in pursuing counterfeiters.

²⁹ See Chow, *supra* note 1, at 19–21 (describing raids conducted in Yiwu City, "a significant wholesale distribution center for counterfeit goods in the PRC[.]" from 1998 to 1999).

³⁰ See Pierson, *supra* note 13 ("[B]rands say the same fraudsters keep showing up under different names[.]"); Semuels, *supra* note 15 ("Milo and Gabby tried to track down the [counterfeit] sellers, but almost all of the sellers had given false names when setting up their Amazon seller accounts, and the addresses they gave turned out to be bogus as well[.]").

official report that Alibaba sees itself as above the law in China and feels no need to follow it.³¹ MNCs have long suspected that Alibaba tolerates or encourages counterfeiting on its sites.³² Brand owners have persistently complained that Alibaba and Amazon appear reluctant to assist brand owners in tracking down counterfeiters and create unnecessary bureaucratic and technical hurdles in the detection of counterfeiters.³³ Some brand owners have attributed these difficulties to an economic motive: e-commerce platforms earn revenue through sales, including sales of counterfeit goods.³⁴ In the case of Alibaba, brand owners have long suspected that it tolerates or supports counterfeiting and these sentiments have been confirmed by official statements by PRC enforcement authorities. According to PRC officials, Alibaba's attitude towards the law and enforcement authorities is marked by a fundamental "arrogance."³⁵ In China, it is not unusual for powerful entities to view themselves as above the law.³⁶ The Communist Party, the most powerful entity of all, sees the law as a mere instrument to be used to serve the ends of the Party.³⁷ Alibaba is not intimidated by or fearful of law enforcement authorities; to the contrary, Alibaba sees itself as more powerful than government law enforcement authorities and answerable only to the Party.³⁸ For these reasons, MNCs must accept the reality that Alibaba, in the words of PRC officials, tolerates and supports counterfeiters in order to protect its revenues from sales of counterfeit goods and that it will likely take an intervention by the Party at its highest levels to effect meaningful change in Alibaba's conduct. Any plan to stem the sales of counterfeits on Alibaba's platform that requires Alibaba's active participation must proceed with the assumption that it will be met with resistance or efforts that are half-hearted.

Third, although the use of the Internet to sell counterfeits presents formidable new challenges to brand owners, this Article argues that simple and effective measures are available under PRC law to brand owners to deter

³¹ See Gongshang Zongju (工商总局), Guanyu Dui Alibaba Jituan Jinxing Xingzheng Zhidao Gongzuo Qingkuang de Baipishu (关于对阿里巴巴集团进行行政指导工作情况的白皮书), translated in STATE ADMIN. OF INDUS. & E-COMMERCE, PEOPLE'S REPUBLIC OF CHINA, WHITE PAPER ON ALIBABA GROUP HOLDINGS ADMINISTRATIVE GUIDANCE WORK SITUATION (2015) [hereinafter SAIC WHITE PAPER]. A partial English translation is available at Zheping Huang, *The Chinese Government Has Erased a Damning Report on Alibaba, but You Can Read It Here*, QUARTZ (Jan. 29, 2015), <https://qz.com/335675/the-chinese-government-has-erased-a-damning-report-on-alibaba-but-you-can-read-it-here/>. The SAIC White Paper is extensively discussed in Part II.B.

³² See *infra* Part II.B.

³³ See *infra* Part III.A.

³⁴ See e.g., Pierson, *supra* note 13 ("Not only has [Amazon] avoided any serious backlash for allowing the sale of fake goods, it's actually thrived from it, say more than two dozen brand owners, e-commerce consultants, attorneys, investigators and public policy experts.").

³⁵ SAIC WHITE PAPER, *supra* note 31, at 20.

³⁶ See *infra* Part II.D.2.b.

³⁷ *Id.*

³⁸ *Id.*

many counterfeiters from using the Internet and to detect and identify those that do.³⁹ This Article proposes and sets forth for the first time a set of simple and effective methods that MNCs can use to create effective deterrence to counterfeiting on the Internet.⁴⁰ To the best of the author's knowledge, no MNC, brand owner, or any professional or academic study has previously identified these methods, although they are openly available in plain sight in China's legal system, and their use is required and regularly encouraged by PRC officials. Although certain aspects of China's information technology industry, such as protection and enforcement of intellectual rights, are weak by comparison to the United States, other aspects of China's information technology industry are far ahead of the United States.⁴¹ In particular, China's obsessive need to exert pervasive control over and to monitor its citizens and all aspects of Chinese society have created the informational technology tools available to deter counterfeiters.⁴² In fact, Chinese government officials have urged Internet sites to use the tools available to control entry onto Internet sites and to monitor entities on the Internet.⁴³ Brand owners, however, either do not trust PRC officials or understand the potential effectiveness of these tools.

Unlike brick-and-mortar counterfeiters who need no permission to operate, counterfeiters must obtain a "pass" through a digital port of entry in order to obtain access to the Internet to sell their products.⁴⁴ Operators of e-commerce platforms have the ability to exercise absolute control over entry. Controlling this point of entry through the use of tools created by the PRC government is the key to controlling counterfeiting on the Internet. Counterfeiters wish to operate in hiding and secrecy; they fear and detest transparency and accountability. E-commerce platforms can remove the anonymity of the Internet by following a straightforward registration system

³⁹ See *infra* Part III.

⁴⁰ *Id.*

⁴¹ China is far ahead of the U.S. in the use of technologies, such as facial recognition, to closely monitor its citizens. See Zhou Jiaquan, *Drones, Facial Recognition, and a Social Credit System: 10 Ways China Monitors Its Citizens*, S. CHINA MORNING POST (Aug. 4, 2018), <https://www.scmp.com/news/china/society/article/2157883/drones-facial-recognition-and-social-credit-system-10-ways-china>.

⁴² China closely monitors its citizens. Recently, China announced a "social credit" system in which the activities of each citizen will be ranked, and each citizen given a score evaluating the social merit of his or conduct. For a discussion on how China monitors its citizens, see Charlie Campbell, *How China Is Using "Social Credit Scores" to Rewards and Punish Its Citizens*, TIME (Jan. 16, 2019), <https://time.com/collection/davos-2019/5502592/china-social-credit-score/>.

⁴³ See *infra* Part III.

⁴⁴ Online vendors are required by e-commerce platforms to register before they are allowed to access the site. See e.g., *Selling on Amazon: Frequently Asked Questions*, AMAZON, <https://services.amazon.com/selling/faq.htm> (last visited July 1, 2019) (requiring a business name, address, and contact information among other information in order to open an Amazon seller account).

as required by PRC law.⁴⁵ However, Alibaba does not faithfully apply the requirements of PRC law but instead is careless and loose in verifying entity registration.⁴⁶ Brand owners also complain that Amazon has lax registration requirements and registers many entities with fictitious identities and addresses.⁴⁷

As a condition of gaining access to e-commerce sites, PRC law requires all vendors to submit a business license issued by PRC government authorities. These licenses have strict disclosure requirements that will reveal their true legal identities and locations in strict accordance with the detailed and specific information contained in official PRC government records and electronically on government websites to the public.⁴⁸ To obtain this official business license, business operators must undergo a review and approval process by PRC government authorities over the legality and economic feasibility of their proposed business operations.⁴⁹ Most counterfeiters will not wish to submit to such an approval process for fear of being detected and being subject to capture and prosecution. Those entities that do undergo this official review will then need to openly display their business licenses on the website. In turn, counterfeiters will be unable to escape detection as brand owners will be able to bring suit directly against them.⁵⁰

A unique concept of PRC law is that each business entity must have a natural person who serves as its legal representative and who is subject to civil liability and criminal prosecution.⁵¹ The legal representative must be identified in the business license so brand owners will have a person in flesh and blood against whom they can directly file civil or criminal actions in China or in the United States if U.S. contacts exist.⁵² The faithful execution of these requirements should help brand owners to deter many counterfeiters from selling through Internet sites. Currently, however, brand owners do not insist on enforcement of these requirements and neither Alibaba nor Amazon faithfully follows PRC law on entity registration.⁵³

This Article will proceed as follows. Part II examines the background

⁴⁵ See *infra* Part III.

⁴⁶ See text accompanying notes 231-34 *infra*.

⁴⁷ See *infra* note 95.

⁴⁸ See Administrative Measures for Online Trading, art. 23 (promulgated by the State Admin. of Indus. & E-Commerce, Order No. 60, Jan. 26, 2014, effective Mar. 15, 2014), CLI4.218557(EN), <http://en.pkulaw.cn/display.aspx?id=16309&lib=law&EncodingName=big5>. See also *infra* Part III.

⁴⁹ See *infra* Part III.

⁵⁰ *Id.*

⁵¹ See General Principles of the Civil Law of the People's Republic of China, ch. III, art. 57 (promulgated by the Nat'l People's Cong., Order No. 66, Mar. 15, 2017, effective Oct. 1, 2017), translated by Whitmore Gray & Henry Ruiheng Zheng, *General Principles of the Civil Law of the People's Republic of China*, 34 AM. J. COMP. L. 715, 726 (1986) [hereinafter General Principles of the Civil Law of the PRC].

⁵² See *infra* Part III.

⁵³ *Id.*

of counterfeiting in China and how the advent of the Internet has propelled this illegal activity to new heights. The ability to transcend the physical limitations created by brick-and-mortar counterfeiting operations has created a vast new opportunity in cyberspace for counterfeiters who can now compete directly with genuine goods and vanish at the first sign of trouble. Part II also discusses brand owner concerns about Alibaba and Amazon. In the case of Alibaba, brand owners have long claimed that Alibaba tolerates or supports counterfeiting on its websites. A recent in-depth investigation and report by PRC national authorities not only confirms this suspicion but also sets forth the PRC government's view that Alibaba sees itself as being above the law. Brand owners have also complained that Amazon is unresponsive to their concerns about counterfeits, requiring byzantine notice and takedown procedures that only add to brand owners' misery. Part III examines the hurdles that brand owners claim that they face in attempting to work with Alibaba and Amazon in removing infringing webpages or postings from their sites; these frustrations are due to cumbersome notice and takedown procedures that can take months and tax brand owners through heavy costs in time, energy, and money. Part III then sets forth this Article's proposed method of using existing online tools in the PRC to help create deterrents to counterfeiting on the Internet. These tools can be used to combat counterfeits on Alibaba and Amazon as well as on other e-commerce platforms. Part IV contains concluding observations.

II. COUNTERFEITING AND THE INTERNET

A. Brief Overview of Counterfeiting in China

As early as 2000, China was described as having the most serious counterfeiting problem in world history.⁵⁴ The origin of this problem can be traced to 1) China's access to advanced technology (i.e. intellectual property) brought into China by MNCs that make foreign direct investments in China and 2) to China's weak and developing legal system,⁵⁵ which does not create effective deterrence for counterfeiters and infringers of intellectual property rights.⁵⁶ Although U.S. companies have made many efforts through the first two decades of the twenty-first century to combat counterfeiting in China, China remains the largest source of counterfeits in the world. For example, a recent study cited in *Forbes* indicates that China produces 80% of the world's counterfeits and that counterfeiting is now a \$1.7 trillion per year industry.⁵⁷

⁵⁴ Chow, *supra* note 1, at 3. The background and history of the rise of counterfeiting before the advent of the internet is set forth in this article. *See infra* Parts II.A & II.B.

⁵⁵ DANIEL C.K. CHOW & THOMAS J. SCHOENBAUM, *INTERNATIONAL BUSINESS TRANSACTIONS* 537–38 (3d. ed. 2015).

⁵⁶ DANIEL C.K. CHOW & THOMAS J. SCHOENBAUM, *INTERNATIONAL TRADE LAW* 643 (3d. ed. 2017) (China's weak legal system does not create effective deterrence.).

⁵⁷ Wade Shepard, *Meet the Man Fighting America's Trade War Against Chinese Counterfeits (It's Not Trump)*, *FORBES* (Mar. 29, 2018), <https://www.forbes.com/sites/wade>

The U.S. General Accountability Office reports that in 2016, 88% of all seized counterfeit goods by the United States originated from China and Hong Kong.⁵⁸ The European Union claims that China is the largest source of counterfeit goods sold into the EU.⁵⁹ Counterfeiting is now the largest criminal enterprise in the world,⁶⁰ and China is the epicenter of counterfeiting.⁶¹ The highest number of shipments of counterfeits seized around the world originates from East Asia, with China as the top source.⁶²

On April 3, 2019, the Trump Administration issued a Presidential Memorandum announcing that combatting counterfeiting and piracy had been elevated to a new level of priority for the United States.⁶³ The memorandum specifically tasked the Justice Department and the Department of Homeland Security to focus on and investigate “online third party marketplaces.”⁶⁴ This indicates a recognition by the United States that counterfeiting on e-commerce platforms is a specialized priority area of concern.

B. The Advent of the Internet

The rise of Internet sales platforms in the early 2000s created a valuable new opportunity for counterfeiters. To understand the significance of this development, it is necessary to recognize that there are two main components to counterfeiting: manufacturing and distribution.⁶⁵

The manufacturing of counterfeits tends to arise in proximity to the manufacturing of genuine goods.⁶⁶ In the early 1990s, one of the first areas open to foreign investment in China was in the southern region of Guangdong Province, near Hong Kong. MNCs opened manufacturing facilities in special

shepard/2018/03/29/meet-the-man-fighting-americas-trade-war-against-chinese-counterfeits/#321a1941c0d6.

⁵⁸ GAO REPORT, *supra* note 3, at 13.

⁵⁹ EUROPEAN COMM’N, EU SEIZURES AT THE BORDER OF GOODS INFRINGING ON INTELLECTUAL PROPERTY RIGHTS (2018), https://ec.europa.eu/taxation_customs/sites/taxation/files/factsheet_ipr_report_2018_en.pdf.

⁶⁰ See Shepard, *supra* note 57 (“The trade in counterfeit and pirated goods is currently at \$1.7 trillion . . . and is expected to grow to \$2.8 trillion and cost 5.4 million jobs by 2022.”).

⁶¹ See *id.* See also EUROPEAN COMM’N, *supra* note 59 (reporting that China and Hong Kong, together, accounted for over 83% of counterfeit goods).

⁶² OECD & EUROPEAN UNION INTELLECTUAL PROP. OFFICE, TRADE IN COUNTERFEIT AND PIRATED GOODS: MAPPING THE ECONOMIC IMPACT 49 (2016), <http://dx.doi.org/10.1787/9789264252653-en>.

⁶³ Memorandum on Combatting Trafficking in Counterfeit and Pirated Goods, Section 1 (Apr. 3, 2019), <https://www.whitehouse.gov/presidential-actions/memorandum-combating-trafficking-counterfeit-pirated-goods/>.

⁶⁴ *Id.*

⁶⁵ Daniel C.K. Chow, *Organized Crime, Local Protectionism and the Trade in Counterfeit Goods in China*, 14 CHINA ECON. REV. 473, 474 (2003).

⁶⁶ *Id.*

economic zones that created financial incentives for investment.⁶⁷ Soon after these facilities were established, the brand owners found that counterfeits began to appear in the same locations.⁶⁸ MNCs discovered that employees working in their facilities or their relatives, friends, or associates had begun to use the know-how that they acquired from the MNC to establish their own manufacturing operations in order to produce counterfeits.⁶⁹

A counterfeiter that has manufactured a fake good must then sell it to consumers. The illegal factory may be located far away from densely populated urban areas where large numbers of consumers are found, so the counterfeiter must find a distribution channel for the goods to reach the end-use consumer. Distribution is the second major component of counterfeiting.

Prior to the rise of the Internet, counterfeiters faced a problem: legitimate distributors would have nothing to do with counterfeits.⁷⁰ MNCs distribute their products in China only through qualified distributors that are able to sell to high-end state-owned department stores and other retail outlets in high-end shopping centers.⁷¹ Qualified distributors are those entities that are able to pass a stringent set of criteria established by brand owners.⁷² These distributors will not work with counterfeiters for fear of losing their contracts with legitimate brand owners, and, as a result, counterfeiters are unable to penetrate into legitimate distribution channels to reach high-end retailers.⁷³ Rather, counterfeiters had to rely on brick-and-mortar wholesale distributors of lesser and questionable repute who would be willing to sell counterfeits, smuggled goods, and inferior quality products.⁷⁴ These wholesale distributors are found in markets in China that are either enclosed or open air spaces with hundreds or thousands of wholesale vendors.⁷⁵ Retailers appear at these wholesale markets with trucks or vans to transport the counterfeits purchased at these markets.⁷⁶ Large reputable retailers, such as state-owned department stores, do not buy at these wholesale markets.⁷⁷ Only retailers that are small mom and pop stores, street stalls, or open air vendors in China will purchase from these markets.⁷⁸ This left the counterfeiter with the problem that it could

⁶⁷ *Id.*

⁶⁸ *See id.* at 474–75.

⁶⁹ This observation is based upon the author's own experience working as in-house counsel for an MNC with major operations in China. It is a pattern that is repeatedly occurs in China: counterfeiting tends to arise in locations with legitimate manufacturing operations.

⁷⁰ *See* Chow, *supra* note 65, at 476.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *See id.* at 476–77.

⁷⁵ *Id.* at 476.

⁷⁶ *See* Chow, *supra* note 65, at 476.

⁷⁷ *Id.*

⁷⁸ *Id.*

almost never penetrate into high-end retail stores.⁷⁹ Purchasers of counterfeits would have to travel to side streets, back alleys, and other areas in less desirable urban locations to buy counterfeits from small and less reputable retailers.⁸⁰ The need to travel to unsavory locations deterred many consumers.

In the United States, counterfeits are also unable to penetrate into legitimate distribution channels to reach large department stores or other large retailers.⁸¹ Counterfeits are almost never found in large chain stores such as Costco, Target, or Walmart. These companies either use qualified distributors or have vertically integrated business models that allow them to control distribution themselves.⁸² These distributors refuse to deal in counterfeits, smuggled goods, or gray market goods.⁸³ Only less reputable distributors will deal in these secondary goods, but they do not sell to large and high end retailers who refuse to deal with them.⁸⁴ These distributors sell to discount stores, small mom-and-pop stores, street vendors, or private persons who arrange for sales through word of mouth.⁸⁵ The advent of the Internet has now given counterfeiters what they have long sought: a legitimate and broad-reaching distribution channel to reach retail consumers who are now able to purchase products without having to travel to specific and undesirable locations where counterfeits are sold. Counterfeiters can now place their products on the Internet to reach consumers worldwide and are no longer confined to using illegal wholesale markets to reach lower retail quality stores. While in the past, consumers would not encounter counterfeits on the next shelf adjacent to authentic goods in brick and mortar stores because high end retailers refused to deal with distributors of counterfeit goods, the same is no longer true on the Internet. It is now possible for counterfeits to be on the digital shelf next to genuine goods on the same or an adjacent webpage.⁸⁶ Counterfeits can now compete directly with genuine goods.⁸⁷ Counterfeiters can also use false digital images that hide the low

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ This observation is based on the author's own experience as an expert witness in U.S. litigation involving U.S. multinational companies in cases involving counterfeits from China.

⁸² *Id.*

⁸³ Gray market goods (sometimes also called parallel imports) are genuine goods that are intended for sale in a foreign market but that are purchased abroad and shipped back to the home market. For example, genuine goods that are sold by the manufacturer to Japan are purchased by a foreign distributor in Japan who then resells them to an importer in China. The foreign distributor is able to take advantage of a lower price in Japan or favorable currency exchange rates in order to sell the products in China at a price that is lower than the genuine goods are sold directly by the manufacturer to buyers in China. See CHOW & SCHOENBAUM, *supra* note 55, at 567-68.

⁸⁴ See Chow, *supra* note 65, at 476.

⁸⁵ *Id.*

⁸⁶ See GAO REPORT, *supra* note 3, at 11.

⁸⁷ *Id.* ("In the past, consumers could often rely on indicators such as appearance, price, or

quality of their goods in competition with genuine goods.⁸⁸

The rise of counterfeits coincides with shifts in consumer habits. In June 2000, approximately 22% of U.S. consumers purchased goods online, but by December 2016 that portion had risen to 79%.⁸⁹ By 2020, worldwide e-commerce sales are expected to reach \$4 trillion, and e-commerce is expected to reach nearly 15% of global retail spending by 2020.⁹⁰

Prior to the advent of the Internet, counterfeiters in China that sought to sell their goods in the United States loaded the goods in large shipping containers with false documentation to transport the goods by ocean carriage to a port in the United States.⁹¹ While detection was difficult, if a brand owner had reliable specific intelligence of an illegal shipment,⁹² customs authorities in the United States would open and inspect the container.⁹³ With Internet sales, thousands or hundreds of thousands of small, individual packages are now shipped to the United States by mail, making it nearly impossible to detect and stop these shipments.⁹⁴

Not only do e-commerce platforms allow counterfeiters unprecedented access to end use consumers, counterfeiters are also able to take advantage of the anonymity of the internet to evade capture and detection by using false identities, business names, and locations.⁹⁵ The Internet has created an irresistible new opportunity for counterfeiters and has opened vast new avenues for generating profit.

C. Liability Regimes for Internet Service Providers

Under the Digital Millennium Copyright Act (DMCA)⁹⁶ in the United

location of sale to identify counterfeit goods in the marketplace, but counterfeiters have adopted new ways to deceive customers.”).

⁸⁸ *Id. Cf. id.* (“The physical appearance of counterfeit goods may no longer serve as a ‘red flag’ for consumers that the good they are considering purchasing is not genuine. Counterfeit goods and their packaging are becoming more sophisticated and closely resemble genuine goods[.]”).

⁸⁹ *Id.* at 12.

⁹⁰ *Id.*

⁹¹ *See* Chow, *supra* note 65, at 475.

⁹² Such intelligence can be gathered through the use of private investigation companies that penetrate counterfeit rings. A number of companies, such as Kroll and Pinkerton, specialized in these investigations.

⁹³ The author was involved as an attorney in a counterfeiting case in the United States in which U.S. Customs authorities stated that they would be willing to conduct an inspection of shipping containers but only on the basis of reliable specific information.

⁹⁴ *See* Pierson, *supra* note 13 (“Customs agents had a fighting chance when pirated goods predominantly arrived in cargo containers. But with the rise of e-commerce, counterfeiters and their middlemen can ship goods in parcels too innumerable to catch.”).

⁹⁵ *See id.* (“[B]rands say the same fraudsters keep showing up under different names[.]”); Semuels, *supra* note 15 (“Milo and Gabby tried to track down the [counterfeit] sellers, but almost all of the sellers had given false names when setting up their Amazon seller accounts, and the addresses they gave turned out to be bogus as well[.]”).

⁹⁶ 17 U.S.C. § 512 (Westlaw through Pub. L. No. 116-68). DMCA implements two World

States and similar provisions in China,⁹⁷ Internet service providers (ISPs) are not directly liable for the sale of counterfeits listed on their sites by third-party vendors.⁹⁸ While ISPs may be subject to vicarious liability for facilitating the sales, DCMA provides a “safe harbor.”⁹⁹ ISPs are entitled to immunity from vicarious liability for third-party listings and sales of counterfeit goods if they have no knowledge of the infringing material and remove it expeditiously upon receiving notice of its illegal nature.¹⁰⁰ To implement DCMA and the corresponding PRC law, e-commerce companies such as Alibaba and Amazon have set forth internal notice and takedown procedures that brand owners are required to follow when they find infringing material.¹⁰¹ As detailed in a later section, brand owners often complain that these procedures are cumbersome, time consuming, and ineffective.¹⁰²

D. Alibaba

1. Brand Owner Concerns

Alibaba is currently the world’s largest e-commerce platform in the world.¹⁰³ In 2016, Alibaba’s Internet marketplaces in China had 423 million

Intellectual Property Organization (WIPO) treaties: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. WIPO Copyright Treaty, Dec. 20, 1996, 112 Stat. 2861, 2186 U.N.T.S. 121; WIPO Performances and Phonograms Treaty, Dec. 20, 1996, 112 Stat. 2861, 2186 U.N.T.S. 203. As of 2007, the United States and the People’s Republic of China are now contracting parties to both treaties. *Contracting Parties – WIPO Copyright Treaty*, WIPO, https://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=16 (last visited July 1, 2019); *Contracting Parties – WIPO Performances and Phonograms Treaty*, WIPO, https://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=20 (last visited July 1, 2019).

⁹⁷ See generally Trademark Law of the People’s Republic of China (promulgated by the Nat’l People’s Cong., adopted Aug. 23, 1982, most recently revised Apr. 23, 2019, effective Nov. 1, 2019); Law Against Unfair Competition of the People’s Republic of China (promulgated by the Nat’l People’s Cong., Order No. 10, Sept. 2, 1993, revised Nov. 4, 2017, amended Apr. 23, 2019).

⁹⁸ See 17 U.S.C. § 512(c)(1).

⁹⁹ *Id.* See generally Susanna Monseu, *Fostering Web 2.0 Innovation: The Role of the Judicial Interpretation of the DMCA Safe Harbor, Secondary Liability and Fair Use*, 12 J. MARSHALL REV. INTELL. PROP. L. 70 (2012).

¹⁰⁰ See 17 U.S.C. § 512(c)(1).

¹⁰¹ See *Intellectual Property Policy for Sellers*, AMAZON, <https://sellercentral.amazon.com/gp/help/external/201361070> (last visited July 1, 2019); *Intellectual Property Rights (IPR) Protection Policy*, ALIBABA, <https://rule.alibaba.com/rule/detail/2049.htm> (last visited July 1, 2019).

¹⁰² See *infra* Part III.

¹⁰³ Comment Submitted by Eric Pelletier, Vice President of Alibaba, to the Honorable Prodir Mehta, Assistant United States Trade Representative re: 2016 Special 301 Out-of-Cycle Review Notorious Markets (Docket Number USTR-2016-2013), at 2 (Oct. 7, 2016), https://www.alizila.com/wp-content/uploads/2016/10/P-Alibaba-Group-Comments-for-2016-Notorious-Markets-Report-2_FINAL_compressed.pdf?x95431 (last visited Nov. 25,

active purchasers with a combined gross merchandise volume (GMV) of \$485 billion.¹⁰⁴ In 2018, in the span of just two years, active purchasers in China grew to 636 million and GMV grew to exceed \$768 billion,¹⁰⁵ creating the prospect that Alibaba's users may soon surpass one billion and its GMV may soon surpass \$1 trillion, numbers that seemed almost inconceivable just a decade ago. In 2015, package delivery from Alibaba's e-commerce platform in China averaged thirty million per day.¹⁰⁶ The sheer size and scope of Alibaba's operations dwarfs even that of its closest competitors. For example, Alibaba's GMV in 2018 at \$768 billion is more than three times that of Amazon, the world's second e-commerce platform, at \$239 billion.¹⁰⁷

From Alibaba's earliest days of operation, back in 1999, MNCs have claimed that counterfeits are abundantly available on Alibaba's websites.¹⁰⁸ Frustrated with the lack of results in China, U.S. companies have raised these concerns with the U.S. government and, as a result, Alibaba has been repeatedly placed on U.S. government blacklists. Despite its many claims that it is implementing new changes to effectively combat counterfeiting on its websites, Alibaba was first placed on the Out-of-Cycle Notorious Markets List in 2011¹⁰⁹ and sought to remove itself from the list in anticipation of its initial public offering (IPO) in the United States in 2014. Although Alibaba was dropped from the 2012 list,¹¹⁰ Alibaba found itself once again on the

2019).

¹⁰⁴ *Id.*

¹⁰⁵ Press Release, Alibaba Group Announces December Quarter 2018 Results (Jan. 30, 2019), https://www.alibabagroup.com/en/news/press_pdf/p190130.pdf.

¹⁰⁶ Jen Wiczner, *Alibaba: Here's Why Our Mind-Blowing Numbers Are Real*, FORTUNE (Sept. 23, 2015), <https://fortune.com/2015/09/23/alibaba-says-numbers-real-not-fake/>.

¹⁰⁷ Adam Levy, *The 7 Largest E-Commerce Companies in the World*, THE MOTLEY FOOL (Dec. 26, 2018), <https://www.fool.com/investing/2018/12/26/the-7-largest-e-commerce-companies-in-the-world.aspx>.

¹⁰⁸ See, e.g., *Alibaba and the 2,236 Thieves: An Online-Fraud Scandal in China*, THE ECONOMIST (Feb. 22, 2011), <https://www.economist.com/newsbook/2011/02/22/alibaba-and-the-2236-thieves>;

¹⁰⁹ OFFICE OF U.S. TRADE REPRESENTATIVE, 2011 OUT-OF-CYCLE REVIEW OF NOTORIOUS MARKETS 3 (Dec. 20, 2011), <https://ustr.gov/sites/default/files/uploads/gsp/speeches/reports/2011/Notorious%20Markets%20List%20FINAL.pdf> (discussing Alibaba's subsidiary site Taobao.com).

¹¹⁰ Doug Palmer, *U.S. Drops China's Taobao Website from "Notorious" List*, REUTERS (Dec. 13, 2012), <https://www.reuters.com/article/net-us-usa-trade-piracy/u-s-drops-chinas-taobao-website-from-notorious-list-idUSBRE8BC1IG20121213>.

Notorious Markets list in 2014¹¹¹, 2016¹¹², 2017¹¹³, and 2018¹¹⁴. Furthermore, in 2016, a group of 17 international trade associations reiterated their concerns in a letter to USTR, stating:

During the ten months since USTR published [the 2015 USTR Special 301 Notorious Markets Report] we have seen little evidence that there has been any noticeable change on the Alibaba platforms themselves; and at any given moment, a consumer around the world can chose from hundreds of thousands of counterfeit clothes, shoes, travel goods, handbags, toys, auto parts, jewelry, watches, furniture, electronics, pharmaceuticals, and other articles.¹¹⁵

Many brand owners have concluded that Alibaba, despite its protestations to the contrary, actually tolerates and supports counterfeiting on its websites because Alibaba earns revenues from all sales, including sales of counterfeit goods. Labelling Alibaba as “our most dangerous and damaging adversary,”¹¹⁶ one brand owner stated:

Alibaba’s strategy has consistently been to provide lip service to supporting brand enforcement efforts while doing as little as possible to impede the massive flow of counterfeit merchandise on its platforms.¹¹⁷

¹¹¹ OFFICE OF U.S. TRADE REPRESENTATIVE, 2014 OUT-OF-CYCLE NOTORIOUS MARKETS LIST 8 (Mar. 5, 2015), https://ustr.gov/sites/default/files/2014%20Notorious%20Markets%20List%20-%20Published_0.pdf (discussing Alibaba’s subsidiary site Taobao.com).

¹¹² OFFICE OF U.S. TRADE REPRESENTATIVE, 2016 OUT-OF-CYCLE NOTORIOUS MARKETS LIST 12–13 (Dec. 2016), <https://ustr.gov/sites/default/files/2016-Out-of-Cycle-Review-Notorious-Markets.pdf> (discussing Alibaba’s subsidiary site Taobao.com).

¹¹³ OFFICE OF U.S. TRADE REPRESENTATIVE, 2017 OUT-OF-CYCLE NOTORIOUS MARKETS LIST 20–23 (Jan. 11, 2018), https://ustr.gov/sites/default/files/files/Press/Reports/2017%20Notorious%20Markets%20List%201.11.1_8.pdf (discussing Alibaba’s subsidiary site Taobao.com).

¹¹⁴ OFFICE OF U.S. TRADE REPRESENTATIVE, 2018 OUT-OF-CYCLE NOTORIOUS MARKETS LIST 26–27 (Jan. 11, 2018), https://ustr.gov/sites/default/files/2018_Notorious_Markets_List.pdf (discussing Alibaba’s subsidiary site Taobao.com).

¹¹⁵ Comment Submitted AFL-CIO et al. to the Honorable Probir Mehta, Assistant United States Trade Representative re: 2016 Special 301 Out-of-Cycle Review Notorious Markets (Docket Number USTR-2016-2013), at 2 (Oct. 26, 2016), <https://www.mema.org/sites/default/files/resource/Multi-Org%20Letter%20on%20Alibaba%20102616.pdf>.

¹¹⁶ Letter from Lee S. Sporn of Michael Kors (USA), Inc. to Bob Barchiesi, President, International Anti-Counterfeit Coalition (IACC), at 2 (Apr. 21, 2016) [Hereinafter Letter from Lee S. Sporn]. See Erika Kinetz, *Some Howl Over Alibaba’s Place in Anti-Counterfeiting Group*, ASSOC. PRESS (May 5, 2016), <https://www.apnews.com/2c9381cb0c2841aba956abe1a3005b3>.

¹¹⁷ Letter from Lee S. Sporn, *supra* note 116, at 2. See Kathy Chu, *Brands Voice Doubts After Alibaba Joins Group Fighting Fake Goods*, WALL ST. J. (Apr. 28, 2016), <https://www.wsj.com/articles/brands-voice-doubts-after-alibaba-joins-group-fighting-fake-goods-1461763178>.

a. Alibaba's Defense of Counterfeits

Many brand owners' skepticism about Alibaba's sincerity in combatting counterfeiting can be attributed to statements made by its Chairman and founder, Jack Ma, that defend counterfeiting. In responding to criticism by luxury brands about the sale of counterfeits on Alibaba, Ma made clear his position in 2015. A commentator observed:

The longer Ma talks, the more it's clear where his sentiments fall. The second-richest man in China thinks the very idea of luxury retail—selling belts and accessories and the like for thousands of dollars—is inherently absurd. “How can you sell Gucci or whatever branded bag for so much money? It is ridiculous,” he says. “I understand the branded companies are not happy, but I also say that’s your business model. You have to check your business model, too.”¹¹⁸

The following year, in a speech at Alibaba's headquarters, Ma stated:

The problem is the fake products today are of better quality and better price than the real names. They are exactly the [same] factories, exactly the same raw materials but they do not use the names.¹¹⁹

These statements suggest that Ma believes that there is a normative justification for Alibaba's support of counterfeits. Ma believes luxury brands like Gucci are inviting unauthorized copies by charging prices so high that they are “absurd.” Alibaba sees itself as helping out small-time sellers that sell counterfeits or infringing products to lift themselves into the middle class. Jack Ma and Alibaba take on a modern “Robin Hood” persona. Just as the fictional Robin Hood robbed from the rich to give to the poor, Alibaba is assisting small-time Chinese sellers to take a free ride on the goodwill of luxury brands owned by MNCs that have invited counterfeiting through their greed, avarice, and attempts to gouge vulnerable Chinese consumers. China's consumers also benefit from having access to fakes that are “of better quality and better price than the real names.”¹²⁰ Ma's position may help Alibaba to further gain popularity in China by enhancing Ma's reputation as a true national hero and great patriot of China, but it also infuriates brand owners.¹²¹

¹¹⁸ Michael Schuman, *Why Alibaba's Massive Counterfeit Problem Will Never Be Solved*, FORBES (Nov. 4, 2015), <https://www.forbes.com/sites/michaelschuman/2015/11/04/alibaba-and-the-40000-thieves/#31848fd729dc>.

¹¹⁹ Charles Clover, *Alibaba's Jack Ma Says Fakes Are Better Than Originals*, FIN. TIMES (June 14, 2016), <https://www.ft.com/content/6700d5cc-3209-11e6-ad39-3fee5ffe5b5b>.

¹²⁰ *Id.*

¹²¹ See Letter from Lee S. Sporn, *supra* note 116. When Alibaba was accepted as a member of the International Anti-Counterfeiting Coalition, Sporn, who represents Michael Kors, a fashion house, resigned in protest. Chu, *supra* note 117.

b. Counterfeits for Sale on Alibaba

To test the claims of brand owners that counterfeits are found in abundance on Alibaba's sites, the author recently did a search of Alibaba sites and immediately found many examples of counterfeits and infringing products. Photographs of the webpages containing three of these examples are set forth in the Appendices. These examples are discussed below, but there are other examples on this site that are too numerous to discuss within the confines of this Article.

(a) Appendix 1 is an advertisement for handbags being sold under a "big brand name" ("Da Pai") called "Gucci Guccio." These handbags copy the design and trade dress of Gucci handbags and use the name "Gucci" as part of their brand name.¹²² Gucci was singled out by Alibaba Chairman Jack Ma as a luxury brand owner selling its products at absurdly high prices.¹²³ The advertised price for these products is 1500 Renminbi ("people's currency" or RMB, the Chinese fiat currency). At the currency exchange rate of 1 RMB to 0.15 U.S. dollar, this price is the equivalent of about \$225 U.S. dollars. On Gucci's website in the United States, genuine Gucci bags similar to the ones advertised on Alibaba sell for over \$2000 U.S. dollars with some bags selling for as much as \$7500.¹²⁴ It is highly unlikely for a genuine Gucci handbag of the type in this advertisement to sell for \$225. It is also highly unlikely that these types of prices can be charged for gray market goods.¹²⁵ In addition, nothing in the advertisement indicates that these are second hand or used goods. Chinese consumers have an aversion to purchasing secondhand goods due to cultural reasons, and Chinese merchants are well aware of consumers' dislike of secondhand goods.¹²⁶ It is highly likely that the products advertised in the attached Alibaba webpage are counterfeits.

(b) Appendix 2 is an advertisement for a 700 ml bottle of Hennessy

¹²² The author was told by an associate in China that Alibaba did not consider "Gucci Guccio" to be an infringing or counterfeit use because the name "Gucci" did not appear alone but was accompanied or modified by another name as part of the product's brand name. Only the unauthorized use of a trademark such as Gucci appears alone would be considered an infringing use.

¹²³ See *infra* text accompany note 117.

¹²⁴ *Women's Handbags*, GUCCI, <https://www.gucci.com/us/en/ca/women/womens-handbags-c-women-handbags/1> (last visited July 1, 2019).

¹²⁵ While prices for gray market goods are usually lower than prices for genuine goods intended for the home market, the price differential would not be as great as that set forth in the case of the handbags in Appendix 1, i.e. it would be highly unlikely that a genuine handbag that sold for approximately \$2,000 to \$7,500 in Japan could be sold as a gray market good in China for \$225. CHOW & SCHOENBAUM, *supra* note 55, at 567.

¹²⁶ See Yiling Pan, *Why the Second Hand Luxury Market isn't Thriving in China*, JING DAILY (Aug. 24, 2017), <https://jingdaily.com/what-blocks-secondhand-luxury-market-thriving-in-china/> (last visited July 12 2019) (Chinese consumers "still prefer to purchase new luxury goods and look down on the value of second-hand goods").

XO cognac with an advertised price of 432 RMB or \$65. A similarly sized bottle (750 ml) sells for approximately \$160 in the United States.¹²⁷ It is highly likely that the bottle sold on the Alibaba website is a counterfeit.

(c) Appendix 3 is an advertisement for fashion workout pants made by Abercrombie and Fitch, based in Columbus, Ohio, selling at a price of 80 RMB or \$12. Based on the photograph and the author's experience in tracking counterfeiters in the consumer products industry, it is apparent that these products are of low quality and are inferior to what Abercrombie and Fitch would sell in retail stores. By comparison, Appendix 4 includes a photograph of a similar Abercrombie and Fitch product from its website that sells for \$58.¹²⁸ These facts indicate that it is highly likely that the product advertised on the Alibaba website is a counterfeit.

To understand why brand owners view examples such as these as threats to their business, it is necessary to realize that in China (as in many other countries) there is a huge appetite for counterfeit goods, and many consumers actively search for and buy counterfeits.¹²⁹ The vast majority of consumers in China who visit the webpages for the products described in the examples above are fully aware that these are counterfeit goods, but these consumers are actively seeking these goods.¹³⁰ In the case of counterfeit Gucci handbags and counterfeits of other famous brand names, consumers are actively seeking to buy cheap imitations of the famous brand that they can purchase for a tenth or less than the genuine product.¹³¹ These consumers want the prestige of the brand, trademark, or trade dress and are not concerned about the quality of the actual merchandise itself.¹³² So long as the product has the trademark or trade dress, the purchaser of the counterfeit is able to enjoy the

¹²⁷ *Hennessy Cognac XO*, WINE CHATEAU, <https://www.winechateau.com/products/hennessy-cognac-xo> (last visited July 1, 2019).

¹²⁸ See Appendix 4 *infra*.

¹²⁹ Jay Kennedy, *Commentary: More Buying Counterfeits and Knockoff - It's Costing Billions and More* (May 12, 2019), CHANNEL NEWS ASIA, <https://www.channelnewsasia.com/news/commentary/more-buy-knock-off-counterfeit-fake-goods-branded-drug-crime-11499382> (noting that "there are many consumers who willingly buy counterfeit goods"). See also *The Counterfeit Goods Industry in Modern China* (April 15, 2019), DAXUE CONSULTING, <https://daxueconsulting.com/counterfeit-products-in-china/> (noting that "the market for fake goods in China is largely driven by consumers who actively search for and purchase counterfeit products").

¹³⁰ This observation is based on the author's own experience in China. See Liz Robbins, *Investigators Seize Fake Luxury Goods*, N.Y. TIMES (Aug. 16, 2018), <https://www.nytimes.com/2018/08/16/nyregion/fake-luxury-goods-handbags.html>.

¹³¹ This observation is based on the author's work with private investigation companies tracking counterfeiters in China.

¹³² See DANIEL C.K. CHOW & EDWARD LEE, *INTERNATIONAL INTELLECTUAL PROPERTY: PROBLEMS, CASES, AND MATERIALS* 784 (3d ed. 2017) (consumers will knowingly purchase fake luxury goods).

good will associated with the brand name or trademark.¹³³ In China today (as in many other countries), there is an enormous demand for counterfeit luxury branded handbags that offer the prestige of the genuine brand at a fraction of the price of the genuine product.¹³⁴

The same is true with counterfeit liquor as shown in example (b) above. Consumers in China who purchase counterfeit bottles of famous brand name liquor are not in general buying the liquor for private or personal consumption.¹³⁵ In China, for personal or professional reasons, people often have banquets or dinners where highly alcoholic drinks are served and consumed in large quantities as part of social drinking rituals.¹³⁶ It is a mark of prestige for a host to serve a famous foreign brand of liquor, such as a French made cognac like Hennessy or a western brand of whiskey such as Johnny Walker Black Label.¹³⁷ There is a huge demand for this type of counterfeit liquor, where the counterfeiter uses a bottle that is either a copy or a genuine used bottle and fills it with a cheap but potent liquor.¹³⁸ The host can enjoy the good will of serving his guests a high prestige brand while only paying for a common liquor that, while inexpensive, is just as potent but is not contaminated or harmful to the guests.

In the case of (c), young adults in China are highly fashion-conscious and are hungry for famous international brands.¹³⁹ Most consumers viewing the webpage with Abercrombie and Fitch pants selling for \$12 are fully aware that these are counterfeits and that the product is of low quality. They reason, however, that they can pay about the same price for a low-quality product without the prestige of the counterfeit Abercrombie label or pay a little bit more for the same low-quality product but enjoy the prestige of the Abercrombie brand name. Many consumers will choose the latter.¹⁴⁰

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ These observations about the use of alcohol in China are based upon the author's own experience and based on discussions with colleagues and associates.

¹³⁶ See Nathan H. Gray, "*Gan Bei*": *Business and Ritualistic Drinking in China*, WORD PRESS (Apr. 22, 2010), <https://nathanhgray.wordpress.com/2010/04/22/gan-bei-business-and-ritualistic-drinking-in-china/> (discussing the importance of drinking rituals).

¹³⁷ See Jiani Ma, *Rich Post-80s Drive Chinese Whiskey Market Growth*, JING DAILY (Apr. 16, 2018), <https://jingdaily.com/chinese-whiskey-market/> (noting the demand for premium and super premium brands of whiskey and cognac in China).

¹³⁸ Natalie Wang, *Nearly 40% of Chinese Consumers Admit to Purchasing Fake Booze*, THE DRINKS BUS. (Mar. 19, 2018), <https://www.thedrinksbusiness.com/2018/03/nearly-40-chinese-consumers-admit-to-purchasing-fake-booze/> (noting that consumers admit to intentionally purchase fake booze in China).

¹³⁹ See e.g., *Luxury Brands Tailor Their Marketing to Asian Millennial Consumers*, THE FASHION LAW (Aug. 7, 2018), <http://www.thefashionlaw.com/home/luxury-brands-tailor-their-marketing-to-millennial-consumers-in-the-far-east>.

¹⁴⁰ This observation is based upon the authors' experience in investigating counterfeit consumer products in China.

2. Alibaba's "Arrogance" and Illegal Activities

While MNCs have consistently complained about Alibaba's tacit approval and support of counterfeiting, these sentiments were recently confirmed for the first time by enforcement authorities in China in connection with an extraordinary national level investigation of Alibaba. The State Administration of Industry and Commerce (SAIC) and its local branches (AICs) are charged with maintaining orderly markets in the PRC and are primarily responsible for stemming the flow of counterfeit goods.¹⁴¹ In the case of Alibaba, the SAIC took the unprecedented step of conducting an administrative guidance meeting with Alibaba officials in July 2014.¹⁴² The Director of the SAIC emphasized the unique nature of the meeting when he stated, "For this meeting, I didn't know whether it's the first ever of its kind, or the last, but I hope that this would be the last time for a meeting of this nature."¹⁴³

Enforcement actions are usually the provenance of local AICs as the SAIC, the central level authority, is a supervisory and policy-making body.¹⁴⁴ However, the SAIC believed that in the case of Alibaba, it was necessary for the agency to step in to resolve a case that had proven to be intractable to local authorities.¹⁴⁵ In the administrative guidance meeting, the SAIC and appropriate local level AICs met with Alibaba officials in order to set forth an agreed upon set of steps to remediate counterfeiting on Alibaba platforms.¹⁴⁶

The administrative guidance meeting between the SAIC and Alibaba executives occurred on July 16, 2014,¹⁴⁷ and on January 28, 2015, the SAIC issued a White Paper as a follow up to the meeting to formally set forth a

¹⁴¹ *State Administration of Industry and Commerce*, IP CHANNEL (Feb. 9, 2010), <http://ip.people.com.cn/GB/152255/10960401.html>.

¹⁴² See Transcript of Administrative Guidance Meeting Between SAIC and Alibaba (held July 14, 2016) (on file with author) [hereinafter Transcript of Admin. Guidance Meeting]; Huang, *supra* note 31 ("On July 16, 2014, the administrative guidance group of the Internet Supervision Department . . . held an administrative guidance forum at the Zhejiang Province Industry and Commerce Bureau. Principal officers and management teams of the core departments of Alibaba Group attended the meeting and accepted administrative guidance."). See also Heather Timmons, *Chinese Regulators Flagged Illegal Practices at Alibaba Months Before Its Monster IPO*, QUARTZ (Jan. 28, 2015), <https://qz.com/334863/chinese-regulators-flagged-illegal-practices-at-alibaba-months-before-its-monster-ipo/>. Administrative guidance is governed by the SAIC's Comprehensive Promotion of Administrative Guidance Work (2009).

¹⁴³ Transcript of Admin. Guidance Meeting, *supra* note 142, at 128.

¹⁴⁴ *State Administration of Industry and Commerce*, *supra* note 141 ("The [SAIC] . . . is the competent authority of ministerial level directly under the State Council in charge of market supervision/regulation and related law enforcement through administrative means.").

¹⁴⁵ See SAIC WHITE PAPER, *supra* note 31, at 11–12.

¹⁴⁶ The steps were later summarized in the SAIC White Paper. *Id.* at 19.

¹⁴⁷ See *id.*; Huang, *supra* note 31.

plan of remediation.¹⁴⁸ In both the transcript of the meeting and in the SAIC White Paper, the SAIC makes the point repeatedly that at the time of the meeting in July 2014 there were numerous counterfeits, infringing products, and other violations of Chinese laws on advertising, product information, and licensing on Alibaba's websites.¹⁴⁹

However, the point being made by the SAIC White Paper and during the administrative guidance meeting is more subtle, and even more deep-seated, than the need to control persistent illegal activities. For example, the SAIC states:

Alibaba Group, for a long time, *has failed to take seriously* the operational violations on its e-commerce platforms and did not take effective measures to address the violations. This caused a miniscule issue to snowball into a serious problem, leading Alibaba to its greatest crisis since its incorporation.¹⁵⁰

This critique is not directed at practices involving IP rights; it is directed at an underlying culture at Alibaba, which is one of viewing itself as above the law, including an attitude of a willful refusal to obey the law. At another point, the SAIC White Paper states:

It is suspected that [Alibaba] knowingly, intentionally, by negligence or in spite of their presumed knowledge facilitates unlicensed operations, trademark infringements, untruthful publicity, pyramid schemes and violations of consumers' rights.¹⁵¹

The SAIC traces Alibaba's flouting of the law to an attitude of "arrogance."¹⁵² An AIC official at the July 16, 2014 meeting stated that when speaking to Alibaba employees, he felt "a kind of arrogant emotion sprouting and growing."¹⁵³ In its White Paper, the SAIC specifically tells Alibaba that it should "redress arrogance."¹⁵⁴ The SAIC informs Alibaba that it cannot expect to "receive special treatment under law. . . . Regulators . . . shall treat businesses equally under law."¹⁵⁵ The SAIC also admonishes Alibaba to "ethically conduct business" and warns that "[a]n enterprise shall not get

¹⁴⁸ See SAIC WHITE PAPER, *supra* note 31. The purpose of the White Paper is to provide "various understandings and information about the said administrative guidance meeting" to Alibaba. See *id.* at 11.

¹⁴⁹ Transcript of Admin. Guidance Meeting, *supra* note 142, at 3–8.

¹⁵⁰ SAIC WHITE PAPER, *supra* note 31, at 11–12 (emphasis added).

¹⁵¹ *Id.* at 14.

¹⁵² *Id.* at 20.

¹⁵³ Transcript of Admin. Guidance Meeting, *supra* note 141, at 117.

¹⁵⁴ SAIC WHITE PAPER, *supra* note 31, at 20.

¹⁵⁵ "No market player shall receive special treatment under law. The management of Alibaba family shall understand their bottom line. Regulators in the applicable jurisdiction shall treat businesses equally under law." *Id.*

what it wants at its own will.”¹⁵⁶ The SAIC additionally warns Alibaba that it cannot flout the law when it finds the law interferes with its interests and then assert the law when it needs the law’s protection despite acting without credibility or integrity.¹⁵⁷

Although the SAIC stood in the position of a government regulator at the meeting, it at times seemed to descend into the role of a sycophant flattering the Alibaba executives for the purpose of cajoling and pleading with them to respect the law. For example, at the administrative guidance meeting, AIC officials lavishly praised Alibaba, telling the executives how proud the PRC was of their accomplishment,¹⁵⁸ mentioning that all of the Alibaba executives at the meeting were “famous people”¹⁵⁹ and “big shots,”¹⁶⁰ and joking that the monthly salary of just one of the Alibaba executives were as much as the combined annual salaries of all the AIC officials present at the meeting.¹⁶¹

a. Specific Practices

Alibaba’s lack of respect for the law manifested in two practices that drew the SAIC’s special attention and were the focus of discussion during the administrative guidance meeting: taking bribery from the platform participants and colluding with the counterfeiters. The SAIC states that “a large number of Alibaba staffers take business bribes in exchange for giving platform participants [preferential business opportunities] to squeeze out their competitors.”¹⁶² While Alibaba was already aware of the bribery problem and took some steps to control it, the AICs stated that bribery was still a problem as of the July 16, 2014 administrative guidance meeting,¹⁶³ and an Alibaba vice president at the meeting acknowledged that “temptation from the outside” is a problem among the Alibaba staff.¹⁶⁴ The SAIC also cited Alibaba employees’ active participation in misleading consumers and committing various consumer protection violations. For example, the SAIC

¹⁵⁶ *Id.*

¹⁵⁷ “An enterprise shall not get what it wants at its own will, i.e. when needing credibility to protect an enterprise’s interest, it boasts about credibility but throws the law away; when needing law to protect itself, it raises up high the flag of law but intentionally ignores its duties regarding credibility and integrity.” *Id.*

¹⁵⁸ Transcript of Admin. Guidance Meeting, *supra* note 141, at 13.

¹⁵⁹ *Id.* at 39.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 109.

¹⁶² SAIC WHITE PAPER, *supra* note 31, at 16.

¹⁶³ Transcript of Admin. Guidance Meeting, *supra* note 141, at 9 (“The sixth problem is what was included in governance, that is, the commercial bribery existing among the staff of Taobao.com. Suppliers and users of the platform are all involved. You have realized this problem and tried to keep it under control. However, the situation still exists.”).

¹⁶⁴ Alibaba executive Xiaofeng Shao: “Recently, we have continued to improve the punishment system, even including the standards for our internal staff because this is also a big problem we face like the temptation from the outside.” *Id.* at 92.

notes that “[s]ome of the online shops, through the trading with others, delete negative comments, providing business information to themselves and others that disrupts normal business order But [Alibaba’s] supervision and punishment are not strict enough. There are staff in [Alibaba] involved in this violation.”¹⁶⁵ A second set of practices involves Alibaba employees working together with counterfeiters, tipping the counterfeiters off to enforcement actions. For example, an SAIC official stated that in one instance the SAIC asked Alibaba for information about ten online stores suspected of selling counterfeits; although Alibaba provided the information, seven of the stores promptly closed, two cancelled their accounts, and one started to sell authentic products.¹⁶⁶ The SAIC concluded that “[t]his indicated information disclosure by your company staff”¹⁶⁷ to the counterfeiters. In another instance, the SAIC stated that after local AICs provided Taobao, an e-commerce platform owned by Alibaba, with information about their investigations, Taobao was suspected of tipping off counterfeiters and manufacturers of illegal narcotics.¹⁶⁸

The unlawful activities by Alibaba employees discussed at the administrative guidance meeting in July 2014 came just three years after a major scandal in 2011 that involved about 100 Alibaba employees, including supervisors and sales managers, who after an internal investigation were found to be directly responsible for allowing over 2,300 China Gold Suppliers to defraud international buyers.¹⁶⁹ Long time CEO David Wei Zhe and COO Elvis Lee Shi Huei were forced to resign as a result of the scandal.¹⁷⁰ According to news reports, Alibaba lost \$933 million in market share due to the scandal.¹⁷¹ Three years after this scandal, according to the SAIC, numerous members of Alibaba’s staff continued to conduct illegal activities adding further to its perception of a culture of lawlessness at Alibaba.

¹⁶⁵ *Id.* at 10.

¹⁶⁶ *Id.* at 11.

¹⁶⁷ *Id.*

¹⁶⁸ SAIC WHITE PAPER, *supra* note 31, at 17.

¹⁶⁹ Pascal-Emmanuel Gobry, *Huge Fraud at China E-Commerce Giant Alibaba.com: Management Out, 100+ Employees Dismissed*, BUS. INSIDER (Feb. 21, 2011), <https://www.businessinsider.com/alibaba-ceo-resigns-over-huge-fraud-scandal-2011-2>; Kelvin Soh, *Alibaba.com CEO Resigns After Jump in Fraudulent Sales*, REUTERS (Feb. 21, 2011), <https://www.reuters.com/article/us-alibaba/alibaba-com-ceo-resigns-after-jump-in-fraudulent-sales-idUSTRE71K1QA20110221> (“‘Members of our company’s senior management knew of a noticeable increase of fraud claims by global players against China Gold Supplier customers on the international marketplace that began in late 2009,’ Ma said in the statement.”).

¹⁷⁰ Gobry, *supra* note 169; Soh, *supra* note 169.

¹⁷¹ Mark Lee, *Alibaba Shares Tumble After Fraud Leads to CEO Departure*, BLOOMBERG (Feb. 22, 2011), <https://www.bloomberg.com/news/articles/2011-02-22/alibaba-comdown-graded-by-morgan-stanley-after-ceo-wei-resigns>.

b. Above the Law in China

Alibaba's "arrogance" needs to be understood in the context of China's legal and political culture. In China today, it is not unusual for powerful entities to routinely disregard the law. In general, the more powerful an entity, the less compelled it feels to follow the law. Alibaba is among a handful of the most powerful entities in China. As a mundane example familiar to every citizen in China, cars registered to the People's Liberation Army ("PLA") do not obey traffic laws.¹⁷² Every car registered to the PLA has a special license plate. These cars will routinely drive through red lights, speed, and refuse to pay tolls. Under China's current security systems, cars that drive through red lights are recorded by cameras stationed at every traffic stop, and letters containing fines are sent to transgressors. PLA cars, however, do not pay fines. No regular police officer with the Public Security Bureau will dare to stop a PLA car for a traffic violation, and no toll collector will dare to challenge a PLA car that refuses to pay the toll. This is a deeply embedded cultural attitude that starts at the top with the most powerful entity of all in Chinese society: the Communist Party, which views itself as above the law and views the law as a mere instrument for it to use to achieve its own ends.¹⁷³ These Party attitudes will be familiar to Jack Ma, the chairman of Alibaba, who is also a member of the Communist Party,¹⁷⁴ as are other senior Alibaba executives.¹⁷⁵

As noted earlier, Alibaba's size is prodigious, and its financial power overwhelming.¹⁷⁶ In China today, an entity that is as large and powerful as Alibaba does not believe that it needs to answer to lowly government enforcement officials. Alibaba executives, such as Chairman Jack Ma, himself a Communist Party member, and other senior Alibaba officials who are also Party members, believe that they do not answer to the law but only to the Party, the ultimate authority in China.¹⁷⁷ One example of the close link between Alibaba and the Party is that Alibaba runs China's new social credit system.¹⁷⁸ Alibaba assigns a three digit score (from 350 to 950) to each citizen in China based on the social desirability of the citizen's conduct,

¹⁷² The author has witnessed these practices by the PLA firsthand in China.

¹⁷³ DANIEL C.K. CHOW, *THE LEGAL SYSTEM OF CHINA IN A NUTSHELL* 62 (3d ed. 2015): "[N]either Imperial China nor pre-reform modern China recognized or accept the rule of law [T]he Communist Party views itself as holding unchallenged authority. In modern China, the Communist Party is supreme."

¹⁷⁴ Li Yuan, *Jack Ma, China's Richest Man Belongs to the Communist Party. Of Course.*, N.Y. TIMES (Nov. 27, 2018), <https://www.nytimes.com/2018/11/27/business/jack-ma-communist-party-alibaba.html>.

¹⁷⁵ The author has personal knowledge that senior Alibaba officials are Party members from his current work as a legal expert in litigation involving China.

¹⁷⁶ See *supra* text accompanying notes 103–107.

¹⁷⁷ This observation is based upon the author's own assessment and analysis.

¹⁷⁸ Campbell, *supra* note 42.

allowing the government to punish or reward its citizens.¹⁷⁹ These close ties further suggest that Alibaba is not intimidated by and does not fear PRC enforcement authorities. For their part, PRC enforcement authorities are reluctant to shut down or seriously harm Alibaba because such actions will lead to significant financial losses for China and the possible demise of one of the world's leading technology companies and a great source of national pride.¹⁸⁰

An indication of how Alibaba continues to view itself as above the law in China is that on April 25, 2019, the USTR placed Alibaba on its Notorious Markets List for the third year in a row.¹⁸¹ This designation occurred five years after the SAIC administrative guidance meeting in July 2014 and four years after the SAIC issued the White Paper detailing a plan of remediation in 2015. In its 2018 report, the USTR stated, “[a]lthough Alibaba has taken some steps to curb the offer and sale of infringing products, right holders . . . continue to report high volumes of infringing products and problems with using takedown procedures.”¹⁸² After a history of misconduct, scandals, vehement protests by brand owners, an extraordinary effort by the PRC government, and numerous blacklists by the U.S. government, Alibaba's conduct has not changed appreciably. Under these circumstances, brand owners must confront the reality that Alibaba is not likely to change its conduct without intervention by the highest levels of the Party, probably only by a personal decision by Xi Jinping, China's President and the General Secretary of the Communist Party.¹⁸³ Until senior Party leaders intervene, brand owners must accept the likelihood that Alibaba believes that it can operate outside of the law in China with impunity and without fear of government reprisals.

E. Amazon

Amazon is currently the largest e-commerce marketplace in the United States¹⁸⁴ and is the second largest in the world, trailing only Alibaba.¹⁸⁵ As of 2016, the market value of Amazon exceeded that of the eight largest U.S. brick-and-mortar retailers combined, including Walmart, Target, and Best

¹⁷⁹ *Id.*

¹⁸⁰ This observation is based upon the author's assessment of the overall tone of the SAIC White Paper, *supra* note 31, and the transcript of the administration guidance meeting, *supra* note 141.

¹⁸¹ OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *SUPRA* NOTE 114.

¹⁸² *Id.*

¹⁸³ This is the author's professional opinion based on his experience and knowledge of China. For a summary of Xi's positions, see *President Xi Jinping*, THE U.S.-CHINA BUS. COUNCIL, <https://www.uschina.org/president-xi-jinping> (last visited July 1, 2019). See also *#I Xi Jinping*, FORBES, <https://www.forbes.com/profile/xi-jinping/#2f2f40051601> (last visited July 1, 2019) (President Xi became the “core” leader of the Communist Party in 2016.).

¹⁸⁴ See Levy, *supra* note 107.

¹⁸⁵ See *id.*

Buy.¹⁸⁶ In December 2018, Amazon's GMV reached \$239 billion.¹⁸⁷ One of its most popular online retail services, Amazon Prime, now has over 100 million members worldwide.¹⁸⁸ Amazon's official anti-counterfeiting policy states that it is the responsibility of the seller or supplier to ensure that its products are genuine, not counterfeits.¹⁸⁹ Two aspects of Amazon's business practices have led to a rise in online counterfeits.

Once a brand owner agrees to sell its products on Amazon's e-commerce marketplace, Amazon will source products not only from the brand owner, but also from other third-party vendors that sell the branded products. In order to have sufficient inventory on hand to satisfy customer orders expeditiously, Amazon's warehouses will co-mingle products from the brand owner and from other third-party vendors into a single source of supply.¹⁹⁰ If a third-party vendor ships a counterfeit product to Amazon, it becomes co-mingled with genuine products in Amazon's warehouse. When a customer orders a product online, the customer may receive a product from the warehouse from either the brand owner or a third-party vendor, which might be a counterfeit. The source of the product is not clear to the customer when he or she makes a purchase, but the customer will generally assume that it was manufactured by the brand owner.

Unable to make inroads into China's e-commerce marketplace against competitors such as Alibaba, Amazon decided in 2015 to woo Chinese manufacturers to sell directly to U.S. consumers on its e-commerce site.¹⁹¹ As China is the world's largest source of counterfeits, the result was predictable: beginning in 2015, counterfeits soon began to proliferate on Amazon's e-commerce sites, much to the chagrin and exasperation of brand owners. Brand owners' complaints against Amazon also echo some of the complaints against Alibaba. For example, according to one brand owner representative, "Amazon is making money hand over fist from counterfeiters, and they've done about as little as possible for as long as possible to address the issue."¹⁹²

¹⁸⁶ Jeff Desjardins, *The Extraordinary Size of Amazon in One Chart*, VISUAL CAPITALIST (Dec. 30, 2016), <https://www.visualcapitalist.com/extraordinary-size-amazon-one-chart/>.

¹⁸⁷ See Levy, *supra* note 107.

¹⁸⁸ Austen Hufford & Georgia Wells, *Amazon Prime Has More Than 100 Million Members*, WALL ST. J. (Apr. 18, 2018), <https://www.wsj.com/articles/amazon-prime-has-more-than-100-million-members-1524088630>.

¹⁸⁹ *Amazon Anti-Counterfeiting Policy*, AMAZON, <https://sellercentral.amazon.com/gp/help/external/201165970> (last visited July 1, 2019).

¹⁹⁰ Pierson, *supra* note 13.

¹⁹¹ Shepard, *supra* note 9.

¹⁹² Levy, *supra* note 18.

III. ENTITY VERIFICATION MEASURES AND THE REQUIREMENTS OF PRC LAW

The discussion in Part II centers on how the concern is different in each case, although brand owners voice similar concerns about counterfeits available on Alibaba and Amazon. The major complaint by brand owners with Alibaba is that it facilitates the sale of counterfeits in order to satiate the enormous appetite for counterfeits among China's consumers. In the case of Amazon, the major concern of brand owners is that U.S. consumers who seek to purchase genuine products are instead deceived into purchasing a counterfeit. In both cases, brand owners have expressed frustration with the lack of effective enforcement by these e-commerce platforms against webpages or postings selling counterfeits on Alibaba or Amazon's websites. These problems are further discussed below.

A. Problems with Enforcement

Although brand owners have many complaints about enforcement issues against counterfeiters on Alibaba and Amazon platforms, the crux of these complaints can be summarized as follows: (1) counterfeiters use false identities and addresses and thus are untraceable; (2) brand owners must suffer through the use of cumbersome and ineffective notice and takedown procedures; and (3) existing measures used by e-commerce platforms do not deter repeat infringing activity.

1. False Names, Identities, and Addresses

Current e-commerce platforms, including Alibaba and Amazon, do not subject new sellers to adequate verification or confirmation although Alibaba is required to do so under PRC law; without an enforced verification or confirmation process, counterfeiters routinely use false or inaccurate names and addresses when registering with these e-commerce platforms.¹⁹³ When brand owners pursue counterfeiters in enforcement actions, they discover that names and addresses are fictional, and the counterfeiters then disappear into the vast expanse of cyberspace. Brand owners argue that Alibaba and Amazon have few requirements for registration and that verification of this information is not thorough or adequate. In the case of Alibaba, the SAIC White Paper stated that "only lip service is paid to credential review and registration of vendors."¹⁹⁴ Brand owners often complain that vendors on Amazon use fictitious names and addresses.¹⁹⁵

2. Burdensome Notice and Takedown Procedures

E-commerce platforms create bureaucratic or technical hurdles in

¹⁹³ SAIC WHITE PAPER, *supra* note 31, at 13.

¹⁹⁴ *Id.*

¹⁹⁵ *See* [a hereinafter reference], *supra* note 13.

helping brand owners to locate or identify sources of counterfeits and counterfeiters.¹⁹⁶ These hurdles delay, frustrate, and create additional financial burdens for brand owners.¹⁹⁷ Both Amazon and Alibaba use a notice and takedown procedure that is based upon requirements set forth in the DMCA¹⁹⁸ and similar provisions in PRC law, respectively.¹⁹⁹ When a brand owner discovers an offending webpage or posting, the brand owner is required to submit notices to the ISP under a certain set of criteria that results in the ISP requiring the removal of an offending webpage or posting. Brand owners have described the experience of using notice and takedown procedures as “Kafka-esque”²⁰⁰ and likened their use to being imprisoned in “Amazon purgatory.”²⁰¹ Brand owners are required to place an order for the counterfeit goods, buy and receive the goods from the offending website, test the goods, verify that they are counterfeit, and then submit both the counterfeit and genuine product with notices documenting these actions.²⁰² Alibaba has a “three strikes” policy,²⁰³ requiring proof of three completed transactions involving counterfeits and submission of notices before an offending webpage can be removed. This process can take months, is expensive, and consumes significant time and effort by the brand owner. Even when brand owners satisfy this arduous process, they complain that the notices are still often ultimately rejected for technical reasons.²⁰⁴

3. Lack of Deterrence

In those instances in which brand owners can achieve a takedown of the offending website or otherwise bring pressure to bear on counterfeiters, brand owners complain that once the counterfeit goods disappear, they reappear in short order on a new webpage.²⁰⁵ Some brand owners refer to this process as a futile game of “Whac-A-Mole” in which a counterfeiter disappears only to immediately reemerge under a new name, identity, and location to resume its counterfeiting operations.²⁰⁶ In the meanwhile, brand owners have expended significant time, effort, and money in pursuing the

¹⁹⁶ See *supra* text accompanying note 15; see also *supra* text accompanying note 101.

¹⁹⁷ See Bercovici, *supra* note 15.

¹⁹⁸ See 17 U.S.C. § 512 (Westlaw through Pub. L. No. 116-68). See also *Intellectual Property Policy for Sellers*, *supra* note 101 (Amazon); *Intellectual Property Rights (IPR) Protection Policy*, *supra* note 101 (Alibaba).

¹⁹⁹ See generally Trademark Law of the People’s Republic of China, *supra* note 97; Law Against Unfair Competition of the People’s Republic of China, *supra* note 97.

²⁰⁰ Bercovici, *supra* note 15.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Enforcement Actions for Intellectual Property Rights Infringements Claims on Alibaba.com*, ALIBABA (Nov. 1, 2017), <https://rule.alibaba.com/rule/detail/2043.htm>.

²⁰⁴ See Bercovici, *supra* note 15.

²⁰⁵ See *supra* text accompanying note 15.

²⁰⁶ Bercovici, *supra* note 15.

counterfeiting without achieving any tangible results.

B. Proposed Remedial Measures

While counterfeiting on the Internet is a daunting problem, China provides the information technology tools that can be used to deter counterfeiters and that can address each of the three major enforcement issues faced by brand owners: false identities and addresses, convoluted notice and takedown procedures, and rampant recidivism. Most brand owners are completely unaware of or otherwise do not understand these potent tools.

1. AIC Business License

As part of China's extensive system of industrial and social control, a legal regime of identification and attribution of legal liability exists that can be used against counterfeiters involved in e-commerce commerce. Both in the July 16, 2014 administrative guidance meeting and in its White Paper, the SAIC repeatedly refers to Alibaba's need to control counterfeiting at the point of entry (i.e., registration on the Alibaba websites). The AICs stressed that if entry is well controlled, many of Alibaba's current problems can be solved.²⁰⁷ This Article argues that brand owners should heed the advice of China's enforcement authorities and seek to have e-commerce platforms implement effective registration procedures in accordance with the specific requirements of PRC law. These measures can create prophylactic measures at the point of entry that can create an effective deterrent to counterfeiting.

Article 23 of SAIC Order No. 60, Measures on the Administration of Online Transactions ("MAOT")²⁰⁸ requires business operators of online platforms to verify the legal identities of all entities or persons applying for access to their platform for the sale of products:

The business operator of a third-party transaction platform shall examine and register as business operators the identities of the legal persons, other economic organizations or industrial and commercial sole proprietors that apply for access to the said platform for sale of products or provision of services, establish registration files and conduct regular verification and updating, and *make public the information specified in their business licenses or provide electronic links to their business licenses in eye-catching locations on its main web pages for business activities.*²⁰⁹

As set forth above, Article 23 requires the e-commerce platform to display information in the business licenses of business operators or to

²⁰⁷ Hua Yu of Fujian Provincial AIC: "Until now, it seems that there are some difficulties in solving some problems. But in fact, if the entity is well controlled, I don't think it will be a problem." Transcript of Admin. Guidance Meeting, *supra* note 141, at 27.

²⁰⁸ See Administrative Measures for Online Trading, *supra* note 48.

²⁰⁹ *Id.* at art. 23 (emphasis added).

provide a link to their business licenses.²¹⁰ Under PRC law, every lawful business entity in the PRC must have a business license issued by the local AICs that contains the lawful business scope of the entity, its address, and the name of its legal representative.²¹¹ All lawful enterprises must have an official, AIC-issued business license; any entity that does not have a business license cannot lawfully operate.²¹² Business operators obtain a business license by applying to local AICs that review their proposed business operations to ascertain that they are lawful and economically feasible.²¹³ For example, if a business operator proposes to sell trademarked products, the AICs will ask for proof of a trademark registration or trademark licensing agreement.²¹⁴ The issuance of a business license means that the AICs have reviewed and approved the proposed business plan of the applicant and found it to be lawful.

Among its other functions, the business license sets forth the lawful business scope of the entity. For example, a business license might state that the entity is lawfully authorized to engage in the sale of laundry detergent or other cleansing agents for laundry. Such an entity would be acting unlawfully if it engaged in any business outside of that scope, such as, for example, the sale of peripheral equipment for computers or mobile phones. A business operator that obtains a business license for the sale of genuine products but instead sells counterfeits is in violation of its license and faces a fine or suspension of the license, which would require ceasing business operations.

The business license also prevents the business operator from using a business name and address on an e-commerce site different from that on the business license. Only the business identified in the license by its name and address is lawfully entitled to use the business license, i.e. such licenses are not transferable and cannot be used by an entity other than the one that

²¹⁰ *Id.*

²¹¹ Companies Law of the People's Republic of China, ch. I, art. 7 (promulgated by the President of the PRC, Order No. 42, Oct. 27, 2005, effective on Jan. 1, 2006) ("The business license for a company shall state therein such matters as the name, domicile, registered capital, actual paid-up capital, business scope, the name of the legal representative, etc.") [hereinafter Companies Law of the PRC].

²¹² *See id.* ("Company registration authorities shall issue business licenses for companies established under the law. The date of issuance of a business license for a company shall be the date of establishment of the company."). *See National Enterprise Credit Information Publicity System*, SAIC, <http://www.gsxt.gov.cn/index.html> (last visited July 1, 2019). *See also The 5-in-1 China Business License (WFOE/WOFE)*, FDI CHINA (July 11, 2018), <https://www.fdicchina.com/blog/china-company-registration/wfoe-wofe/5-in-1-business-license/>.

²¹³ This observation is based upon the author's own experience in applying for business licenses in China. *See* Matt Slater, *What Is a China AIC?*, CHINA CHECKUP (Dec. 9, 2013), <https://www.chinacheckup.com/blogs/articles/china-aic> ("China AICs . . . provide official registration records for all companies in their jurisdiction[.]").

²¹⁴ The author has applied for business licenses in China and was asked by the AIC to provide proof of ownership or authorized use of trademark rights for products sold under the mark to ensure that the business had the legal right to sell the branded products.

applied for and received the business license. A business operator that has sold counterfeit goods and that has been the subject of an enforcement action cannot just simply disappear and reappear on the Internet under a different business name and address; if the name and address do not match that on the license, the use of the license is unlawful. Strictly verifying the information on the business license will prevent business operators accused of counterfeiting from disappearing and immediately reappearing under a different name and address. To use a different name and address, the business operator would have to apply for a new business license from the AIC, a process that could take months.²¹⁵

Requiring a valid business license will preclude many underground counterfeiting factories, petty criminal organizations, smugglers, and other illegal entities from registering to sell on an e-commerce platform because such entities are unwilling to undergo scrutiny by the AICs for fear that their illegal activities will be exposed, leading to prosecution by AICs and other PRC authorities, such as the Public Security Bureau (the police). These types of nefarious entities and persons are also involved in brick-and-mortar counterfeiting; they operate illegal underground factories and have no business licenses.²¹⁶ However, without a valid business license, these entities will be unable to register on an e-commerce platform such as Alibaba in accordance with Article 23 of the MAOT.

2. Legal Representative

The business license will also contain the name of the business entity's legal representative.²¹⁷ Under PRC law, every lawful business must have a natural person who serves as the legal representative of the business entity.²¹⁸ According to PRC law, the legal representative has the clear authority to act on behalf of the business entity and can bind the business entity to contracts and other legal relationships.²¹⁹ In many cases, the chairman of the board of directors of a company or a person of a similar rank in other organizations will serve as the legal representative.²²⁰ PRC authorities wanted to make sure that under the law, it was always clear which person within a business enterprise could sign a legally binding contract or create other legal

²¹⁵ This observation is based on the author's own personal experience in applying for business licenses in China.

²¹⁶ The author's own experience is that many of these counterfeiters do not operate their businesses within the boundaries of the laws and regulations.

²¹⁷ Companies Law of the PRC, *supra* note 211, at ch. I, art. 7

²¹⁸ General Principles of the Civil Law of the PRC, *supra* note 51, at ch. III, art. 38 ("In accordance with the law or the articles of association of the legal person, the responsible person who acts on behalf of the legal person in exercising its functions and powers shall be its legal representative.").

²¹⁹ *Id.*

²²⁰ Any person can serve as a legal representative, but companies usually appoint a high ranking official.

relationships.²²¹ Although not specifically required by the MAOT, e-commerce platforms should require the business entity's legal representative to undergo the registration procedures so as to make certain that the business entity has lawfully committed to legal obligations created by registration.

Under PRC law, the legal representative is also personally subject to administrative and criminal liability whenever the company conducts illegal operations beyond the range approved by registration authorities, commits fraud, secretly withdraws or transfers funds, or engages in other illegal activities.²²² The existence of the legal representative ensures the PRC government that there is always a flesh and blood person who will be responsible to PRC authorities for violations of the law by legal "persons," such as a business enterprise.²²³ PRC authorities did not want ultimate civil or criminal liability to rest solely with a legal fiction while natural persons escaped responsibility.²²⁴

By identifying a business entity's legal representative through requiring submission of its business license, e-commerce platforms such as Alibaba would provide the brand owner with a flesh and blood person against whom it can directly bring a complaint in a civil lawsuit under the PRC Trademark Law²²⁵ or Anti-Unfair Competition Law²²⁶ or whom the Public Security Bureau (the police) can arrest under the PRC Criminal Law.²²⁷

With these requirements, brand owners would not be limited to using the e-commerce platform owner's internal enforcement mechanism, such as

²²¹ General Principles of the Civil Law of the PRC, *supra* note 51, at ch. III, art. 38.

²²² General Principles of Civil Law of the People's Republic of China, Article 49:

Under any of the following circumstances, an enterprise as legal person shall bear liability, its legal representative may additionally be given administrative sanctions and fined and, if the offence constitutes a crime, criminal responsibility shall be investigated in accordance with the law:

- (1) conducting illegal operations beyond the range approved and registered by the registration authority;
- (2) concealing facts from the registration and tax authorities and practicing fraud;
- (3) secretly withdrawing funds or hiding property to evade repayment of debts;
- (4) disposing of property without authorization after the enterprise is dissolved, disbanded or declared bankrupt;
- (5) failing to apply for registration and make a public announcement promptly when the enterprise undergoes a change or terminates, thus causing interested persons to suffer heavy losses;
- (6) engaging in other activities prohibited by law, damaging the interests of the State or the public interest.

General Principles of the Civil Law of the PRC, *supra* note 51, at ch. II, art. 49.

²²³ General Principles of the Civil Law of the PRC, *supra* note 51, at ch. III, arts. 38 & 49.

²²⁴ *Id.*

²²⁵ Trademark Law of the People's Republic of China, *supra* note 97.

²²⁶ Law Against Unfair Competition of the People's Republic of China, *supra* note 97.

²²⁷ Selling counterfeits violates Article 140 of the Criminal Law of the People's Republic of China. *See* Criminal Law of the People's Republic of China, ch. III, art. 140 (promulgated by the President of the PRC, Order No. 83, Mar. 14, 1997).

the notice and takedown procedures. As PRC law requires that the business operator make its business license available on the e-commerce platform and as business licenses are publicly available on the AIC websites, the brand owner does not need to go through the platform owner to obtain the necessary information to directly pursue the business operator.²²⁸ Instead, the brand owner can immediately act against the legal representative listed in the business license upon discovering an offending webpage or posting rather than be subject to the long and frustrating delays of the notice and takedown procedures. Of course, the brand owner can also use the platform owner's internal procedures in addition to bringing an action directly against the business operator through PRC enforcement authorities or, under some circumstances, in the United States if the offender has sufficient U.S. contacts.²²⁹

The use of an enforcement method that does not rely on the active participation of the e-commerce platform is particularly useful in the case of Alibaba, which the PRC authorities themselves have identified as viewing itself above the law. Any method of enforcement against counterfeiters that requires the active participation of Alibaba could be met with half-hearted efforts or resistance, as many brand owners have persistently suspected and complained. Directly pursuing the counterfeiter will also relieve brand owners from the burden of using Amazon's convoluted internal procedures.

3. Verification and Deterrence

Requiring, verifying, and displaying seller information should create an effective deterrent against selling counterfeits on Alibaba and other e-commerce platforms, since fewer counterfeit sellers would even turn to the platform in the first place if such sufficient safeguards were in place. Counterfeiters always rely on the use of false identities, false names, and false addresses because they are fearful of detection, capture, arrest, and prosecution.²³⁰ This is true of counterfeiters who sell in brick-and-mortar outlets as well as counterfeiters who sell on the Internet. The essential tools

²²⁸ A similar procedure can be used in the case of sole proprietorships that would require individuals to register, i.e. Alibaba should do a strict review of the identity card of the registrant. "A natural person who intends to engage in online product transactions shall carry out business activities via a third-party transaction platform, and submit to the third-party transaction platform his/her name, address, valid identity proof, valid contact details and other real identity information." General Principles of the Civil Law of the PRC, *supra* note 51, at ch. I, art. 7. The same principle applies: identifying the name and address of a flesh and blood person who can be held civilly and criminally responsible can be an effective deterrent against counterfeiters on Alibaba websites.

²²⁹ It would be possible to file an action against a Chinese counterfeiter in the United States only if the counterfeiter is subject to the personal jurisdiction of U.S. courts under the minimum contacts standard set forth in *Int'l Shoe v. Wash.*, 326 U.S. 310 (1945) and its progeny.

²³⁰ This observation is based on the author's own extensive experience in pursuing counterfeiters in China and in the United States.

of the counterfeiter are secrecy, subterfuge, and artifice. The counterfeiter relies on these tools to disappear at the first sign of trouble. Denying the counterfeiter the use of these tools of secrecy and disguise would force the counterfeiter to operate openly and transparently subject to legal actions in China or in the United States, a prospect that counterfeiters abhor. Many counterfeiters would find the price of transparency and the risks of capture too high a price to pay for operating on the Internet and, as a result, will be deterred from registering on e-commerce platforms.

Currently, however, as the SAIC notes, Alibaba “only pays lip service”²³¹ to verifying information. The SAIC specifically criticized Alibaba for numerous careless and lax practices in its examination of business licenses that fail to verify that the entity named in the business license was the user of the license.²³² A review of the Alibaba webpages contained in the Appendix indicates the business operator has not displayed or provided access to its business license on its webpage as required by Article 23 of the MAOT.²³³ At present, many individuals register on Alibaba’s websites by using false identification papers, sets of which—as the SAIC noted—can be purchased on Alibaba’s websites.²³⁴ Under its guidelines, Amazon does not require online sellers from China to submit an AIC business license or identify a legal representative. Currently, Amazon only requires a business name, a telephone number, and some form of personal identification, and, as a result, many vendors provide fictitious information.²³⁵

4. Amazon and PRC Law

Although Alibaba is clearly subject to the SAIC Measures on the Administration of Online Transactions, it is arguable that Amazon is also subject to these provisions as applied to business entities in China that register on Amazon. Under traditional choice of law principles, the physical location of the business entities in China provides a basis for choosing Chinese law to govern the matter of the registration of those entities.²³⁶ Even

²³¹ SAIC WHITE PAPER, *supra* note 31, at 13.

²³² “Some online stores that are required to upload business licenses to pass the true name authentication have an entity name, business address, residential information that apparently are not consistent with the entity name, business address or residential address on the business license. Some vendors uploaded business license information of other companies.” *Id.*

²³³ See Appendices 1-3.

²³⁴ Transcript of Admin. Guidance Meeting, *supra* note 142, at 98.

²³⁵ *Selling on Amazon: Frequently Asked Questions*, *supra* note 44 (requiring a business name, address, and contact information among other information in order to open an Amazon seller account); see also *supra* note 13 (brand owners find vendors provide bogus information).

²³⁶ Under the Restatement (Second) of Conflicts of Law § 188(2), the following factors would support a finding of PRC law to govern the registration requirements: (a) place of contracting, (c) place of performance, (d) location of the subject matter of the contract, and (e) place of incorporation and place of business of the parties. Restatement (Second) of Conflicts of Law § 188(2) (Am. Law Inst. 1971).

if choice of law rules do not dictate the application of the SAIC Measures, nothing prevents Amazon from choosing on its own, through a choice of law clause in its contracts with vendors, to follow PRC law and require each Chinese business to submit an AIC business license or a link to the license on its websites as well as requiring the legal representative to undergo registration procedures.²³⁷ This process will allow brand owners in the United States to bring an action directly against business operators in China that use offending webpages or posts on Amazon in lieu of or in addition to pursuing notice and takedown procedures. As the vast majority of counterfeits originate from China,²³⁸ such measures could be an effective deterrent to counterfeits on Amazon.

5. Consent to Arbitration before CIETAC

Although not required by MAOT or other PRC law, e-commerce sites should also include in their registration procedures a clause requiring the resolution of disputes involving foreign elements by arbitration before the China International Economic and Trade Arbitration Commission (CIETAC).²³⁹ CIETAC has its headquarters in Beijing and facilities in other cities in China and Hong Kong;²⁴⁰ it lists many foreign experts among its roster of arbitrators,²⁴¹ and parties can choose English as the language of the arbitration.²⁴² The clause should include a provision that the business operator consents to the arbitration of disputes with the platform owner or an entity authorized by the platform owner, i.e., the brand owner.

Arbitration clauses providing for resolution of disputes by CIETAC are now commonly used by many companies to resolve international business disputes that involve China,²⁴³ and arbitration is generally the normal method for resolving international disputes.²⁴⁴ The advantage of such a clause for the brand owner is the certainty that an action can be filed against the legal

²³⁷ Parties can also choose the applicable law through a choice of law provision. *See id.* § 187.

²³⁸ *See supra* Part II.A.

²³⁹ China Int'l Econ. & Trade Arbitration Comm'n (CIETAC) Arbitration Rules, art. 3(2) (revised and adopted by the China Council for the Promotion of International Trade and China Chamber of International Commerce on Nov. 4, 2014 and effective on Jan. 1, 2015), <http://www.cietac.org/Uploads/201904/5caae5be03bb5.pdf> [hereinafter CIETAC Arbitration Rules].

²⁴⁰ CIETAC Arbitration Rules, *supra* note 239, art. 2(3).

²⁴¹ *Arbitrators*, CIETAC, <http://www.cietac.org/index.php?g=User&m=Arbitrator&a=index&l=en> (last visited July 1, 2019).

²⁴² CIETAC Arbitration Rules, *supra* note 239, art. 30.

²⁴³ *See Model Clause: China International Economic and Trade Arbitration Commission (CIETAC)*, INT'L TRADE CENTR., <http://www.intracen.org/Model-Clause-China-International-Economic-and-Trade-Arbitration-Commission-CIETAC/> (last visited July 1, 2019) (promoting the use of a model arbitration clause using the CIETAC).

²⁴⁴ CHOW & SCHOENBAUM, *supra* note 55, at 593 (noting that arbitration is now the normal way to resolve international business disputes).

representative of the business operator with CIETAC and that CIETAC will have jurisdiction over the respondent. This will allow brand owners to move expeditiously when filing an action with CIETAC without having to deal with the uncertainty of preliminary issues such as proper notice and jurisdiction in a court-based litigation. The brand owner will also not need to suffer through the agony of waiting months required by using notice and takedown procedures.

CIETAC awards enjoy a high degree of respect and enforceability in China. PRC law requires parties to implement CIETAC arbitral awards²⁴⁵ and the awards are enforceable by Chinese courts at the local level.²⁴⁶ Consent to arbitration before a prestigious entity such as CIETAC would act as a further powerful deterrent to counterfeiters in China, who are used to dodging legal authorities not consenting to appear before them. The threat of being brought before CIETAC should further deter counterfeiters from registering on e-commerce platforms. For those merchants that do register, brand owners will have a quick and effective method of enforcement.

IV. CONCLUSION

The dawn of the age of e-commerce in the new millennium opened new possibilities for legitimate commerce, but it also created vast new opportunities for illegal commerce, such as the sales of counterfeits on a previously impossible scale and level of penetration. This Article has detailed some of the daunting challenges the Internet created for brand owners and the brand owners' numerous but frustrated efforts in dealing with this potent new threat.

This study has focused on the two largest e-commerce sites in the world that dominate online retail services in China and the United States and the lessons learned can be immediately applied to other sites. The kinds of problems that brand owners face on Alibaba and Amazon are both different and similar.

The problems are different in that Alibaba facilitates the sale of counterfeits to satiate the enormous demand for counterfeits by Chinese consumers, whereas Amazon sells counterfeits on its e-commerce site to U.S. consumers who are deceived into buying a counterfeit when they sought to buy a genuine product. Together, Alibaba and Amazon can deliver a crippling one-two punch to brand owners: Alibaba facilitates the sale of counterfeits of their products to those consumers who seek them, and Amazon facilitates the sale of counterfeits to those who do not. Considering

²⁴⁵ CIETAC Arbitration Rules, *supra* note 239, art. 55(1) ("The parties shall perform the arbitral award within the time period specified in the award. If no time period is specified in the award, the parties shall perform the award immediately.")

²⁴⁶ CIETAC Arbitration Rules, *supra* note 239, art. 55(2) ("Where one party fails to perform the award, the other party may apply to a competent court for enforcement of the award in accordance with the law.")

that there are other huge e-commerce sites such as JD.com and Tencent in China and e-Bay and Groupon in the United States with similar issues, brand owners are faced with numerous dangerous threats.

The problems are similar in that brand owners find the pursuit of counterfeiters through these two e-commerce giants to be frustrating and ineffective and the direct pursuit of counterfeiters to be futile, as counterfeiters quickly vanish into cyberspace at the first sign of trouble.

Both sets of problems can be remediated through the suggested course of action set forth in this Article. However, while brand owners have made many demands to Alibaba and Amazon to streamline and improve their internal procedures for the monitoring of counterfeits and their notice and takedown procedures, to the best of the author's knowledge, no brand owner has looked closely at PRC law for help despite the urging of PRC officials.²⁴⁷ Given the poor reputation of China in protecting foreign intellectual property rights,²⁴⁸ this lack of trust in PRC law is understandable, but information technology tools are available that can be put to effective use. Of course, these tools were not created by the PRC with the goal of protecting foreign brand owners, but instead for the purpose of satisfying China's obsessive need to closely monitor all aspects of Chinese civil society. While China is far behind the United States in protecting intellectual property rights, China is far ahead of most countries in using information technology to monitor and supervise all aspects of Chinese civil society.²⁴⁹ These tools can provide a level of effective deterrence to Chinese counterfeiters that seek to sell their illegal wares on internet commerce sites based in China or the United States. Brand owners can use the tools detailed in this Article on their own, or in conjunction with existing and developing new tools through internet commerce sites as an overall strategy of deterrence.

To be able to use the tools discussed in this Article, brand owners only need to insist on what they have every right to receive: e-commerce sites in China, such as Alibaba, must faithfully obey relevant provisions of PRC law that are simple and straightforward, an area in which Alibaba falls far short;²⁵⁰ and e-commerce sites in the United States, including Amazon, should apply PRC law on entity registration of Chinese business operators

²⁴⁷ See *supra* note 206.

²⁴⁸ See Daniel C.K. Chow, *The Myth of China's Open Market Reforms and the World Trade Organization*, U. PENN. J. INT'L L. 8 (forthcoming 2019) (file on copy with the author).

²⁴⁹ One example is China's recent social credit system, which involves assigning a social credit score indicating the desirability of a citizen's conduct to each citizen in China, a country of over 1.38 billion people. See *supra* note 42. There is also a more menacing side to China's use of technology in monitoring its citizens. Critics have argued that China has used advanced technology to create an "all seeing police state" in the rebellious Muslim-dominated area of Xinjiang Province. See *China's Hi-Tech Police State in Fractious Xinjiang a Boon for Security Firms*, S. CHINA MORNING POST (Jun. 27, 2018), <https://www.scmp.com/news/china/diplomacy-defence/article/2152749/chinas-hi-tech-police-state-fractious-xinjiang-boon>.

²⁵⁰ See *supra* Part II.D.2.

under traditional choice of law rules, a choice of law clause, or voluntarily. Verification of entity registration should become easier with the enactment of proposed new data security legislation that would impose civil and criminal liability for the misuse of electronic information.²⁵¹ Entities that register on e-commerce sites could become liable for the use of false, misleading, or inaccurate business licenses and thus would have an additional legal incentive to use business licenses accurately.²⁵²

Alibaba poses a particularly formidable challenge to brand owners due to its overwhelming size and power within China and its leading role in facilitating the online sale of counterfeits. Alibaba's prodigious wealth and strength has led, in the words of PRC officials, to a culture of "arrogance."²⁵³ Brand owners have suspected for years that Alibaba tacitly tolerates and supports counterfeiting in order to earn revenue from these sales. Recently, PRC national government authorities have confirmed these suspicions as the result of an extraordinary national-level intervention intended to discipline Alibaba. Beyond tolerating and supporting counterfeiting, Alibaba, in the words of PRC national authorities, views itself as above the law and unafraid of and not intimidated by PRC enforcement authorities.²⁵⁴ In fact, the opposite seems to be the case, as the 2014 investigation of Alibaba by the SAIC indicates: government authorities are reluctant to seriously discipline Alibaba or its business due to Alibaba's exalted stature and reputation as a national paragon in China.²⁵⁵ This raises a deeper issue with Alibaba for brand owners, as this attitude is unlikely to change without intervention by the highest levels of the Communist Party, a topic that deserves further scholarly exploration but is beyond the scope of this Article.

The proposed course of action described in this Article has the advantage of not having to rely on Alibaba's active participation; all that is required is that Alibaba mechanically apply the law as is required for registration of online vendors, and brand owners can on their own enforce their rights against offending parties in civil and criminal actions in China or the United States. The proposals set forth in this Article also apply to problems that brand owners face on Amazon and other U.S.-based e-commerce sites, so long as these sites apply PRC law as a result of choice of law analysis, a choice of law clause, or voluntarily. So long as Amazon follows PRC law in entity registration verification, brand owners can proceed directly with legal actions against counterfeiters and infringers in China or

²⁵¹ Shuju Anquan Guanli Banfa (Zhengjiu Yijian Gao) Di Si Tiao (数据安全管理办法 (征求意见稿) 第四条), *translated in* Security Measures for Data Security Management (Draft for Comments), art. 4, COVINGTON UNOFFICIAL TRANSLATION, https://www.insideprivacy.com/wp-content/uploads/sites/6/2019/05/Measures-for-Data-Security-Management_Bilingual-1.pdf (last visited Nov. 25, 2019).

²⁵² *Id.*

²⁵³ See *supra* text accompanying note 151.

²⁵⁴ See *supra* text accompanying notes 151-156.

²⁵⁵ See *supra* text accompanying note 182.

the United States and are not relegated to the misery of relying solely on Amazon's convoluted and cumbersome internal procedures.

Ironically, while most brand owners have focused their attention on streamlining the internal monitoring procedures of e-commerce platforms, they have ignored the more effective tools that are available in plain sight in China's legal system. By using these tools created by China's obsessive need to closely monitor and control all aspects of its civil society, brand owners can help to deter counterfeiters by forcing them to shed their concealment and anonymity and by exposing them to what they fear and loathe the most: transparency and accountability for their illegal actions.

V. APPENDICES

Appendix 1. Alibaba Listing: Gucci Guccio Handbags



高端定制大牌
gucci guccio天...



¥1500

使用淘宝扫一扫

03月29日前有效

Appendix 2. Alibaba Listing: Hennessy XO

天天优选



活动价:
¥432
立即购买 >

新店开张 低价冲量

低价冲钻

轩尼诗XO干邑白
兰地 法国Henne...



¥432

使用淘宝扫一扫

03月29日前有效

Appendix 3. Alibaba Listing: Abercrombie & Fitch Sweatpants



加绒厚款

秋冬款加绒AF运动裤女小脚加厚长...

¥80

使用淘宝扫一扫

保存图片到相册 → 打开淘宝立即看见

Full Image (215K)

04月01日前有效

Appendix 4. Abercrombie & Fitch Sweatpants

