Counterfeit Products sold on E-Commerce Platforms Pose a Growing Risk to Safety

Growing Issue

In the United States in recent years, e-commerce platforms have become a critical resource for many businesses; providing opportunities for them to reach new audiences and markets. The ecommerce industry as a result, has enjoyed yearly growth – including in 2019, with the US Census Bureau reporting a 5% increase in sales from 2nd quarter to 3rd quarter.[1] In fact, e-commerce was estimated to reach $3.46 trillion in 2019, up from $2.93 trillion in 2018.[2]

The sale of fake and counterfeit products has also increased. In line with global growth in ecommerce sales, the Organization for Economic Cooperation and Development (OECD) has reported a steady increase in trade in fake goods – reporting a growth of 154% from 2005 to 2016.[3] Many counterfeit products are low-quality and can cause injuries.[4]

In addition to counterfeit products, marks meant to confirm and convey the safety of products are also being counterfeited. TIC Council members have identified instances of member marks being counterfeited and placed on products that were not evaluated by the member organization and therefore may not meet specifications identified in published standards which include, but are not limited to, electrical safety and sanitation. TIC Council members take action in each instance, notifying potentially affected customers and consumers and pursuing bad actors to ensure such counterfeit marks are taken off the market. Use of such practices places consumers at risk if those products are not in compliance with United States regulations.

Products sold individually are shipped into the United States in small packages and may evade detection by border checkpoints and inspectors, further increasing the risk of sale of products that do not meet US Safety regulations.

Lack of Accountability

In the United States, e-commerce platforms, while similar to brick and mortar stores, are not subject to the same regulation and oversight.[5] The ease with which a seller can create an account and upload new listings of products incentivizes sellers to upload new listings without evaluating and confirming the provenance of products or the certification marks they are accompanied with.

Where an issue with a seller or their products is identified, there is not a strong system in place to prevent that seller from creating a duplicate account under a new name or moving to a different e-commerce platform. In many cases, it is the IP owner of the product that carries the burden of notifying ecommerce platforms that a seller is listing counterfeit products. This does not ensure communication

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[1] U.S. Census Bureau News, November 19, 2019, https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf
[2] Digital Commerce 360 projections; November 2019, https://www.digitalcommerce360.com/article/global-ecommerce-sales/
[3] OECD/EUIPO, Trends in Trade in Counterfeit and Pirated Goods, Illicit Trade, OECD Publishing, Paris/ European Union Intellectual Property Office, (Mar. 18, 2019), https://doi.org/10.1787/g2g9f533-en.
[4] U.S. Customs and Border Protection, Fake Goods, Real Dangers, https://www.cbp.gov/FakeGoodsRealDangers
[5] Combating Trafficking in Counterfeit and Pirated Goods, Report to the President of the United States, Homeland Security, Office of Strategy, Policy & Plans, January 24, 2020, page 6

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to consumers of potential risks or a clear pathway for consumers to identify and report purchases of counterfeit or unsafe products.

Finally, when issues with products sold online are discovered, ecommerce platforms do not share accountability with the sellers. This disincentivises ecommerce platforms from taking proactive action to prevent such sales.

Action is Needed

To address this growing issue, the TIC Council supports US efforts to establish the following:

- A communication and/or tracking system to ensure stakeholders can share information on counterfeit and unsafe products quickly and this information can be disseminated to ecommerce platforms for subsequent action.
- Development of a 'bad actors' database that is available to marketplaces and consumers, a registry of commonly counterfeited products and marks, and open communication through multiple channels (e.g. email, flyers, social media, and print and other communication modalities) would help to increase awareness of this issue and provide needed resources.
- Policies requiring sellers to have products and their corresponding certifications be independently verified to US safety regulations prior to and for continuous listing.
- Policies requiring that sellers who use e-commerce platforms openly declare prior to placing a product online for sale, that the product(s) are NOT counterfeit. Such declaration should appear on the site, e.g. in a form of a 'clickable' logo, which should pop-up showing the 'open declaration'.
- Policies requiring action from e-commerce platform owners when a seller is found to be selling counterfeit goods. Such actions should include blacklisting and reporting to government bodies. e-commerce platform owners and the TIC council can partner to develop and implement this mechanism.
- Workshops and stakeholder roundtables to identify best practices in inspecting small shipments to the United States to identify counterfeit products and products that do not meet US safety regulations.

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TIC Council is the global trade federation representing the independent third-party Testing, Inspection and Certification (TIC) industry which brings together more than 90-member companies and organizations from around the world to speak with one voice. Its members provide services across a wide range of sectors: consumer products, medical devices, petroleum, mining and metals, food, and agriculture among others. Through provision of these services, TIC Council members assure that not only regulatory requirements are met, but also that reliability, economic value, and sustainability are enhanced. TIC Council's members are present in more than 160 countries and employ more than 300,000 people across the globe.

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