



SUMMARY

Best Practices to Combat Online Sale of Counterfeits in the EU and US

Online marketplaces—e-commerce platforms that aggregate listings from multiple third-party sellers—have significantly improved the way consumers buy goods, allowing for more choice and convenience. Unfortunately, bad actors can exploit these platforms to sell counterfeit goods. Counterfeits are imitations of real products that use another brand’s name without permission, and these fakes can threaten public health, safety, and national security, as well as cause economic harm to legitimate businesses and their workers. Because online marketplaces connect both buyers and sellers, they are uniquely positioned to help stop counterfeits, especially when rights holders, law enforcement agencies, and other stakeholders work jointly with them to address this problem.

Both the United States and the European Union have developed many overlapping best practices for how these platforms can combat counterfeits that have been endorsed by a multitude of representatives from the private sector and government. Policymakers in other countries should look to these agreed upon best practices as a starting point for future discussions on anti-counterfeiting initiatives, especially if they seek to develop similar voluntary agreements or codify these best practices in law. Establishing a unified set of commercially reasonable and technically feasible practices to combat counterfeit goods will streamline compliance across all platforms and create a united front to protect consumers from dangerous and unlawful counterfeit products.

The following summarizes best practices for online platforms found in both the EU “Memorandum of Understanding on the Sale of Counterfeit Goods on the Internet” and the U.S. “Report to the President of the United States: Combating Trafficking in Counterfeit and Pirated Goods.”

Establishing and enforcing policies to protect IP rights

Platforms should adopt and enforce terms of service for third-party sellers that protect intellectual property (IP) rights.

Creating notice and takedown procedures

Platforms should create a notice and takedown process that allows rights holders to efficiently report counterfeit listings, receive prompt action, and learn of the response.

Assessing third-party sellers

Platforms should take reasonable steps screen third-party sellers, such as by reviewing, auditing, or verifying seller profile data.

Enabling consumer reporting of counterfeits

Platforms should allow consumers to report counterfeits easily, both before and after purchase.

Addressing pervasive counterfeits proactively

Platforms should create proactive measures to address pervasive counterfeit products, such as by restricting items at high risk of being counterfeited, items that pose a high risk to health and safety, and items that are obvious fakes.

Preventing repeat offenders

Platforms should track and remove sellers who repeatedly violate their anti-counterfeiting policies, including by removing other seller profiles owned or controlled by the same seller and preventing repeat infringers from re-registering for new accounts.

Providing redress to consumers

Platforms should provide redress for consumers who unintentionally purchase counterfeit products, such as by providing refunds or other assistance.

Improving data sharing

Platforms should share data with other stakeholders working to combat counterfeits, including rightsholders and other intermediaries.

Assisting law enforcement

Platforms should engage with law enforcement after discovering counterfeit activity to assist with lawful investigations.

For more information, see: Becca Trate and Daniel Castro, “Best Practices to Combat Online Sale of Counterfeits in the EU and US,” Center for Data Innovation, July 2022. Available at datainnovation.org.