



August 23, 2023

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
United States Patent and Trademark Office
Mail Stop OPIA
P.O. Box 1450
Alexandria, Virginia 22314-1450

RE: Request for Comments on Future Strategies in Anticounterfeiting and Antipiracy
[\[Docket No. PTO-C-2023-0006\]](#)

Dear Under Secretary and Director Vidal:

The Alliance for Automotive Innovation (“Auto Innovators”) and the Automotive Anti-Counterfeiting Council (“A2C2”) welcome the opportunity to submit comments to the U.S. Patent and Trademark Office (“USPTO”) in response to its Request for Comments on Future Strategies in Anticounterfeiting and Antipiracy. Auto Innovators and A2C2 appreciate the Administration’s continued efforts to address the sale and trafficking of counterfeit and pirated products. These efforts protect consumers, workers, businesses, and intellectual property rights holders from dangerous counterfeit automotive components and other goods that endanger public health and safety.

Auto Innovators represents the manufacturers that produce most of the cars and light trucks sold in the U.S., original equipment suppliers, battery makers, technology companies, and other value-chain partners within the automotive ecosystem. A2C2 is a collaborative industry group, comprised of automakers and their partners, that strives to eliminate counterfeit automotive components that could harm U.S. consumers. Representing approximately 5 percent of the country’s GDP, responsible for supporting 10 million jobs, and driving \$1 trillion in annual economic activity, the automotive industry is the nation’s largest manufacturing sector.

The automotive industry’s extensive investments in research and development and ongoing innovation to provide the safest and most energy-efficient vehicles for American drivers must be protected from the growing threat of counterfeit automotive components. Motor vehicle safety critical components, if counterfeit, may not operate or perform as intended. For example, counterfeit airbags may fail to deploy properly or at all. In addition to airbags, other examples of frequently counterfeited safety critical and other vehicle components that can negatively impact vehicle operation, performance, and emissions include,

but are not limited to, brake pads, wheels, ignition coils, fuel injectors, fuel pumps, spark plugs, oil filters, mass airflow sensors, oxygen sensors, and pressure sensors. Counterfeit motor vehicle parts do not just infringe on valid intellectual property rights; such parts also give rise to serious public safety concerns and undermine the competitiveness of automotive manufacturing in the U.S. Here is a [video](#) of testing done on a variety of counterfeit automotive components.

As USPTO notes, counterfeit products are “readily available to U.S. consumers through all forms of commerce, including physical markets, ecommerce, and social media sites.” In recent years, the proliferation of counterfeit automotive components has increased exponentially online. A record number of American consumers have turned to [e-commerce platforms](#) for their shopping needs, underscoring the importance of verifying independent merchants, especially those located overseas. An automaker [examined](#) counterfeit seller data on one established marketplace, finding that over 75 percent of foreign-seller addresses were completely or partially unverifiable. Recent law enforcement activities highlight the trend of counterfeiters selling automotive components online. In 2019, a California man was [sentenced](#) to six months in federal prison after authorities uncovered a scheme involving the sale of counterfeit airbag covers on another established online marketplace. In May, a Tennessee man was [indicted and arrested](#) for importing counterfeit motor vehicle airbag parts, assembling them, and selling them on eBay.

While automotive rights holders proactively undertake monitoring, notice, and takedown efforts to object to third-party infringing uses online, there are steps that USPTO and the Administration can take to prevent counterfeit automotive components from entering the stream of commerce and reaching consumers.

- **Support Strong Enforcement of INFORM Consumers Act:** USPTO, through its Intellectual Property Attaché Program and other efforts, observes how counterfeiters and those who traffic counterfeited goods work to evade detection. To the extent that these evasion efforts involve the use of e-commerce platforms, USPTO should share any such information with the Federal Trade Commission and State Attorneys Generals given their enforcement role with regards to the INFORM Consumers Act.
- **Continue Work on Secondary Trademark Infringement Liability in E-Commerce:** In late 2020, the USPTO issued a [Request for Comments on Secondary Trademark Infringement Liability in the E-Commerce Setting](#). 19 out of 24 respondents noted that the current doctrine of secondary trademark infringement liability “is not an effective tool in addressing the problem of counterfeit goods sold through the internet.”¹ Examples of the doctrine’s insufficiency include the degree to which online service providers and

¹ USPTO, “Secondary Trademark Infringement Liability in the E-Commerce Setting: Summary of Responses to Federal Register Notice PTO-T-2020-0035,” August 2021. Can be found at: [Secondary Trademark Infringement Liability in the E-Commerce Setting \(uspto.gov\)](#).

intellectual property owners must monitor the e-commerce platforms for marks and the lack of clarity regarding what constitutes sufficient knowledge or control to hold an e-commerce platform provider liable for the infringing activities of its users. The USPTO should continue to pursue its efforts to assess contributory trademark infringement liability for e-commerce platforms.

- **Foster Adoption of Industry Best Practices:** Brand owners and consumers must navigate and manage e-commerce platforms individually due to the differences in how the platforms manage reports of counterfeit goods and engage in enforcement. USPTO should evaluate ways to incentivize e-commerce platforms to exercise robust due diligence and implement industry best practices related to the enforcement of counterfeit goods. Such practices relate to active policing of e-commerce sites for infringing uses; using technological measures for screening goods (*e.g.*, anti-fraud filtering search engines); and imposing prompt notice and takedown procedures that target infringing products and services and the accounts connected to those products and services.
- **Expand Efforts to Include Drop Shipment Facilities:** The discussion regarding counterfeiting significantly centers around the proliferation of dangerous products on e-commerce platforms. However, counterfeiters and those that trade in counterfeit goods are also increasingly using drop-ship facilities to hide both their identities and the source of the distributed goods. Just as with e-commerce platforms, USPTO should work with law enforcement authorities on ways to hold drop shippers accountable for the goods that pass through their facilities.
- **Enhance Penalties for Counterfeits:** In the *Memorandum on Stopping Counterfeit Trafficking on E-Commerce Platforms Through Fines and Civil Penalties*,² the Departments of Homeland Security and Justice were directed to advance a legislative proposal to, among other things, impose the maximum fines and civil penalties on “any e-commerce platform that directs, assists with, or is in any way concerned in the importation into the United States of counterfeit goods.” Authorities should impose such fines and penalties on e-commerce platforms, sellers of counterfeit goods, and anyone else knowingly in the related supply chains. Vigorous and strict penalties should be enacted and enforced for sellers who provide false or misleading information about products, for repeat sellers of counterfeit products (particularly as it relates to health and safety products), for manufacturers of counterfeit goods, and for sellers who attempt to evade detection by utilizing varying or fictitious identifiers within and across platforms.

² “Memorandum on Stopping Counterfeit Trafficking on E-Commerce Platforms Through Fines and Civil Penalties.” Can be found at: [Memorandum on Stopping Counterfeit Trafficking on E-Commerce Platforms Through Fines and Civil Penalties – The White House \(archives.gov\)](#).

Auto Innovators and A2C2 appreciate that the USPTO is seeking input regarding future strategies in the fight to prevent counterfeited goods from entering the stream of commerce and reaching the hands of consumers. As consumers are often unaware of the extent of their exposure to counterfeit products and the dangers that these products may pose, it is imperative that USPTO and all government agencies do everything they can to stop the proliferation of such goods.

Sincerely,



Hilary Cain
Vice President
Technology, Innovation, & Mobility Policy
Alliance for Automotive Innovation



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President
Automotive Anti-Counterfeiting Council

