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PRACTICES USED BY ONLINE MARKETPLACES TO TACKLE THE TRADE IN COUNTERFEITS – EXECUTIVE SUMMARY*

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ABSTRACT

Online marketplaces have developed over the past 20 years into a vigorous, innovative and hugely successful industry. It supports large corporations and empowers emerging entrepreneurs by connecting them with customers across the globe. However, there is a dark side to this success: it also facilitates the trade in counterfeit goods. In contrast to other facilitative industries, such as logistics and payment providers, online marketplaces attract special attention because the visibility of the counterfeits in their shop windows create obvious opportunities for controlling the illicit trade. This report presents the findings of exploratory research into the practices used by a sample of online marketplaces to tackle the trade in counterfeits. It finds that a small minority of the platforms implement meaningful anti-counterfeiting policies. Due to the variety of business models in the market, the report recommends a risk-based approach for a common anti-counterfeiting framework rather than a prescriptive menu of practices.

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** The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

EXECUTIVE SUMMARY

1. The illegal trade in counterfeit goods poses a significant threat to the free-market system, hindering progress and endangering societal welfare. The forces of globalization and the digital economy have allowed counterfeit manufacturers to access global markets, transforming counterfeiting into a massive global industry. The estimated value of international trade in counterfeit goods in 2019 was USD 464 billion, equivalent to 2.5 per cent of world trade. The demand for counterfeit products is facilitated by intermediary online marketplaces which connect illicit suppliers with consumers across the globe. This report explores the extent to which a range of 36 practices are adopted by the marketplaces. The study used a mixed methodology: an examination of the published policies and practices of 50 marketplaces and 16 technology providers, a compliance test on the marketplaces and technology providers, and interviews with industry stakeholders.
2. The study finds that just eight of the 50 sampled marketplaces have coherent anti-counterfeiting strategies in place and all eight passed the compliance test. Four of these marketplaces are generalists, which sell a wide range of products, and their anti-counterfeiting strategies are based on a wide range of administrative controls. The other four are specialists and their control strategies are based on inspecting and verifying the authenticity of products.
3. The other 42 marketplaces do not have coherent strategies in place and 60 per cent failed the compliance test. Some are indifferent to the counterfeit problem. Others are simply engaged in window-dressing, that is their actions fall short of the values and intentions proclaimed in their policies. The social media sector is notably deficient in delivering on its own policies. The investment in anti-counterfeiting strategies falls well short of that required to serve the sector's business model.
4. The rapid innovations of technology providers are leading to the integration of marketing and physical logistics across multiple platforms, which increases the reach, agility and operational efficiencies of legitimate and illicit sellers. However, just one of the technology providers sampled has implemented meaningful policies; the others have not recognized the problem.
5. Weak verification processes are a fundamental problem within the industry that undermines the ability to control illicit merchants. In particular, the practice of "adopted verification", whereby a marketplace accepts new sellers because they are already trading on another marketplace, spreads the operational reach of illicit traders.
6. The shortcomings in the ethical technologies that control and disrupt bad actors means that anti-counterfeiting strategies remain heavily reliant on professional relationships with stakeholders, which favors the large brands with clout. To compensate for the technology gap, the industry currently needs to invest in recruiting sufficient professionals possessing a diverse set of inter-personal, commercial, intellectual property and problem-solving skills.
7. Obstacles to effective collaboration need to be addressed, including the inadequacies in data sharing. The trend towards technology-driven integration of marketing and logistics makes data sharing with all stakeholders and between competitors even more crucial. This also means recalibrating the high evidence thresholds which hinder collaborative investigations and favor the illicit merchants.

9. Considering the complexity, the range of actors and the variety of business models within the industry, the report recommends that the industry should consider a generic, risk-based framework for tackling counterfeits rather than a prescriptive formula. This would enable marketplaces to develop strategies to cope with the scale and complexity of their own business models. Such strategies fundamentally depend on ethical leadership, meaningful and transparent anti-counterfeit policies, and sufficient resources, all of which are currently absent in many marketplaces.

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