

Questions for All Witnesses
E-Commerce and Intellectual Property Theft

- 1. Based on your experience with e-commerce marketplaces, are there any companies that are rising to meet the challenge of protecting American intellectual property rights and working with you to do so? Which online retailers and marketplaces are leading in this space and why?**

Alibaba and eBay are two examples of companies that have absolutely risen to the challenge and that work exceptionally closely with brands. I cannot say strongly enough how their active help has directly benefitted Specialized.

It seems that Alibaba and eBay had specific “change moments” that caused or otherwise contributed to them beginning to actively engage with brands to protect American intellectual property rights. For example, eBay was involved in a significant lawsuit with Tiffany over allegations of trademark infringement, and Alibaba appears to have been shocked at the reaction to their IPO in 2014, as American companies raged about the number of counterfeits on their platform.

Because of these “change moments,” Alibaba and eBay appear to have undergone deep cultural changes within their companies, resulting in significant internal support for building first in class programs to combat counterfeiting. They have both succeeded. The presence of counterfeit goods still does persist on both platforms, but is vastly less than what it was, or what it could have been.

When these internet professionals collaborate with brands and government, it creates the triangle that I have referenced that is a condition of winning.

- 2. Are there any online retailers in particular who are unwilling to work with your organizations to address intellectual property theft?**

Despite the considerable challenges many brands have had on Amazon’s platform, we have experienced only a few hot skirmishes on Amazon (mostly with apparel sellers) because Amazon’s cycling section is relatively small. Nonetheless, in

these instances, Amazon provided minimal help and failed to answer emails, leaving us to address the counterfeit sellers with other methods.

Amazon is hopefully currently experiencing an “change moment” comparable to the change moments had by Alibaba and eBay in the past.

3. Can you discuss specifically the new challenges posed by the increased sales of counterfeit goods on social media platforms?

Social media is a central battleground for Specialized. This is especially true in emerging markets like Latin America where United States companies can have their intellectual property infringed by counterfeits to enormous economic impact and to the significant detriment of public safety.

Specialized respects that investigating counterfeit sellers exists right at the charged intersection of privacy and intellectual property rights; however, coordinated efforts by brands and government working together will encourage the needed “change moments” within social media companies to drive counterfeiters off the platforms and arrest the committed sellers.

Currently, we monitor 946 Facebook groups and remove vast numbers of listings every single day. Still, we are unable to take additional steps leading to offline enforcement without more active investigative support from social media companies.

Brands and social media companies must build cases to bring to law enforcement. This is the only path to success. The ability of mechanisms like Facebook Messenger to send money, allows massive illicit commerce to happen without any visibility.

**Questions for Andrew Love
Brand Security / Investigations
Specialized Bicycles**

1. Do you know how many injuries and even deaths occur every year because Americans use counterfeit safety products like helmets, knee pads, etc.?

Even with a very minimal capacity to reach buyers of counterfeits (usually only after a successful arrest/conviction), we have discovered multiple documented cases of injuries. However, we do not have documented deaths.

I believe there is a simple reason for the lack of documented deaths. Counterfeit helmets look very similar to real ones. After a devastating bike crash that results in a fatality, checking the helmet is the last thing on anyone's mind, as it would cast a pall of blame on the deceased during a tragic situation.

We estimate that crash usage rates for high end cycling helmets approach 20%. We are sure tens of thousands of fake helmets from other brands are in circulation in the USA. We fight as hard as we can, but still are deeply worried.

2. What recommendations do you have to Congress about how can better equip CBP and private industry to combat the importation of counterfeit products?

My colleague Bob Margevicus serves on an Industry Trade Advisory Panel (ITAC), as well as the Bicycle Products safety committee (BPSC), and he recommends the following three specific actions Congress and Customs can take to combat importation of counterfeit products:

- 1) Reduce the De Minimus provision to US\$200.
- 2) Require marketplace hosts and/or freight carriers to take their share of responsibility for any counterfeit product, or seller, by establishing an authorized marketplace seller certification.
- 3) Obligate all De Minimus shippers to permanently label directly imported products with:
 - ✓ The manufacturer's name and manufacture location (including country of origin)

- ✓ Certify products meets all CPSC, FDA, DEA, NRC and other necessary government defined product safety provisions
- ✓ Formally verify the product does not violate any United States intellectual property rights
- ✓ Declare the actual value charged, and paid, on a separate commercial document
- ✓ Include an actual contact point in the United States for any disputes, warranty, liability, product problems or other concerns

Lastly, with Section 301 tariffs increasing to 25% on all imports from China, De Minimus shipments, which are currently **excluded** from **all** Section 301 tariffs, need to **be included**.

In short: the small parcel air economy needs to play by the same rules as the container economy.