

United States Senate Committee on the Judiciary  
Subcommittee on Intellectual Property

Responses to Questions for the Record  
for Matt Priest  
President & CEO  
Footwear Distributors & Retailers of America (FDRA)

May 23, 2019

Dear Chairman Tillis, Ranking Member Coons, and Members of the Subcommittee:

Below are responses to the written questions for the record following my testimony at the April 30th Senate Judiciary Subcommittee on Intellectual Property hearing entitled “World Intellectual Property Day 2019: the Role of Intellectual Property in Sports and Public Safety.”

**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?***

Yes, there are a number of good examples where platforms are adopting some proactive and preventative measures. While not all are doing all the right things in this critical area, sites such as Jet.com are conducting upfront screening of sellers.

Some of the practices platforms have adopted that have made a positive impact include:

- Requiring authentication of new sellers
- Proactively identifying suspicious sellers
- Banning notorious or repeat offenders
- Increasing information sharing with rights holders

While a step in the right direction, marketplaces need to do more to protect American intellectual property rights and ensure they are incentivized to do so. Those that welcome the prevalence of third-party sellers, and whose business relies on the income such sellers provide, are often less incentivized to take the necessary steps to combat these practices.

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

None that can be identified. Almost all marketplaces acknowledge the challenge posed by the prevalence of counterfeit goods available on their platforms and have programs in place to try and combat such activity. The question comes down to the effectiveness of those programs and the platform’s willingness to share vital information with rights holders as issues arise with bad actors.

**Matt Priest, President & CEO**

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

Social media platforms that allow commerce in closed or private environments create new challenges for rightsholders. Specifically, in the current dynamic of notice and take down, take downs often do not occur because it is not possible for rightsholders to notice infringing product being sold in chats, on private pages, or in private groups. Often these pages act as gateways to other sites or chats where the sale of illicit goods is also conducted, making it even more challenging for rights holders if they do not have assistance from the platform.

In addition to social media platforms, message boards and online public forums are rife with opportunities to connect consumers with purveyors of counterfeit goods. Counterfeit sellers can be found on Reddit and other platforms unveiling and marketing their goods of the top sellers and hottest trends in the sneaker market. All it takes is a few clicks to connect to the seller, select the product, make the purchase, and wait for the arrival of a pair of highly sophisticated counterfeit shoes.

**Questions for Matt Priest, President and CEO, Footwear Distributors and Retailers of America**

***1. As you mentioned, federal law currently allows Customs and Border Protection (CBP) to seize counterfeit trademarks but not counterfeit goods that infringe a design patent. As your demonstration showed, that doesn't make much sense. Do other countries currently allow their customs officials to seize products that infringe on a design patent? Which countries specifically?***

Other countries already empower their customs agencies to seize products based on design registrations, including the European Union, China, Mexico, and Japan, among others.

***2. My understanding is that at one point in the mid-1990s CBP actually had a pilot program that allowed for the seizure of infringing design patents but this program was discontinued for some reason. Do you know why this program was ended? Are there any reasons why CBP couldn't resume this pilot program?***

I am not aware of this program.

***3. If Congress were to mandate that CBP start seizing counterfeit products that infringe design patents it would likely put a strain on CBP's resources. What role can and should the private sector play in helping CBP to identify counterfeit products? Are there public-private partnerships models in other countries that we could follow here in the United States?***

The private sector can take a number of steps to minimize any strain. Specifically, rights holders can register any designs into a database that the agents can use to reference against, similar to trademarks or copyrights. Rights holders can also train agents on what to look for, similar to trainings that already happen around trademarks and trade dress. And finally, when an agent suspects an item of infringing on a design patent, the agent can contact the rights holder to verify the determination and move forward with the seizure.

***4. What role could enhanced information sharing play in combating counterfeit goods? What statutory or regulatory barriers exist that prohibit greater information sharing between CBP and private industry?***

We believe that if CBP is able to share additional information, more consistently, and in a standardized format CBP along with rights holders can reduce the number of counterfeits entering the US.

Important pieces of information for CBP to share with rights holders:

- Photographs of the shipping labels
- Carrier/courier/postal service used
- Markings on a package that indicate what platform it was purchased on and what warehouse it is shipping through, for example, Amazon's Fulfillment by Amazon (FBA) number
- Identification of how the goods were shipped and seized. For example, whether items were seized as they were traveling through postal shipments or as part of large sea container shipment normally used for commercial shipments
- Description of goods from shipping documents
- Available information on which route the package was shipped on, any information on transshipment or transfers
- Weight of package
- Declared value of the goods

Standard format:

- We would like CBP to create a useable, standardized method to share information with brands to help maximize the work brands and platforms can do to investigate and track back counterfeits to the source or manufacturer and the transit company or shipper responsible for transporting counterfeits.
- Standardized formatting would allow rights holders to "scrape" the data on products seized and importer/exporter information from the document.
- Consistent data can also enable partnerships with the private sector to use more algorithms, artificial intelligence, and other advanced data automation tools to help prevent counterfeit activity.

It is unclear to us what barriers exist that prohibit this level of information sharing.

On behalf our member companies, FDRA appreciates the opportunity to provide this additional information to the Subcommittee, and we stand ready to work with the Committee on this critical issue.

Sincerely,



Matt Priest  
President & CEO  
Footwear Distributors and Retailers of America

**Matt Priest, President & CEO**