

Questions from Senator Tillis for Daniel Shapiro

Witness for the Senate Committee on the Judiciary Subcommittee on Intellectual Property Hearing “Back to School with the SHOP SAFE Act: Protecting Our Families from Unsafe Online Counterfeits”

Thank you Ranking Member Tillis for the questions below. We would be more than happy to participate in legislative groups to further shape legislation and protect American consumers and companies from counterfeit products.

1. Is there reliable data captured on how many counterfeits were found on any given marketplace in a year? If not, should there be?

Major marketplaces such as Amazon, eBay, Alibaba or Shopee release annual reports sharing proactive measures undertaken throughout the year to actively combat online counterfeiting.

There are multiple ways in which counterfeits are identified on any given marketplace:

- There are internal signals that create risk for Marketplaces and are proactively removed.
- User feedback and user reports.
- External reports from Brands and service providers.

There is also the case for brands that may not be aware of their products being counterfeited or are unable to actively participate in the reporting of counterfeit issues to ecommerce platforms.

Reliable data across all marketplaces should be available to multiple stakeholders for transparency purposes.

2. Brand owners are currently required to police their brands on hundreds of online marketplaces. How much of a burden is this, especially for small business owners?

In today's digital landscape, brands, regardless of their size, are challenged by the vastness and complexity of policing their intellectual property. Brands are in fact responsible for defending their IP in order to protect its value.

The size, speed and scale of global marketplaces, social media platforms and stand-alone ecommerce websites make it almost impossible for brands to do this with human capital.

Our extensive experience working with brands has demonstrated that placing the responsibility solely on one party can be daunting, especially in this 24/7 fast-paced e-commerce world.

3. To your knowledge, are there any practices that are more current than the practices listed in the SHOP SAFE Act or that should be sufficient to avoid secondary liability that are not covered by the bill?

Red Points believes that creating a standardized vetting process for best practices among online marketplaces is a good business approach especially for products where health and safety are of concern.

However, marketplaces are not aware of the distribution practices of brands and without mandatory collaboration only brands who participate with marketplaces should be considered for liability.

4. Should platforms be required to notify consumers when they remove a listing because it appeared to be selling counterfeit products?

Red Points supports the notification to consumers who have previously purchased an item, and said item has now been removed. This notice should allow the consumer to reach out to the marketplace for a return. A fair and reasonable time frame between the consumer purchase and the listing removal should be considered.

5. Should any revisions be made to the definition of “goods that implicate health and safety?”

In the general definition included in the SHOP SAFE Act, it seems to encompass many industries, verticals, and products. It is also true that counterfeiters often use hazardous chemicals in very basic products like clothing, bedding, and sleepwear that could cause significant health issues.

Perhaps providing further details within the concept of ‘goods that implicate health and safety’ on specific categories and products might be a better starting point.

6. Are there currently any standard practices across platforms for vetting sellers or screening products? If so, how effective do you find those practices to be? What would you improve?

To our knowledge, the vetting practices of marketplaces are preparatory and not shared with brands or service providers like Red Points.

7. Are there currently any standard practices across platforms for removal of known counterfeit or infringing products?

It is our experience that when notifying platforms across the globe that an item is infringing on a brands’ intellectual property, the item is quickly removed with very few exceptions.

Every ecommerce platform may have varying forms, portals, document collections process, but in the end response to the notification is swift.

8. Are there any additional best practices platforms should implement to help prevent infringing use by third party sellers on their platforms?

While we are not apart or fully aware of the vetting process used by marketplaces, we hope it includes the following:

1. How has the seller obtained the inventory?
2. Has the seller authenticated the inventory?
3. Ongoing monitoring of consumer reviews.

9. Are there any additional changes that you would like to see made to the SHOP SAFE Act and why?

It is our position that the SHOP SAFE Act be a balanced approach between marketplaces, brands, and service providers. We would welcome the opportunity to participate in the working group to advance the bill.

10. What more can Congress do to help stem the sale of counterfeit goods online?

Besides legislation, we believe consumer education is key. Having a nation-wide campaign across schools would be extremely beneficial to raise awareness of the dangers of counterfeits, not just health and safety, but how it can damage the reputation of brands, loss of jobs, and hazard to the environment.

Moreover, continued rigorous training at the country's entry points is crucial to prevent counterfeit goods from entering the market. Customs and enforcement agents must be adept at identifying counterfeits, particularly in commodities from high-risk regions.