

**Written Testimony of
Steve Lamar, American Apparel & Footwear Association President and CEO
“Back to School with the SHOP SAFE Act: Protecting Our Families from Unsafe Online Counterfeits”¹
U.S. Senate Committee on The Judiciary, Subcommittee on Intellectual Property
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Thank you for inviting our industry to testify this afternoon.

Nobody wants to buy clothes or shoes that will sicken their kids, or that were made by forced labor, or that were produced in sweatshops, or that destroyed the environment. But that’s exactly what happens when consumers buy counterfeit fashion.

And that’s why the SHOP SAFE Act is so important for Congress to consider and pass quickly.

My name is Steve Lamar. I’m proud to serve as the President and CEO of the American Apparel & Footwear Association, the national trade association for the apparel and footwear industry, and other sewn products companies, and their suppliers. We represent more than 3.2 million U.S. workers and more than \$490 billion in annual U.S. retail sales.²

Our members invest millions to build, train, and inspect supply chains to ensure that the clothes, shoes, and accessories bought and worn by American families are not only fashionable and affordable but are also ethically and sustainably sourced and made, and are safe for consumers. This is an area of continuous improvement as each day we are looking further back in our supply chains and implementing increasingly complicated transparency, traceability, and product safety requirements to make sure that the clothes and shoes worn by everybody in this room, and everybody in this country, are responsibly made.

On top of their considerable investment in social and ethical compliance, U.S. brands and retailers of all sizes spend considerable resources to police third party marketplaces, try to remove shady websites, and take down fraudulent ads in a mission to address the growing counterfeit problem and protect consumers.³ Counterfeit products not only harm our members’ reputations and hurt their sales, but they also put our members’ customers in harm’s way with fake products that could sicken them or create other risks.

It is beyond dispute that counterfeits cause grave harm to innovation and our economy. The National Association of Manufacturers estimates that counterfeits sucked \$131 billion (about \$400 per person in the U.S.) from the U.S. economy in 2019, and in the process destroyed more than 300,000 U.S. jobs and wiped away nearly \$10 billion in

¹ “Back to School with the SHOP SAFE Act: Protecting Our Families from Unsafe Online Counterfeits”
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<https://www.judiciary.senate.gov/committee-activity/hearings/back-to-school-with-the-shop-safe-act-protecting-our-families-from-unsafe-online-counterfeits>

² AAFA <https://www.aafaglobal.org>

³ AAFA submitted 2022 comments to the U.S. Trade Representative quantifying the abundance of counterfeits across platforms and detailing the resources brands reallocate to police marketplaces across the destructive counterfeiting value chain.

https://www.aafaglobal.org/AAFA/AAFA_News/2022_Letters_and_Comments/AAFA_Files_2022_Notorious_Markets_Comments_USTR.aspx

federal, state, and local tax revenues.⁴ This is an issue for governments and businesses of all sizes. The burden of constantly monitoring websites – while tough for an external observer – is particularly rough for small businesses, especially if they derive their entire livelihood from the internet. While nobody has the resources to be everywhere all at once, this is particularly the case for small businesses that have limited means to stop illicit actors from illegally selling their innovative product.

Counterfeits expose consumers to unconscionable risks. We are part of a broad industry coalition supporting the SHOP SAFE Act,⁵ spanning diverse sectors of the economy that have been raising alarms about the growing danger posed by counterfeits that are too easily allowed onto our front steps and into our living rooms. While headlines scream about the dangers of counterfeit airbags, batteries, and prescriptions, the dangers posed by counterfeits are everywhere, including apparel, footwear, accessories, toys, personal care products and more. In 2022, AAFA commissioned a study of 47 counterfeit clothes, shoes, and other accessories – items that we would wear daily. We found that 17 of those products – just over 36 percent – had dangerously high levels of poisonous materials, like lead, arsenic, and phthalates.⁶ Not only did these items fail U.S. safety rules, but they also could have made consumers seriously ill if they had bought and used them. To say that counterfeits kill is not an exaggeration, as Congress' own watchdog noted in a 2018 GAO report.⁷

You can see why stopping the explosion of counterfeits remains one of our top priorities.

Counterfeiters have a different view of the world. Their entire business model is based on stealing somebody else's innovation and identity, so it is with little remorse that they exploit workers, engage in wage theft, employ shoddy factories, dump hazardous waste into rivers and lakes, and use dangerous chemicals.⁸ When they lure folks into buying their fake products, they often dabble in more thievery, exposing consumers to financial scams.⁹ The fact that authentic brands invest so much in social and ethical effort only widens the profit margins of counterfeiters since they are often able to score a sale, without paying for any of the compliance that they are duping customers into believing has occurred. What happens to the profit of these ill-gotten gains? They become the seed capital for organized crime, terrorist activities, and yet more counterfeit activity.¹⁰ This is exactly why the U.S. Department of Homeland Security under former President Trump issued the "Combating Trafficking in Counterfeit and Pirated Goods" report¹¹ and why President Biden has called for more to be done to verify third-party sellers' information and to impose liability on online marketplaces.¹² Protecting consumers, businesses, and American jobs has been – and should be – a bipartisan issue.

⁴ The National Association of Manufacturers: Countering Counterfeits: The Real Threat of Fake Products
<https://www.nam.org/wp-content/uploads/2020/07/CounteringCounterfeits.vf.pdf>

⁵ Cross-Industry Letter Calls on Congress to Pass Legislation to Stop the Sale & Promotion of Dangerous Counterfeits Online
https://www.aafaglobal.org/AAFA/AAFA_News/2022_Press_Releases/Cross_Industry_Letter_Congress_Stop_Sale_Counterfeits.aspx

⁶ AAFA Fashion Industry Study Reveals Dangerous Chemicals, Heavy Metals in Counterfeit Products
https://www.aafaglobal.org/AAFA/AAFA_News/2022_Press_Releases/Fashion_Industry_Study_Reveals_Dangerous_Chemicals_Heavy_Metals_Counterfeits.aspx

⁷ GAO: INTELLECTUAL PROPERTY "Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market"
<https://www.gao.gov/assets/gao-18-216.pdf>

⁸ TRACIT: The Human Cost of Illicit Trade <https://www.tracit.org/human-cost-of-illicit-trade.html>

⁹ IACC: What is Counterfeiting / Intellectual Property (IP) Theft? <https://www.iacc.org/resources/about/what-is-counterfeiting#:~:text=It%20Could%20Cost%20You%3A%20Purchasing%20from%20counterfeit%20websites,can%20steal%20your%20personal%20or%20credit%20card%20information.>

¹⁰ OECD: Global Trade in Fakes <https://www.oecd.org/publications/global-trade-in-fakes-74c81154-en.htm>

¹¹ DHS Combating Trafficking in Counterfeit and Pirated Goods
https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf

¹² The White House FACT SHEET: President Biden's Safer America Plan <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/01/fact-sheet-president-bidens-safer-america-plan-2/>

Like many, we celebrate the growth of the ecommerce environment, and cherish the opportunities the internet has created to enable consumers to interact with our industry and to enable our industry to thrive, especially during the pandemic. But with great opportunity comes great responsibility. That is why the accountability and proactive measures required by SHOP SAFE are vital.

U.S. law currently contains many guardrails to make sure brick and mortar retailers of all sizes do not sell counterfeit items. Authentic brands don't have to visit every store across the country to make sure these brick-and-mortar locations are only selling legitimate goods. They don't have to go through lengthy takedown fights with these physical stores, only to find fake goods pop up again shielded by a new name.

In the online world, things are very different. Brands must monitor every platform out there, with new platforms popping up every day. And when brands find counterfeits, fake websites, dupe influencers,¹³ or fraudulent ads¹⁴ promoting those websites, they must beg and fight the platforms to get those products, ads, and websites removed. If the platform removes them at all, it can be weeks or months later, all that time allowing the counterfeiters to profit. Often, the infringers pop back up within days.

We can't simply think it is okay to let brands and retailers shoulder the burden of monitoring these websites. Inefficient at best and Sisyphean at worse, this task is likened to a game of "whack-a-mole" because counterfeiters are a wily bunch. They are pioneers in the latest technology and are constantly developing creative approaches to evade detection, knowing also that the legal framework that is deployed to stop them has been rapidly outpaced by the internet itself. They also know that many third-party marketplaces can hide within that framework, avoiding responsibility for the goods they allow to be sold.

Interestingly, some of the same platforms that end up hosting counterfeiters are themselves pioneering amazing technological advancements that can put up more effective roadblocks against illicit actors. Many of them talk about their zero tolerance for counterfeits – a value that is commendable. But we've been hearing that for years while this counterfeit epidemic has been allowed to flourish. We are past the time to talk, and it is now time to update and create stronger federal incentives appropriate for the ecommerce eco systems – and consistent with what we have in the physical world. We must now convert those words into actions.

Last year, Congress took the first step to tighten our anti-counterfeit defenses and protect consumers by passing the INFORM Consumers Act, which requires third party platforms to disclose more information to consumers about large volume sellers on their sites. We celebrated that measure as it helps take away the ability of criminals to sell counterfeits by unmasking them.¹⁵ But it was only a first step in what is now needed to help bring our anti-counterfeit tools into the age of ecommerce. We now need proactive measures to make sure the counterfeits don't get on to these third-party marketplaces in the first place.

SHOP SAFE will do just that, holding third-party online platforms accountable so they will be incentivized to make the necessary changes. They will need to meet the same requirements, and face the same accountability, as brick-and-mortar retailers, your mom-and-pop store down the street, when it comes to stopping the sale of counterfeit or illicit products. If they take commonsense, easily achievable steps like asking sellers for key pieces of needed information, implementing proactive measures for screening listings before displaying the goods to the public, and denying their platform to repeat infringers they will clean up their own sites and achieve safe harbor from the legislation's tough liability provisions. And if they don't, they expose themselves to liabilities that will make hosting counterfeits more than just a cost of doing business.

¹³ AAFA: Dupe Influencers <https://www.aafaglobal.org/DupeInfluencers>

¹⁴ AAFA & TRACIT: FRAUDULENT ADVERTISING ONLINE EMERGING RISKS AND CONSUMER FRAUD
https://www.tracit.org/uploads/1/0/2/2/102238034/tracit_fraudulentadvertisingonline_july21_2020_final.pdf

¹⁵ AAFA Applauds Passage of INFORM Consumers Act with Omnibus Spending Package
https://www.aafaglobal.org/AAFA/AAFA_News/2022_Press_Releases/AAFA_Applauds_INFORM_passage_Omnibus.aspx

Earlier in my testimony I talked about a destructive vicious cycle that allows counterfeits to flourish. Sadly, we are locked in a vicious policy cycle we must break as well. In a few days, as we do every year, our association will submit comments to the Office of the U.S. Trade Representative (USTR), presenting the online platforms that our members have identified as Notorious Markets. In a few months, USTR will issue a report that discusses the problems associated with these and other marketplaces.¹⁶ Around that same time, Customs and Border Protection (CBP) will publish statistics showing the alarming amount of counterfeit clothes, shoes, accessories, electronics, auto parts, jewelry, and toys they stopped last year, noting ruefully that it was only a fraction of what enters into the U.S. With these and other studies, the record is clear that counterfeits are a growing scourge, especially for our members with over 70% of the products seized by CBP.¹⁷ This all causes more acute damage to our economy, our workers, and our citizens. And every year, we keep preparing these reports, and every year they get more dire.

We have before us legislation that can break this cycle and change the narrative of those reports and those statistics and finally deny the ability of counterfeiters the ability to prey on our population.

It is time to pass the SHOP SAFE legislation now.

Thank you. I look forward to your questions.

¹⁶ USTR Releases 2022 Review of Notorious Markets for Counterfeiting and Piracy <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/january/ustr-releases-2022-review-notorious-markets-counterfeiting-and-piracy>

¹⁷ CBP: Intellectual Property Rights Seizure Statistics (FY 2021) <https://www.cbp.gov/sites/default/files/assets/documents/2022-Sep/202994%20-%20FY%202021%20IPR%20Seizure%20Statistics%20BOOK.5%20-%20FINAL%20%28508%29.pdf>