



July 30, 2021

The Honorable Henry C. "Hank" Johnson
Chairman, House Judiciary
Subcommittee on Courts,
Intellectual Property, and the Internet
2141 Rayburn House Office Building
Washington, DC 20515

The Honorable Darrell Issa
Ranking Member, House Judiciary
Subcommittee on Courts,
Intellectual Property, and the Internet
2141 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Johnson and Ranking Member Issa:

We write to raise concerns with the SHOP SAFE Act of 2021 (H.R. 3429) that was referred to your subcommittee. The goal of the bill is to combat the sale of counterfeit products on digital platforms. However, companies are already incentivised to combat counterfeit products on their platforms -- and the bill's requirements would harm smaller online marketplaces.

Digital platforms that host third-party goods are already incentivized to remove counterfeit products. These platforms seek to provide the highest quality products to become a trusted resource for consumers to return to many times. Many of these platforms also have or seek commercial partnerships with major brands, who demand that marketplaces actively police counterfeits. To that end, they are already investing millions of dollars,¹ deploying advanced technologies to detect counterfeit products,² and partnering with rights holders to quickly identify products that potentially infringe on their intellectual property rights.³

Recently, some companies have joined rights holders in bringing lawsuits against those third parties that attempt to sell counterfeit products.⁴ Imposing liability on platforms ignores their multipronged approach to address the issue and may interfere with their own efforts to remove counterfeit products.

¹ <https://www.aboutamazon.com/news/company-news/amazon-brand-protection-report>

² <https://blog.etsy.com/news/2021/our-commitment-to-the-trust-and-safety-of-the-etsy-marketplace/>

³ <https://pages.ebay.com/seller-center/listing-and-marketing/verified-rights-owner-program.html>

⁴ <https://www.thefashionlaw.com/facebook-gucci-partner-to-file-counterfeit-suit-against-facebook-instagram-user/>



The bill will also unfairly impact nascent online marketplaces. By some accounts, there are millions of companies that sell products produced by third parties online to consumers. While the headlines are dominated by a handful of these companies, many are much smaller to midsize. As Engine reports, “proposals like SHOP SAFE would mean startup e-commerce platforms must learn many million trademarks and assess potential infringement without the benefit of input from mark owners who are best suited to know what is (and is not) counterfeit.”⁵ The bill creates compliance burdens on startups by creating barriers to their growth and success.

At best, the bill is duplicative of efforts being deployed by companies and, at worst, will impede successful efforts currently utilized by companies to keep counterfeit products off digital platforms. Even more consequential, fledgling companies will be negatively impacted by the bill’s requirements. We urge you to consider these important points and stop the bill from moving forward.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Bagchi".

Koustubh “K.J.” Bagchi
Senior Director, Federal Public Policy

⁵ <https://www.engine.is/news/startup-news-digest-052821>