



October 15, 2019

Mr. Daniel Lee  
Assistant U.S. Trade Representative for Innovation and Intellectual Property (Acting)  
Office of the U.S. Trade Representative  
600 17 Street, NW  
Washington, DC 20508

RE: 2019 Special 301 Out-of-Cycle Review of Notorious Markets (Docket Number: USTR-2019-0013)

Assistant USTR Representative Lee,

Amazon submits these comments as part of the Office of the United States Trade Representative's (USTR) 2019 Special 301 Out-of-Cycle Review of Notorious Markets. Amazon's comments respond to the recommendations submitted by the American Apparel and Footwear Association (AAFA) recommending that Amazon's stores in specific jurisdictions be included in USTR's 2019 Notorious Markets List.

## **SUMMARY OF AMAZON'S ANTI-COUNTERFEITING MEASURES**

Amazon strives to be Earth's most customer-centric company, where consumers can find and discover virtually any authentic, lawful product they want to buy. We know that customer trust is hard to win and easy to lose, and we view counterfeiting as an existential threat: if customers do not trust what they purchase through Amazon's stores, they can and will shop elsewhere. That is why we go well beyond our legal obligations and invest heavily in proactive efforts to prevent counterfeits from ever reaching our stores. In 2018 alone, we invested over \$400 million in personnel and employed over 5,000 employees to fight fraud and abuse (including counterfeiting) in our stores. Our primary focus is on preventative, technology-driven tools built on machine learning and data science to proactively scan the more than 5 billion changes submitted to our worldwide catalog each day. We also stand behind the products sold through our stores even when third-party sellers do not. We willingly make these investments because they are good for our customers, good for the honest entrepreneurs who account for more than 58% of the physical gross merchandise sales made through our stores, and good for the rights owners and brands that invent the hundreds of millions of products for sale in Amazon's stores. These investments are producing positive results: in 2018, our proactive efforts prevented over 1 million suspected bad actors from publishing a single product for sale in our stores, blocked over 3 billion suspected bad listings from being published on our stores, and ensured that over 99.9% of products that customers actually viewed in Amazon's stores never have received a complaint about a suspected counterfeit from a customer or rights owner.

Our investments include unique, industry-leading innovations to prevent counterfeits from being sold in our stores:

1. **Brand Registry.** This service powers proactive brand protection on Amazon. Registration is free to any rights owner with a registered trademark, independent of any economic relationship with Amazon. Through Brand Registry, brands gain access to powerful tools including automated brand protections that use machine learning to predict infringement and proactively protect brands' intellectual property.

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These tools grow more effective over time and year to date in 2019 have proactively blocked over 400% more listings suspected of violating intellectual property (IP) rights than during the same period in 2018. Brand Registry also provides enrollees a powerful Report a Violation tool that increases the accuracy of brands' notices of claimed infringement, and allows brands to search for potentially infringing products using state-of-the-art image search technology. More than 200,000 brands around the world are enrolled in Brand Registry, and they are finding and reporting 99% fewer suspected infringements than before the launch of Brand Registry.

2. **Transparency.** This product serialization service effectively eliminates counterfeits on enrolled products. Amazon provides participating brands unique, 2D Data Matrix codes that brands place on every unit they manufacture of an enrolled product. Those codes allow Amazon, other retailers, law enforcement, and customers to determine the authenticity of each individual unit of that product in the industry supply chain, simply by scanning the codes with a mobile app. Since Transparency's launch in 2018, over 6,000 brands have enrolled, enabling Amazon to protect brands and our customers by detecting and preventing over 300,000 counterfeit products from being sold. To date, brands have not reported a single counterfeit notice of infringement for Transparency-enabled products.
3. **Project Zero.** This new program empowers brands to help Amazon drive counterfeits to zero. It combines the breadth and power of Amazon's automated proactive brand protections, the complete coverage of unit serialization, and a new self-service tool that for the first time gives rights owners the power to remove suspected counterfeits directly from Amazon's stores. As of October 2019, 6,000 brands are already enrolled in Project Zero.
4. **Innovative protection of IP rights.** Amazon recently launched this new program to help emerging brands obtain trademarks and IP protection from the earliest stages of their product lifecycles. Amazon recognized that entrepreneurs often do not think to obtain IP protection while developing products, and often do not know where to turn when they need protection. IP Accelerator solves this challenge by connecting businesses with a curated network of trusted IP law firms that provide high quality trademark registration services at competitive rates to help brands secure a trademark. Amazon has vetted the participating IP law firms for experience, expertise, and customer service, and all have agreed to competitive, pre-negotiated rates for the standard services involved in obtaining a trademark registration. When businesses use these law firms to file trademark applications, Amazon provides their brands with accelerated access to brand protection in Amazon's stores. Brands will benefit from automated brand protections, which proactively block bad listings from Amazon's stores, increased authority over product data in our store, and access to our Report a Violation tool, a powerful tool to search for and report bad listings that have made it past our automated protections.

We recognize these tools are not perfect and we work hard to continuously improve them based on feedback from rights owners, selling partners, and regulators. Such feedback depends upon collaborative relationships, which also include joint lawsuits, law enforcement referrals, and working with industry associations to create structured engagement for constructive feedback. However, despite Amazon's best efforts to engage with the AAFA collaborate with its members to effectively prevent the sale of counterfeits, many of its member brands have not adopted Amazon's brand protection tools.

## **AMAZON'S ENGAGEMENT WITH THE AMERICAN APPAREL AND FOOTWEAR ASSOCIATION (AAFA)**

Since December 2018, Amazon has conducted monthly engagements with a group of brands selected by AAFA to discuss our brand protection innovations including Brand Registry, Transparency, Project Zero and more, share key performance indicators, and provide feedback and guidance on Amazon's policies. When Amazon receives negative feedback from these engagements about its policies or tools, it uses that feedback to improve the policies and tools to address brands' concerns. Amazon places great value on providing this forum for brands to provide insights and suggested improvements to its tools.

The dialogue provided through these meetings has helped AAFA members adopt Amazon's brand protection tools, which have significantly improved the proactive IP protections provided to AAFA members. Specifically:

1. Adoption of Brand Registry by members of AAFA's Brand Protection Council has risen from 19% before the monthly engagements started to 80% today.
2. This increased adoption of Brand Registry has enabled Amazon to proactively protect AAFA members' intellectual property on Amazon, resulting in a 75% reduction in the number of notices of claimed infringement (of all types of IP) filed by AAFA members who participate in these meetings for the five Amazon stores for which AAFA has recommended for inclusion on the watch list.<sup>1</sup>
3. For every one notice of claimed infringement that these members have submitted to Amazon for those five stores over the past six months, Amazon has proactively removed 165 listings suspected of infringing AAFA members' intellectual property rights.
4. Although AAFA has recommended Amazon's India store for inclusion on the 2019 Notorious Markets List, these members have not filed a single notice of suspected counterfeit for Amazon's India store in the past six months.

Despite the demonstrated effectiveness of Amazon's tools, however, some AAFA member brands have refused to use them. For example, 13 members of the AAFA's Brand Protection Council have declined to enroll in Brand Registry; only 22 brands have enrolled in Project Zero despite 51 brands being invited, and none have adopted Transparency. Further, AAFA did not attempt to raise or resolve the concerns in their filing with Amazon prior to submitting them, despite the forum that the monthly meeting provides. AAFA's suggestion that Amazon is not doing its part to eliminate counterfeits from its stores does not stand up to the data from Amazon's efforts on behalf of AAFA members.

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<sup>1</sup> It is unclear why AAFA singled out these five stores. Amazon's brand protection efforts apply globally to all of its stores, with the exception of the limited times when Amazon tests new products in limited geographies or where certain IP laws only apply in certain jurisdictions (e.g., parallel import laws in Europe). For example, Amazon Brand Registry is available in all of Amazon's stores worldwide, and Amazon engages in proactive brand protection efforts in each of its stores where brands have registered intellectual property. Transparency is available in the United States, United Kingdom, Germany, France, Italy, Spain, Canada, and India. Amazon launched Project Zero first in the US, but has since expanded it to its stores in Europe and Japan.

## **CONCLUSION**

The fight against counterfeits is far from over and Amazon will not stop investing in the development of effective tools and solutions until there are zero counterfeits in its stores. Contrary to the suggestion in AAFA's submission, these efforts are working, as over 99.9% of the products that customer actually view in Amazon's stores never have received a complaint about a suspected counterfeit from a customer or rights owner. Amazon solicits constructive feedback from brands and associations as to how it can continue to improve those tools, make the process easier for brands, and more effectively fight counterfeiters. However, when brands refuse to use the tools that Amazon makes available to them, offer only anonymous criticism that is directly refuted by available data, or conflate concerns about counterfeits with questions like the "unauthorized" distribution of authentic products, the shared goal of combatting counterfeiting is undermined rather than enhanced. While Amazon welcomes continued feedback from and will continue to work with AAFA to protect its members' intellectual property in Amazon's stores, its submission does not reflect the efforts that Amazon has already undertaken on their behalf and does not support Amazon's inclusion on the 2019 Notorious Markets List.

Thank you for the opportunity to provide comments in this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Huseman". The signature is fluid and cursive, with the first name "Brian" and last name "Huseman" clearly distinguishable.

Brian Huseman  
Vice President, Public Policy