



## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No.: PTO-C-2025-0016]

### Request for Comments on OECD's Working Party on Countering Illicit Trade (WP-CIT)

### Draft Voluntary Guidelines for Countering Illicit Trade in Counterfeit Goods on Online Marketplaces

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of public roundtable and request for comments.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is working across government and with the private sector to address counterfeiting. As part of this effort, the USPTO seeks feedback from interested parties on their observations and experiences in combatting the trafficking of counterfeit products through online marketplaces. The discussion will focus on the Organisation for Economic Co-operation and Development's ("OECD") recent work on *Draft Voluntary Guidelines for Countering Illicit Trade in Counterfeit Goods on Online Marketplaces* (the "*Guidelines*"). The USPTO will host a roundtable on the topics listed in this notice on Thursday, June 5, 2025, which will be held at the OECD Washington Center in person and virtually.

#### **DATES:**

Comments: Comments must be received by 11:59pm ET on Friday, June 27, 2025. The *Guidelines* will be available to review upon request per the instructions at <https://www.uspto.gov/about-us/events/roundtable-oecd-e-commerce-guidelines>.

Public Roundtable Event: The public roundtable event will be held at the OECD Washington Center in person and virtually on Thursday, June 5, 2025 beginning at 9 a.m. Interested parties wishing to attend the public roundtable event in person must register by May 29, 2025.

Registration for remote attendance will be available through June 5, 2025. Registration for both in-person and virtual options, along with the agenda, is available at <https://www.uspto.gov/about-us/events/roundtable-oecd-e-commerce-guidelines>. Parties interested in speaking at the event may submit their requests with the instructions provided on the registration page at <https://www.uspto.gov/about-us/events/roundtable-oecd-e-commerce-guidelines>. Please note that requests to speak will be accommodated on a first-come, first-served basis. Due to the limited number of time slots available for speakers, the USPTO may not be able to accommodate all requests.

**ADDRESSES:**

(1) *Electronic Submissions:* Submit all electronic comments via the Federal e-Rulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (at the homepage, enter “PTO-C-2025-0016” in the “Search” box, select the “Comment” icon, complete the required fields, and enter or attach your comments). The materials in the docket will not be edited to remove identifying or contact information, and the USPTO cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted only in Microsoft Word, Microsoft Excel, or Adobe PDF formats. Comments containing references to studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Please do not submit additional materials. If you want to submit a comment with confidential business information that you do not wish to be made public, please submit the comment as a written/paper submission in the manner detailed below.

(2) *Written/Paper Submissions:* Send all written/paper submissions to: United States Patent and Trademark Office, Mail Stop OPIA, P.O. Box 1450, Alexandria, VA 22314. Submission packaging should clearly indicate that materials are responsive to Docket No. PTO-C-2025-0016, Office of Policy and International Affairs, Comment Request;

Call for Feedback on OECD's Working Party on Countering Illicit Trade (WP-CIT) Draft  
Voluntary Guidelines for Countering Illicit Trade in Counterfeit Goods on Online Marketplaces.

*Submissions of Confidential Business Information:* Any submissions containing confidential business information must be delivered in a sealed envelope marked "confidential treatment requested" to the address listed above. Submitters should provide an index listing the document(s) or information they would like the USPTO to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title(s) and description(s), and relevant page numbers and/or section numbers within a document. Submitters should provide a statement explaining their grounds for objecting to the disclosure of the information to the public. The USPTO also requests that submitters of confidential business information include a non-confidential version (either redacted or summarized) of those confidential submissions that will be available for public viewing and posted on [www.regulations.gov](http://www.regulations.gov). In the event that the submitter cannot provide a non-confidential version of its submission, the USPTO requests that the submitter post a notice in the docket stating that it has provided the USPTO with confidential business information. Should a submitter fail to docket a non-confidential version of its submission or post a notice that confidential business information has been provided, the USPTO will note the receipt of the submission on the docket with the submitter's organization or name (to the degree permitted by law) and the date of submission.

**FOR FURTHER INFORMATION CONTACT:** Ameen Imam, USPTO, Office of Policy and International Affairs, at [ameen.imam@uspto.gov](mailto:ameen.imam@uspto.gov). Please direct media inquiries to the Office of the Chief Communications Officer, USPTO, at 571-272-8400.

**SUPPLEMENTARY INFORMATION:** In recent years, online marketplaces have created new opportunities for businesses, consumers, and brands by opening new channels of distribution, reducing costs, broadening consumer access and options for goods, and increasing convenience.

However, online marketplaces have also been exploited by opportunist actors trafficking in the sale and distribution of counterfeit goods. This was noted in the April 3, 2019 Presidential Memorandum titled “Memorandum on Combating Trafficking in Counterfeit and Pirated Goods.”<sup>1</sup> The Presidential Memo raised awareness about the impact of counterfeit goods on economic competitiveness, by harming United States intellectual property (IP) rightsholders, cheating consumers, and damaging the reputation of online markets. The Presidential Memo recognized the necessity of cooperation and collaboration between various stakeholders, like online marketplaces, governments, and rights holders. Voluntary agreements and initiatives that put best practices into use by rights holders, governments, and online marketplace operators are powerful tools in combatting counterfeiting.

The Organisation for Economic Cooperation and Development (OECD), a multilateral organization with 38 member countries, through the Working Party on Countering Illicit Trade (WP-CIT), recently undertook a comprehensive initiative to provide evidence-based analysis and policy recommendations to address illicit trade in counterfeit goods on online marketplaces. This initiative seeks to provide OECD member countries with insights and best practices that can be uniformly applied in local economies to enhance enforcement against counterfeit products offered through online marketplaces.

The initiative encompasses three phases. Phase 1 identified the scale of the challenge through expert webinars and discussions, resulting in the 2021 report *E-Commerce Challenges in Illicit Trade in Fakes, Governance Frameworks and Best Practices*.<sup>2</sup> The report identified the opportunity for future work centered on “industry-led solutions” and the “development of voluntary codes of conduct.”

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<sup>1</sup> <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-combating-trafficking-counterfeit-pirated-goods/>.

<sup>2</sup> OECD (2021), *E-Commerce Challenges in Illicit Trade in Fakes: Governance Frameworks and Best Practices*, Illicit Trade, OECD Publishing, Paris, <https://doi.org/10.1787/40522de9-en>.

Phase 2 comprised a multi-phased process to bring the plan identified in Phase 1 to fruition. The first part of Phase 2 involved the collection and analysis of existing industry best practices to address the sale of counterfeit products offered through online marketplaces. Then, OECD organized an Advisory Subgroup, made up of experts in IP, economics, and enforcement, including from academia, the private sector, and representatives from OECD member states. The Advisory Subgroup put together a comprehensive guide delineating best practices to mitigate the sale of counterfeit goods on online marketplaces for three primary stakeholders: governments, online marketplace operators and rights holders. This guide, the *Draft Voluntary Guidelines for Countering Illicit Trade in Counterfeit Goods on Online Marketplaces* (the “*Guidelines*”), was presented at the Spring 2024 WP-CIT meeting. The *Guidelines* offer an international, voluntary, and non-binding framework to support efforts to curb counterfeit trade online.

The *Guidelines* anchor the overall project and provide the basis for Phase 3, which seeks to facilitate a public-private and cross-sectoral dialogue on the best practices offered in the *Guidelines* at the national level in select OECD member countries. The United States will be one of the first countries to hold a public meeting. The discussion seeks to facilitate an open and transparent exchange of views, and will offer an opportunity for stakeholders to evaluate the proposed best practices and identify any remaining gaps in the *Guidelines*. The dialogue will strengthen public-private engagement on countering illicit trade in online marketplaces, foster trust among stakeholders, and help inform any further refinement of the *Guidelines*.

The USPTO seeks information from interested parties regarding their insights, evaluation of the best practices and any remaining gaps in the *Guidelines*. In particular, the USPTO requests information from intellectual property rights holders, online marketplaces and platforms, consumers, sellers and other private sector stakeholders.

## **Request for Information**

The USPTO requests information from all interested parties, including trademark owners affected by the sale of counterfeited goods, online and physical sellers and marketplaces, other online platforms, consumers, and other parties engaged in the fight against counterfeited goods entering the stream of commerce and reaching the hands of consumers, on OECD's *Draft Voluntary Guidelines for Countering Illicit Trade in Counterfeit Goods on Online Marketplaces* (the "Guidelines"). Interested parties may request a copy of the *Guidelines* per the instructions at <https://www.uspto.gov/about-us/events/roundtable-oecd-e-commerce-guidelines>.

After reviewing the *Guidelines*, Respondents can direct their comments to the list of topics provided below.

Respondents may address any or all of the topics outlined below. Respondents should identify, where possible, the topic(s) that the comments are intended to address. Respondents may organize their submissions in any manner. Please note that respondents have the opportunity to request that any information contained in a submission be treated as confidential business information by certifying that such information is confidential and would not customarily be released to the public by the respondent. Confidential business information must be clearly designated as such and provided only by mail carrier (Please see **ADDRESSES** section above).

The USPTO welcomes all input relevant to OECD's *Guidelines*. In particular, we seek the following information:

### **Topic 1- Strategies to combat sales of counterfeit goods on online marketplaces**

The *Guidelines* note that governments, online marketplace operators, and rights holders (collectively, the "principal stakeholders") face challenges in combatting the trade of counterfeit goods. The methods criminals use to traffic counterfeit goods on online marketplaces are dynamic and evolving and, thus, require consistent, effective collaboration and attention.

Accordingly, the *Guidelines* suggest sophisticated strategies that involve the cooperation of all three principal stakeholders.

- a) Please comment on the guidelines suggested for governments and identify any gaps known to be effective methods for governments that are not captured in the *Guidelines*. Paragraphs 17-18 (a.)-(d.).
- b) Please comment on the guidelines suggested for online marketplace operators and identify any gaps known to be effective methods for online marketplace operators that are not captured in the *Guidelines*, including voluntary versus involuntary best practices for online operators. Paragraphs 27-28 (a.)-(c.).
- c) Please comment on the guidelines suggested for rights holders and identify any gaps known to be effective methods for rights holders that are not captured in the *Guidelines*. Paragraphs 50-51(a.).

## **Topic 2- Repeat infringers**

The *Guidelines* highlight the importance of undertaking effective action against third-party sellers on online marketplaces that are actively marketing and selling counterfeit goods on a repeat basis. The *Guidelines* recognize the importance of all three principal stakeholders cooperating in this regard.

- a) Please comment on the suggested guidelines for governments to undertake, including taking actions against repeat offenders and supporting registers and watch lists to track entities involved with the facilitation of counterfeit trade. Paragraphs 19-20(a.)-(b.).
- b) Please comment on the suggested guidelines for online marketplace operators to undertake, including cooperating with governments, rights holders and other stakeholders, supporting registers and watch lists, and implementing measures to deter repeat infringers. Paragraphs 35-36(a.)-(e.).
- c) Please comment on the suggested guidelines for rights holders to undertake, including cooperating with governments and online marketplace operators, and supporting registers

and watch lists to track entities involved with the facilitation of counterfeit trade.

Paragraphs 54-55(a.)-(b.).

### **Topic 3- Enforcement and Sanctions**

The *Guidelines* recognize the necessity of meaningful enforcement actions by the principal stakeholders to effectively disrupt the trade of counterfeit goods. The *Guidelines* lay out specific actions for each principal stakeholder.

- a) Please comment on the suggested guidelines for governments to undertake, including coordinating efforts, information sharing, effective criminal and civil penalties, and sanctioning online marketplaces in certain circumstances. Paragraphs 21-22(a.)-(c.).
- b) Please comment on the suggested guidelines for online marketplaces to undertake, including coordinating efforts and applying sanctions provided in their terms of service agreements. Paragraphs 44-45(a.)-(b.).
- c) Please comment on the suggested guidelines for rights holders to undertake, including cooperating with governments and online marketplace operators and sharing information and intelligence. Paragraphs 56-57(a.).

### **Topic 4- Information exchange, transparency and public awareness**

The *Guidelines* emphasize the value of information exchange. The *Guidelines* note the utility of annual reports by enforcement authorities and online marketplace operators in improving research and analysis and providing policy makers with key data metrics. Each principal stakeholder has an identified role in this regard.

- a) Please comment on the suggested guidelines for governments to undertake, including compiling and reporting data and developing effective joint campaigns with online marketplace operators and rights holders. Paragraphs 23-24(a.)-(b.).

- b) Please comment on the suggested guidelines for online marketplace operators to undertake, including developing joint campaigns with government and rights holders, tracking trends and preparing public reports. Paragraphs 46-47(a.)-(c.).
- c) Please comment on the suggested guidelines for rights holders to undertake, including working with governments and online marketplace operators on effective joint campaigns. Paragraphs 58-59(a).

### **Topic 5- Market surveillance**

The *Guidelines* note the importance of developing, adapting and sharing effective detection tools that can enable the disruption of counterfeit goods. Bad actors involved in counterfeit goods trade are constantly shifting strategies and techniques to avoid detection and disguise their sales. Accordingly, the *Guidelines* propose several practices for online marketplace operators and rights holders.

- a) Please comment on the suggested guidelines for online marketplace operators to undertake, including monitoring their marketplaces, sharing information with other parties, consulting with rights holders, providing tools to governments and rights holders, and utilizing advanced screening technologies. Paragraphs 29-30(a.)-(e.).
- b) Please comment on the suggested guidelines for rights holders to undertake, including exploring mechanisms for enhancing the detection of counterfeit goods on marketplaces and sharing these techniques and standards. Paragraphs 52-53(a.).

### **Topic 6- Notifications and counternotifications**

The *Guidelines* recognize that effective enforcement requires an effective information gathering process, which only then enables online marketplace operators to take action. The *Guidelines* highlight the importance of policies and programs that facilitate reporting and promote

communication among the principal stakeholders. The *Guidelines* propose online marketplace operators consider a number of practices outlined in Paragraphs 31-32(a.)-(i.).

- a) Please comment on the suggested guidelines for online marketplace operators to undertake as it relates to mechanisms for notifications and counternotifications.

### **Topic 7- Takedown of Listings for Counterfeit Goods**

The *Guidelines* underline the necessity of online marketplace operators removing and suspending sales of counterfeit goods. The *Guidelines* propose a number of actions in Paragraphs 33-34(a.)-(d.) for online marketplace operators to take to effectively suspend sales of counterfeit products and remove listings.

- a) Please comment on the suggested guidelines for online marketplace operators to remove and suspend listings offering counterfeit goods and identify any gaps that may be lacking in the practices.

### **Topic 8- Accountability and liability**

The *Guidelines* recommend that purchasers of counterfeit goods be entitled to full and prompt refunds. The *Guidelines* designate online marketplace operators with the principal role in supporting purchasers in seeking redress.

- a) Please comment on the suggested guidelines for online marketplace operators in Paragraphs 37-38(a.)-(d.).

### **Topic 9- Listings**

The *Guidelines* recommend that online marketplace operators ensure that the information in product listings is accurate, clear and complete so that the information can be useful to the principal stakeholders.

- a) Please comment on the suggested recommendations for online marketplace operators in Paragraphs 39-40(a.)-(e.).

### **Topic 10- Third-Party Sellers**

The *Guidelines* identify significant challenges with third-party sellers and notes that they have become more prominent. The *Guidelines* emphasizes the need to adequately vet sellers prior to being allowed to trade on platforms and for securing commitments from the sellers to abide by the online marketplace operators' terms of service agreements.

- a) Please comment on the practices enumerated for online marketplace operators to undertake when working with third-party sellers both for vetting and for terms of service agreements. Paragraphs 41, 42(a.)-(d.) and 43(a.)-(c.).

### **Topic 11- International Cooperation**

The *Guidelines* underline the importance of the principal stakeholders taking a global perspective with their efforts to combat illicit trade, including expanding partnerships and public-private agreements.

- a) Please comment on the practices identified for governments to undertake to expand international cooperation. Paragraphs 25-26(a.)-(c.).
- b) Please comment on the suggested guidelines identified for online marketplace operators to undertake to expand international cooperation. Paragraphs 48-49 (a.)-(b.).
- c) Please comment on the suggested guidelines identified for rights holders to undertake to expand international cooperation. Paragraphs 60-61(a.)-(b).

**Coke Morgan Stewart,**

*Acting Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office.*

