

TRADEMARK WORKING GROUP

c/o Paul F. Kilmer/ HOLLAND & KNIGHT LLP / Suite 1100 /
800 17th Street, NW /Washington, D.C. 20006

Telephone: (202) 955-3000

Fax: (202) 955-5564

Email: paul.kilmer@hklaw.com

October 5, 2015

RE: 2015 Out-of-Cycle Review of Notorious Markets
Docket Number: USTR-2015-0016

Submitted via *http://www.regulations.gov*

Christine Peterson, Esq.
Director for Intellectual Property and Innovation
Office of the U.S. Trade Representative
1724 F Street, NW
Washington, D.C. 20508

Dear Ms. Peterson:

The Trademark Working Group submits this response to the Federal Register Notice of September 10, 2015, by the Office of the U.S. Trade Representative (USTR) inviting written comments regarding Notorious Markets. This submission deals only with notorious markets in the nations of Argentina, Brazil, China, India, Nigeria and Paraguay.

The Trademark Working Group was formed in 2013 as an *ad hoc* informal collaborative of U.S. companies and organizations that have experienced challenges in registering, maintaining and protecting their trademark rights abroad. Participants in the Trademark Working Group include Fortune 500 companies or their subsidiaries in addition to other well-known companies and organizations whose brands would be readily recognized in the U.S. and abroad. Members of the Trademark Working Group have chosen to remain anonymous since many of them have trademark matters pending in the nations identified in this submission.

The Trademark Working Group is not a full-time government relations organization. There are no dues or other obligations required to participate in the Trademark Working Group. Instead, this submission was created by the volunteer efforts of a number of persons who are otherwise employed full-time in the practice of law, either within companies or other organizations or with private law firms. As a result, this submission is perhaps more informal than those of other organizations.

Notorious Markets 2015:

The following have been identified by the participants in the Trademark Working Group as notorious markets (physical and online) in which counterfeit goods may regularly be found:

A. Argentina:

1. **Feria de la Salada**, Lomas de Zamora (Buenos Aires) – A wide variety of counterfeit goods are available in this marketplace.
2. **Feria de Pompeya**, Buenos Aires – A wide variety of counterfeit goods are available in this marketplace.

B. Brazil:

1. **Mercado Popular 25 de Março**, São Paulo (Southeast Brazil - Rua 25 de Março, s/a, Centro, São Paulo) – Primary counterfeit goods found in this market are bags, cell phones, costume jewelry, glasses, watches and toys.
2. **Mercado Popular da Uruguaiana**, Rio de Janeiro (Southeast Brazil - Rua Uruguaiana, s/n, Centro, Rio de Janeiro) – Primary counterfeit goods found in this market are cell phones, videogames, electronic devices, bags, clothes, shoes, perfumes and cosmetics.
3. **Feira dos Importados**, Brasília (Center-West Brazil - Brazilian Capital - Sia Trecho 7, s/n, Área Especial, Brasília) – Primary counterfeit goods found in this market are shoes, computer goods, electronic devices, clothes and toys.
4. **Beco da Poeira**, Fortaleza (Northeast Brazil - Avenida Imperador, 546, Centro, Fortaleza) – Primary counterfeit goods found in this market are clothes, shoes, electronic goods and toys.
5. **Camelódromo do Alecrim**, Natal (Northeast Brazil - Rua Presidente Bandeira, s/n, Alecrim, Natal) – Primary counterfeit goods found in this market are clothes, shoes and toys.

C. China:

China Physical Markets

1. **Chenghai City**, Shantou – An egregious counterfeiting zone, Chenghai City specializes in manufacturing plastic, injection-made counterfeit goods, including toys and other consumer products, and has a number of wholesalers and factories openly marketing counterfeit goods. Enforcement in the region is extremely difficult due to the closed nature of the industry in the district and the close relations businesses have with local administrative and criminal law enforcement authorities.
2. **Silk Market**, Beijing – Notorious for a wide range of counterfeit products sold to domestic and overseas consumers.

The Silk Market is located in the Central Business District (“CBD”) area of Beijing in a neighborhood of foreign embassies and consulates. The market is known for distribution of counterfeit goods to foreign tourists and other customers. The quality of the counterfeit goods in the market is generally good, which has caused more concern to the brand owners.

The following factors appear to be the main obstacles in achieving successful enforcement action in the Silk Market:

- The traders in the market are now "experts" in hiding the counterfeit products and thwarting AICs' inspections and investigations. They have secret drawers in the stores and secret warehouses in the neighborhood to hide the counterfeit products and frustrate any enforcement action initiated by brand owners;
 - The traders only display a few sample products. If a customer is interested in making a purchase, the customer is led to separate rooms downstairs or out of the market, and shown more counterfeit branded products. This practice makes any AIC enforcement action quite challenging and generally ineffective;
 - Many brand owners have initiated lawsuits against the market landlord and individual traders. However, because only sample counterfeit goods are found in the market, damage awards tend to be very low and therefore the deterrent value of litigation is limited; and
 - Apart from the technical difficulties surrounding enforcement action, there are complications regarding protection by the local government and individual authorities which make enforcement more challenging.
3. **Yiwu Small Commodities Market**, Yiwu City, Zhejiang Province (East of China) – Notorious for a variety of small counterfeit consumer goods.

The Yiwu Small Commodities Market is infamous for being the export center of small counterfeit goods in China.

Though enforcement efforts over the years by brand owners and local authorities have reduced the presence of counterfeit products on display, many unbranded products sold in the market are reported to be the source of globally distributed counterfeit products, to which infringing labels are later added.

The large scale of the market and the large number of traders have led to repeated infringements even after enforcement actions.

4. **Luohu Commercial Center**, Shenzhen – Notorious for a wide range of counterfeit commodities.

The Luohu Commercial Center is located at the border of Shenzhen and Hong Kong. It is the source of counterfeit goods for many other smaller markets in China. Brand owners have attempted enforcement actions against the Luohu Commercial Center and its merchants, with only limited success. The main reasons appear to be:

- The shops usually only display sample products and seldom display many counterfeit goods in the stores. If consumers are interested in buying a significant amount of goods, the merchants will lead them to secret rooms containing quantities of counterfeit goods, which rooms are generally locked;
- The merchants are united and well-organized. Whenever any shop is being raided, other shop owners within the market converge at the shop to assist in frustrating the raid and hiding the counterfeit goods; and
- The merchants are very familiar with the local AIC officials and they alert one another when AIC officials enter the market.

5. **An Fu Footwear and Accessory Market**, Putian City, Fujian Province (South of China) – Notorious for counterfeit shoes and accessories.

This market is located in Fujian Province, where most shoe manufacturers have their factories. This market not only sells counterfeit products directly to domestic customers, but also exports counterfeit products to foreign markets, sometimes via express delivery services.

The An Fu Footwear and Accessory Market has become the main source of online sales of counterfeit shoes in China.

6. **Qi Pu Market**, Shanghai – Notorious for counterfeit clothing. As in other markets discussed above, the merchants in this area are extremely alert, and usually do not carry a large stock of counterfeit goods in their stores.

7. **Zengcheng International Jeans Market**, Guangzhou – Notorious for counterfeit jeans. As in other markets discussed above, the merchants in this area are extremely alert, and usually do not carry a large stock of counterfeit goods in their stores.
8. **Clothing Wholesale Center**, in Guangzhou Railway Station, Guangzhou – Notorious for counterfeit clothing. As in other markets discussed above, the merchants in this area are extremely alert, and usually do not carry a large stock of counterfeit goods in their stores.
9. **Jin Bao Clothing Market**, Guangzhou – Notorious for counterfeit clothing. As in other markets discussed above, the merchants in this area are extremely alert, and usually do not carry a large stock of counterfeit goods in their stores.
10. **Jin Shun Clothing Market**, Guangzhou – Notorious for counterfeit clothing. As in other markets discussed above, the merchants in this area are extremely alert, and usually do not carry a large stock of counterfeit goods in their stores.

China E-Commerce Markets

1. **Taobao.com and affiliated alibaba.com/1688.com** – Notorious for various types of counterfeits and pirated goods.

Taobao was included in previous Notorious Markets lists for the widespread availability of counterfeit and pirated goods in its electronic marketplace. This website was removed from the 2012 Notorious Markets list because it had undertaken efforts over the previous year to work with rightsholders directly or through their industry associations to clean up its website.

However, in early of 2015, the State of Administration of Industry & Commerce (SAIC) published results of an internet-based inspection which indicated that only 37.25% of goods on Taobao were authorized. Taobao fiercely disputed the SAIC's report, challenging the investigation result and the SAIC's methodology as being "biased." Later, the SAIC and Taobao reached an agreement under which Taobao was required to strengthen its routine site inspections and samplings. However, it appears that Taobao is still the largest online platform for the sale of counterfeit goods.

In order to rectify the use of Taobao as a platform for the sale of counterfeit goods, its owners would need to streamline procedures for dealing with complaints regarding counterfeiting, decrease the time required for taking down listings for counterfeit and pirated goods, and continue efforts to work with authorities to police its online merchants.

2. **Jingdong (JD.com)** – Notorious for various types of counterfeits, pirated goods and other types of unauthorized goods.

Jingdong is the largest online commercial enterprise in China. In May of 2014, Jingdong was successfully listed on the U.S. NASDAQ Stock Market (code: JD) as a large-scale integrated online business platform.

A large percentage of all counterfeit and pirated goods are sourced from the Jingdong C2C business platform. Based on an unofficial investigation, a significant portion of traders who provide counterfeits on Jingdong were expelled by Alibaba as a result of Alibaba's crackdown on counterfeiting.

D. **India:**

1. **Nehru Place**, Delhi/NCR – The primary counterfeit goods found in this market consist of computer software.
2. **Gandhi Nagar**, Delhi/NCR – The primary counterfeit goods found in this market are garments.
3. **Palika Bazaar**, Delhi/NCR – The primary counterfeit goods found in this market are electronics.
4. **Kashmere Gate**, Delhi/NCR – The primary counterfeit goods found in this market are auto parts.
5. **Tank Road**, Delhi/NCR – Counterfeits in this market include a wide variety of goods.
6. **Rajouri Garden**, Delhi/NCR – The primary counterfeit products found in this market are luxury goods.
7. **Mayapuri Market**, Delhi/NCR – The primary counterfeit goods found in this market are automobiles.
8. **Tilak Nagar Market**, Delhi/NCR – The primary counterfeit goods found in this market are hardware items.
9. **Kotla Mubarakpur**, Delhi/NCR - The primary counterfeit goods found in this market are hardware items.

10. **Ghaffar Market**, Delhi/NCR – The primary counterfeit goods found in this market are mobile phones.
11. **Janpath Market**, Delhi/NCR – The primary counterfeit goods found in this market are garments.
12. **Bhagirati Palace**, Delhi/NCR – The primary counterfeit goods found in this market are garments.
13. **Heera Panna Market**, Mumbai – The primary counterfeit products found in this market are luxury goods.
14. **Linking Road**, Mumbai – The primary counterfeit products found in this market are luxury goods.
15. **Grant Road**, Mumbai – The primary counterfeit products found in this market are electronics.
16. **Bhiwandi Road**, Mumbai – The primary counterfeit products found in this market are automobiles.
17. **Dharvi**, Mumbai – The primary counterfeit products found in this market are leather goods.
18. **Quinton Road**, Kanpur - The primary counterfeit products found in this market are automobiles.
19. **Near Civil Lines**, Allahabad – The primary counterfeit products found in this market are automobiles.
20. **Mahendar Garh**, Uttar Pradesh – The primary counterfeit products found in this market are automobiles.
21. **GT Road Sonipat**, Karnal – Counterfeits in this market include a wide variety of goods.
22. **Sulatanpet**, Bangalore – The primary counterfeit goods found in this market are footwear.

23. **Burma Bazaar**, Chennai – Counterfeits in this market include a wide variety of goods.
24. **Parrys Corner**, Chennai – The primary counterfeit goods found in this market are electronics.
25. **Trichy**, Tamil Nadu – The primary counterfeit goods found in this market are garments.

E. Nigeria:

1. **Alaba International Market**, Ojo, Lagos State – Notorious for counterfeit electrical/electronic goods, as well as pirated copies of music and films.

This is a very large and busy market located in the far west of Lagos State towards the Republic of Benin. It serves the West African market as it is relatively close to the border town of Cotonou, Republic of Benin.

Most of the traders are Igbos from the Eastern part of Nigeria. These traders are tenacious and would do almost anything to sustain their businesses.

It has become increasingly challenging to carry out successful enforcement actions in this market because of its busy nature, including its heavy vehicular traffic, which makes driving out of the market difficult. In addition, the traders are often times hostile, defiant and violent.

2. **Computer Village Market**, Ikeja – Notorious for counterfeit computer products and accessories; mobile telephone devices; and pirated software.

In the past, there had been success in conducting raids. It has become increasingly difficult to conduct enforcement actions, for the following reasons:

- Computer Village is a community comprising several streets/roads in and out of the market;
- There are over a hundred buildings/plazas in the market which are used as shops and packing stores;
- The entire market and the roads therein are very compact and packed with street traders, making vehicular movement extremely difficult;
- The shops sell counterfeits of all major brands of mobile phones, but usually have limited units of any individual brand in stock at any particular time;

- Large stocks are often kept in warehouses or at packing stores which are located on the third floors of the plazas and are usually under lock. Often times the warehouses are not close to the shops;
 - The traders have become united and organized, with an internal security/enforcement unit. Whenever any shop(s) is/are being raided, other shop owners and hustlers within the market converge at the shop(s) to assist in frustrating the operation; offending goods are meanwhile removed from other shops in the market;
 - The traders take advantage of their large numbers and the constraints to vehicular movement within the market to frustrate the conduct of raids;
 - The traders are hostile, aggressive and violent in resisting the evacuation of seized counterfeit/pirated goods from the market; and
 - Police officers who provide protection for enforcement teams and maintain order during raids are usually cautious in deploying force to check the resistance and chaotic situations caused by the traders during the raids. The traders take advantage of this caution in frustrating raids.
3. **Trade Fair Market**, Badagry Expressway, Lagos State – The market contains various sections for different types of counterfeit products, including spare parts and cosmetics.
- This is an extremely large market. In carrying out successful enforcement actions in this market, it is necessary to obtain the cooperation of the leadership of the market and their internal security unit. These elements can be very dangerous if their cooperation is not obtained.
4. **Oke-Arin/Apongbon Markets**, Lagos Island – Popular for counterfeit beverages and packaged food products.
5. **Ojuwoye Market, Mushin**, Lagos – Popular for counterfeit beverages and packaged food products.
6. **Balogun/Idumota/Dosunmu Markets**, Lagos Island – Popular for counterfeit cosmetics, clothing, shoes and bags.
7. **Ebutte Ero Market**, Lagos Island – Popular for counterfeit household items and kitchen appliances.
8. **Jankara Market**, Lagos Island – Popular for counterfeit electrical equipment, electronics, telecommunication products.

--It is relatively easier to conduct small-scale raids in the foregoing markets (Nos. 3-8).

9. **Onitsha Main Market, Onitsha**, Anambra State (East of Nigeria) – Popular for counterfeits of numerous types of goods, including clothing.

10. **Onitsha Bridge Head** – Popular for counterfeit drugs and other products.

11. **Ariaria Market in Aba**, Abia State (East of Nigeria) – Popular for counterfeits of various products, including clothing, packaged food products and beverages.

--It is extremely dangerous to carry out enforcement action in the three foregoing markets.

12. **Ogbete Market**, in Enugu State (East of Nigeria) – Popular for counterfeits of various types of products.

13. **Kwanbai and Sabongari Markets**, in Kano, Kano State (North Nigeria) – Popular for counterfeits of various types of products.

--These last two markets are large, but it is relatively easy to conduct raids within them.

The major source of counterfeit/pirate products in Nigeria is China. Many times, the goods are routed through Dubai. Some products come in through porous land borders such as the Seme border with Cotonou, Republic of Benin, and other borders in the North shared with countries such as Niger, Chad and Cameroun.

The counterfeiters in some cases already have regular customers who buy directly from them; these sellers refuse to serve unknown customers. The majority of the markets have put in place formidable Traders Associations that protect counterfeiters' interests and shield them collectively from the full weight of the law in the event that they are caught in the act. The Traders Associations exercise enormous authority and control over the traders and have the capacity to sanction uncooperative traders. In most of the markets, the Traders Associations have successfully prevented regulatory officials from investigating or conducting raids, and/or have successfully suspended enforcement actions by regulatory agencies.

Other major challenges in Nigeria include the absence of anti-counterfeiting legislation, the slow pace of the judiciary and regulatory officials in addressing counterfeiting/piracy matters, and a lack of understanding of intellectual property issues by regulatory authorities and, in some cases, members of the judiciary. It is also not uncommon to find shops or warehouse owners tipped off to upcoming raids, often by enforcement officers who collect bribes for keeping the counterfeiting/piracy community informed about upcoming enforcement actions. The offending goods simply disappear before action can be taken. It is also common for evidence of counterfeiting/piracy to go missing from court files.

One local law firm estimates that 40% of the shops in the markets identified above are engaged in trade in counterfeit and pirated goods. Most shops that sell counterfeit/pirated goods do not display a sizable quantity of the goods, and most of the illegal goods are kept in secret warehouses that many times are located outside the markets.

F. Paraguay:

1. **Ciudad del Este** – This counterfeiting zone remains one of the most notorious in the world. A wide variety of counterfeiting goods are available for both retail and wholesale distribution.

Thank you for your attention to this submission.

TRADEMARK WORKING GROUP

Sincerely yours,

/Paul Kilmer/
Paul F. Kilmer