

**Motor & Equipment Manufacturers Association**

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July 29, 2019

Mr. Earl Comstock  
Director of the Office of Policy and Strategic Planning  
U.S. Department of Commerce  
Washington, D.C. 20230

**Re: Comment Request: Report on the State of Counterfeit and Pirated Goods  
Trafficking and Recommendations [Docket No. 190703544-9544-01]**

Dear Mr. Comstock:

The Motor & Equipment Manufacturers Association (MEMA) represents more than 1,000 companies that manufacture and remanufacture motor vehicle parts, components, and systems for use in the light- and heavy-duty vehicle original equipment and aftermarket industries. Our members provide more than 871,000 direct jobs, making the motor vehicle parts industry the largest sector of manufacturing jobs nationwide. On behalf of this industry, I welcome the opportunity to provide these written comments to the U.S. Department of Commerce as the administration prepares a report for the President on “Combating Trafficking in Counterfeit and Pirated Goods,” in accordance with the Federal Register notice of July 10, 2019.

Intellectual property rights (IPR) protection is critical to the sustained success of the motor vehicle parts manufacturing industry. The IPR and brands of a company are among its most valuable assets, while the value and strength of a brand is what makes it vulnerable to counterfeiters. Manufacturing and trafficking of counterfeit motor vehicle parts and components are serious and growing problems. MEMA takes the issue of counterfeit motor vehicle parts and trademark theft very seriously. The theft of IPR leads to significant costs to suppliers. These costs include lost sales, damages to brand reputation, and significant legal and investigation expenditures.

In addition to the economic impacts of counterfeit motor vehicle parts, the continued proliferation, importation and dissemination of counterfeit parts pose a significant risk to public health and safety. Genuine and legitimate parts are specifically designed for use on vehicles and meet federal motor vehicle safety standards, where applicable. Counterfeit parts put consumers at risk when they do not perform as intended or fail, leading to brake failure, engine failure, vehicle fires or other catastrophic consequences.

The following comments are made in response to the specific questions outlined by the Commerce Department in the Federal Register notice.





## **I. The extent to which online third-party marketplaces and other third-party intermediaries are used to facilitate importation and sale of counterfeit and pirated goods.**

Online sales of counterfeit motor vehicle parts are a growing problem. While online sales have not always been a significant means of counterfeit parts entering the domestic marketplace, China and other countries are experiencing a phenomenal growth in e-commerce. This has resulted in an increasing presence of counterfeit parts in the international online environment. Today, counterfeit goods, offered as genuine brands, are more readily available online in the U.S. market and globally because of third-party marketplaces.

MEMA applauds the administration's commitment to protect IPR as demonstrated through this effort as well as the annual Notorious Markets Report, the Special 301 investigation, and through IPR protections in trade agreements. A robust federal program to protect IPR is essential to support innovation of motor vehicle technologies as well as other sectors.

The exact value of counterfeit motor vehicle parts and tools sold on third-party marketplaces on online platforms is unknown. However, a MEMA member company reports receiving communication from U.S. Customs and Border Protection (CBP) two to three times a month regarding a seizure of a counterfeit shipment. These products are being shipped via the U.S. Postal Service to specific individuals, indicating that the sales were conducted via an online platform.

This same member company has shared with MEMA that they conduct multiple test purchases per month through suspicious listings on online platforms. After analyses of these test purchases, many of the products are found to be counterfeit. Examples of these parts include fuel injectors, spark plugs, or many other types of automotive products.

Once a counterfeit vehicle part is identified on a third-party online marketplace, it is impossible for the brand owner to identify the entity conducting the sales because of the online format. This leaves brand owner to rely on the platform to remove counterfeit sellers from their marketplaces.

## **II. The existing practices of online third-party marketplaces and/or other third-party intermediaries that are most effective in curbing importation.**

MEMA and our member companies have been developing and maintaining relationships with the major online platforms in order to address the growing presence of counterfeit parts. At present, consumers have no way to be certain that a product they are buying online is genuine. To help rectify that, marketplaces and brand owners must work together so that genuine products can be offered to the consumers.

One MEMA member has suggested that online marketplaces take on the role of product management. Under this scenario, manufacturers could share details about the product, such as where it is manufactured, the MSRP, and how and from where the product is



shipped. The platform could use this data to further indicate to a consumer that the product is genuine.

Online sales, including sales of motor vehicle parts, is a growing segment of the economy. To protect consumers from unwittingly buying and installing counterfeit motor vehicle parts, more work must be done in this area to provide a robust solution that protects consumers, brand owners, and online marketplaces

### **III. Recommendations for potential policy, administrative, regulatory, and/or legislative changes by the Federal government that could be effective in curbing the importation and sale of counterfeit and pirated goods through online third-party marketplaces and/or enabling more effective law enforcement regarding the importation and sale of such goods.**

MEMA and our member companies have worked with CBP on issues to assist brand owners and the government in combatting counterfeit motor vehicle parts. This collaboration has included speaking to CBP agents on supply chain issues and sharing information and training on tools used to verify product authenticity. However, our member companies have identified some challenges in working with CBP that require policy changes to allow brand owners and the agency to work together in a more effective and efficient manner. Addressing these challenges will strengthen the collaborative partnership MEMA and our member companies have fostered with CBP. Some suggestions are:

- Fully implement the authorities granted to CBP under the Trade Facilitation and Trade Enforcement Act of 2015 to share information with brand owners (including manufacturing rights holders, online marketplaces, and others) to allow action against counterfeiters. This may require changes to other statutes in order to meet congressional intent. MEMA members have provided examples of current practices falling short:
  - CBP requires brand owners to post bonds to obtain sample products from a seizure. Today, it is only possible to submit a payment for these bonds via a cashier's check. MEMA recommends that CBP either eliminate the requirement for a bond or allow the bond payment to be made via credit card payment.
  - CBP regularly seeks information from a brand owner to determine if a suspect shipment is genuine or counterfeit. When CBP seeks this information, the agency shares redacted photos, which, in many instances, contain significant redactions and are over-redacted to such an extent that all of the relevant information is concealed. These redactions make it impossible for the brand owner to identify model number and/or manufacturing information of the product in question. MEMA recommends CBP discontinue



the over-redaction of information in order to allow brand owners to identify a product as genuine or counterfeit. This goal could be achieved by the development and deployment of a standard operating procedure to ensure that CBP officials are applying these requirements consistently.

- Brand owners know the logistical information for each product they manufacture and import. However, CBP is unable to share this information with brand owners. This logistical information, such as the name and location of the shipper, the intended recipient, broker, etc., would help companies working with CBP determine if a product is genuine or if it would need further examination. MEMA recommends changes to existing statute to allow this information to be shared with the brand owner whose products are in question.

MEMA urges the administration to consider additional requirements be placed on online marketplaces to increase protections against online counterfeit sales.

- Online marketplaces protect information regarding who the third-party offering counterfeit products for sale. Under current practice, platforms do not make this information available to brand owners.
- Online marketplaces should be responsible for the sales of counterfeit products once it has been proven that a product is counterfeit.
- Online marketplaces and platform owners create their own logistic chains outside of those of the brand owner. In these instances, the marketplaces should take steps to ensure that the products they are selling are genuine.

#### IV. Conclusion

MEMA appreciates the administration's open engagement with the motor vehicle parts manufacturing industry and welcomes the opportunity to assist the government in helping address the most important issues relating to IPR enforcement. MEMA urges you to consider these points as Commerce and other agencies complete the report for the President.

Please contact Catherine Boland, vice president, legislative affairs, (202-312-9241 or [cboland@mema.org](mailto:cboland@mema.org)) with questions or concerns regarding MEMA's comments.

Sincerely,

A handwritten signature in black ink that reads "Ann Wilson". The signature is written in a cursive, flowing style.

Ann Wilson  
Senior Vice President, Government Affairs