

Administration of Donald J. Trump, 2020

Memorandum on Stopping Counterfeit Trafficking on E-Commerce Platforms Through Fines and Civil Penalties

October 13, 2020

Memorandum for the Attorney General and the Secretary of Homeland Security

Subject: Stopping Counterfeit Trafficking on E-Commerce Platforms Through Fines and Civil Penalties

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. Trafficking in counterfeit goods infringes on the intellectual property rights of American companies, undermines their competitiveness, and harms American workers. Counterfeit trafficking also poses significant health and safety threats to online consumers. E-commerce platforms serve as key contributors to counterfeit trafficking by acting as intermediaries and providing marketplaces that match up buyers and sellers.

It is the policy of the United States, as reflected in Executive Order 13904 of January 31, 2020 (Ensuring Safe and Lawful E-Commerce for United States Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights Holders), to protect consumers, intellectual property rights holders, businesses, and workers from counterfeit goods trafficked through e-commerce. In furtherance of this policy, the executive branch should focus enforcement efforts on e-commerce platforms involved in counterfeit trafficking, and should pursue legislation that would clarify and strengthen the executive branch's authority and increase its resources to deter and address counterfeit trafficking on e-commerce platforms.

Sec. 2. Stopping Counterfeit Imports. (a) The Secretary of Homeland Security, through the Commissioner of U.S. Customs and Border Protection and in consultation with the Attorney General, shall consider taking all appropriate action, consistent with applicable law, under sections 526 and 596 of the Tariff Act of 1930, as amended (19 U.S.C. 1526 and 1595a), to:

- (i) seize counterfeit goods imported into the United States in connection with a transaction on an e-commerce platform; and
- (ii) impose the maximum fines and civil penalties permitted by law on any e-commerce platform that directs, assists with, or is in any way concerned in the importation into the United States of counterfeit goods.

(b) Within 120 days of the date of this memorandum, the Secretary of Homeland Security, in coordination with the Attorney General, shall develop a legislative proposal to promote the policy objectives of this memorandum.

Sec. 3. Definitions. For purposes of this memorandum:

(a) "E-commerce platform" means any web-based platform that includes features primarily designed for arranging the sale, purchase, payment, or shipping of goods, or that enables sellers not directly affiliated with an operator of a web-based platform to sell goods through the web to consumers located in the United States.

(b) "Counterfeit good" means the deceptive and misleading use in commerce of marks, including trademarks, goods that are trademarked, and trade names. This definition includes the deceptive and misleading use of reproductions, copies, counterfeits, or colorable imitations. This

definition should be construed consistent with the intent of the Congress set forth in section 1127 of title 15, United States Code.

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

NOTE: An original was not available for verification of the content of this memorandum.

Categories: Communications to Federal Agencies : E-commerce platforms, combatting counterfeit trafficking through fines and civil penalties, memorandum.

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