

Update: White House Action Following DHS Report on Combating Counterfeit Goods

Andrea L. Calvaruso

February 6, 2020

As we advised [last week](#), the Department of Homeland Security (“DHS”) recently issued its long-awaited report to the White House, “Combating Trafficking in Counterfeit and Pirated Goods” (the “Report”). One week later, on January 31, 2020, the White House issued an [executive order](#) aimed at blocking the sale of contraband and counterfeit goods online (the “Executive Order”).

Since its start, the Trump Administration has targeted the sale of counterfeit goods on e-commerce platforms, seeking to stem the flow of contraband across the border. The Report notes a dramatic increase in counterfeits traded internationally and a ten-fold increase in border seizures over the past decade, more than 85 percent of which was contraband arriving from China. The products frequently are made with subpar materials and inferior craftsmanship, and skirt federal safety regulations. Others, like fentanyl-containing counterfeit narcotics, pose an even more apparent threat to public health. The Executive Order reiterates the White House’s commitment to protecting consumers, IP rights owners, businesses, and workers from the physical and economic harms that flow from these imports.

In the Executive Order, President Trump directs DHS to “consider appropriate measures consistent with federal law” to ensure that e-commerce marketplaces stop selling or facilitating the sale of counterfeit goods and other contraband online. It mandates heightened requirements by U.S. Customs and Border Protection (“CBP”) to identify companies trading in counterfeits, including through increased scrutiny and tougher inspections. CBP is further tasked with leading the charge on developing new criteria against which to measure the efforts of foreign postal carriers to reduce trafficking of counterfeit goods and other contraband. Bad actors may face increased inspections and in extreme cases, their shipments may be blocked entirely.

The Executive Order sets various deadlines for additional action this year:

- By March 31, the Attorney General will reallocate resources sufficient to increase prosecution of import violations.
- By April 30, in consultation with the United States Postal Service (“USPS”), CBP will submit a report on preventing barred importers from importing goods into the United States.
- By April 30, CBP and USPS will submit a report on measures to block imports from foreign postal carriers who fail to cooperate with the government’s new anti-counterfeiting efforts.
- By April 30, CBP will publish guidance notifying foreign postal carriers of the new compliance system and potential sanctions.
- By August 28, DHS will submit a report on fee adjustments that may be necessary to reimburse the Federal Government’s new anti-counterfeiting costs.

We will continue to monitor developments in this area and keep you updated.