

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IRON MAIDEN HOLDINGS LTD.,

Plaintiff,

Case No.: 1:18-cv-522

v.

Judge Jorge L. Alonso

THE PARTNERSHIPS AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON SCHEDULE "A", Magistrate Judge Maria Valdez

Defendants.

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS
MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST A
CERTAIN DEFENDANT IDENTIFIED IN SCHEDULE A**

Plaintiff IRON MAIDEN HOLDINGS LTD. ("IMHL" or "Plaintiff") submits the following memorandum in support of its Motion for Entry of Default and Default Judgment under Fed. R. Civ. P. 55 against the Defendant identified as No. 84 Hi Painting Store in Schedule A (collectively, the "Defaulting Defendant") based on Plaintiff's action for trademark infringement, counterfeiting, false designation of origin and violation of the Illinois Uniform Deceptive Trade Practices Act. Excluded from this motion are defendants that have settled with IMHL.

IMHL, is a Limited company having its principal place of business in the United Kingdom. It is associated with IRON MAIDEN, an English metal band formed in Leyton, East London, in 1975 by bassist and primary songwriter Steve Harris. Complaint, Docket Entry 1 at ¶¶ 6-10. Since the initial launch of its original IRON MAIDEN brand products, Plaintiff's IRON MAIDEN marks are and have been the subject of continuous marketing and promotion by Plaintiff. Plaintiff has and continues to market and promote its IRON MAIDEN marks to

consumers. *Id.* The U.S. registrations for the IRON MAIDEN Trademarks have been continuously used and never abandoned. *Id.*

On information and belief, the Defendants create numerous Defendant Internet Stores and design them to appear to be selling genuine Plaintiff products, while selling inferior imitations of Plaintiff's products. The Defendant Internet Stores share unique identifiers, such as design elements and similarities of the counterfeit products offered for sale, establishing a logical relationship between them and suggesting that Defendants' illegal operations arise out of the same transaction, occurrence, or series of transactions or occurrences. *Id.* at ¶ 4. Defaulting Defendant conducts business throughout the United States, including within the State of Illinois and this Judicial District, through the operation of the fully interactive commercial websites and online marketplaces operating under the Defendant Domain Names and Online Marketplace Accounts (collectively, the "Defendant Internet Stores") identified in Schedule A. *Id.* at ¶ 2. Each Defaulting Defendant targets the United States, including Illinois, and has offered to sell, and on information and belief, has sold and continues to sell Counterfeit IMHL Products to consumers within the United States, including the State of Illinois. *Id.* Additional factual assertions applicable to Defaulting Defendant is found in Paragraphs 11-20 of the Complaint are incorporated herein. *Id.* at ¶¶ 11-20.

IMHL filed this action on January 23, 2018, alleging, among other claims, federal trademark infringement and seeks statutory damages and injunctive relief. Docket Entry 1. On February 1, 2018, this Court granted IMHL's *Ex Parte* Motion for Entry of a Temporary Restraining Order (the "TRO") and subsequently converted the TRO into a Preliminary Injunction on February 14, 2018.

Paragraph 13 of the TRO permitted IMHL to complete service of process to Defendants by electronic publication at the Defendant Domain Names which were transferred to IMHL's control, or by sending an e-mail to the e-mail addresses identified in Exhibit 2 to the Declaration of Paul Varley and any e-mail addresses provided for Defendants by third parties. The Defendant identified in the Schedule A was properly served on February 6, 2018. Docket Entry 15. Defaulting Defendant has not entered an appearance or otherwise defended this action. *See* Declaration of Keith A. Vogt (the "Vogt Declaration") at ¶ 2.

Pursuant to Federal Rule of Civil Procedure 55(a) and (b)(2), IMHL now moves this Court for an Order entering default and default judgment finding that Defaulting Defendant is liable on Counts I and II of IMHL's Complaint. Fed. R. Civ. P. 55(a) and (b)(2). IMHL further seeks an award of statutory damages as authorized by 15 U.S.C. § 1117(c)(2) for willful trademark counterfeiting against the Defaulting Defendant for use of infringing and counterfeit IRON MAIDEN Trademarks in connection with products sold through each of the Defendant Internet Stores. IMHL also seeks entry of a permanent injunction prohibiting Defaulting Defendant from selling Counterfeit/Infringing Products, an Order that the domain name used by Defaulting Defendant to sell Counterfeit IMHL Products be permanently transferred to IMHL, and that all assets in Defaulting Defendant's financial accounts operated by PayPal, as well as any newly discovered assets, be transferred to IMHL.

ARGUMENT

I. JURISDICTION AND VENUE ARE PROPER IN THIS COURT

This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051 et seq., 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may

properly exercise personal jurisdiction over Defendants since each of the Defendants directly targets business activities toward consumers in Illinois and causes harm to IMHL's business within this Judicial District. *See* Complaint, Docket Entry 1, at ¶ 2; *uBID, Inc. v. GoDaddy Grp., Inc.* 623 F.3d 421, 423-24 (7th Cir. 2010) (without benefit of an evidentiary hearing, plaintiff bears only the burden of making a prima facie case for personal jurisdiction; all of plaintiff's asserted facts should be accepted as true and any factual determinations should be resolved in its favor).

Through at least the fully interactive commercial Internet websites and online marketplace accounts operating under the Defendant Internet Stores, the Defaulting Defendant has targeted sales from Illinois residents by operating websites and/or online marketplace accounts that offer shipping to the United States, including Illinois and, on information and belief, has sold Counterfeit/Infringing Products to residents within the United States, including Illinois. Many of the websites look sophisticated and accept payment in U.S. Dollars via credit cards, Western Union, PayPal, and Amazon. Docket Entry 1 at ¶ 13. As such, personal jurisdiction is proper since the Defaulting Defendant is committing tortious acts in Illinois, is engaging in interstate commerce and has wrongfully caused Plaintiff substantial injury in the State of Illinois. *See Michael Kors, L.L.C. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 15-cv-00124 (N.D. Ill. Mar. 25, 2015 and May 12, 2015) (Docket Nos. 44 and 61); *Monster Energy Co. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 15-cv-00277 (N.D. Ill. Mar. 25, 2015) (Docket No. 50); *True Religion Apparel, Inc. and Guru Denim, Inc. v. The Partnerships and Unincorporated Association Identified on Schedule A, No. 13-cv-8397* (N.D. Ill. January 16, 2014) (Docket No. 39); and *Calvin Klein Trademark Trust, Calvin Klein, Inc., and Warnaco*

Inc. v. The Partnerships and Unincorporated Association Identified on Schedule A, No. 14-5337 (N.D. Ill. September 16, 2014) (Docket No. 41).

II. IMHL HAS MET THE REQUIREMENTS FOR ENTRY OF DEFAULT

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, “when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.” Fed. R. Civ. P. 55(a). On January 23, 2018, IMHL filed its Complaint alleging, among other claims, federal trademark infringement and counterfeiting, 15 U.S.C. § 1114 (Count I) and false designation of origin, 15 U.S.C. § 1125(a) (Count II). The Defendants were properly served on February 6, 2018. Docket Entry 15. Despite having been served with process, the Defaulting Defendant has ignored these proceedings and failed to plead or otherwise defend this action. Vogt Declaration at ¶ 2. Upon information and belief, the Defaulting Defendant is not an active-duty member of the U.S. armed forces. *Id.* at ¶ 3. Accordingly, IMHL asks for entry of default against the Defaulting Defendant.

III. IMHL HAS MET THE REQUIREMENTS FOR ENTRY OF DEFAULT JUDGMENT

Rule 55(b)(2) of the Federal Rules of Civil Procedure provides for a court-ordered default judgment. A default judgment establishes, as a matter of law, that defendants are liable to plaintiff on each cause of action alleged in the complaint. *United States v. Di Mucci*, 879 F.2d 1488, 1497 (7th Cir. 1989). When the Court determines that a defendant is in default, the factual allegations of the complaint are taken as true and may not be challenged, and the defendants are liable as a matter of law as to each cause of action alleged in the complaint. *Black v. Lane*, 22 F.3d 1395, 1399 (7th Cir. 1994).

Twenty-one (21) days have passed since Defendants were served, and no answer or other responsive pleading has been filed by the Defaulting Defendant identified in Schedule A. *See* Fed. R. Civ. P. 12(a)(1)(A). Accordingly, default judgment is appropriate, and consistent with previous similar cases in front of this Court, IMHL requests an award of statutory damages as authorized by 15 U.S.C. § 1117(c)(2) for willful trademark infringement and counterfeiting against the Defaulting Defendant for use of infringing and counterfeit imitations of IMHL's Trademarks in connection with products sold through the Defendant Internet Stores. IMHL also seeks entry of a permanent injunction prohibiting Defaulting Defendant from selling Counterfeit/Infringing Products, an order that domain names used by Defaulting Defendant to sell Counterfeit IMHL Products be permanently transferred to IMHL, and that all assets in Defaulting Defendant's financial accounts operated by PayPal and WISH and any newly identified accounts be transferred to IMHL.

A. Trademark Infringement and Counterfeiting

To properly plead a claim of trademark infringement and counterfeiting pursuant to the Lanham Act, a plaintiff must allege that (1) its mark is distinctive enough to be worthy of protection, (2) defendants are not authorized to use the mark; and (3) defendant's use of the mark causes a likelihood of confusion as to the origin or sponsorship of defendant's products. *See Neopost Industrie B.V. v. PFE Int'l Inc.*, 403 F. Supp. 2d 669, 684 (N.D. Ill. 2005) (citing *Bliss Salon Day Spa v. Bliss World LLC*, 268 F.3d 494, 496-97 (7th Cir. 2001)).

IMHL alleged in its Complaint that its IRON MAIDEN Trademarks are distinctive, that Defaulting Defendant has knowledge of IMHL's rights in the IRON MAIDEN Trademarks, that Defaulting Defendant is not authorized to use the IRON MAIDEN Trademarks, and that Defaulting Defendant's use of the IRON MAIDEN Trademarks causes a likelihood of

confusion. Docket Entry 1 at ¶¶ 21-27. Since the Defaulting Defendant has failed to respond or otherwise plead in this matter, the Court must accept the allegations contained in IMHL's Complaint as true. *See* Fed. R. Civ. P. 8(b)(6); *Am. Taxi Dispatch, Inc., v. Am. Metro Taxi & Limo Co.*, 582 F. Supp. 2d 999, 1004 (N.D. Ill. 2008). Accordingly, IMHL requests entry of judgment with respect to Count I for willful infringement and counterfeiting of the IRON MAIDEN Trademarks against the Defaulting Defendant.

B. False Designation of Origin

A plaintiff bringing a false designation of origin claim under 15 U.S.C. § 1125(a) must show that: (1) the plaintiff has a protectable trademark; and (2) a likelihood of confusion will exist as to the origin of plaintiff's products. *All Star Championship Racing, Inc. v. O'Reilly Auto. Stores, Inc.*, 2013 WL 1701871, *10 (C.D. Ill. Apr. 18, 2013) (*citing Johnny Blastoff, Inc. v. Los Angeles Rams Football Co.*, 188 F. 3d 427, 436 (7th Cir. 1999)). This is the same test that is used for bringing a trademark infringement claim under the Lanham Act. *See Neopost*, 403 F. Supp. 2d at 684.

IMHL alleged in its Complaint that Defaulting Defendant is using the federally registered IRON MAIDEN Trademarks without authorization on the Counterfeit/Infringing Products. This creates a likelihood of confusion, mistake, and deception among the general public as to the affiliation, connection, or association with IMHL or the origin, sponsorship, or approval of Defaulting Defendant's Counterfeit/Infringing Products by IMHL. *Id.* at ¶¶ 28-32. Furthermore, by using the IRON MAIDEN Trademarks on the Counterfeit/Infringing Products, Defaulting Defendant creates a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the Counterfeit Counterfeit/Infringing Products. *Id.* As a

result, IMHL requests entry of judgment with respect to Count II for willful false designation of origin against the Defaulting Defendant.

IV. IMHL IS ENTITLED TO MONETARY DAMAGES AND INJUNCTIVE RELIEF

The awarding of statutory damages serves dual interests in that it is remedial in nature, but also intended to protect an important public interest. Given the broader economic losses and harm to the job market caused by counterfeiting, coupled with the possible dangers to consumers who are tricked into purchasing low quality, counterfeit products over the Internet, it is important to both penalize defendants and try to deter future violations.

A. Statutory Damages Are Appropriate in this Case

Pursuant to the statutory damages provision of the Lanham Act, 15 U.S.C. § 1117(c), a plaintiff in a case involving the use of a counterfeit mark may elect to receive “not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.” 15 U.S.C. § 1117(c)(1). When the counterfeiting is found to be willful, 15 U.S.C. § 1117(c)(2) provides for statutory damages of up to “\$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.” 15 U.S.C. § 1117(c)(2).

Although 15 U.S.C. § 1117(c) contains the dollar range for possible statutory damage awards, the only guidance provided by the statute for how to determine a damage award within the statutory dollar range is “as the court considers just.” 15 U.S.C. § 1117(c). Courts interpreting 15 U.S.C. § 1117(c) have analogized case law applying the statutory damage provision of the Copyright Act contained in 17 U.S.C. § 504(c). *See Lorillard Tobacco Co.*, 2004 U.S. Dist. LEXIS 22563, *10; *Sara Lee v. Bags of New York, Inc.*, 36 F. Supp. 2d 161, 166 (S.D.N.Y. 1999). In *Sara Lee*, 36 F. Supp. 2d at 170, the court awarded statutory damages

in the amount of \$750,000 after estimating the defendants' ill-gotten gains and trebling them to "deter and punish a willful continuous course of infringements and defiance of the judicial process." The *Sara Lee* analysis included seven factors: (1) the profits made by the defendants; (2) the revenues lost by plaintiff; (3) the value of the mark; (4) the deterrent effect on others; (5) whether the conduct was innocent or wilful; (6) whether a defendant has cooperated in providing records; and (7) the deterrent effect on the defendant.

The Office of the U. S. Trade Representative issued findings of the Special 301 Out-of-Cycle Review of Notorious Markets for 2015, December 2015 (See, Exhibit 1), highlighted disturbing trends in the marketing and distribution of counterfeit goods online, with escalating levels of counterfeit sales online including an increase in the services that support such operations. With an estimated 15% increase in online sales of counterfeit goods last year, the economic toll of counterfeiting on governments, businesses, and consumers is disturbing.

Accordingly, a significant consideration should be whether infringing sales were made over the Internet, with the rationale was that sales over the Internet increased the amount of an award because use of the Internet made the infringement widely available.

The lack of information regarding Defaulting Defendant's sales and profits makes statutory damages particularly appropriate for default cases like the instant case. *See Petmed Express, Inc. v. medpets.com, Inc.*, 336 F. Supp. 2d 1213, 1220 (S.D. Fla. 2004). Likewise, Courts have recognized that statutory damages should be awarded without requiring an evidentiary hearing. *See Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc.*, 2008 U.S. Dist. LEXIS 31761, *11 (N.D. Ill. Apr. 17, 2008).

B. Defendants' Counterfeiting Was Willful

As alleged in IMHL's Complaint, Defaulting Defendant facilitates sales by designing the Defendant Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers selling genuine IMHL Products. Docket Entry 1 at ¶ 4.

Pursuant to 15 U.S.C. § 1117(e), a counterfeiting violation is presumed willful "for purposes of determining relief if the violator ... knowingly provided ... materially false contact information to a domain name registrar...." 15 U.S.C. § 1117(e).

It is clear that Defaulting Defendant's counterfeiting was willful. "Willful infringement may be attributed to the defendant's actions where he had knowledge that his conduct constituted infringement or where he showed a reckless disregard for the owner's rights." *Lorillard Tobacco Co. v. S & M Cent. Serv. Corp.*, 2004 LEXIS 22563, *19-20 (N.D. Ill. Feb. 25, 2005). As such, knowledge need not be proven directly, but can be inferred from a defendant's conduct. *Id.* at 20. In the instant case, Defaulting Defendant clearly had knowledge that their activities constituted infringement or at least a reckless disregard for IMHL's rights in the IRON MAIDEN Trademarks, especially given IMHL's extensive promotional efforts discussed above.

Finally, this Court has deemed counterfeiting willful when defendants default. *See Michael Kors, L.L.C. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 15-cv-00124 (N.D. Ill. Mar. 25, 2015 and May 12, 2015) (Docket Nos. 44 and 61); *Monster Energy Co. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 15-cv-00277 (N.D. Ill. Mar. 25, 2015) (Docket No. 50).

C. A High Statutory Damages Award Is Appropriate and Just

The Seventh Circuit's standard for awarding statutory damages for copyright infringement under 17 U.S.C § 504(c) is articulated in *Chi-Boy Music v. Charlie Club*, 930 F.2d 1224, 1229 (7th Cir. 1991). Under the *Chi-Boy* standard, a court awarding statutory damages is “not required to follow any rigid formula,” but instead “enjoys wide discretion.” *Id.* In computing the award amount, a court may consider factors such as “the difficulty or impossibility of proving actual damages, the circumstances of the infringement, and the efficacy of the damages as a deterrent.” *Id.* Courts in this district have also considered the significant value of a plaintiff’s brand and the efforts taken to protect, promote and enhance that brand in determining the appropriate dollar figure for the award. *Lorillard Tobacco Co.*, 2004 U.S. Dist. LEXIS 22563, *16.

In addition, courts have awarded high damage amounts where a defendant’s counterfeiting activities attracted wide market exposure through Internet traffic or advertisement. *See Coach, Inc. v. Ocean Point Gifts*, 2010 U.S. Dist. LEXIS 59003, *15-16 (D.N.J. Jun. 14, 2010) (high damage awards in counterfeit cases were “due in part to the wide market exposure that the Internet can provide”); *Burberry Ltd. v. Designers Imports, Inc.*, 2010 U.S. Dist. LEXIS 3605, *28-29 (S.D.N.Y. Jan. 19, 2010) (damages amount based, in part, on “Defendant's ability to reach a vast customer base through internet advertising”).

In similar cases involving willful Internet-based counterfeiting, this Court has awarded significant damages, including up to the maximum provided by law, to the plaintiff to serve the purposes of: (1) deterring the defendant and others situated like him from bringing into commerce counterfeit goods, (2) compensating the plaintiff for damages caused by defendant’s infringement, and (3) punishing the defendant appropriately for his counterfeiting activities. *See*,

e.g., Michael Kors, L.L.C. v. The Partnerships and Unincorporated Associations Identified on Schedule "A", No. 15-cv-00124 (N.D. Ill. Mar. 25, 2015 and May 12, 2015) (Docket Nos. 44 and 61); *Monster Energy Co. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 15-cv-00277 (N.D. Ill. Mar. 25, 2015) (Docket No. 50). Given the Court's clear discretion in determining the appropriate amount of the statutory damages award within the statutory limits of 15 U.S.C. § 1117(c), IMHL respectfully requests the Court's entry of an award of two million dollars (\$2,000,000) per the Defaulting Defendant as it has done in the past under similar circumstances.

D. IMHL is Entitled to Permanent Injunctive Relief

In addition to the foregoing relief, IMHL respectfully requests entry of a permanent injunction enjoining Defaulting Defendant from infringing or otherwise violating IMHL's registered trademark rights in the IRON MAIDEN Trademarks, including at least all injunctive relief previously awarded by this Court to IMHL in the TRO and Preliminary Injunction. IMHL is also entitled to injunctive relief so it can quickly take action against any new websites and online marketplace accounts that are identified, found to be linked to Defaulting Defendant, and selling Counterfeit IMHL Products. *See Michael Kors, L.L.C. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 15-cv-00124 (N.D. Ill. Mar. 25, 2015 and May 12, 2015) (Docket Nos. 44 and 61); *Monster Energy Co. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 15-cv-00277 (N.D. Ill. Mar. 25, 2015) (Docket No. 50).

V. CONCLUSION

IMHL respectfully requests that the Court enter default and default judgment against each Defaulting Defendant, award statutory damages in the amount of two million dollars

(\$2,000,000) per Defaulting Defendant pursuant to 15 U.S.C. § 1117(c) and enter a permanent injunction order prohibiting Defaulting Defendant from selling Counterfeit/Infringing Products, permanently transferring the domain names used by Defaulting Defendant to sell Counterfeit/Infringing Products to IMHL, and transferring all assets in Defaulting Defendant's financial accounts operated by PayPal and WISH to IMHL.

DATED: May 16, 2018

Respectfully submitted,

/s/ Keith A. Vogt

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2018, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, I will electronically publish the documents on a website to which the Defendant Domain Names that have been transferred to IMHL's control now redirect, and I will send an e-mail to the e-mail addresses identified in Exhibit 2 to the Declaration of Paul Varley and any e-mail addresses provided for Defendants by third parties that includes a link to said website.

/s/ Keith A. Vogt

Keith A. Vogt, Esq.

Exhibit 1



2015 Out-of-Cycle Review of Notorious Markets



OFFICE *of the* UNITED STATES TRADE REPRESENTATIVE

DECEMBER 2015



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Results of the 2015 Out-of-Cycle Review of Notorious Markets

Overview

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Commercial-scale trademark counterfeiting and copyright piracy cause significant financial losses for rights holders and legitimate businesses, undermine critical U.S. comparative advantages in innovation and creativity to the detriment of American workers, and can pose significant risks to consumer health and safety. The Notorious Markets List (List) highlights select online and physical marketplaces that reportedly engage in and facilitate substantial copyright piracy and trademark counterfeiting.^[1]

The Office of the United States Trade Representative (USTR) has developed the List under the auspices of the annual Special 301 process.^[2] USTR solicited comments regarding potential markets to highlight in this year's List through a Request for Public Comments published in the Federal Register (WWW.REGULATIONS.GOV, Docket Number USTR-2015-0016). The List is based on publicly-available information.

USTR highlights these markets not only because they exemplify global counterfeiting and piracy concerns, but also because the scale of infringing activity in such markets can cause significant economic harm to U.S. intellectual property rights (IPR) holders. Some of the identified markets reportedly host a combination of legitimate and unauthorized activities. Others reportedly exist solely to engage in or facilitate unauthorized activity. The List is not an exhaustive list of all physical and online markets worldwide in which IPR infringement takes place.

USTR has identified notorious markets in the Special 301 Report since 2006. In 2010, USTR announced that it would begin publishing the List separately from the annual Special 301 Report, pursuant to an Out-of-Cycle Review (OCR). USTR first separately published the List in February 2011. The present List is the result of the 2015 OCR of Notorious Markets.

The List does not reflect findings of legal violations, nor does it reflect the U.S. Government's analysis of the general IPR protection and enforcement climate in the countries connected with the listed markets. A broader analysis of IPR protection and enforcement in particular countries or economies is presented in the annual Special 301 Report published on or about April 30th of

[1] The terms "copyright piracy" and "trademark counterfeiting" appear below as "piracy" and "counterfeiting," respectively.

[2] Please refer to the **Public Information** section below for links to information and resources related to Special 301.

each year (please refer to the **Public Information** section at the end of this document).

The List includes several previously-identified markets because our previously-stated concerns with those particular markets have not been addressed. We have examined each market anew and updated each listing. Other previously-identified markets may not appear in the present List for a variety of reasons, including that: the market has closed or its popularity or significance has diminished; enforcement or voluntary action has reduced or eliminated the prevalence of IPR-infringing goods or services; market owners or operators are cooperating with rights holders or government authorities to address infringement; the market is no longer the most noteworthy example of its kind; or no commenter nominated the market for continued inclusion on the List. ■

Positive Developments Since the 2014 Out-of-Cycle Review of Notorious Markets

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Since the release of the 2014 List in March 2015, some market owners and operators have undertaken notable efforts to address the widespread availability of pirated or counterfeit goods in their markets. The United States commends these efforts, and encourages governments, rights holders, and the owners and operators of these and other markets, including those newly identified in the 2015 List, to engage in sustained and meaningful efforts to combat piracy and counterfeiting.

During the past year, some of the listed online markets are reported to have undertaken various measures that demonstrated a willingness to cooperate in addressing infringement, such as: providing streamlined notice and takedown procedures; expediting responses to complaints; completing licensing arrangements with rights holders; and engaging with rights holders to develop additional cooperative procedures. For example, USTR identified Vietnamese social media site and popular online music portal **ZING.VN**^[3] as a notorious market in the 2012-2014 Notorious Markets Lists. ZING.VN does not appear on the 2015 List in recognition of Zing's efforts to address copyright infringement on its music portal, to provide licensed content, and to use content identification technology to locate infringing content. USTR encourages ZING.VN to continue along this path to fully addressing unauthorized content and remaining concerns of rights holders.

In 2015, several previously-listed online markets reportedly closed or experienced disruption, including **FREE-TV-VIDEO-ONLINE.ME**, a website that indexed and provided streaming services to pirated television content, and **MOLTEN-WOW.COM**, a website that provided unauthorized access to a popular multiplayer online role-playing game.^[4] As a result of right holder civil action in New Zealand, the operator of previously-listed **YTS.RE** (also known as **YIFY**) no longer offers pirated streaming services.^[5] Additionally, in October 2015, the Federal Court of Canada issued an injunction ordering the operators of the popular streaming application "Popcorn Time," which formerly used pirated content provided by YTS.RE, to shut down the POPCORNTIME.IO website and corresponding app.

Other previously-listed or nominated sites were the subject of significant domestic and international law enforcement efforts. Brazilian federal police are undertaking notable enforcement

[3] Only previously- and presently-listed markets appear in **bold** type. In contrast, markets that have not appeared on this or prior year's Lists are in normal type face. When a paragraph includes multiple references to a market only the first instance will appear in **bold** type.

[4] Clones of free-tv-video-online.me, also known as Project Free TV, illustrates the challenges of sustaining enforcement results against pirate websites. Additionally, molten-wow.com reportedly resumed operations as nominated site warmane.com, hosted in France. The resurgence of this market and its use of domain name hopping illustrate ongoing enforcement challenges for legitimate cloud-based game publishers against unauthorized private servers, also known as "pirate servers" or "grey shards."

[5] See <http://www.mpaa.org/wp-content/uploads/2015/11/Major-Piracy-Sites-Shut-Down1.pdf>

efforts against one of the most popular sites for movie piracy in Brazil as part of a coordinated effort to take down nominated site MEGAFILMESH.NET. Additionally, **BAIXETURBO.ORG** was listed in the 2014 Notorious Markets List and does not appear on the 2015 List because it is no longer available. However, the site has resurfaced under a new domain name, SOBAIXAR.COM, with a lower global Alexa ranking.^[6]

Large free trade zones (FTZs) have also become enablers for counterfeit activities and are being used as a staging ground to disguise the illicit nature of counterfeit goods, to add infringing trademarks, logos, and packaging to products, as well as to conceal the origin of counterfeit goods.^[7] The European Union (EU) has identified counterfeiters as the main abuser of the worldwide infrastructure of 3,000 FTZs in 135 countries.^[8] The Trans-Pacific Partnership (TPP) agreement includes provisions that would require Parties to make criminal procedures and penalties applicable in their FTZs for willful counterfeiting and piracy on a commercial scale, for willful importation and exportation of counterfeit and pirated goods on a commercial scale, and for the willful importation of labels and packaging that use others' trademarks without authorization in relation to goods or services that are identical to goods or services for which the trademark is registered.^[9]

In Uruguay, customs officials now have greater authority to operate inside FTZs. A March 2015 decree operationalized the 2014 modernization of Uruguay's customs laws that made FTZs subject to stricter customs controls. This decree gives officials the authority to control the flow of goods coming in and out of FTZs, as well as to issue fines to both the owners of counterfeit goods and the storage providers that facilitate distribution of counterfeits. In recognition of these developments, the Libertad and Florida Sur FTZs are no longer identified as notorious markets. USTR will monitor the effectiveness of Uruguay customs' operation protocols and pilot program.

Russia's new anti-piracy law became effective on May 1, 2015 and in October 2015, Russian courts issued a decision ordering permanent injunctions for eleven pirate websites. None of these sites were nominated for inclusion in this year's List. On November 9, 2015, the Moscow City Court ordered the permanent shutdown of the largest Russian-language torrent website, **RUTRACKER.ORG**. Because the court order has not yet come into effect, and because RUTRACKER.ORG operators are considering continuing business as usual in the hope that their Russian users will circumvent access restrictions, RUTRACKER.ORG continues to appear on the Notorious Markets List.

Also in 2015, authorities in China examined the problem of counterfeit sales online with a focus on consumer protection. According to the November 2015 China Anti-Infringement and Counterfeiting Annual Report submitted to Chinese lawmakers, less than 59 percent of articles sold online were genuine last year.^[10] Among the recommendations to strengthen regulation of online markets was new legislation to clarify consumers' rights and sellers' responsibilities.^[11] U.S. rights holders observe that the efforts of Chinese e-commerce platforms to restrict counterfeit

[6] The new site is quickly gaining popularity in Brazil, the origin of over 90 percent of the site's traffic. After only four months in operation Sobaixar.com has over 2 million visitors a month and may merit a future relisting.

[7] Information on the general challenge of enforcing IPR in FTZs is available at <http://www.iccwbo.org/Data/Documents/Bascap/International-engagement-and-advocacy/Combating-illicit-trade-in-FTZs/>

[8] See 2015 Situation Report on Counterfeiting in the European Union, Europol and the Office for Harmonization in the Internal Market, April 2015 available at <https://oami.europa.eu/ohimportal/documents/11370/80606/2015+Situation+Report+on+Counterfeiting+in+the+EU>

[9] Visit USTR's TPP resource center for more information at <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-fact-sheets>. Trans-Pacific Partnership Agreement, IP Chapter, Article 18.77.

[10] "Leading group reveals counterfeit goods still rife," Nov. 27, 2015, available at <http://english.ipraction.gov.cn/article/News/News/201511/20151100072260.shtml> (last accessed Dec. 8, 2015).

[11] "Ten pieces of opinions put forth by State Administration for Industry and Commerce to strengthen regulation of online markets," Nov. 27 2015, available at <http://english.ipraction.gov.cn/article/News/News/201511/20151100072198.shtml> (last accessed Dec. 8, 2015).

sales have not kept pace with the rapid growth of online sales in China, which grew 40 percent last year to almost \$442 billion.^[12]

The United States commends these efforts and encourages its trading partners to continue their individual and cooperative efforts to combat copyright piracy and trademark counterfeiting. ■

[12] "Over 40 percent of China's online sales counterfeit, shoddy: Xinhua," Nov. 2, 2015, available at <http://www.reuters.com/article/us-china-counterfeits-idUSKCN0SS02820151103> (last accessed Dec. 8, 2015).

Other Developments Related to Previously-Listed Markets

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USTR continues to monitor markets that have been removed from the List. Markets may be re-listed if there is a change in circumstances, e.g., if a website or physical market that ceased to operate as a result of enforcement or other action resumes its unauthorized activities or the corrective actions that merited removal from the List prove inadequate or short-lived.

A goal of the List is to motivate appropriate action on the part of owners and operators in the private sector as well as governments to reduce piracy and counterfeiting. In some cases, the situation in a particular market or geographic area presents unique challenges not effectively addressed in this OCR process. While most digital piracy is global there are still geographic clusters of illicit activity. For example, reports suggest that Poland is home to a network of allegedly infringing online videogame distribution. Poland-based cyberlockers (**CATSHARE.NET** and **FILESHARK.PL**) provide 90 percent of a Polish indexing site's (**DARKWAREZ.PL**) links to allegedly infringing videogames. While these sites do not appear on this year's List, USTR urges Polish authorities to investigate these allegations.

Chinese e-commerce consumer-to-consumer platform **TAOBAO.COM** and sister company **ALIBABA.COM** were first identified in the 2008 Special 301 Report for facilitating the sale of counterfeit and pirated goods to consumers and businesses. USTR removed Taobao from the List in 2012 in recognition of efforts to address rights holder and consumer complaints. Furthermore, during the 2013 Notorious Markets review, Taobao provided assurances to various stakeholders that it would continue to work with all relevant stakeholders to address remaining issues raised by software, publishing, and apparel and footwear companies, many of which are small and medium-sized enterprises with limited enforcement resources. In 2014, Alibaba Group informed USTR that the company continued its efforts to address stakeholder complaints, including by reportedly removing millions of listings for counterfeit and pirated products manufactured in China and offered for sale and export both on its own and pursuant to the notice and takedown process.

In January 2015, the Chinese Government echoed several of the long-standing complaints against these markets in a White Paper issued by the State Administration for Industry and Commerce (SAIC).^[13] Taobao has also appeared in three of the top ten cases named by the National Copyright Administration of China in its 2014 "Sword Net Action Campaign."

During the 2015 review, commenters that rely on trademark protection widely criticized **TAOBAO.COM**, **ALIBABA.COM**, and other Chinese e-commerce websites under the Alibaba Group, including **TMALL.COM**, a business-to-consumer platform, and **1688.COM**, a wholesale marketplace. Brand owners continue to report that Alibaba platforms, particularly Taobao, are used to sell large

[13] This SAIC report is no longer available on the SAIC website but unofficial translations of the report are available. Alibaba disputes the accuracy of the report. Reportedly, after subsequently reaching an agreement with SAIC, Taobao was required to strengthen its routine site inspections and samplings. See also "Watchdog finds fake goods in online malls," Jan. 29, 2015, available at <http://english.ipraction.gov.cn/article/News/News/201501/20150100043847.shtml>

quantities of counterfeit goods. The Alibaba Group reported that it has added new enforcement features since the 2014 List including a good-faith product takedown procedure, a three-and four-strikes penalty system, and an English-language version of the TaoProtect portal to register IPR and submit takedown requests. Some rights holders also report good working relationships and cooperation with Alibaba Group's enforcement teams. However, it is unclear what effect these procedures are having on the overall prevalence of counterfeit goods on the Alibaba platforms, particularly Taobao. Furthermore, submissions this year from trademark holders in several industries do not report improvement of the underlying problem.

Despite these new procedures, USTR is increasingly concerned by rights holders' reports that Alibaba Group's enforcement program is too slow, difficult to use, and lacks transparency. USTR does not re-list Taobao or Alibaba at this time but it encourages the company to enhance cooperation with all stakeholders to address ongoing complaints. Given the size and the scale of Alibaba's platforms, stronger and more efficient systems for addressing right holders' concerns should be undertaken without delay. Such steps should include (1) simplifying Taobao's processes for rights holders to register and request enforcement action, (2) making Taobao's good faith takedown procedures generally available, and (3) reducing Taobao's timelines for takedowns and issuing penalties for counterfeit sellers. USTR will continue to monitor the situation in the coming year for evidence of whether the new enforcement changes are demonstrably effective in addressing ongoing concerns. ■

ISSUE FOCUS

Emerging Marketing and Distribution Tactics in Internet-Facilitated Counterfeiting

This year, USTR is highlighting emerging trends in the marketing and distribution of counterfeit goods online. The Internet provides many new opportunities for economic growth, encouraging innovation, and the development of new business models. The Internet can also be used to carry out infringing activity due to the ease of conducting commerce through unverified vendors, inability for consumers to inspect goods prior to purchase, and deceptive marketing. In this OCR and in recent years, rights holders have noted escalating levels of counterfeit sales online and an increase in the services that support such operations. With an estimated fifteen percent increase in online sales of counterfeit goods last year, the economic toll of counterfeiting on governments, businesses, and consumers is mounting.^[14] Internet-facilitated counterfeiting includes e-commerce sites that provide large-scale platforms for counterfeit sellers and wholesalers to reach a global consumer base such as auction sites, business-to-business (B2B, also known as trade boards), consumer-to-consumer (C2C), and business-to-consumer (B2C) sites. It also includes individual, one-off websites offering counterfeit versions of branded products or mimicking the look and feel of a legitimate retailer.

In the case of standalone websites, there can be tens of thousands of websites targeting a single brand making it difficult to identify a notorious example when these online one-off markets have lower popularity. The List therefore cannot capture the scope and scale of this global problem. These illicit sites use deceptive tactics including cybersquatting (such as nominated sites [HTTP://MACYS-SHOES.COM](http://MACYS-SHOES.COM) and MACYSKOREA.COM), typosquatting (for example, MACIYS.COM, MAXCYS.COM, and MWCYS.COM) and search engine optimization manipulation to hijack genuine traffic and lure customers to counterfeit offerings.^[15] Increasingly sophisticated criminals operate networks of hundreds of sites, use paid search ads and social media campaigns to promote their illegitimate sites, and use mobile apps to solicit sales.

[14] For a discussion of the costs of counterfeiting, including online counterfeiting see Net Names, "Counting the Cost of Counterfeiting," Oct. 2015, available at <http://www.netnames.com/blog/wp-content/uploads/2015/10/NetNames-Counterfeiting-Report-A4-2015.pdf>

[15] Brand enforcement company MarkMonitor saw a 22 percent increase in cybersquatting in 2014 (<https://www.markmonitor.com/download/Infographics/MarkMonitor.infographic.CorporateOverview.pdf>) and reports that 14 percent of searches on a branded item lead online users somewhere other than the legitimate brand's site. See also MarkMonitor, "Seven Best Practices for Fighting Counterfeit Sales Online" available at https://www.markmonitor.com/download/wp/wp-Fighting_Counterfeit_Sales.pdf

Counterfeit sellers on large e-commerce platforms are also using social media and email campaigns to drive traffic to their online shop windows. Counterfeiters bury trademark references in lengthy product descriptions, remove logos and trademarks on otherwise recognizable products, blur the trademark from original copyrighted images, or use creative angles to showcase infringing products without running afoul of strictly-construed trademark policies. As one e-commerce submission notes, e-commerce platforms must make continuous efforts to address the ever-more-ingenious techniques for evading detection.

Online counterfeiters enjoy such low operating costs and easy, immediate access to a global customer base that counterfeit goods can be as profitable for criminal gangs as illegal drugs.^[16] Retail, luxury brands, electronics, and pharmaceuticals are among the worst-affected sectors. For example, an investment in the trafficking of counterfeit pharmaceuticals can generate a return ten to twenty-five times higher than the same investment in drug trafficking.^[17] In addition to counterfeit pharmaceuticals, counterfeit consumer products—such as car parts, children’s toys, mobile phones, and sporting equipment—can also endanger consumer health and safety as many counterfeits are made inexpensively with substandard or hazardous materials.^[18]

Distribution of counterfeits purchased online from standalone websites and large e-commerce platforms also presents enforcement challenges for rights holders and governments. Instead of shipping a container of counterfeits, today’s Internet-facilitated counterfeiters can ship infringing articles one at a time, decreasing the risk of customs detection and minimizing their losses if the shipment is seized. Seizure statistics from U.S. and European customs authorities in the United States and European Union confirm the surge of small consignment shipments. Counterfeiters are also attempting to evade enforcement by shipping trademarked packaging, holograms, and labels separately from the products for later downstream assembly.

USTR applauds governments that are addressing these challenges through legislative, administrative, and executive actions. For example, the European Union recently enhanced its border enforcement authority to address the increase in trafficking of counterfeit goods via small, postal, or express courier consignments.^[19]

Provisions in the recently concluded TPP agreement seek to address many of these challenges. These include commitments to provide for criminal procedures and penalties for trafficking in counterfeit labels and packaging; to make enhanced penalties available for particularly serious cases, such as trafficking in counterfeit trademark products that threaten health and safety; to close loopholes used by counterfeiters that threaten global supply chains; and to confirm that enforcement procedures for trademark and copyright infringement are available to the same extent in the digital environment.^[20] USTR invites foreign governments to use these and other TPP provisions as a benchmark for addressing online trademark counterfeiting and other 21st century challenges. ■

[16] United Nations Office on Drugs and Crime, *Transnational Organized Crime in East Asia and the Pacific*, 2013; available at http://www.unodc.org/documents/data-and-analysis/Studies/TOCTA_EAP_web.pdf (p.128).

[17] International Institute of Research against Counterfeit Medicines, “Counterfeit Medicines and Criminal Organizations,” Sept. 2013, at 18 available at http://fightthefakes.org/wp-content/uploads/2013/11/Rapport-Etude_IRACM_Contrefacon-de-Medicaments-et-Organisations-Criminelles_EN_FINALs2.pdf

[18] For a recent example, see “U.S. Customs and Border Protection Holiday Advice for Consumers – Hoverboards” <http://www.cbp.gov/newsroom/national-media-release/2015-12-11-000000/us-customs-and-border-protection-holiday-advice>

[19] Please see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005DC0479>

[20] Visit USTR’s TPP resource center for more information at <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-fact-sheets>

Results of the 2015 Out-of-Cycle Review of Notorious Markets

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As noted, the 2015 List identifies particular online and physical markets in which pirated or counterfeit products and services are reportedly available, but it does not constitute a legal finding or a conclusion as to IPR protection and enforcement in any affiliated country or economy, nor is it intended to be an exhaustive listing of all notorious markets around the world. Rather, the List highlights some of the most prominent examples of both online and physical marketplaces where pirated or counterfeit goods are trafficked that were reported and examined during the OCR process.

Owners and operators of the notorious markets included in the 2015 List that are willing to address piracy and counterfeiting have many options for doing so. Such owners and operators can adopt business models that rely on the licensed distribution of legitimate content and can negotiate appropriate licenses with rights holders. If an otherwise legitimate business has become a platform for piracy or counterfeiting, the owner or operator can work with rights holders and enforcement officials to help discourage and curtail acts of infringement. There are a variety of best practices developed by industries themselves that can help combat these problems. However, in the absence of such good faith efforts, responsible government authorities should investigate reports of piracy and counterfeiting in these and similar markets, and pursue appropriate action against such markets and their owners and operators. Governments should also ensure that appropriate enforcement tools are at the disposal of right holders and government authorities, which may require closing the loopholes that permit operators to evade the law.

Online Markets^[21]

The 2015 List of notorious online markets again includes examples of various technologies and business models. USTR based its selections not on specific technologies or business models but on whether, based on available information, a nominated site or affiliated network of sites appears to engage in or facilitate IPR infringement. Accordingly, the 2015 List reflects sites and online services that reportedly engage in and facilitate substantial piracy and counterfeiting to the detriment of U.S. creators and brand owners, as well as legitimate sellers and distributors. In addition to facilitating IPR infringement, these sites may lack safeguards for consumer privacy, security and safety, and some reportedly actively and surreptitiously install malware on users' computers, commit ad-

[21] In most cases, the List identifies online markets by the domain name provided in the public responses to the Federal Register request. However, it is common for operators of online Notorious Markets to change a site's domain name or to use multiple domain names at once to direct users to the main site. The List reflects each market's most commonly referred to or well-known domain name or names as of December 8, 2015.

vertisement fraud, and enable phishing scams to increase their unlawful profits.

4SHARED.COM

With more than 117 million unique visitors a month, this cyberlocker site^[22], reportedly based in the British Virgin Islands and hosted in Cyprus, is well-known globally and particularly popular in Brazil.^[23] While 4shared provides legitimate services, the site also continues to facilitate streaming and downloads of allegedly pirated videos, music, books and games. By some measurements, 4shared is one of the largest and most profitable direct download cyberlockers that facilitates infringement.^[24] 4shared mobile apps further allow users to stream infringing content to mobile devices and recently added search and music player features appear to encourage music infringement. While this site responds to takedown notices, reportedly provides direct access to trusted right holders representatives, and has implemented a feature that scans for unauthorized content, the music industry reports no change in the levels of infringing files.

BUKALAPAK.COM

This consumer-to-consumer marketplace is based in Indonesia and has an Alexa ranking of 12 in that country and 571 globally. While Bukalapak is a platform for legitimate sales, apparel and footwear companies report challenges with counterfeit sellers and a lack of effective procedures for reporting and removing counterfeit listings on this quickly growing e-commerce platform.

[22] The cyberlockers identified in the List reportedly operate primarily to provide users with access to unauthorized content. Such sites are distinguishable from legitimate cloud storage services that allow consumers to lawfully store, share, backup, and access data.

[23] Unless otherwise noted, the global and country-specific popularity of online markets referenced in this List is determined through Alexa rankings, SimilarWeb data, and public submissions. Alexa.com utilizes a proprietary methodology to analyze global and country-specific user traffic and develop a numerical rank that indicates a website's popularity relative to other sites. Rankings can change dramatically and quickly. SimilarWeb.com uses big data technology to estimate websites' unique visitors and the origin of those visits. For example, according to Alexa, 4Shared.com is the 98th most popular website in Brazil and has the highest percentage of global visitors (16 percent) and according to SimilarWeb, 4Shared.com is the 42nd most popular site in Brazil and Brazil has the highest percentage of unique visitors (30 percent). Both the Alexa rankings and SimilarWeb data that appear in this document are current as of December 8, 2015.

[24] NetNames & Digital Citizens Alliance, "Behind The Cyberlocker Door: A Report on How Shadowy Cyberlocker Businesses Use Credit Card Companies to Make Millions," Sept. 2014, available at <http://www.digitalcitizensalliance.org/cac/alliance/content.aspx?page=cyberlockers>. 4shared.com disputes the allegations made in the report.

DHGATE.COM

This Chinese e-commerce site connects Chinese factories and sellers directly with businesses and individual buyers and reportedly hosts over 30 million product listings, some of which allegedly infringe the trademarks and copyrights of U.S. companies. Over the past six years and in each OCR of notorious markets, trademark owners have consistently reported challenges with counterfeit goods on this online wholesale marketplace. Consumer health and safety has been endangered due to counterfeit products that evade detection on the DHgate platform.^[25] According to SimilarWeb and Alexa data, DHgate is most popular in China, India, the United Kingdom, Brazil, and the United States.

EBOOKEE.ORG

ALSO OPERATING AS EBOOKEE.DOC.ZZZ.COM

Ebookee is a top indexing site with connections to China that is allegedly dedicated to pirated ebooks, magazines, and other digital media. The site has been operating for more than eight years and provides direct links to files available for download from notorious cyberlockers, some of which, including 4shared and uploaded.net, appear in this List. Along with others, the site and its subsequent variations have been the subject of a court-imposed blocking order in the United Kingdom.

EX.UA AND EXTRATORRENT.CC

These sites, both of which have appeared on the List several times, continue to benefit from Ukraine's status as a haven for online piracy. Almost 35 million users visit EX.UA every month to download and stream content including reportedly infringing music, videos, movies, TV series, e-books, and audiobooks, and software that one commenter alleges is uploaded by site administrators themselves. Similarly, EXTRATORRENT.CC allegedly has extremely high rates of piracy with more than 75 million visits a month and a 14 percent increase in August 2015 compared to August 2014.^[26] While Extratorrent has been the subject of successful enforcement actions in several countries, it maintains a global Alexa ranking of 333. Furthermore, Extratorrent has Alexa rankings in India and Pakistan of 76 and 26, respectively, which illustrate the commercial impact that sites which facilitate infringement can have on geographically diverse markets. In 2015, other players in the Internet ecosystem have voluntarily taken reasonable actions against Extratorrent as a result of piracy and malware complaints, including removing search engine access to the site and deleting its social media profile. USTR encourages the Government of Ukraine

[25] Lindsey, Joe "To Catch a Counterfeiter: The Sketchy World of Fake Bike Gear," *Bicycling.com*, Sept. 15, 2015, available at <http://www.bicycling.com/bikes-gear/components/catch-counterfeiter-sketchy-world-fake-bike-gear>

[26] According to reported comScore Media Metrix, Word Wide data.

to take lasting action against those who operate these and similar sites within Ukraine's jurisdiction.

KAT.CR

Formerly **KICKASS.TO**, **KICKASSTORRENTS.COM**, and also operated as **KAT.SX**

This BitTorrent indexing site is now the biggest torrent site in terms of visitors and popularity after surpassing ThePirateBay in 2014. KAT.CR has the highest global Alexa ranking of all the online notorious markets on this List. Over 6 million torrent files attracted more than 25 million unique visitors in one month. Reportedly based in Canada, over the past several years the site operators have changed the domain name numerous times, obscured or hidden their locations, and have used multiple servers in various countries to evade or otherwise frustrate enforcement actions. The site originally operated as KICKASSTORRENTS.COM but moved to KAT.PH, until Philippine authorities took enforcement action. The .tt domain registry cancelled the domain KA.TT in 2013, followed by the .so domain registry which cancelled the domain KICKASS.SO in February 2015 and the .im domain registry which cancelled KICKASSTORRENTS.IM in April 2015 within hours.^[27] The domain hopping tactics deployed by KAT.CR allow the site to reappear at the top of search results and evade court-ordered injunctions.

MOVSHARE GROUP

OPERATING As NOWVIDEO.SX, WATCHSERIES.IT, TORRENTZ.EU, VIDEOWEED.ES, NOVAMOV.COM, AMONG OTHERS

This group of affiliated and extremely popular sites, with ties to Switzerland, Sweden, the Netherlands, Panama, Canada, and other countries, reportedly uses multiple technologies to make available countless unauthorized copies of movies, games, music, audio-books, software, and sporting event broadcasts. These cyberlockers, linking sites, forums, and streaming sites all work together to facilitate global distribution of allegedly infringing content. The sites are said to generate revenues through advertising and premium membership or subscription fees, and to compensate users for uploading infringing content. Rights holders report that Nowvideo and others in the Movshare group are systematically unresponsive to takedown notices.

[27] .tt is the country code top-level domain (ccTLD) of Trinidad and Tobago, .so is the ccTLD of Somalia, and .im is the ccTLD of Isle of Man.

PRIVATE LAYER-HOSTED SITES

PUTLOCKER.IS, **CUEVANA.TV**, WATCHSERIES.IT, and NOWVIDEO.SX (listed as part of the Movshare Group)

This group of websites, all hosted by Private Layer based in Switzerland and Panama, are evidence of the rising popularity among pirate sites of certain Swiss hosting services. Switzerland has announced plans to close a loophole in its law that restricts enforcement against pirate sites. However, at this time, rights holders report that Switzerland is an increasingly popular host country for such sites. PUTLOCKER.IS returns to the List after rebuilding its user base and rising in the ranks to once again become a globally popular site for allegedly pirated movies and television shows. The operator of Putlocker is based in Vietnam. Another streaming site based in Argentina, CUEVANA.TV, attracts large numbers of Spanish-speaking users from Argentina, Mexico, Spain, and Chile.

REBEL

A DIVISION OF MOMENTOUS

This Canada-based domain name registrar allegedly knowingly licenses domain names to a disproportionate number of illegal online pharmacies. Rebel maintains less than 0.05 percent of the total domain name market but reportedly more than 17 percent of the entire illegal online pharmacy market.^[28] One submission estimated that Rebel sells domain name registration services to 4,850 illegal online drug sellers.^[29] Private organizations and regulatory authorities have notified Rebel of the illegal nature of the online pharmacies it sponsors but Rebel has reportedly not taken action and has allegedly become a “safe haven” for criminal enterprises specializing in counterfeit drugs.^[30] This year’s submissions reflect that, while the role of domain name registrars remains an ongoing subject of important discussion, Rebel’s outlier status is evidence that it is not taking measures that other domain name registrars have found to be reasonable to address infringement, such as having policies that prohibit domain names from being used in furtherance of criminal activity and acting on complaints as appropriate to suspend or lock domain names of illegal online pharmacies.

[28] United States. Cong. House. Subcommittee on Courts, Intellectual Property and the Internet. Stakeholder Perspectives on ICANN. Hearings, May 13, 2015. 114th Cong. 1st sess. (testimony of John C. Horton) available at http://judiciary.house.gov/_cache/files/479d5a53-11d3-4919-80fb-e8e24d462cbf/legitscript---john-horton---house-judiciary-committee-testimony---05-13-15.pdf

[29] Previously-listed domain name registrar **Tucows** was again nominated this year. Illegal online pharmacies reportedly continue to obtain domain names from Tucows.

[30] Consumer information regarding online pharmacies is available from the U.S. Food and Drug Administration’s through the BeSafeRx campaign (<http://www.fda.gov/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/BuyingMedicinesOvertheInternet/BeSafeRxKnowYourOnlinePharmacy/>) and Know Your Source campaign (<http://www.fda.gov/Drugs/ResourcesForYou/HealthProfessionals/ucm389121.htm>) as well as at the following websites: <http://safeonlinerx.com>; www.safemedsonline.org; and www.nabp.net/programs/accreditation/vipps While these sites focus primarily on the U.S. audience, similar resources are available to consumers outside the United States, including at <http://asop.eu/home>

RAPIDGATOR.ORG AND RUTRACKER.ORG

Formerly **TORRENTS.RU**

Commenters from the book publishing, movie, entertainment software, and music industries all nominated Rapidgator for inclusion on this year's List. Rapidgator is hosted in Russia but primarily provides allegedly infringing content to users outside of the country. RAPIDGATOR.NET employs rewards and affiliate schemes to compensate users based on downloads and sales of new accounts. Operators of the site allegedly net an estimated \$2 million annually.^[31] RUTRACKER.ORG, hosted in and operated from Russia, is a BitTorrent portal with more than 13 million active accounts. The site is currently one of the most popular in the world and a top site in Russia. Ongoing court action in Russia may result in decreased use of the site, but that court action is not final.

SEGUNDAMANO.ES

Also operating as **VIBBO.COM**

This site is the most popular example of a circumvention device distribution website that allegedly facilitates the unauthorized use of copyright-protected games by selling "mod chips" or game copier hardware that are used to circumvent technological protection measures designed to promote authorized uses. Segundamano is based in Spain.

UPLOADED.NET

Also operating as **UL.TO** and **UPLOADED.TO**

This cyberlocker with alleged connections to Switzerland and Netherlands, provides access to a broad range of unauthorized copies of copyright-protected content, provides a reward system to its users, and reportedly generates over \$6 million per year in advertising and subscription revenues. The site operator allegedly employs multiple IP addresses, domain names, and server locations to evade law enforcement. The site is popular around the world and undermines the market for legitimate content in Japan, Germany, France, Spain, and the United States, sometimes before the content has even been released.

VK.COM

Also known as **VKONTAKTE.COM**

Nominated again this year, vk.com is one of the most popular sites in the world and continues to operate as an extremely popular social networking site in Russia and neighboring countries. vk.com reportedly facilitates the distribution of allegedly infringing mov-

[31] NetNames, Behind the Cyberlocker Door, 28.

ie, television and music files. Social networking sites can serve as a uniquely valuable communication platform, enabling beneficial commercial, cultural, and social exchanges. Most successful social networking sites do so in ways that do not involve the active facilitation of copyright infringement. Reports that vk.com is taking steps to address piracy are encouraging, and the United States hopes to see measurable and lasting measures comparable to other social media sites.

ZIPPYSHARE.COM

Well-known for downloads and distribution of allegedly infringing music, Zippyshare allegedly offers more pre-release music, i.e. music that has not yet been commercially released, than any other cyberlocker. Zippyshare is reportedly hosted in France. Its revenues reportedly come from paid advertising, which targets millions of users from around the world, particularly from India, where the site has an Alexa ranking of 278. Zippyshare pages are known to install malware on visitors' computers and send visitors to dangerous websites.^[32]

Physical Markets

The Internet has brought about a global revolution in the authorized and unauthorized distribution of films, music, software, video games, and books. In many markets, unauthorized online distribution of, or access to, copyright-protected content largely has replaced unauthorized distribution via physical media. In other markets, however, physical media (including CDs, DVDs, video game cartridges, and pre-loaded computer hard drives and other storage devices) continue to be prevalent, with widespread distribution, at times involving local manufacture, through markets such as those identified below.

The Internet also makes available innumerable sites that facilitate the distribution of counterfeit products to consumers worldwide. However, physical markets, such as the ones listed below, remain the primary distribution channel for counterfeit goods in much of the world.

In a global environment, enforcement against unscrupulous retailers, although important, will not be sufficient to reduce the flow of counterfeit products. Enforcement tools, such as asset forfeiture, can help target custodians of locations that sell and store infringing products. The importance of effective border enforcement measures to prevent the exportation of counterfeit goods from their countries of manufacture, the importation into the destination country, and the transiting of such goods through third countries on their way to destination countries cannot be overstated. Another key to reducing piracy and counterfeiting, however, lies in the ability to influ-

[32] Safe Browsing Site Status, Google Transparency Report available at <https://www.google.com/transparencyreport/safebrowsing/diagnostic/?hl=en>. As of December 8, 2015, ten of the online markets on this List were identified as sending visitors to dangerous websites, four were identified as installing malware on visitors' computers, one site was identified for trying to trick visitors into installing programs that harm their browsing experience, and dangerous websites were sending visitors to at least four of the listed sites.

ence demand and redirect the consumers who knowingly participate in illicit trade to legitimate alternatives.

In response to the 2015 *Federal Register Request*, USTR again received fewer nominations for physical markets than in the past, particularly from copyright-intensive industries. Several commenters focused exclusively on notorious markets online due to the rise of digital distribution and online infringement. At the same time, USTR is concerned by new reports of notorious physical markets in Turkey, the United Arab Emirates, Kuwait, Vietnam, and Spain.

As in past years, several commenters continue to identify China as the primary source of counterfeit products. Some Chinese markets, particularly in larger cities, have adopted policies and procedures intended to limit the availability of counterfeit merchandise, but these policies are not widely adopted, and enforcement remains inconsistent. At the same time, a number of online markets in China have been the subject of deterrent enforcement actions in China's courts and at least one online market is exploring ways to investigate counterfeiting and piracy operation offline. It is reported that in many instances, Chinese authorities engage in routine enforcement actions in physical markets. The United States welcomes these efforts and recommends their expansion to combat more effectively the scale of the reported problem in China, with a special focus on the following key markets:

Jin Long Pan Foreign Trade Garment Market Guangzhou
Luohu Commercial Center Shenzhen
Chenghai District Shantou

China is reportedly the global hub for manufacturing counterfeits, and Guangdong province and the cities of Guangzhou and Shenzhen are its epicenter. In Guangzhou, shops in Jin Long Pan Foreign Trade Garment Market allegedly sell low-quality, relatively inexpensive counterfeit versions of American and other branded apparel and footwear on a wholesale scale for export to Africa and the Middle East, in particular. In Shenzhen, merchants in Luohu Commercial Center are reportedly the source of counterfeit goods for many smaller markets in China. Also in Guangdong province, Chenghai District is reportedly an egregious counterfeiting zone where factories manufacture counterfeit toys and consumer goods for wholesalers.

Qi Pu Market
Shanghai

The Qi Pu Market is a wholesale clothing market, housed in five seven-story buildings, offering a wide array of apparel and accessories. Many sellers reportedly conceal their counterfeit products from plain sight. Upon request, customers are reportedly escorted to locations within the market where finished counterfeit products are available for examination and purchase, including in commercial quantities for export.

Silk Market

Beijing

Many retail vendors at the Silk Market reportedly distribute counterfeit consumer and industrial products to Chinese and foreign buyers. Illicit activities reportedly continue at the Silk Market despite welcome efforts by Chinese authorities to work with management and engage in enforcement actions, and even though some rights holders have successfully sued the market's operators. Vendors at the Silk Market reportedly have access to a supply of newly-manufactured counterfeit products to replace those that have been confiscated, and their profits appear to far exceed financial penalties that have been imposed on them. It appears that past civil and administrative enforcement efforts, although imposing some costs, have not actually ended infringement. Nonetheless, China's identification of the Silk Market and other markets as enforcement priorities were welcome steps and resulted in administrative penalties, government inspections, and product seizures. These actions should be intensified and expanded to other markets in China.

Worldwide, from the Americas, to Africa, to Eastern Europe, and in Southeast Asia, Chinese-origin counterfeit goods from these and other Notorious Markets reportedly find their way into markets, businesses, and homes. In some cases, parties with ties to China manage the wholesale and retail distribution channels that facilitate the flow of counterfeit merchandise, including to notorious markets in places such as Lagos, Nigeria; Ciudad del Este, Paraguay; and Bangkok, Thailand.

Computer Village Market, Ikeja Lagos State, Nigeria Oke-Arin & Apongbon Markets Lagos Island, Nigeria

The situation in Nigeria exemplifies why both effective import controls at the destination market and export controls at the country of origin are essential in stopping the flow of counterfeit and pirated goods. Nigerian authorities face challenges in allocating sufficient resources and building the necessary infrastructure to engage in effective import controls against the tide of foreign-manufactured counterfeit products. Computer Village Market is known to be the largest market for knockoff computer products and accessories in Nigeria. Raids by regulators continue, but store owners collude to thwart enforcement efforts and up to an estimated 80 percent of the wide variety of electronic devices, music, movies, and other products available here are still counterfeit or pirated. Nearby, Oke-Arin & Apongbon Markets is reportedly known for counterfeit soft drinks, spirits, and popular consumer goods. Regulatory agencies have conducted raids and made some arrests, but the chaotic nature of these densely populated markets make enforcement difficult.

Ciudad del Este

Paraguay

Ciudad del Este has been named in either the List or the Special 301 Report for over 15 years. Regional organized crime groups are reportedly responsible for the bulk of counterfeit and copyright-infringing goods in Ciudad del Este. The border crossing at Ciudad del Este and the city itself reportedly serve as a hub for the distribution of counterfeit and pirated products in the Brazil-Argentina-Paraguay triple frontier region and beyond. The United States applauds the Cartes Administration's goal of transforming Ciudad del Este into a legitimate marketplace, including the signing of an IPR memorandum of understanding with the United States in June 2015, under which Paraguay commits to take specific steps to improve IPR protection and enforcement in Paraguay.

Galeria Pagé and 25 de Março

Sao Paulo, Brazil

Galeria Pagé and the surrounding 25 de Março continues to be the epicenter of pirate and counterfeit commerce in Sao Paulo and to serve as a distribution hub to other parts of the country. Sao Paulo's "City Free of Piracy" project was heralded for the impact it had locally and throughout Brazil, but since 2013 the municipal government has shifted its focus away from IPR enforcement. Local authorities reportedly have conducted some raids in the Galeria Pagé and 25 de Março area; however, counterfeiting and piracy continues to thrive in open air markets and inside the buildings at Galeria Pagé. USTR urges political support for stronger enforcement in this flagship market complex.

Harco Glodok

Jakarta, Indonesia

Harco Glodok is Indonesia's largest trade center for consumer electronics and related goods. This market reportedly serves as the retail distribution point for a complex piracy and counterfeiting network. The Government of Indonesia's efforts over the past few years have failed to rid this otherwise legitimate market of IPR-infringing goods and services. USTR urges the Indonesian Government, including the recently announced anti-piracy task force under the Creative Economy Agency to launch a sustained, coordinated, and effective effort to tackle widespread counterfeiting and piracy at Harco Glodok and elsewhere.^[33]

[33] Other markets in Indonesia, including those named in previous Lists, were not identified in response to this year's Federal Register Request, but nonetheless require attention.

La Salada

Buenos Aires, Argentina

La Salada continues to operate as South America's largest black market and has plans to expand in 2016. Sellers of counterfeit and pirated products deal openly because enforcement reportedly has been small-scale and intermittent.

Tank Road and Sadar Bazar

New Delhi, India

Numerous markets in India have appeared in past Lists, with no identified meaningful, effective response by the Indian government. In the 2015 Notorious Markets process, India ranked first in terms of the number of nominated physical markets with an increase in reports of counterfeit apparel and footwear. Tank Road is reportedly known for a wide variety of counterfeit products, including apparel and footwear while vendors and wholesalers in Sadar Bazar reportedly sell deceptively similar counterfeit consumer goods and cosmetics. The United States continues to raise the importance of IPR protection and enforcement with India, underscoring the need to combat counterfeiting and piracy in both online and physical markets. The United States encourages India to take sustained and coordinated enforcement action at the Tank Road and Sadar Bazar Markets (New Delhi), previously-listed markets, and numerous other non-listed markets in its territory.

Tepito Mexico City, Mexico

San Juan de Dios Guadalajara, Mexico

Although rights holders commented positively on the IPR enforcement efforts of Mexico's specialized intellectual property crimes unit at the Tepito market, significant levels of piracy and counterfeiting reportedly continue in Tepito, San Juan de Dios, and in dozens of other markets across Mexico. The United States encourages Mexico to continue coordinated law enforcement efforts, including against high-level targets in the distribution chain, to reduce the availability of counterfeit and pirated product in markets across the country. We further encourage Mexico to empower customs officials to interdict infringing imports on their own authority as well to enforce against counterfeit and pirated goods moving in-transit.

MBK Mall

Bangkok, Thailand

IPR holders face a difficult environment in Thailand due to the large number of markets offering counterfeit and pirated goods and services, and a relative lack of enforcement. We appreciate the Government of Thailand's efforts over the past year, including at Pantip Plaza and for the enforcement statistics it provided in response to the Federal Register Request. However, reports indicate that pervasive counterfeiting and piracy continue in most of the previously-listed markets and particularly at MBK Mall (Bangkok) where infringing offerings range from counterfeit headphones and Bluetooth speakers to apparel and footwear to pirated DVDs. USTR requests that Thai authorities conduct sustained, coordinated enforcement actions at any nominated markets in which counterfeiting and piracy are rampant. USTR will continue to monitor the situation. ■

Public Information

The 2015 Notorious Markets List is the result of the fifth OCR of Notorious Markets, which USTR initiated on September 10, 2015, through a Federal Register Request for Public Comments. The request and responses are available at WWW.FEDERALREGISTER.GOV, Docket Number USTR-2015-0016. USTR developed the 2015 List in coordination with the Federal agencies represented on the Special 301 Subcommittee of the Trade Policy Staff Committee (TPSC). Information about Special 301, the TPSC, and other intellectual property rights-related processes and issues is available at [HTTPS://USTR.GOV/ISSUE-AREAS/INTELLECTUAL-PROPERTY](https://ustr.gov/issue-areas/intellectual-property).

To assist U.S. rights holders and consumers who confront IPR infringement online, the U.S. Government continues to expand the tools available on WWW.STOPFAKES.GOV, including by providing links to infringement reporting mechanisms at a number of popular online retailers and markets. These resources are available at WWW.STOPFAKES.GOV/BUSINESS-TOOLS/RETAILER-REPORTING. Victims and interested parties may report IPR theft to U.S. law enforcement agencies either through a link at WWW.STOPFAKES.GOV or directly at WWW.IPRCENTER.GOV/REFERRAL.

The Administration, led by the Office of the Intellectual Property Enforcement Coordinator (IPEC), is in the process of developing a strategic plan to advance the Nation's intellectual property enforcement and policy priorities for 2016-2019 (2016 Plan). The 2016 Plan will provide continued focus on the issues presented in the 2015 Notorious Markets List, including enhancing measures to combat criminal activity in the digital supply chain by encouraging the continued development of industry practices to better identify, prioritize, and disrupt criminal exploitation of U.S.-based services, platforms, and online marketplaces, such as within the financial (payment processor) sector, e-commerce and social media platforms, domain name registrars, and social media sites and apps. Specifically, to combat the illicit trade in counterfeit and pirated goods, IPEC will continue to encourage international partners to implement and enhance ex officio powers for customs authorities to detain and seize goods suspected of infringing intellectual property rights, absent an application by the rights holders. IPEC will also advocate for more aggressive IPR enforcement by customs authorities in FTZs. ■





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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IRON MAIDEN HOLDINGS LTD.,

Plaintiff,

Case No.: 1:18-cv-522

v.

Judge Jorge L. Alonso

THE PARTNERSHIPS AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON SCHEDULE "A", Magistrate Judge Maria Valdez

Defendants.

DECLARATION OF KEITH A. VOGT

I, Keith A. Vogt, of Oak Park, Illinois, declare as follows:

1. I am an attorney at law, duly admitted to practice before the Courts of the State of Illinois and the United States District Court for the Northern District of Illinois. I am the attorney for Plaintiff. Except as otherwise expressly stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows:
2. I hereby certify that the Defaulting Defendant (as defined in the accompanying Memorandum) has failed to plead or otherwise defend this action within the allotted time in violation of Federal Rule of Civil Procedure 12(a)(1)(A).
3. My office investigated the infringing activity of the Defaulting Defendant, including attempting to identify its contact information. Our investigation confirmed that the Defaulting Defendant is primarily domiciled in China. As such, I am informed and believe that the Defaulting Defendant is not an active-duty member of the U.S. armed forces.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: May 16, 2018

/s/ Keith A. Vogt
Keith A. Vogt
Counsel for Plaintiff