June 28, 2018
The Honorable Orrin Hatch
Chairman
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch and Ranking Member Wyden,

The Sports & Fitness Industry Association (SFIA) applauds the Committee’s inquiry into the challenges presented by counterfeiting and efforts to reduce the number of fake products available on-line. SFIA members’ products are targeted for counterfeiters and our industry has taken a variety steps to reduce the production and flow of counterfeit goods into the marketplace.

Thank you for the opportunity to provide insight from the sports and fitness equipment industry on preserving intellectual property rights. Please find background information on the issue from the sporting goods and fitness equipment industry perspective below followed by our responses to the Committee’s specific questions.
On behalf of our members and corporate partners, SFIA is pleased to provide information to the Senate Committee on Finance regarding the on-going activities within our association with respect to informing American consumers on the dangers of counterfeit goods and how we assist our member companies in curtailing the illegal sale of counterfeits through e-commerce sites.

To fully appreciate the situation, it is important to recognize the size and scope of the problem in the United States and the types of illicit activity impacting the industry as a prelude to our responses to the committee’s questions.

We tried to provide a more direct read on the barriers to entry for would-be counterfeiters, overt & covert forensic technologies & tools deployed by our members and future anti-counterfeiting direction for the SFIA in our response. The background is critical to inform the Senate Committee on Finance as to if/how/why this illegal trade is evolving, if/how/why the consumer needs are changing, and what that represents in terms of the current and future impact to the loss of American jobs. With these insights, the Senate Committee on Finance can confidently determine the strategic future course of action with regards to legislation.

Note: This response contains the latest anti-counterfeiting industry figures published by both the International Anti-Counterfeiting Industry Association (IACC) and Smithers Pira of Akron Ohio.
Executive Summary

The Sports & Fitness Association for the past decade has watched closely the anti-counterfeiting efforts its member hard-goods manufacturers and professional sports leagues deploy daily to combat the sales of counterfeit goods and licensed products. Both the golf and tennis manufacturers and major league sports properties such as the NFL MLB, NBA and the NHL were quick to recognize the threat to their revenues, brand equity and reputation brought upon them by the sale of counterfeit goods in the physical and digital marketplace. Each one of these entities has deployed robust and comprehensive anti-counterfeiting programs aimed directly at the consumer in both the physical and digital marketplaces.

The Sports & Fitness Industry Association after months of due diligence selected Surys to be our corporate partner to educate, inform and deploy for our members the latest physical and digital technologies designed to stop counterfeitors and give consumers “peace of mind” knowing they have purchased a genuine product.

Surys, Inc. a market leader in optical and digital security solutions for authentication, product protection and product identification was selected by the SFIA in 2014 to help our members combat counterfeits. During the past four years, Surys Inc. has presented to the general membership at its annual conferences, participated in roundtable discussions at SFIA. Legal Summits and met with dozens of member manufacturers on
a one-one one basis to raise the awareness of this problem and offer members comprehensive security solutions to protect their brands and intellectual property.

Industry Overview

Counterfeit goods, software piracy and the theft of trade secrets cost the American economy as much as $600 billion a year according to the IACC. Counterfeit goods alone cost the U.S. economy $41 billion and the main culprit is China, including Hong Kong, which represents over 85% of counterfeit goods entering the United States.

Sporting goods represents only 1% of counterfeit products seized in the United States. Luxury goods like handbags, shoes and accessories has for the first time in 2017 surpassed pharmaceuticals as the most counterfeited items coming into the U.S.

Threats to brand equity are in addition to counterfeiting, diversion, unauthorized use of the mark, tampering and theft. Most of our members are concentrated on brand creation, enhancement and maintenance and only a handful of industry groups inside of the SFIA invest in brand protection. Fighting counterfeiting, diversion and unauthorized use of the mark affect a company's budget and its cost of goods sold. Many of our newest members do not have the mechanisms or systems in place to even quantify their losses due to counterfeiting and diversion.
The North American security providers deployed in 2017 on behalf of all US brands the following expenditures for brand protection by function:

- Tamper evidence labels and sleeves... $314M
- Supply chain Security.................. $183M
- Consumer confidence labels........... $210M
- Internet monitoring services........... $150M
- Loss prevention tags.................... $20.8M-

The U.S. is by far the largest consumer of fake goods consuming more than three times more than Mexico, the second largest. Counterfeit consumer electronics is by far the largest group followed by software, food, auto parts, toys, music and clothing.

The US together with the EU has taken the lead in developing standards and regulations to address the counterfeit problem. Here are just a few:

- IDEA –STD 2016....inspection processes for the Electronics Association that are merged into the TQM systems of the brand owner

- Food Safety Modernization Act...time, tempature and humidity seals designed to prevent food safety problems before they happen

- Drug Supply Chain Security Act (DSCSA) ...requirements to electronically track pharmaceuticals throughout the distribution system and mandates a national license program for wholesalers, distributors and third-party logistics providers.
The “internet of things” has created new opportunities for selling and advertising illegal goods to an ever-widening pool of potential customers. As a result, many of these counterfeit goods are being delivered directly into the home from China making it extremely difficult to interdict these counterfeit goods before they enter the United States. Pallet by pallet distribution has been replaced by box by box shipments directly from the counterfeiters to the consumer.

This shift to online distribution has raise a variety of difficulties for the SFIA members who seek to enforce their rights against individuals who are able to operate with relative anonymity and beyond the jurisdiction of U.S. courts or law enforcement. This proliferation of this illicit online trade poses a threat to consumer confidence in the legitimacy of the internet as a commercial platform.

The SFIA, working with its security partner Sury's, is trying to raise the awareness of this growing problem among its members and present a business case endorsing both an on-line and physical security plan that protects the product, authenticates the product and tracks the product throughout the global supply chain.

Here are some of the developing technologies shared with our members over the past 24 months:

- Product authentication for consumers using smartphone. Consumer interaction and data analytics are already being deployed that allow consumers to read
encrypted digital chips and QR codes simultaneously to get a positive authentication with their smartphone cameras.

- Printed electronics...emerging serialization technology but with high unit price so adoption has been limited
- RFID tagging...tried and tested tool for inventory management but the unit cost is not acceptable to most if not all of our membership.
- Autonomous database...allows product ID and supply chain data on packaging and product in real-time.
- Internet monitoring and domain name management...digital enforcement services that have well-established relationships with the major auction sites, B2B trade boards and marketplaces, domain registrars and domain hosts globally. This means that the team is able to affect fast, compliant takedown and enforcement actions. Expert analysts monitor auction sites, perform de-listings and seller shutdowns with compliance tracking.

Market Place Sites.
Infringing listing notifications shall be sent to the agreed B2C and B2B sites that infringe Client’s Intellectual Property Rights.

Fraudulent and or Counterfeit Websites.
Deactivation requests shall be sent to hosting providers and domain registrars to affect the deactivation of fraudulent and or counterfeit websites. The result of
these actions will be that the domain is either suspended or the infringing website content is removed.

**Infringing Websites.**

Cease and desist communication shall be sent to the third-party registrant/owner of an infringing website requesting that the registrant/owner of an infringing website cease and desist the trade mark or copyright infringement.

In summary, while suppliers and security solutions companies that excel at developing overt, covert and digital elements which cannot be copied or forged, brand owners such as our membership are predominately interested in whether the investment they make in such technologies will result in the prevention of the counterfeit problem. As a result, the level of adoption has been slower than the growth of the problem. SFIA is committed to the on-going education of our members and will work with security providers on building a better business case.

Our specific responses to your inquiry are a collaboration of input provided by an internationally recognized optical and digital security specialist (Red), a firm who represents SFIA brands on anti-counterfeiting efforts in China (dark blue) and SFIA member companies (light blue). Please find our responses below:
1. Do you warn consumers about the risk of counterfeits of your products, their availability, and/or how to avoid accidently purchasing them, and if so, how?
   a. Do you believe that your consumers understand the significance of purchasing counterfeit versions of the goods?
      i. We believe that a majority of consumers are seeking legitimate products and are genuinely upset when they purchase a good online and receive a counterfeit item. For most consumers, once they use the product they are able to distinguish a difference in quality and performance.
      ii. It is common for consumers to contact brands or leave negative comments online regarding the products they purchased, not knowing they purchased counterfeit items.
      iii. Our member hard and soft-good manufacturers take the lead in warning consumers about the risks of counterfeit products. Industry leaders in the golf and tennis industry have deployed a robust security label program that helps consumers identify real from fake items. The professional sports leagues provide the most visible consumer awareness program around their major championships and all-star weekends. MLB’s “if it’s got the seal campaign” has been very effective in moving consumers off counterfeit products and only buying genuine product. Consumers subconsciously employ a risk/tolerance analysis when deciding whether to purchase a counterfeit good. Consumers are more likely to
purchase a counterfeit jersey or handbag than say a high-end golf club, where safety and performance will be impacted.

iv. Golf consumers often do not have a full understanding of the quality and performance issues that could arise with purchasing fake golf equipment and there is a general lack of understanding amongst all consumers regarding the significance of purchasing counterfeits in terms of the criminal enterprise that fuels and operates the counterfeit trade.

b. What challenges exist in informing consumers of the risks associated with the purchase of counterfeit goods?

   i. We support campaigns to increase awareness of counterfeits and the negative impact counterfeits have on innovation.

   ii. The challenge is often less about informing consumers about the risk, but rather, about providing them the information to be able to identify suspicious goods when shopping online. We would like to see platforms provide consumers with the information they need to determine if the goods are legitimate, for example: who is selling the product, what is the seller's history, does the seller have negative reviews for selling counterfeits, what does the product look like, is it a legitimate photograph, are there photos of the labels etc.

   iii. Making the issue of counterfeits take on a greater significance amongst consumers. Getting consumers to take seriously the fact
that buying fakes fuels criminal enterprise. A survey conducted by the Group by the Harris Polls found that twenty-nine percent of Millennials (ages 18-34) and 26 percent of those aged 35-44 said that counterfeits are often the same quality as the real products. Furthermore, only 58 percent of Americans said they believe golf products are counterfeited frequently -- compared to 86 percent that said they believe fashion products are counterfeited frequently.


2. What tools do you provide consumers to verify the authenticity of their goods?
   a. We like many brands are adopting and currently testing forensic and tracking technologies.

   b. The Groups members publish information on their websites to assist consumers in verifying the authenticity of golf products and on www.keepgolfreal.com. Consumers are advised to deal with authorized dealers and can contact the specific brand for authentication support.

   c. Individual members of our association use a variety of overt, covert and digital tools to help consumers as well as investigators verify the authenticity of their goods. Serialized holograms, color-shifting films,
watermarks, taggants, RFID chips and printed electronics are used in our members brand protection efforts.

3. Please describe how you coordinate with e-commerce platforms to curtail counterfeiters?

   a. Through a global monitoring program, our digital brand protection team and our external vendors scrape, collect, analyze and qualify all relevant offers, report counterfeits through notice and take down systems.

   Further, we engage with platforms on initiatives to create more collaboration to remove counterfeit on the e-commerce platforms. Through these initiatives, we conduct intense and thorough monitoring campaigns and share our analysis and detailed reports with the platforms to have them set up or enhance their proactive and preventive measures.

   b. While the S.F.I.A. does not coordinate with e-commerce platforms to curtail counterfeiters, our members contract with internet monitoring services companies to analyze, identify the fraudulent consumer marketplaces and are enabled to issue take down notices which in many case shot down fraudulent sites.

4. Once you suspect that counterfeit goods are being distributed, by either an importer or by a distributor or distribution network within the US what types of
actions, including the initiation of litigation do you pursue? Please provide examples.

a. We send notices to platforms and keep monitoring the marketplace.

b. We contact platforms in multiple ways, if necessary, to have a suspected counterfeit item removed. We also ask platforms to monitor certain sellers (its multiple accounts, if any), investigate and share info with law enforcement entities.

c. We actively work with law enforcement at the local, state, and federal level for medium and large-scale operations and encourage platforms to support these efforts.

d. We work closely with CBP and help educate custom officials on how to spot counterfeit goods

e. We hire private investigators to assist CBP with inspections and risk assessment on counterfeit shipments

f. We respond directly to requests from CBP to authenticate goods they have detained, and suspect are counterfeit

g. We regularly send cease and desist orders to importers and sellers of counterfeit, informing them of our right.

h. We initiate litigation against counterfeiters who knowingly engage in the production, importation, and/or sale of counterfeits

i. In the last several years, golf manufacturers have filed 12 lawsuits in federal court against 723 defendants to shut down counterfeit
websites. These lawsuits have resulted in injunctions ordering the transfer of over 1300 domain names to the Group.

j. The S.F.I.A. is not an anti-counterfeiting organization and thus does not participate in the discovery of counterfeit operations and in no circumstances gets involved with the initiation of any litigation. These responsibilities remain in the hands of our individual brand owners and their corporate security and brand protection teams. Our members have both internal and external investigative teams performing this diligence and in many cases work with the International Anti-Counterfeiting Coalition known as the IACC located in Washington D.C.

5. Do you participate in brand registration and verification programs provided by e-commerce platforms or any other intermediary? What features of such programs have been useful in identifying and removing counterfeit products?

a. Yes, we participate in brand registration programs, however, these programs vary from one platform to the other. Generally, they are very burdensome and make it very hard for brands to enforce their rights efficiently or in a timely manner. For example, when platforms have a large number of listings it is especially difficult to enforce on all the country-based platforms of the same group, or to follow-up and keep track of the listings submitted by the brands using these protocols.

b. The SFIA does not participate in brand registration and verification programs provide by e-commerce platforms. This is the sole responsibility
of our member organizations. Internet monitoring and domain name management services firm have been somewhat successful in these endeavors and as such, many of the members have increased their spend with these firms.

6. What other services, tools, protections, and assistance do you provide?
   a. The SFIA provides informational platforms such as conferences, legal summits and white papers covering all aspects of anti-counterfeiting tools and illicit trade activities on a regular basis to its members.

7. Have you ever conducted test buys through online e-commerce platforms? If so, can you provide us with information on the outcome of the test buys?
   a. Yes, we conduct regular test buys. However, implementing test purchase programs is very burdensome and is not feasible on platforms where there is a large percentage of listings for which brands do not have sufficient info to even begin to authenticate the goods. Brands are not in the position to get in touch with each and every online seller suspected of selling counterfeits to ask for additional information and pictures.
   b. Our SFIA members regularly through their third party investigative partners perform audits and test-buys in both the physical and digital marketplaces. The SFIA does not get involved and does not have access to any of this information.
8. What do you do to remove counterfeits from the stream of commerce?

   i. We actively send notice and take down requests, working directly with platforms, work with all levels of law enforcement, CBP, and hire investigators. We also analyses global notice and take down trends as to identify patterns, that we indicate to platforms to have them improve their proactive and preventive measures.

   ii. Again, the SFIA’s charter does not include participation directly in any anti-counterfeiting activities such as IP protection, fraudulent websites, fake goods detections or removal of bogus sites. Internet monitoring services companies perform these duties on our member’s behalf on a daily basis for monthly fees dependent on the scope and breadth of the product line.

9. In your view, what are the challenges in assisting consumers from inadvertently purchasing counterfeits and better targeting distributors of counterfeit goods?

   a. What concrete steps can be taken to address these challenges?

1. Platforms could share full and detailed data with rights owners, such as: 1) listings that have been proactively and reactively removed 2) account information of sellers that have been suspended or banned from the platform 3) account information of repeat infringers.

2. Platforms should be using information they have to proactively identify suspicious listings. Including: Price level (ex. under xx for footwear); Shipping
time (over 14 business days); Multiple products available (different sizes and colorways); Negative sellers' history and feedback; Lack of pictures (e.g. pictures of labels); Lack of information in the listing description.

3. Platforms can use automated tools to proactively address this problem and prevent future occurrences. For example, platforms can proactively screen listings and use algorithms and machine learning to flag potential illegal content. Platforms can also adapt their existing anti-fraud systems to tackle the problem of online counterfeits.

4. Other potential actions items:
   - Timely take downs when posts are flagged
   - Banning repeat offenders
   - Request proof of authenticity from 3rd party sellers
   - Platforms working with law enforcement
   - When platforms learned that illicit items have already been sold, notify the consumer and use the profit to invest in anti-counterfeit measures.
   - Engage more systematically in collaboration with brands and law enforcement authorities when platforms encounter large syndicates of counterfeitters, repeated infringers or have identified trends.

5. The biggest challenge facing consumers from inadvertently purchasing fake products is adoption of a ubiquitous method for consumers to authenticate their
product bought on-line from the marketplace. The technology exists but our members have not seen the value or business case to get fully on-board with the technologies provided by our partner, Sury's or other alternatives. Additionally, consumers have a hard time determining the location of the marketplace they are purchasing from. The fraudsters go to extreme lengths in hiding the country of origin for their illegal commerce.

The SFIA could lobby their members to adopt a security label program, verifiable by smartphone to the various industry groups that make up our membership. This is what all the professional sports leagues due with all their licensees that manufacture and distribute their licensed products. A revenue stream could be created for the SFIA through a rebate from its security vendor generating substantial dollars to help educate the consumer directly and thus give consumers piece of mind knowing they purchased a genuine item.

10. Do you engage with US federal and/ or local authorities to remove counterfeits from the stream of commerce and to curtail their distribution in the US? If so, what authorities and types of activates and coordination efforts have proven successful, and are there gaps in such engagement?

i. We regularly engage with Customs and Border Protection and Homeland Security on the federal level to pursue importers of
counterfeits, as well as local and state authorities pursuing domestic sale of counterfeits. When engaged, all authorities are excellent partners, unfortunately, these cases are often not a priority.

ii. The SFIA as an Association does not engage directly with any U.S. federal or local authorities in order to remove counterfeits from the marketplace.

b. Have you initiated civil litigation for such activity? What are the barriers to such action?

i. We engage in civil litigation against large targets in various countries. However, establishing that the defendants had knowledge they were engaged in counterfeit commerce can be a barrier to a successful litigation. These actions are very costly and damages award are often low and do not act as a deterrent. In addition, damages can be difficult to collect as counterfeiters are often located in countries where enforcing a judgment is very complex, if not impossible, or they hide behind shell companies.

c. Have federal or local authorities brought prosecution for such activity concerning your intellectual property? What are the barriers to such action.

i. Our experience has been that prosecutors at all levels do not prioritize pursuing cases against counterfeiters, unless we are able
to demonstrate a significant loss of business, or ties to other crimes.

11. Do you engage with foreign governments to curtail the proliferation of counterfeits? If so, what types of activities and coordination efforts have proven successful? What has not?

a. We engage in various programs: awareness campaigns, domain name seizures, collaboration on investigations and actions against vendors active on social media, through websites or selling platforms, participation to the Memorandum of Understanding lead by the European Commission which aim is to facilitate collaboration between brands and several major selling platforms.

These actions help in fighting online sales of counterfeits but have limited impact:

- Platforms do not willingly and fully share the information they have regarding counterfeiters
- Law enforcement agencies have difficulties prioritizing the targets for which their action would have the biggest disruptive impact
- Brands do not have the capacity to easily identify targets or the most visible and active counterfeiters
- It is very difficult for brands to identify counterfeits offered online without assistance from the platforms that have background
information regarding their vendors (brands do not have access to this information)

b. In China during 2017, the Group participated in 7 administrative cases resulting in the seizure of 3,709 counterfeit golf products and 3 criminal cases resulting in the seizure of 1,243 counterfeit golf products. The Group recently announced the seizure of the 2 millionth counterfeit golf product in China since the Group was formed. Further information is available here.


12. If you become aware of a counterfeit, either distributed to a consumer or otherwise within your control or stewardship, what, if any, actions can you take to prevent the sale of the good?

a. We actively engage with law enforcement agencies.

b. The SFIA would immediately notify our member companies if we were made aware through our security partner or by any other means, the existence of counterfeit goods in the physical or digital marketplace. Our members have well-trained teams in place to jump into action if necessary.
Thank you for the opportunity to share the Sports and Fitness Industry's perspective on the counterfeiting problem in America. Please help American businesses combat counterfeits. Please let me know if you have any follow-up questions.

Sincerely,

[Signature]

Tom Cove
President & CEO