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E-COMMERCE PLATFORMS AND COUNTERFEIT PRODUCTS IN SINGAPORE

Judicial Symposium on Intellectual Property 2023
Keynote Speech

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TOPICS

- 1. LAWS AGAINST THE SALE OF COUNTERFEIT PRODUCTS IN SINGAPORE**
- 2. REGULATION OF E-COMMERCE PLATFORMS IN SINGAPORE IN RESPECT OF COUNTERFEIT PRODUCTS**
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LAWS AGAINST COUNTERFEIT PRODUCTS IN SINGAPORE

LAWS AGAINST COUNTERFEIT PRODUCTS IN SINGAPORE

Singapore's framework of laws protecting intellectual property rights ("IPR") generally renders unlawful the manufacturing and sale of counterfeit products.

- The statutes in Singapore protecting IPR include:
 - Copyright Act 2021, which protects original authorial works, including artistic works;
 - Trade Marks Act 1998, which protects registered trade marks in Singapore, as well as trade marks which are well known (whether registered or otherwise) in Singapore;
 - Registered Designs Act 2000, which protects registered designs;
 - Patents Act 1994, which protects registered patents and inventions; and
 - Geographical Indications Act 2014, which protects geographical indications.
- Counterfeit products potentially infringe at least one of the above IPR, as they copy / imitate / pass off as an authentic product without the authorisation of the IPR owner.

LAWS AGAINST COUNTERFEIT PRODUCTS IN SINGAPORE

Singapore's framework of laws protecting intellectual property rights ("IPR") generally render unlawful the manufacturing and sale of counterfeit products.

- Infringement of IPR protected by the various statutes primarily attracts a civil action against the IPR infringer though in some cases, it may even attract criminal prosecution.
- Therefore, IPR owners can avail themselves of the laws in Singapore protecting IPR by taking civil action against the seller of the counterfeit products. In such civil actions, the Singapore Courts can award remedies such as damages, a delivery up of the counterfeit products, as well as an injunction restraining future manufacturing or sale of the counterfeit products.
- Further, some of the IPR statutes in Singapore include IPR protection by way of border enforcement measures. Singapore customs officers can, on their own volition or by way of information provided by IPR owners, examine and seize any imported/exported goods that are suspected of infringing IPR.

LAWS AGAINST COUNTERFEIT PRODUCTS IN SINGAPORE

There also exists in Singapore consumer-protection legislation that imposes restrictions on the sale of goods that are false described or advertised.

- Under the Sale of Goods Act 1979, where there is a contract of sale by description, there is an implied condition in the contract of sale that the goods will correspond with the description.
- Under the Consumer Protection (Fair Trading) Act 2003, it is an unfair practice to deceive or mislead consumers, or to make false claims. Such unfair practices may lead to civil actions from aggrieved consumers, as well as potentially face regulatory action from the Competition and Consumer Commission of Singapore.

REGULATION OF E-COMMERCE PLATFORMS IN SINGAPORE IN RESPECT OF COUNTERFEIT PRODUCTS

REGULATION OF E-COMMERCE PLATFORMS IN SINGAPORE IN RESPECT OF COUNTERFEIT PRODUCTS

All e-commerce platforms operating in Singapore are subject to Singapore laws protecting IPR.

- The various IPR statutes render unlawful the manufacturing, sale, or copying of the respective IPR.

For e-commerce platforms that function only as a marketplace for sellers to sell their products, Singapore law generally does not specifically require e-commerce platforms to take measures against counterfeit products offered for sale by others on the platform.

- E-commerce platforms which function only as a marketplace will likely not be considered the seller of the counterfeit product, as the e-commerce platform is merely the platform on which the buyer and seller of the counterfeit product perform the sale transaction.

REGULATION OF E-COMMERCE PLATFORMS IN SINGAPORE IN RESPECT OF COUNTERFEIT PRODUCTS

However, if the e-commerce platform provider adopts a more active role in the sale, it may be regarded as a co-seller of the products and it should be mindful of the relevant IPR and applicable consumer protection laws as it may be identified as a co-infringer or co-accused.

- Notably, there is a growing trend of e-commerce platforms selling products under their own house brands.
- In such a case, the e-commerce platform provider would be liable as the sole-infringer/sole accused for any IPR infringements and consumer protection claims that may arise from its sale of products under its house brand.

REGULATION OF E-COMMERCE PLATFORMS IN SINGAPORE IN RESPECT OF COUNTERFEIT PRODUCTS

Further, if the e-commerce platform acts as a reseller of goods, in that it purchases a good from third party in one transaction, and subsequently resells the good to the consumer in a separate transaction, it can be liable for any IPR infringements and/or breaches of consumer protection laws that may arise from the act of resale.

Case study: Calvin Klein, Inc and another v HS International Pte Ltd and others [2016]

- **A** was an e-commerce platform based in Singapore, which functioned as a platform on which customers could purchase products from another e-commerce platform from overseas.
- Whenever a customer would purchase products using **A**, the owners of **A** would purchase the same products from the e-commerce platform from overseas and sell them on to the customer at a profit.

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REGULATION OF E-COMMERCE PLATFORMS IN SINGAPORE IN RESPECT OF COUNTERFEIT PRODUCTS

Case study: *Calvin Klein, Inc and another v HS International Pte Ltd and others* [2016]

- Counterfeit goods were available for purchase on **A**. Consequently, **A** was sued for trade mark infringement by Calvin Klein, Inc. **A** argued that it was merely a customer-to-customer platform which provided customers a platform to order goods from the e-commerce platform from overseas.
- The Singapore High Court held that **A** was liable for trade mark infringement.
- The High Court held that, unlike other e-commerce platforms where there is only one contract for sale between buyer and seller, **A**'s business model meant that there were two contracts: between the overseas seller and **A**, and between **A** and the end-customer. As such, **A** was in effect, selling the counterfeit products.
- This finding was buttressed by the fact that the owners of **A** were free to set whatever price it wished for the goods sold on **A** and earn the resulting profit. g

ROLE OF PUBLIC-PRIVATE PARTNERSHIPS IN TACKLING COUNTERFEIT PRODUCTS ON E- COMMERCE PLATFORMS

ROLE OF PUBLIC-PRIVATE PARTNERSHIPS IN TACKLING COUNTERFEIT PRODUCTS ON E-COMMERCE PLATFORMS

Trend of Singapore e-commerce platforms implementing self-regulation initiatives

- A number of e-commerce platforms in Singapore have recognised the issues that IPR owners face with counterfeit products, and have generally implemented self-regulation measures, such as:
 - seller verification;
 - money-back guarantees to customers for inauthentic products;
 - intellectual property protection portals where IPR owners can submit and monitor complaints against products on the respective e-commerce platforms.

ROLE OF PUBLIC-PRIVATE PARTNERSHIPS IN TACKLING COUNTERFEIT PRODUCTS ON E-COMMERCE PLATFORMS

Trend of Singapore e-commerce platforms implementing self-regulation initiatives

- Private sector partnerships aimed at tackling counterfeit products exist in Singapore.
- A number of e-commerce platform providers are part of the **Southeast Asia eCommerce Anti-Counterfeiting Working Group** (SeCA Working Group), which creates a consolidated online directory to the respective IPR protection policies, programmes and tools available on all participating platforms for IPR owners to manage and deter IPR-infringing activities on the participating platforms.

ROLE OF PUBLIC-PRIVATE PARTNERSHIPS IN TACKLING COUNTERFEIT PRODUCTS ON E-COMMERCE PLATFORMS

Importance of public-private partnerships

- The public sector's capacity to create regulatory solutions is often stymied with regulatory lag. The issue of regulatory lag is exacerbated by the pace of technological innovation, particularly in e-commerce.
- E-commerce platforms are generally at the forefront of issues that may arise from e-commerce transactions, and will be most informed of the trends in e-commerce, particularly in relation to counterfeit products.
- Effective public-private partnerships targeted at regulatory issues are most effective when the partnership creates an alignment of interests between both public and private sectors.

ROLE OF PUBLIC-PRIVATE PARTNERSHIPS IN TACKLING COUNTERFEIT PRODUCTS ON E-COMMERCE PLATFORMS

Case Study: The E-Commerce Marketplace Transaction Safety Rating (the “TSR”)

- In 2022, the Inter-Ministry Committee of Scams (jointly established by various Singapore government ministries, including the Ministry of Home Affairs and the Ministry of Trade and Industry) launched the TSR in collaboration with major e-commerce platform providers.
- The TSR is a rating which indicates the extent to which they have implemented anti-scam measures that ensure:
 - a. user authenticity,
 - b. transaction safety,
 - c. availability of loss remediation channels for consumers,
 - d. the effectiveness of the anti-scam measures.

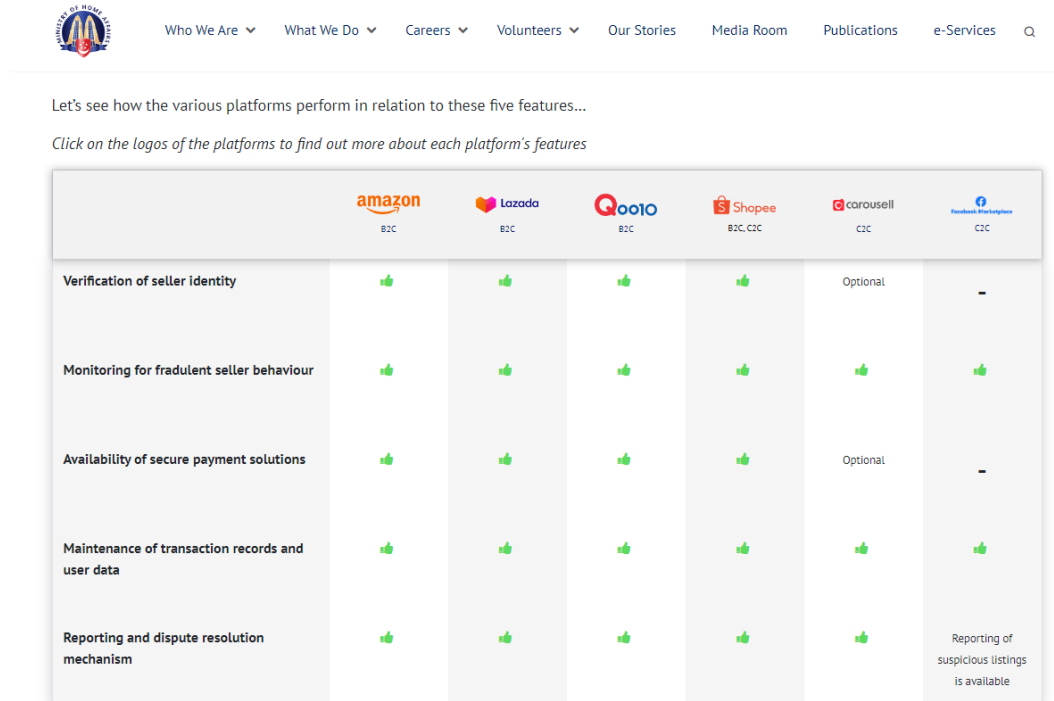


Source: [Ministry of Home Affairs Infographic](#) (last accessed 29 September 2023)







ROLE OF PUBLIC-PRIVATE PARTNERSHIPS IN TACKLING COUNTERFEIT PRODUCTS ON E-COMMERCE PLATFORMS

Case Study: The E-Commerce Marketplace Transaction Safety Rating (the “TSR”)

- The Ministry of Home Affairs maintains a website which indicates the TSR rating of the participating e-commerce platforms, and sets out the measures that each participating e-commerce platform implements.



The screenshot shows the Ministry of Home Affairs website with a navigation bar and a section titled "Let's see how the various platforms perform in relation to these five features...". Below this is a table comparing five e-commerce platforms across five features. The platforms are Amazon, Lazada, Qoo10, Shopee, and Corousel, each with a B2C or B2C, C2C rating. The features are Verification of seller identity, Monitoring for fraudulent seller behaviour, Availability of secure payment solutions, Maintenance of transaction records and user data, and Reporting and dispute resolution mechanism. The table uses green thumbs up icons for positive ratings and text for optional or negative ratings.

	 B2C	 B2C	 B2C	 B2C, C2C	 C2C	 C2C
Verification of seller identity	👍	👍	👍	👍	Optional	-
Monitoring for fraudulent seller behaviour	👍	👍	👍	👍	👍	👍
Availability of secure payment solutions	👍	👍	👍	👍	Optional	-
Maintenance of transaction records and user data	👍	👍	👍	👍	👍	👍
Reporting and dispute resolution mechanism	👍	👍	👍	👍	👍	Reporting of suspicious listings is available

Source: [Ministry of Home Affairs website on TSR](#) (last accessed 29 September 2023)

ROLE OF PUBLIC-PRIVATE PARTNERSHIPS IN TACKLING COUNTERFEIT PRODUCTS ON E-COMMERCE PLATFORMS

Case Study: The E-Commerce Marketplace Transaction Safety Rating (the “TSR”)

- In order for an e-commerce platform to improve its TSR, it will have to implement measures that:
 - verify seller authenticity,
 - monitor fraudulent seller behaviour,
 - provide secure payment options,
 - maintain transaction records and user data, and
 - implement reporting and dispute resolution mechanisms.
- The standards to be met are set out in a set of guidelines published by the Singapore Standards Council known as Technical Reference 76.

ROLE OF PUBLIC-PRIVATE PARTNERSHIPS IN TACKLING COUNTERFEIT PRODUCTS ON E-COMMERCE PLATFORMS

Moving Forward

- While the TSR and the accompanying standards are primarily targeted at reducing scams, some of the measures that prevent scams that are set out in the standards also potentially assist in reducing the sale of counterfeit products, such as merchant verification, maintenance of transaction records, and reporting mechanisms.
- Moving forward, the Singapore authorities and e-commerce platform providers have an existing basis on which they can collaborate further to establish standards that can be implemented specifically for the purpose of reducing the sale of counterfeit products and/or products that infringe IPR, either by expanding the scope of existing standards, or implementing new ones altogether.

ROLE OF PUBLIC-PRIVATE PARTNERSHIPS IN TACKLING COUNTERFEIT PRODUCTS ON E-COMMERCE PLATFORMS

Moving Forward

- E-commerce platforms can work together to formulate a Code of Practice that sets out uniform standards by which e-commerce platforms must comply with in order to tackle the issue of counterfeit products.
- A commonly agreed Code of Practice can then be adopted by the relevant regulatory authority as the standard by which all e-commerce platforms must abide by, after consultation with the public sector.
- Appropriate incentives can also be provided to incentivise adoption of this Code of Practice – e.g. “safe harbour” provisions for e-commerce platforms who have adopted the Code of Practice shielding them from civil actions brought by IPR owners for counterfeit products sold on the e-commerce platform.

ROLE OF PUBLIC-PRIVATE PARTNERSHIPS IN TACKLING COUNTERFEIT PRODUCTS ON E-COMMERCE PLATFORMS

Key Takeaways

- Successful public-private partnerships will require active cooperation and kickstarting from the private sector.
- Public-private partnerships will be at their most effective when the interests of the public and private sectors are aligned and where the partnership is meant to further this common interest.

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Notes

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