Ref. CALL FOR INFORMATION: CMA DIGITAL MARKETS TASKFORCE

Introduction

- The Transnational Alliance to Combat Illicit Trade (www.TRACIT.org) welcomes the opportunity to contribute our views to the CMA Digital Markets Taskforce.

- TRACIT is an independent, private sector initiative to drive change and mitigate the economic and social damages of illicit trade by strengthening government enforcement mechanisms and mobilizing businesses across industry sectors most impacted by illicit trade.

- Our views necessarily reflect the interconnected nature of illicit trade, and our recommendations seek solutions to common bottlenecks, trends and vulnerabilities that strengthen the fight against illicit trade across sectors.

- It is well-documented that Intellectual Property Rights (IPR) infringements, particularly trademark counterfeiting and copyright piracy, seriously harm UK businesses and put consumers at risk for fraudulent and harmful products.[1]

Publication of new report on Fraudulent Advertising Online

- On 22 July 2020, TRACIT and the American Apparel and Footwear Association (AAFA) published a report that shows that 70 major international brands were targeted by fraudulent advertisements on Instagram and Facebook since 2017, some of which received up to a quarter of a million views before they were detected. https://www.tracit.org/featured-report-fraudulent-advertising-online.html

- Millions of consumers were exposed to thousands of fraudulent advertisements all over social media networks like Facebook and Instagram, or other popular websites like YouTube or Google, where people were not expecting fraud. These adverts took the consumer to illegitimate e-commerce websites that defraud and/or sell counterfeit products and deceitful services.

- Fraudulent advertising is rapidly emerging as a new risk to consumers shopping online – presenting a new gateway to an old problem – the massive world of counterfeiting and piracy available throughout the Internet.

- Consumers risk not receiving goods or buying poor quality or even dangerous products. They are also at risk of having their payment details stolen. Counterfeiters are notoriously linked to serious organized crime, spending their profits on illicit drugs, money laundering and corruption, depriving governments, businesses and societies of hundreds of billions of dollars in taxes, sales and jobs."

What are the causes?

Our report delineates the root causes of the problem, which are shared here as potentially valuable in your efforts to identify system weaknesses and to form remedies.

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[1] http://www.oecd.org/gov/risk/trade-in-counterfeit-products-and-uk-economy-report-update-2019.pdf

- **Limited verification –** Without robust due diligence checks that verify the identity of who is advertising on the platform, fraudulent advertisers are free to exploit the system with little risk of exposure and virtually no risk of punishment or penalty. The placement of a fraudulent advert can be done in just a couple hours at very little cost.

- **System weaknesses –** Fraudsters exploit system weaknesses, such as lacking controls on accounts sponsoring the fraudulent advertisements, such as account history or relevance between advertising accounts and the advertisement.

- **No controls on destination websites -** When Instagram or Facebook users click on fraudulent sponsored adverts, an in-app browser typically directs them to an external websites designed specifically to sell counterfeit or fraudulent products. In the absence of rogue destination websites, fraudulent adverts would have nowhere to redirect consumers. For these reasons, efforts have been directed at domain name registrars and Internet Service Providers to prevent or take down such infringing sites.

- **Little protection from repeat infringers -** It is not difficult to repeat a fraudulent advert, even after being reported.

- **Deceptive practices -** A fraudulent advert typically appearing on Instagram or Facebook targeting a well-known brand can be of very high design quality, showcasing hundreds of products images, often feature very high discounts and bogus logos for payment to entice consumers into a quick purchase.

- **Online advertising supply chain –** Demonstrated by the repeated similarities identified throughout this report, there is a systemic problem with the online advertising supply chain.

What needs to be done?

Per the Call for Information, *Section 2.16, Remedies for Addressing Harms*, we submit the following recommendations included in our report. We believe these measures would help to minimize the *"potential negative effects on platform users"* and could perhaps be included as elements of a future *"code of conduct"*, delineated Section 2.19.

1. *Enhanced "Know Your Business Customer" protocols -* Websites and social media platforms should know who they are working with when accepting paid advertising, by gathering and verifying individual/business name and street address (proven with recognised ID), phone number, email, and a proof of business registration.

2. *Rigorous review of advertisement prior to publication -* To ensure that their terms of service are being adhered to, and that no innocent consumers are being defrauded by fraudulent, scam advertising, all adverts published on a site or platform should be reviewed for infringing content, both algorithmically and where high risk has been flagged, manually. In addition, the external sites to which such adverts link should also be reviewed to determine their legality and authenticity.

3. *Effective reactive measures against fraudulent advertisers -* To act as an effective deterrent to illegal advertising activities, sites and platforms must establish strong, effective, and enforced measures against advertisers who have been found to infringe their terms of service. This should go beyond termination of the advertising agreement and include removal of the infringer's account and blocking the advertiser from the website or platform.

4. *Ensure consumers and rights holders can report and share information about fraudulent advertisers -* Until such time that advertising on websites and social media platforms have a robust system to prevent bad actors, there needs to be avenues for consumers and rights holders to share information that can be used to dismantle criminal networks currently operating on their platforms. Currently, while adverts can be reported and removed, platforms appear unreceptive to receiving trends and data-sharing initiatives that could assist them in blocking bad actors accessing advertising.

5. *Establish requirements for an e-business license for advertisers -* Such a license would require verification of (i) financial disclosures that can be corroborated by third parties (e.g., bank statements), and (ii) physical location information that can be supported by government records or trusted third parties. Such a system could be accompanied by a central registry ideally managed by a highly secure, disinterested party or industry group to maintain the licenses.

Requests for Inclusion

TRACIT requests that the points above are carefully considered during the process following the Call for Information including the Task Force's subsequent work to create standards, promote a code of conduct and promulgate remedies.

In particular, we note that the Strategic Market Status (SMS) held by social media platforms, like Facebook and Instagram and other websites like Google and YouTube conveys a gatekeeper power that has not consistently protected consumers from the adverse impacts of advertising fraud online. In fact, the monopoly-like control of the system and the power to dictate terms and charge fees leaves little room for transparency and competition for and by outside parties.

Steps must be taken to ensure that the internally-controlled gatekeeper powers are not abusive and do not present bottlenecks to ridding the Internet of fraud and unfair competition.

In closing,

- We agree with the Market Study Final Report (para 77, p 22), wherein it is argued that an "*enforceable code of conduct would help address a number of concerns identified in digital advertising markets and consumer-facing services such as search and social media that are funded by digital advertising.*"

- We purport that curtailing fraudulent advertising online is wholly consistent with the Market Study Final Report (para 80, p 23) proposals that "*the code should be based around three high-level objectives (fair trading, open choices, trust and transparency), with principles within each objective, providing greater specificity as to the behaviour required by the code.*"

We hope that the findings of our report shine light on the problem of fraudulent advertising online and can assist in your ambitions to develop a responsive code of conduct.

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For more information, to arrange an interview, please contact:
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TRACIT and AAFA's report is available at: https://www.tracit.org/featured-report-fraudulent-advertising-online.html