

New Claims And New Trends In IP Counterfeiting

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I. Introduction

Counterfeiting is a major business—counterfeit goods average 2 to 3% of total global imports and top \$450 billion in trade value.¹ It is also a developing and maturing business—while traditional “streetcorner” knockoffs still exist, three kinds of more sophisticated copying now drive the field:

- **“Dupe” counterfeits** do not copy a mark outright. Instead, they echo a well-known product’s packaging, shape, taste, or design inexactly, but closely enough to raise a question of source. Budget-conscious consumers may specifically seek out dupes—far from confused, some have featured their purchases of lower-priced look-alikes on social media as an intentional, smart choice.²
- **“Superfake” counterfeits**, conversely, are exact copies. In fact they are so exact—in high-quality materials, construction, stitching, hardware, and even forged authentication markers—that trained specialists struggle to tell them apart from the genuine article.³
- **Pharmaceutical knockoffs** and other public safety threats are also on the rise. Fakes have veered from their historical focus on fashion retail into goods with greater public safety risks, such as auto parts, cosmetics, and especially medicine. Pharmaceuticals face a

¹ OECD, *Global Trade in Fake Goods Reached USD 467 Billion, Posing Risks to Consumer Safety and Compromising Intellectual Property* (May 2025), <https://www.oecd.org/en/about/news/press-releases/2025/05/global-trade-in-fake-goods-reached-USD-467-billion-posing-risks-to-consumer-safety-and-compromising-intellectual-property.html>; see also Office of the U.S. Trade Representative, *2025 Review of Notorious Markets for Counterfeiting and Piracy*, at 18 (Mar. 2026) (reporting the same figure at approximately 2.3% of total global imports, based on 2021 customs data).

² See *A Half-Trillion-Dollar Problem: Inside Fashion’s Counterfeit Economy*, The Fashion Law (2025), <https://www.thefashionlaw.com/a-half-trillion-dollar-problem-inside-fashion-counterfeit-economy/> (describing the normalization of dupe purchasing driven by e-commerce and social media).

³ See OECD/EUIPO, *Mapping Global Trade in Fakes 2025: Global Trends and Enforcement Challenges* (May 7, 2025), <https://doi.org/10.1787/94d3b29f-en> (documenting rising quality of counterfeits and their migration into safety-critical categories).

huge variety of counterfeiting operations, where the copying can turn criminal and even life-threatening.⁴

These developments have transformed counterfeiting litigation. In many ways, these are trademark and trade dress disputes like any other, and turn on the typical questions of source confusion, functionality, distinctiveness and the like. But the new paradigms require more sophisticated countermeasures. A “dupe” counterfeit plaintiff must account for the possibility that some consumers are not confused by the fakes, but know already and choose them on purpose. A superfake that passes a platform’s authentication process can push potential liability from the counterfeiter to the platform that vouched for the goods. And in the highest-stakes categories—counterfeit drugs, auto parts, and other products that pose a direct risk to public safety—the copying blurs the line with criminal law.⁵

II. The “Dupe” Wave and the Confusion Question

a. “Dupes” Drive Conflict Between Retailers and Brands

The proliferation of “dupe” copies has led to a surge of brand-vs.-retailer litigation since mid-2025.⁶ Driven by inflation and other economic pressures, generic brands, store brands, and private-label products that closely resemble their name-brand counterparts are increasingly popular. Unlike “traditional” counterfeit knockoffs, these products may not copy word or design marks outright, but instead mimic the packaging, appearance, taste, or design of higher-priced and well-known brands. That similarity can create confusion in the marketplace as to their source; but savvy consumers may intentionally seek out “dupes” precisely because they offer comparable functionality or aesthetics at a cheaper price. There can also be overlap with genericism, especially where a legitimate product’s own packaging and labels feature minimalist, spare designs. These disputes cluster in several doctrinal and practical categories, as discussed below.

b. Intentional Copying That May Not Deceive Consumers

Like any trademark case, “dupe” cases turn on source confusion, and a product that merely looks like the original does not infringe unless the resemblance is likely to confuse consumers about its source. But that question is sharper in a dupe case because buyers often recognize that product dupes are not genuine name-brand goods, and may actually want them exactly for that reason.

Benefit Cosmetics LLC v. e.l.f. Cosmetics, Inc. is an early example of this. e.l.f. openly conceded its Lash ‘N Roll mascara was inspired by Benefit’s Roller Lash. But after a bench trial, a judge in the Northern District of California found that the product did not infringe, because Benefit had not shown that the product, though a dupe, likely confused consumers.⁷ The court credited Benefit’s

⁴ *Id.* (clothing, footwear, and leather goods jointly account for the majority of seized items by volume, while hazardous categories including automotive parts, medicines, cosmetics, toys, and food are increasingly prevalent).

⁵ *Id.*

⁶ See *Run, Don’t Walk: Dupe Culture, Trade Dress, and the Growing Fight Over Brand Identity*, IPWatchdog (Jan. 12, 2026), <https://ipwatchdog.com/2026/01/12/run-dont-walk-dupe-culture-trade-dress-growing-fight-brand-identity/>; *Dupes, Not Counterfeits: Why Look-Alike Products Are the Trademark Battleground of 2026*, Brooks Kushman (2026), <https://www.brookskushman.com/insights/dupes-not-counterfeits-why-look-alike-products-are-the-trademark-battleground-of-2026/>.

⁷ *Benefit Cosmetics LLC v. e.l.f. Cosmetics, Inc.*, No. 3:23-cv-00861 (N.D. Cal.); see *Federal Court Rules in Favor of Beauty Company’s “Dupe” Mascara Product*, Troutman Pepper (2025), <https://www.troutman.com/insights/trademark-case-shows-infringement-is-often-in-the-eye-of-the->

trade dress as commercially strong, non-generic, and non-functional, yet found no likelihood of confusion, pointing to dissimilar commercial impressions, no evidence of actual confusion across two years of coexistence, and sophisticated buyers who treat a \$6 product and a \$29 product as different goods.⁸ Most important to future dupe cases, the court held that a dupe manufacturer's admitted intention to mimic is not necessarily an intention to deceive as to source.⁹

In another important case, Lululemon has advanced an untested variation of the confusion theory, arguing that Costco shoppers may believe (wrongly) that Kirkland goods are supplied by Lululemon behind the scenes.¹⁰ That theory would exploit a structural ambiguity in Costco's private-label model, in which the manufacturer of a branded product is sometimes the undisclosed supplier of the competing Kirkland version—such that a shopper could plausibly infer a sponsorship or supply relationship that does not exist. Separately, Lululemon has moved to register a DUPE-formative mark of its own as a proactive fencing strategy.¹¹ That case is ongoing.

Other cases confirm that “dupe” issues are not limited to lower-priced goods; luxury goods are not immune to the changing social norms and evolving market conditions driving retailers to offer bargain alternatives for popular fashion products.¹² In *Richemont International SA v. Malidani Jewelry Corp.*, the owner of Cartier and Van Cleef sued over copies of the Cartier LOVE and Juste un Clou pieces and Van Cleef's Alhambra design, which sold for between \$1,500 and \$9,000.¹³ The luxury jewelry brand David Yurman has sued TJX Stores for purportedly selling look-alike versions of its products at T.J. Maxx and Marshalls which consumers on social media described as “‘David Yurman’ dupes.”¹⁴ And in *Tapestry, Inc. v. Last Brand, Inc.*, the owners of Coach sued the operator of the e-commerce platform Quince for selling leather goods which were allegedly “substantially indistinguishable or confusingly similar” to Coach's luxury products.¹⁵

To be clear, “dupe” cases have not entirely rewritten the rules for trademark and trade dress claims. For example, deliberate copying still carries weight. Consistent with classic copying cases such as *Adidas v. Skechers*, courts treat it as circumstantial evidence that the defendant sought to trade on the senior mark, and it can help prove secondary meaning, since a design worth copying

beholder-federal-court-rules-in-favor-of-beauty-companys-dupe-mascara-product/; *Battle of the Beauty Dupes: Courts Side with e.l.f. over Benefit*, The Trademark Lawyer (2025), <https://trademarklawyermagazine.com/battle-of-the-beauty-dupes-courts-side-with-e-l-f-over-benefit/>.

⁸ *Benefit Cosmetics LLC v. E.L.F. Cosmetics, Inc.*, No. 23-cv-00861-RS, 2024 WL 5135604, at *6–7, *12, *14–17 (N.D. Cal. Dec. 17, 2024).

⁹ *Id.* at *10, *17.

¹⁰ See *Always in Season: Luxury, Fashion, and the Law — Dupes for Sale*, Reed Smith (2025), <https://www.reedsmith.com/our-insights/blogs/viewpoints/102147o/always-in-season-luxury-fashion-and-the-law-dupes-for-sale-confusion-not-i/>; *Cases to Watch in 2026*, Foley & Lardner LLP (Mar. 2026), <https://www.foley.com/insights/publications/2026/03/cases-to-watch-in-2026/>.

¹¹ See *Lululemon registers “dupe” trade marks in fight against lookalikes*, Marks & Clerk (Nov. 6, 2025), <https://www.marks-clerk.com/insights/latest-insights/1021tg5-lululemon-registers-dupe-trade-marks-in-fight-against-lookalikes/>

¹² See *The Luxury Reckoning: How Dupes Became the Logical Outcome*, The Fashion Law (2026), <https://www.thefashionlaw.com/the-luxury-reckoning-how-dupes-became-the-logical-outcome/>.

¹³ *Richemont International SA v. Malidani Jewelry Corp.*, No. 1:25-cv-06284-LAP (S.D.N.Y. filed July 30, 2025) (Cartier LOVE and Juste un Clou pieces and Van Cleef's Alhambra design, with accused products priced between \$1,500 and \$9,000); see Foley & Lardner LLP, *supra* note 10.

¹⁴ Complaint, *David Yurman Enters. v. The TJX Cos., Inc.*, No. 1:26-cv-01151-GHW-BCM (S.D.N.Y. Feb. 11, 2026), Dkt. No. 1 ¶¶ 6, 37.

¹⁵ Complaint, *Tapestry, Inc. v. Last Brand, Inc.*, No. 3:25-cv-03082 (N.D. Cal. Apr. 4, 2025), Dkt. No. 1 ¶ 15.

is often one that has come to signal a source.¹⁶ But courts have distinguished the savvy shopper who knows they are buying a copy from the shopper who is likely to be confused. Copying shows only an intent to imitate, which is not the same as confusing consumers about source, and does not substitute for proof that buyers were likely misled.¹⁷

c. The Functionality Defense in Trade Dress—Success and Limits

Trade dress protects the features of a product that identify its source, not the features that make the product work or that competitors need in order to compete. Functionality remains one of the strongest defenses in a trade dress case, and courts have applied it rigorously in both its utilitarian and its aesthetic forms. The defense is especially potent against a dupe, because the very features a brand most wants to claim are often the same features that serve a function, or that embody an aesthetic the whole market shares.

An example is *Deckers Outdoor Corp. v. Last Brand, Inc. (d/b/a Quince)*, where the court granted summary judgment to Quince on Deckers' trade dress claims in October 2025, holding the UGG Classic Ultra Mini Boot and Tasman designs generic, and finding that Deckers had failed to address aesthetic functionality.¹⁸ The court explained that a design that serves an aesthetic purpose independent of source identification, and whose exclusive use would meaningfully disadvantage competitors, has aesthetic functionality and is unprotectable; even a strong consumer association with UGG could not save it.¹⁹

The defense has limits, however, and *WHOOOP, Inc. v. Shenzhen Lexqi Electronic Technology Co.* illustrates them. The District of Massachusetts granted WHOOP a preliminary injunction in February 2026, ordering a Chinese manufacturer to halt U.S. sales of copycat fitness trackers, and rejecting the argument that WHOOP's utility patents rendered its trade dress functional.²⁰ The court drew a line between functional features described in a patent and the ornamental presentation of those features, reasoning that competitors could reach the same function through alternative designs.²¹ Whether an exclusive right would put rivals at a significant non-reputational disadvantage is emerging as a key issue in these cases.

¹⁶ *Adidas Am., Inc. v. Skechers USA, Inc.*, 890 F.3d 747, 754–58 (9th Cir. 2018).

¹⁷ See *Trade Dress Litigation in the Dupe Era: What Works, What Fails, and Early Court Signals*, Lathrop GPM (Feb. 2026), <https://www.lathropgpm.com/insights/trade-dress-litigation-in-the-dupe-era-what-works-what-fails-and-early-court-signals/>.

¹⁸ *Deckers Outdoor Corp. v. Last Brand, Inc.*, No. 23-cv-04850-AMO, 2025 WL 2822685, at *3–5 (N.D. Cal. Oct. 2, 2025) (summary judgment for Quince on the trade dress claims, Oct. 2, 2025, holding the Classic Ultra Mini Boot and Tasman designs generic and finding Deckers failed to address aesthetic functionality); see *UGG-ly Result: Court Calls Classic Ultra Mini and Tasman Trade Dress Generic*, ArentFox Schiff (2025), <https://www.afslaw.com/perspectives/fashion-counsel/ugg-ly-result-court-calls-classic-ultra-mini-and-tasman-trade-dress>.

¹⁹ *Last Brand*, 2025 WL 2822685, at *3–5.

²⁰ *Whoop, Inc. v. Shenzhen Lexqi Elec. Tech. Co.*, 818 F. Supp. 3d 207, 215, 217–18 (D. Mass. 2026) (preliminary injunction granted Feb. 2, 2026, on a \$200,000 bond, distinguishing functional features described in a utility patent from the ornamental presentation of those features); see *WHOOOP Nabs Injunction in Trade Dress Battle Over Minimalist Band*, The Fashion Law (2026), <https://www.thefashionlaw.com/whoop-nabs-injunction-in-trade-dress-battle-over-minimalist-wearable/>; *Whoop Wins Early Block on Chinese Firm's Similar Fitness Bands*, Bloomberg Law (2026), <https://news.bloomberglaw.com/ip-law/whoop-wins-early-block-on-chinese-firms-similar-fitness-bands>.

²¹ *Whoop*, 818 F. Supp. 3d at 215, 217–18.

J.M. Smucker Co. v. Trader Joe's Co. presents one of the most straightforward functionality arguments in recent cases. The round, crimped seal of an Uncrustable arguably holds the sandwich together and preserves shelf life, and competing products use identical construction, so Smucker's has tried to limit its claim to the combination of design and packaging features rather than to the crustless format itself.²² Whether that narrowing saves the claim from a functionality attack remains uncertain under Sixth Circuit precedent.

d. Applications of Secondary Meaning and Genericness

A trade dress plaintiff must show that its claimed design identifies a single source and, for product design, it must also show that the design is not generic, but rather has acquired source-identifying secondary meaning.

Brands have encountered difficulties overcoming the genericness requirement in the dupe context. For a minimalist design that is popular but also widely copied, the ubiquity can cut against protection, and evidence of advertising spend or market dominance alone may no longer carry the day; courts may require more particularized and concrete proof via consumer evidence. Some examples follow.

- In *WHOOP*, the court credited a decade of consistent design, celebrity association, and an instance of actual confusion (an Amazon review that called the copycat a "Whoop brand") all without requiring a consumer survey.²³
- In *Last Brand*, by contrast, the court found a proliferation of similar minimalist designs rendered the trade dresses of UGG's iconic Mini and Tasman shoes generic.²⁴
- A second court reached the same result in *Deckers v. Romeo & Juliette, Inc.*, finding the Classic Ultra Mini, Tazz, and Tasman trade dresses generic.²⁵
- In *Sol de Janeiro USA, Inc. v. MCoBeauty Pty Ltd*, the court also dismissed a trade dress claim but on different grounds. It found the defendant's marketing its "dupes" as offering "comparable aesthetics" in fact undercut its argument that the marks were dissimilar, but nonetheless dismissed the trade dress claim because the plaintiff's allegation that its bottle design conveyed "natural elegance" was too conclusory to plead non-functionality.²⁶

²² Complaint, *J.M. Smucker Co. v. Trader Joe's Co.*, No. 5:25-cv-02181 (N.D. Ohio Oct. 13, 2025) Dkt. No. 1 (basing the complaint in part on functionality of the round crimped seal); see *The PB&J Lawsuit: Smucker vs. Trader Joe's Explained*, Chambers (Mar. 24, 2026), <https://chambers.com/articles/the-pb-j-lawsuit-smucker-vs-trader-joe-s-explained>; *When Design Becomes Destiny: What Smucker v. Trader Joe's Reveals About Brand Protection in the Age of Lookalikes*, Holon Law (Oct. 30, 2025), <https://holonlaw.com/trademark/when-design-becomes-destiny-what-smucker-v-trader-joes-reveals-about-brand-protection-in-the-age-of-lookalikes/>.

²³ *Whoop*, 818 F. Supp. 3d at 218–19 & n.2, 221, 222.

²⁴ *Last Brand*, 2025 WL 2822685, at *4.

²⁵ *Deckers Outdoor Corp. v. Romeo & Juliette, Inc.*, No. 2:25-cv-04220-RGK-SK, 2026 WL 851436, at *2, *16–17 (C.D. Cal. Mar. 20, 2026).

²⁶ *Sol de Janeiro USA, Inc. v. MCoBeauty Pty Ltd*, No. 24-cv-8862 (ER), 2026 WL 2937438, at *8–10, *12 (S.D.N.Y. Sep. 30, 2026); see also Memorandum of Law in Support of Motion to Dismiss Amended Complaint, *Sol de Janeiro USA, Inc. v. MCoBeauty Pty Ltd*, No. 1:24-cv-08862 (S.D.N.Y. Jan. 27, 2026) Dkt. No. 49 (challenging trade dress pleading specificity and Article III standing in light of the plaintiff's reported record revenues); Foley & Lardner LLP, *supra* note 10.

- *Mondelez* confirms that decades of advertising investment make secondary meaning easier to establish, and Mondelez pointed to Aldi's own slogan—"like brands, only cheaper"—as evidence of intentional copying.²⁷
- The Federal Circuit's decision in *Bullshine Distillery v. Sazerac Brands* confirms timing may also be relevant. That court clarified that registrability is assessed as of the time of registration rather than some earlier period—so an established design whose rivals had not yet proliferated when protection was sought may keep its rights even as copies later flood the market.²⁸

e. The Choice of Enforcement Vehicle: Trademark, Trade Dress, Design Patent, False Advertising

As above, "dupe" counterfeits are intentional copies, but the copying may be generic or functional, and may not confuse consumers. This can make a traditional trademark or trade dress case an awkward fit. Brand owners can respond by stacking claims, pairing trademark, trade dress, design patent, copyright, and false advertising, while defendants can present the familiar defenses of functionality, no secondary meaning, and fair use.

Design patent claims are emerging as an important alternative. Design patents protect a precise ornamental appearance and sidestep the distinctiveness and functionality hurdles of trade dress claims. In assessing design patents, courts consider "the overall appearance, visual impressions, artistry, and style of ornamental subject matter."²⁹ Plaintiffs often include a claim for infringement of a design patent in cases involving dupe products. But these claims may invite an invalidity attack that can extinguish the right permanently. The *Last Brand* verdict shows the danger.³⁰ In June 2026—in the same case that had produced the October 2025 summary judgment on trade dress—the jury found that Quince's Australian Shearling Mini Boot infringed Deckers' design patent, but also found the patent invalid.³¹ While the jury did not specify its reasoning on the verdict form, the verdict followed Quince's trial arguments that certain features were functional and the patent drawings lacked sufficient clarity.³² The Federal Circuit's decision in *LKQ Corp. v. GM Global Technology Operations* heightens that risk, because it opened new ground for obviousness challenges to design patents.³³ Today the Federal Circuit applies the same four-factor

²⁷ Complaint, *Mondelez Int'l, Inc. v. Aldi, Inc.*, No. 1:25-cv-05905 (N.D. Ill. May 27, 2025) Dkt. No. 1; see *Mondelez Sues Aldi for Copycat Packaging in Landmark Case*, Packaging Digest (2025), <https://www.packagingdigest.com/packaging-design/mondelez-sues-aldi-for-copycat-packaging-in-landmark-case>.

²⁸ *Bullshine Distillery LLC v. Sazerac Brands, LLC*, 130 F.4th 1025, 1029–30 (Fed. Cir. 2025); see *Key Trademark Developments in 2025 — and Areas to Watch in 2026*, Debevoise & Plimpton (Jan. 2026), <https://www.debevoise.com/insights/publications/2026/01/key-trademark-developments-in-2025-and-areas-to>.

²⁹ *LKQ Corp. v. GM Glob. Tech. Operations LLC*, No. 2021-2348, 2023 WL 328228, at *8 (Fed. Cir. Jan. 20, 2023) (Lourie, J., add'l views), *reh'g en banc granted, opinion vacated*, 71 F.4th 1383 (Fed. Cir. 2023).

³⁰ Verdict Form, *Last Brand*, Dkt. No. 361.

³¹ *Id.*

³² See Dorothy Atkins, *Calif. Jury Invalidates Ugg Maker's Boot Patent In Quince Trial*, Law360 (June 15, 2026); see also Vicki M. Young, *What the Deckers/Quince Patent Lawsuit Failed to Resolve — and What Brands Can Do to Fight Back*, WWD (June 16, 2026).

³³ *LKQ Corp. v. GM Glob. Tech. Operations LLC*, 102 F.4th 1280 (Fed. Cir. 2024) (broadening the grounds for obviousness challenges to design patents); see *Trade Dress Litigation in the Dupe Era*, Lathrop GPM (Feb. 2026), <https://www.lathropgpm.com/insights/trade-dress-litigation-in-the-dupe-era-what-works-what-fails-and-early-court-signals/>.

test to both utility and design patents, alongside other “secondary considerations” unique to design patents, such as commercial success and industry praise.³⁴

A false advertising strategy can avoid those risks, but has its own challenges. In *Williams-Sonoma, Inc. v. Last Brand, Inc.*, Williams-Sonoma targeted comparative claims such as “Pottery Barn quality for half the price” and sought treble damages—an approach that also sidesteps *Wal-Mart Stores v. Samara Brothers*, which bars trade dress protection for product design absent proven secondary meaning.³⁵ Williams-Sonoma ran the same strategy against the viral look-alike search site in *Williams-Sonoma, Inc. v. Carrot Cart, Inc. (d/b/a Dupe.com)*, which settled in October 2025.³⁶ That said, false advertising claims demand different proof from plaintiffs, requiring evidence of “actual deception” or “at least a tendency to deceive a substantial portion of the intended audience” as well as damages resulting from the purported misrepresentation.³⁷

These cases confirm the importance of a “dupe” plaintiff’s careful selection of claims at the outset. There is no risk-free choice, and each case requires balancing of IP, legal theories, evidentiary requirements, and potential pitfalls downstream.

III. “Superfakes” and the Authentication Platforms

A superfake may reproduce materials, hardware, and even authentication markers so precisely that they pass platform inspection—in which case, the selling platform’s own verification badge or certificate becomes the point of liability rather than a defense. Brands may restrict their own distribution channels to render any product offered elsewhere suspect, but secondary markets are unavoidable, and the platforms that specialize in second-hand designer goods invest heavily in authentication while confronting the same uncertainty as the consumers they serve. The result is that authentication guarantees have begun to carry independent legal weight, and when a superfake slips through, the loss tends to land on the platform rather than on the counterfeiter or the buyer.

a. Authentication as a Legal Commitment And Source Of Liability Rather Than a Defense Against It

When a platform grants a verification badge or a certificate to a superfake, two questions follow: (1) whether the guarantee creates enforceable liability to the buyer, and (2) whether selling a counterfeit under an authentication umbrella is itself infringement or willful counterfeiting. Recent litigation has answered both questions affirmatively, at least in certain circumstances.

Nike, Inc. v. StockX LLC established that having an authentication program does not automatically shield the platform from liability. In March 2025, the Southern District of New York granted partial summary judgment for Nike, holding StockX liable for selling thirty-seven pairs of counterfeit Nike

³⁴ LKQ, 102 F.4th at 1295–1300 (citing *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966)).

³⁵ See *Williams-Sonoma Tries Ad-Centric Angle in Quince Dupe Suit*, Bloomberg Law (2026), <https://news.bloomberglaw.com/ip-law/williams-sonoma-tries-ad-centric-strategy-in-quince-dupe-lawsuit>; *Williams-Sonoma, Inc. v. Last Brand, Inc.*, No. 3:25-cv-10118 (N.D. Cal.); *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 216 (2000).

³⁶ *Williams-Sonoma, Inc. v. Carrot Cart, Inc. (d/b/a Dupe.com)*, No. 1:24-cv-06597 (S.D.N.Y.) (dismissed with prejudice after settlement); see *The Real Stakes Behind Williams-Sonoma’s Case Against Dupe.com*, The Fashion Law (2025), <https://www.thefashionlaw.com/the-real-stakes-behind-williams-sonomas-case-against-dupe-com/>.

³⁷ *Parks LLC v. Tyson Foods, Inc.*, 863 F.3d 220, 226 n.7 (3d Cir. 2017).

sneakers that had passed its own authentication.³⁸ Four of those pairs went to Nike's own investigators and thirty-three to a single third-party buyer; that was no issue for the court, but it did reject Nike's false advertising claims and declined to find willfulness, and the case settled thereafter on confidential terms.³⁹ The refusal to find willfulness spared StockX enhanced Lanham Act damages, but the core holding remains that a verification-based platform can be directly liable for distributing physical counterfeit goods that cleared its own process. The scale of the problem shows in StockX's own numbers. The platform has reported that in 2024 it rejected more than 370,000 products, nearly \$74 million in value, including over 30,000 pairs of suspected counterfeit sneakers worth roughly \$10 million.⁴⁰

Chanel, Inc. v. What Comes Around Goes Around LLC extended the principle to resellers and showed that liability does not depend on the goods being crude fakes. In February 2024, a jury found the reseller liable on all four of Chanel's claims and awarded \$4 million in statutory damages,⁴¹ and the final judgment, entered a year later on February 26, 2025, added a permanent injunction and ordered disgorgement of part of the reseller's profits.⁴² The verdict rested on two independent findings. First, the reseller had sold items that Chanel's quality-control database showed were never authorized for sale.⁴³ Second, the reseller's marketing, including Coco Chanel quotations, a discount code, and "100% authenticity" guarantees, created a false impression of affiliation.⁴⁴

Chanel is pressing the same theory in another pending case against The RealReal, another resale platform built on authentication. In March 2026, the Southern District of New York dismissed most of The RealReal's antitrust counterclaims while leaving its unclean-hands defense intact, which preserves the claim that Chanel itself has acted improperly toward the secondary market.⁴⁵ In any case, Chanel's core claims remain live, and the case will turn primarily on the adequacy of The RealReal's authentication process—notably including Chanel's allegation that The RealReal

³⁸ Order Granting in Part and Denying in Part Motion for Summary Judgment, *Nike, Inc. v. StockX LLC*, No. 22-CV-0983 (VEC) (S.D.N.Y. Mar. 4, 2025), Dkt. No. 319; see *Nike v. StockX: A Timeline Behind the Trademark Lawsuit*, The Fashion Law (2025), <https://www.thefashionlaw.com/nike-v-stockx-a-timeline-behind-the-trademark-lawsuit/>; *Nike and StockX Settle Lawsuit After Three-Plus Years in Court*, Sole Retriever (Aug. 2025), <https://www.soleretriever.com/news/articles/nike-stockx-settle-lawsuit-august-2025>.

³⁹ Order Granting in Part and Denying in Part Motion for Summary Judgment, *Nike*, No. 22-CV-0983 (VEC) (S.D.N.Y. Mar. 4, 2025), Dkt. No. 319.

⁴⁰ StockX, *2025 Brand Protection and Customer Trust Report* (reporting that in 2024 it rejected more than 370,000 products, nearly \$74 million in GMV, including over 30,000 pairs of suspected counterfeit sneakers worth roughly \$10 million), <https://stockx.com/about/stockx-drops-annual-brand-protection-customer-trust-report-reveals-company-rejected-nearly-10-million-worth-of-counterfeit-sneakers-in-2024/>.

⁴¹ Special Verdict Form, *Chanel, Inc. v. What Comes Around Goes Around LLC*, No. 1:18-cv-02253-LLS (S.D.N.Y. Feb. 6, 2024), Dkt. No. 407.

⁴² Judgment Enjoining Defendants, *Chanel*, No. 18-cv-02253 (S.D.N.Y. Feb. 26, 2025), Dkt. No. 505; see *What Comes Around...How Chanel's Win May Help Brands Protect Their Rights in the Resale Market*, Kelley Drye (2024), <https://www.kelleydrye.com/viewpoints/client-advisories/what-comes-around-how-channels-win-may-help-brands-protect-their-rights-in-the-resale-market>.

⁴³ Kelley Drye, *supra* note 42.

⁴⁴ *Id.*

⁴⁵ Opinion & Order re: Motion to Dismiss, *Chanel, Inc. v. The RealReal, Inc.*, No. 18-cv-10626 (VSB) (S.D.N.Y. Mar. 26, 2026) Dkt. No. 422; see *Chanel Wins Dismissal of The RealReal's Antitrust Counterclaims*, The Fashion Law (2026), <https://www.thefashionlaw.com/chanel-wins-dismissal-of-the-realreals-antitrust-counterclaim/>.

stripped Chanel serial numbers from its listings and therefore removed the buyer's primary means of verification.

b. Who Bears the Risk When a Superfake Passes

Taken together, these cases show the platform will generally absorb the loss when a superfake passes authentication, and they rest that loss on two distinct theories.

The first is warranty. A guarantee of authenticity creates express and implied warranty exposure, and consumer-protection regulators—not just litigants—will scrutinize whether contractual limits to refund or replacement are honored in practice. Illustrative is the Federal Trade Commission's December 2024 order requiring GOAT to pay over \$2 million. The order rested chiefly on Mail Order Rule violations for shipping delays and cancellation failures, with the buyer-protection shortfall a secondary concern; its deception finding also drew on the pattern of partial refunds, store credit substituted for cash, and outright denials, rather than on any single practice.⁴⁶ But even so, it signals that regulators will hold a platform to its buyer-protection promises.

The second is trademark. Under *Nike v. StockX*, the platform can be directly liable even though a superfake deceived it, because direct infringement under the Lanham Act does not require intent, and willful blindness or recklessness can be inferred from the platform's methodology, its vendor relationships, and its data-based failure rates.

These challenges leave brands and buyers with no easy options. The primary infringer is still the individual counterfeiter, but they are often anonymous, or offshore, or both, leaving the platform the most accessible defendant. Market-based solutions could include further brand cooperation on authentication infrastructure, such as digital product passports, blockchain-anchored provenance, and NFC chips—although they would require brands to trade some control over secondary markets for reduced litigation exposure, a trade many luxury brands have resisted.⁴⁷ None of these solutions helps the individual buyer directly, whose most reliable remedy in practice remains the credit-card chargeback.

IV. Marketplace Liability and Platform Enforcement

The same control that creates authentication liability drives the broader question of a marketplace's responsibility for the actions of its third-party sellers. Brand owners are increasingly scrutinizing the marketplaces themselves, challenging the assumption that a platform bears no responsibility for third-party listings simply because it does not hold title to the goods. The marketplace stands between the brand and the buyer, controlling which sellers may list products, how products are presented, where consumers are directed, and, through fulfillment, the warehousing and shipping of the goods. The foreign and fast-moving sellers behind most counterfeits, meanwhile, are hard to reach, which pushes brands toward the one defendant that is available to be sued—the platform itself. The law still gives protection to a marketplace that polices infringement once notified, but that protection is under growing pressure, and platforms have begun to answer by going on offense.

⁴⁶ Federal Trade Commission, *FTC Order Requires Online Retailer GOAT to Pay More than \$2 Million to Consumers* (Dec. 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-order-requires-online-retailer-goat-pay-more-2-million-consumers-mail-order-rule-violations>.

⁴⁷ Boston Consulting Group, *How Luxury Brands Can Counter the Rise of Superfakes* (2025), <https://www.bcg.com/publications/2025/how-luxury-brands-can-counter-rise-superfakes> (discussing digital product passports, blockchain-anchored provenance, and NFC chips as authentication measures).

a. The Specific-Knowledge Framework and the Quality of Notice

In the United States, the burden of policing infringement still falls on the brand owner rather than the marketplace. The baseline is the Second Circuit’s holding in *Tiffany (NJ) Inc. v. eBay Inc.*, which requires specific knowledge of particular infringing listings and a failure to act, and which rejected a willful-blindness theory because eBay removed flagged listings.⁴⁸ That allocation remains formally in place through 2026, but its practical weight is eroding because two decisions have shown that a platform’s exposure rises with its involvement in the sale. In *Y.Y.G.M. v. Redbubble*, the Ninth Circuit required awareness of specific infringement—yet held that once aware, a platform must make bona fide efforts to root out infringement, which varies based on context.⁴⁹ The Sixth Circuit went further. In *Ohio State University v. Redbubble*, it found that a platform integrated into procurement, manufacturing, shipping, and packaging, and placing its own hang tags and return address on goods, could be liable for direct infringement, not merely for contributory infringement.⁵⁰ Those cases mark a spectrum, from the passive facilitator that owes only a duty to act on specific notice, to the integrated seller that answers for the goods directly. A platform’s place on that spectrum increasingly decides the case.

Involvement is only one axis of exposure. The other is the quality of the brand’s notice, and on that axis, the framework still protects the platform. In *Microtech Knives, Inc. v. Outdoors Online, LLC* (N.D. Ga.), a 2025 decision granted summary judgment to the marketplace because the plaintiff’s cease-and-desist letter listed seventeen trademarks but supplied no URLs, item numbers, merchant names, or seller identifiers.⁵¹ That the platform had itself removed twenty-one listings on its own initiative did not change the result, because a takedown demand transfers the actual knowledge that *Tiffany* requires only when it identifies the infringement at the URL, ASIN, or seller-identifier level; a generalized list of marks, however long, is not sufficient.

b. Control as a Proxy for Liability

Because satisfying that notice burden means identifying listings one by one, plaintiffs may argue that algorithmic search placement, the power to suspend sellers and withhold payment, and seller onboarding together make a platform more than a passive host, such that the host framework should not apply at all. No circuit has decided the point in the trademark context, but a forceful signal came in *Maglula v. Amazon*, where the court denied Amazon summary judgment and said its evidence would not make “one iota of difference to a jury.”⁵² The denial meant the control question would reach a jury, and Amazon settled rather than let one answer it.⁵³

⁴⁸ *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93, 107, 109–10 (2d Cir. 2010); see *The Second Circuit’s Decision in Tiffany v. eBay*, Finnegan, <https://www.finnegan.com/en/insights/articles/the-second-circuit-s-decision-in-tiffany-v-ebay.html>.

⁴⁹ *Y.Y.G.M. SA v. Redbubble, Inc.*, 75 F.4th 995, 1002–03 (9th Cir. 2023).

⁵⁰ *Ohio State Univ. v. Redbubble, Inc.*, 989 F.3d 435, 440–41, 448 (6th Cir. 2021); see *On-Line Platform Liability for Third-Party Trademark Infringement*, Baker Botts (Oct. 2025), <https://www.bakerbotts.com/thought-leadership/publications/2025/october/on-line-platform-liability>.

⁵¹ *Microtech Knives, Inc. v. Outdoors Online, LLC*, No. 1:23-cv-04381-VMC, 2025 WL 3451553, at *4–5, *9 (N.D. Ga. Sep. 25, 2025), appeal dismissed, No. 26-10096, 2026 WL 684575 (11th Cir. Mar. 11, 2026).

⁵² Order re: Defendants’ Motion for Summary Judgment, *Maglula, Ltd. v. Amazon.com, Inc.*, No. 1:19-cv-01570 (E.D. Va. May 18, 2021), Dkt. No. 480.

⁵³ See *Amazon Case Study: How to Hold Online Markets to Account on Fakes*, Finnegan, <https://www.finnegan.com/en/insights/articles/amazon-case-study-how-to-hold-online-markets-to-account-on-fakes.html>; see also *Counterfeiting Litigation Targets Online Marketplaces*, Crowell & Moring,

The “Fulfilled by Amazon” program sharpens the problem. When Amazon warehouses, packs, ships, and processes returns for a third-party seller’s goods, the passive-host characterization is harder to sustain. The Third Circuit’s products-liability decision in *Oberdorf v. Amazon* already treated Amazon as a seller on those facts, and although no trademark ruling specific to the program had issued at the appellate level through mid-2026, its reasoning that control over the transaction can defeat a no-title defense could prove highly effective for brand owners if applied in the trademark context.⁵⁴

European courts already apply this reasoning. The Court of Justice of the European Union in *Christian Louboutin v. Amazon* held that a platform may itself be using a mark where a reasonably observant consumer could perceive it as the seller—consumer perception is the relevant test.⁵⁵ The UK Supreme Court in *Lifestyle Equities CV v. Amazon UK Services Ltd* extended that exposure across borders, holding that Amazon’s U.S. website infringed UK trademarks by targeting UK consumers.⁵⁶ Back in the United States, the control theory faces its sharpest test in the litigation against Temu. Brandy Melville’s 2025 suit against Temu in the District of New Jersey contests Temu’s self-characterization as a mere marketplace by alleging control over sellers, payment processing, shipping, and advertising; similar suits have come from the estate of MF DOOM, Twenty One Pilots, and others.⁵⁷

c. The Marketplace on Offense

To this point, the platform has appeared only as a defendant. Some platform operators have tried to flip that script, joining brand owners as co-plaintiffs against counterfeiters to build a more favorable enforcement record and defend against secondary liability claims. The goal is to reframe the platform as a victim and an enforcement partner, rather than a negligent facilitator.

Amazon is a primary mover in this space since the launch of its Counterfeit Crimes Unit in June 2020, staffed with former federal prosecutors, agents, and data analysts. By Amazon’s April 2026 reporting, the unit operates across fourteen countries, partners with government agencies, has

<https://www.crowell.com/en/insights/client-alerts/counterfeiting-litigation-targets-online-marketplaces> (surveying the control theory).

⁵⁴ *Oberdorf v. Amazon.com Inc.*, 930 F.3d 136, 151 (3d Cir. 2019), *reh’g en banc granted, opinion vacated*, 936 F.3d 182 (3d Cir. 2019) (settling before court resolved the dispute); see Max Mitchell, *Products Liability Lawsuit Against Amazon Has Settled, Mooting Pa. Supreme Court Argument*, LAW (Sep. 23, 2020), <https://www.law.com/thelegalintelligencer/2020/09/23/products-liability-lawsuit-against-amazon-has-settled-mooting-pa-supreme-court-argument/>; *Third Circuit Decides Amazon Is Subject to Strict Products Liability for Product Sold on Its Marketplace*, McGivney Kluger, <https://mcgivneyandkluger.com/third-circuit-decides-amazon-is-subject-to-strict-products-liability-for-product-sold-on-its-marketplace/>.

⁵⁵ *Christian Louboutin v. Amazon*, Cases C-148/21 and C-184/21 (CJEU).

⁵⁶ *Lifestyle Equities CV v. Amazon UK Services Ltd*, [2024] UKSC 8; see *Increasing Liability of Online Marketplaces for Trademark Infringement*, Wolters Kluwer, <https://legalblogs.wolterskluwer.com/trademark-blog/eu-increasing-liability-of-online-marketplaces-for-trademark-infringement/>; *Ready, Set, Buy — Supreme Court Holds That Amazon Did Target UK Consumers*, Fieldfisher, <https://www.fieldfisher.com/en/services/intellectual-property/intellectual-property-blog/ready-set-buy-supreme-court-holds-that-amazon>.

⁵⁷ Complaint, *Bastiat USA, Inc. v. PDD Holdings Inc.*, No. 2:25-cv-13592-JXN-CLW (D.N.J. filed July 21, 2025) Dkt. No. 1; see *Brandy Melville Sues Temu for Trademark Infringement, Counterfeiting*, Fashion Dive (2025), <https://www.fashiondive.com/news/brandy-melville-sues-temu/757044/>; Trace William Cowen, *MF DOOM’s Name and Likeness Used in Counterfeit Temu Products, Multimillion-Dollar Lawsuit Alleges*, Complex (Aug. 11, 2025), <https://www.complex.com/style/a/tracewilliamcowen/mf-doom-name-likeness-counterfeit-temu-lawsuit>.

initiated over 200 civil actions, and has pursued more than 32,000 bad actors.⁵⁸ Amazon also reports over \$180 million in court-ordered restitution and judgments and more than 290 prison sentences.⁵⁹

The cases give support to Amazon's claims. In a 2023 matter in China, Amazon and the Prada Group referred a counterfeiter to the relevant public security bureau, and a Chinese court imposed a three-year sentence, a \$25,000 fine, and forfeiture in a conviction based primarily on Amazon's overseas sales records and fulfillment center inventory data rather than a physical seizure—a notable evidentiary route because the platform's own data can reach an offshore counterfeiter that a seizure never would.⁶⁰ In Europe, Amazon and Brother filed their first joint civil suit in 2023; in December 2025 the Berlin Regional Court ruled against all eighteen defendants as an organized counterfeiting network, awarded €500,000 to Brother, and ordered destruction and supply-chain disclosure, with the judgment final as to fourteen defendants.⁶¹ The model traces to the joint suit Amazon and Valentino filed in the Western District of Washington in 2020 over counterfeit Rockstud shoes, which settled on undisclosed terms.⁶²

Amazon's approach may not, however, be practical for all e-commerce platforms—particularly those which lack the resources to establish a dedicated team of attorneys and investigators for counterfeit enforcement.⁶³ Overzealous prosecution of alleged patent, trademark, and copyright infringement could also undermine a platform's relationship with its sellers, and may even inspire separate litigation by those sellers against the platform.⁶⁴ Finally, and perhaps most significantly, platforms that attempt to proactively engage in monitoring run the risk of gaining sufficient

⁵⁸ Dharmesh Mehta, *Amazon efforts lead to criminal sanctions and \$180 million in penalties against bad actors*, Amazon (June 25, 2025), <https://www.aboutamazon.eu/news/policy/amazon-efforts-lead-to-criminal-sanctions-and-180-million-in-penalties-against-bad-actors>; *Trustworthy Shopping Experience Report*, Amazon (Apr. 2026), <https://trustworthyselling.aboutamazon.com/2025-trustworthy-shopping-experience-report>.

⁵⁹ Amazon, *supra* note 58.

⁶⁰ *Strategic Collaboration Between Amazon's Counterfeit Crimes Unit and the Prada Group Leads to International Counterfeiter's Guilty Plea*, Amazon (Oct. 2023), <https://press.aboutamazon.com/2023/10/strategic-collaboration-between-amazons-counterfeit-crimes-unit-and-the-prada-group-leads-to-international-counterfeiters-guilty-plea>.

⁶¹ About Amazon Team, *Berlin Court Rules in Favor of Amazon and Brother in Landmark Counterfeit Case*, About Amazon (Dec. 11, 2025), <https://www.aboutamazon.eu/news/policy/berlin-court-rules-in-favor-of-amazon-and-brother-in-landmark-counterfeit-case>; About Amazon Team, *Amazon and Brother Announce Lawsuit to Shut Down Germany-Based Counterfeit Ring*, Amazon (Feb. 23, 2023), <https://www.aboutamazon.eu/news/policy/amazon-and-brother-announce-lawsuit-to-shut-down-germany-based-counterfeit-ring>.

⁶² Notice of Settlement, *Amazon.com Inc v. Kaitlyn Pan Group*, No. 2:20-cv-00934 (W.D. Wash. Dec. 30, 2020) Dkt. No. 29; see *Amazon and Valentino File Joint Lawsuit over Shoe Counterfeiting*, Reuters (2020), <https://www.reuters.com/article/technology/amazon-and-valentino-file-joint-lawsuit-over-shoe-counterfeiting-idUSKBN23P2M3/>.

⁶³ See T. Bishop, *Amazon ramps up its fight against fakes with help from AI and law enforcement*, GeekWire (Mar. 25, 2025), <https://www.geekwire.com/2025/amazon-ramps-up-its-fight-against-fakes-with-help-from-ai-and-law-enforcement/> (noting Amazon spends more than \$1 billion annually on counterfeit enforcement worldwide).

⁶⁴ Today, several law firms purportedly specialize in representing Amazon sellers in disputes with the platform, particularly intellectual property infringement matters. See, e.g., *Sending DMCA Counter Notices to Amazon When Sellers Are Wrongfully Accused of Copyright Infringement*, Rosenbaum & Segall, P.C., <https://amazonsellerslawyer.com/blog/intellectual-property/amazon-sellers-wrongfully-accused-copyright-infringement/>; see also Amazon Suspension Lawyer, <https://amazonsuspensionlawyer.com/amazon-copyright-infringement/>.

knowledge of specific instances of infringement to subject themselves to liability under authorities like *Y.Y.G.M.*⁶⁵ Platforms should be mindful of these potential risks in deciding how to approach proactive regulation of infringement.

V. Pharmaceuticals and Other High-Stakes Goods

The same kind of copying that drives retail trademark and trade dress disputes can turn lethal when it reaches medicine and auto parts. In these cases, defendants face not only the prospect of civil litigation, but also regulatory and criminal prosecution.

Counterfeit drugs are a particular concern. By widely cited estimates, roughly 67 to 75% of web-based drug merchants are illicit, and the 2024 Notorious Markets List, whose annual focus that year was illicit online pharmacies, reported that about 96% of the world's roughly 35,000 online pharmacies operate in violation of the law.⁶⁶ The same List reported counterfeit U.S. brand-name medicines accounted for 38% of global counterfeit-medicine seizures, with counterfeiters relying on transshipment through third countries to obscure the origin of the goods.⁶⁷ Consumer misunderstanding compounds the risk—the ASOP Global Foundation's 2023 survey of 1,500 Americans found that 52% of adults had used an online pharmacy; 24% of those with online-pharmacy experience reported prior exposure to harmful, counterfeit, or substandard medication; and 54% wrongly assumed all such websites are approved by the U.S. Food and Drug Administration or state regulators.⁶⁸

The most important structural development is the merger of pharmaceutical counterfeiting with narcotics trafficking. The historic line between inert or wrong-dose counterfeit medicines and illicit drug trafficking has collapsed, with pills sold as oxycodone, Adderall, or Xanax through seemingly legitimate online pharmacies now frequently containing undisclosed and potentially life-threatening additives like fentanyl.⁶⁹

a. Criminal Prosecutions

In *United States v. Lopez Reyes*, the government charged eighteen defendants in September 2024 in connection with an enterprise that ran pill-pressing mills in residential basements in the Bronx

⁶⁵ *Y.Y.G.M.*, 75 F.4th at 1003 (“willful blindness arises when a defendant was made aware that there was infringement on its site but . . . ignored that fact”) (citation and internal quotation marks omitted).

⁶⁶ Office of the U.S. Trade Representative, *2023 Special 301 Report*, at 18 (2023), <https://ustr.gov/sites/default/files/2023-04/2023%20Special%20301%20Report.pdf>; Office of the U.S. Trade Representative, *2024 Review of Notorious Markets for Counterfeiting and Piracy*, at 9, [https://ustr.gov/sites/default/files/2024%20Review%20of%20Notorious%20Markets%20of%20Counterfeiting%20and%20Piracy%20\(final\).pdf](https://ustr.gov/sites/default/files/2024%20Review%20of%20Notorious%20Markets%20of%20Counterfeiting%20and%20Piracy%20(final).pdf); see *US ‘Notorious Markets’ Report Warns of Risks from Online Pharmacies*, Associated Press (2025), <https://apnews.com/article/ustr-notorious-markets-fake-counterfeit-pharmacies-06fe170f49a6105c720dc968e5f814e7> (hereinafter “Notorious Market List”).

⁶⁷ Notorious Market List, *supra* note 66, at 3–10.

⁶⁸ Alliance for Safe Online Pharmacies Global Foundation, *Americans’ Perception and Use of Online Pharmacies: ASOP Foundation 2023 Consumer Survey* (Sep. 2023), <https://asopfoundation.pharmacy/wp-content/uploads/2023/12/ASOP-Foundation-Consumer-Behavior-Survey-Key-Findings-2023.pdf>.

⁶⁹ See Drug Enforcement Administration, *National Drug Threat Assessment 2024*, https://www.dea.gov/sites/default/files/2025-02/508_5.23.2024%20NTA-updated.pdf; *Over 115 Million Pills Containing Illicit Fentanyl Seized by Law Enforcement in 2023*, National Institutes of Health (2024), <https://nida.nih.gov/news-events/news-releases/2024/05/over-115-million-pills-containing-illicit-fentanyl-seized-by-law-enforcement-in-2023>.

and Washington Heights.⁷⁰ Defendants were alleged to have been manufacturing pills that contained fentanyl, para-fluorofentanyl, and methamphetamine, but were pressed and dyed to look like genuine oxycodone and Adderall, and distributed more than one million pills to victims in all fifty states through purported online pharmacies.⁷¹ A U.S. Army veteran died of acute fentanyl intoxication in February 2024 after buying what she believed was oxycodone. In June 2026 a jury convicted one defendant of a continuing criminal enterprise, which carries a mandatory minimum of life imprisonment, along with narcotics conspiracy resulting in death, distribution, and money-laundering conspiracy, while two connected Indian-national suppliers were sanctioned by the Treasury's Office of Foreign Assets Control in September 2025.⁷² The domestic-manufacturing tier appears in *United States v. Oppenheimer*, where a Cambridge man who manufactured more than 200 kilograms of counterfeit pills, sourcing components from a supplier in China, pleaded guilty in January 2026 and was sentenced in May 2026 to thirteen years imprisonment.⁷³ More broadly, the Drug Enforcement Administration's OD Justice Task Force filed twenty federal cases in the first five months of 2025 against dealers whose sales caused at least one death, and has charged 163 defendants since 2018.⁷⁴

b. Coordinated International Enforcement

Interpol's annual Operation Pangea is the leading coordinated campaign against illicit online pharmaceutical sales. Pangea XVI, in October 2023, spanned eighty-nine countries and produced seventy-two arrests and seizures worth more than \$7 million.⁷⁵ The campaign has grown since. From December 2024 to May 2025, Pangea XVII spanned ninety countries, produced 769 arrests,

⁷⁰ Press Release, U.S. Att'y's Off., S.D.N.Y., *U.S. Attorney Announces Charges Against 18 Defendants In Scheme To Manufacture And Distribute Millions Of Deadly Counterfeit Pharmaceuticals Through Fake Online Pharmacies* (Sep. 30, 2024), <https://www.justice.gov/usao-sdny/pr/us-attorney-announces-charges-against-18-defendants-scheme-manufacture-and-distribute> (hereinafter "USAO Press Release"); Press Release, I.R.S., *Two Defendants Convicted of Engaging in a Massive Enterprise to Distribute Fake Pharmaceuticals Online That Resulted in Death* (June 1, 2026), <https://www.irs.gov/compliance/criminal-investigation/two-defendants-convicted-of-engaging-in-a-massive-enterprise-to-distribute-fake-pharmaceuticals-online-that-resulted-in-death>; *United States v. Lopez Reyes*, No. S8 23 Cr. 501 (JPC) (S.D.N.Y.); see also *Two Defendants Convicted of Engaging in a Massive Enterprise to Distribute Fake Pharmaceuticals*, U.S. Attorney's Office, S.D.N.Y., <https://www.justice.gov/usao-sdny/pr/two-defendants-convicted-engaging-massive-enterprise-distribute-fake-pharmaceuticals>; *Treasury Sanctions Indian Nationals and Online Pharmacy for Supplying Counterfeit Fentanyl-Laden Pills*, U.S. Embassy (Sep. 2025), <https://in.usembassy.gov/treasury-sanctions-indian-nationals-and-online-pharmacy-for-supplying-counterfeit-fentanyl-laden-pills/>.

⁷¹ USAO Press Release, *supra* note 70.

⁷² *Id.*

⁷³ *United States v. Oppenheimer*, No. 24-cr-10240 (D. Mass.); see *Large-Scale Counterfeit Pill Manufacturer Sentenced to 13 Years in Federal Prison*, U.S. Attorney's Office, D. Mass., <https://www.justice.gov/usao-ma/pr/large-scale-counterfeit-pill-manufacturer-sentenced-13-years-federal-prison>.

⁷⁴ *Federal Prosecutors File 20 Cases This Year Against Alleged Drug Dealers*, Drug Enforcement Administration (May 2025), <https://www.dea.gov/press-releases/2025/05/16/federal-prosecutors-file-20-cases-year-against-alleged-drug-dealers-who>.

⁷⁵ Interpol, *Global Illicit Medicines Targeted by INTERPOL Operation* (2023), <https://www.interpol.int/en/News-and-Events/News/2023/Global-illicit-medicines-targeted-by-INTERPOL-operation>.

seized about 50 million doses worth \$65 million, and shut down roughly 13,000 sites. Pangea XVIII, in March 2026, added 269 arrests and about 6.42 million doses seized.⁷⁶

c. Civil and Regulatory Actions

Although criminal cases have received more notoriety, pharmaceutical companies have also brought civil actions to defend their rights—and protect consumers.

Gilead Sciences, Inc. v. Safe Chain Solutions, LLC highlights the widespread nature of counterfeits in pharmaceuticals. Gilead identified 85,247 counterfeit bottles of its branded HIV medications Biktarvy and Descovy—worth more than \$250 million at wholesale—that were sold to pharmacies across thirteen states through a buyback model that purchased empty or near-empty bottles from vulnerable patients, refilled them with other substances including painkillers, and supplied falsified documentation.⁷⁷ In February 2024 Safe Chain Solutions and its co-founders settled for \$2.7 million in forfeited assets and a permanent injunction—a settlement that resolved the case against only one of more than 150 defendants.⁷⁸

Similarly, in *Janssen Scis. Ir. Unlimited Co. v. TLC Xpress Pharmacy Inc.*, a major medical firm sued downstream distributors for selling counterfeit HIV medication bearing the plaintiffs' trademarks.⁷⁹ Janssen traced defective bottles of its HIV medication Symtuza to certain wholesale distributors after receiving reports from patients and pharmacies that doses had been swapped with Prezcoibx, a different HIV medication. The court granted summary judgment in part on the trademark claims, describing a nationwide conspiracy where illicit suppliers paid cash to patients for their prescription medication so they could repackage them to resell. Some of the repackaged medicine Janssen recovered lacked FDA-required documents and disclosures, contained the wrong pills, or had falsified or missing pedigrees. The court held improperly repacked or mislabeled bottles were materially different from genuine goods as a matter of law, and were counterfeits to the extent they infringed Janssen's trademark, but found a triable issue on whether falsified pedigrees supported Jansen's argument that the medication did not meet its quality control standards.⁸⁰

Manufacturers may also bring trademark and other civil claims to prevent the importation of genuine medical equipment from foreign markets to the United States.⁸¹ In *Roche Diabetes Care*

⁷⁶ Interpol, *Pharmaceutical Crime Operations*, <https://www.interpol.int/en/Crimes/Illicit-goods/Pharmaceutical-crime-operations>; *Operation Pangea XVIII: Global Action Against Falsified Medicines and Illicit Trade*, Danish Medicines Agency (2026), <https://laegemiddelstyrelsen.dk/en/news/2026/operation-pangea-xviii-global-action-against-falsified-medicines-and-illicit-trade/>.

⁷⁷ *Gilead Sciences, Inc. v. Safe Chain Solutions, LLC*, No. 21-cv-04106 (E.D.N.Y. 2021); see *Gilead Announces Actions to Remove Counterfeit HIV Medications from U.S. Supply Chain*, Gilead, <https://www.gilead.com/company/company-statements/2022/gilead-announces-actions-to-remove-counterfeit-hiv-medications-from-us-supply-chain>.

⁷⁸ Adam Lidgett, *Gilead Reaches Deal In Suit Over Counterfeit HIV Drug*, Law360 (Feb. 22, 2024), <https://www.law360.com/articles/1805908>; Natalie Jones, *Safe Chain Solutions to Settle Alleged Counterfeit HIV Drug Claims*, Star Democrat (Feb. 28, 2024), https://www.stardem.com/news/local_news/safe-chain-solutions-to-settle-alleged-counterfeit-hiv-drug-claims/article_94579bdc-d24c-11ee-a0e9-374f0d34d8ba.html

⁷⁹ *Janssen Scis. Ir. Unlimited Co. v. TLC Xpress Pharmacy Inc.*, No. 22-cv-1983 (BMC), 2025 WL 974299 (E.D.N.Y. Apr. 1, 2025).

⁸⁰ *Id.* at *1, *3–5, *7, *10.

⁸¹ *Complaint, Roche Diabetes Care, Inc. v. JMD Enterprises*, No. 1:24-cv-03625-DG-RML (E.D.N.Y. May 20, 2024) Dkt. No. 1.

v. JMD Enterprises, Roche alleged that defendants sold genuine equipment diverted from foreign markets as well as wholly unauthorized counterfeit products bearing Roche's trademarks and trade dress through Amazon to American consumers.⁸² According to Roche's complaint, even the genuine products were not fit to be sold in the United States because they did not carry appropriate labeling, inserts, or English-language packaging, and could not be properly recalled within the United States if necessary.⁸³ The case is ongoing.

The boom in GLP-1 drugs, the semaglutide class that includes Ozempic, created a further new opportunity for bad actors. The FDA opened an investigation into counterfeit Ozempic in December 2023, with a further seizure in April 2025.⁸⁴ The FDA also issued a warning letter to Sterling Distributors, a Florida wholesaler, for selling counterfeit Ozempic pens—one of only three warning letters ever issued citing the Drug Supply Chain Security Act—and Novo Nordisk has separately moved against compounding pharmacies and telehealth platforms over compounded semaglutide it contends is illegal.⁸⁵

* * *

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:



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⁸² *Id.* ¶ 32.

⁸³ *Id.* ¶¶ 6, 111.

⁸⁴ *FDA Warns Consumers Not to Use Counterfeit Ozempic (Semaglutide) Found in U.S. Drug Supply Chain*, U.S. Food & Drug Administration, <https://www.fda.gov/drugs/drug-alerts-and-statements/fda-warns-consumers-not-use-counterfeit-ozempic-semaglutide-found-us-drug-supply-chain>; *December 7, 2025: FDA Seized More Fake Ozempic Pens in the U.S.*, SafeMedicines (2025), <https://www.safemedicines.org/2025/12/dec-9-2025.html>.

⁸⁵ The FDA's action against Sterling Distributors is documented in U.S. Food & Drug Administration, *Warning Letter to Sterling Distributors* (No. 706508, June 5, 2025), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/sterling-distributors-706508-06052025> (finding that Sterling distributed suspect and illegitimate product, including counterfeit Ozempic, in violation of the Drug Supply Chain Security Act); see also Novo Nordisk, *Novo Nordisk Terminates Collaboration with Hims & Hers Health, Inc. Due to Concerns About Their Illegal Mass Compounding and Deceptive Marketing* (June 23, 2025), <https://www.prnewswire.com/news-releases/novo-nordisk-terminates-collaboration-with-hims-hers-health-inc-due-to-concerns-about-their-illegal-mass-compounding-and-deceptive-marketing-302488189.html>.