

Foreword

1. Counterfeiting is a real scourge on today's society. It can fool consumers and threaten their health and safety, especially when counterfeit products do not respect applicable standards or contain toxic substances. By encouraging an underground economy, it constitutes unfair competition for companies and destroys jobs.

2. Counterfeiting is growing via new distribution channels offered by the Internet. Counterfeiters are exploiting services provided by e-commerce platforms to try to distribute illicit merchandise. By doing this, they are harming the image of these platforms and reducing consumer confidence in online commerce, thereby holding back its growth.

3. In order to curb these practices, to protect consumers who are endangered or fooled by counterfeit goods and to encourage growth in online business, e-commerce platforms and the holders of industrial property rights signing this Charter have decided to work together under the auspices of national authorities.

4. The signatory platforms and rights holders shall work together to implement concrete means to ensure a tangible and effective response to the sale of counterfeit goods on e-commerce websites, i.e. fake products that are manufactured or reproduced without the permission of the rights holders concerned.

5. The signatory platforms and rights holders consider that it is possible to use measures and the exchange of information to deploy firm anti-counterfeiting measures. The parties are conscious that these measures must be implemented and jointly tested in order to examine their pertinence and regularly modified in order to be effective against counterfeiting. The parties therefore agree to test the arrangements stipulated by this Charter for a period of eighteen months. After this testing period, the arrangements will be subject to a global evaluation in order to determine the conditions of their deployment on a more durable basis, ensuring that they are continuously adapted and improved.

6. Whatever legislation governs their activities, the signatory platforms and rights holders are free to commit themselves to implementing the practical measures defined in this Charter. Signing this Charter and implementing the mechanisms stipulated within shall not prejudice the legal status of the signatories nor their current or future liability regime; these actions shall have no consequences on current or future legal proceedings. The objective of this Charter is neither to deal with matters relating to selective retailing of authentic products nor to fight against "para-commercialisme" and define the threshold of sales beyond which the sellers on platform websites should be considered as acting as professionals.

Chapter I: Anti-counterfeiting measures

Article 1 – Providing information to sellers and ensuring consumer awareness

The platforms shall inform sellers of products within the categories most subject to counterfeiting of their obligation to guarantee the authenticity of the products they propose for sale and/or use and the sanctions they risk under penal law and under the general terms and conditions of sale and/or use of the platform in the event they sell counterfeit goods. Sellers will be informed of this through messages transmitted automatically when the advertisements in question are submitted to the platform.

The rights holders and platforms shall cooperate to inform consumers about the risks of counterfeiting, especially via the Internet.

Article 2 – Offers of sale concerning medicines

The sale of medicines is restricted to pharmacists, the only professionals certified to provide the necessary advice to ensure the health and protection of consumers. The platforms and rights holders acknowledge that the sale of medicines shall not be possible via their e-commerce websites and exclude the existence of a resale market of such products.

The platforms undertake to implement state-of-the-art measures to detect offers of sale concerning medicines and to prevent their publication online.

If despite the deployment of these measures, such an offer of sale is only detected after its publication online, the platforms undertake to withdraw it immediately and to take all necessary measures to prevent its later re-publication online.

In all events, the platforms will immediately suspend, upon the occurrence of the first such offer, all accounts identified as belonging to the seller in question, including those opened under different usernames, for a period of six months. In the event another offer is detected, they shall close all this user's accounts and shall deploy all measures at their disposal to prevent the re-registration of the seller for a period of five years.

Article 3 – Measures to detect counterfeiting

The platforms and rights holders are conscious of the fact that counterfeit products may be offered for sale in several different forms on the websites belonging to the platforms. Certain offers of sale of counterfeit products can be detected by the intrinsic analysis of their content, while others can be identified by examining the general behaviour of the seller and all information concerning said seller. In both cases, measures can be implemented to automatically analyse all pertinent information.

The platforms and rights holders agree to test the use of state-of-the-art measures for a period of eighteen months, in order to:

- a) detect offers of sale of counterfeit products or offers that use well-known trademarks for keyword spamming (advertising a well-known trademark with no relation to the product for sale), by the content of advertisements and before they are published online;
- b) detect sellers of counterfeit products based on their behaviour.

The rights holders and platforms will cooperate in deploying the testing process.

Article 4 – Notification procedures for rights holders

The notification procedures by which the rights holders will indicate to the platforms which offers of sale concern counterfeit products or which sellers are offering counterfeit products for sale, are one of the measures used to prevent the sale of counterfeit products on the websites concerned.

The platforms undertake to set up effective and efficient notification procedures that are easily accessible by electronic means. These procedures shall be simple, understandable and limited to the information required to clearly identify the declaring party and the offers of sale or sellers concerned.

The rights holders shall use the notification procedures provided by the platforms to identify the offers of sale of counterfeit goods or the sellers of such products. The rights holders shall comply with these procedures in good faith and will ensure the procedures are applied efficiently. The platforms shall inform the rights holders of the outcome of their notifications.

The platforms and rights holders shall cooperate in order to enable the extensive and continuous use of the notification procedures, also to ensure their efficiency and responsiveness to new methods. The right holders may indicate in their notifications why they consider that the notified goods are counterfeit products, and the platforms may use those informations to develop and implement the detection measures outlined in the previous article.

Article 5 – Handling offers of sale of counterfeit goods and sellers of counterfeit products

The platforms undertake to refrain from publishing online offers of sale concerning counterfeit products that have been detected by the measures outlined in Article 3 a). If despite the use of these measures, such an offer of sale is only detected after its publication online, at the initiative of the platform or subsequent to notification by the rights holder concerned by application of Article 4, the platforms agree to withdraw the offer of sale immediately and to take all necessary measures to prevent its re-publication at a later time. In all events, the platforms will immediately suspend, upon the occurrence of the first such offer, all accounts identified as belonging to the seller in question, including those opened with different usernames, for a period of six months. In the event another such offer is detected, they shall close all this user's accounts and shall deploy all measures at their disposal to prevent the re-registration of the seller for a period of five years.

In the event of detection of a seller likely to sell counterfeit goods, at the initiative of the platform by application of article 3 b) or subsequent to notification by the rights holder concerned by application of Article 4, the platforms undertake to demand justification of the authenticity of the product(s) proposed for sale and to suspend the seller's account pending the delivery of such justification. If the seller cannot provide suitable documentation proving the authenticity of the product(s), the platforms agree to close all the seller's accounts, including those opened under different usernames and to deploy all measures at their disposal to prevent the re-registration of the seller for a period of five years.

To prevent the circumvention of these measures, the platforms shall deploy all measures at their disposal to identify all accounts opened by the sellers in question and which they may open subsequently using other usernames.

Article 6 – Handling offers of sale of goods imported into the European Economic Area

The platforms and rights holders shall be especially vigilant concerning products proposed to consumers in France from outside the borders of the European Economic Area or proposed by sellers based outside this territory. In the absence of the international exhaustion of intellectual property rights, such importations of products bearing trademarks protected in France are subject to the authorisation of the rights holder concerned.

The platforms undertake to deploy appropriate measures that enable the verification of the localisation of the products proposed to consumers in France or the location of the sellers offering such products.

If the sellers are based outside the European Economic Area or if they propose products localised outside this area, the platforms shall request that the sellers provide documentation proving that they have received the appropriate authorisation from the rights holder concerned.

Rights holders who identify unauthorised sellers located outside the European Economic Area or proposing products localised outside this area via websites owned by the platforms shall use the procedures outlined in Article 4 to notify the platforms about these sellers and to expressly indicate that the sellers do not have the appropriate authorisation.

If a seller cannot produce documentation to justify he has the authorisation of the rights holder or in the event the rights holder issues a notification, the platforms will withdraw the offer of sale concerned and, in the event another such offer is detected on the account of the same seller, will close the account.

Article 7 – Handling offers of sale of products in the categories most subject to counterfeiting

For the categories of products identified as the most subject to counterfeiting, the platforms undertake to prohibit bid periods for a duration of less than 10 days.

Article 8 - Consumer complaints

The platforms agree to receive complaints from consumers who are victims of offers of sale of counterfeit products. To this end, they shall set up an easily accessible and visible section on their websites where consumers can notify them of counterfeit products or sellers of counterfeit goods.

The platforms shall transmit all complaints collected to the rights holders concerned, when counterfeit products require special expertise, receive their comments on the content of the complaints and if the complaint has suitable grounds based on the general terms and conditions of sale and/or use of the platform, shall apply the sanctions defined in Article 5.

Article 9 – Offers of sale from regular sellers of products of categories identified as the most subject to counterfeiting

The platforms and rights holders shall agree to consider as a regular seller of products of categories identified as the most subject to counterfeiting under the terms of this charter, any person fulfilling suitable criteria based on the number of articles offered for sale, sales volumes and values, as well as the period of completion of these operations, in those categories. The parties will define such criteria jointly.

The platforms agree to identify the individuals, whether based in France or selling products on the French market, whether using one or several accounts, who correspond to these criteria. The platforms will request that these persons provide proof of identity and address on pain of suspension of their account(s) (for French sellers, this includes the ‘Kbis’ declaration or their identity card, SIREN/SIRET number, French bank account number, etc.) and the platforms shall verify the documents provided.

The platforms shall conserve this identity and address information and the corresponding justifying documentation for the duration of operation of the account(s) concerned and for a period of five years after the closure of the account(s) concerned.

The platforms shall clearly indicate the conditions and methods of collection of this information in their general terms and conditions of sale and/or use.

Chapter 2: Exchange of information between platforms and rights holders in the fight against counterfeiting

Article 10 – Correspondents and contact methods dedicated to anti-counterfeiting

To facilitate the exchange of information and cooperation between the parties, the platforms and rights holders shall designate one or more correspondents within their respective organisations, who shall be responsible for all matters concerning the implementation of this Charter. The parties shall exchange the contact details of their respective correspondents.

To inform consumers, the parties shall set up dedicated anti-counterfeiting contact points by all appropriate telecommunication methods (phone, fax, e-mail, etc.). The list of dedicated contacts shall be published in an easily-accessible section on the websites owned by the platforms.

Article 11: Information concerning offers of sale and sellers

The platforms have information enabling the detection of offers of sale of counterfeit products and of sellers likely to sell counterfeit products (seller identification information, IP address, sales history, financial information, etc.).

The rights holders possess information that may contribute to the efficiency of the anti-counterfeiting measures stipulated by this Charter. They know their products well and can distinguish them from counterfeit products. They may have put in place measures to this end or developed expertise that would identify offers of sale of counterfeit goods or the profiles of sellers likely to sell such products.

The rights holders undertake to transmit to the platforms all elements in their possession that may contribute to identifying offers of sale of counterfeit products or seller profiles likely to sell such products. On the basis of these elements, the platforms agree to train their personnel involved in the implementation of this Charter.

Article 12: Development, adaptation and update of detection tools

To ensure efficient operations, the development, adaptation and update of the detection measures stipulated by this Charter require the periodical exchange of information between the platforms and the rights holders.

The detection criteria must be specifically adapted to each category of products concerned and according to the diversity of the sectors affected by counterfeiting activities. The platforms and rights holders agree to organise bilateral or multilateral meetings to exchange the information required for the definition and adaptation of these specific criteria. The platforms and rights holders undertake to supply each other with a list of criteria that they have identified as pertinent.

These meetings shall be held as often as needed and at least once a year.

Article 13: Confidentiality

All the information transmitted between platforms and rights holders under application of this Charter is confidential, except that appearing in the assessment of its application indicated in Article 15 below.

The platforms and rights holders undertake to respect and ensure the respect of the strictest confidentiality of this information and to take all necessary measures to preserve this confidentiality, in particular concerning their personnel and co-contractors.

Chapter 3: Conducting the testing process

Article 14: Implementation of the testing process

The measures stipulated in Articles 2, 3, 4, 5, 6 and 9 will be put into production no later than six months after the signature of this Charter.

At this time, an authority appointed by the minister(s) responsible for industry and consumption will assess whether the parties have indeed taken the measures necessary to implement the testing process.

Article 15: Evaluation of the testing process

The platforms and rights holders agree to hold a general assembly under the chairmanship of the authority appointed by the minister(s) for industry and consumption, eighteen months after the signature of this Charter, in order to:

- exchange information about evolutions in counterfeit practices observed on the websites owned by the platforms;
- jointly update the list of categories of products identified as the most subject to counterfeiting;
- draw up an assessment of the application of this Charter; this assessment shall indicate the results obtained via the testing process, the correct operation of the cooperation mechanisms and the mutual respect of obligations as stipulated by this Charter. The assessment shall be provided to the minister(s) responsible for industry and consumption.

Article 16: Durable deployment of the Charter

After the testing period, the parties may agree to extend the deployment of the provisions of this Charter.

As part of the durable implementation of the provisions of this Charter, the parties respecting their obligations may indicate on their website and in any of their corporate communications, whatever the medium, that they are a signatory to this Charter.

At any moment, all parties may request the intervention of the authority appointed by the minister(s) for industry and consumption in the event another party does not respect their obligations. The authority shall decide to convoke all signatories to this Charter to a General Assembly held under its supervision, in order to discuss any such non-respect of obligations. If the non-respect is indeed confirmed, it is made public and the defaulting party may no longer promote its quality of signatory to this Charter.

This Charter will be subject to annual assessments concerning its application, transmitted to the minister(s) for industry and consumption, also to periodical evaluations in order to

envisage modifications that are obligatory or possible to ensure greater efficiency. If in the course of these assessments, it is observed that a party no longer respects its obligations, it will cease to promote its quality of signatory to this Charter.

Article 17: Membership and renunciation of the Charter

After its signature, the Charter shall remain open to new platform or rights holder members.

The signatory platforms and rights holders shall have the right to renounce their membership of this Charter, by registered letter addressed to the authority appointed by the minister(s) for industry and consumption and to the other signatory parties. The renouncement shall only take effect for the future and shall only involve the renouncing party, which shall nonetheless remain bound by the obligations of confidentiality stipulated in Article 13 of this Charter.