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THREADS OF TERROR, CRIME, & SLAVERY
“HE WHO WOULD PRY BEHIND THE SCENES OFT SEES
A COUNTERFEIT”¹

*Gabriella Manduca**

Over the past decade, there has been a greater appreciation of how “following the money trail” directly contributes to the fight against terrorism, crime, and corruption around the world. Money serves as the oxygen for any activity, licit or illicit; it is the critical enabler for any organization, from international crime syndicates like the Mexican cartels to terrorist groups like the FARC, ISIS, and Hezbollah. Financial intelligence has helped governments to better understand, detect, disrupt, and counter criminal and terrorist networks and expose political corruption. Since the September 11, 2001 terrorist attacks, . . . [nations] have strengthened their ability to combat money laundering and terrorist financing and consciously incorporated the financial instrument of national power into their national security strategies.²

But trying to starve the terrorists of money is like trying to catch one kind of fish by draining the ocean. A better strategy has

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¹ A COMPLETE DICTIONARY OF POETICAL QUOTATIONS 109 (Sarah Josepha Hale ed., 1881).

² CELINA B. REALUYO, “FOLLOWING THE MONEY TRAIL” TO COMBAT TERRORISM, CRIME, AND CORRUPTION IN THE AMERICAS 1 (2017), https://www.wilsoncenter.org/sites/default/files/follow_the_money_final_0.pdf.

evolved . . . as [governments] learned more about how [Al Qaida] raises, moves, and spends money.³

*Terrorists are selling fakes to fund attacks—attacks in our cities that try to make victims of all of us. You wouldn't buy a live scorpion, because there's a chance that it would sting you on the way home, but would you still buy a fake handbag if you knew the profits would enable someone to buy bullets that would kill you and other innocent people six months later? Maybe not.*⁴

INTRODUCTION

Investigations following the September 11, 2001 terrorist attacks revealed Al Qaida's use of the international financial system to fund the attacks' execution.⁵ This revelation was met with increased stringency in financial regulation.⁶ After banking and customs regulations tightened in 2001, the global counterfeit products economy⁷ exploded with highly profitable returns.

³ THE NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT 382 (2004), <http://govinfo.library.unt.edu/911/report/911Report.pdf>.

⁴ Alastair Gray, *How Fake Handbags Fund Terrorism and Organized Crime*, TED (Nov. 2017), https://www.ted.com/talks/alastair_gray_how_fake_handbags_fund_terrorism_and_organized_crime?language=en#t-3376.

⁵ REALUYO, *supra* note 2, at 5.

⁶ *Id.* (“Since 9/11, terrorist and criminal groups have turned to a [sic] different funding sources and mechanisms to move or hide funding to circumvent heightened government vigilance and the oversight of traditional banking.”).

⁷ TIM PHILLIPS, *KNOCKOFF: THE DEADLY TRADE IN COUNTERFEIT GOODS* 3–4 (2005);

Product counterfeiting is a form of consumer fraud: a product is sold, purporting to be something that it is not. . . . Product counterfeiting is typically an organized group activity, because the manufacturing of goods takes people and time, and the goal is invariably profit. Many jurisdictions take the offence quite seriously As a result, most product counterfeiting would be considered organized crime under the [United Nations] Convention [against Transnational Organized Crime].

U.N. OFFICE ON DRUGS & CRIME [UNODC], *THE GLOBALIZATION OF CRIME: A TRANSNATIONAL ORGANIZED CRIME THREAT ASSESSMENT*, at 173, U.N. Sales No. E.10.IV.6 (2010), <https://www.unodc.org/res/cld/bibliography/the->

Organized crime and terrorist groups⁸ had to reinvest money into business instead of in financial institutions.⁹ Within that historical framework, it became necessary to coordinate international efforts against money laundering and terrorist financing.¹⁰

If future historians were to pinpoint the year in which the global counterfeit economy took off, they might pick 2001. It should not be so: in 2001, governments all over the world tightened banking regulations so that it was harder to hide the proceeds of crime following the 11 September terrorist attacks. . . . The opposite has been the case. [Instead of making it more difficult to hide crime proceeds, t]ightening banking regulations meant that organized crime had money it needed to invest in business rather than the bank, and the counterfeiting business is perfect: no questions asked, cash based, extremely profitable. The routes by which illegal importers of drugs, arms or humans brought their products from one place to another are the same routes by which counterfeits reach us: the same ships, the same ways to evade customs officers, the same, or better, profit margins. The difference is that the penalties were lower, and customs officers weren't looking for knockoff sports shoes. Since 2001, we have seen a massive shift of business among these gangs into trading knockoffs.¹¹

globalization-of-crime-a-transnational-organized-crime-threat-assessment_html/TOCTA_Report_2010_low_res.pdf.

⁸ While organized crime and terrorist groups are similar in this endeavor, organized crime groups generally pursue financial profit, whereas terrorist networks seek to finance operations through different types of illegal trafficking. Rémy Sabathie, *Le Piratage, Un Crime Presque Parfait [Piracy, An Almost-Perfect Crime]*, 4 LES DOSSIERS DES YEUX DU MONDE.FR 6 (2014) (Fr.), <http://les-yeux-du-monde.fr/wp-content/uploads/2014/05/dossier-avril-Les-Yeux-du-Monde.pdf>.

⁹ PHILLIPS, *supra* note 7.

¹⁰ Donato Masciandaro, *Economics of Money Laundering: A Primer* 1, 4, 22 (Paolo Baffi Ctr. Bocconi U., Working Paper No. 171, 2007), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=970184.

¹¹ PHILLIPS, *supra* note 7.

The international financial architecture was quick to take coordinated action against money laundering after the September 11 terror attacks prompted awareness of the ties between organized crime, terrorist financing, and money laundering.¹² The same has not been done for the analogous problem of products counterfeiting, despite clear evidence that fashion counterfeiting funds terrorists and organized crime, supports human rights violations,¹³ and facilitates trafficking in drugs, arms, and humans.¹⁴ Just as independent anti-money laundering body the Financial Action Task Force (“FATF”) refined its specialized regulatory mission for member states to target international crime financing after September 11,¹⁵ products counterfeiting needs to be addressed as a means of international terrorist and organized crime financing.¹⁶ To meet this end, products counterfeiting (and in particular, fashion counterfeiting)¹⁷ should not be described as an issue of intellectual property (“IP”) crime; rather, it should be characterized as an international crime financing and human rights issue.¹⁸ The

¹² *Id.*

¹³ Sweatshop and child labor seem a given for counterfeit products; the easiest way to keep prices down is to keep costs down. “One of the worst stories I read was where they had raided an illegal factory and the children were actually handcuffed to the sewing machines,” Arielle Elia, an assistant curator at the Museum at FIT, says

Mikelle Street, *Counterfeit Fashion is Funding Terrorism, Sweatshops, and Untold Human Misery*, ESQUIRE (Dec. 21, 2016), <https://www.esquire.com/style/news/a51777/counterfeit-designer-fashion-complex-documentary/>.

¹⁴ Sarah Hofmann, *The Steep Price for Cheap Goods: Money Laundering and Human Trafficking’s Role in Counterfeit Goods*, FRAUD CONF. NEWS (June 19, 2017), <https://www.fraudconferencenews.com/home/2017/6/19/the-steep-price-for-cheap-goods-money-laundering-and-human-traffickings-role-in-counterfeit-goods>.

¹⁵ See generally Kathryn L. Gardner, *Fighting Terrorism the FATF Way*, 13 GLOBAL GOVERNANCE: A REV. OF MULTILATERALISM & INT’L ORGS. 325, 325–45 (2007) (discussing the successes of the FATF’s approaches to addressing terrorist financing).

¹⁶ See Gray, *supra* note 4.

¹⁷ See *id.*

¹⁸ See Daniel Bukszpan, *Counterfeiting: Many Risks and Many Victims*, CNBC (July 13, 2010), <https://www.cnbc.com/id/38229835>.

proposed Anti-Counterfeiting Trade Agreement (“ACTA”)¹⁹ was a positive initiative toward creating an independent international regulatory body; however, it failed, largely because of its secret negotiations and because it planned to institute an overreaching IP regulatory system.²⁰ An independent international body that approaches anti-counterfeiting as a means of crime financing and as a conduit of human rights violations would effectively target the international counterfeiting business, change public perception of fashion counterfeiting as a victimless crime,²¹ and encourage individual nations to view anti-counterfeiting as an important cause, like anti-money laundering is, toward the end of targeting international crime.

Part I of this Note examines anti-money laundering as a means of anti-crime financing. Great effort, both internationally and domestically, has been put into attacking money laundering because of its connections with international crime and terrorist financing, but the same has not been done for the analogous crime financing and human rights problem of counterfeiting.

Part II addresses fashion and the global counterfeit economy, discussing the industry’s economic breadth and its status as a low risk, high yield business venture. It then further explores the serious ethical repercussions of the counterfeit fashion industry which often go unnoticed as the world assumes that fashion counterfeiting is a victimless crime. However, like money laundering, fashion counterfeiting has served to lower the risks associated with financing international organized crime and terrorist organizations’ operations. Finally, this Part concludes by drawing a parallel between anti-money laundering and anti-counterfeiting as means of targeting and disrupting international crime, pinpointing criminals at vulnerable points where their money and products surface in the licit financial and trade systems.

Part III describes the U.S. federal statutory handling of counterfeiting, which demonstrates an awareness of the connections

¹⁹ *Anti-Counterfeiting Trade Agreement (ACTA)*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/acta> (last visited Mar. 30, 2019).

²⁰ See *Anti-Counterfeiting Trade Agreement*, ELECTRONIC FRONTIER FOUND., <https://www EFF.ORG/issues/acta> (last visited Mar. 30, 2019).

²¹ See Colleen J. Orscheln, *Bad News Birkins: Counterfeit in Luxury Brands*, 14 J. MARSHALL REV. INTELL. PROP. L. 249, 259 n.93 (2015).

between trafficking in counterfeit goods, enterprise crime, and money laundering. This Part also examines state reforms in New York and California, two important hotbeds for counterfeit fashion in the U.S. whose statutes have been reformed to add trafficking in counterfeit goods as a predicate offense to enterprise crime prosecution. This Part concludes with the notion that strong statutory tools exist both at federal and state levels, but that enforcement of anti-counterfeiting efforts is only effective if law enforcement, judges, prosecutors, and the public are aware that fashion counterfeiting is in fact not a victimless crime. Instead, it is one, like money laundering, which has serious and far-reaching international implications deserving of at least comparable law enforcement attention, punishment, and global coordination.

Part IV considers attitudes held toward counterfeit fashion and the common notion that fashion counterfeiting is a lesser crime. The perception stems from the framing of fashion counterfeiting as an IP crime, creating a falsely limited perception among consumers as well as in legal academia and in the government's approach to anti-counterfeiting. Furthermore, this Part asserts that counterfeiting should be reframed, not as just an IP issue, but as an international crime financing and human rights issue. In particular, the most effective way to change attitudes toward counterfeiting is through education, both of the public and of those who can affect the law.

Part V proposes this Note's solution, a rejection of the oft-given suggestion that the U.S. adopt anti-counterfeiting legislation criminalizing purchasers of counterfeit goods as a central response to the problem of fashion counterfeiting.²² It argues that a strong anti-counterfeiting international regulatory framework is a necessity, but that its success can only come about if an international body specializing in anti-counterfeiting is established, and if counterfeiting is reframed in the eyes of the public and legislature as a crime financing and human rights issue, not solely an IP issue. This Part claims that the proposed and later rejected Anti-Counterfeiting Trade Agreement, which would have established an independent international standard-promulgating body, was a failed attempt at international reform, mainly because ACTA improperly couched anti-counterfeiting into a broad IP reform proposal. Critics

²² See *infra* Section IV.C.

harshly opposed ACTA because of its overreaching copyright and privacy implications, not because it tangentially sought to target counterfeiting as a means of crime financing. Thus, this Part argues that ACTA should be redrafted in a manner reflective of its title, strongly focusing on counterfeiting and framing it as a means of crime financing and human rights abuses, in addition to IP theft, instead of forcing anti-counterfeiting into what is truly an overarching IP reform model. Finally, this Part discusses the importance of public education campaigns that spread awareness about the ties between counterfeit fashion and international crime.

I. ANTI-MONEY LAUNDERING AS A MEANS OF ANTI-CRIME FINANCING

The Financial Action Task Force is the international standard-promulgating body for anti-money laundering and anti-terrorist financing.²³ It is an independent intergovernmental organization founded by the 1989 G-7 Summit in Paris to combat money laundering.²⁴ The FATF publishes recommendations that member nations, including the United States,²⁵ should adopt in order to effectively target money laundering.²⁶ After the September 11, 2001 terrorist attacks, the FATF revised its mission and expanded its purpose to include “identifying sources and methods of terrorist financing.”²⁷ It developed special recommendations²⁸ to better track

²³ *Who We Are*, FATF, <http://www.fatf-gafi.org/about/> (last visited Mar. 30, 2019).

²⁴ *History of the FATF*, FATF, <http://www.fatf-gafi.org/about/historyofthefatf/> (last visited Mar. 30, 2019).

²⁵ *See FATF Members and Observers*, FATF, <http://www.fatf-gafi.org/about/membersandobservers/> (last visited Mar. 30, 2019).

²⁶ *History of the FATF*, *supra* note 24.

²⁷ JAMES K. JACKSON, CONG. RESEARCH SERV., RS21904, THE FINANCIAL ACTION TASK FORCE: AN OVERVIEW 2 (2017), <https://fas.org/sgp/crs/misc/RS21904.pdf>.

²⁸ [The] FATF has been leading global action against terrorist financing since 9/11. It has developed global standards to fight terrorist financing to which more than 200 jurisdictions have committed. As a result all countries have now criminalised terrorist financing and are taking concrete action to prevent, detect and disrupt this.

terrorist financing.²⁹ The National Commission on Terrorist Attacks Upon the United States (also called the 9/11 Commission) stated that pinpointing terrorist financing, particularly by complying with the FATF recommendations, “must remain front and center in U.S. counterterrorism efforts.”³⁰

In May 2017, Senator Chuck Grassley introduced a bipartisan piece of legislation named the Combating Money Laundering, Terrorist Financing, and Counterfeiting Act of 2017.³¹ The Act would purport to supplement financial crime law and its enforcement by increasing domestic financial transparency and expanding financial institutions’ compliance obligations.³² Importantly, this proposed legislation is part of an overarching international effort to combat “terrorism and trafficking through economic sanctions and anti-money laundering (AML) rules.”³³ Senator Dianne Feinstein stated that the Act “adopts many of the recommendations made by the Justice Department [(“DOJ”)] to ensure that transnational criminal organizations, including terrorist

International Conference on Combating the Financing of Daesh and Al-Qaeda, FATF (Apr. 26, 2018), <http://www.fatf-gafi.org/publications/fatfgeneral/documents/no-money-terror-apr-2018.html>; Eben Kaplan, *Tracking Down Terrorist Financing*, COUNCIL ON FOREIGN REL. (Apr. 4, 2006), <https://www.cfr.org/background/tracking-down-terrorist-financing> (“These [recommendations] included passing legislation specifically criminalizing terrorist financing, requiring financial institutions to report suspicious transactions, creating a greater degree of international cooperation in tracking down terrorist financiers, and ratifying the UN convention on financing terrorism, a step that has been taken by 150 countries.”).

²⁹ JACKSON, CONG. RESEARCH SERV., *supra* note 27 (“In April, 2012, the member countries adopted a remodeled set of Forty Recommendations and renewed the FATF’s mandate through December 31, 2020.”).

³⁰ THE NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 3.

³¹ It should be noted that in this bill, “counterfeiting” refers only to counterfeit currency and not to product counterfeiting. *See* Combating Money Laundering, Terrorist Financing, and Counterfeiting Act of 2017, S. 1241, 115th Cong. (2017).

³² *See id.*

³³ John Kelly & Thad McBride, *Proposed Legislation Would Combat Terrorist Financing, Money Laundering*, BASS, BERRY & SIMS: GOV’T CONTS. & INT’L TRADE (June 8, 2017), <https://www.bassberrygovcontrade.com/proposed-legislation-would-combat-terrorist-financing-money-laundering/>.

groups, face consequences for laundering illicit funds, evading laws and promoting criminal activity.”³⁴ The Act follows a 2016 Mutual Evaluation Report of the United States by the FATF which gave the U.S. the “lowest possible rating for efforts to prevent criminals from using legal entities to hide and move money or carry out illicit schemes.”³⁵ This dismal rating provided impetus for the DOJ’s support of legislation which would create greater transparency in financial institutions for anti-money laundering and anti-crime financing purposes.³⁶ The proposed legislation shows, however, a clear recognition of a need for regulation pinpointing financial crime in the licit financial system for its association with international criminal organizations and terrorist financing.³⁷

II. FASHION AND THE GLOBAL COUNTERFEIT ECONOMY

Counterfeit fashion is but one subset of the broader category of illicit trade.³⁸ It is, however, a particularly attractive channel of trade for criminal organizations who wish to mitigate risk in their fundraising efforts.³⁹ Engaging in fashion counterfeiting shows motivations that mirror those for laundering money, which attempts to wash suspicion and risk from criminal proceeds by filtering them through seemingly legitimate sources.⁴⁰

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *See id.*

³⁸ *See* Louise Shelley, *Illicit Trade and Our Global Response*, 95 FOREIGN SERV. J. 22, 22–25 (2018).

³⁹ Fashion counterfeiting “makes more money for organized crime with less risk for them[.]” Lynne O’Donnell, *Fake Fashion Fuels Vast Illicit Profits, Sea of Human Misery*, SEATTLE TIMES (Feb. 28, 2017), <https://www.seattletimes.com/business/fake-fashion-fuels-vast-illicit-profits-sea-of-human-misery/>.

⁴⁰ *See* Michael Schidlow, *Counterfeit Goods: Money Laundering in Plain Sight (Part I—The Risks)*, THOMSON REUTERS LEGAL EXECUTIVE INST. (June 28, 2018), <http://www.legalexecutiveinstitute.com/counterfeit-goods-money-laundering-part-1/>.

*A. Fashion Counterfeiting is a Low Risk, High Yield
Business Venture*

The International Chamber of Commerce's Business Action to Stop Counterfeiting and Piracy and the International Trademark Association commissioned economic research firm Frontier Economics to study the economic impact of counterfeiting and piracy.⁴¹ The subsequent report indicates that, "despite increased efforts by the private sector, governments, international government organizations and a growing number of NGOs, the problem [of counterfeiting] is getting worse, not better."⁴² A study was conducted jointly by the Organisation for Economic Co-Operation and Development ("OECD") and European Union Intellectual Property Office ("EUIPO") to measure the scale of counterfeit trade and warn of the international problem through empirical evidence.⁴³ The study showed that counterfeit trade made up two and a half percent of world trade in 2013, the equivalent of \$461 billion.⁴⁴ Accordingly, that amount was projected to increase to \$991 billion by 2022.⁴⁵ These sums per annum reflect, at the very least, the following figures: damage done to IP rights holders,⁴⁶ damage done to governments that miss uncollected tax revenue,⁴⁷ and potential

⁴¹ FRONTIER ECON., THE ECONOMIC IMPACTS OF COUNTERFEITING AND PIRACY 5 (2017), https://www.inta.org/communications/documents/2017_frontier_report.pdf.

⁴² *Id.*

⁴³ OECD & EUIPO, TRADE IN COUNTERFEIT AND PIRATED GOODS: MAPPING THE ECONOMIC IMPACT 11 (2016), https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Mapping_the_Economic_Impact_study/Mapping_the_Economic_Impact_en.pdf.

⁴⁴ This figure is equivalent to the GDP of Austria in the same year. *Id.*

⁴⁵ FRONTIER ECON., *supra* note 41, at 8.

⁴⁶ See, e.g., *Protection of Intellectual Property: The Fight Against Counterfeit Goods, Piracy and Other Violations of Intellectual Rights*, ECONOMIE (Feb. 22, 2018), <https://economie.fgov.be/en/themes/intellectual-property/protection-intellectual> (noting the far-reaching effects of counterfeit goods, which "deprive companies of the fruit of their notoriety, positive image and their investments in research and development, innovation and marketing.").

⁴⁷ FRONTIER ECON., *supra* note 41 ("[T]he infiltration of counterfeit[s] . . . crowd[s] out Billions in legitimate economic activity and facilitat[es] an 'underground economy' that deprives governments of revenues for vital public

finances collected by criminal organizations which propagate counterfeit enterprises.⁴⁸ While the counterfeit business of consumer products—ranging from luxury goods, to baby food, to car parts, to pharmaceuticals—is a \$1.2-plus trillion industry, in 2017, the growing market just for counterfeit fashion amounted to \$450 billion, an enormous figure.⁴⁹ According to official statistics from the European Union (“E.U.”), the apparel, footwear, and accessories industries suffer annual revenue losses of about \$27.7 billion due to the counterfeit products trade, roughly ten percent of total sales.⁵⁰ U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement agencies seized 34,143 shipments of goods entering the country that infringed upon the IP rights of various companies in 2017.⁵¹ Had those goods been authentic, they would have been worth more than \$1.2 billion.⁵²

services, forces higher burdens on tax payers, dislocates hundreds of thousands of legitimate jobs and exposes consumers to dangerous and ineffective products.”).

⁴⁸ See OECD & EUIPO, *supra* note 43, at 15.

⁴⁹ *The Counterfeit Report: The Big Business of Fakes*, THE FASHION L. (Oct. 11, 2018), <http://www.thefashionlaw.com/home/the-counterfeit-report-the-impact-on-the-fashion-industry>.

⁵⁰ Sarah Shannon, *Fighting the \$450 Billion Trade in Fake Fashion*, BUS. OF FASHION (Mar. 2, 2017), <https://www.businessoffashion.com/articles/intelligence/fighting-the-450-billion-trade-in-fake-fashion>.

⁵¹ *The Number of Counterfeits Seized in the U.S. Grew by Almost 10% Last Year*, THE FASHION L. (Mar. 9, 2018), <http://www.thefashionlaw.com/home/counterfeit-seizures-grew-by-almost-10-percent-in-the-us-by-last-year>.

⁵² *Id.*

B. Fashion Counterfeiting is Not a Victimless Crime

Counterfeiting is largely perceived as a victimless crime,⁵³ particularly in the fashion industry.⁵⁴ While stronger public distain and legislative punishment surrounds, for example, the counterfeit drug business,⁵⁵ a distinction is drawn between *dangerous* counterfeiting—such as that of goods designed for human consumption—and that of seemingly innocuous goods, like fashion counterfeiting.⁵⁶ In reality, counterfeit fashion is a dark global enterprise.⁵⁷ As a business venture with no expenditures on quality or compliance measures, low overhead costs, low risks, low penalties, and high yields,⁵⁸ criminal organizations and terrorists use counterfeiting to fund their operations in a discreet, inconspicuous manner, as opposed to through, for example, narcotics trafficking.⁵⁹

The OECD's report *The Economic Impact of Counterfeiting and Piracy* highlights the financial losses suffered by brands, depleting both their funds and reputations;⁶⁰ those suffered by consumers who

⁵³ U.N. OFFICE ON DRUGS & CRIME [UNODC], THE ILLICIT TRAFFICKING OF COUNTERFEIT GOODS AND TRANSNATIONAL ORGANIZED CRIME, at 2 http://www.unodc.org/documents/ropan/Campaign/Counterfeit_Goods/The_Illic_it_Trafficking_of_Counterfeit_Goods_and_Transnational_Organized_Crime.pdf (“[W]hile the illicit trafficking of counterfeit goods is often perceived as a ‘lesser crime[,]’ the consequences can be quite serious, with the costs going far beyond just the illegal copying of products.”).

⁵⁴ O’Donnell, *supra* note 39.

⁵⁵ See, e.g., 18 U.S.C. § 2320(b)(3) (2019) (providing increased penalties for trafficking in counterfeit military goods or services and counterfeit drugs).

⁵⁶ See Sandra L. Rierson, *Pharmaceutical Counterfeiting and the Puzzle of Remedies*, 8 WAKE FOREST INTELL. PROP. L.J. 433, 454–55 (2008) (calling for more severe penalties when the counterfeiting relates to what the author believes are more “morally culpable” enterprises like drug counterfeiting as opposed to fashion counterfeiting).

⁵⁷ See Gray, *supra* note 4.

⁵⁸ See PEGGY E. CHAUDHRY & ALAN ZIMMERMAN, PROTECTING YOUR INTELLECTUAL PROPERTY RIGHTS: UNDERSTANDING THE ROLE OF MANAGEMENT, GOVERNMENTS, CONSUMERS AND PIRATES 22–23 (2013).

⁵⁹ See O’Donnell, *supra* note 39.

⁶⁰ OECD, THE ECONOMIC IMPACT OF COUNTERFEITING AND PIRACY: EXECUTIVE SUMMARY 18 (2007), <https://www.oecd.org/sti/38707619.pdf>.

may be exposed to health and safety dangers;⁶¹ and those suffered by governments that experience tax losses and incur large costs in enforcing IP rights.⁶² Nonetheless, it also highlights the mounting concern that counterfeiting is a source of funding directly related to other criminal activities, namely arms and narcotics trafficking, prostitution, money laundering and, most strikingly, terrorism.⁶³ Not only does counterfeit fashion create macro effects on brand value, government spending, and crime funding—on a micro scale, counterfeit fashion harms individuals (often children)⁶⁴ who produce it in deplorable sweatshop conditions.⁶⁵

London-based [IP] lawyer Mary Bagnall describes scenes of horror[—]children chained to sewing machines; people locked in underground factories in remote corners of China “It’s difficult to communicate to consumers why it is not a victimless crime.” . . . Consumers can understand the perils of fake air bags for cars, or fake toys or electrical goods

⁶¹ See Erin Fitzgerald, Note, *The Fashion Police: Criminalizing the Knowing Purchase of Trademark Counterfeit Fashion Items*, 47 NEW ENG. L. REV. 127, 142 (2012) (discussing health risks to consumers, as counterfeit goods are unregulated and uninspected, and highlighting counterfeiters’ use of bacteria, antifreeze, and even urine as active ingredients in counterfeit perfumes).

⁶² OECD, *supra* note 60, at 20–21.

⁶³ See, e.g., Schidlow, *supra* note 40 (“[T]here is no evidence that other schemes such as narcotics sales, violent crimes or human trafficking cease. . . . [P]roceeds of other illicit activity can be utilized to fuel the sale of counterfeit goods, and the sale of counterfeit goods can be utilized to support other ongoing criminal activity.”).

⁶⁴ Retired NYPD Captain Peter Moreno said, “There are a lot of ugly things that go on to make this allegedly beautiful bag There’s all kinds of kidnapping, dirty money.” Steve Dool, *Drugs, Guns, and Fake Kicks: Inside the Counterfeit Economy*, COMPLEX (Dec. 21, 2016), <https://www.complex.com/style/2016/12/counterfeit-fashion-industry>.

⁶⁵ Fashion journalist Dana Thomas retold an investigator’s particularly impactful story: “I remember walking into an assembly plant in Thailand . . . and seeing six or seven little children, all under 10 years old, sitting on the floor assembling counterfeit leather handbags.” The investigator recalled that “[t]he owners had broken the children’s legs and tied the lower leg to the thigh so the bones wouldn’t mend. They did it because the children said they wanted to go outside and play.” DANA THOMAS, DELUXE: HOW LUXURY LOST ITS LUSTER 288 (2007).

that “could explode in the face of a child,” Bagnall said. But the fake goods industry goes much further than that.⁶⁶

The human cost of fashion counterfeiting, primarily suffered on the manufacturing end, may be largely unseen, but it exists nevertheless.⁶⁷

C. Terrorists and Organized Crime Groups use Fashion Counterfeiting to Raise Capital

In addition to the high-order effects on the U.S. and world economies, a darker threat concerns how counterfeit fashion purchases fund and conceal international organized crime operations, including prostitution, drug trafficking, and terrorism.⁶⁸ Former director of the French General Directorate for Internal Security Pierre de Bousquet de Florain summarized the problem poignantly in an interview, stating that Afghan terrorist networks

⁶⁶ O’Donnell, *supra* note 39.

⁶⁷ Consumers may see fakes as “fun” and feel clever to buy sunglasses or sneakers that look like the real thing but cost a fraction of the price. The reality, however, is anything but fun for the workers, many of them children, who toil in appalling, often slave-like conditions in secret factories making fake products for gang bosses who . . . “have no ethics and no respect for the law.”

Id.

⁶⁸ In 2006, Italian investigative journalist Roberto Saviano published *Gomorra: Italy’s Other Mafia*, an exposé of the Camorra, the Neapolitan mafia which still has great control over modern Italy. Saviano recounts disturbing and grim testimonials of the Camorra’s operations, including detailed accounts of its tremendous fashion counterfeiting business. His work also provides a fascinating discussing of the mafia’s involvement in legitimate luxury fashion brand manufacturing. “The Secondigliano clans realized that their vast international distribution and sales network was their greatest asset, even stronger than drug trafficking. Narcotics and clothing often moved along the same routes.” ROBERTO SAVIANO, *GOMORRAH: ITALY’S OTHER MAFIA* 43 (2007). Since publishing *Gomorra*, Saviano has had to live under police protection. Kathryn Bromwich, *Roberto Saviano: ‘I Saw My First Corpse in Secondary School. It Didn’t Shock Me’*, THE GUARDIAN (Aug. 26, 2018), <https://www.theguardian.com/books/2018/aug/26/roberto-saviano-interview-gomorra-piranhas>.

exist “thanks to crime, robberies, . . . and counterfeiting of designer clothes.”⁶⁹ The FBI determined that the 1993 bombing of the World Trade Center was funded by counterfeit apparel sales made on Broadway Avenue in New York City.⁷⁰ Al Qaida propaganda has been found to recommend trafficking in counterfeit goods to raise finances for terrorist activities.⁷¹ After the deadly 2015 Charlie Hebdo attack in Paris, French Minister of Budget Christian Eckert spoke at the Customs annual press conference and acknowledged the now-undeniable link between counterfeiting and terrorism.⁷² He stated, “It has been proven that many Jihadists are at the heart of counterfeit trafficking . . . Fighting against counterfeit[s] allows also to fight against terrorism.”⁷³ The Kouachi brothers, perpetrators of the Charlie Hebdo attack, “lived from drug trafficking, but also and particularly, from the sale of counterfeit products, especially Nike trainers.”⁷⁴ Customs was already on notice of the Kouachis’

⁶⁹ *Des Liens avec la Criminalité Organisée?* [Links to Organized Crime?] LA DÉPÊCHE DU MIDI (Mar. 14, 2003) (Fr.), <https://www.ladepeche.fr/article/2003/03/14/133417-des-liens-avec-la-criminalite-organisee.html>.

⁷⁰ Fitzgerald, *supra* note 61, at 141.

⁷¹ UNION DES FABRICANTS [UNIFAB], COUNTERFEITING & TERRORISM 14 (2016), https://www.unifab.com/wp-content/uploads/2016/06/Rapport-A-Terrorisme-2015_GB_22.pdf;

[U]ne personne, ayant été un membre d’Al Qaida, fût arrêtée pour avoir expédié des contrefaçons . . . S’agissant de ce groupe particulier, on relève l’existence de documents qui révèlent que cette organisation préconise à ses adeptes de faire le commerce d’objets contrefaisants dans le dessein de générer des fonds pour les opérations terroristes.

CENTRE D’ÉTUDES INTERNATIONALES DE LA PROPRIÉTÉ INDUSTRIELLE [CEIPI], IMPACTS DE LA CONTREFAÇON ET DE LA PIRATERIE EN EUROPE [IMPACTS OF COUNTERFEITING AND PIRACY IN EUROPE] 35 (2004) (Fr.), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/doc_centre/crime/docs/study_ceipi_counterfeiting_fr.pdf.

⁷² UNION DES FABRICANTS [UNIFAB], *supra* note 71, at 6.

⁷³ *Id.*

⁷⁴ Jean-Marc Leclerc, *Les Terroristes Versent dans la Contrefaçon* [Terrorists Pour into Counterfeiting], LE FIGARO (Feb. 22, 2015) (Fr.), <http://www.lefigaro.fr/actualite-france/2015/02/22/01016-20150222ARTFIG00194-les-terroristes-versent-dans-la-contrefacon.php> (“Les

involvement with trafficking counterfeit goods after an attempt to fraudulently import products, an offense which was punished by just a fine.⁷⁵ *L'Express* magazine's investigative report noted:

Sharif Kouachi's conversations on the phone and those of his associates seem to show that he then embarked on counterfeiting of clothing and sports shoes. To the police, he leaves the terrorist spectrum, seeming to enter that of petty crime. No sign of danger is detected. In June 2014, surveillance of the Kouachi brothers [is] definitively lifted. Police pass to other suspects. Seven months later, the brothers burst into Charlie Hebdo's newsroom.⁷⁶

It takes little to imagine what might have been avoided had police not lifted surveillance on Sharif because law enforcement overlooked fashion counterfeiting as a serious crime.⁷⁷

Although there is abundant evidence of the dangers surrounding fashion counterfeiting, it is still not prioritized by many countries in their legislation which targets terrorism and organized crime.⁷⁸ This

frères Kouachi, à l'origine de cette nouvelle offensive terroriste, vivaient de trafic de drogue mais aussi et surtout de vente de produits contrefaits, des chaussures Nike notamment.”).

⁷⁵ UNION DES FABRICANTS [UNIFAB], *supra* note 71, at 16.

⁷⁶ *L'Express* magazine reported:

Les conversations de Chérif au téléphone et de ses fréquentations semblent montrer qu'il se lance alors dans la contrefaçon de vêtements et de chaussures de sport. Pour les policiers, il sort du spectre terroriste, semblant entrer dans celui de la petite délinquance. Aucun signe de dangerosité n'est détecté. Si bien qu'en juin 2014, la surveillance des Kouachi est définitivement levée. La police passe à d'autres suspects. Sept mois plus tard, les frères font irruption dans la salle de rédaction de Charlie Hebdo.

Pascal Ceaux & Eric Pelletier, *Frères Kouachi: Révélations au Yémen [Kouachi Brothers: Revelations in Yemen]*, L'EXPRESS (Jan. 10, 2015) (Fr.), https://www.lexpress.fr/actualite/societe/enquete/attaques-terroristes-a-paris-le-yemen-au-coeur-de-l-enquete_1639417.html.

⁷⁷ *See id.*

⁷⁸ UNION DES FABRICANTS [UNIFAB], *supra* note 71, at 20 (“Despite all the dangers presented by counterfeiting, it still does not feature as a priority for different States, in terms of dealing with organised crime. In some countries, the criminal aspect is not even taken into consideration!”).

is in stark contrast to the international action for greater anti-money laundering regulation which followed the September 11 attacks.⁷⁹ The U.S. federal system provides prosecutors with strong anti-counterfeiting statutes,⁸⁰ and state statutory schemes like those in New York and California are following suit.⁸¹ However, characterization of fashion counterfeiting as simply an IP theft issue feeds a perception of fashion counterfeiting as a victimless crime among consumers, law enforcement, prosecutors, and judges alike, thus restraining statutory weapons from their potential to be truly effective.⁸² This perpetuated false perception, coupled with a weak international anti-counterfeiting system, fuels the rampant successes of fashion counterfeiting.

D. Both Anti-Money Laundering and Anti-Counterfeiting Target International Crime

International criminal organizations and terrorists are elusive and very difficult to track,⁸³ but they are potentially vulnerable at points where their products and money surface in the legal economy and financial system. In the same way anti-money laundering efforts aim to pinpoint criminal financial flows in the licit financial system,⁸⁴ anti-counterfeiting efforts could target the products which serve as a source of income for those criminals. Approaches to attacking international crime through licit financial and trade

⁷⁹ See generally Nicole M. Healy, *The Impact of September 11th on Anti-Money Laundering Efforts, and the European Union and Commonwealth Gatekeeper Initiatives*, 36 THE INT'L LAWYER 733, 743–48 (2002) (discussing developments in international anti-money laundering law and strategy after the September 11, 2001 terrorist attacks).

⁸⁰ See, e.g., 18 U.S.C. § 2320 (2019) (defining the offense of trafficking in counterfeit goods or services); see also Sam Cocks, Note, *The Hoods Who Move the Goods: An Examination of the Booming International Trade in Counterfeit Luxury Goods and an Assessment of the American Efforts to Curtail its Proliferation*, 17 FORDHAM INTELL. PROP., MEDIA & ENT. L.J. 501, 521–35 (2006).

⁸¹ See *infra* Section III.B.

⁸² See Kevin Lewis, *The Fake and the Fatal: The Consequences of Counterfeits*, 17 PARK PLACE ECONOMIST 47, 50 (2009).

⁸³ Kaplan, *supra* note 28.

⁸⁴ See *id.*

channels could effectively, albeit indirectly, bolster international law enforcement efforts to dismantle these criminal organizations.⁸⁵

After 2001, recognition of the use of money laundering by terrorists and organized crime brought about international anti-money laundering efforts for cooperation and harmonization in the international financial architecture.⁸⁶ Measuring the breadth of criminal organizations and money laundering, economist John Walker developed an approach to quantify money laundering by estimating the proceeds earned by different international offenses that terrorist and organized crime units perpetrate and combining that figure with the probability of those proceeds being laundered.⁸⁷ In his paper *Measuring Global Money Laundering*,⁸⁸ Walker's estimates show that business fraud is a greater source of laundered money than illegal drugs.⁸⁹ Moreover, Walker argues that "attacking the economic basis of crime can be an effective transnational crime prevention strategy and that economists can play a valuable role in monitoring and combating transnational crime and money laundering."⁹⁰

[G]iven that the conduct of any illegal activity may be subject to a special category of transaction costs, linked to the fact that the use of the relative revenues increases the probability of discovery of the crime and therefore incrimination, those transaction costs can be minimized through an effective laundering action, a means of concealment that separates financial flows from their origin. In other words, whenever a given flow of purchasing power that is potential[—]since it cannot be used directly for

⁸⁵ See Friedrich Schneider, *Turnover of Organized Crime and Money Laundering: Some Preliminary Empirical Findings*, 144 PUB. CHOICE 473, 474–76 (2010) (discussing anti-money laundering as a means of effectively, yet indirectly, targeting crime financing).

⁸⁶ See generally Healy, *supra* note 79 (suggesting that nations will continue to cooperate in strengthening international financial regulations to combat terrorist and organized crime funding).

⁸⁷ Schneider, *supra* note 85, at 474.

⁸⁸ *See id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

consumption or investment as it is the result of illegal accumulation activity[—]is transformed into actual purchasing power, money laundering has occurred. . . . The goal of terrorism finance is to channel capitals of any origin to individuals or groups to enable acts of terrorism. As in the money laundering activity, the financial flows may increase the probability that the crime of terrorism will be discovered, thus increasing the probability of incrimination. . . . A typical example [of the coexistence of money laundering and money dirtying] is the financing of terrorism with the proceeds from the production of narcotics. In those specific situations the importance of the transaction costs is greater, since the need to lower the probability of incrimination concerns both the crimes that generated the financial flows and the crimes for which they are intended. The value of a concealment operation is even more significant.⁹¹

Products counterfeiting, like the financing of terrorism with proceeds from drug trafficking, is an example of the coexistence of money laundering and money dirtying.⁹² Products counterfeiting, and specifically fashion counterfeiting, presents a minimization of transaction costs in the money dirtying stage, as it is a lower risk venture than, for instance, drug trafficking;⁹³ counterfeit products

⁹¹ Masciandaro, *supra* note 10, at 4, 21–22.

⁹² *See id.*

⁹³ Consumer goods have replaced the nicotine habit as the new contraband. . . . [N]ew items—genuine, false, semifalse, or partially real—arrive. Silently, without a trace. With less visibility than cigarettes, since there's no illegal distribution. As if they'd never been shipped, as if they'd sprouted in the fields and been harvested by some unknown hand. Money doesn't stink, but merchandise smells sweet. It doesn't give off the odor of the sea it crossed or the hands that produced it, and there are no grease stains from the machinery that assembled it. Merchandise smells of itself. Its only smell comes from the shopkeeper's counter, and its only endpoint is the buyer's home.

SAVIANO, *supra* note 68, at 15–16.

represent potential purchasing power, and their purchase directs actual purchasing power to criminals, all while decreasing the transaction cost of the money dirtying because counterfeiting is perceived to be a less dangerous crime and is consequently punished less severely.⁹⁴ Fashion counterfeiting is thus in this sense a more valuable enterprise than drug trafficking because the transaction cost of money dirtying is significantly lower.⁹⁵

The September 11, 2001 terrorist attacks brought about radical change in international anti-money laundering efforts.⁹⁶ In particular, the FATF reacted by calling an emergency meeting and presenting an initiative to combat the use of money laundering in the financing of terrorism, where President of the FATF Clarie Lo announced that the mission of the FATF “is to strangle and cut the supply of money and assets that is the lifeblood of terrorists.”⁹⁷ In further support of that sentiment, Treasury Secretary Paul O’Neill added, “[The] FATF is uniquely positioned to take up the challenges of terrorist financing [and its] goal must be nothing less than the disruption and elimination of the financial frameworks that support terrorism and its abhorrent acts.”⁹⁸ This emergency meeting resulted in the FATF broadening its mission to target terrorist financing and promises by member nations to comply with those recommendations.⁹⁹ Ties between fashion counterfeiting and terrorist financing should have elicited a similar reaction for global cooperation in the international regulatory system, but such has not been the case.

⁹⁴ See generally Masciandaro, *supra* note 10 (proposing a framework through which to examine black financial markets and discussing the relative economic value of variable-risk activities to criminal groups).

⁹⁵ See generally *id.* at 22 (explaining the value of a concealment operations relating to variable-risk activities).

⁹⁶ Healy, *supra* note 79, at 733.

⁹⁷ *Id.* at 740–41.

⁹⁸ *FATF Pledges to Combat the Financing of Terrorists*, OECD (Oct. 30, 2001),

www.oecd.org/newsroom/fatfpledgestocombatthefinancingofterrorists.htm.

⁹⁹ See Healy, *supra* note 79, at 734–35.

III. U.S. LEGISLATION AND PROPOSED SOLUTIONS TO THE EVER-GROWING COUNTERFEIT INDUSTRY

In the United States, the Lanham Act is the federal statute regarding trademark use in commercial activity.¹⁰⁰ The Lanham Act provides trademark owners with impressive anti-counterfeiting measures, including “forfeiture of profits to . . . trademark owner[s]; seizure and destruction of all counterfeit merchandise, as well as the means and machinery used to produce [it]; court costs and attorneys’ fees; and compensatory treble damages”¹⁰¹ From the perspective of counterfeiters, civil penalties are considered a mere cost of doing illicit business.¹⁰² Anti-counterfeiting efforts by brands (i.e., IP rights holders) can be enormously expensive, however, and rights holders are often disincentivized from litigation knowing that their litigation costs may exceed the recoverable monetary damages, all making it well worth the expense for counterfeiters.¹⁰³

¹⁰⁰ See The Lanham or Trademark Act of 1946, Pub. L. No. 79-489, 60 Stat. 427 (codified as amended in scattered sections of 15 U.S.C.).

¹⁰¹ Cocks, *supra* note 80, at 522.

¹⁰² MIKE W. PENG, GLOBAL BUSINESS: 2009 UPDATE 40 (2009).

¹⁰³ Nonetheless, counterfeiting litigation pays other dividends by deterring other counterfeiting and by protecting and preserving valuable trademark rights. For instance, the damage to a company’s reputation that arises from consumers who attribute a faulty or low-quality counterfeit product to the trademark owner itself can be severe, particularly when consumers are injured by the counterfeit product. Or in the case of luxury items, such as ROLEX® watches or GUCCI® leather goods, failure to take action against counterfeiters can erode the status-symbol allure of these goods.

Anessa Kramer & Mark Sommers, *Taking an Aggressive Stance Against Counterfeiters: An Overview of Trademark Counterfeiting Litigation under the Lanham Act*, FINNEGAN (Sept./Oct. 1999), <https://www.finnegan.com/en/insights/taking-an-aggressive-stance-against-counterfeiters-an-overview.html>.

A. *U.S. Legislation Targeting the Supply of Counterfeit Goods*

The Lanham Act does not criminalize trafficking in counterfeit trademarked goods; instead, criminal penalties are levied under the 1984 Trademark Counterfeiting Act, codified in 18 U.S.C. § 2320.¹⁰⁴ Section 2320 punishes an individual committing a first offense of trafficking in counterfeit goods with a penalty of up to \$2,000,000 or imprisonment for no more than ten years, or both.¹⁰⁵ For a subsequent offense of trafficking in counterfeit goods, that individual's penalty may increase to a fine of up to \$5,000,000 or imprisonment for up to twenty years, or both.¹⁰⁶ If the trafficking is committed by an organizational offender, penalties augment to \$5,000,000 and \$15,000,000, respectively.¹⁰⁷ Upon Congress's passage of the Violent Crime Control and Law Enforcement Act of 1994, the penalties were increased from those imposed by the 1984 Act, part of the Comprehensive Crime Control Act of 1984 used to levy criminal sanctions on counterfeit trafficking.¹⁰⁸ Exponential growth of trade in counterfeits in the U.S. led Congress to modernize anti-counterfeiting legislation,¹⁰⁹ noting that the previously-enacted 1984 Act was an "inadequate remedy for the explosive growth of criminal commercial counterfeiting."¹¹⁰

The Violent Crime Control and Law Enforcement Act of 1994 also classified trafficking in counterfeit goods under § 2320 as one of several "specified unlawful activ[ies]" capable of bringing about

¹⁰⁴ See generally 18 U.S.C. § 2320 (2019); *U.S. v. Diallo*, 575 F.3d 252, 255 (3d Cir. 2009) (detailing that the prosecution in an anti-counterfeiting action must prove that the accused "knew the marks used on the goods were counterfeit.>").

¹⁰⁵ § 2320(b)(1)(A).

¹⁰⁶ § 2320(b)(1)(B).

¹⁰⁷ § 2320(b)(1)(A), (b)(1)(B).

¹⁰⁸ S. REP. NO. 104-177, at 2 (1995); Cocks, *supra* note 80, at 524.

¹⁰⁹ S. REP. NO. 104-177, at 3 ("Unfortunately, no one predicted the phenomenal growth of the crime of counterfeiting, nor the increased availability of technology that makes counterfeiting both easy and inexpensive.>").

¹¹⁰ H.R. REP. NO. 104-556, at 2 (1996). Congress called for greater penalties because its 1984 Act was insufficient to address "the extent to which organized crime syndicates, often operating on an international level, would become directly involved in the manufacturing, distributing, selling, and financing of counterfeit products." S. REP. NO. 104-177, at 3.

prosecution under §§ 1956 and 1957 of the Money Laundering Control Act of 1986.¹¹¹ Section 1956, “Laundering of Monetary Instruments,” criminalizes conducting or attempting a financial transaction where the party knows that:

the property involved [in the] transaction represents the proceeds of some form of unlawful activity . . . with the intent to promote the carrying on of [a] *specified unlawful activity* [including activity of trafficking in counterfeit goods in violation of § 2320] (emphasis added) . . . knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or to avoid a transaction requirement under State or Federal Law.¹¹²

Section 1957, “Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity,” criminalizes the knowing engagement in or attempt to engage in a “monetary transaction in criminally derived property of a value greater than \$10,000 and . . . derived from specified unlawful activity,” where such specified unlawful activity again includes trafficking in counterfeit goods in violation of § 2320.¹¹³ Trafficking in counterfeit goods is a predicate offense to the Racketeer Influenced and Corrupt Organizations (RICO) Act, which imposes extended criminal and civil penalties for acts which are performed as part of an ongoing criminal enterprise.¹¹⁴ Additionally, trafficking in counterfeit goods is an example of a predicate offense to the crime of terrorist financing under 18 U.S.C. § 2339C.¹¹⁵ Federal statutes thus provide

¹¹¹ 18 U.S.C. §§ 1956(c)(7)(D), 1957 (2019).

¹¹² § 1956.

¹¹³ § 1957.

¹¹⁴ *RICO Law*, HG.ORG, <https://www.hg.org/rico-law.html> (last visited Mar. 30, 2019) (“Title 18, Section 1961 of the United States Code sets forth a long list of racketeering activities, the repeated commission of which can form the basis of a RICO Act claim. These underlying federal and state offenses exist independently of the act, and include . . . [a] number of financial crimes . . . , such as money laundering [and] counterfeiting.”).

¹¹⁵ 18 U.S.C. § 2339C (2019).

potentially powerful tools for addressing counterfeiting. However, availability of resources does not necessarily imply implementation thereof.¹¹⁶

B. New York and California's Approaches are Positive but Incomplete Statewide Reforms

New York and California's state legislatures have both implemented changes which mirror federal law in some respects.¹¹⁷ New York and California are particularly important hubs of counterfeiting in the United States, known best for their Canal Street and Santee Alley fashion counterfeit markets.¹¹⁸ Both states have enhanced their criminal profiteering statutes to include counterfeiting as an offense that triggers prosecution thereunder. California's Criminal Profiteering Statute defines criminal profiteering as "any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under [any of several sections]," including both money laundering and "offenses relating to the counterfeit of a registered mark."¹¹⁹ New York's Penal Law defines trademark counterfeiting as a criminal offense,¹²⁰ and violations of relevant sections 165.72 and 165.73 are defined as criminal acts which may serve as predicate

¹¹⁶ Cocks, *supra* note 80 (providing an overview of the various federal statutes which prosecutors may use to combat counterfeiting, and accounting for the scant record of prosecutions of traffickers of counterfeit goods under RICO law by noting the statutory hurdles that plague other RICO actions).

¹¹⁷ *See id.* at 535.

¹¹⁸ *See, e.g.,* Karen Anthony, *Guide to Buying Fake Handbags in New York City*, UNPUBLISHED ARTICLES, <https://www.unpublishedarticles.com/handbags/> (last visited Apr. 12, 2019) (offering a guide to buying counterfeit handbags on Canal Street, advising that vendors will lead prospective purchasers "into the back room . . . or downstairs into a basement where handbags line the walls. They may act secretive, using Walkie-Talkies, rushing you quickly into the back room and pushing you out when you're done, but don't be intimidated to go with the flow"); *see also* Kristin Vartan, *Counterfeit Culture is a Big LA Commodity*, PEPP. U. GRAPHIC (Apr. 12, 2018), <http://pepperdine-graphic.com/counterfeit-culture-is-a-big-la-commodity/> (discussing the saturated counterfeit fashion marketplace in Los Angeles).

¹¹⁹ CAL. PENAL CODE § 186.2 (West 2019).

¹²⁰ *See* N.Y. PENAL LAW §§ 165.70–165.74 (McKinney 2019).

offenses to trigger prosecution under the state’s enterprise corruption statute,¹²¹ thus aligning state and federal anti-counterfeiting legislation on at least one point. However, neither California nor New York has yet added counterfeiting as a predicate offense to its money laundering statute.¹²²

It has been noted, however, that, “[e]ven without these relatively minor amendments, . . . the criminal statutes proscribing trafficking in counterfeit trademarked goods currently in place at the both the federal and New York state levels amount to formidable anti-counterfeiting weapons if prosecutors and law enforcement authorities apply them dynamically.”¹²³ The efficacy of these “weapons” is conditional—*if* law enforcement applies these laws forcefully, counterfeiting may meet a significant challenge. Despite these modest domestic legislative advancements, however, fashion counterfeits in the U.S. continue to make up a booming industry fueled through global trade.¹²⁴ Effective enforcement, then, requires significant public education and recharacterization of fashion counterfeiting as a crime with real victims.¹²⁵

C. Strong U.S. Anti-Counterfeiting Laws are Insufficient to Address Even Domestic Problems Posed by this Global Industry

Federal and state statutory reforms have been important and reflect recognition of product counterfeiting’s relation to crime

¹²¹ See §§ 460.00-460.80.

¹²² See §§ 470.00-470.25 (addressing money laundering under New York law); see also CAL. PENAL CODE § 186.10 (West 2019) (addressing money laundering under California law).

¹²³ Cocks, *supra* note 80, at 551.

¹²⁴ #Fake: The Ever-Rising Trade of Counterfeit Goods in Fashion, THE FASHION L. (Aug. 8, 2017), <http://www.thefashionlaw.com/home/fake-the-rising-trade-of-counterfeit-goods-in-fashion>.

¹²⁵ As long as the individuals and agencies tasked with prosecuting traffickers of counterfeit goods persist in their lack of resolve to act with the diligence, expedience, and evenhandedness required to rein in such a pervasive criminal activity, the tide of the illicit trademark counterfeiting trade will continue to flow unabated.

Cocks, *supra* note 80, at 553.

financing; however, despite relatively strong statutory resources in the U.S., the global counterfeit products industry continues to augment.¹²⁶ This growth is facilitated by the perception that counterfeiting is a lesser crime,¹²⁷ unchecked by an independent body regulating its global prowess and mandating international coordination as exists in the money laundering arena. Further, counterfeiting is in no way a merely domestic problem. It is a global problem too overwhelming for U.S. Customs and Border Protection and Homeland Security Investigations to effectively control, and even more confused by e-commerce,¹²⁸ as consumers can purchase counterfeit items from international sellers who are not subject to U.S. law.¹²⁹

If engaging in cross-border e-commerce, copyright, trademark and consumer safety laws no longer apply; the offenders of the crimes are outside the legal jurisdiction of U.S. courts and Amazon and eBay cannot yet be held accountable. On top of that, e-commerce sites . . . lack effective vetting systems for new sellers, U.S. customs is unable to properly screen parcels coming in from abroad, and the American legal system is embarrassingly inept at

¹²⁶ *Global Brand Counterfeiting Report 2018–2020*, AP (May 15, 2018), <https://www.apnews.com/ef15478fa38649b5ba29b434c8e87c94>.

¹²⁷ U.N. OFFICE ON DRUGS & CRIME, *supra* note 53.

¹²⁸ Today, the counterfeit trade no longer exists just through downtown city street vendors. Recently, the Internet has become a major enabler in the sale of online counterfeit products, ensuring anonymity and providing counterfeiters with access to a global market. . . . Between 2008 and 2013, [the OECD and EUIPO] showed an 80 percent global growth in counterfeiting.

Amanda G. Ciccatelli, *The Growing Problem of Online Counterfeit Products*, IPWATCHDOG (July 20, 2017), <http://www.ipwatchdog.com/2017/07/20/growing-problem-online-counterfeit-products/id=85846/>.

¹²⁹ Wade Shepard, *Christmas Shoppers Beware: U.S. Law Can't Protect You from Dangerous Counterfeits on Amazon and eBay*, FORBES (Dec. 8, 2017), <https://www.forbes.com/sites/wadeshepard/2017/12/08/christmas-shoppers-beware-u-s-law-cant-protect-you-from-dangerous-counterfeits-on-amazon-and-ebay/#1cba80c652dd>.

protecting its citizens from foreign criminals shipping in illegal items. In this climate, counterfeit and dangerous products flow freely over U.S. borders and into the homes of U.S. citizens, and nobody with any power seems willing or able to do anything about it.¹³⁰

Furthermore, strong domestic policies are not enough to address this global industry; independent international coordination is necessary.

IV. ATTITUDES TOWARD FASHION COUNTERFEITING

Fashion counterfeiting has been regarded as a lesser crime whose victims are unsympathetic corporations.¹³¹ This attitude, held amongst a variety of interest groups, discounts the harms done by organized crime and terrorists' involvement in counterfeiting—both the harms immediately suffered by those who manufacture in unregulated conditions,¹³² and the latent harms suffered by those affected by criminals' successful survival.

¹³⁰ *Id.*

¹³¹ See U.N. OFFICE ON DRUGS & CRIME *supra* note 53 and accompanying text; see also Matthew P. Ponsford, *Curtailing Counterfeit Consumption: Deciphering Ethical Attitudes and Consumer Intention*, 5 J. CIV. & LEGAL SCI. 5 (2016) (exploring counterfeit consumer behavior through the lens of various theories related to such consumption).

¹³² A common misconception is that counterfeiting is a “victimless crime.” While the most obvious victims might be the large corporations that lose sales, those that are most grievously harmed include the low-wage workers who toil in grim sweatshops (counterfeiters do not invest in humane factories) and the unwitting consumers of counterfeit products who are not only defrauded but often put into physical danger (counterfeiters are known to sell counterfeit medicines and even airplane parts). Many people who purchase counterfeits do not realize the pervasive social harms associated with these products. Government reports indicate that counterfeiting also provides substantial funding for organized crime and terrorist organizations.

A. *Consumer Attitudes Toward Counterfeiting: Ethical Mischaracterizations and Increased Demand*

Moreover, the counterfeit industry exists because demand for fashion counterfeits persists.¹³³ This economic concept supports the push for demand-side anti-counterfeiting legislation.¹³⁴ Researchers have found that ethical judgments affect attitudes held toward counterfeit purchases and subsequent decision-making and purchase behavior.¹³⁵ It has been determined that moral judgment has a negative effect on purchase intention,¹³⁶ and that the higher a consumer's moral awareness, the likelier one is to judge a counterfeit fashion purchase situation as morally wrong.¹³⁷

Counterfeit products may be sold under deceptive or non-deceptive conditions, but in the fashion industry, counterfeits are generally sold non-deceptively, "presented in the marketplace as counterfeit or fraudulent with no intent to deceive the purchaser."¹³⁸ Unyielding demand for counterfeit fashion products indicates that consumers prove time and again ambivalent toward the ethical issue that is immediately apparent—IP theft—as they continue to intentionally seek out counterfeit goods in non-deceptive sales

¹³³ Pamela S. Norum & Angela Cuno, *Analysis of the Demand for Counterfeit Goods*, 15 J. FASHION MARKETING & MGMT. 27, 27 (2011).

¹³⁴ *See id.*

¹³⁵ *See generally* Luis F. Martinez & Dorothea S. Jaeger, *Ethical Decision Making in Counterfeit Purchase Situations: The Influence of Moral Awareness and Moral Emotions on Moral Judgment and Purchase Intentions*, 33 J. CONSUMER MARKETING, 213, 213–23 (2016) (researching the effects of moral awareness and moral judgment in counterfeit fashion purchase situations).

¹³⁶ *See generally id.* (finding that moral emotions affected moral judgments and purchase intentions in counterfeit purchase situations).

¹³⁷ *See id.* at 215, 219 (hypothesizing that "[t]he higher the individual's level of moral awareness, the higher her/his level of moral judgment concerning the purchase of a counterfeit product" and concluding, "[T]his study's findings showed that the higher the respondents' level of moral awareness, the more likely they were to judge the purchase of the counterfeit sunglasses in the scenario as morally wrong.").

¹³⁸ *See* John Spink et al., *Defining the Types of Counterfeiters, Counterfeiting, and Offender Organizations*, 2 CRIME SCI. 1, 1 (2013), <https://crimesciencejournal.biomedcentral.com/articles/10.1186/2193-7680-2-8>.

situations.¹³⁹ Research of counterfeit fashion consumer motivations has shown that consumers do not sympathize with the effect counterfeiting has on brands¹⁴⁰ and are generally apathetic toward trademark infringement issues.¹⁴¹

Considering that moral judgment has a negative effect on purchase intention,¹⁴² demand-sustaining behavior demonstrates that the ethical issue consumers perceive toward fashion counterfeits is deemed to be IP theft and economic harm to brands, while the ethical issue of ties to crime and human rights violations is not immediately apparent (as it presumably would be a motivation for *decreased* demand).¹⁴³ Research concerning counterfeit fashion consumer motivations in purchase situations has sought to “discern why some consumers behave responsibly, seeking luxury items at often exorbitant cost, while others neglect ethical conduct entirely, seeking counterfeit goods for the sake of retaining or acquiring perceived social status.”¹⁴⁴ In other words, the analyzed ethical choice seems to be presented as the ethical choice to purchase

¹³⁹ See *Global Brand Counterfeiting Report 2018: Value of Counterfeited Goods in 2017 Amounted to \$1.2 Trillion*, BUS. WIRE (Dec. 22, 2017), <https://www.businesswire.com/news/home/20171222005383/en/Global-Brand-Counterfeiting-Report-2018-Counterfeited-Goods>.

¹⁴⁰ Jason M. Carpenter & Karen E. Edwards, *U.S. Consumer Attitudes toward Counterfeit Fashion Products*, 8 J. TEXTILE & APPAREL, TECH. & MGMT. 1, 6 (2013).

¹⁴¹ Ponsford, *supra* note 131.

¹⁴² See generally Martinez & Jaeger, *supra* note 135 (finding that moral awareness lowered purchase intentions in counterfeit purchase situations).

¹⁴³ Most people who purchase knock-off Louis Vuitton luggage probably don't associate their new wares with child labor or slaves chained to sewing machines. But that's exactly what consumers are supporting when they buy these items. Aside from economic problems such as lost sales, profits and tax revenues, the emotionally compelling element of counterfeiting is the systematic exploitation of labor. You have slaves and children 11, 12, 13 year old kids working in these sweatshop conditions. They are not treated as human beings. They are cogs in a machine to be used up, worn out and thrown away.

Blood Money: The Terrible Human Cost of the Counterfeit Culture, SIAM PREMIER (Jan. 22, 2011), <https://siampremier.com/blood-money-the-terrible-human-cost-of-the-counterfeit-culture/>.

¹⁴⁴ Ponsford, *supra* note 131.

authentic goods from the rights holder, as opposed to the unethical choice to purchase inauthentic goods, resulting in damage to the rights holder.¹⁴⁵ The real ethical problem to be presented, however, should be the issue of purchases being used to fund illicit activity and human rights abuses.

Although counterfeit goods are increasingly entering the U.S. unnoticed to match growing consumer demand, the attitude toward fashion counterfeits as a “significantly less important” issue largely remains the same.¹⁴⁶ Accordingly, acting on anti-brand sentiment, consumers of counterfeit fashion sometimes purchase counterfeits as a result of “negative attitudes toward large brand-owners.”¹⁴⁷ Purchasers are “more likely to find buying counterfeits acceptable when the victim is an organization rather than an individual, and may deflect blame to the large corporations that they believe charge high prices.”¹⁴⁸ “Robin Hood syndrome” is the nickname given to the readiness of consumers, in non-deceptive counterfeit purchase situations, to disregard the rights of IP owners whose property is clearly being appropriated.¹⁴⁹

Oftentimes, counterfeiting goes unchecked because many people perceive counterfeiting as a “Robin Hood” sort of crime. Many Americans resent large, successful corporations, particularly those that charge high prices for goods they view as unnecessary luxuries, such as manufacturers or distributors of designer goods. These consumers are not sympathetic when multinational corporations are

¹⁴⁵ *See id.*

¹⁴⁶ The more goods cross U.S. borders, the harder customs officials have to work to prevent counterfeits from entering the legitimate supply chain. Due to booming international trade, customs officials must inspect an overwhelming quantity of goods in a relatively short time period. This further increases the chances of counterfeits infiltrating the U.S. economy from abroad.

Lewis, *supra* note 82.

¹⁴⁷ Karen E. Edwards & Jason M. Carpenter, *The Face of Fakes: U.S. Consumers and Counterfeit Fashion Products*, 5 J. BUS. & ECON. 1568, 1570 (2014).

¹⁴⁸ *Id.* (citation omitted).

¹⁴⁹ *Id.*

victimized by counterfeiters, especially when the consumers are unaware of the overarching economic and social damage caused by counterfeiting or the links between counterfeit operations and organized crime.¹⁵⁰

It follows, then, that education amongst consumers about the consequences of fashion counterfeiting—including ties to organized crime, terror financing, and human rights violations—would prove an effective disincentive to purchase motivation. The mischaracterization of counterfeiting solely as an IP rights infringement issue maintains it within a sphere where it remains a “Robin Hood” sort of crime.¹⁵¹

Furthermore, Gallup Consulting & the U.S. Chamber of Commerce determined that “the most effective deterrent for preventing individuals’ purchase of counterfeit items is making known the likelihood of funding a terrorist act.”¹⁵² In fact, ninety-five percent of respondents articulated that knowledge of such a connection “would lead them to stop purchasing counterfeits.”¹⁵³ Education concerning counterfeits’ association with crime financing and human rights violations is thus a necessary condition to attitudinal change and subsequent behavioral change toward counterfeit goods.¹⁵⁴ Thus, it follows that this education creates a motivation that otherwise does not exist solely within the IP theft context.

¹⁵⁰ Lewis, *supra* note 82, at 51.

¹⁵¹ See FASHION LAW: A GUIDE FOR DESIGNERS, FASHION EXECUTIVES, & ATTORNEYS, *supra* note 132 and accompanying text.

¹⁵² Dianna M. Martínez, Note, *Fashionably Late: Why the United States Should Copy France and Italy to Reduce Counterfeiting*, 32 B.U. INT’L L.J. 509, 533–34 n.158 (2014).

¹⁵³ *Id.*

¹⁵⁴ See generally Lyn S. Amine & Peter Magnusson, *Targeting Buyers of Counterfeit Goods*, WIPO MAG. (Sept. 2008), http://www.wipo.int/wipo_magazine/en/2008/05/article_0008.html (encouraging public education about counterfeit fashion in order to curb consumer demand).

*B. Legal Academics', Prosecutors', and Judges' Attitudes
Toward Counterfeiting Mischaracterize Counterfeiting
as an IP Issue*

Fashion counterfeiting is generally aligned with IP issues both in legal academia and in law enforcement.¹⁵⁵ It has been argued that, “as a necessary foundation, it is important for scholars, practitioners, and policymakers to better understand the legal development[s] surrounding this crime problem, particularly as it relates to providing protection against trademark infringement.”¹⁵⁶ Instead of phrasing counterfeiting in terms of an IP problem (i.e., “trademark infringement”), an issue towards which consumers prove time and again ambivalent, counterfeiting should be rephrased as a crime financing and human rights problem in legal academia and within the DOJ, particularly in reference materials relied on by prosecutors.

The DOJ classifies counterfeiting as an IP crime and targets counterfeiting through IP initiatives.¹⁵⁷ Anti-counterfeiting is addressed within the *Prosecuting Intellectual Property Crimes* manual, which “provide[s] internal suggestions to [DOJ] attorneys.”¹⁵⁸ The characterization of counterfeiting as an IP crime within law enforcement agencies perpetuates the conception of counterfeiting as a victimless crime, or at least not one that deserves serious criminal prosecution. Describing the FBI’s role on the DOJ Task Force on Intellectual Property, the Department states:

Preventing intellectual property theft is a priority of the FBI’s criminal investigative program. We specifically focus on . . . infringements on products that can impact consumers’ health and safety, such

¹⁵⁵ See Rierson, *supra* note 56 and accompanying text; see also Lewis, *supra* note 82, at 47 (discussing counterfeiting reform in the context of intellectual property owners’ rights).

¹⁵⁶ Jeremy M. Wilson et al., *Product Counterfeiting Legislation in the United States: A Review and Assessment of Characteristics, Remedies, and Penalties*, 106 J. CRIM. L. & CRIMINOLOGY 521, 524 (2016).

¹⁵⁷ See OFFICE OF LEGAL EDUC. EXEC. OFFICE FOR U.S. ATTORNEYS, PROSECUTING INTELLECTUAL PROPERTY CRIMES (2013), https://www.justice.gov/sites/default/files/criminal-ccips/legacy/2015/03/26/prosecuting_ip_crimes_manual_2013.pdf.

¹⁵⁸ *Id.*

as counterfeit aircraft, car, and electronic parts. Key to our success is linking the considerable resources and efforts of the private sector with law enforcement partners on local, state, federal, and international levels.¹⁵⁹

This depiction of counterfeiting as mainly an IP crime again restricts its overarching effects. In emphasizing the dangers posed to ultimate consumers' health and safety, this description minimizes the dangers of counterfeit fashion goods, particularly in their production-side human rights violations and in their crime financing repercussions.

In 2001 alone, 1,477 defendants were charged in federal courts with money laundering as the primary offense filed.¹⁶⁰ In 2002, only 134 defendants were sentenced with IP infringement offenses (where counterfeiting is just one of several possible offenses),¹⁶¹ and in its 2017 PRO IP Act report, the DOJ reported that only fifty-six charges of trafficking in counterfeit goods pursuant to 18 U.S.C. § 2320 were levied.¹⁶² This at least indicates a potentially discrepant prosecutorial fervor toward money laundering offenses, and not toward trafficking in counterfeit goods, although both are evidenced to be tied to international crime financing.¹⁶³

The statutory provisions proscribing trafficking in counterfeit goods presently in force at both the state and federal levels, although not flawless, are sufficient to effectuate a sea [of] change in the

¹⁵⁹ *About the IP Task Force*, U.S. DEP'T OF JUST., <https://www.justice.gov/ip/f/members#FBI> (last visited Mar. 30, 2019).

¹⁶⁰ MARK MOTIVANS, BUREAU OF JUSTICE STATISTICS: MONEY LAUNDERING OFFENDERS, 1994–20011 (2003), <https://www.bjs.gov/content/pub/pdf/mlo01.pdf>.

¹⁶¹ MARK MOTIVANS, BUREAU OF JUSTICE STATISTICS: INTELLECTUAL PROPERTY THEFT, 2002 1 (2004), <https://www.prisonpolicy.org/scans/bjs/ipt02.pdf>.

¹⁶² U.S. DEP'T OF JUSTICE, PRO IP ACT ANNUAL REPORT OF THE ATTORNEY GENERAL FY 2017 32 (2017), <https://www.justice.gov/ip/f/page/file/1031771/download>.

¹⁶³ *See generally* U.S. SENTENCING COMM'N, U.S. SENTENCING COMMISSION'S 2017 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (2017) (evidencing significantly higher rates of prosecution of money laundering offenses than of intellectual property offenses).

counterfeit goods trade in the United States when applied diligently, expeditiously and evenhandedly. To date, however, prosecutors and law enforcement agencies have lacked the resolve to maximize the effectiveness of these laws by applying them consistently and creatively.¹⁶⁴

Despite the relatively strong statutory anti-counterfeiting regime in the U.S., “law enforcement officials sometimes perceive counterfeiting as significantly less important than violent crimes and crimes against physical property, even though the economic damage and health risks can sometimes be just as compelling.”¹⁶⁵ Thus, the DOJ should reclassify counterfeiting as a terrorist financing offense, in addition to an IP crime, and include discussion of trafficking in counterfeit goods within its Terrorist Financing guidelines, which highlight money laundering in connection with terrorist financing and human rights violations, but say nothing about counterfeiting.¹⁶⁶

Finally, there is an indication that the enforcement efforts against trademark counterfeiters are being undermined.¹⁶⁷ The oft-provided solution to this issue of undercut anti-counterfeiting enforcement efforts is to critically increase the number of IP specialized judges in U.S. courts.¹⁶⁸ While it is true that continued judicial training in IP is important, as was accentuated by the World Intellectual Property Organization’s Advisory Committee on Enforcement in June 2004,¹⁶⁹ it would be stronger to recharacterize counterfeiting not as simply an IP issue, but as a matter of crime financing and human rights.

¹⁶⁴ Cocks, *supra* note 80, at 520–21.

¹⁶⁵ Lewis, *supra* note 82, at 50 (citation omitted).

¹⁶⁶ See generally *Terrorist Financing*, 62 U.S. ATT’YS BULL. (2014), <https://www.justice.gov/sites/default/files/usao/legacy/2014/09/23/usab6205.pdf> (giving significant attention to money laundering as a means of terrorist financing, but not discussing counterfeiting as an analogous crime).

¹⁶⁷ *Board Resolution: Measures to Combat Trademark Counterfeiting*, INT’L TRADEMARK ASS’N (Mar. 7, 2005), <https://www.inta.org/Advocacy/Pages/MeasurestoCombatTrademarkCounterfeiting.aspx>.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

C. *Legislation Targeting the Demand for Counterfeit Goods: Suggestions and Inadequacies*

In the discussion of improving anti-counterfeiting legislation in the U.S., comparisons have been drawn between the American and European anti-counterfeiting systems.¹⁷⁰ Although there has been discussion in Europe about the ties between counterfeiting and terrorist and organized crime financing,¹⁷¹ combatting counterfeiting in the U.S. system by modelling it after the European IP system is not ideal. Calls for coordinated anti-counterfeiting reform, such as the harmonization of international laws, have stemmed from Europe.¹⁷² There too, however, E.U. Member States and international organizations alike have not met the challenge of coordinating strong anti-counterfeiting regimes.¹⁷³ The EUIPO stated:

Smuggling and counterfeiting consumer goods constitute financing sources for terrorist organisations. This phenomenon remains poorly known, thus little is done by Member States and international organisations: their repressive policies are not sufficiently coordinated, nor are they up to the challenge. Nevertheless, the fight against smuggling and counterfeiting raises strategic issues in terms of national security and tax revenue. The drying up of the sources of financing terrorism is a challenge that goes beyond the mere protection of Member State populations. It is possible to tackle this phenomenon efficiently by enhancing cooperation between states, international[ly] and [with] industrial organisations.¹⁷⁴

¹⁷⁰ See, e.g., Martínez, *supra* note 152, at 523–29.

¹⁷¹ See generally UNION DES FABRICANTS [UNIFAB], *supra* note 71 (suggesting stronger international cooperation amongst European nations as an important element in transnational anti-counterfeiting).

¹⁷² *Id.* at 20, 28.

¹⁷³ *Id.*

¹⁷⁴ *Fondation Robert Schuman Conference*, EUR. UNION INTELL. PROP. OFF. (Apr. 4, 2018), <https://euiipo.europa.eu/ohimportal/en/web/observatory/news/-/action/view/4134382>.

The EUIPO has begun to address the issue of cooperation.¹⁷⁵ On January 24, 2019, the EUIPO announced that the EUIPO and the E.U. Agency for Law Enforcement Cooperation (“Europol”) would, for the second time,¹⁷⁶ host leaders from several government agencies, including the European Anti-Fraud Office (“OLAF”), in The Hague to discuss cooperation in fighting counterfeiting and piracy in Europe.¹⁷⁷ The conversation was to focus on the following: Europol’s establishment of IP Crime Specialised Units in the police services of E.U. Member States; the need to establish official IP contacts within national police departments; the EUIPO’s effort to align policy on IP data management; OLAF’s effort to target the freight shipment of counterfeits into Europe; and the EUIPO-Europol threat assessment on European IP infringement, scheduled for release in June 2019.¹⁷⁸ Despite being only Europe-wide,¹⁷⁹ this effort and its emphasis on anti-counterfeiting is commendable in the current landscape of weak cooperation and coordination. While the United States should follow the example set by Europe in terms of coordination, the U.S. need not restructure its anti-counterfeiting regime to precisely match that in place in European Member States.

Unlike demand-targeted anti-counterfeiting regimes in countries such as France and Italy, the Lanham Act limits liability in counterfeiting to manufacturers, distributors, and sellers of counterfeits; it imposes no penalties on purchasers.¹⁸⁰ This creates no legal disincentive for purchasers of fashion counterfeits in the United States, leaving popular demand unaffected and supply largely unchallenged.¹⁸¹ Strong support has been given to the proposition that demand-side legislation be instituted in the United

¹⁷⁵ See *Second High-Level Meeting on Joint Strategy against IP Crime*, EUR. UNION INTELL. PROP. OFF. (Jan. 24, 2019), <https://euiipo.europa.eu/ohimportal/en/web/observatory/news/-/action/view/4938064?platform=hootsuite>.

¹⁷⁶ The first such meeting was in September, 2018. *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Fondation Robert Schuman Conference*, *supra* note 174.

¹⁸⁰ See Lauren Matturri, *The Devil Wears Nada: How the Current Statutory Damages System for Counterfeit Trademarks as Demonstrated in Chanel, Inc. v. Matos is Out of Style*, 62 VILL. L. REV. 327, 333 (2017).

¹⁸¹ See *id.* at 342–43.

States,¹⁸² particularly as demand has been a contributing factor toward the swelling of counterfeit supply over the past decades.¹⁸³

New York City Council Member Margaret Chin, representing Manhattan District 1—which includes the infamous counterfeit fashion haven Canal Street—introduced a bill in 2011 that intended to criminalize the purchase of counterfeit goods,¹⁸⁴ thus targeting counterfeit trade indirectly by disincentivizing purchase and reducing demand.¹⁸⁵ While still lax compared with the penalties, confiscations, and potential incarcerations levied by French and Italian systems,¹⁸⁶ this legislation would have criminalized the “purchase of a tangible item containing a counterfeit trademark when [the purchaser] kn[ew] or should have known such trademark is counterfeit,”¹⁸⁷ and would have carried a potential civil penalty of up to \$1,000, up to one year of imprisonment, and fine of no more than \$1,000 per counterfeit article.¹⁸⁸ In effect, this legislation would target consumers for aiding and abetting the counterfeit goods trade. The bill met resistance¹⁸⁹ and was eventually rejected, particularly

¹⁸² Martínez, *supra* note 152, at 531 (“Due to this correlation between lack of consumer penalties and the prevalence of counterfeiting, the United States should follow the Italian and French model and hold consumers ‘liable for . . . aiding and abetting . . . the counterfeit trademark trade.’” (alterations in original)).

¹⁸³ Norum & Cuno, *supra* note 133.

¹⁸⁴ Ashley Parker, *Council Member Seeks to Make Buying Fake Designer Brands a Crime*, N.Y. TIMES (Apr. 26, 2011), <https://www.nytimes.com/2011/04/27/nyregion/bill-aims-to-make-buying-fake-goods-a-crime-in-new-york.html>.

¹⁸⁵ *Id.*

¹⁸⁶ For example, the French Intellectual Property Code provides fines of hundreds of thousands of euro and several years of jail time for purchasers and possessors of counterfeit goods. Martínez, *supra* note 152, at 524.

¹⁸⁷ Maurine M. Wall, *Fake Bags, Real Consequences*, A.B.A. (Aug. 9, 2017), https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/criminal-law/fake_bags_real_consequences/ (alteration in original).

¹⁸⁸ *Id.*

¹⁸⁹ Potential enforcement of the bill was attacked on grounds that prosecutors could not show that a purchaser knew the item in question was counterfeit. A Brooklyn District Attorney’s Office prosecutor said, “[U]nless the police officer is present at the purchase and overhears a conversation of, ‘This is fake. You know

facing concerns that prosecutors would find such violations impossible to prove.¹⁹⁰

Council Member Chin adopted the popular, yet weak stance that those who want a designer article should try to buy the authentic product.¹⁹¹ “What happened to the traditional value of saving up for something you really want that’s valuable? . . . If you really like it, save money to buy the real thing.”¹⁹² Her argument aligns perceived harm with unsympathetic corporations and perpetuates widespread ignorance of counterfeiting’s ties to organized crime, terrorist financing, and human rights abuses; it ignores the issues which would transform perceptions of the counterfeit fashion industry. Perhaps the bill, or other anti-counterfeiting initiatives, would have garnered greater support had their proponents revealed the link between counterfeiting and crime funding and human rights abuses.

V. SOLUTION

The frequently-proffered solution to the fashion counterfeiting problem is to target the persistent demand and criminalize the purchase of fashion counterfeits by consumers, as done in France and Italy, and as was proposed by Council Member Chin.¹⁹³ Criminalizing purchasers, however, is inappropriate as a sole response. Counterfeiting is an international problem that, like money laundering, requires an international cooperative effort to combat.¹⁹⁴ Inconsistencies in international enforcement, paired with a general attitude that fashion counterfeiting is a victimless crime, do nothing to disincentivize criminals from further exploiting this method of financing and conduit for human rights abuses.

that?’ ‘Yes I do. I still want to pay \$50.’, the violation would be impossible for us to prove.” *Id.*

¹⁹⁰ To minimize potential occurrence of prosecution of purchasers who were truly unaware of the counterfeit nature of an item, the bill targeted a consumer who “should have known such trademark is counterfeit for reasons including, but not limited to, the quality and price of the purchased item, and/or the condition of the seller and the sale location.” *Id.*

¹⁹¹ See Parker, *supra* note 184.

¹⁹² *Id.*

¹⁹³ See *supra* pp. 37–38.

¹⁹⁴ See *supra* Part I.

Finally, despite evidence of legislative efforts (even ones whose motivations are misguided like that of Council Member Chin's), there is still an international legislative gap that does not exist in the anti-money laundering context.¹⁹⁵ This international gap is paired with a prevalent attitude that counterfeiting is a victimless crime, even in cities like New York that are known for hotbeds of counterfeit fashion sales.¹⁹⁶ A strong anti-counterfeiting international regulatory framework is critical, but its success necessitates two elements: (1) an international body that specifically concerns itself with counterfeit products trade, and (2) a shifted perception of anti-counterfeiting from solely an IP issue to a crime financing and human rights issue. This dual mechanism would ensure greater international coordination and anti-counterfeiting enforcement, bolstered by a widespread understanding that fashion counterfeiting is associated with crime funding and human rights abuses.

A. *The Anti-Counterfeiting Trade Agreement: A Failed Attempt at International Reform*

The World Trade Organization (“WTO”) propagated the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”), which set minimum protection standards for IP rights with which WTO member states must comply.¹⁹⁷ A new “uniform legal framework” to address counterfeiting beyond the reach of TRIPS is indispensable, however,¹⁹⁸ as “the anti-counterfeiting framework creates challenges beyond the reach of traditional IP law.”¹⁹⁹

Proposed in 2011, the Anti-Counterfeiting Trade Agreement was a multinational treaty that would have set international

¹⁹⁵ Compare *supra* Part I with *supra* Part II.

¹⁹⁶ See *supra* Sections II.B, II.C.

¹⁹⁷ Overview: *The TRIPS Agreement*, WORLD TRADE ORG. [WTO], https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm.

¹⁹⁸ Drakopoulos Law Firm, *International Anti-Counterfeiting Legislation: Existing Regime and Future Developments*, LEXOLOGY (May 18, 2017), <https://www.lexology.com/library/detail.aspx?g=d77097f7-ec6a-4ef8-890a-618e9e5a106b>.

¹⁹⁹ *Id.*

standards for IP rights enforcement, strengthened the international anti-counterfeiting legal framework, and mandated greater international cooperation in anti-counterfeiting and IP rights enforcement more generally.²⁰⁰ ACTA would have created a new governing body (the “ACTA Committee”)²⁰¹ apart from the WTO, World Intellectual Property Organization, and United Nations.²⁰² The concept of an independent body would have been similar to the FATF in its role in anti-money laundering.²⁰³ ACTA’s framework built on the basis of TRIPS with the objective of “facilitating cooperation amongst international law enforcement authorities, implementation of best practices and increased coordination of technical assistance.”²⁰⁴ ACTA would have standardized and coordinated international law and enforcement practices regarding IP rights in the realms of enhanced border measures as well as civil, criminal, and digital enforcement of IP.²⁰⁵ It embodied a recognition of the necessity for international cooperation for the enforcement of IP rights.²⁰⁶ The Agreement ultimately failed after facing severe criticism from non-governmental organizations and consumers that it threatened democracy, access to medicines, and individuals’ right to privacy.²⁰⁷

Although titled the Anti-Counterfeiting Trade Agreement, ACTA was meant to operate as a broad tool of IP enforcement.²⁰⁸

²⁰⁰ See *Anti-Counterfeiting Trade Agreement (ACTA)*, *supra* note 19.

²⁰¹ See *Anti-Counterfeiting Trade Agreement*, *supra* note 20.

²⁰² See *ACTA Rejected by Committee in Crucial Blow Before Final EU Parliament Vote*, RT (June 21, 2012), <https://www.rt.com/news/acta-committee-final-vote-365/>.

²⁰³ See *supra* Part I.

²⁰⁴ Drakopoulos Law Firm, *supra* note 198.

²⁰⁵ Margot E. Kaminski, *An Overview and the Evolution of the Anti-Counterfeiting Trade Agreement (ACTA)*, 21 ALB. L.J. SCI. & TECH. 385, 392 (2011).

²⁰⁶ *Id.*

²⁰⁷ See Drakopoulos Law Firm, *supra* note 198.

²⁰⁸ MÉDECINS SANS FRONTIÈRES: CAMPAIGN FOR ACCESS TO ESSENTIAL MEDS., THE SECRET TREATY: ANTI-COUNTERFEITING TRADE AGREEMENT (ACTA) AND ITS IMPACT ON ACCESS TO MEDICINES 1–3 (Oct. 2010), https://msfaccess.org/sites/default/files/MSF_assets/Access/Docs/ACCESS_briefing_ACTA_ENG_2010.pdf.

Its name has been criticized as misleading,²⁰⁹ as ACTA was thought to focus on copyright regulations instead of anti-counterfeiting.²¹⁰ ACTA's preamble shows that its intentions in terms of anti-counterfeiting were well placed, however.²¹¹ It highlights the ties between the counterfeit goods trade and crime funding as well as the need for international enforcement harmonization, stating that parties to the Agreement:

Not[e] . . . that . . . the proliferation of counterfeit . . . goods . . . undermines legitimate trade and sustainable development of the world economy, causes significant financial losses for right holders and for legitimate businesses, and, in some cases, provides a source of revenue for organized crime and otherwise poses risks to the public; *Desir[e]* to combat such proliferation through enhanced international cooperation and more effective international enforcement; *Intend[]* to provide effective and appropriate means, complementing the TRIPS Agreement, for the enforcement of intellectual property rights, taking into account differences in their respective legal systems and practices[.]²¹²

As seen in its brief introduction, ACTA framed anti-counterfeiting within a broader IP enforcement reform model.²¹³ The inappropriate combination of anti-counterfeiting and IP is what

²⁰⁹ *Id.*

²¹⁰ *See id.* ("ACTA's scope is overbroad and will harm access to medicines. The name of the treaty is misleading: it does not just seek to cover anti-counterfeiting."); *see also* Olivia Solon, *What Is ACTA and Why Should You Be Worried About It?*, WIRED (Jan. 24, 2012), <https://www.wired.co.uk/article/acta-101> (noting, "The title of the treaty suggests the agreement deals with counterfeit goods, such as medicines and luxury goods. However, the treaty actually has a much broader scope and will deal with tools targeting internet distribution and information technology.").

²¹¹ *See* OFFICE OF THE U.S. TRADE REPRESENTATIVE, ANTI-COUNTERFEITING TRADE AGREEMENT (ACTA) 1 (2010), <https://ustr.gov/issue-areas/intellectual-property/anti-counterfeiting-trade-agreement-acta/previous-acta-texts> (follow hyperlink under "Final Text and Public Comment").

²¹² *Id.*

²¹³ *See id.*

led to its harsh criticism and eventual downfall.²¹⁴ ACTA's critics were concerned with digital privacy, copyright law, and access to medication.²¹⁵ Moreover, it has been argued that drafters used anti-counterfeiting as a pretext,²¹⁶ overstating the threats of counterfeiting in order to render more sympathetic an Agreement which would in fact tighten IP law significantly.²¹⁷ A research paper providing an overview of ACTA exemplifies the improper understanding of counterfeiting among legal commentators, stating, "First, the preamble evidences a disproportionately skewed conception of the risk to public safety posed by counterfeit and pirated goods, observing that 'in some cases' such goods provide 'a source of revenue for organized crime and otherwise pose risks to the public.'"²¹⁸ The paper's author further argued the point that increasing border measures would increase government spending and effort just for the benefit of private rights holders.²¹⁹ These statements undermining the severity of the counterfeit products industry resound with the perception of counterfeiting as a victimless crime. The drafters of ACTA had the correct motivation in writing this intention into the preamble. Nevertheless, their focus and execution were flawed.

Furthermore, ACTA should be redrafted to solely target counterfeiting. ACTA misplaced counterfeiting into the broad context of IP enforcement, grouping it with its main concerns—patent, copyright, and other trademark matters.²²⁰ When anti-counterfeiting is considered within the IP classification into which it is legislatively placed, it is conceptually restricted to the incorrect idea that counterfeit trade only hurts IP rights holders, a group with

²¹⁴ See MÉDECINS SANS FRONTIÈRES: CAMPAIGN FOR ACCESS TO ESSENTIAL MEDS., *supra* note 208 (criticizing ACTA in the context of the *Campaign for Access to Essential Medicines*).

²¹⁵ *Id.*

²¹⁶ Kaminski, *supra* note 205, at 386.

²¹⁷ Solon, *supra* note 210.

²¹⁸ Kaminski, *supra* note 205 (quoting *Anti-Counterfeiting Trade Agreement (ACTA)*, *supra* note 19, at E-1).

²¹⁹ *Id.*

²²⁰ See *id.* at 386–87 ("ACTA is primarily a copyright treaty, masquerading as a treaty that addresses dangerous medicines and defective imports.").

which people do not sympathize. It again discounts the human rights and crime funding implications of trade in counterfeit goods.

B. The Importance of Public Education Campaigns

Accordingly, increased consumer awareness regarding ethical issues in counterfeiting beyond IP theft could decrease demand for fashion counterfeits.²²¹ There is proof that this knowledge and characterization of fashion counterfeiting's ethical issues changes attitudes and behaviors among consumers when immediately apparent IP theft issues do not.²²² Thus, it is reasonable to infer that an analogous change in perception and attitude would occur in legislators, law enforcement, and judges if they were made seriously aware of the tangible links between fashion counterfeiting and crime financing. It follows, then, that any serious regulatory scheme (whether statutorily supply or demand-targeted) or international cooperative effort will become more effective if paired with a public education campaign that informs the consuming public, legislators, judges, and law enforcement alike of the risks that counterfeit goods carry. Although it has been argued that such a public awareness campaign would be effectively paired with demand-targeted legislation to make consumers aware of the new penalties they would face upon criminalization of purchases, thus decreasing demand,²²³ it becomes apparent that with a strong public education campaign, criminalization of counterfeit purchases may be unnecessary. Instead of disincentivizing counterfeit purchases through fear of penalty for purchasing counterfeit goods, this education-centric approach to decreasing demand for counterfeits would rely on ethical judgments of consumers and on a restructured prioritization of fashion counterfeiting within the bigger legal picture of anti-crime.

By way of example, France created Le Comité National Anti-Contrefaçon (The National Anti-Counterfeiting Committee)

²²¹ See *supra* notes 152–54 and accompanying text.

²²² See *supra* Section IV.A.

²²³ Martínez, *supra* note 152, at 538 (“Only when both new legislation and awareness measures are carried out will the trafficking of counterfeit luxury goods in the United States meaningfully decrease.”).

(“CNAC”). CNAC warns consumers about the serious economic and social repercussions of counterfeit trade, the dangers that counterfeit products pose, and the potential for purchasers or possessors of counterfeit goods to face penalties. Some viral campaigns have included advertisements that warned, “Buy a fake Cartier, get a genuine criminal record.”²²⁴ Italy’s anti-counterfeiting agency, the Istituto di Centromarca per la Lotta alla Contraffazione (INDICAM), also regularly issues press releases and advertising campaigns to impact public perception regarding the harms of the counterfeit industry.²²⁵ Cities plagued by particularly serious fashion counterfeiting also make an effort to spread awareness, such as by the public education campaign in Florence, Italy in which 200 graffiti were sprayed on popular streets with images of handbags and sunglasses, paired next to messages, such as, “Be aware: If you buy from illegal street vendors, you feed crime. You can be fined up to €7000.”²²⁶ In 2014, the U.N. Office on Drugs and Crime launched an outreach campaign entitled “Counterfeit: Don’t Buy into Organized Crime,” centered around a public service announcement launched on the NASDAQ screen in Times Square before premiering on television.²²⁷ The campaign urged consumers to “look behind” counterfeit goods to boost understanding of the serious repercussions of this illicit trade.²²⁸

²²⁴ See, e.g., *La Nouvelle Campagne Anti-Contrefaçon du Comité Colbert [Comité Colbert’s New Anti-Counterfeiting Campaign]*, MONTRES DE LUXE (June 1, 2012), https://www.montres-de-luxe.com/La-nouvelle-campagne-anti-contrefacon-du-Comite-Colbert_a6325.html (discussing a public awareness campaign jointly conducted by the CNAC and Comité Colbert, an association that promotes the concept of French luxury).

²²⁵ See *Chi Siamo*, INDICAM, <http://www.indicam.it/chi-siamo/> (last visited Mar. 30, 2019).

²²⁶ *Nel Centro Storico di Firenze Arrivano i Graffiti ‘Antidegrado’ [‘Antidegradation’ Graffiti Arrive in the Historic Center of Florence]*, INTOSCANA.IT (June 6, 2017), <https://www.intoscana.it/it/articolo/nel-centro-storico-di-firenze-arrivano-i-graffiti-antidegrado/>.

²²⁷ *‘Counterfeit: Don’t Buy into Organized Crime’—UNODC Launches New Outreach Campaign on \$250 Billion a Year Counterfeit Business*, UNODC (Jan. 14, 2014), <https://www.unodc.org/unodc/en/frontpage/2014/January/counterfeit-dont-buy-into-organized-crime---unodc-launches-new-outreach-campaign-on-250-billion-a-year-counterfeit-business.html>.

²²⁸ *Id.*

Further, while the legitimate products industry reacts significantly to issues of sustainability and human rights in fashion, including slave labor in production, ethical sourcing, and environmental sustainability, there are still only select brands willing to put the time and money into completely eradicating ethical issues in fashion and becoming ethical, transparent, or both.²²⁹ This concept reasonably extends to the notion that if consumers are made aware of human rights violations inherent to the counterfeit fashion industry and are unable to ignore them by a lack of transparency and discussion—like that which shrouds the legitimate fashion industry—demand for counterfeits may decrease. Transparency among legitimate apparel brands has become an issue of increasing importance in the wake of deadly garment factory accidents in recent years.²³⁰ Following the 2013 Bangladeshi apparel factory collapse, which left thousands of workers injured or deceased, labor groups and global unions increased efforts to bring about at least minimal transparency in the garment industry.²³¹ Freelance photojournalist Gethin Chamberlain wrote that, “despite a series of revelations . . . about the brutal conditions in garment factories, companies [and] consumers . . . are still complicit in

²²⁹ See Jim McClelland, *Ethical Issues Remain in the Fashion Industry*, RACONTEUR (Feb. 23, 2017), <https://www.raconteur.net/manufacturing/ethical-issues-remain-in-the-fashion-industry>.

²³⁰ For example, the Rana Plaza garment factory collapse in Bangladesh killed more than 1,000 workers and injured more than 2,500 in 2013. Larisa Epatko, *5 Years After the World’s Largest Garment Factory Collapse, is Safety in Bangladesh Any Better?*, PBS (Apr. 6, 2018), <https://www.pbs.org/newshour/world/5-years-after-the-worlds-largest-garment-factory-collapse-is-safety-in-bangladesh-any-better>.

²³¹ The coalition developed a “Transparency Pledge,” a uniform minimum standard for transparency, drawn from industry best practices. The pledge is a modest starting point for company disclosure. Companies can do far more than what the pledge seeks, for example by publishing information about where they source cotton and other materials from. Aruna Kashyap, “*Soon There Won’t Be Much to Hide*”—*Transparency in the Apparel Industry*, HUM. RTS. WATCH (Dec. 15, 2017), <https://www.hrw.org/world-report/2018/essay/transparency-in-apparel-industry>.

turning a blind eye.”²³² Mandated transparency and brand accountability regarding working conditions and respect of human rights has been proposed by the United Nations Human Rights Council; the Council negotiated a “landmark treaty which aims to ensure transnational corporations . . . are held accountable for human rights violations which take place within their businesses and supply chains.”²³³ The great weight accorded to transparency and respect of human rights in legitimate corporations should translate to counterfeit operations, which, as clandestine operations, are not regulated in terms of production or labor.²³⁴

CONCLUSION

Fashion counterfeiting is a crime whose severity has been ignored for far too long.²³⁵ Coordination in the international financial architecture, domestic legislation, and specialized global standardization have all occurred in light of the connection between crime financing and money laundering, particularly after the September 11, 2001 terror attacks.²³⁶ In the same way, evidence of a clear association between the counterfeit fashion trade and international crime financing and human rights abuses should also bring about the creation of a specialized international body for anti-counterfeiting which sets legislative standards to address this global industry. Parallel to the way anti-money laundering acts as a means

²³² Gethin Chamberlain, *Admit It. You Love Cheap Clothes. And You Don't Care About Child Slave Labour.*, THE GUARDIAN (July 27, 2013), <https://www.theguardian.com/world/2013/jul/28/india-sweated-labour>.

²³³ David Styles, *A Pivotal Moment for Garment Workers' Rights?*, ECOTEXTILE NEWS (Oct. 17, 2018), <https://www.ecotextile.com/2018101723804/social-compliance-csr-news/a-pivotal-moment-for-garment-workers-rights.html>.

²³⁴ See Michael Schidlow, *Counterfeit Goods: Money Laundering in Plain Sight (Part 3—Labor Exploitation & Human Trafficking)*, THOMSON REUTERS LEGAL EXECUTIVE INST. (July 30, 2018), <http://www.legalexecutiveinstitute.com/counterfeit-goods-money-laundering-part-3-human-trafficking/>.

²³⁵ See U.N. OFFICE ON DRUGS & CRIME, *supra* note 53, at 2, 7.

²³⁶ See generally REALUYO, *supra* note 2 (detailing U.S. and Latin American countries' implementation of anti-money laundering and counterterrorist financing regimes).

of targeting and disrupting international crime, effective international anti-counterfeiting measures will pinpoint criminals at vulnerable points where their money and products surface in the licit financial and trade systems.²³⁷ The falsely limited perception that fashion counterfeiting is a lesser crime²³⁸ is reflected in consumers', legal academics', and government's characterization of counterfeiting as an IP crime.²³⁹ Fashion counterfeiting must be recharacterized, not as just an IP issue, but rather as an international crime financing and human rights issue.²⁴⁰ In particular, the most effective way to change attitudes toward counterfeiting is through an independent anti-counterfeiting international body, and through education, both of the public and of those who can affect the law. If we are to take the problems of crime financing and human rights abuses seriously, then we must take international anti-counterfeiting seriously. They cannot be separated.

²³⁷ See Schneider, *supra* note 85, at 473–86.

²³⁸ See Orscheln, *supra* note 21.

²³⁹ Carpenter & Edwards, *supra* note 140; see also Rierson, *supra* note 56 (calling for more severe penalties when the counterfeiting relates to what the author believes are more “morally culpable” enterprises like drug counterfeiting as opposed to fashion counterfeiting); OFFICE OF LEGAL EDUC. EXE. OFFICE FOR U.S. ATTORNEYS, *supra* note 157.

²⁴⁰ See Martinez, *supra* note 152 and accompanying text.