



Sen. Jana Stewart
Chair
Senate Legal & Constitutional Affairs Legislation Committee
PO Box 6100 – The Senate
Parliament House
CANBERRA ACT 2601

Via email: LegCon.Sen@aph.gov.au

Dear Senator Stewart,

Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill

eBay Australia and New Zealand is pleased to submit its views to the Committee as it considers the *Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026* (Cth).

eBay supports the Bill's objective of strengthening Australia's intellectual property enforcement framework. We believe however, further clarity should be provided to ensure these changes do not overcapture well-intentioned consumers engaging in cross-border purchases, or inadvertently reduce incentives for rights holders to engage in proactive, marketplace-based enforcement mechanisms, critical to preventing infringing goods from reaching consumers in the first place.

About eBay

As you may be aware, eBay operates as a pure third-party online marketplace. That means eBay is not the party that lists, sells or stocks items. When using our marketplace, all users agree to our [User Agreement](#), which incorporates a range of specific policies to protect buyers and sellers and to help ensure they are meeting both legal requirements when listing items and our own expectations for behaviour on our services. We have strict rules that prohibit the listing of counterfeit or fake items.¹

eBay takes decisive action to prevent counterfeit and prohibited items from appearing on our marketplace. We invest in a multi-pronged approach that combines sophisticated AI moderation, highly-trained eBay investigators, and robust buyer-protection programs to identify, block, and remove items that infringe on intellectual property or are otherwise prohibited. As identified in our 2024 Transparency Report,² our framework of enforcement led to the proactive removal of

¹ <https://www.ebay.com.au/help/policies/prohibited-restricted-items/counterfeit-policy?id=4276>

² <https://static.ebayinc.com/static/assets/Uploads/Documents/eBay-2024-Global-Transparency-Report.pdf>

approximately 5.9 million potentially counterfeit and prohibited items from across our global sites.

Central to these efforts is our partnership with the approximately 72,000 active intellectual property (IP) rights owners enrolled in eBay's Verified Rights Owner (VeRO) Program.³ Launched in 1998, the VeRO Program enables IP rights owners to report to eBay potentially counterfeit items or other IP infringement issues. eBay promptly removes reported listings, notifies the seller, and reviews the seller account for possible enforcement action.

In higher value luxury categories (such as high value sneakers and handbags), eBay's Authenticity Guarantee program supports these efforts by providing physical inspection and verification of eligible items by professionally-trained authenticators. More than 15 million items have been verified through the program as of June 2025.

Our views on the reforms

While we welcome the underlying purpose of the Bill to strengthen IP enforcement, we hold concerns that a strict liability framework may unfairly capture consumers who inadvertently purchase goods that infringe on IP.

Although it's understood that an importer will still have available the defence of honest and reasonable mistake of fact (under section 9.2 of the *Criminal Code Act 1995*) in circumstances where they have inadvertently or mistakenly imported infringing goods, and that its intended levels of discretion will be applied by Border Force, this is a substantial change and may catch many unwitting consumers unaware.

As noted by other stakeholders,⁴ to provide regulatory certainty, further detailed guidance on enforcement should be provided. Such guidance should include how enforcement agencies will weigh contested authenticity claims. Clearer standards will facilitate more consistent enforcement and help ensure all stakeholders understand how these rules will be practically applied.

In addition, the challenge of addressing counterfeit goods is a multi-faceted one. Our work with IP owners outlined above helps to stop the listing and offering for sale of infringing works on our marketplace. It's noted that under these reforms, IP owners will still be required to make written requests to the Comptroller-General of Customs in relation to IP infringements via the Notice of Objection Scheme. However, if an IP owner only relies on this process (and the newly introduced strict liability penalty regime), consumers may unwittingly purchase infringing items from locations where IP owners have not provided notice (such as online marketplaces).

While some of these recommendations sit outside the proposed Bill, to address these concerns, we suggest the following:

³ <https://www.ebay.com/sellercenter/resources/verified-rights-owner-profiles>

⁴ Submission, Auctioneers and Valuers Association of Australia, 10 April 2026

- That the discretion of Australian Border Force officers in applying penalties more explicitly focuses on repeat importers of the same product and / or importers of larger quantities of infringing goods;
- That Australian Border Force actively encourage IP Owners when making requests via the Notice of Objection Scheme to consider marketplace-based enforcement mechanisms (such as that offered by eBay under its VeRO program) to stop consumers from purchasing infringing goods in the first place; and
- That Australian Border Force undertake a public education campaign on these changes supported and facilitated by an 18 month grace period on any imposition of strict liability penalties on individual consumers.

We thank the Committee for the opportunity to raise these matters. Should the Committee have any further questions, please reach out to the writer via [REDACTED]

Yours sincerely,

[REDACTED]

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eBay Australia and New Zealand