



22 November 2020

Mr. Daniel Lee
Assistant U.S. Trade Representative for
Innovation and Intellectual Property (Acting)
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Mr. Lee

Re: Lazada Group's Rebuttal Comments for 2020 Review of Notorious Markets for Counterfeiting and Piracy: Docket No. USTR-2020-0035

This letter is Lazada Group's rebuttal submission to the Office of the United States Trade Representative ("USTR") for consideration in connection with the 2020 Review of Notorious Markets for Counterfeiting and Piracy ("Notorious Markets Review").

We observe from submissions in the earlier round that some respondents have requested for Lazada platforms be included in the Notorious Markets List ("NML") based on broadly-stated assertions. This submission is aimed at providing information on the wide range of programmes and initiatives at Lazada – all of which are driven by a desire to prevent intellectual property rights ("IPR") infringement on our platforms – and to affirm our commitment to maintaining a legally compliant and safe e-commerce environment for our customers in South East Asia.

We are confident that Lazada is leading the e-commerce industry in South East Asia in establishing high IPR protection standards for the region. More importantly, a wide range of rights holders also tell us that they feel Lazada has been effective in preventing IPR infringement, and we have been publicly recognised as such by brands, associations and law enforcement alike.

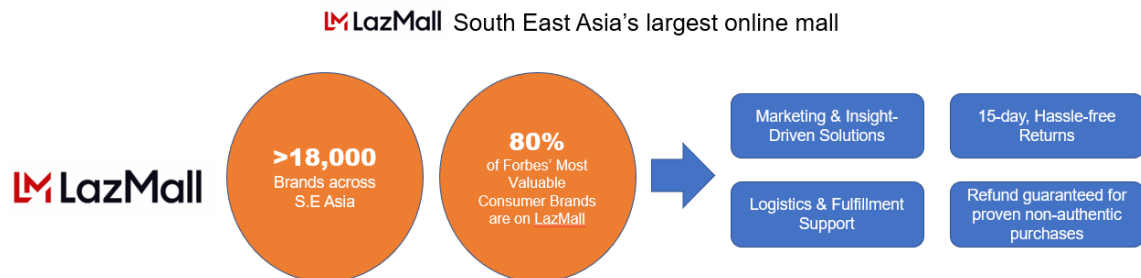
“What Lazada has done will surely bring customers and brand owners confidence that counterfeit problems can be resolved, and this will be an example for solving this kind of problem for other e-commerce businesses”

- Thosapone Dansuputra – Director General, Department of Intellectual Property, Thailand

We would be pleased to make ourselves available to meet via video conference to further discuss Lazada’s IPR protection efforts and initiatives should you wish.

Introduction to Lazada Group

Founded in 2012, Lazada Group (“Lazada”) is a leading and fast-growing e-commerce company in South East Asia with a presence in six countries – Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam. Through our technology, logistics and payments capabilities, we provide consumers with access to a broad range of offerings from SMEs, regional and global brands, serving over 70 million unique consumers in the 12 months ending 31 March 2020.



Lazada’s LazMall hosts a curated selection of leading global and local brands, with stores operated by brands themselves or by authorised distributors.

We understand from reading the USTR’s Request Summary that “*The issue focus for the 2020 Notorious Markets List will examine the use of e-commerce platforms and other third-party intermediaries to facilitate the importation of counterfeit and pirated goods into the United States.*”

On this note, although browsing Lazada platforms is possible from overseas (including the United States), Lazada does not offer delivery services to the United States: Our e-commerce solutions are purely local and the goods are delivered to local addresses in each of the countries within which Lazada platforms operate.

Lazada operates in six different countries – each with a unique legal system. Acknowledging that IPR is territorial by nature, Lazada’s IPR policy, when applied in each territory, will need to be tailored to respect the particular country’s IPR laws and regulations.

Lazada’s IPR Protection Programme

Appreciating the need to respond promptly and efficiently to rights holders’ IPR concerns, Lazada had made significant investments in human resource and technology infrastructure to develop and continually improve the Lazada’s IPR Protection Programme.

In March 2019, Lazada set up the IPR Protection Team (“IPR Protection Team”) – a team dedicated to attending to rights holders’ IPR concerns on Lazada platforms. Aside from designing, developing and implementing Lazada’s IPR Protection Programme, the IPR Protection Team also actively engages with rights holders to ensure that they maximise benefits from the programme and to obtain ongoing feedback. Just in the past 18 months, the team size has increased three-fold. To our knowledge, Lazada is the only e-commerce company in South East Asia with a team dedicated to addressing rights holders’ IPR concerns.

The IPR Protection Programme at Lazada comprises of four focus areas: (A) Strict IPR Policy (B) Merchant Education, (C) Technology Driven Governance and (D) Stakeholder Collaboration. The following sections will provide details on each of the four focus areas.

A. Strict IPR Policy

Lazada has in place a strict IPR policy which prohibits infringement of copyright, trade marks, patents and design rights on our platforms.

Broadly, Lazada’s IPR Policy prohibits:

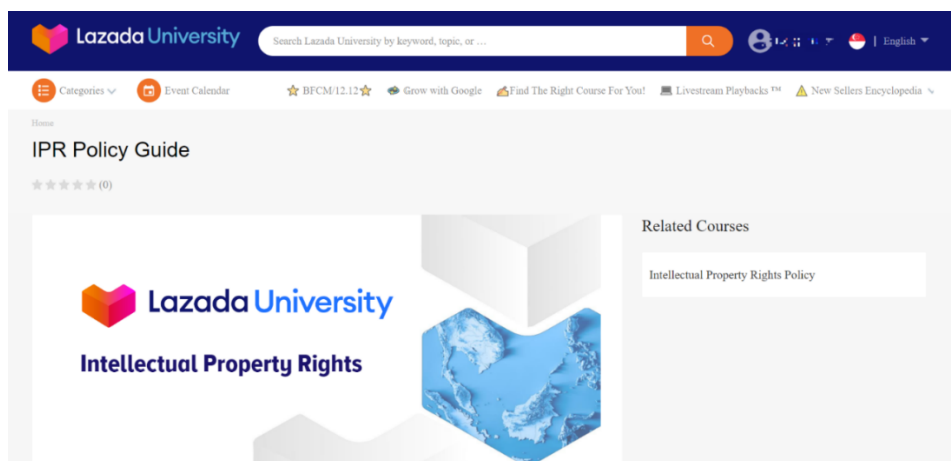
- Listing of counterfeit products or services;
- Listing of products or services with trade mark or copyright infringing content, or with deceptive or misleading information regarding the products listed for sale; and

- Listing of product or services which infringe upon any other type of IPR recognised under the laws of the country where the product or service is listed, including, but not limited to, patents, registered designs, or any type of IPR recognised by the final order of an apex court of that country.

Lazada's IPR policy is published in English or local language on each of the six Lazada platforms.¹ As a representative example of the policy in the English language, the IPR Policy for Lazada Singapore may be found at: <https://pages.lazada.sg/wow/i/sg/LandingPage/IPR>.

B. Merchant Education

Lazada strives to educate merchants as to our expectations of lawful commerce and respect for IPR, and this education is an essential part of the merchant on-boarding process.



To ensure that Lazada's policies are understood, all new merchants are required to go through a series of educational modules in the web-based 'Lazada University' course. These modules include awareness of platform terms and conditions as well as policies relating to IPR. Merchants are also made aware of the consequences for their non-compliance, which include escalating penalties, account suspension, and account termination.

¹ Lazada Singapore: <https://pages.lazada.sg/wow/i/sg/LandingPage/IPR>

Lazada Malaysia: https://pages.lazada.com.my/wow/i/my/LandingPage/IPR?spm=a2o4k.searchlistbrand.footer_top.15.6c95315d5fZqHL

Lazada Indonesia: https://pages.lazada.co.id/wow/i/id/LandingPage/IPR?spm=a2o4j.home.footer_top.14.57997838NKpCK7

Lazada Vietnam: https://pages.lazada.vn/wow/i/vn/LandingPage/IPR?spm=a2o4n.home.footer_top.14.1905e182bdkVPH

Lazada Thailand: https://pages.lazada.co.th/wow/i/th/LandingPage/IPR?spm=a2o4m.10453683.footer_top.15.2a194f76PSesW3

Lazada Philippines: https://pages.lazada.com.ph/wow/i/ph/LandingPage/IPR?spm=a2o4l.home.footer_top.16.239e359dTLP89

C. Technology Driven Governance

I. The IPP Platform - Technology Driven Takedown Mechanism

The [IPP] platform has made it easier for brands to request takedowns, “so we are very encouraged to see Lazada on the IP Protection Platform.”

**- Jonathan Selvasegaram
Asia Pacific Manager and Legal Counsel
REACT
(June 2019)**

The IPP Platform² is a portal where rights holders can register their enforcement accounts, submit takedown requests across the full range of Lazada platforms and track the complaint process, including any counter-notices submitted by merchants. In October 2018, Lazada began rights holder beta testing of the integration, and in June 2019, the IPP Platform publicly launched for Lazada platforms.

In addition to providing rights holders with a faster processing time compared to traditional email channels, the IPP Platform enables rights holders to receive real-time updates on their submitted takedown requests. From the initial submission to the final determination, the IPP Platform provides rights holders with visibility into every step of the notice and takedown process. In addition to transparency, the IPP Platform serves as a repository for IPR documents, so rights holders only need to upload their IPR documents once, thus improving their IPR enforcement efficiency.

Transitioning rights holders away from labour-intensive email reporting to technology-based reporting through the IPP Platform has been an indispensable step in reducing processing times for takedown requests. Rights holders have embraced the transition: In the second half of 2019, the IPP Platform was utilised four times more than previous email-based reporting, and there are currently more than 1000 registered user accounts reporting on Lazada platforms through the IPP Platform.

Despite the rapid increase in the number of rights holders using the IPP Platform since its launch, the IPR Protection Team has been able to upkeep good service-levels and ensure a high-quality experience for rights holders using the IPP Platform. As of September

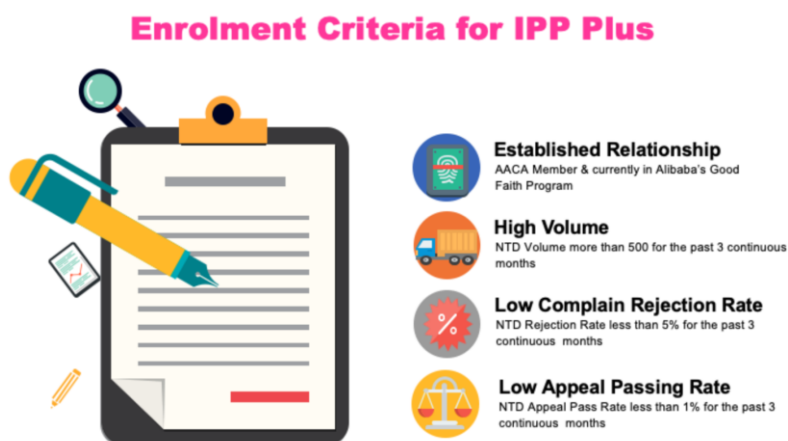
² Available at: <https://ipp.alibabagroup.com/>

2020, more than 99% of takedown requests were processed within 3 business days (and we continue to work towards further reducing this processing time). The shortening of takedown request processing time – through the IPP Platform – is a very significant achievement for Lazada, and even more so when considered against the backdrop of the unprecedented circumstances in the past ten months: The COVID-19 pandemic had caused varying levels of disruptions to work processes for rights holders and our own IPR Protection Team alike.

Whilst Lazada has invested substantially in the IPP Platform, which is the most technologically efficient channel for submitting and monitoring takedown requests, we also offer alternative reporting channels. Since October 2020, Lazada introduced an online form³ - which does not require registration on the IPP Platform – via which rights holders may submit takedown requests. Furthermore, takedown requests may be submitted by email.⁴

II. 'IPP Plus' Programme - Enabling Rights Holders

The 'IPP Plus' programme was first piloted in January 2020. It offers further expedited takedown processing and enhanced service support from the IPR Protection Team. Rights holders participating in the pilot were invited based on relevant notice and takedown criteria such as reporting volume and reporting accuracy. The IPP Plus programme is intended to foster deeper collaboration between rights holders and Lazada by the parties working together to increase takedown request success rates and facilitate expedited enforcement.



³ Online Form: <https://yida.alibaba-inc.com/o/LazadaTrustOnlineForm?spm=a2o42.20243471.3461882360.3.3d4b2ecf5Mhifi#/>

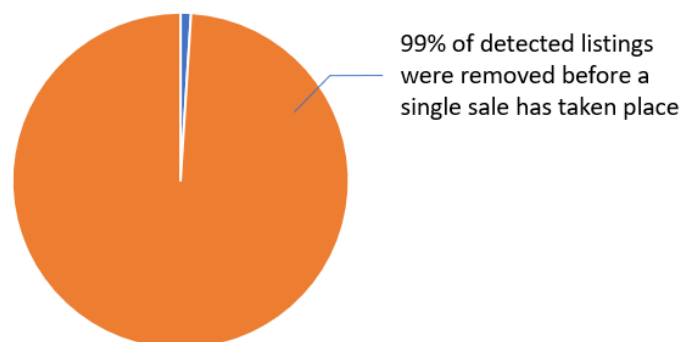
⁴ Email: Trust@lazada.com

Once onboarded into IPP Plus, rights holders are guaranteed a processing time of less than 48 hours for their takedown requests. Additionally, IPP Plus participants also work closely with the IPR Protection Team through regular check-ins and correspondence. During the check-ins, the parties will review past takedown requests filings and carry out deep-dives into the specific takedown requests. These sessions also serve as an opportunity for the IPR Protection Team to provide guidance to participant rights holders to further improve their reporting accuracy, thereby augmenting their takedown enforcement efficiencies.

III. Proactive Measures

Recognising the need to move beyond existing proactive measures which had been applied thus far, Lazada launched a pilot programme in March 2020 as a first step towards developing a more comprehensive, efficient and effective proactive process.

The pilot programme enhances Lazada's capabilities in detection and removal of suspect listings through the use of technology and assimilation of information which we receive from rights holders (such as product-specific information). This pilot further demonstrates Lazada's commitment to IPR protection, and to work closely with rights holders to provide (e-commerce) industry-leading IPR protection in South East Asia.



Since its inception, the programme has removed a significant number of suspect listings, which in turn led to a reduction in the takedown requests filed by participating rights holders. In some cases, the rights holders have observed up to six times reduction in their filing of takedown requests after participating in the pilot. Furthermore, 99% of the suspect listings were removed before a single sale had taken place, thereby achieving the additional goal of protecting consumers on the platform.

D. Stakeholder Collaboration

I. Online-to-Offline Enforcement Actions

Lazada is also cognisant of the fact that anti-counterfeiting efforts need also to be directed at the root of the problem, that is, the physical source(s) of the counterfeit products. By supporting rights holders and local law enforcement agencies in offline investigations and enforcement actions, we play a critical role in the prosecution of bad actors along the full counterfeit products supply chain. These actions also serve to deter future bad actors who may otherwise consider misusing Lazada platforms for their IPR infringing activities.

In the past 18 months, Lazada has collaborated with BMW, HP and Panasonic on various online-to- offline law enforcement actions in Thailand and Malaysia. More information about these cases are set out in **Annex 1**. Notably, the HP raid action in Thailand resulted in the seizure of more than USD 1 million worth of counterfeit material.

"In September 2020, HP ACF investigators assisted the Thai police in an operation to protect consumers from purchasing counterfeit products. The investigators and Thai police officers assembled before raiding three locations that were manufacturing and distributing counterfeit print supplies. The counterfeiters were operating on Lazada e-commerce platform. The case was a groundbreaking success with US\$1.01m worth of counterfeit material seized. The successful raid was possible due to the sharing of vital intelligence by Lazada with HP's anti-counterfeit team and the Thai police. We look forward to continued cooperation to protect customers of HP products sold online and offline."

- Benedict Chen
Brand Protection Manager APJ
Hewlett Packard Enterprise
(Oct 2020)

"The transparent approach with regards to communication of our collaboration illustrates Lazada's genuineness in promoting fair and open collaboration with rights holders."

- Yip Chee-Choon
Brand Protection Manager
BMW Asia
(Oct 2019)

"The transparent approach with regards to communication of our collaboration illustrates Lazada's genuineness in promoting fair and open collaboration with rights holders."

- Mr. Fumiaki Tanaka
Marketing Director
Panasonic Malaysia
(Aug 2020)

II. Outreach, Engagement and Cooperation

In an effort to provide transparency and extend support to the rights holder community, the IPR Protection Team has been hosting and participating in conferences, roundtable discussions, workshops and one-on-one meetings with rights holders. In the last 18 months, we have engaged more than 700 stakeholders including rights holders, law enforcement agencies and associations operating in the South East Asia region, via these channels.

Aside from the conferences organised by international IPR associations (such as IACC⁵ and INTA⁶) and government agencies (such as IP Key South-East Asia⁷, the IPO (UK)⁸ and the MDTCA⁹), Lazada has also engaged with an extensive network of rights holders through the AACA.¹⁰ This network has allowed the IPR Protection Team to hit the ground running by connecting with a wide range of rights holders and making our new IPR protection initiatives quickly available to many relevant parties.

Furthermore, we also initiated Lazada's own biannual Lazada IP Protection Workshops since 2019. These workshops serve as a forum where rights holders can provide their own feedback directly to Lazada, share best practices with each other, and allow Lazada to update the rights holders about our latest cooperation initiatives in the field of IPR protection. The workshops also provide an opportunity for rights holders to kick-start collaboration with Lazada by expressing their interests in particular pilot programmes and discussing their ideas and suggestions directly with the IPR Protection Team for improvements to any of the programmes.



⁵ IACC: International Anti-Counterfeiting Coalition

⁶ INTA: International Trademark Association

⁷ IP Key South-East Asia is an organisation which is directed by the European Commission (EC) and implemented by the European Union Intellectual Property Office (EUIPO).

⁸ IPO (UK): Intellectual Property Office of the UK

⁹ MDTCA: Malaysia Ministry of Domestic Trade & Consumer Affairs

¹⁰ AACA: Alibaba Anti-Counterfeiting Alliance

Our strong collaboration with the Department of Intellectual Property in Thailand (DIP) is a further testament to Lazada's willingness to work with government agencies in the promotion of IPR protection. In addition to participating in DIP-organised or co-hosted seminars and roundtables throughout 2019, Lazada also participated in, and supported, a "Stop Piracy" mini-marathon organised by the DIP in March 2020. The theme of the mini-marathon was "Stop Piracy."



Some of the organisations and governments engaged with Lazada have gone further to formalise the parties' commitment for collaboration in the form of a defined cooperation programme or a written Memorandum of Understanding ("MOU"). In this regard, Lazada is an active participant of the Japan External Trade Organization ("JETRO") cooperation programme and we have in place an MOU with the Korea Intellectual Property Protection Agency ("KOIPA"). We are also actively participating in a discussion led by DIP for a Memorandum of Understanding "Re: Cooperation to Prevent Intellectual Property Infringement on the Internet" for rights holders, government agencies and Internet operators in Thailand.



III. Rights Holder Resources

Taking on the feedback and requests we received at various outreach and engagement events (as detailed above), Lazada has also created a range of readily available resources for rights holders, such as:

- The Lazada IPR Frequently Asked Questions (FAQ) guide which addresses some of the most common inquiries;
- A dedicated email channel for rights holders to submit general inquiries on IPR protection matters (protectip@care.lazada.com); and
- The IPR Protection Handbook, which consolidates information on how to register for and use the IPP Platform to manage takedown requests, and includes comprehensive step-by-step instructions for navigating the submission process as well as dedicated FAQs for Lazada.

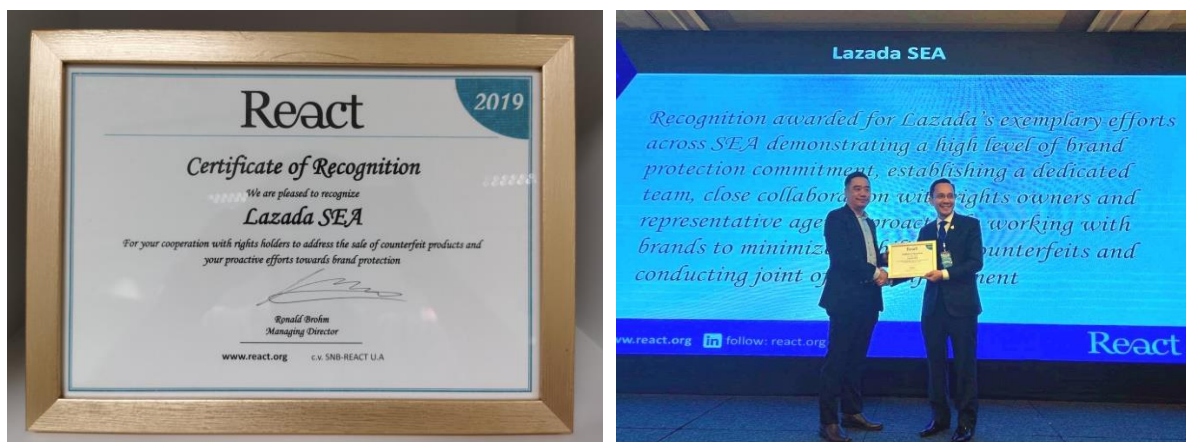


These resources serve as a first port of call for rights holders who are looking to enforce their IPR on Lazada and go toward furthering Lazada's goal to ensure that all rights holders can effectively utilise Lazada's IPR Protection Programme.

IV. Recognition and Appreciation

In acknowledgement of the significant improvements which Lazada has made in the area of IPR protection, the Netherlands-based anti-counterfeiting organization, REACT, awarded a recognition to Lazada for "proactive efforts in brand protection and cooperation with rights holders to address the sale of counterfeit products" in January 2020. The award was presented during the "Annual Asia Assembly" – which was held in partnership with the Vietnam

Directorate of Market Surveillance. As a further testament to the progress Lazada has made in the last two years, the DIP Thailand has also endorsed these efforts.



Conclusion

Lazada has worked tirelessly (and will continue to do so) in designing, implementing and refining programmes and initiatives to prevent IPR infringement on our platforms. We will also keep channels open for rights holders, government authorities, industry associations and other stakeholders to engage and collaborate on IPR and consumer protection issues. Lazada is not only the leading e-commerce company in South East Asia, it is also leading the e-commerce industry in establishing a new IPR protection standard and environment in the region. In view of such demonstrated efforts and commitment, Lazada cannot conceivably be considered a notorious market.

Whilst Lazada continues on the proven successful track of reducing infringing listings by working directly with rights holders, optimising our technology and deploying proactive measures against suspect listings, we are also relentless in seeking greater opportunities to partner with more rights holders, law enforcement agencies and the greater IPR enforcement community. The milestones achieved in the last 18 months showcase our commitment to building a robust foundation for a sophisticated, multi-tiered IPR protection system.

Sincerely,

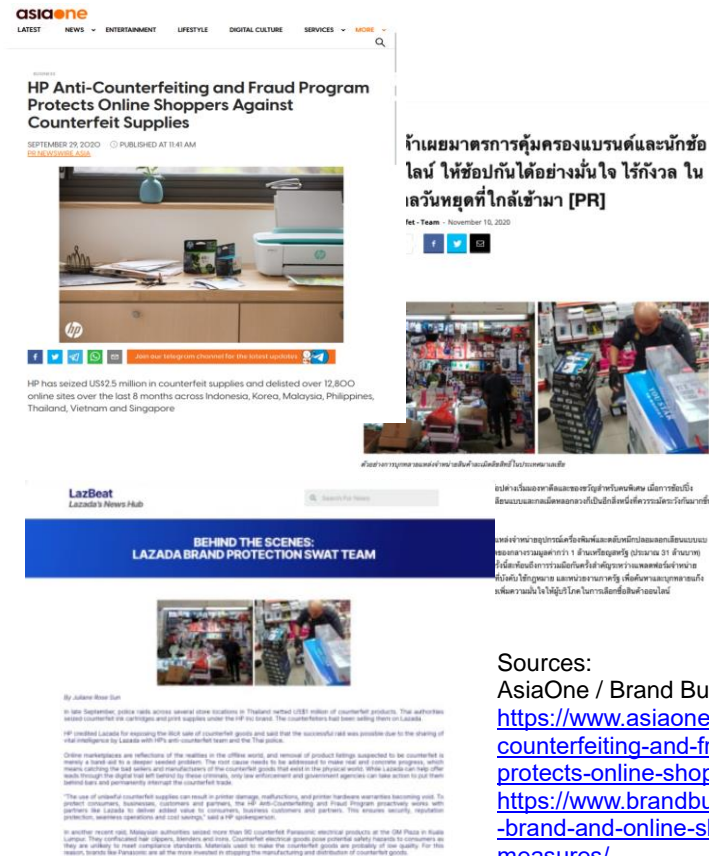
Mr. Alan Chan

Head of Platform Governance
Lazada Group

Annex 1

Online-to-Offline Enforcement Actions

(I) HP Raid in Thailand (September 2020)



- Collaboration with HP and the Thailand Police.
- More than USD \$1 million worth of counterfeit material

"In September 2020, HP ACF investigators assisted the Thai police in an operation to protect consumers from purchasing counterfeit products. The investigators and Thai police officers assembled before raiding three locations that were manufacturing and distributing counterfeit print supplies. The counterfeiters were operating on Lazada e-commerce platform. "The case was a groundbreaking success with US\$1.01m worth of counterfeit material seized. The successful raid was possible due to the sharing of vital intelligence by Lazada with HP's anti-counterfeit team and the Thai police. We look forward to continued cooperation to protect customers of HP products sold online and offline."

- Benedict Chen
Brand Protection Manager APJ
Hewlett Packard Enterprise
(Oct 2020)

Annex 1 Online-to-Offline Enforcement Actions

(II) Panasonic Raids in Kuala Lumpur, Malaysia (August 2020)

Online Advertisements Lead To Counterfeit Electrical Products Seized By Ministry During Raids

24-08-2020

Ministry and Panasonic Malaysia warn of safety risks in counterfeit electrical products



Sources:
The Star / China Press / Jiji Press /
www.panasonic.com

- Collaboration with Panasonic and the Ministry of Domestic Trade and Consumer Affairs (MDTCA)
- A total of 94 suspected counterfeit Panasonic products were seized

“We would also like to thank the brand protection team of Lazada for supporting us in these actions to help ensure only genuine Panasonic products are sold on their platform”

**- Mr. Fumiaki Tanaka
Panasonic Malaysia
Marketing Director
(Aug 2020)**



Annex 1
Online-to-Offline Enforcement Actions

(III) BMW Raids in Thailand (August 2019)

- Collaboration with BMW and the Thailand Police
- More than 1,000 units of BMW automobile parts were seized

“The transparent approach with regards to communication of our collaboration illustrates Lazada’s genuineness in promoting fair and open collaboration with rights holders.”

- Yip Chee-Choon
Brand Protection Manager
BMW Asia
(Oct 2019)