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TOGETHER AGAINST COUNTERFEITING ALLIANCE WELCOMES POLITICAL AGREEMENT ON DSA BUT STRESSES THAT MORE FORCEFUL REGULATION IS NEEDED TO EFFECTIVELY TACKLE ONLINE COUNTERFEITING

The Together Against Counterfeiting (TAC) Alliance salutes the efforts deployed by the co-legislators to reach a political agreement on the Digital Services Act (DSA). However, while the text is still being finalized, the agreement represents only a first step in the right direction in fighting online counterfeiting, rather than going the full distance. It will therefore be essential to complement the DSA with additional targeted and mandatory initiatives focused on curbing online counterfeiting.

Since the start of the current European Commission mandate, great ambitions have been laid out for the DSA to make the EU a standard-setter in ensuring that “what is illegal offline, is illegal online.” This was notably meant to apply to the fight against online counterfeiting, which has grown exponentially in the past decade and has been bolstered by the e-commerce boom associated, amongst others, to the Covid-19 pandemic.

Pending the publication of the political agreement and its finalization at technical level, brands are nonetheless concerned that, while some positive advances have been made, political considerations and a sense of urgency have led the co-legislators to cut some corners, limiting the legislation’s potential to effectively curb counterfeiting.

Positive advances notably include the extension of the trusted flagger definition to individual rightsholders, who are best placed to flag violations of their intellectual property, as well as an obligation for online platforms to inform consumers who bought fake products. On the other hand, a glaring weakness of the political agreement is the still limited scope of the Know Your Business Customer (KYBC) obligation to marketplaces only, which fails to take into account the full landscape of online counterfeiting.

If the EU is still truly committed to ending the “digital Wild West,” the TAC Alliance therefore calls on the European Commission to go the full distance by putting forward new initiatives complementing the horizontality of the DSA, to tackle online counterfeiting. The upcoming EU Counterfeiting Toolbox, which is scheduled for publication in Q4 2022, would represent an important opportunity, if it includes binding and future-proof measures.

The Together Against Counterfeiting (TAC) Alliance brings together almost 100 companies from all industrial sectors, with the support of over 20 trade associations and NGOs. Our purpose is to raise awareness about the impact of the worrying growth of counterfeiting and push for the adoption of immediate, horizontal and ambitious legislative solutions at European level.

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