

February 15th, 2011

USTR Request for Comments on Anti-Counterfeiting Trade Agreement, Docket number USTR-2010-0014

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PharmacyChecker.com evaluates online pharmacies and compares their prescription drugs prices. We created PharmacyChecker.com in 2002 to help Americans searching for affordable medication find information on reputable online pharmacies, based in and outside the United States, and to avoid rouge websites selling counterfeit and dangerous drugs. In the course of our research, verifications, and inspections, we know that some non-US pharmacies (International Pharmacies), who sell prescription drugs to Americans, operate exceedingly safe and licensed mail-order pharmacy operations that enable Americans to afford their medications. They are a lifeline for Americans who are uninsured or underinsured.

PharmacyChecker.com supports international agreements that provide protection for intellectual property rights holders. And as Americans and business persons we believe that our innovation is our greatest asset. However, we view the Anti-Counterfeiting Trade Agreement (ACTA) as an overreaching international agreement that will lead to actions taken by IPR holders that result in negative health outcomes for Americans. **If adopted, ACTA increases the likelihood that International Pharmacies, which safely and ethically dispense, by mail-order, affordable prescription drugs to American patients who might otherwise not be able to afford their medication, will no longer be able to operate.**

The Parties to ACTA cite that part of their focus is on protection of public health by keeping counterfeit and dangerous drugs off the market. But the scope of ACTA seeks to address a multitude of intellectual property rights completely unrelated to safety. ACTA's scope would facilitate civil and even criminal action against companies and people engaged in activities that clearly protect American health but who may *unknowingly* violate a trademark right in the dispensing of a safe and effective prescription drug to an American citizen. Such International Pharmacies could be subject to product seizures and even closure, the effect being less access by Americans to safe and affordable medication.

Peter Maybarduk from the group Public Citizen aptly describes the problems of IP enforcement in terms of public health: "...among IP infringements, only willful trademark counterfeiting of potentially dangerous classes of products poses a categorical public safety

risk. Outside the context of counterfeiting, IP infringement analysis is not related to health.” The trade in personally imported prescription drug products, that uninsured and under insured Americans rely on to afford their medication, is a perfect example of Mr. Maybarduk’s point.

The direct threat to public health is logically explained as follows: Prescription drug utilization is price elastic. If a drug sold in the United States is above a certain price and there are no lower cost equivalent alternative, many Americans prescribed that drug will not adhere to the prescription due to cost. Over the past decade, millions of Americans have purchased drugs from safe International Pharmacies due to their relatively lower prices. Without access to such International Pharmacies many Americans would not be able to afford their medications leading to negative health outcomes.

For the reasons stated above, we agree with Mr. Maybarduk who writes: “Public health analysis leads to the conclusion that ACTA should be scaled back to cover only willful commercial scale trademark counterfeiting.” Section 1, part 3, in ACTA recognizes the need for “proportionality, between the seriousness of the infringement, the interests of third parties, and the applicable measures, remedies and penalties.” Through this lens of proportionality USTR must consider the American patient struggling to afford prescription medication.

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