

# United States Senate

WASHINGTON, DC 20510

## VIA ELECTRONIC TRANSMISSION

May 4, 2020

The Honorable William P. Barr  
Attorney General  
United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

The Honorable Chad F. Wolf  
Acting Secretary  
Department of Homeland Security  
2707 Martin Luther King Jr. Ave, SE  
Washington, DC 20528

Dear Attorney General Barr and Secretary Wolf:

We write you today to express our strong support for your efforts to prosecute the pervasive intellectual property theft by entities controlled by the Chinese government and Chinese-based entities. China has made their intentions clear: if America can create it, they will steal it. This overt effort to misappropriate American innovation has gone on for too long. Domestic and international enforcement of intellectual property rights must continue to be a top priority for your agencies.

As Americans come together to stop the spread of the 2019 novel coronavirus, we are alarmed by reports that counterfeit personal protective equipment (PPE) has been identified and seized by federal authorities. PPE is essential to protect the healthcare workers who are on the front-lines of this fight risking their own personal safety to help others. By now most Americans have heard of the “N95” respirators, which is one of the lifesaving devices used by healthcare professionals. These respirators are so essential that the Center for Disease Control and Prevention (CDC) does not recommend the N95 respirator for public use. This is because they are “critical supplies that must continue to be reserved for health care workers and other medical first responders.”

Alarming, counterfeits of these masks are making their way into the hands of dedicated first responders. On March 27, the Federal Bureau of Investigation (FBI) issued a press release warning individuals to be vigilant for counterfeit PPE. The CDC published guidance on their website with depictions of counterfeit products that misrepresent National Institute of Occupational Safety and Health (NIOSH) approval. One example the CDC lists is a company producing counterfeit N95 respirators with falsely marked valid NIOSH approval numbers. Just last month, DHS reported seizing a shipment of counterfeit 3M respirators shipped from China, and several states have reported receiving substandard respirators from the Chinese. Counterfeit devices originating in China pose a serious and immediate threat to American healthcare workers who are going to work every day to protect others.

The intellectual property developed by American researchers and innovators will be critical to our nation's recovery and ability to prevent another outbreak of this virus in the future. While PPE is essential to the current effort to slow the spread of COVID-19, the next step in America's recovery is dependent on so many products of American innovation: testing kits to identify those infected with the virus, medicines and therapeutics to treat those infected with the virus, and vaccines to prevent more individuals from contracting the virus. Given the potential profit, we anticipate a surge in counterfeits attempting to take advantage of the urgent need.

We must do everything we can to promote and protect these lifesaving American innovations and prevent a flood of incoming counterfeit products, which can be done without decreasing the flow of legitimate medical products. As your agencies, in coordination with the White House, work to bolster and secure the domestic supply chain of essential medicines, medical devices, and active pharmaceutical ingredients, it is equally essential that we simultaneously strengthen the coordinated efforts of U.S. law enforcement to seize counterfeit goods at our borders, investigate their origins, and prosecute the criminal enterprises behind them. This will require close coordination between private sector companies with sophisticated knowledge of their supply chains and federal law enforcement agencies that can move swiftly to respond to actionable intelligence of intellectual property theft.

A coordinated multi-agency response is essential. We want to commend your prioritizing this issue and encourage you to continue to leverage the existing resources and capabilities of the Computer Crimes and Intellectual Property Section, the National Intellectual Property Rights Coordination Center, and other relevant functions to maximize the U.S. government's enforcement power to keep our citizens safe from counterfeits at this very critical time. As you pursue this critical work, we want to ensure that your Departments have all of the necessary tools, resources, and legal authorities they need to effectively prosecute these cases.

Accordingly, and when practical, we ask that you or someone whom you designate to lead this fight against intellectual property infringement within your agencies brief our offices on current Chinese intellectual property theft as it relates to COVID-19 and steps you are taking to combat that. We also ask to be briefed on any additional resources, tools, or authorities you will need to pursue these efforts. Finally, and in order to have the most productive conversation, we ask that this briefing be conducted in a classified setting.

Thank you for your prompt attention to this matter. We look forward to your reply, and to working with you to protect America's innovation economy.

Sincerely,



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Thom Tillis  
United States Senator



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John Cornyn  
United States Senator



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Marsha Blackburn  
United States Senator