



we wear SM intellectual property

February 10, 2012

The Honorable Stanford McCoy
Assistant U.S. Trade Representative for Intellectual Property and Innovation
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Filed Electronically to Docket No. USTR-2011-0021 (2011 Special 301 Review)

Dear Mr. McCoy:

Thank you for the opportunity to submit comments on the enforcement and protection of intellectual property rights (IPR) by our trading partners as part of the United States Trade Representatives' (USTR) review under Section 182 of the Trade Act of 1974 (Special 301). These comments are submitted on behalf of the member companies represented by the American Apparel & Footwear Association (AAFA) – the national trade association for the apparel and footwear industry, and its suppliers.

In January, U.S. Customs and Border Protection (CBP) released its annual IPR Seizure Statistics for 2011. While both footwear and apparel remain in the top five most counterfeited items (by value) over the last year, the total value of counterfeit seizures has decreased in that time. Footwear, which has been most counterfeited item by value over the last six years, now sits in second place at 14% down from 24% in 2010. Value of apparel seizures also dropped from 10% to 8%. While these numbers reflect continued priority attention by CBP as the value dropped \$10 million since 2010 and almost \$100 million since 2008, CBP reported 10,000 more total seizures between 2008 and 2011. CBP accounted for this increase in seizures despite the drop in total value due to the capture of more low-value shipments found in the use of express and direct mail through rogue Web sites, which remain deeply offensive to our industry and to the U.S. jobs that depend on the intellectual property our industry creates. The explosive proliferation of rogue websites appears to be the new primary avenue used by counterfeiters to move their illicit goods to consumers worldwide, especially to consumers here in the United States. While we do not view rogue websites as a trade issue per se, it is our strong recommendation that the US Trade Representative remain fully engaged with other agencies to address this enormous problem.

Based on recent comments by AAFA members, we have compiled a list of countries where systemic IPR enforcement practices need to be improved, while also sharing any successes in countries where AAFA members have traditionally faced resistance to the protection of our brands.

China

According to CBP, 62% of the value of all seizures in 2011 originated from China. Footwear and apparel each accounted for 20% and 9% (2nd and 3rd place respectively) of the domestic value of seizures from China. In terms of total seizures, apparel ranked number first with 4,466 seizures and footwear ranked fifth with 977 seizures. In practical terms, these numbers represent more than twelve apparel and three footwear seizures per day in 2011 by CBP. While we see improvement, we would also encourage USTR to work with Chinese Customs to prevent fake goods from leaving China, especially when the legitimate

1601 North Kent Street
Suite 1200
Arlington, VA 22209

(703) 524-1864
(800) 520-2262
(703) 522-6741 fax
www.wewear.org

items are not manufactured in China in the first place. We have previously suggested educational approaches that would address this need and are happy to follow up as appropriate.

Substantial concern still exists over lack of adequate protection in China for marks which are owned, used, and registered in many countries outside of China, but which are not recognized as well-known trademarks in China. If another party files an application in China ahead of the actual owner of the mark, the legitimate rightsholder is still left unprotected. Further, Chinese trademark law does not recognize the use of a brand name on several different commodities. We are encouraged by efforts of the Chinese government to revamp its trademark law to address these problems. However, improved enforcement at the provincial level is wildly inconsistent and needs to be improved through increased police action and penalties.

Costa Rica

AAFA members continue to cite Costa Rica as concern as the office of the Attorney General appears to be balking at effective enforcement of intellectual property rights. This is not appropriate for a free trade agreement partner. Prosecutors still will not pursue raids against known counterfeiters and penalties remain low. Companies are also deterred by engaging in long legal battles due to the high costs of adjudication.

AAFA member companies have touted some positive signs of progress. The Coast Rican government did take some steps forward in 2011 to understand the counterfeiting problem. For example, it held trainings as a first step to enforce against counterfeiters. In addition, government officials have stated that they would work to prosecute IPR cases. We are encouraged to see these developments take shape over the course of 2012.

Mexico

Problems with intellectual property rights protection are ongoing in Mexico, which is again concerning as a free trade agreement partner. Apparel and footwear companies are still concerned that Mexico's failure to improve their IPR protection hurts their opportunity to expand operations in Mexico. This expansion could provide the U.S. workers with new job opportunities and help the overall U.S. economy.

Trademark registration is still a difficult process to navigate and recognition of common law trademark rights based on previous use is not consistent. We would encourage USTR to work with Mexico to improve its trademark registration system in way that will work better with its trading partners. For example, opposition to trademark applications prior to registration should become a common practice to allow legitimate rightsholders the ability to dispute rights claimed by trademark squatters.

Members have advised us that the Mexican Customs Service has been a strong partner in IPR enforcement in Mexico. It continued to seize shipments of counterfeit articles at ports throughout the country.

Thailand

The Thai Trademark Registrar and the Board of Trademarks still rely on visual and phonetic similarity comparisons and not the conceptual similarity of the marks, which increases the opportunity for trademark squatters to claim rights on established marks. As a result, brand holders have found it increasingly costly to oppose or cancel these illegitimate registrations.

We also remain concerned about the lack of progress by the Thai government in the enforcement against notorious markets, as we listed in our Out-of-Cycle Special 301 Report in 2011. These markets include: Jatujak or Chatuchak Weekend Market ("JJ"Market); MBK Shopping Centre near Chulalongkorn University and Siam Square; Klong Thom (Chinatown), Sukhumvit Road (between Sukhumvit Soi 3 and Asoke) and Patpong Road-Silom Road-Suriwongse Road ("Patpong Market").

On the positive side, some AAFA member companies have reported continued support and cooperation from the Royal Thai Police and Royal Thai Customs in intellectual property enforcement across the country. Yet, as products are still able to get to these notorious markets, we can see that more work needs to be done.

Turkey

Turkey remains a hub for the manufacture, export and transshipment of apparel counterfeits between Europe and Asia. Law enforcement varies by jurisdiction and the judicial process remains very slow and inefficient. Our members have even seen counterfeit goods left with the defendants after raids. Further, final seizure and subsequent destruction of the fake goods do not occur until final adjudication. Criminal penalties are also too low to provide as an effective deterrent to committing counterfeit crimes.

Venezuela

Reports from our membership have indicated that the Venezuelan customs service, SENIAT, made some successful counterfeit seizures in 2011. However, the Venezuelan prosecutor's office still takes years to adjudicate cases. The process is so slow and the penalties are so low, that neither is effective to deter counterfeiters.

Additionally, the Venezuelan Patent & Trademark Office (PTO) did not make improvements during 2011 relating to the publication of trademarks applications. The office continued to publish applications for trademarks that are nearly identical to AAFA members' marks.

We appreciate this opportunity to raise these concerns and look forward to working with USTR and other U.S. government agencies to address intellectual property rights issues worldwide. Should you or your staff have any questions, please feel free to contact Kurt Courtney on our staff at (703) 797-9039.

Sincerely,

A handwritten signature in cursive script that reads "Kevin M. Burke".

Kevin M. Burke
President and CEO