



February 16, 2010

Ms. Jennifer Choe Groves
Director for Intellectual Property and Innovation
and Chair of the Special 301 Committee
Office of the U.S. Trade Representative (USTR)
600 17th Street, NW
Washington, DC 20508

Filed Electronically to Docket No. USTR-2010-0003

RE: Comments for the Identification of Countries Under Section 182 of the Trade Act of 1974 (Special 301)

Dear Ms. Groves:

We appreciate 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 industries. AAFA member companies are comprised of some of the most well-known U.S. apparel and footwear brands seen and sold in markets throughout the world.

The 2010 Customs and Border Protection (CBP) seizure statistics for 2009 indicate that footwear and apparel accounted for 38% and 8% respectively of the total value of counterfeit goods seized at our borders. Therefore, strengthening our members' brands and intellectual property protections around the globe and ensuring the effective enforcement of IPR in foreign countries are essential to maintaining U.S. companies' world-wide competitiveness and brand integrity.

For the fourth straight year, counterfeit footwear was the top commodity seized in FY 2009 with a domestic value of \$99.7 million. The median value of IPR footwear seizures in FY 2009 was \$1,008, which was more than double the median value of IPR footwear seizures in FY 2008, \$450. In other words, while CBP was able to seize more high value cargo, counterfeiters are also feeling more confident in being able to bring high value shipments of footwear across U.S. borders.

Based on recent comments by AAFA members, countries and practices cited as concerns include:

China

Counterfeit products originating from China made up 79% of the total value of goods seized by U.S. Customs and Border Protection in 2009 with a domestic value of \$204.7 million.

Counterfeit footwear from China totaled almost 48% of all infringing footwear in 2009 with the domestic value at almost \$98 million. Apparel made up 9% of the total value of goods seized from China accounting for almost \$18 million.

AAFA member companies look forward to continue working with both the U.S. and Chinese governments to tackle the prevalence of black and grey market goods in China. Such reforms need to occur through our ongoing trade agreements, but the U.S. government must also encourage the Chinese government to increase its own internal enforcement efforts.

Costa Rica

As Costa Rica continues its implementation of the CAFTA-DR trade agreement, the Costa Rican judicial system seems to place IPR law enforcement requirements as a low priority, despite its inclusion in the trade agreement. As a result, the only way for AAFA members to combat counterfeiters is through civil judicial actions backed by security bonds. Unfortunately, the costs associated with these actions also have made this procedure very difficult.

All too often when able to conduct a raid on an operation, AAFA members continue to see charges on counterfeiters dismissed. Even worse, when found guilty, penalties are usually very small or immaterial. As such, counterfeiters are not at all dissuaded from pursuing future counterfeiting activities.

Mexico

AAFA members found that Mexican Customs continued to provide strong support for the industry last year, resulting in the seizure of tens of thousands of counterfeit items. However, brand owners are still required to post bonds in order to initiate raids with the the Mexican Institute of Industrial Property (IMPI). Obviously, this cost and time needed to fulfill this requirement continues to present an obstacle to enforcement. Eliminating this requirement altogether would boost enforcement efforts in the country.

Also, brand owners are still finding problems with Mexico's recognition of common law trademark rights. To obtain a trademark in Mexico, the government requires a formal registration to establish trademark rights, adding another cost to the price of protection for legitimate rights holders. It would be very helpful if USTR could press the Mexican government to expand the scope of its trademark law to allow common law protection.

Philippines

In the Philippines, AAFA members saw encouraging developments in IPR protection. The Intellectual Property Unit of the Bureau of Customs has successfully monitored the entry of counterfeit goods into the country leading to seizures of counterfeit goods. However, illegal importers are still able to provide false information regarding their businesses prohibiting brand owners from filing formal legal cases against them after the seizure of the goods by the Bureau of Customs.

Philippine courts continue to act very slowly in the prosecution of IPR cases. Fortunately, it is our understanding that the Philippines Intellectual Property Office and Supreme Court are drafting Special Rules on IP litigation. The Special Rules will soon be implemented in one or two specialized courts. AAFA members are encouraged that the new procedure will expedite the pace of court proceedings since that is the single greatest disincentive to IPR enforcement in the Philippines.

Thailand

In 2009, the Thai government began to make significant efforts to fight intellectual property rights infringement, as they began to implement strong policies and strategies on IP. Deputy Commerce Minister Alongkorn Ponlaboot proactively initiated amendments to the Thai trademark and copyright law to further prohibit the sale of counterfeit goods.

In 2009, AAFA members received strong cooperation from the Royal Thai Police and Royal Thai Customs leading to several seizures of counterfeit goods. For 2010, we look forward to continue working with Thai police to initiate more actions against the factories and warehouses which are a large source of counterfeit goods.

“Copycat” trademarks seem to still be filed in Thailand for registrations designed to mislead consumers. Under the authority of Department of Intellectual Property (DIP), the Trademark Registrar and the Board of Trademarks continue to focus primarily on visual and phonetic similarity comparisons without regard to the conceptual similarity of the marks and the possibility of bad-faith intent by applicants. The lack of focus on conceptual similarity will encourage bad-faith applicants to continue to file trademark applications with the DIP that are copies of well-known trademarks. If the DIP continues accepting such marks for registration, it will be increasingly difficult for legitimate intellectual property owners to oppose or cancel these illegitimate trademarks.

As always, we certainly appreciate all of the efforts of the United States Trade Representative on the protection of intellectual property rights. We look forward to working with your office in 2010 to continue the fight against counterfeits and protect American innovation abroad. Please feel free to contact Kurt Courtney in my office with any questions at (703) 797-9039.

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Burke". The signature is written in a cursive, flowing style.

Kevin M. Burke
President and CEO
American Apparel & Footwear Association