



we wear[®] our mission

April 08, 2015

The Honorable Ambassador Froman
United States Trade Representative
600 17th St NW
Washington, D.C. 20508

Dear Mr. Ambassador:

We are writing to enlist USTR's assistance in AAFA's ongoing efforts to fight the rampant proliferation of counterfeit apparel and footwear on the TaoBao platform of Alibaba.

Representing more than 1,000 world famous name brands, the American Apparel & Footwear Association (AAFA) is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its four million U.S. workers, and its contribution of \$361 billion in annual U.S. retail sales.

Our members have been on the front lines in the fight against counterfeits for decades. Today, online enforcement is more important than ever.

Alibaba's TaoBao platform is notorious as one of the biggest platforms for counterfeit goods worldwide. Our members encounter innumerable counterfeits on TaoBao every day, which result in millions of dollars of lost sales, damage to reputation, legal costs, and exhaustion of internal resources. While some have had mixed success in securing take-downs of a small percentage of these infringing products, others are frustrated at the slow and cumbersome procedures that prevent swift action. Even successes are short-lived as counterfeit products often reappear within hours or days of a take-down.

USTR removed TaoBao from its Special 301 Notorious Market list in 2012 even as it signaled ongoing concerns over the widespread availability of counterfeit apparel and footwear on that site. USTR declined to relist TaoBao in the 2013 and 2014 reports.

Since TaoBao was delisted, the problem of counterfeit apparel and footwear on the site has worsened.

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Included with this letter is a document created by AAFA membership detailing many of the issues our industry has had in working with TaoBao for the last decade. These issues include:

- Lack of clarity or consistency in documents necessary to effectuate a take-down
- Long delays before take-downs are executed
- A weak punishment system
- Lack of cooperation with local law enforcement
- Lack of enforcement for Copyrights and Trademarks
- Lack of trust by TaoBao in brand owners' take-down requests
- TaoBao acting as both judge and jury in determining whether a take-down request is justified

For much of the past year, AAFA has been working with representatives of Alibaba to address these concerns. Although Alibaba has publicly accepted several of the concepts we've discussed, including an updated take-down system, a "trusted reporter program," and an increased focus on physical raids and law enforcement cooperation, implementation has been sluggish or non-existent.

The slow pace has convinced us that Alibaba is either not capable of or interested in addressing this problem. A strong message from USTR stating that the status quo will lead to the relisting of TaoBao in the 2015 report would send a clear signal that rhetoric without action will not be tolerated. ***We urge you to use every opportunity to deliver this message to officials from Alibaba and in other applicable intellectual property rights fora.***

In the coming months, we will work with our members to provide further information to you on specific areas of action. It is our hope that, working together, we can significantly eliminate this counterfeit scourge.

Thank you for your swift attention to this matter.

Sincerely,



Juanita D. Duggan
President and CEO

Attachment

AAFA & TaoBao Issue Summary

Top Industry Issues

1. *Fear of Sensitive Information Being Leaked to Counterfeiters*

- Issue: Industry members are hesitant to share sensitive information on how they are aware that an item on TaoBao is known to be counterfeit. This is because TaoBao uses a strike system and could possibly share sensitive information with their store fronts. Because TaoBao uses these techniques, the industry is concerned that known counterfeiters could possibly gain valuable, sensitive information from the industry and use that information to make better, more precise counterfeit goods. This could also make enforcement and take-downs significantly more difficult.
- Issue: In addition, some industry members have been requested to provide information about their business partners, specifically the companies authorized to manufacture or sell those members' goods. Providing such information raises several concerns for our members. In particular, because our members provide customs authorities with a list of their business partners, if the information provided to TaoBao is not kept confidential, there is nothing to prevent the set-up of companies with similar names and credentials that could engage in cross-border trade outside the scrutiny of customs officials.
- Issue: Some industry members have been asked to provide scanned copies of individual IDs, as representatives of the rights owner. These industry members are concerned that this sensitive information will not be properly safeguarded by TaoBao and have been reluctant to provide it.
- Solution: AAFA would also like to ensure that only necessary information, relevant to the takedown request, be submitted as part of this process and that such information is secure.

2. *Improved Enforcement of Copyrighted materials*

- Issue: TaoBao has refused to take down copyrighted images without having information of where the image is published for public viewing. Infringers are not just copying current season images from company's websites and, as such, it is impossible for a company to know

the location of every public image online. Also, even when an image is current, TaoBao does not accept copyright infringement complaints as a reason of removing listings of selling counterfeit products. Instead, TaoBao insists that a copyright complaint cannot be expanded to products, only for advertisement materials or online publications. This means TaoBao will just remove the photos but still keep the listings of infringing products.

- Solution: TaoBao must realize that infringement of copyrights applies to all relevant products including marketing materials and physical items. Removing photos but keeping product listings does not address the issue of counterfeit products; it only slightly hinders the infringer until they can find a new image or new source and continue to sell their illegal goods. If a product is being sold using counterfeit marketing materials, both the marketing materials and the products must be removed from TaoBao permanently and immediately.

3. Improved Cooperation with Local Authorities

- Issue: When a company is required to involve the local authorities to seize counterfeit goods in a province where TaoBao is located, we have seen examples of slow response times and difficulty with enforcement. It is believed that this is due to local authorities protecting TaoBao, who should not need nor want protection of this kind.
- Solution: TaoBao must not only cooperate with local authorities but also encourage them to take swift decisive action when a company has identified a counterfeit target that requires a physical raid.

4. Increased Scope of Trademark Infringers

- Issue: Companies have had difficulty with TaoBao removing listings that may not violate trademarks in the exact registered sense but are otherwise blatant violations in the common sense (ex: adding or changing single letters to a registered brand while selling blatant knockoffs of that brand's products).
- Solution: TaoBao must use common sense and not allow slight variations that are obviously an attempt to produce counterfeit and knockoff products. These violations must be treated like any attempts at exact counterfeits and be taken down immediately.

5. Recognition of Well-Known Trademarks & Administrative Burdens Associated with Trademark Infringement Takedown Requests

- Issue: TaoBao refuses to remove listings of goods bearing well-known/famous marks. Specifically, TaoBao has consistently refused to recognize that the protection of these marks extends to classes other than

the class of registration. When TaoBao does accept a trademark they request that trademark owners submit additional documents providing proof of trademark rights, outside of the registration certificates. This has included affidavits regarding the use of the mark and court decisions indicating the well-known status. In addition, TaoBao has often considered International Trademark registrations with China designated as the country of protection as insufficient grounds for removing infringing listings.

- Solution: TaoBao must adapt its policy and recognize that goods bearing famous brands without the consent of the owner are infringing, regardless of whether the marks appear in connection to the registered goods. Also, TaoBao should rely on the provided trademark registration certificates, including the marks registered via the Madrid system.

6. No Three Strike System

- Issue: TaoBao's point system gives far too much leniency to infringers when no leniency should be given at all.
- Solution: There should be no warning system, no point system, and no strike system. If someone is selling counterfeit products, their store front should not only be removed immediately, but also banned permanently. Any lesser measures give entirely too much power to illegal counterfeit manufacturers.

7. Improved Take Down Timing

- Issue: Companies continue to experience long delays in take downs.
- Solution: TaoBao has taken steps to simplify and expedite their take down system, but much more can be done. First, TaoBao can simplify their reporting system and increase their own response time once a report is filed. Second, as mentioned previously in issue one, TaoBao can enter into a program with AAFA similar to their efforts with IACC in order to promote easy, efficient, collaborative, confidential, and immediate take downs of acknowledged counterfeit products.

8. No MOU Should be Required to be Signed by Individual Brands

- Issue: TaoBao has made recent efforts to work with individual companies and brands to increase enforcement of copyrights. While these efforts have made some progress in specific cases, they are very time-consuming and have yet to create a better environment for the industry as a whole.

- Solution: TaoBao should partner with AAFA to create a solution that benefits the entire apparel, footwear, and textile industry and promote an industry wide process that creates tangible outcomes.

9. *Cooperation with Taking down Design Patents*

- Issue: Companies have tried to work with TaoBao to enforce design patents but in certain cases, even after providing required documents including certificates, violating product has not been taken down.
- Solution: AAFA acknowledges that design patents fall under a complex area of international patent and copyright law. However, design patents are still as valid as any other registered patent or copyright. TaoBao must determine what measures are necessary for them to carry out to increase enforcement of design patents. AAFA is more than happy to assist TaoBao in this process. TaoBao must enforce patents when the requirements are met, no questions asked.

Next Steps

1. AAFA would like to explore a relationship with TaoBao that may result in an MOU which would address our member's concerns in particular expeditious and simple takedowns.
2. TaoBao will develop a webinar program using its platform that would describe action plans created by TaoBao to correct the listed issues. The webinar would also educate the industry on how they can more effectively alert TaoBao to known counterfeit products via their reporting system. AAFA will inform its Brand Protection Council of the webinar and how to participate.