



**we wear intellectual property<sup>SM</sup>**

June 25, 2012

David V. Aguilar  
Acting Commissioner  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue NW  
Washington, DC 20229

Timothy E. Skud  
Deputy Assistant Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Re: Docket No. USCBP 2012-001

“Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border” – U.S. Customs & Border Protection, Department of Homeland Security, Department of Treasury (77 Federal Register 24375 (April 24, 2012))

Dear Commissioner Aguilar and Deputy Assistant Secretary Skud:

On behalf of members of the American Apparel & Footwear Association (AAFA), the national trade association for apparel and footwear companies and their suppliers, I appreciate this opportunity to submit comments on the U.S. Customs and Border Protection (CBP) interim rules pertaining to the ability of customs officials to share information with trademark owners for the purpose of identifying counterfeit goods. While we support the proposed rule and are eager to assist CBP in identifying counterfeits, some AAFA members have expressed concerns over the requirement that rightsholders must wait to see any information until after the importer is notified. I thank you for your time and attention to these comments.

For the last several years, AAFA and several other groups have worked with Congress and the Administration to show the need for CBP to disseminate product disclosure and packaging information to rightsholders to assist the agency in making quick infringement determinations without holding up legitimate commerce. Today, this ability is even more critical as our members have tested counterfeit products for hazardous material and discovered that many illicit articles contain chemicals restricted or banned by the United States and other countries, such as phthalates, lead, and chromium VI. This rule enables rightsholders to work with CBP, so that we may pool our intelligence to achieve our mutual enforcement goals.

As you know, footwear and apparel have been in the top five most seized counterfeit items (by value) by CBP for four out of the last five years. Only in 2011 did footwear lose the number one spot after holding first place since 2006. While the industry could not be more thankful to CBP for its strong enforcement actions, we also take note of the rampant rise in seizures of low-value shipments due to the ongoing problem associated with rogue Web sites, who ship their fake products straight to the consumer. The rogue Web site problem notwithstanding, our members as well as the counterfeiters still use the ports every day and efficient enforcement will always be required to ensure that illegal and unsafe goods are caught before entering the United States.

Some AAFA members have expressed concern that the current waiting period set forth by the rule will provide counterfeiters primary access to questionable goods. These members contend that the rightsholder and the importer should be provided information simultaneously in the event the importer is a counterfeiter in

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disguise. If CBP cannot determine the legitimacy of a product, then the agency should be empowered to contact the owner of that trademark. Moreover, the practical effect of the delay could last upwards of two weeks, which present a significant burden in the event the shipment in question is legitimate. AAFA believes that this issue warrants further discussion between CBP, trademark owners, and importers.

We are very thankful to the efforts of CBP to combat the counterfeiting problem and look forward to working with the agency in stopping fake and potentially harmful items from entering the United States. Please feel free to reach out to Kurt Courtney on our staff at (703) 797-9039 or by e-mail at [kcourtney@wewear.org](mailto:kcourtney@wewear.org) if you have any questions or need more information about the apparel and footwear industry.

Sincerely,

A handwritten signature in cursive script that reads "Kevin M. Burke". The signature is written in black ink and is positioned above the typed name and title.

Kevin M. Burke  
President and CEO