



we wear[®] intellectual property

October 16, 2015

The Honorable Daniel H. Marti
United States Intellectual Property Enforcement Coordinator
Executive Office of the President
Washington, D.C. 20500

Re: Development of 2016 Joint Strategic Plan on Intellectual Property
Enforcement; Submitted electronically at www.regulations.gov

Dear Mr. Marti:

On behalf of the member companies of the American Apparel & Footwear Association (AAFA), we appreciate this opportunity to submit comments to the U.S. Government as it develops its third Joint Strategic Plan on Intellectual Property Enforcement ("Joint Strategic Plan") in accordance with the *Federal Register* notice of September 1, 2015. We also appreciate the leadership of your office in ensuring coordinated and consolidated U.S. Government activity to safeguard U.S. intellectual property rights abroad and at home.

AAFA is the national trade association representing apparel, footwear, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands drawn from throughout the supply chain, 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.

IP Theft and the Fashion Industry

AAFA takes the issue of intellectual property theft very seriously. Stolen intellectual property (IP) costs our members billions in lost sales, damage to reputation, and substantial legal expenses. Ultimately, these costs lead to U.S. job losses and higher costs for U.S. consumers.

Our industry is one of the most heavily counterfeited industries on the planet. In FY 2014, Customs and Border Protection (CBP) reported that apparel, footwear, and travel goods and accessories represented approximately 43 percent of all seizures, accounting for more than half a billion dollars in seized

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counterfeit products.¹ This is only the tip of the iceberg. Including infringement that occurs in physical and online markets, IP-related theft of fashion products worldwide equals approximately \$68 billion.²

For our members, IP theft can occur in many locations. Advances in e-commerce and nearly instant delivery have sadly ushered in new opportunities for infringement and new and costly challenges for our members. For example, we recently provided comments to the U.S. Trade Representative (see attached), identifying TaoBao and 100 other notorious online and physical markets. This year is the largest compilation of notorious markets we've presented, a sober reminder that the problem is getting worse. We are looking for ongoing support from the Administration to help translate these notorious market reports into action and, ultimately, into IP success stories.

Coordination and Education

Continuous education is critical to combatting this evolving challenge, particularly that which occurs in cyberspace. Moreover, new technologies are constantly being developed and deployed. Your office can play a valuable role in making sure U.S. government agencies lend their perspective and expertise to creating fresh content for educational programs and in promoting successful private-public partnerships. We specifically encourage the greater use and posting of webinars on the Stop Fakes platform³ to inform industry and other IP stakeholders of new resources and tools available to combat IP theft. As part of this effort, we encourage you to draw upon successful technological advances to incorporate private sector resources into public education programs.

Developing and deploying new resources to meet the continuous challenge presented by infringers is critical. We were pleased to see the announcement earlier this month about a new Justice Department initiative to foster better partnerships between IP enforcement of the Federal Bureau of Investigations, local governments, and industry. We look forward to hearing about, and working with our members to take advantage of, more such initiatives in the future.

We are also pleased to see the recent rule that allows CBP to share information on potential counterfeit products with rights holders. That rule requires CBP to provide detailed information to the rights holder on the potentially infringing import, immediately upon the product's detention by CBP.⁴ This level of notification should be a model for future government/industry cooperation, especially as new Customs legislation and

¹ <http://www.cbp.gov/sites/default/files/documents/2014%20IPR%20Stats.pdf>

² <https://www.youtube.com/watch?v=APuQ05iOnto>

³ www.stopfakes.gov

⁴ <http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23543.pdf>

new trade agreements (such as the Trans-Pacific Partnership (TPP) or the Trans-Atlantic Trade and Investment Partnership (T-TIP)), take effect.

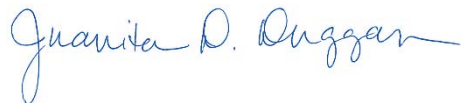
Combatting Trolls

At the same time, we remain concerned by entities who assert frivolous IP rights for the purpose of litigation. Such copyright and patent trolls present a serious challenge to our members, nearly equivalent to the damage caused by infringers themselves. We are encouraging Congress to pass legislation to fix this problem and welcome the Administration's support for such initiatives. In the meantime, we encourage your office to develop educational resources to help companies understand and defend against troll activity.

In conclusion, let me reiterate our support for the great work being performed by the Office of the Intellectual Property Enforcement Coordinator (IPEC) and look forward to continuing our partnership with you and your staff to prevent the sale of infringing products to consumers in the United States and abroad. We especially appreciate the role your office plays in coordinating a U.S. government-wide response and facilitating effective public-private sector cooperation to ensure that the disparate agencies can combine resources to attack this global problem.

Please contact Steve Lamar at (703)797-9041 or slamar@wewear.org if you have any questions or would like additional information.

Sincerely,



Juanita Duggan
President and CEO
American Apparel & Footwear Association (AAFA)

Attachment



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October 5, 2015

Christine Peterson
Director for Intellectual Property and Innovation
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20508

RE: 2015 Out of Cycle Review for Notorious Markets
Docket Number: USTR–2015–0016
Submitted electronically at www.regulations.gov

On behalf of the member companies of the American Apparel & Footwear Association (AAFA), we appreciate this opportunity to submit comments to the United States Trade Representative's (USTR) *2015 Special 301 Out of Cycle Review of Notorious Markets*. We are grateful to USTR for its unfaltering commitment to the protection of American intellectual property rights around the world.

AAFA is the national trade association representing apparel, footwear, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands drawn from throughout the supply chain, 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.

AAFA takes the issue of counterfeit and trademark theft very seriously. Stolen intellectual property, such as that which occurs through the notorious markets we describe below, costs our members billions in lost sales, damage to reputation, and substantial legal expenses. Ultimately, these costs lead to U.S. job losses and higher costs for U.S. consumers.

The attachments to these comments contain notorious online and physical markets – which “engage in or facilitate substantial copyright piracy or trademark counterfeiting.” AAFA recommends that these notorious markets be included in the 2015 Notorious Markets Report.

Among them, and as outlined in our comments immediately below, is the TaoBao marketplace. ***We strongly urge that TaoBao be listed as a Notorious Market in the 2015 report.***

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In its 2012 Notorious Markets report, USTR delisted TaoBao but noted:

*...we urge Taobao to further streamline procedures for submitting and responding to notifications to **decrease the time required for taking down listings of counterfeit and pirated goods** and to continue its efforts to work with and **achieve a satisfactory outcome with U.S. rights holders and industry associations** (for example in the **apparel and footwear** and software industries), as well as U.S. based **small and medium sized enterprises** (SMEs) and we ask these industries to report back expeditiously on the status of these efforts.*

In the 2013 and 2014 reports, USTR continued to urge TaoBao and Alibaba to work with the apparel and footwear industry to address our industry's serious concerns, particularly those involving small and medium sized enterprises that do not have access to costly enforcement resources.

Our concerns have not been addressed. Counterfeits remain rampant on TaoBao and are often found on other Alibaba sites. Consider the following:

- In early 2015, a Chinese government agency – State Administration for Industry and Commerce (SAIC) – found that 67 percent of the goods purchased on TaoBao were counterfeit (a point that was also mentioned earlier this year in the Special 301 report).
- Our members who engage in constant monitoring of Alibaba platforms regularly and continuously report widespread proliferation of counterfeits.
- Any review of TaoBao on a daily basis will find listings for dozens of AAFA member brands at absurdly low prices – a strong indication that such merchandise is counterfeit.

Although TaoBao has continued to introduce adjustments to its takedown procedures, our experience is that TaoBao's takedown programs are incomprehensible, difficult to use, highly subjective, and do not often result in permanent takedowns. Brands that have been able to affect takedowns using these programs still report widespread counterfeits on Alibaba platforms. Many find that the takedowns are only temporary as replacement storefronts offering counterfeit merchandise pop up almost as fast as takedowns occur, particularly on TaoBao. Because of the significant expense in monitoring Alibaba sites, such programs are often out of reach for small and medium sized enterprises.

While we have engaged in a dialogue with Alibaba for the past four years, and extensively for much of the past year, we have had little success in convincing Alibaba to craft a program that will rid TaoBao of counterfeits. In July, we wrote to Alibaba Executive Chairman Jack Ma inviting him to work

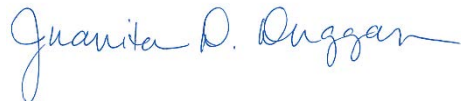
with us to develop a program that is transparent, comprehensible, and fast. To date we have received no response, which is in itself a response.

Unfortunately, delisting TaoBao in 2012 did not lead to sustained improvements to the counterfeit problem. In fact, it has gotten worse. Increased pressure is needed to fix this problem. Otherwise, counterfeits will only continue to proliferate worldwide as Alibaba continues to expand.

Thank you for your immediate attention to this important issue. I look forward to continueing this dialogue to protect American ingenuity and competitiveness abroad.

Please contact Steve Lamar at (703)797-9041 or slamar@wewear.org if you have any questions or would like additional information.

Sincerely,

A handwritten signature in blue ink that reads "Juanita D. Duggan". The signature is fluid and cursive, with the first name being the most prominent.

Juanita Duggan
President and CEO
American Apparel & Footwear Association (AAFA)

Attachments

Attachment A

AAFA Recommendations for 2015 Notorious Markets Report – Online Markets

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82%B0%E3%83%87%E3%83%BC%E3%83%AB%E3%82%BA/](http://www.buyma.com/r/BLOOMINGDALES-%E3%83%96%E3%83%AB%E3%83%BC%E3%83%9F%E3%83%B3%E3%82%B0%E3%83%87%E3%83%BC%E3%83%AB%E3%82%BA/)

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Attachment B

AAFA Recommendations for 2015 Notorious Markets Report – Physical Markets

China

Market Name	Location	Types of Products Sold
Zengcheng International Jeans Market	Xin tan town, Zengcheng city, Guangdong	Jeans for export to Africa and for domestic sale
Silk Market	Xiu Shui Building, No. 8, Xiu shui street (E), Chaoyang district, Beijing	General apparel and footwear, popular among international tourists
Qi Pu market	Qi Pu road, Shanghai	General apparel and footwear
Jin Long Pan Foreign Trade Garment Market	San Yuan Li Av, Baiyun district. Guangzhou	General apparel and footwear for export to Africa
Guangzhou Kangle Building	No. 921, Ren Min road, Guangzhou	General apparel and footwear
Guangzhou GuangKong Building	Ren Min road, Guangzhou(close to above market)	General apparel and footwear
Guangzhou WanTong Garment Wholesale Market	No. 135, Huangshi road(w), Guangzhou	General apparel and footwear
Guangzhou Jinbao Foreign Trade Garment Market	Lane 9, No. 57, Zhanxi road, Guangzhou	General apparel and footwear
Guangzhou Zhanxi Garment Market	No. 2 building, Zhanxi garment market, Guangzhou	General apparel and footwear
Guangzhou Jinshun Garment Market	No. 59, Zhanxi road, Guangzhou	General apparel and footwear
Guangzhou Shahe Yiming Garment Market	Lianquan road, Tianhe district, Guangzhou	General apparel and footwear
Guangzhou Shijing Guangda Garment Market	Shijing town, Baiyun district, Guangzhou	General apparel and footwear
Dongzheng Garment Market, Chaotianmen Market	Yubei District, Chaotianmen market, Chongqing	General apparel and footwear, popular among international tourists

Hangzhou Sijiqing Suhang Garment Market	Hanghai road, Jianggang district, Hangzhou	General apparel and footwear
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India

Market Name	Location	Types of Products Sold
Dabwali	Haryana	General apparel and footwear
S.R. Nagar	Hyderabad, Andhra Pradesh	General apparel and footwear
Bapu Nagar	Hyderabad, Andhra Pradesh	General apparel and footwear
Lakshmi Nagar	Chennai, Tamil Nadu	General apparel and footwear
Kundanpuri	Ludhiana, Punjab	General apparel and footwear
Gurunanak Market	Ludhiana, Punjab	General apparel and footwear
Gur Mandi	Ludhiana, Punjab	General apparel and footwear
Mohalla Gaushala Road	Ludhiana, Punjab	General apparel and footwear
Manish Market	Ludhiana, Punjab	General apparel and footwear
Karol Bagh	Delhi	General apparel and footwear
Tank Road	Delhi	General apparel and footwear
Gaffar Market	Delhi	General apparel and footwear
Shakespeare Road	Karol Bagh, Delhi	General apparel and footwear
Sadar Bazar	Delhi	General apparel and footwear
Sarojini	Nagar, Delhi	General apparel and footwear
Balajinagar	Bangalore, Karnataka	General apparel and footwear
Gandhinagar	Bangalore, Karnataka	General apparel and footwear
Bommanhalli	Bangalore, Karnataka	General apparel and footwear
Koramangala	Bangalore, Karnataka	General apparel and footwear
Malakpet	Bangalore, Karnataka	General apparel and footwear

New Market	Kolkata	General apparel and footwear
Atta Market	Noida, Uttar Pradesh	General apparel and footwear
Dashrath Readymade Market	Indore, Madhya Pradesh	General apparel and footwear
Victoria Market	Indore, Madhya Pradesh	General apparel and footwear
Khar West	Mumbai	General apparel and footwear
L.T. Marg	Mumbai	General apparel and footwear
Nastrapur	Gujarat	General apparel and footwear
Naranpura	Ahmedabad, Gujarat	General apparel and footwear
Laxmi Road, Pune	Maharashtra	General apparel and footwear
Shahpur Colony	Kolkata, West Bengal	General apparel and footwear

Mexico

Market Name	Location	Types of Products Sold
El Tepito	Colonia Morelos, Cuauhtémoc borough, Mexico City	General apparel and footwear
San Juan de Dios	Guadalajara, Jalisco	General apparel and footwear
Tianguis (mobile street vendors)	Narvarte, Montezuma, Aragón, Ecatepec, La Raza, Ciudad, Lago, Las Torres, Guelatao, Texcoco, Chalco, and Eje Central Lázaro Cárdenas	General apparel and footwear

Spain

Market Name	Location	Types of Products Sold
Els Limits de La Jonquera in Girona	Cataluña (North-East of Spain and right in the border with France).	General apparel and footwear

Thailand

Market Name	Location	Types of Products Sold
Jatujak/Chatuchak Weekend Market ("JJ"Market)	Kamphaeng Phet 2 Road, Chatuchak, Bangkok, Thailand	General apparel and footwear
MBK Shopping Centre	Pathum Wan, Bangkok	General apparel and footwear
University and Siam Square	Pathum Wan, Bangkok	General apparel and footwear
Klong Thom (Chinatown)	Corner of Worachak Road and Chao Kamrop Road, Bangkok	General apparel and footwear
Sukhumvit Road	Sukhumvit Soi 3 and Asoke, Bangkok	General apparel and footwear
Patpong Market	between Silom Road and Surawong Road, Bangkok	General apparel and footwear
Rong Klua Market	Aranyaprathet	General apparel and footwear
Tawanna Plaza	Directly next to The Mall Bangkapi	General apparel and footwear

Turkey

Market Name	Location	Types of Products Sold
Bodrum	Cevat Şakir Cad., Atatürk Cad., Cumhuriyet Cad., Bodrum	General apparel and footwear
Fethiye	Fethiye	General apparel and footwear
Marmaris	Marmaris	General apparel and footwear
Kemer	Ataturk Blvd., Liman Cad., Kemer	General apparel and footwear
Antalya	Antalya	General apparel and footwear
Side	Side	General apparel and footwear
Alanya	Çarşı Mah, Alanya	General apparel and footwear
Kusadasi	Barbaros Blvd., Kusadasi	General apparel and footwear

Grand Bazaar	Beyazit Mh., Istanbul	General apparel and footwear
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Ukraine

Market Name	Location	Types of Products Sold
7th kilometer	Odessa	General apparel and footwear
Petrovka (Black Market)	Kiev	General apparel and footwear
Barabashova	Kharkov	General apparel and footwear
Pivdenny	Lvov	General apparel and footwear
Troieschyna	Kiev	General apparel and footwear

United Arab Emirates

Market Name	Location	Types of Products Sold
Ajman China Mall	Ajman Emriates	General apparel and footwear
DragonMart	Dubai	Many differerent products

Uruguay

Market Name	Location	Types of Products Sold
Serrato	8 de Octubre Av., Montevideo	General apparel and footwear
Techitos Verdes	18 de Julio Av., Montevideo	General apparel, footwear, and electronics products
Del Control	Mercedes street	General apparel, footwear, and electronics products
San Miguel	Agraciada Av.	General apparel and footwear
Parque Rodó	Gonzalo Ramírez street	General apparel, footwear, and electronics products
Tristán Narvaja	Tristán Narvaja street	General apparel, footwear, and electronics products

Villa Biarritz	Ellauri street	General apparel and footwear
Montevideo Port, Carrasco airport, highways, etc.	Coming from China to Paraguay	Many different products
Florida Free Zone	Florida	Many different products
Libertad Free Zone	San José	Many different products
Montevideo Free Zone	Montevideo	Many different products
Nueva Palmira Free Zone	Colonia	Many different products

Vietnam

Market Name	Location	Types of Products Sold
Dong Market	District 5 - HCMC	General apparel and footwear
Binh Tay Market	District 5 - HCMC	General apparel and footwear
Tan Binh Market	Tan Binh District - HCMC	General apparel and footwear
Nin Hiep Market	Gia Lam - Hanoi	General apparel and footwear



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October 12, 2015

Christine Peterson
Director for Intellectual Property and Innovation
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20508

RE: 2015 Out of Cycle Review for Notorious Markets
Docket Number: USTR–2015–0016
Submitted electronically at www.regulations.gov

On behalf of the member companies of the American Apparel & Footwear Association (AAFA), we appreciate this opportunity to submit rebuttal comments to the United States Trade Representative's (USTR) *2015 Special 301 Out of Cycle Review of Notorious Markets*. We are grateful to USTR for its unfaltering commitment to the protection of American intellectual property rights around the world.

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After reading the Alibaba comments, we reiterate our request that Alibaba's TaoBao platform be listed as a notorious market for the 2015 report. We have three main concerns:

First, the systems and programs Alibaba cites as progress are the very programs our members have cited as being incomprehensible, difficult to use, and highly subjective. These programs create barriers to takedowns and force members to decipher, often only with the help of dedicated specialists, what they must do to institute a takedown. Requests for takedowns are often rejected or subjected to unacceptable delays, a point Alibaba freely admits by noting that takedowns can take several days once a request is approved. Further, these programs – inasmuch as they entail considerable cost and resources – remain out of reach of small and medium sized members.

Moreover, these programs are not nearly robust enough to handle the likely volume of counterfeits on the site. While Alibaba provided a long list of activity

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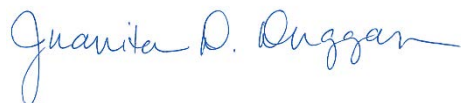
it has undertaken, the end result is still a system that does not result in permanent takedowns or a market that contains fewer counterfeits. Any search of TaoBao on any day, including this morning, reveals dozens and dozens of listings of AAFA member brands at absurdly low prices – a strong indication that such merchandise is counterfeit.

Second, Alibaba’s comments demonstrate our concerns that there is no transparency or publicly and independently verifiable data showing improvements. The heavily bracketed comments by Alibaba exclude any data on takedowns or the incidence of counterfeits, and are unverifiable. The company’s claims stand in stark contrast with the findings of the Chinese government, which found that 67 percent of all goods available on TaoBao are counterfeit, and the experience of our members. The absence of a mechanism to measure and verify progress remains a serious barrier to efforts to rid TaoBao permanently of counterfeits.

Finally, Alibaba notes that it “...regards fighting counterfeiting and protecting intellectual property rights a core mission.” That has not been our experience given nearly four years of unproductive conversations, and in light of the fact we have yet to receive a response to our request to meet at a high level to develop a program that is transparent, comprehensible, and fast. A copy of that request, which we made directly to Alibaba Executive Chairman Jack Ma in July, is attached.

Please contact Steve Lamar at (703)797-9041 or slamar@wewear.org if you have any questions or would like additional information.

Sincerely,



Juanita Duggan
President and CEO
American Apparel & Footwear Association (AAFA)

Attachment



we wear® our mission

July 17, 2015

Jack Ma
Executive Chairman
Alibaba (China) Co., Ltd:
969 West Wen Yi Road
Yu Hang District
Hangzhou 311121
China

Dear Mr. Ma:

As you are aware, over the last several years our organizations have been meeting regarding the problem of counterfeits on Alibaba's online platforms. Both organizations acknowledge that counterfeits are a serious problem on Alibaba's sites. Alibaba says it wants to fix this problem: you personally remarked, "counterfeiting is a cancer we have to deal with."

Under that premise, representatives from Alibaba and AAFA have increased our engagement in the last year and participated in regular meetings, conference calls, and email dialogue. Yet, after years of discussions, meetings, and conversations, there has been no meaningful outcome—the problem still persists.

During your recent tour of the U.S. you made very compelling remarks about an ambitious goal to grow Alibaba's platform and to make even more products available to more people. If Alibaba is successful in this endeavor—without first addressing the systemic presence of counterfeits—then regrettably, Alibaba will succeed in proliferating counterfeits worldwide.

In light of all this, we are asking for Alibaba to begin addressing counterfeits in a manner that is transparent, comprehensible, and fast. We are asking for Alibaba to create a process whereby Alibaba removes counterfeits quickly at the request of certified brands. This process must contain four critical elements: **easy brand certification**; **brand-controlled "take-downs"**; **brand-approved sales**; and a **transparent verification process with results made public**.

Attached to this letter is greater detail on our request and what brands need for successful take-downs.

The global scope of Alibaba's reach requires setting the highest standard of brand protection. Alibaba transformed business and

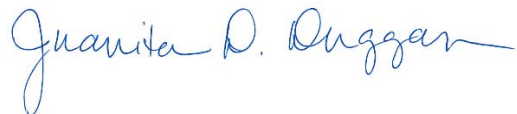
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commerce using technology, and we are hopeful that under your leadership the type of innovation you have come to be known for can also be applied to the problem of counterfeits.

I look forward to your response and hope that we can meet on this matter soon.

Regards,

A handwritten signature in blue ink that reads "Juanita D. Duggan". The signature is written in a cursive, flowing style.

Juanita Duggan
President & CEO

Attachment

REMOVING COUNTERFEITS FROM ALIBABA'S PLATFORMS

Both Alibaba and AAFA have agreed that a counterfeit problem exists on Alibaba's online platforms. The problem is evident not only in the sheer number of counterfeits that appear in a simple brand search, but also validated in a January 2015 study by the Chinese State Administration for Industry and Commerce (SAIC) that found that 67 percent of the goods they purchased were counterfeit.

To address counterfeits on Alibaba's platforms, the **American Apparel & Footwear Association** is asking the company to develop a new, transparent process for take-downs containing the following elements:

I. Easy Brand Certification

Certification establishes brand-ownership. Brand owners must have a timely and easy-to-use way to become certified to initiate take-downs.

AAFA will work with Alibaba to establish an English-language process to certify brand owners through AAFA.

II. Brand-Controlled Take-downs

Effective intellectual property rights protection must empower certified brand owners with the ability to report counterfeits that Alibaba removes quickly. Alibaba must create a program that:

- Is automated;
- Is easy-to-use; and
- Results in immediate, permanent take-downs.

AAFA will work with Alibaba to establish agreed upon timelines; agreed upon credentialing; and an agreed upon take-down appeal process that includes removal of the counterfeit product during the appeals process.

III. Brand-Approved Sales

The rights to sell a product containing a brand's IP rest with the brand owner. Alibaba must allow brand owners to pre-approve authorized sellers, and conversely require wholesale sellers to prove prior authorization.

AAFA will work with Alibaba to determine an agreed upon definition for wholesaler and to establish a mechanism to facilitate and enforce pre-authorizations.

IV. Transparent Verification of Progress

To measure and validate progress being made in anti-counterfeiting efforts across all of Alibaba's platforms, progress must be documented and easily accessible for all to see.

These metrics must be:

- Publicly-available;
- Statistically sound; and
- Conducted by an independent, third-party on a regular basis.

AAFA will work with Alibaba to create agreed upon metrics, identify a timetable for regular measurement/validation, and identify a third-party auditor that Alibaba will fund. AAFA will also work with Alibaba on an agreed mechanism to share and publicize the results.