



we wear[®] intellectual property

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.

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.

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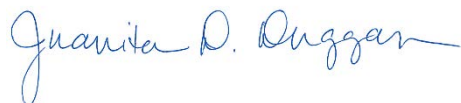
it has undertaken, the end result is still a system that does not result in permanent takedowns or a market that contains fewer counterfeits. Any search of TaoBao on any day, including this morning, reveals dozens and dozens of listings of AAFA member brands at absurdly low prices – a strong indication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

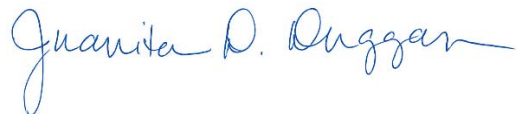
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commerce using technology, and we are hopeful that under your leadership the type of innovation you have come to be known for can also be applied to the problem of counterfeits.

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 style with a long horizontal flourish at the end.

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.