



October 29, 2010

The Honorable Eileen Hill
Acting Deputy Assistant Secretary
International Trade Administration
1401 Constitution Ave
Washington, DC 20230

Submitted electronically at www.regulations.gov

Dear Deputy Assistant Secretary Hill:

On behalf of the members companies of American Apparel & Footwear Association (AAFA), we are grateful for this opportunity to submit comments to the United States International Trade Administration's (ITA) "*Government Programs To Assist Businesses Protect Their Intellectual Property Rights (IPR) in Foreign Markets.*" I thank the ITA for its commitment to enhance and improve American intellectual property rights protections across the globe.

AAFA member companies can be found around the world engaging in many different activities for the support of this important global industry. Whether it is manufacturing, sourcing, or retail, these apparel, footwear and textile firms are part of a larger world market bringing fashionable, high-quality products to store shelves at affordable prices. As a result of this reality, the inherent nature of this industry is both its greatest blessing and costliest curse.

For example, several AAFA members have expressed concerns that the Chinese Patent and Trademark Office continues to reject long-standing and well-documented global trademarks. In fact, AAFA members have seen trademark protection granted to Chinese applicants registering marks that bear striking similarities to our members' marks that were previously denied registration. In the meantime, counterfeit production of apparel, footwear and other fashion accessories continues to thrive in China. These fake goods are subsequently sold throughout China and exported to other key markets including the United States.

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. 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.

Apparel, footwear and accessories from small to medium enterprises (SMEs) are the most frequent target of these illicit manufacturers, particularly as these brands become more popular globally and have less resources to fight counterfeiters. Even where SMEs have not expanded into the Chinese market, Chinese counterfeiters may already be manufacturing and shipping counterfeit products worldwide, extending the reach and the effect of their violations far beyond China. Such counterfeiting adversely affects U.S. brands in foreign markets that are vital to their growth and success.

These phenomena lead to the question of enforcement and the ability, or more often inability, of brand holders to protect their marks abroad. The first tool would be a fair and coherent system for U.S. companies to properly obtain trademark recognition for their well-established brands. In addition to the inherent difficulty in navigating the Chinese trademark process, U.S. SMEs not intending to enter the Chinese market immediately are confronted with Chinese counterfeiters preemptively claiming their trademarks. In such cases, American rights-holders must initiate a protracted process to reclaim the trademark, enabling Chinese counterfeiters to continue their activities unabated for as long two years.

To prevent Chinese counterfeiters from taking advantage of U.S. brands in the global market, U.S. industry, the U.S. Government and Chinese officials should work together to prevent these counterfeits from leaving China in the first place. To accomplish this goal, we suggest building upon existing U.S.-China cooperation, such as the *Memorandum of Cooperation on Strengthened Cooperation in Border Enforcement* signed by U.S. CBP and its Chinese counterpart, the General Administration of Customs of the People's Republic of China (GAC), in 2007. Article V of this Memorandum provides for "Joint Cooperation with Industry," where "CBP and GAC will explore opportunities of joint cooperation with industry in the area of IPR protection."

Pursuant to these provisions, perhaps ITA would consider creating a committee to promote cooperation to prevent the Chinese export of IPR-infringing products in the apparel and footwear industry. This industry may be helpful in providing the GAC with information and education regarding apparel, footwear and fashion accessory brands owned by U.S. SMEs not yet sold in China, while Chinese counterfeiters produce those items to be sent to compete against our members' legitimate products in those foreign markets. This guidance would advance GAC efforts to be more proactive and effective in seizing products destined for exports. In addition, we would propose encouraging the GAC to utilize foreign trademarks registered in the destination country but not yet registered in China because of the limited resources of U.S. SMEs (or more likely already registered by Chinese counterfeiters in China), or as an alternative the GAC could use brand-related copyrights that can be recorded in China, to assist in enforcement efforts.

For business of all sizes, the ability to use such tools in a joint cooperation mechanism with U.S. and China customs officials in order to directly address counterfeiting in China would be invaluable. Such methods would effectively expand the tools available to the GAC and CBP to inhibit the proliferation of Chinese counterfeit

jeans, t-shirts, handbags, tennis shoes, wallets, and other items from reaching other important markets.

The prevalence of rogue websites that traffic and sell counterfeit apparel and footwear products also poses a direct threat to AAFA member companies' brandname integrity. These websites are generally based outside the United States far beyond the jurisdiction of the U.S judicial system, which seriously complicates the ability to remove access to fake goods by our customers. Further, these rogue sites look and seem legitimate often mirroring AAFA members' own sites. They process and accept credit cards payments as well feeding the impression that they are affiliated with the trademark owner.

I thank you and the ITA for looking into this important issue on behalf of American businesses especially in our industry. I hope that we will continue to work cooperatively to protect American ingenuity and competitiveness abroad.

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