



February 5, 2016

Ms. Christine Peterson
Director for Intellectual Property and Innovation
Office of the United States Trade Representative (USTR)
600 17th Street, N.W.
Washington, DC 20503

RE: Identification of Countries under Section 182 (Special 301) of the Trade Act of 1974. Docket Number: USTR-2015-0022

Dear Ms. Peterson:

On behalf of the American Apparel & Footwear Association (AAFA), I am submitting the following comments to the Office of the United States Trade Representative (USTR) in response to the request for public comments to compile the 2016 Special 301 report identifying countries that deny adequate and effective protection of intellectual property rights (IPR).

We are requesting an opportunity to testify at the March 1, 2016 hearing.

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, our membership includes 340 companies, 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 \$360 billion in annual U.S. retail sales.

We have compiled a detailed list of countries where systemic IPR enforcement problems exist and where IPR practices need to be improved. This submission also highlights some successes in countries where AAFA members have traditionally faced resistance to the protection of their brands. In addition, we have provided information related to difficult enforcement environments encountered with foreign internet registries. That information is attached.

Attention to these issues supports U.S. apparel and footwear jobs, particularly since our members' competitiveness is highly dependent upon the protection of the intellectual property embedded in their designs, their brands, and their images. We estimate that intellectual property theft cost our members upwards of \$68 billion in 2013, a figure that has no doubt increased as this problem has worsened.

But the victims of IPR theft stretch even further. Facilities that make knock off shoes, clothes, and accessories do not typically meet the high standards or comply with the regulations upon which our members insist to ensure product safety, worker safety, and workers' rights. In addition to stealing the identity of world famous brands, counterfeiters put millions of workers in danger through substandard conditions while exposing consumers to unknown product safety risks. It is with this in mind that our joint efforts to remove counterfeits from the marketplace permanently, and to make sure they never get introduced into our supply chains in the first place, takes on heightened concern.

As we note in several of the country comments below, we are hopeful that the recently concluded Trans-Pacific Partnership (TPP) will help improve recognition and enforcement of brands worldwide. While it is expected to have an immediate impact on the countries who have signed on to the TPP, we hope it will have a beneficial impact on countries that are currently outside the agreement. For example, TPP provisions about harmonization for trademark registration protocols should improve the situation among ASEAN countries (which includes several TPP parties), where the process to register marks differs widely.

As a final note, we applaud the process in the United States to coordinate interagency IPR enforcement and priority-setting in an office in the White House through the Intellectual Property Enforcement Center (IPEC). Knowing that the Administration is hoping to replicate this approach in other countries, we would recommend that you use the Special 301 report to call out those countries that have successfully adopted this same mechanism.

We appreciate this opportunity to raise these concerns and look forward to working with USTR and other U.S. government agencies to address intellectual property rights issues worldwide. We consider this to be an ongoing process and will provide USTR with updated comments on new issues as our members bring them to our attention.

Thank you for your time and consideration in this matter. Please feel free to contact me at (202) 853-9347 or slamar@wewear.org if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Lamar". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephen Lamar
Executive Vice President

Attachment

Attachment

Cross Cutting Issue

Foreign Internet Registries

AAFA Recommendation: Highlight this problem

Counterfeiters are increasingly registering domains that advertise and sell counterfeit goods and infringe brand owner's trademarks, both in the domain name itself and in the content of the website. Many of these counterfeiters use a country code top-level domain (ccTLD) in order to avoid detection by United States brand owners and enforcement of United States court orders. Individual ccTLDs have varying requirements and fees for registering domains; however, most ccTLDs require that the website registrant be a citizen or have a registered office in the country in question and that the registrant provide true and complete contact information upon registration of a website. Most ccTLDs also have policies against cybersquatting.

Despite these registration requirements and policies, a number of foreign registries do not make registration information publicly available and do not provide information or assistance to brand owners whose intellectual property rights have been violated on a website using a ccTLD.

For instance, as of June 3, 2013, following a decision by the Swedish data protection authority, the Internet Foundation in Sweden, the registry for the Swedish ccTLD (.SE), no longer provides contact information for domain holders unless the holder of the domain name has approved publication. It is unlikely that a counterfeiter will approve publication of his/her contact information. There are more than 1.3 million registered .SE domains, an increasing number of which violate intellectual property rights. Yet there exists no mechanism by which rights holders can take down these domains. More importantly, the lack of publicly available information about the domain registrants makes it difficult, if not impossible, for brand owners to explore other alternatives. The Internet Foundation of Sweden also handles the operation and administration of the top-level domain .nu, an increasingly popular extension. Similar problems exist in other countries, including ccTLDs in Spain, Germany, Denmark, The Netherlands, China, and Switzerland.

We also note that many ccTLDs are not subject to ICANN consensus policies, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), adding another hurdle to enforcing intellectual property rights against bad actors in the ccTLD space. Although some ccTLDs have adopted the UDRP, or a UDRP-like dispute resolution process, as listed [here](#), other ccTLDs may require complex, costly and time-consuming efforts, including litigation, to disable or recover infringing domain names.

Country Specific Issues

Canada

AAFA Recommendation: Watch List

The system established by the Canada Border Services Agency (CBSA) for the recordation of Trademarks and Copyrights remains confusing more than a year after implementation. As a result, many brand owners will not record their marks due to the long list of unknowns. While we understand some clarifications have been proposed/implemented, we have not heard any positive results from active brands. This situation will remain the case until CBSA can clarify the procedures for brand owners.

Members have reported difficulty getting the Royal Canadian Mounted Police active with respect to enforcement cases related to trademark and counterfeit violations.

While we believe that new commitments related to increased enforcement and promulgation of clear trademark procedures, as required by the Trans-Pacific Partnership (TPP), will go towards addressing some of these concerns, we hope that Canada will implement these initiatives on a more accelerated time table.

China

AAFA Recommendation: Priority Watch List

While we have seen some improvement in China in terms of verbal communication between the Chinese government and entities in our industry in 2015, we continue to see a growth in the number of products and brands that are being counterfeited. We applaud the work USTR has done with our industry to address our concerns regarding counterfeit goods being sold on many China-based websites, which we continue to monitor in our notorious markets submissions. We appreciate the work that some of these Chinese companies have undertaken to begin addressing these concerns. Of particular interest is the announcement by JD.com to exit the consumer to consumer website business because of the inherent difficulty in policing such sites in China for counterfeits.

While encouraged by the efforts being made, deep concerns still remain with counterfeit goods still prevalent on many sites, including TaoBao and other sites maintained by Alibaba, which USTR also highlighted in its most recent notorious market report. A recent report published by the State Administration for Industry and Commerce (SAIC), for example, found that only 37 percent of products surveyed on Taobao were legitimate. Chinese authorities have subsequently reported on the high prevalence of counterfeit goods on online marketplaces, such as TaoBao. We are pleased that the Chinese government is publicly acknowledging this issue and we hope that these sites will work with USTR and our industry to take corrective action.

We look forward to continuing work with USTR and Chinese entities to remove these counterfeit goods completely.

We also remain concerned over the lack of adequate protection in China for marks that are owned, used, and registered in many countries outside of China, but which are not recognized as well-known trademarks in China. Despite repeated efforts to change the policy, the fact remains that if another party files an application in China ahead of the actual owner of the mark, the legitimate brand owner is still left completely unprotected. Further, Chinese trademark law still does not recognize the use of a brand name on several different commodities. We are encouraged by efforts of the Chinese government to revamp its trademark law to address these problems. However, those efforts have been slow and have yet to bear fruit. Just as important, enforcement at the provincial level remains wildly inconsistent, and needs to be enhanced through increased police action and penalties.

Finally, as we have mentioned previously, we believe the U.S. Government should work with Chinese Customs to prevent fake goods from leaving China, especially in cases in which the legitimate versions of the product are not manufactured in China. We have previously suggested educational approaches that would resolve this serious problem.

Costa Rica

AAFA Recommendation: Watch List

AAFA members have cited uneven progress with respect to enforcement issues in Costa Rica. While some brands have had positive experiences in the past year, others have reported little change from the past, when a lack of coordination between the relevant government agencies and follow through mean inaction on many enforcement priorities. We hope to see further improvements in the coming year, especially since Costa Rica is an FTA partner.

Guatemala

AAFA Recommendation: Watch List

Members report significant counterfeit garment production with an unorganized police, customs, and judiciary system to handle these cases. They have reported no success working enforcement cases in 2015, which is disappointing because Guatemala is an FTA partner. Members are restarting outreach given new leadership at police and customs agencies.

Honduras

AAFA Recommendation: Priority Watch List

AAFA members report there are receiving little support or cooperation from enforcement or prosecutorial officials, including the judiciary or in customs. There

seem few options for effective IPR enforcement actions, which is disappointing since Honduras is an FTA partner.

Indonesia

AAFA Recommendation: Watch List

Members report that they are receiving little support from Customs, law enforcement, and administrative authorities regarding proposed raid actions. One member attempted but was unable to execute any successful raid actions in 2015.

Korea

AAFA Recommendation: Watch List

In Korea, the refusal of the Korean trademark office to accept letters of consent can result in a situation in which a mark is deemed to be famous in Korea yet cannot be registered as a trademark. The refusal to register the mark as a trademark creates harm to the brand owner, as the lack of registration hampers the brand owner's ability to police its marks and to take action against counterfeiters. As a U.S. free trade agreement partner, Korea should be a leader in IPR issues.

Mexico

AAFA Recommendation: Watch List

Problems with IPR protection are ongoing in Mexico, where counterfeit goods remain prevalent. Trademark registration is still a difficult process to navigate and recognition of common law trademark rights based on previous use is not consistent. We are hopeful this will improve quickly given Mexico's new commitments related to trademarks under the TPP.

Members have advised us that the Mexican customs authorities have been a strong partner in IPR enforcement in Mexico, and we saw several successful raids and seizures in past years. Member have also reported that the office of the attorney general and the Mexican Institute of Intellectual Property have also been helpful with raid actions. They are concerned, however, that such cooperation is inconsistent, especially with leadership changes.

Philippines

AAFA Recommendation: Priority Watch List

The National Bureau of Investigation ("NBI") and Intellectual Property Office of the Philippines ("IPO-PHL") have improved greatly and our members have reported successful raid actions in the past two years. The main problem lies with the judiciary system, both with prosecutors and judges who are ineffective and create situations where all cases languish and solid cases are dismissed for no clear legal

reasons. These avoidable delays exacerbate costs because companies have to pay storage fees for goods seized and have to fund legal work for prosecutors or that goes to waste because defendants often do not attend mandatory mediation (with no recourse). They also dis-incentivize companies to conduct raids since there is very little legal remedy.

Russia

AAFA Recommendation: Priority Watch List

AAFA members have continuously reported that they have received absolutely no support from Russian law enforcement when it comes to the protection and enforcement of their patents, trademarks, and copyrights. As a result, AAFA members, echoing concerns we understand are made by other industries, continue to face the persistent and growing threat of counterfeiting and piracy in Russia. Online piracy also continues to plague the Russian market and the government has failed to establish any sort of effective enforcement strategy to address the problem.

Thailand

AAFA Recommendation: Watch List

Although we have seen some improvements in recent years, support from the Royal Thai Police and Royal Thai Customs in intellectual property enforcement cases is inconsistent at best. We are concerned that Thailand's lack of attention to economic crimes will create an environment where counterfeit production and sales can flourish. Meanwhile, our continued concern with the Thai Trademark Registrar and the Board of Trademarks remains unchanged. Both organizations continue to focus on the visual and phonetic similarity comparisons between trademarks without regard to the conceptual similarity of marks and the possibility of bad faith intent by applicants. This practice has resulted in the registration of many trademarks likely to create consumer confusion with earlier-registered trademarks. The registration of copycat trademarks and trademarks filed in bad faith makes it increasingly difficult and costly for brand owners to successfully oppose and cancel these illegitimate applications and registrations.

Turkey

AAFA Recommendation: Priority Watch List

Turkey remains a European-Asian hub for the manufacture, export, and transshipment of counterfeits, particularly for apparel. In 2014 and in 2015, members reported sporadic support and assistance from Turkish law enforcement in raids and seizures. On a less optimistic note, the judicial system, related to IPR matters, continues to remain inefficient and slow, with judicial remedies that do nothing to deter counterfeiters. Most cases spend years in the Court only to end up with suspended sentences. The Turkish government has not shown any seriousness to

prioritize judicial IPR reforms that would bring them in line with other leading countries in the region.

Saudi Arabia

AAFA Recommendation: Watch List

Members report “severe infringements” and erosion of brand identify in Saudi Arabia. Unfortunately, IPR enforcement is costly and difficult. Specific problems have emerged due to administrative burdens in launching raids and in follow up prosecutions. Among other things, companies targeted in raids have been allowed to continue to sell infringing products. Follow up information provided to support additional raids or enforcement actions is acted upon sluggishly, if at all. Without significant legislative changes to reform this system, IPR enforcement will remain challenging.

Ukraine (Watch List)

AAFA Recommendation: Watch List

Members had reported very little cooperation from customs and enforcement authorities. The conflict with Russia has made this worse.

Venezuela

AAFA Recommendation: Watch List

Reports from our membership have indicated that the Venezuelan customs service, SENIAT, made some successful counterfeit seizures over the past few years. However, the Venezuelan prosecutor’s office still takes years to adjudicate cases. The process is so slow and the penalties are so low that neither is effective to deter counterfeiters. Additionally, the Venezuelan Patent & Trademark Office (PTO) continued to fail to make improvements during 2015 relating to the publication of trademarks applications. The office continued to publish applications for trademarks that are nearly identical to AAFA members’ marks. Also, the trademark opposition process is slow, ineffective, and sometimes impossible to obtain timely outcomes from the PTO.