



# we wear® intellectual property

**February 06, 2015**

Susan F. Wilson  
Director for Intellectual Property and Innovation  
Office of the U.S. Trade Representative  
600 17th Street, NW  
Washington, DC 20508

Filed Electronically to Docket No. USTR-2014-0025 (2015 Special 301 Review)

Dear Ms. Wilson:

Thank you for the opportunity to submit comments on the enforcement and protection of intellectual property rights (IPR) by our trading partners as part of the United States Trade Representative's (USTR) review under Section 182 of the Trade Act of 1974 (Special 301).

These comments are submitted on behalf of the member companies represented by the American Apparel & Footwear Association (AAFA) – the national trade association for the apparel and footwear industry and its suppliers. Representing more than 340 companies responsible for 1,000 world famous name brands, AAFA is the trusted public policy and political voice of the apparel and footwear industry, its suppliers, its management and shareholders, its four million U.S. workers, and its contribution of \$361 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. 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.

1601 North Kent Street  
Suite 1200  
Arlington, VA 22209

(703) 524-1864  
(800) 520-2262  
(703) 522-6741 fax  
[www.wewear.org](http://www.wewear.org)

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.

Should you or your staff have any questions, please feel free to contact Michael McDonald or our staff at (703) 797-9052 or [mmcdonald@wewear.org](mailto:mmcdonald@wewear.org).

Sincerely,

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

Juanita D. Duggan  
President and CEO

Attachment

## **Attachment**

### **Foreign Internet Registries**

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 Infrastructure Foundation, 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 1.7 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 Infrastructure Foundation also handles the operation and administration of the top-level domain .nu, an increasingly popular extension. Similar problems exist with respect to ccTLDs in Spain, Germany, Denmark, The Netherlands, China, and Switzerland.

### **Canada**

The new system established by the Canada Border Services Agency (CBSA) for the recordation of Trademarks and Copyrights is very confusing. Under the new system, brand owner will likely be burdened with all costs from seizures.

As a result, many brand owners will continue to not record their marks due to the long list of unknowns. This situation will remain the case until CBSA can clarify the procedures for brand owners.

We are also very concerned that "no use" information or declarations are required for filing or registration of a trademark. Under the previous system, companies needed to indicate whether the submitted trademark had been used in Canada and if so, the date of first use. The new system has removed this requirement. Without this requirement there is the distinct possibility of an increase in bad faith harvesting of trademark registrations.

We had hoped that Canada's participation in the Trans-Pacific Partnership (TPP) negotiations would provide a mechanism to improve intellectual property protections. To the contrary, many of the IPR provisions proposed by Canada in the TPP would instead weaken IPR standards.

## **China**

While we have seen some improvement in China in terms of verbal communication between the Chinese government and entities in our industry in 2014, we continue to see a growth in the number of products and brands that are being counterfeited. 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. We would be happy to follow up as appropriate.

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 counterfeit concerns of our members. While encouraged by the efforts being made, deep concerns still remain, with counterfeit goods still prevalent on many sites. A recent report published by the State Administration for Industry and Commerce (SAIC), for example, found that only 37% of products surveyed on Taobao were legitimate. We are pleased that the Chinese government is publicly acknowledging this issue and we hope that they 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.

## **Costa Rica**

In the past, AAFA members cited Costa Rica as a concern due to the Office of the Attorney General in Costa Rica appearing to balk at effective enforcement of intellectual property rights. In 2012, the Costa Rican Government appeared to be taking steps in the right direction to address the counterfeiting problem. Unfortunately, that progress stalled in 2014. We believe the cause is a disconnect between the relevant government

agencies. Costa Rican officials continue to verbalize their dedication to improving intellectual property enforcement. We hope those words translate into the full implementation of what we believe to be a good plan of action.

### **Korea**

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 new free trade agreement partner, Korea should be a leader in IPR issues.

### **Mexico**

Problems with IPR protection are ongoing in Mexico, which is very concerning due to its status as a free trade agreement partner, and its role as a party to the Trans-Pacific Partnership (TPP) talks. Trademark registration is still a difficult process to navigate and recognition of common law trademark rights based on previous use is not consistent. We urge USTR to work with Mexico to improve its trademark registration system in a way that will work better with its trading partners. For example, Mexico should allow opposition to trademark applications prior to registration. Such a mechanism would enable legitimate brand owners the ability to dispute rights claimed by trademark squatters.

Members have advised us that the Mexico's SAT (customs) has been a strong partner in IPR enforcement in Mexico and we saw several successful raids and seizures during 2014. Despite this progress, counterfeit goods remain prevalent in the Mexican marketplace.

### **Russia**

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 those markets. Online piracy also continues to be a plague in the Russian market and the government has failed to establish any sort of effective enforcement strategy to address the problem.

### **Thailand**

Support from the Royal Thai Police and Royal Thai Customs in intellectual property enforcement cases was virtually non-existent in 2014. 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**

Turkey remains a European-Asian hub for the manufacture, export, and transshipment of counterfeits, particularly for apparel. In 2014, we witnessed a sharp decline in support and assistance from Turkish law enforcement in raids and seizures. However, at the end of 2014, we started to see limited support for raids and an increase in Turkish Customs 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.

### **Venezuela**

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 2014 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.