

October 26, 2016

Probir Mehta,  
Assistant United States Trade Representative for Innovation and Intellectual Property  
Office of the United States Trade Representative  
600 17th Street NW  
Washington, D.C. 20508

Docket Number: USTR-2016-2013

### **2016 Special 301 Out-of-Cycle Review of Notorious Markets**

Dear Mr. Mehta:

The undersigned organizations are writing to urge the designation of Alibaba platforms as notorious markets in this year's 2016 Special 301 Out-of-Cycle Review.

We are encouraging this step because of the enormous number of counterfeits that persist on Alibaba platforms, most notably Taobao, but also on other platforms such as AliExpress.

As you know, the counterfeiting epidemic, made readily available through ecommerce platforms, is at crisis levels. The OECD reports that counterfeiting now accounts for more than 2.5 percent of all imports. Our own government has classified intellectual property as a priority enforcement area for customs, which regularly seizes more than one billion dollars in counterfeit goods each year.

Victims of counterfeiting are everywhere. Companies whose brands are stolen through counterfeiting, lose sales and access to markets, which hurts their ability to employ workers and grow their businesses. Consumers, who unwittingly buy counterfeits, become subject to numerous health and safety concerns. Finally, working conditions in factories that make counterfeit goods are abysmal.

Although the wide availability of counterfeits on ecommerce sites is not confined to Alibaba platforms, Alibaba has now become one of the largest ecommerce sites with hundreds of millions of subscribers and the ability to penetrate markets globally on a scale never before seen. Moreover, the wide availability of counterfeits on Alibaba platforms has been extensively noted by many stakeholders, governments, and even Alibaba executives themselves.

During the 2015 review, USTR noted that;

*“More efficient systems for addressing rights holders’ concerns should be undertaken without delay.”*

That report notes specifically that, *“Such steps should include:*

- (1) simplifying Taobao’s processes for rights holders to register and request enforcement action,*
- (2) making Taobao’s good faith takedown procedures generally available, and*
- (3) reducing Taobao’s timelines for takedowns and issuing penalties for counterfeit sellers.”*

During the ten months since USTR published this report, Alibaba has made a number of statements acknowledging its counterfeit problem and public commitments indicating that it will improve the way it runs its platforms to address that problem. Alibaba has also made a number of high profile hires and is reportedly spending more resources to tackle this problem and explain its effects in Washington and around the world. While this increased attention is a welcome development, we have seen little evidence that there has been any noticeable change on the Alibaba platforms themselves. At any given moment, a consumer around the world can chose from hundreds of thousands of counterfeit clothes, shoes, travel goods, handbags, toys, auto parts, jewelry, watches, furniture, electronics, pharmaceuticals, and other articles.

Moreover, Alibaba has failed to change its procedures to address the three deficiencies USTR cited before and which are noted above. While Alibaba executives have made numerous announcements on ways they intend to address these issues, no changes have been implemented to date.

It is for this reason we urge the designation of Alibaba platforms as notorious markets in this year’s 2016 Special 301 Out-of-Cycle Review.

We look forward to working with Alibaba, the U.S. government, and with other stakeholders to achieve real change on Alibaba platforms.

Sincerely,

North America

AFL-CIO  
American Apparel & Footwear  
Association (AAFA)  
Auto Care Association  
Council of Fashion Designers of  
America (CFDA)

Fashion Accessories Shippers  
Association (FASA)  
Fashion Jewelry & Accessories Trade  
Association  
Motor & Equipment Manufacturers  
Association

Rubber and Plastic Footwear  
Manufacturers Association  
Specialty Equipment Market  
Association (SEMA)  
Trademark Working Group  
Travel Goods Association (TGA)

Europe

Asociación para la Defensa de la  
Marca (ANDEMA)  
Business Action to Stop Counterfeiting  
and Piracy (BASCAP)

Federation of the Swiss Watch  
Industry FH (FHS)  
Istituto di Centromarca per la Lotta  
Alla Contraffazione (INDICAM)  
Norwegian Anti-Counterfeiting Group  
(NACG)  
Union des Fabricants (UNIFAB)

Asia

Asian Coalition Against Counterfeiting  
And Piracy (ACACAP)