

Submitted via www.regulations.gov, Docket No. USTR-2017-0015

October 2, 2017

Christine Peterson,
Director for Intellectual Property and Innovation,
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: **2017 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments**
Docket No. USTR-2017-0015

Dear Ms. Peterson,

The Auto Care Association appreciates the opportunity to comment on the Aug. 16, 2017, *Federal Register* Notice requesting comments to the Office of the U.S. Trade Representative's ("USTR") 2017 Special 301 Out-of-Cycle Review of Notorious Markets.¹ We hope our filing will assist USTR in identifying internet markets based outside the United States that should be included in the 2017 Notorious Markets List.

The Auto Care Association

The Auto Care Association, a Bethesda, Md.-based trade association, has nearly 3,000 member companies and affiliates manufacture, distribute and sell motor vehicle parts, accessories, tools, equipment, materials, supplies and services. The Auto Care Association member companies operate or otherwise represent more than 150,000 small, medium and large manufacturing facilities, repair shops, parts stores and distribution outlets.

The Auto Care Industry

The auto care industry, also commonly referred to as the automotive aftermarket, is the sector of the automotive industry that is responsible for the manufacture, remanufacture, distribution, wholesaling and retailing of all vehicle replacement parts, accessories, tools, equipment, chemicals and services. The industry includes parts, accessories and services for light vehicles and medium and heavy-duty trucks. Any product or service that a vehicle may need after the original equipment (OE) manufacturer assembles it is an auto care industry product or service.

The 500,000 businesses in the auto care industry are a significant sector of the U.S. economy, forming a coast-to-coast network of independent manufacturers, distributors, retailers and repair shops. The industry employs 4.6 million people (3.2 percent of the workforce) and reported sales of nearly \$368 billion (2 percent of the nominal GDP) in 2016. This integrated grid of companies and organizations is

¹ 2017 *Special 301 Out-of-Cycle Review of Notorious Markets Comment Request*, 82 Fed. Reg. 38987 (Aug. 16, 2017).

dedicated to providing the quality parts, products and vehicle service and repair for all 278.6 million cars and trucks on U.S. roads today.

Online Notorious Markets

Our members view counterfeit auto parts from China as a critical issue facing the auto care industry. As a manufacturing hub and an important source of imports, China is a critical player in our industry's supply chain. While the majority of trade with China in our industry occurs without issue, counterfeit auto parts represent a significant danger to the safety and welfare of the general public, and also pose a significant economic threat to our industry. As the industry works to keep Americans' cars on the road by providing quality replacement parts and accessories, counterfeiting hurts our industry's image and can give the false impression that imported aftermarket parts are not reliable. When counterfeiters sell products using our members' brand names, they steal income from legitimate companies, cause consumers to question the reliability of these brands and threaten consumer safety. They also threaten the flow of legitimate trade, as counterfeiting cases raise the level of scrutiny on aftermarket products, causing additional burdens and delays.

Our members, many of whom have a presence in China, are committed to coordinated efforts targeting the individuals responsible for the introduction of counterfeit parts into the global economy. Despite ongoing efforts, many online marketplaces selling a significant amount of counterfeit automotive products continue to operate, and our members need additional support from the U.S. and Chinese governments to address this issue.

Our members report the proliferation of online supply chains based in China, parallel to legitimate distribution channels, that allow the online distribution of counterfeit parts. These online B2B and e-commerce sites advertise branded counterfeit products for sale at rates that significantly undercut the margins of our members' original products. Additionally, counterfeit parts do not meet the standards of quality and safety requirements. Failure to adequately combat the sale of counterfeit products can cause damages, injuries or fatalities.

We identify the most commonly reported "notorious" sites below.

CHINA

- **Alibaba**
- **Taobao**
- **AliExpress**

All three businesses are under the Alibaba Group ("Alibaba"). Although Taobao was included on the 2016 Notorious Markets List, we strongly urge that all three online sites be included as Notorious Markets in the 2017 report.

Several of our members report that the majority of automotive parts, tools and equipment marketed with their brands on Alibaba Group's family of websites are counterfeits. Relative to the U.S. market, these members report that most of the Alibaba sellers are wholesalers attempting to find retail distribution in the U.S. In other words, Alibaba sellers often seek to sell large volumes of counterfeit products to retailers. Please consider the following:

- Alibaba continues to sell a number of counterfeit products on its platforms. Our members who engage in constant monitoring of Alibaba platforms report widespread proliferation of counterfeits. Nearly all listings advertising our members' branded products are counterfeit and it is very difficult to purchase a legitimate product from Alibaba's websites.
- Alibaba allows sellers to use brand names in their listings for non-related, non-counterfeit products. In other words, sellers often "borrow" branded names in their listings as a tactic to promote their products.
- Members report that Alibaba's level of cooperation with them in the U.S. has been unsatisfactory. According to the 2016 Notorious Markets Report, Alibaba reported that it added a good-faith takedown mechanism to simplify the takedown submission process. However, our members report that the enforcement program is still difficult to use and not enough to discourage merchants from selling counterfeit products in these marketplaces. Members also report that brand protection tools and resources available from domestic competitors to Alibaba, such as eBay and Amazon, are far superior.

Addressing Counterfeit Products on Alibaba's Platforms

We include again², the following general principles that we would like to see Alibaba adopt to address the proliferation of counterfeit products on its various platforms.

- I. **Easy Brand Certification**
 - a. Certification establishes brand ownership. Brand owners must have a timely and easy-to-use way to become certified to initiate takedowns.
- II. **Brand-Controlled Take-downs**
 - a. Effective intellectual property rights protection must empower certified brand owners with the ability to report counterfeits that Alibaba removes immediately.
 - b. Alibaba must create a program that:
 - i. Is automated;
 - ii. Is easy-to-use; and
 - iii. Results in immediate, permanent take-downs.
- III. **Brand-Approved Sales**
 - a. 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.
- IV. **Pre-Emptive Monitoring**
 - a. Key to any platform's anti-counterfeit strategy is a program of robust, pre-emptive monitoring. Alibaba must institute, across all its platforms, an aggressive program to

² Auto Care Association's Response to 2016 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments Docket No. USTR-2016-2013 (Oct. 7, 2016).

monitor and unilaterally take down infringing sites. The burden to prevent counterfeits from being offered in the first place rests with Alibaba.

V. Seller Certification and Education

- a. Before sellers gain access to any of Alibaba's platforms, they need to be informed that counterfeiting is illegal and educated on its negative impacts, and how they can become partners in the effort to stop it. Such education must occur before and during the time a seller has access to a platform, and it should be exhibited as an online certification in any seller's store.

VI. Transparent Verification of Progress

- a. 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:
 - i. Publicly available;
 - ii. Statistically sound; and
 - iii. Conducted by an independent, third party on a regular basis.

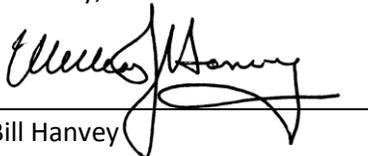
While we appreciate Alibaba's efforts to address rights holders' concerns, we remain very concerned with the drastic amount of counterfeit automotive products sold on these sites daily, and the difficulty our members are experiencing in obtaining enforcement.

* * *

We appreciate the opportunity to comment and look forward to continuing this dialogue with USTR and representatives from the identified websites to protect and enforce intellectual property rights.

Please contact Angela Chiang at 301-654-6664 or via email at angela.chiang@autocare.org if you have any questions or would like additional information.

Sincerely,



Bill Hanvey
President and CEO
Auto Care Association