

**POINT BY POINT REBUTTAL OF USTR NOTORIOUS MARKETS
LISTING OF TAOBAO**

USTR:

“SMEs continue to have problems accessing and utilizing takedown procedures on Taobao.com. In 2017, more SMEs have requested assistance from U.S. government agencies and embassies regarding Taobao.com than any other e-commerce platform.”

Alibaba’s Response:

- This proves nothing. Alibaba is the biggest ecommerce platform in the world. It is not appropriate to compare platforms by simply counting complaints with no context.
- What about Amazon, eBay and others? USTR has no basis for comparison, because it does not ask for similar data from US companies.
- We engage in extraordinary direct outreach to US SMEs through road shows, working with the US government, outreach to associations whose members are comprised of small businesses, etc.
 - We participate in the U.S. Patent and Trade Office’s roadshows nationwide to educate SMEs on our IP protection programs.
 - For example, in June, Alibaba hosted Gateway 17 in Detroit. Over 3,000 U.S. small businesses and entrepreneurs attended and learned about opportunities to generate sales and create jobs in the United States by tapping into China’s growing consumption economy. As part of Gateway 17, we invited the U.S. Patent and Trademark Office and they gave a presentation entitled, “Empowering Innovation with the USPTO.” Alibaba also provided an IP protection resource center staffed by our IP protection professionals.
- Historically Alibaba had two platforms – TaoProtect and AliProtect– which were combined so that rights holders now have access to a single, unified platform (in multiple languages) to register IP and submit takedown requests.
- This IP Protection platform website has clear step-by-step instructions in multiple languages on how to register and protect IPR on our platforms.
- We give rights holders the ability to submit trademark documentation in multiple languages when registering their IP.
- We provided an online form for rights holders to submit takedown requests even if the rights holder does not wish to register an account with us. We expect the form will be particularly useful for SMEs who might not be frequent users of our IP protection system.
- We provided a single, unified email address to submit takedown requests for any of our platforms.
- We widely distributed a written explanation of our policies, and provided access to Alibaba personnel to assist with IP protection.
- We have a uniform, clear and public statement of policy that we prohibit the sale of IP-infringing goods on our platforms, and that we punish merchants who sell infringing goods.

- Alibaba funds the participation of many companies in the International Anti-Counterfeiting Coalition's (IACC) MarketSafe Expansion program, which allows rights holders, including SMEs, to submit good faith takedown requests and receive training for full participation in the Good Faith program.
- USTR uses number of complaints to the US government as evidence their claims are legitimate. But they say that such data, when provided by Alibaba, is an illegitimate metric to show there are fewer counterfeits being found on Alibaba's platforms (fewer counterfeit complaints from rights holders).

USTR:

Alibaba has undertaken efforts, some within the last six months, to curb the offer and sale of infringing products on Taobao.com, and some right holders report an improved outlook as a result.

Response:

- The implication that we have only been focused on this for the last 6 months is ridiculous. Addressing counterfeits has been a top priority of Alibaba for many years, and Alibaba has made steady progress over that time, as evidenced by our Notorious Markets submissions since 2012 (when Taobao was taken off the list)

USTR:

“One U.S. automotive parts trade association reported that searches for branded products turn up few legitimate listings and some Taobao.com sellers reportedly use U.S. brand names on product listings that divert Chinese and global buyers away from legitimate offerings.”

Alibaba's Response:

- This is a reference to a submission from the Auto Care Association. This association refused to even talk to Alibaba/Taobao over the last year to try to resolve their problems. USTR is well aware of this fact. Furthermore, almost the entire submission of this association is a “cut and paste” from their submission last year.
- The other automotive sector associations who previously called for Alibaba/Taobao to be on the list did not do so this year, citing significant improvements this year: Here is one example: <http://www.alizila.com/alibaba-takes-e-commerce-industry-lead-blocks-airbag-component-sales/>

USTR:

“Despite USTR's call in the 2016 List for Taobao.com to expand its Good Faith takedown program, the enforcement program reportedly continues to be burdensome and insufficient to end the sale of counterfeit products on the platform.”

Alibaba's Response:

- The number of participants in the Good Faith program grew significantly to more than 1,400 by August 2017, which is a more than 50 percent increase over the year before.
- Furthermore, as of September 2017, Alibaba had removed more than 197,000

potentially infringing product listings as a result of takedown requests submitted through the IACC MarketSafe program (which allows rights holders to submit good faith takedown requests through the IACC).

- Alibaba funds participation in the IACC MarketSafe Expansion program, which allows rights holders, including SMEs, to submit good faith takedown requests and receive training for full participation in the Good Faith program. Alibaba is the only platform in the world to do this.
- Almost two-thirds of the brands in the Good Faith program are from the U.S. and other countries apart from China.
- Furthermore, a key aspect of the Good Faith program is that listings are taken down within 24 hours of a request being made. We have now reached a similar level of responsiveness for the vast majority of notices, even if they are not in the Good Faith program. Outrageously, USTR failed to recognize this critical fact. As explained in our submission to USTR:
 - 97% of takedown requests – including both Good Faith and non-Good Faith requests - are handled within 24 hours, and 83% of those requests resulted in actual takedowns within that time period.

USTR:

“While two U.S. trade associations reported better dialogue with Alibaba and some improvements in online enforcement on Taobao.com and other Alibaba platforms, the relatively high numbers of counterfeits on these sites continue to be a challenge for many U.S. brands. According to one of those associations, some member companies also reported ongoing problems, including with respect to delays or burdensome aspects of takedown programs. That association emphasized the importance of addressing these problems, given the sheer size, global reach, and growth of Alibaba’s network.”

Alibaba’s Response:

- Many groups who previously had actively sought for us to be put on the list, changed their tune this year and advocated to the USTR that we should not be included.
- No association except the Auto Care Association asked that Taobao be listed this year. ACA refused to talk to us over the last year, and this year’s their submission is virtually a cut and paste from last year’s.

USTR:

While Alibaba presented its considerable efforts to address many concerns identified in the 2016 List, important unresolved concerns remain. For example, Alibaba has not identified metrics to assess objectively the scale of infringing products sold on Taobao.com nor objectively demonstrated that the volume or prevalence of counterfeit goods has decreased over the last year. The data provided by Alibaba to date do not directly reflect the scope and status of the counterfeiting problem on the Taobao.com platform, but instead is merely suggestive of progress made. For example, a decline in the number of takedown requests, while perhaps indicative of a positive trend across platforms, does not speak to the overall scope of the problem on Taobao.com.

Response:

- We have been more transparent than any platform in the world regarding the presence of counterfeit products on our platforms. Nobody – not Amazon, not eBay – has been as transparent as we have been.
- We routinely scan all of our platforms and if we identify a listing that we suspect is counterfeit, we take it down. And we have reported all of that data. The evidence is there, and it has been provided to USTR.
 - Our algorithms have the capacity to process 100 million pieces of data per second, which enables us to perform real-time scanning of suspicious product specifications during a merchant’s listing creation process. This capacity enables us not only to take down listings after they have been posted but to scan any suspicious product specifications during the listing creation process, so that we can stop merchants from uploading infringing content.

USTR:

“Additionally, Alibaba’s efforts to address right holders’ concerns appear to be aimed more towards global brands rather than SMEs, and the claimed results of those steps remain to be objectively verified.”

Alibaba’s Response:

- This ignores facts the USTR is well aware of and is patently false (See the discussion of SMEs in our submission on page 33.)
- Alibaba’s mission as a company is to help small businesses thrive – their success is our success. So, protecting their intellectual property is a critical in this.
- Alibaba has implemented measures specifically tailored to address the unique needs of small and medium-sized enterprises (“SMEs”), including:
 - Providing a simple online form for submitting takedown requests;
 - Creating a single entry point for all rights holders through IPP platform,
 - expediting takedown requests for all users;
 - Making it easier to find the IPP Platform;
 - Standardizing prompt responses to takedown requests to ensure consistent and clear communication;
 - Pressing for tougher enforcement, penalties, lower criminal thresholds for counterfeiters; and
 - Broadening the International Anti-Counterfeiting Coalition’s (“IACC’s”) MarketSafe Expansion program to include more SMEs at no charge.
- Alibaba incorporated small business IP protection education, with participation of government IP authorities, into Alibaba’s small business export promotion event at Gateway ‘17 in Detroit, which was attended by over 3,000 U.S. small businesses.
- Alibaba also participates in USPTO Road Shows around the United States to introduce and explain its IP protection program to SMEs. We will continue to incorporate IP protection into our SME-focused events in the United States and worldwide.
- SMEs now have access to easier procedures to enforce their IP rights, and are more educated about—and are using—Alibaba’s IP protection program.

USTR:

“Alibaba reports that the changes it discussed during this year’s review were implemented in the latter half of 2017. Alibaba should continue to implement reported reforms across its platforms, while also working with brand owners to fine tune these tools and react quickly to emerging counterfeit trends.”

Alibaba’s Response:

- The implication that we have only been focused on this for the last 6 months is ridiculous. USTR completely ignores the work we have done for many, many years.
- It is condescending for the USTR to assert that Alibaba should continue to do the good work we are doing. If our motivation for protecting IP was anything other than to protect our customers and their businesses, this assertion might have merit, but it is not.
- Section 5 of our submission goes into great detail about our outreach to brands
- We specifically set up the Alibaba Group Anti-Counterfeiting Alliance with the very purpose USTR identifies (“working with brand owners to fine tune these tools and react quickly to emerging counterfeit trends”). To our knowledge, this is the only such body in the industry.
 - As just one example, we established in January 2017, the AACA includes thirty global consumer brands spanning 12 industries. The goal is to encourage rights holders, e-commerce platforms, and law enforcement agencies to work collaboratively to fight counterfeiting through increased communication and the exchange of information; share best practices among the members; and engage in joint media outreach to educate the public and consumers about the damage counterfeit products cause. The AACA also set up an Advisory Board aimed at creating an efficient channel for rights holders to provide feedback on significant IP enforcement-related strategies and policies, and a leading industry forum to discuss new trends in online IP infringement activities, litigation, and platform practices.

Editor’s Note:

In 2016 the USTR made three recommendations to Alibaba. The below chart shows how we not only met but dramatically exceeded each of the USTR’s 2016 recommendations.

USTR RECOMMENDATION IN 2016	ALIBABA’S ACTIONS AND RESULTS
1. <i>Simplify processes for right holders to register and request enforcement action.</i>	Action: <ul style="list-style-type: none">• TaoProtect and AliProtect merged their registration and login processes, so that rights holders now have access to a single, unified platform (in English) to register IP and submit takedown requests.

	<ul style="list-style-type: none"> • We published on our website clear step-by-step instructions (in English) on how to register and protect IPR on our platforms. • We gave rights holders the ability to submit trademark documentation in multiple languages when registering their IP. • We provided an online form for rights holders to submit takedown requests even if the rights holder does not register an account. We expect the form will be particularly useful for SMEs who might not be frequent users of our IP protection system. • We provided a single email address to submit takedown requests for any of our platforms. • We participated in the U.S. Patent and Trade Office’s roadshows nationwide to educate SMEs on our IP protection programs. We widely distributed a written explanation of our policies, and provided access to Alibaba personnel to assist with IP protection. • We published a uniform, clear statement of policy that we prohibit the sale of IP-infringing goods on our platforms, and that we will punish merchants who sell infringing goods. <p>Results:</p> <ul style="list-style-type: none"> • 11% YoY increase in rights holders registered with Alibaba’s IP protection programs.
<p>2. <i>Make good faith takedown procedures generally available.</i></p>	<p>Action:</p> <ul style="list-style-type: none"> • As of September 2016, Alibaba had removed more than 197,000 potentially infringing product listings as a result of takedown requests submitted through the IACC MarketSafe program (which allows rights holders to submit good faith takedown requests through the IACC).

	<ul style="list-style-type: none"> • Alibaba funds participation in the IACC MarketSafe Expansion program, which allows rights holders, including SMEs, to submit good faith takedown requests and receive training for full participation in the Good Faith program. • One of the chief benefits of participation in the Good Faith program is that listings are taken down within 24 hours of a request. Now, 97% of takedown requests – including both Good Faith <u>and</u> non-Good Faith requests - are handled within 24 hours, and 83% of those requests resulted in actual takedowns within that time period. <p>Results:</p> <ul style="list-style-type: none"> • The number of participants in the Good Faith program grew significantly over the 12 months between September 2016 and August 2017. • Almost two-third of the brands in the Good Faith program are international brands.
<p>3. <i>Reduce Taobao's timelines for takedowns and issuing penalties for counterfeit sellers.</i></p>	<p>Action:</p> <ul style="list-style-type: none"> • Implemented expedited procedures for all rights holders and takedown requests. • In February 2017, Taobao adopted a simple three-strike policy. If a merchant is identified as selling any counterfeit or pirated products three times, it will be permanently banned from the platform. In previous years, Taobao applied a three-strike system only when the same IP right was at issue in each case. • We substantially expanded our proactive takedown program. Between September 2016 and August 2017, Taobao proactively took down 28 times more listings than the number of listings removed reactively in response to complaints from rights holders. <p>Results:</p>

	<ul style="list-style-type: none"> • 97% of takedown requests handled within 24 hours and 83% of those requests resulted in actual takedowns within that time period. • Between September 2016 and August 2017, Taobao proactively took down 28 times more listings than the number of listings removed reactively in response to complaints from rights holders, and 98% of those proactive takedowns were removed before a single sale took place. • In the last year, Alibaba has banned hundreds of thousands of merchants from its platforms for selling IP-infringing products. • We provided leads to law enforcement resulting in over 1,000 arrests and the closure of nearly 1,000 offline manufacturing and distribution locations.
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This year's report completely ignores the fact that Alibaba met and exceeded the 2016 report's recommendations. And, in a classic move-the-goalposts manner, recommends Alibaba take action in seven *new* areas, where Alibaba already has substantial accomplishments.

In choosing this course of action, the USTR hurts their credibility and shows they are not running a fair or fact-based process. This also sends a terrible message to other ecommerce operators who may want to get more aggressive in protecting IP that there is virtually no benefit in working with the USTR in good faith, as we have clearly done.

USTR's Seven New Recommendations for 2018:

USTR:

“Over the next year, among other actions, Alibaba should: 1) seriously consider expanding its reported ban on automotive air bags and air bag components listings on the Alibaba.com and AliExpress.com platforms to the Taobao.com platform, and to other widely-counterfeited products not ordinarily sold in C2C marketplaces, such as brake pads and other automotive parts”

Alibaba's Response:

- Alibaba was the first ecommerce platform in the world to ban airbags and airbag components. We already lead in this area. ()
- Other well-known, American ecommerce platforms still offer these items for sale on their marketplaces.

2) take efforts to ensure that its referrals of criminal leads to Chinese authorities lead to meaningful enforcement outcomes, such as by targeting large manufacturers and distributors of counterfeit goods;

Alibaba's Response:

- This is patently absurd. Alibaba has provided leads that resulted in over 1,000 arrests and the closure of nearly 1,000 offline manufacturing and distribution locations.
- We are unaware of any platform that provides the volume and quality of information we provide to law enforcement authorities. Nobody comes close.
- Alibaba, and, separately, Alibaba Group's lead founder and Executive Chairman, Jack Ma, have publicly advocated for stronger IP laws and enforcement in China, including jail time for offenders, and actively support real world efforts to protect IP globally. Stricter laws and penalties must fit the serious crimes of infringement and piracy to deter bad actors.
- Further, Alibaba is not a law enforcement authority and, as such, cannot possibly ensure that "referrals of criminal leads to Chinese authorities lead to meaningful enforcement outcomes." All we can do is provide the information, support any investigations and the local authorities decide whether or not to prosecute.
- No private company in the world -- in any country -- can serve the role of a government, which is what the USTR is insisting Alibaba do in its report. If USTR has a concern with the Chinese government, then it should raise the concern directly with the Chinese government. They should not use Alibaba as a pawn in their bilateral disputes

3) seek to improve the effectiveness of the repeat infringer policy;

Alibaba's Response:

- USTR did not specify improvements in Alibaba's repeat infringer policies as one its three recommendations in last year's report.
- Nevertheless, we have improved our policy dramatically over the years, and commit enormous resources to the issue and utilize cutting edge technology to deal with the problem.
- In fact, in February 2017, Taobao adopted a simple three-strike policy. If a merchant is identified as selling any counterfeit or pirated products three times, it will be permanently banned from the platform.

4) make available to right holders the contact information of infringing sellers and details on the volume of infringing sales after infringing listings are removed so that right holders can follow-up with enforcement action;

Alibaba's Response:

- Rights holders can in fact already request contact information after successful takedown requests and it will be provided by Alibaba.
- While we cannot not disclose the sales volume directly to rights holders, rights holders wishing to pursue additional legal action can ask the local authorities to require Alibaba to provide the data and such permission is routinely granted.

- Alibaba has a dedicated resource focused on providing this type of cooperation

5) seek SME input and provide advisory opportunities to develop more effective policies to address the challenges SMEs face on Taobao.com and other platforms;

Alibaba's response:

- Alibaba's mission as a company is to help small businesses thrive – their success is our success. So, protecting their intellectual property is critical to Alibaba.
- Alibaba has implemented measures specifically tailored to address the unique needs of small and medium-sized enterprises ("SMEs"), many as a result of getting advisory opinions from SMEs themselves, including:
 - Providing a simple online form for submitting takedown requests;
 - Creating a single-entry point for all rights holders through IPP platform, expediting takedown requests for all users;
 - Making it easier to find the IPP Platform;
 - Standardizing prompt responses to takedown requests to ensure consistent and clear communication;
 - Pressing for tougher enforcement, penalties, lower criminal thresholds for counterfeiters; and
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- Alibaba incorporated small business IP protection education, with participation of government IP authorities, into Alibaba's small business export promotion event at Gateway '17 in Detroit, which was attended by over 3,000 U.S. small businesses.
- Alibaba also participates in USPTO Road Shows around the United States to introduce and explain its IP protection program to SMEs. We will continue to incorporate IP protection into our SME-focused events in the United States and worldwide.
- SMEs now have access to easier procedures to enforce their IP rights, and are more educated about—and are using—Alibaba's IP protection program.

6) improve tools to prevent the unauthorized use of product images for the sale of infringing products; and

Response:

- Rights holders already regularly submit takedown requests for photos that infringe copyright using advanced image recognition technology.
- And, we are constantly developing and using the most advanced image scanning technology to help prevent counterfeits and copyright infringements.

7) ensure that infringing sellers and goods do not migrate from TMall or Taobao.com to other platforms owned and operated by Alibaba such as Xian Yu, located at 2.taobao.com.

Response:

- Tmall has *never* been subject of concerns related to IP infringement. This shows how little the USTR understands our business.
- We work continuously to develop the technology and policy to protect IP across our platforms.
- Any implication we would go through such efforts with all but one of our platforms is ridiculous.