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October 13, 2021

Network Supervision Department
General Administration of Market Supervision
No. 8 Sanlihe East Road
Xicheng District, Beijing, 100820
Via Email: wjsgfc@samr.gov.cn

RE: Opinions on the E-Commerce Law

Dear Sir or Madame:

It is my pleasure to provide the comments herein on behalf of the International AntiCounterfeiting Coalition ("IACC").

The IACC is the world's oldest and largest organization dedicated exclusively to combating trademark counterfeiting and copyright piracy. Founded in 1979, and based in Washington, D.C., the IACC represents approximately 200 corporations, trade associations, and professional firms, spanning a broad cross-section of industries. IACC members include many of the world's best-known brands in the apparel, automotive, electronics, entertainment, luxury goods, pharmaceutical, software, and other consumer product sectors.

The IACC and its members have taken a keen interest in the development and implementation of legal regimes around the world in connection with the protection and enforcement of intellectual property rights online. The emergence of the People's Republic of China, both as a global leader in the manufacturing of consumer goods across virtually every product sector, and as one of the world's largest consumer markets for high-quality goods produced by global brands underscores the importance of ensuring that the framework established by the Chinese government provides the range of tools necessary to protect intellectual property owners, legitimate manufacturers and retailers, and consumers. Doing so will, by extension, preserve and enhance the vitality of the online market.

We welcome your continuing efforts towards this goal, and appreciate the opportunity to provide our feedback in support of your ongoing work.

Article 43

As detailed in the proposed amendment offered for comment by the State Administration for Market Regulation (“SAMR”), Article 43 of the E-Commerce Law would expand the period during which rights holders may provide notice of their institution of legal proceedings in connection with reported infringements on an e-commerce platform which were disputed by the relevant seller.

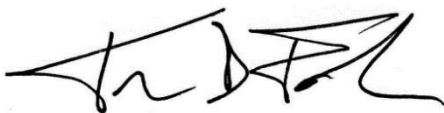
While we approve of the rationale underlying the amendment, many rights-holders believe that the proposed increase from 15 days to 20 business days remains insufficient to allow for the meaningful enforcement of their intellectual property rights. As a practical matter, even a 20-day window is unlikely to provide foreign rights holders with sufficient time to obtain the necessary notarization and legalization required to institute legal proceedings in such matters. Absent special treatment to expedite such processes, many international brands – including those who arguably suffer the greatest harms as a result from the illicit sale of counterfeit goods on e-commerce platforms – may be precluded from availing themselves of the process set forth in the e-commerce law.

Many individuals engaged in the trafficking of counterfeit goods online are well aware of these circumstances. Throughout many years of working closely with Chinese e-commerce platforms, experience has taught us that counterfeiters will often simply contest any complaint filed by rights holders, with the hope or expectation that – whether due to practical limitations of time or cost – the aggrieved rights holder will not pursue the matter in Chinese courts. In connection with those illicit sellers’ assertions of non-infringement of the relevant intellectual property rights, it has also become commonplace for such individuals to provide falsified or fraudulent documentation purporting to “prove” the authenticity of the goods they’re offering for sale or some other provenance of a legitimate source (e.g., sales receipts, forged distribution agreements, or similar documents).

While such documentation is often as demonstrably false as the goods on offer themselves, reviewing and appropriately responding to such assertions consumes the valuable time and resources of the rights holders whose intellectual property has been targeted. To the extent that the adopted framework incentivizes sellers to baselessly dispute well-grounded (and in many cases, forensically confirmed) complaints of intellectual property violations, we would urge the SAMR to reconsider its approach. Further, we’d encourage that any amendments to the E-Commerce Law ensure that the operators of e-commerce platforms have the necessary flexibility to consider the weight and reliability of the evidence presented by the parties to such disputes.

On behalf of the IACC, I thank you for your consideration of these views, and would be happy to provide any necessary clarifications, or to answer any questions you may have in connection with this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Travis D. Johnson", with a stylized, flowing script.

Travis D. Johnson
Vice President - Legislative Affairs, Senior Counsel