

The Honorable Ron Kirk  
Ambassador  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

February 15, 2011

**Re: Anti-Counterfeiting Trade Agreement Public Comments in Response to USTR's  
Request for Written Submissions from the Public; *Docket Number USTR-2010-0014***

Dear Ambassador Kirk:

The International Trademark Association (INTA) is grateful for the opportunity to provide comments on the Anti-Counterfeiting Trade Agreement (ACTA). We congratulate the Office of the U.S. Trade Representative (USTR) for completing the ACTA negotiations and we look forward to its expeditious implementation.

Counterfeiting and piracy are no longer isolated to one country, region, demographic or economic class. Fakes are accessible at the corner of the street or at the click of a mouse. As a result, counterfeiting and piracy have become a global phenomenon that is increasingly difficult to control. We therefore support ACTA as an agreement built upon existing international rules to strengthen measures and to effect better enforcement among countries to combat these serious problems. Such an international framework is critical in order to mitigate the harmful impact of counterfeiting and piracy on public safety, consumer health, national security, global economy and legitimate industries.

Since the official negotiations commenced in 2008, INTA, through partnership with the Business Action to Stop Counterfeiting and Piracy (BASCAP) and the Business Response Group (BRG), has provided full support to ACTA and the efforts of the USTR and other negotiating countries to develop ACTA. Our support letters and recommendations can be found on INTA's website.<sup>1</sup>

We applaud provisions in ACTA that take a step above current international rules such as the World Trade Organization's (WTO) Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs), including providing for ex officio authority for competent authorities to act upon their own initiative to initiate investigations or legal actions for criminal enforcement. We also strongly support the provision that applies border measures to goods of a commercial nature sent in

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<sup>1</sup> <http://www.inta.org/Advocacy/Pages/AntiCounterfeitingTradeAgreement.aspx>

small consignments and are pleased to see trademark counterfeiting included in some provisions in the section on Enforcement in the Digital Environment.

We would like to re-emphasize several recommendations below that have been previously submitted. We strongly encourage countries that sign the agreement to apply the recommendations during the implementation of ACTA, and that interpretation of ACTA, once adopted, be consistent with these recommendations.

- **Scope of ACTA should be limited to trademark counterfeiting and copyright piracy:**<sup>2</sup> We note that “intellectual property rights” and “infringements” are defined broadly in Section 2 of ACTA. Consistent with our previous recommendation, we urge that interpretation of ACTA be limited to trademark counterfeiting and copyright piracy and that relevant terms in ACTA such as “suspect goods” and “infringement,” etc., be interpreted as referring only to trademark counterfeiting and copyright piracy. This is not to say that we do not believe in the importance of strong enforcement of other intellectual property rights. However, given the varying development of protection in many countries of IPRs other than trademarks and copyrights – from simple registration of rights to levels of infringement - the inclusion in ACTA of additional IPRs may adversely affect the effectiveness of ACTA and put at risk its successful implementation.
- **Suspected counterfeit and pirated goods in transit must be stopped:**<sup>3</sup> While we understand concerns regarding the seizure of generic goods, particularly generic medicines, we emphasize that the intended aim of ACTA is counterfeits and pirated goods. In situations where there is suspicion that fake or pirated products are transiting through a country or especially in those situations where the trademark owner has confirmed that the goods are counterfeits, customs authorities must stop those goods before they are sold to unsuspecting consumers, who may be harmed by using or ingesting the fake product. Customs authorities should consider the transit of counterfeit trademark goods as use of that trademark in that country. Current U.S. law already allows for Customs to seize counterfeits in transit through the U.S., and we recommend that ACTA be interpreted consistent with, and not backing away from, that position. We appreciate the efforts of the U.S. to stop goods in transit, and we urge the U.S. to call on the other negotiating countries to implement the same measures.
- **Definition of counterfeit goods should encompass any trademark symbol:** We note that the definition of counterfeit trademark goods in Section B: General Definitions mirrors the definition provided for counterfeit trademark goods in TRIPs. We recommend that the

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<sup>2</sup> Noted in our July 2009 submission, *Business Perspectives on Recently Released “Summary of Key Elements under Discussion”*

<sup>3</sup> Noted in our June 2010 submission, *INTA and BASCAP Comments on the Consolidated Text of the Anti-Counterfeiting Trade Agreement (ACTA)*

definition be interpreted broadly so as to include any trademark symbol including a logo, label, sticker, brochure, and instructions for use or guarantee document bearing such a symbol, even if presented separately.

The United States and other ACTA signatories have an important opportunity to educate other countries about the harm of counterfeiting and piracy, as well as the economic opportunities offered by a system that promotes and protects innovation. In addition to ensuring the proper implementation of ACTA in each of the signatory countries, the ACTA Committee, comprised of representatives from each signatory country, should help other countries develop assessments of the economic, social and other benefits of participating in ACTA or at a minimum adopting its principles. The Committee should also “recruit” other non-signatories to sign and implement this agreement.

We hope that these comments in addition along with the more detailed memos, letters and other communications on ACTA we have submitted throughout the last two years have been of assistance to the USTR and other negotiators. We thank you for your thoughtful consideration and look forward to the successful establishment and implementation of this important initiative.

Sincerely,



Gerhard Bauer  
2011 INTA President