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INTELLECTUAL PROPERTY PROTECTION PRACTICES OF ALIBABA GROUP UNDER THE INTERNET PLATFORM-BASED BUSINESS MODEL

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1. GROUP PROFILE

1. The Alibaba Group was founded in 1999 by a team of 18 members led by Jack Ma, China's online business pioneer. Mr. Ma aspired to help make the Internet accessible, trustworthy and beneficial for everyone. The privately held Alibaba Group currently employs more than 20,000 people around the world and has more than 70 offices in Greater China, Singapore, India, the United Kingdom, and the United States of America.

2. Alibaba Group operates diversified Internet-based businesses with a mission to make it easy for anyone to buy or sell anywhere in the world. Since its inception, it has developed leading businesses in consumer e-commerce, online payment, business-to-business (B2B) marketplaces and cloud computing. In recent years, it has expanded into new areas such as mobile apps, mobile operating systems and Internet TV. The company focuses on fostering an open, collaborative and prosperous e-commerce ecosystem that benefits consumers, merchants and the economy as a whole.

3. Alibaba's mission is to make it easy to do business anywhere. Its vision is to become the platform of first choice for sharing information, to be an enterprise that has the happiest employees, and to last at least 102 years (across 3 centuries). Alibaba's objective is to build an e-commerce ecosystem, serve 10 million Small- and Medium-Sized Enterprises (SMEs), create 100 million jobs, and serve one billion users worldwide.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

4. In 2003, four years after Alibaba Group's establishment, it announced a daily income of 1 million yuan. In 2004, it realized a profit of 100 million yuan per day. In 2012, it paid a tax of 10 million yuan every day. Also in 2012, the combined transactions of Taobao.com and Tmall.com, both operated by Alibaba Group, reached 1 trillion yuan. By 2013, the daily tax payment of Alibaba exceeded 20 million yuan. According to a report recently issued by AliResearch and Tsinghua University School of Social Sciences, jobs directly and indirectly created by Alibaba's retail e-commerce have reached 12 million.

2. INTELLECTUAL PROPERTY (IP) PROTECTION IN GENERAL

5. Alibaba has directed attention to IP protection since the first day of its foundation. Through various experiments and measures, the Alibaba Group has gradually established an IP protection system consisting of diversified functions, such as complaint processing, proactive management, government collaboration, brands cooperation, and awareness-raising. At present, the Group spends over 100 million yuan each year fighting inferior and counterfeit products. It has established a 5,000-strong professional IP protection team consisting of staff from relevant departments and online volunteers. In the past year, Alibaba removed more than 100 million hyperlinks to products suspected of IP infringement.

6. IP protection is a global issue. As a leading platform-based e-business, Alibaba works as a third party in IP protection, in support of law enforcement by governments and rights holders. It attempts to overcome differences in IP laws and customs across jurisdictions and identify a means of protection that meets the needs of the Internet environment and for which consensus can be achieved.

3. SPECIFIC MEASURES AND TOOLS

A. Creating an Online IP Protection and Complaint System

7. As countries and industries devote more attention to IP protection, our third-party e-commerce platforms have received an increasing number of complaints and notices in various forms. The pressing need is to screen these complaints from around the world and process, rapidly and effectively, qualified claims through a fair and transparent procedure. Alibaba has thus established a number of IP protection mechanisms that provide dispute resolution for complainants and respondents in an open, transparent, and timely manner.

- *The Ali IP Platform (IPP)*

8. Alibaba Group established a fully-fledged complaint platform as early as in 2008 and created the Ali IP Platform (IPP) in 2013. The purpose is to establish a cooperation mechanism with global rights holders and build a bridge between them and the various websites under Alibaba. At present, this platform covers the complaint platform of Taobao.com. It will be connected with the complaint functions of B2B websites. Rights holders will thus enjoy convenient one-stop services.

9. The IP Platform is well received by rights holders across the world. By 2013, the platform of Taobao.com alone had registered 36,000 rights holders.

B. Developing Appropriate User Guides for Platforms

10. Apart from complying with the legal requirements applicable to their operation, Alibaba's online business platforms such as Alibaba.com, Taobao.com, and Tmall.com have developed a series of rules that help them contain users' infringement of IP rights.

11. Among the above-mentioned initiatives, Taobao.com has adopted a "Points Deduction" system for registered members, similar to the system used to maintain a driver's license. Each registered member will get a certain number of points every calendar year. If the member is found to sell counterfeit products or otherwise infringe IP rights, a certain number of points will be deducted according to the seriousness of the violation. When all the points are gone, the member will be removed from the platform. In 2013, a new concept of "four strikes and you're out" was adopted on the basis of the above system, in an attempt to strengthen punishment for repeat offenders.

12. A deposit system has been adopted for Tmall.com. To incentivize IP protection, shop owners on the marketplace must pay a deposit before opening shops. Once they are found to sell counterfeits, harsh punishment is meted out by closing down the shops and confiscating the deposits.

C. Controlling Market Access for Special Industries

13. A seller's market access mechanism has been introduced, requiring vendors of special categories of products to obtain certification. At present, many categories on Taobao.com are subject to such access management. These include sex products; books, magazines and newspapers; music, film and TV and audiovisual products; insurance products; lotteries; and Taobao travels.

14. For example, sellers of books and audiovisual products must own and possess a "License to Trade in Publications" and a "Business License for Sole Proprietorship" issued by the Chinese authorities before they are allowed to post product information under these categories.

D. Proactive Anti-counterfeit Measures

• *Creating the "Mystery Shopper" Mechanism*

15. In 2011, Taobao.com formally established a "Mystery Shopper" mechanism to sample products for examination by third-party quality inspection agencies or brand owners. Once the product is found to be of inferior quality or to be a counterfeit, Taobao will impose penalties according to its website rules. If the case is serious, it will be directly referred to law enforcement agencies.

16. The Mystery Shopper program is a preventive monitoring system against infringement. Taobao has developed rigorous rules for each step of the system, including product identification, purchasing, submission for inspection, penalty, and feedback. Random sampling has become a regular tool for IP protection and a routine operation of Taobao.com. Government-recognized notarization techniques have been introduced in this system.

• *Control of Apparent Counterfeits/Piracy*

17. IP infringements take different forms on platform-based e-commerce websites. For common forms of infringement, such as apparent counterfeits, Alibaba as a socially responsible Internet company will certainly take control measures. Through frequent communications with rights holders, we have collected certain information and are regularly updating it in collaboration with some rights holders. At present, the control mechanism covers apparent counterfeits, products that contain keywords (e.g., "Type A Product" and "1:1") suggesting

apparent counterfeits, and certain obvious cases of counterfeit trading. Apparent piracy includes DVD products for films not yet shown in the cinema and devices to crack games.

E. Working with Different Partners and Taking Multiple Approaches to IP Protection Co-Operation

• *Government Authorities*

18. On April 23, 2013, the Alibaba Group held a ceremony in Hangzhou, announcing in-depth cooperation with government law enforcement agencies, including State General Administration of Press, Publication, Radio, Film and Television (GAPP), General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), State Intellectual Property Office, and State Administration of Industry & Commerce, to fight counterfeiting and protect intellectual property rights. By connecting its e-commerce platforms with law enforcement authorities, by working both online and offline, and by combining online technological measures with offline law enforcement, the corporation is hoping to root out the phenomena of counterfeiting, piracy and other IP infringements, thus helping to create an honest and novel business infrastructure.

19. In addition, Alibaba Group has been working actively with the government on its “Jianwang (Net-sword) Operation” (against piracy), the “Nine Ministry online anti-counterfeit operation”, and other dedicated campaigns for IP protection. In 2013, it worked with the Ministry of Public Security to launch a series of special operations to fight offline counterfeit trading.

• *Brand Owners*

20. In 2013, Taobao.com and the international brand Louis Vuitton signed a Memorandum of Understanding (MOU) in Paris, France, to establish a cooperation mechanism for IP protection. The two companies will work together to fight online counterfeit transactions. Ever since 2010, Taobao.com had held regular meetings with Louis Vuitton and worked with the company to fight counterfeits offline.

21. By the end of 2013, Alibaba Group had cooperated with 1,060 brands for IP protection, including both domestic and international brands.

• *Trade Associations*

22. In 2012, Taobao.com and the Motion Picture Association of America (MPAA) signed an MOU; and in 2013, Taobao.com and the International Anti-Counterfeiting Coalition (IACC) also signed an MOU. Alibaba is promoting IP protection through cooperation with large trade associations and organizations.

23. In addition, Alibaba Group has been holding regular exchanges and consultations in cooperation with IP protection associations for specific industries, such as, the Quality Brands Protection Committee (QBPC) registered under the China Association of Enterprises with Foreign Investment (CAEFI), a copyright protection alliance formed by a coalition of 15 publishers based in Beijing, Business Software Alliance (BSA), and the American Apparel and Footwear Association (AAFA).

F. Offline Anti-Counterfeit Operation at the Source

24. It is well-known that counterfeiting, piracy and other IP infringement are a social issue. Counterfeit online products originate from counterfeiting activities in the real world. Trading in

counterfeit products using the online business platform is only one channel of transaction. In the meantime, practices have shown that all sellers of counterfeit products can be tracked down because all transactions are recorded on the online business platform. This means that it will be easier to identify sources of counterfeits online than offline. In the latter case, the products are sold covertly or widely distributed, making it hard to locate the source. Internet technology, therefore, can provide better conditions for IP protection and the fight against counterfeiting.

25. In 2013, Alibaba worked with the Chinese criminal law enforcement authority to handle 77 IP infringement cases. Members of 51 criminal groups engaged in counterfeit trading were arrested. The value involved was 360 million yuan.

G. Positive Guidance in IP Protection and Creating a Consumer Protection System

- *Popular IP Education*

26. Alibaba will produce an IP Protection Handbook each year, which contains the company profile, channels for rights protection, explanation of rules, and successful cases. All the important information about IP protection is collected in one place and presented to rights holders and sellers. At the same time, open, online training in basic knowledge about IP protection is organized through Taobao University when sellers are recruited, a new way of delivering courses. In regions where online sellers are concentrated, physical IT training activities will be held on the importance of IP protection.

- *Encouraging Innovation Is the Best Method of IP Protection*

27. Besides taking measures to fight infringement, Alibaba encourages SMEs to create their own brands and technologies and it provides assistance to that end. For example, Tmall has opened a special space for "Tmall Original" brands. ("Tmall Original" brands are popular proprietary brands created under an online business model.)

- *Seller Transformation and Legal-Product Support*

28. Promoting IP protection through positive measures and helping counterfeit sellers transform themselves into legal sellers also constitute an area of focus for Alibaba in IP protection. The chain of online counterfeit trading is as follows: sellers buy products from counterfeit dealers, sellers post information on the website, consumers obtain information from the platform or through a search engine, and sellers and buyers strike a deal. In this process, if the illegal source can be converted into a legal source, then the entire chain will become healthy. We found that through a series of seller transformation programs, and through a combination of penalisation and education in which first offenders will be admonished and warned and repeat offenders will be punished, 25% of counterfeit sellers no longer sell counterfeits.

- *Consumer Protection*

29. Take the example of Taobao.com. Taobao has been providing multilayer protections for consumers through its consumer safeguard scheme, its all-buyer safeguard scheme, and a third-party secured transaction process through Alipay. In 2011, Taobao.com devoted 200 million yuan to the "Refunding First" scheme (refunding by Alibaba before the claim is settled). This will lift consumer experience to a new level and help guide the whole industry towards healthy development.

4. THE FUTURE—CONCEPTUAL INNOVATION

A. Civil Liability of Infringers

30. Based on the current online IP protection system developed by Alibaba, certain achievements have been made in working with the criminal justice system to prosecute counterfeit traders, in working with administrative authorities to suppress illegal operations, or in working with rights holders online to identify infringement information. Innovations need to be made in management systems so that differences in IP protection across jurisdictions can be overcome from the perspective of a third party e-commerce platform. Considering the essence of IP protection, *i.e.*, protecting rights holders from income losses, more co-operation with rights holders and imposing civil liability on infringers will constitute new measures favorable to IP protection.

B. Control and Interception of Illegal Proceeds from Infringements

31. The Alibaba Group operates diversified Internet-based businesses, including online payment. Alipay.com, an Alibaba affiliate, is the most popular third-party online payment platform among Chinese consumers. It is working with many financial institutions, including China's national banks, major regional banks, and Visa and MasterCard, to provide payment solutions to Chinese and foreign customers. Creating an IP protection mechanism that is connected to the payment system and controlling and intercepting illegal proceeds during and after the transaction based on *ex ante* discovery of the infringement will strike a fatal blow to infringers as it cuts to the core of illegal transactions.

5. DIFFICULTIES AND CHALLENGES IN ONLINE IP PROTECTION

32. Products and transactions on the Internet are complex and huge in number. Meanwhile, as anti-counterfeiting measures on business platforms are upgraded, infringers also modify the terms and expressions indicating counterfeits and make them more obscure. In practice, we found some counterfeit sellers post information using modified word spellings or even coded language.

33. Due to the borderless nature of the Internet, information dissemination also defies boundaries. Up to now, a globally recognized online IP protection mechanism is still not available.

34. Rights holders also abuse their rights. Some rights holders take IP protection as an excuse to protect their business channels; IP protection and control of business channels are lumped together.

35. Locally registered rights holders encounter problems when they claim rights in other jurisdictions.

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