

PRODUCT PARTNERS, LLC STATEMENT FOR THE RECORD

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**Committee on Ways and Means
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Hearing on China's Trade and Industrial Policies

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PRODUCT PARTNERS, LLC STATEMENT FOR THE RECORD ON CHINA'S TRADE AND INDUSTRIAL POLICIES

Chairman Levin, Ranking Member Camp, and Members of the Committee:

On behalf of Product Partners, LLC ("Product Partners"), thank you for the opportunity to submit this statement for the record in response to the Committee's June 16, 2010 hearing on China's trade and industrial policies. The U.S.-China trade relationship is an important one, but serious bilateral issues must be addressed in order for both countries to prosper.

Like many small- and medium-sized enterprises ("SMEs"), the largest problem facing Product Partners is the rampant counterfeiting and piracy of its intellectual property ("IP") by companies based in China. And like other American companies that have continued to expand despite the economic challenges of the past few years, Product Partners has also experienced a staggering growth in the piracy of our products from China. We understand that large companies have for years been fighting Chinese piracy. However, SMEs often lack adequate resources to effectively stop this IP theft that not only disadvantages our company, but ultimately hurts our workers and our consumers. Therefore, Product Partners shares the concerns of the Committee and we strongly believe that more aggressive action by the U.S. government is necessary to compel China to abide by internationally-recognized IP protections and take action against those perpetrators of IP infringement within its borders.

Product Partners, LLC

Product Partners, LLC, a leader in fitness and weight-loss solutions, is based in Santa Monica, California. Founded in 1998, the company's core purpose is to provide products and services that help people achieve their goals and lead healthy, fulfilling lives. We are a medium-sized company with approximately 300 employees, and 2009 earnings of approximately \$350 million.

The divisions of Product Partners include Beachbody®, the nation's most popular in-home fitness and weight-loss products; Team Beachbody®, a dynamic online support and fitness community which includes a network of nearly 25,000 independent "Coach" distributors who earn an income and livelihood distributing Beachbody products; and Breakthrough In Beauty®, skincare products that use patented technology to provide anti-aging and rejuvenation benefits. Among the company's most popular products is the P90X® Extreme Home Fitness kit, Insanity® extreme cardio program, Turbo Jam®, and Body Gospel®.

Piracy of Product Partners Goods

As Americans have sought to improve their health and well-being, Product Partners and its brands have grown significantly over the past few years. At the same time, pirates have seized the opportunity to profit on the company's success. Not only has this resulted in the loss of substantial revenue (which, in turn, means fewer jobs, less tax revenue, and fewer fitness options for consumers), this piracy also costs hundreds of thousands of dollars a year to try to combat.

Product Partners has engaged in multiple strategies to combat this rampant piracy. These actions have included working with U.S. Customs and Border Protection (“CBP”) and Immigration and Customs Enforcement (“ICE”) to identify and seize pirated products, as well as prosecute the parties involved. To date, Product Partners has registered 36 copyrights and trademarks with CBP, including the P90X® word mark and copyright for the P90X® Extreme Home Fitness kit. The company has also shared information regarding suspected pirates with CBP, and is working to train CBP officials regarding authentic versus pirated products. Additionally, Product Partners is developing an even more pro-active national strategy to target imports of pirated Product Partners goods and further strengthen its relationships with ICE and CBP to meet this goal. In addition to its work with government agencies, Product Partners has also sent hundreds of cease and desist notices to operators of websites that sell pirated Product Partners goods, the vast majority of which are in China.

In the first quarter of 2010 alone, Product Partners has already taken the following actions:

- The removal of over 18,000 online marketplace listings for counterfeit products, totaling more than 4.7 million units with an estimated \$128 million retail value.
- Legal action against 1,100 sellers of infringing products in the United States.

Additionally, CBP has made seizures of pirated Product Partners merchandise, including over 3,800 Chinese-made pirated P90X® Home Fitness Kits in Chicago between August 2009 and February 2010; and seizures continue to occur in the ports and mail facilities of Chicago, San Francisco, Milwaukee, Cincinnati, and Long Beach.

Financial Burden on Small and Medium-Sized Enterprises

Despite these successes and our ongoing efforts to work with CBP and ICE, pirated exports continue to flow unabated from China. Meanwhile, Chinese authorities stand by watching, refusing to take action. It is particularly troubling that we are forced to play a virtual game of “whack-a-mole” in the United States, whereas we try to find pirated Product Partners merchandise which may be in any box among the thousands of imports that enter through dozens of U.S. ports every day. While it would be more effective to stop these products at their source, we cannot do so alone.

Indeed, the resources that Product Partners is currently dedicating to combating this piracy presents a significant financial burden for our medium-sized company. By dedicating significant time, money, and effort on fighting piracy, valuable resources are being diverted from Product Partners’ other business interests, which may lead to the loss of sales, a slow-down in revenue growth, and the inability to expand and create new jobs. Moreover, as a medium-sized company, Product Partners simply does not have the resources of larger entities to continuously and effectively combat this piracy. For example, merely preparing and sending a relatively simple cease and desist order to an operator of an infringing website – in addition to sending a similar letter to the host of such website – requires Product Partners to research the owner of the website, prepare a letter that specifically identifies each infringing aspect of the website, provide citations to relevant laws, and attach copies of relevant copyrights and trademarks, etc. This must be done

repeatedly for each of the hundreds of infringing websites that we identify every month. Moreover, most website operators do not respond to these notices, which requires further legal action to be taken – and, since the vast majority of the owners are in China, any further action is essentially futile. As a result, it is not realistic or financially possible for a company of this size to employ the veritable armies of consultants, investigators, and attorneys that are truly necessary to even begin to effectively combat this piracy. Truth be told, Product Partners should not have to – China itself should be taking action instead – and the United States and other trading partners around the world should be compelling China to enforce internationally-recognized IP rights and affirmatively combat piracy on its own soil.

Online Advertising

Recently, one particularly troublesome aspect of fighting the piracy of our products has become more prevalent. Specifically, the dominance of advertisements on American Internet search engines that promote pirated Product Partners merchandise. Pirates are paying these search engines to place “sponsored links” on their websites, thereby steering consumers who are seeking legitimate merchandise directly to websites selling counterfeit goods.

For example, a pirate can purchase the ad word “P90X” or some similar variation and, as a result, if a user types the word “P90X” into the search engine when searching for legitimate product, the search engine will direct the user to an advertisement for that pirate’s product. Moreover, pirates can purchase multiple ad words to ensure that even if a user has a typographical error in the search, the user will still be directed to a website operated by the pirate. Compounding the problem is that these illegitimate websites also purchase and use domain names/web addresses that seem legitimate, such as www.p90xxonline.com, www.P90X-dvdstore.com, www.shopp90xus.com, and www.fitnessp90xs.info, among many others, and wholesale copy various pages from our official website. However, none of these websites sell legitimate Product Partners merchandise. In fact, the average consumer likely has no idea that the product being advertised is pirated.

Conclusion

We are very pleased that the Ways and Means Committee is putting focus on this troubling issue with China. As a medium-sized company that is constantly combating pirated products from China, Product Partners can attest to the need for increased U.S. government action to exert more pressure on China to recognize and enforce its international obligations and take pro-active steps to combat the rampant piracy going on in that country. China, like the U.S. and other countries, must play by the rules and respect intellectual property rights in this global economy.