

How Alibaba won _ and lost _ a friend in Washington

May 27 2016, by Erika Kinetz And Desmond Butler



In this file photo taken Sept. 23, 2014, Jack Ma, founder of Alibaba, speaks at the Clinton Global Initiative in a session titled "Valuing What Matters" in New York. Alibaba's relationship with an anti-counterfeiting lobby coalition known as the International Anti-Counterfeiting Coalition is a tale of how one of China's corporate giants won—and ultimately lost—a friend in Washington, using legal methods long deployed by corporate America: money and friendship. (AP Photo/Mark Lennihan, File)

In 2011, a respected anti-counterfeiting coalition in Washington

escalated its fight against the Chinese e-commerce giant Alibaba, saying its websites served as a 24-hour market "for counterfeiters and pirates" and should be blacklisted.

Fast forward to 2016. The same lobbying group, the International Anti-Counterfeiting Coalition, reversed its position. Alibaba had become "one of our strongest partners." The group welcomed Alibaba as a member and invited its celebrated founder, Jack Ma, to be the keynote speaker at its spring conference in Orlando, Florida.

This is the tale of how one of China's corporate giants won—and ultimately lost—a friend in Washington, using legal methods long deployed by corporate America: money and influence. But those time-honored tools weren't enough to defuse the deep loathing that has greeted one of communist China's greatest capitalist success stories.

Alibaba is at the forefront of China's rise on the global stage, and the anxiety and suspicion that have greeted the company abroad are, to some extent, anxiety and suspicion about China itself. A month after it became the first e-commerce company to join the anti-counterfeiting coalition, Alibaba got kicked out.

An Associated Press analysis of public filings shows that the coalition's public comments shifted from criticism to praise as the personal and financial ties between Alibaba and the group deepened, even as other industry associations—and the U.S. and Chinese governments—continued to take a harder line. A probe by the U.S. Securities and Exchange Commission into Alibaba's accounting practices and sales data, disclosed this week, has raised further questions about how the company does business.

How Alibaba fares in Washington could help shape the global fight against counterfeiting and impact the expansion of one of China's most

prominent companies.

Those who believe Alibaba intentionally profits from the sale of fakes fear the company could lobby its way out of having to make meaningful changes in the way it polices its platforms. That, critics say, would be a boon for the multibillion-dollar counterfeiting industry, which costs U.S. companies money, can imperil consumers' safety, and feeds an underground money-laundering industry for criminal syndicates.

Alibaba was one of the first Chinese companies to play politics seriously inside the beltway, and may not have realized how even the smallest misstep can backfire, said Sean Miner, China program manager for the Peterson Institute for International Economics.

"Chinese firms are going to have a bigger spotlight on them," he said. Miner said that as Alibaba tries to expand its global reach, "their reputation has preceded them. ... Some Americans might think, 'Why don't you go home and fix the problems first?'"

ALIBABA'S RICHES

Alibaba began 17 years ago in the modest living room of a gutsy man with a history of failure. Jack Ma struggled in school, and even Kentucky Fried Chicken refused to hire him.

Today, Alibaba is a \$15.7 billion e-commerce ecosystem that supports the livelihoods of tens of millions of merchants. Some 423 million shoppers last fiscal year picked through the billion listings that Alibaba's platforms host on any given day.

Alibaba doesn't sell any merchandise. It merely facilitates transactions, deriving much of its revenue from advertising. Alibaba's core is Taobao, a Chinese consumer-to-consumer platform much like eBay, only bigger.

The company also operates Tmall, which offers merchants, including Nike and Macy's, official storefronts to consumers in China. Two export platforms, Alibaba and AliExpress, connect businesses in China with buyers around the world.

Critics, among them some top brands and intellectual property lawyers, say Alibaba's ecosystem has proven remarkably conducive to counterfeiting. They feared Alibaba's inclusion in the anti-counterfeiting coalition would lend it undeserved credibility. In U.S. court filings, Gucci America and other brands belonging to France's Kering Group have accused Alibaba of knowingly profiting from the sale of fakes—a charge Alibaba has dismissed as "wasteful litigation."

Alibaba and its advocates argue that the only way to fight counterfeiting is to fight together. The company says it works diligently to improve its systems, and that it proactively took down 120 million listings of suspicious products on Taobao last year.

Still, it remains relatively easy to find knock-offs. Chat with a vendor on Taobao and the price of a Louis Vuitton Rivoli handbag listed at 15,200 yuan (\$2,318) may magically drop to 980 yuan (\$150). And despite the company's repeated admonitions that it stands with brands in the global fight against fakes, skepticism reigns.

MR. MA GOES TO WASHINGTON

After Robert Barchiesi, a gruff-talking former New York cop, took over the anti-counterfeiting coalition in 2008, the group took a hard line, singling out Alibaba and Taobao for facilitating the large-scale sale of fakes.

The U.S. Trade Representative listened, and placed Taobao on a blacklist of markets notorious for sales of fakes in 2008.

Alibaba responded by ramping up its game in Washington. In 2012, Alibaba's spending on lobbying shot up from \$100,000 a year to \$461,000, and has remained fairly steady ever since, according to Opensecrets.org.

Among its lobbyists was James Mendenhall, former general counsel for the U.S. Trade Representative. Mendenhall was part of a string of high-profile hires Alibaba would make, including a former chief of staff for the U.S. Treasury and a former White House staffer who went on to GE Capital. In April, Alibaba announced a further expansion of its government affairs office in Washington, with three new hires with experience in the White House, the Commerce Department, Congress and several blue-chip U.S. companies.

"Alibaba has engaged in a thoughtful, customer-focused dialogue with policy makers," said Eric Pelletier, head of international government affairs for Alibaba Group. "Enabling U.S. businesses greater access to global markets, including China, will create more American jobs, which is good for everybody."

The anti-counterfeiting coalition told the trade representative in 2012 that Taobao topped its list of concerns. "Advertisements for fakes of IACC member brands are often in the thousands and even millions," the coalition wrote.

By the end of 2012, Alibaba was off the notorious markets list anyway. The U.S. Trade Representative commended Taobao for its "notable efforts" to work with rights-holders.

The next year, the coalition signed an agreement with Taobao to expedite the removal of counterfeit goods through a pilot program it called MarketSafe. The coalition charged its members \$12,500 last year to participate, on top of annual dues as high as \$8,400.

The coalition had found a way to monetize brands' frustration with Alibaba's take-down procedures. It was also starting to look like a family business. Barchiesi's daughter-in-law, Kathryn Barchiesi, provided "investigative support" for MarketSafe. The coalition says the program is not profitable, but those fees helped the IACC more than double revenues, to \$2.6 million, under Robert Barchiesi's leadership.

In 2011, a fresh-faced man named Matthew Bassiur hired Barchiesi's son, Robert Barchiesi II, to work as an investigator at Apple. Two years later, Bassiur was on the board of a foundation that awarded a private company run by Barchiesi's other son, James Barchiesi, a contract for "fiscal and operational management."

The coalition paid companies belonging to James Barchiesi nearly \$150,000 from 2012 to 2014 for accounting, advertising and rent. The coalition says those contracts were market-rate or better.



In this file photo taken Nov. 11, 2015, Jack Ma, executive chairman of the Alibaba Group speaks in front of a giant screen showing real-time sales figures of e-commerce giant Alibaba, during a press conference for the "Singles' Day" online shopping festival held at National Aquatic Center, also known as the "Water Cube" in Beijing, China. Alibaba's relationship with an anti-counterfeiting lobby coalition known as the International Anti-Counterfeiting Coalition is a tale of how one of China's corporate giants won—and ultimately lost—a friend in Washington, using legal methods long deployed by corporate America: money and friendship. (AP Photo/Andy Wong)

Five weeks before Alibaba's 2014 public offering on the New York Stock Exchange, Barchiesi went on CNBC and deflected attention from Alibaba, saying counterfeiting on Alibaba's sites was a "microcosm of a bigger problem." He praised the company for working "in good faith" with the coalition.

What Barchiesi didn't say is that he too would buy shares in Alibaba Group Holding Ltd.

He bought shares on that first wild day of trading, at \$91 each, according to the coalition, which also says his holdings represent a "small percentage" of his portfolio. Alibaba's new shares shot up 38 percent in one day. It was the largest IPO in history, catapulting Ma to near-mythic status.

MEMBER REVOLT

By 2015, the coalition had stopped complaining about Alibaba to U.S. officials, focusing instead on the "true cooperation and partnership" they enjoyed with Alibaba through the MarketSafe program. But neither the U.S. nor the Chinese governments were convinced the company had turned a corner.

In January 2015, Chinese regulators published a report stating that just 37 percent of the goods purchased on Taobao were genuine. Alibaba disputed the accuracy of the report, which disappeared from the Chinese internet.

Meanwhile, the American Apparel & Footwear Association, which represents over 1,000 brands, urged U.S. authorities to put Taobao back on the counterfeiting blacklist. It asked the Securities and Exchange Commission and the U.S. Trade Representative for help with "rampant proliferation" of counterfeit goods on Taobao, which it said had been getting worse. "The slow pace has convinced us that Alibaba is either not capable of or interested in addressing the problem," the group concluded.

Brands were quietly dropping off the membership roster of the International Anti-Counterfeiting Coalition. LVMH holding, Tory Burch, Hunter Boots, Columbia Sportswear, Cath Kidston, Sony Corp. and Lucasfilm all vanished between October and March. Those companies either did not respond or declined requests for comment on their reasons for leaving.

In December, the U.S. Trade Representative reported that Alibaba's platforms had been "widely criticized" for selling large quantities of counterfeit goods. It urged Alibaba to "enhance cooperation."

The next month, Robert Barchiesi's friend, Bassiur, started work as Alibaba's chief of global intellectual property enforcement.

The coalition continued to praise Alibaba to U.S. officials and in April welcomed it as the first e-commerce member, under a special new category that precluded voting and leadership rights.

U.S. luxury brand Michael Kors was the first to quit in protest. Its

general counsel, Lee Sporn, told the coalition's board in an April 21 letter that it had "chosen to provide cover to our most dangerous and damaging adversary."

Then Gucci America defected.

The coalition and Alibaba jumped into action, announcing that MarketSafe would be free for all companies, whether or not they were members. The financial terms of the deal were not disclosed.

The storm soon intensified. The morning of May 11, an anonymous email went out to board members threatening a mass walk-out unless Alibaba was kicked out. The email contained a list of concerns, including personal ties between Bassiur and Barchiesi.

The coalition, the email said, "has become a revenue generating business rather than the non-profit organization we all so desperately need." Alibaba's membership, it added, "damages and weakens the enforcement and legal remedies we have with Alibaba group."

Tiffany resigned its seat on the board that same evening, citing governance concerns.

On May 13, the AP reported Barchiesi's ownership of Alibaba stock. The AP investigation also mapped the personal and financial ties between Barchiesi and Bassiur, and documented Barchiesi's use of family members to help run the coalition, including hiring his son's firm as the coalition's "independent" accountant.

The board convened a call at noon that day. Barchiesi spoke first, defending his achievements. He did not offer to step down.

At 2 p.m., less than 12 hours after the AP's report, the board informed

members that the coalition was suspending Alibaba's membership category, pending "further discussion."

The board said Barchiesi's "performance and accomplishments as President have been exemplary, and he has the Board's full confidence and support."

The coalition's policy states that board members must be informed of conflicts of interest. But not all board members knew the head of their coalition owned stock in a company some of their membership regarded as an enemy. The board issued a statement saying that omission of "certain aspects of the disclosed conflict" was not Barchiesi's fault, but arose from weak governance. They vowed to commission an independent review.

Dissenting coalition members were dismayed Barchiesi didn't step down and contemplated a coordinated walkout. There was talk of boycotting Ma's keynote at the coalition's conference in Orlando.

Before that could happen, Alibaba announced Ma was pulling out, two days before his scheduled keynote. Alibaba president Michael Evans appeared in Ma's place.

"We cannot and will not allow a tyranny of the minority to thwart progress," Evans said at the conference last week. "If we are not invited to join you in this fight, then we invite you to join us. We have no competitors in this battle. Only a common enemy: the counterfeiters."

Barchiesi remains at the helm of the coalition. The results of the governance audit are not expected for months.

Ma came to America anyway. What was meant to be a victory lap for the wiry former English teacher, now China's second-richest man, had

become a public relations debacle. Even so, he left no doubt that Alibaba has succeeded in making inroads with Washington.

On Tuesday, Ma had a quiet lunch with President Barack Obama. Reporters spotted him leaving the White House amid a crush of black umbrellas. He smiled beneath a gray sky and pronounced his meeting with the president "very good."

Then he ducked into a waiting car and was gone.

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