Exploring Online Fraud and the Sale of Counterfeit Goods

Efforts to Combat Fraud and Counterfeiting in the United States

Date: 07 October 2020
Shira Perlmutter
Chief Policy Officer and Director for International Affairs
USPTO
Alaina van Horn
Chief
Customs and Border Protection (CBP), Intellectual Property Rights Branch
CBP’s Intellectual Property Rights (IPR) Border Enforcement Regime
ROADMAP

• Introduction to CBP’s IPR Enforcement
• CBP e-Recordation Program
• Programs Available to Recordation Holders
• Legal Enforcement Authorities
• Questions
• Appendix
CBP’s Interest in IP Enforcement

• IPR is one of seven CBP Priority Trade Issues (PTIs)
• PTIs represent high-risk areas that:
  • cause significant revenue loss;
  • harm the U.S. economy; and/or
  • threaten the health and safety of the American people
• IPR infringement, specifically:
  • threatens US economic competitiveness and livelihood of U.S. workers
  • implicates national security
  • threatens the health and safety of unsuspecting consumers
  • funds criminal activity and transnational criminal organizations (TCO)
FISCAL YEAR 2019 IPR SEIZURE STATISTICS
BY NUMBER OF SEIZURES

FY 2019 TOTALS:
27,599 - NUMBER OF SEIZURES
$1,555,269,057 - MSRP

CHINA 48%
HONG KONG 35%
All Other Countries 10%
CBP’s IP Border Enforcement Authority

• CBP is the primary federal agency responsible for securing American’s borders, enforcing nearly 500 laws on behalf of 49 other U.S. Government agencies

• CBP has independent authority (*ex officio*) to examine, detain, seize and/or exclude merchandise at US ports of entry that violate recorded trademarks and copyrights

• CBP enforces U.S. International Trade Commission Section 337 exclusion orders

• CBP has the authority to make infringement determinations, forfeit merchandise imported in violation of U.S. trade laws, impose penalties, and ultimately destroy infringing goods

• **RECORDATION** is the cornerstone of trademark and copyright protection at the border
Office of Field Operations IP Enforcement Structure

- PHYSICAL LOCATION
  - Ports of Entry
    - CBP Officers/Inspectors
    - Fines Penalties and Forfeiture Officers
  - Centers
    - Import Specialists
    - Entry Specialists

- VIRTUAL
CBP created 10 industry-specific Centers to increase uniformity at the ports, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen the agency’s knowledge about industry practices.
Regulations & Rulings Directorate
Divisions based in Washington, DC and New York, NY

- Commercial and Trade Facilitation Division*
- Border Security and Trade Compliance Division*
- Regulations and Disclosure Law Division
- National Commodity Specialist Division
IPR Branch, Regulations & Rulings, OT

- Issue binding rulings, renders pre-seizure infringement determinations, and adjudicates administrative petitions for relief concerning IP related seizures
- Maintains IPRR, IPRS and IPRiS databases
- Grants recordations; reviews applications for gray market protection and Lever-rule protection
- Provides advice to CBP field personnel on IP and trade enforcement issues
- Administers ITC exclusion orders
- Provides training to CBP personnel, international customs organizations and the trade community

HQIPRBranch@cbp.dhs.gov
IPRRQuestions@cbp.dhs.gov
IPRBranch.ITC337.Admin@cbp.dhs.gov
What IP does CBP Enforce?

Trademark (ex officio)

Copyright (ex officio)

Utility Patent*

Design Patent*

Trade Secret*

* only pursuant to an ITC exclusion order
IPR Recordation

Copyright
Trademark
Registered

Intellectual Property Rights Branch
Registration v. Recordation

Registration relates to the official act of filing (1) a trademark with the U.S. Patent & Trademark office, or (2) a copyright with the U.S. Copyright Office for a federal registration.

Recordation refers to bringing a valid, federally registered right (trademark or copyright) to CBP (IPR Branch, R&R) in order to protect against the importation of infringing goods. 19 CFR § 133.1, et seq.

Distinction: Seizure is not always possible of goods that violate unrecorded rights.
Importance of Recordation

• The longstanding CBP policy is to focus its IP enforcement efforts on recorded trademarks and copyrights.

• The legal authorities for detaining, seizing and forfeiting merchandise are different depending on whether the trademark or copyright has been recorded with CBP.

• Recorded trademarks and copyrights are afforded more protection than those that are unrecorded:
  - Enforcement against “confusingly similar” marks
  - Right holders receive notice of the name and address of the parties associated with the seized goods (disclosure of information post-seizure)
  - 19 CFR 133.21 pre-seizure exchange of information and images with CBP
  - §1526(f) penalty available to deter future violations
Registration
RECORDATION
U.S. Copyright Office Registration

TFTEA Section 304: Enforcement by CBP of Pending Copyright Registrations

**TEMPORARY RECORDATION OF UNREGISTERED COPYRIGHTS**
Temporary recordation of unregistered Copyrights is now available while your application for registration is pending at the U.S. Copyright Office (USCO). Upon request (email to iprquestions@cbp.dhs.gov), you will receive instructions for submitting an application for recordation of your copyright with CBP for border enforcement purposes. Proof of application to register your Copyright at the USCO is required.

- Pending applications granted temporary recordation status for 6 months
- Such recordations are eligible for only one renewal period
Welcome to the Intellectual Property Rights e-Recordation (IPRR) application.

The filing of this electronic application will begin the administrative recordation process with CBP. A separate application is required for each recordation sought. Applications will be processed in the order in which they are received. The recordation fee for copyrights is $190. The recordation fee for trademarks is $190 per International Class of goods.

We recommend that you have the following materials and information readily available before you begin the application process:

- U.S. Patent & Trademark Office Registration Number or the U.S. Copyright Office Registration Number
- Digital images of the protected mark/work in ".jpg," ".gif" or ".pdf" format that accurately depict the right to be protected. Individual image files are limited to 2MB.
- Evidence of a pending application for registration at the U.S. Copyright Office, if recording an unregistered copyright with CBP.
Requests for assistance with the recodoration application process should be directed to the Intellectual Property Rights Branch via email iprrquestions@cbp.dhs.gov or call (202)325-0020.

**Instructions** The system will time-out after 30 minutes of inactivity. Proceeding through the application resets the 30-minute timer on each page. Please complete the application before exiting the system, as incomplete applications will not be processed. If your application times out, please contact IPRQUESTIONS@cbp.gov to delete the incomplete application before you can continue on. Please refrain from entering information just to "test" the system. Click TRADEMARK TRADEMARK Renewal or COPYRIGHT COPYRIGHT Renewal if you would like to view the application before you begin. Be sure to "screen print" each page as you move through the application process, and retain for your records.

Instructions/FAQ’s
What additional information does CBP ask for?

- Image of registration certificate
- Accurate image(s) of protected mark as used in commerce, in ".jpg," ".gif" or ".pdf " format
- Names of licensees or parties authorized to use the mark
- Country of manufacture
- **Point of contact, name, address, telephone and email**
- “Additional information”
- Product identification guide
- Credit card payment encouraged over payment by check
Recordation Fees

New recordations:
  • $190 per class of goods, per trademark
  • $190 per copyright

Renewal:
  • $80 per previously recorded class of goods, per trademark
  • $80 per copyright

Recordation Term
  • The recordation will remain in force concurrently with the underlying USPTO registration, if renewed with CBP every time the USPTO registration is renewed
  • The recordation will remain in force concurrently with the underlying copyright registration, if renewed with CBP every 20 years

Expired recordations
  • The fees are the same as that for new recordations
Recordation data available to all 328 U.S. Ports of Entry, the moment a recordation is approved
COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 11 2017)


SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in November 2017. The last notice was published in the CUSTOMS BULLETIN Vol. 51, No. 47, November 22, 2017.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229–1177, or via email at iprrquestions@cbp.dhs.gov.


Dated: January 31, 2018

CHARLES R. STEUART
Chief,
Intellectual Property Rights Branch
Regulations and Rulings, Office of Trade
<table>
<thead>
<tr>
<th>Recordation No.</th>
<th>Effective Date</th>
<th>Expiration Date</th>
<th>Name of Cop/Tmk/Tnm</th>
<th>Owner Name</th>
<th>GM Restricted</th>
</tr>
</thead>
<tbody>
<tr>
<td>COP 17-00215</td>
<td>11/01/2017</td>
<td>11/01/2037</td>
<td>Emmy</td>
<td>National Academy of Television Arts and Sciences &amp; Hollywood Academy of Television Arts and Sciences d.b.a. Academy of Television Arts and Sciences</td>
<td>No</td>
</tr>
<tr>
<td>COP 17-00217</td>
<td>11/08/2017</td>
<td>11/08/2037</td>
<td>GAME OF THRONES: THE IRON THRONE</td>
<td>HOME BOX OFFICE, INC.</td>
<td>No</td>
</tr>
<tr>
<td>COP 17-00218</td>
<td>11/18/2017</td>
<td>11/18/2037</td>
<td>CARTOON NETWORK ANTI-COUNTERFEITING GUIDE 2017</td>
<td>THE CARTOON NETWORK, INC.</td>
<td>No</td>
</tr>
<tr>
<td>COP 17-00219</td>
<td>11/29/2017</td>
<td>11/29/2037</td>
<td>Fingerlungs Sloth Packaging (1L)</td>
<td>WowWoo Group Limited</td>
<td>No</td>
</tr>
<tr>
<td>TMK 00-00133</td>
<td>11/16/2017</td>
<td>12/29/2027</td>
<td>DONNA KARAN NEW YORK</td>
<td>GABRIELLE STUDIO, INC.</td>
<td>No</td>
</tr>
<tr>
<td>TMK 00-00133</td>
<td>11/16/2017</td>
<td>12/29/2027</td>
<td>DONNA KARAN NEW YORK</td>
<td>GABRIELLE STUDIO, INC.</td>
<td>No</td>
</tr>
<tr>
<td>TMK 02-00050</td>
<td>11/18/2017</td>
<td>08/13/2027</td>
<td>LEGO and Design</td>
<td>LEGO JURIS A/S</td>
<td>No</td>
</tr>
<tr>
<td>TMK 02-00050</td>
<td>11/18/2017</td>
<td>08/13/2027</td>
<td>LEGO and Design</td>
<td>LEGO JURIS A/S</td>
<td>No</td>
</tr>
<tr>
<td>TMK 03-00534</td>
<td>11/30/2017</td>
<td>01/11/2019</td>
<td>JEAN PAUL GAULTIER (Stylized)</td>
<td>GAULME SOCIETE ANONYME</td>
<td>No</td>
</tr>
<tr>
<td>TMK 03-00534</td>
<td>11/30/2017</td>
<td>01/11/2019</td>
<td>JEAN PAUL GAULTIER (Stylized)</td>
<td>GAULME SOCIETE ANONYME</td>
<td>No</td>
</tr>
<tr>
<td>TMK 03-00536</td>
<td>11/30/2017</td>
<td>05/02/2018</td>
<td>JEAN PAUL GAULTIER (Stylized)</td>
<td>GAULME</td>
<td>No</td>
</tr>
<tr>
<td>TMK 03-00536</td>
<td>11/30/2017</td>
<td>05/02/2018</td>
<td>JEAN PAUL GAULTIER (Stylized)</td>
<td>GAULME</td>
<td>No</td>
</tr>
<tr>
<td>TMK 04-00723</td>
<td>11/02/2017</td>
<td>08/07/2026</td>
<td>WARMLITE</td>
<td>Altarre International Corp.</td>
<td>No</td>
</tr>
<tr>
<td>TMK 04-00723</td>
<td>11/02/2017</td>
<td>08/07/2026</td>
<td>WARMLITE</td>
<td>Altarre International Corp.</td>
<td>No</td>
</tr>
<tr>
<td>TMK 05-00272</td>
<td>11/17/2017</td>
<td>02/08/2025</td>
<td>Rams Helmet Design</td>
<td>THE LOS ANGELES RAMS, LLC</td>
<td>No</td>
</tr>
<tr>
<td>TMK 05-00272</td>
<td>11/17/2017</td>
<td>02/08/2025</td>
<td>Rams Helmet Design</td>
<td>THE LOS ANGELES RAMS, LLC</td>
<td>No</td>
</tr>
<tr>
<td>TMK 06-00820</td>
<td>11/30/2017</td>
<td>10/09/2022</td>
<td>R (Stylized)</td>
<td>THE LOS ANGELES RAMS, LLC</td>
<td>No</td>
</tr>
<tr>
<td>TMK 06-00820</td>
<td>11/30/2017</td>
<td>10/09/2022</td>
<td>R (Stylized)</td>
<td>THE LOS ANGELES RAMS, LLC</td>
<td>No</td>
</tr>
</tbody>
</table>
What's New

The total number of searchable IPR recordings in this database is 41049

Recordations

In order to record a new recording or to renew your existing recording, please navigate to e-Recordations. CBP’s IPR e-Recordation program is administered by the Intellectual Property Rights Branch within the Regulations and Ruling Directorate, Office of Trade. For assistance please email: iprrquestions@cbp.dhs.gov, or call .

About the Intellectual Property Rights Search (IPRS)

IPRS is a searchable database containing public versions of U.S. Customs and Border Protection intellectual property rights recordings. Recordations can be retrieved based on simple or complex search characteristics using keywords and Boolean operators. IPRS has the added functionality of restricting searches to specific fields and record types. IPRS contains expired as well as current records and by default excludes expired records. For more information
**Design Only (Air Force 1 Outsole)**

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>Expiration Date</th>
<th>Title</th>
<th>Product</th>
<th>Description</th>
<th>Owner Name</th>
<th>Contact Name</th>
<th>Firm Name</th>
<th>Record Number</th>
<th>Agent Number</th>
<th>Typ</th>
</tr>
</thead>
<tbody>
<tr>
<td>8/8/2018</td>
<td>9/24/2028</td>
<td>IC 025. Footwear</td>
<td>The color(s) Color is not claimed as a feature of the mark. is/are claimed as a feature of the mark. The mark consists of the design of the tread on the sole a shoe. The broken lines show the position of the mark on the goods and are not claimed as a part of the mark.</td>
<td>Nike, Inc.</td>
<td>Joe Pallett</td>
<td>Nike, Inc.</td>
<td>TMK 18-00812</td>
<td>34519...</td>
<td>TMK</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>Expiration Date</th>
<th>Title</th>
<th>Product</th>
<th>Description</th>
<th>Owner Name</th>
<th>Contact Name</th>
<th>Firm Name</th>
<th>Record Number</th>
<th>Agent Number</th>
<th>Typ</th>
</tr>
</thead>
<tbody>
<tr>
<td>8/8/2018</td>
<td>9/24/2028</td>
<td>IC 025. Footwear</td>
<td>The color(s) Color is not claimed as a feature of the mark. is/are claimed as a feature of the mark. The mark consists of the design of</td>
<td>Nike, Inc.</td>
<td>Joe Pallett</td>
<td>Nike, Inc.</td>
<td>TMK 18-00814</td>
<td>34519...</td>
<td>TMK</td>
<td></td>
</tr>
<tr>
<td>Title</td>
<td>DESIGN ONLY (AIR FORCE 1 OUTSOLE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>-----------------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Product</td>
<td>IC 025. Footwear</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>The color(s) Color is not claimed as a feature of the mark. is/are claimed as a feature of the mark. The mark consists of the design of the tread on the sole a shoe. The broken lines show the position of the mark on the goods and are not claimed as a part of the mark.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owner Name</td>
<td>Nike, Inc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gray Market Importations Restricted</td>
<td>NO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Patent and Trademark Office Registration Number</td>
<td>3451904</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Firm Contact Name | Nike, Inc.  
Joe Pallett  
One Bowerman Drive  
Beaverton, Oregon, 97005 |
| Phone | |
Programs Available to Recordation Holders
Product Identification Guides

- Recordation holders have the ability to upload product identification guides, introducing their brand and providing information on how to identify genuine merchandise and distinguish it from others
- Product identification guides are posted on CBP's internal website, and used by CBP personnel to help evaluate suspect shipments
- Side-by-side comparisons of genuine vs. unauthorized goods may be provided
- All CBP personnel are governed by the Trade Secrets Act, 18 U.S.C. § 1905, and cannot disclose this proprietary information
- For more information, and a sample guide, visit: https://www.cbp.gov/document/guidance/ipr-product-id-training-guide
Company Name

Product Identification Training Guide

Company Website

Date of Product Guide Submission to CBP

FOR LAW ENFORCEMENT USE ONLY

GENUINE AND SUSPECT PRODUCT EXAMPLES

Genuine

Description(s) of physical characteristics of the Genuine product. For example, a Genuine product of Company V incorporates blue labeling.

Suspect

Description(s) of physical characteristics of the Suspect product. For example, the Suspect version is incorrectly labeled with improper placement, font, and font size.

FOR LAW ENFORCEMENT USE ONLY
IPR Product Identification Webinars

• Right holders who conduct product identification trainings, either in-person or online, see heightened identification of counterfeit goods.

• Trainings can now be conducted online, maximizing the number of CBP attendees, and allowing for question and answer periods.

• The webinars are recorded, and available for future viewing by CBP personnel

• The IPR MUST be recorded with CBP, a product ID guide must be current, and all materials must vetted prior to delivering the webinar

• To schedule online training events please contact the IPR Division at IPRHELPDESK@cbp.dhs.gov.

• For more information visit: https://www.cbp.gov/trade/priority-issues/ipr/webinar
IP Authentication Technology

• Through the Donations Acceptance Program (DAP) CBP is authorized to accept trade tools from right holders, such as IP authentication technology

• If interested in exploring partnership opportunities with CBP or for more information, please contact the DAP at dap@cbp.dhs.gov

• The DAP is authorized by 6 U.S.C. § 301a, and consistent with 19 CFR 133.61 as mandated by Section 308(d) of the Trade Facilitation and Trade Enforcement Act of 2015
Utilize e-Allegations with actionable intelligence on illegal trade activity

https://eallegations.cbp.gov/
You are entering an Official United States Government System, which may be used only for authorized purposes. The Government may monitor and audit usage of this system. Users are hereby notified that use of this system constitutes consent to such monitoring and auditing. Unauthorized attempts to upload information and/or change information on this Web site are strictly prohibited and are subject to prosecution under the Computer Fraud and Abuse Act of 1986 and Title 18 U.S.C. Sec.1001 and 1030.

Thank you for visiting the U.S. Customs and Border Protection e-Allegations portal. Here you can report on suspected violations of U.S. Customs Law and related illicit trade activities. In making allegations, please be as specific, detailed, and concise as possible to help expedite your complaint.

REPORT SUSPECTED CRIMINAL/ILLEGAL ACTIVITY

This button is to be used for reporting criminal and illegal activities for referral to Homeland Security Investigations.

- Immigration crime, human rights violations and human trafficking or smuggling
- Smuggling of weapons, narcotics, or other contraband
- Financial crimes, money laundering, bulk cash smuggling
- Cybercrime, website fraud
- International art and antiquity theft
- En Español

REPORT TRADE VIOLATIONS

This button is to be used only to report illegal trade activity.

- Intellectual Property Rights infringement
- Textile or Free Trade Agreement violations
- Health and Safety issues
- Classification and Value violations
- Forced Labor Violations

e-Allegations Frequently Asked Questions
Engage the Centers of Excellence and Expertise

- Suspected violations, as well as any questions about CBP operations should be directed to the appropriate Center of Excellence and Expertise.

http://www.cbp.gov/trade/centers-excellence-expertise-information/cee-directory

- Email CEE@cbp.dhs.gov for assistance in determining which Center to contact.
Legal enforcement authorities
IP Violations & Legal Standards of Infringement

- **Counterfeit violation**: “identical with or substantially indistinguishable from” the registered and recorded trademark
- **“Confusingly similar” violation**: suspect mark copies or simulates the protected trademark
- **Piratical copy**: “substantially similar” to the protected work, such than it passes the “ordinary observer” test
- **DMCA violative**: Device primarily designed for circumventing copyright controls
- **Lever-rule protected**: trademark has been granted Lever-rule protection and the merchandise at issue is physically and/or materially different from that intended to be sold in the United States
- **Gray market protected**: trademark has been granted gray market protection and the merchandise at issue is genuine, foreign made, gray market merchandise
- **Subject to exclusion**: falls within the scope of a Limited or General ITC Exclusion Order
- **Subject to SFO**: subject to immediate seizure pursuant to an ITC Seizure & Forfeiture Order
Main IPR Seizure Statutes

• **19 U.S.C. §1526(e)**
  
  Used only for goods bearing counterfeit marks

• **19 U.S.C. §1595a(c)**
  
  Used for almost everything else:
  - goods bearing "confusingly similar" marks
  - Lever-rule protected goods
  - §2320 trademark violations
  - piratical copyright violations
  - DMCA violations

• **19 U.S.C. §1526(b)**
  
  Used for restricted gray market goods

• **19 U.S.C. §1337(d)**
  
  Used to exclude merchandise subject to an exclusion order

• **19 U.S.C. §1337(i)**
  
  Used seize merchandise subject to an ITC Seizure and Forfeiture Order
Important to Distinguish . . .

• **Prohibited merchandise**: shall **not** be permitted entry into the United States, including in-bond entries for T&E or IE, and is subject to seizure where and when the violation is discovered.

• **Restricted merchandise**: may be permitted entry into the United States under certain conditions, as provided by law - type of entry is relevant to whether such goods are permitted entry.
Categories of Merchandise

**Prohibited Merchandise**
- Counterfeit
- Piratical
- DMCA violative
- Subject to ITC Seizure & Forfeiture Order

**Restricted Merchandise**
- Confusingly similar
- Gray market or Lever-rule protected
- Subject to exclusion per ITC LEO or GEO
Counterfeit violation

• Detention authority
  19 CFR § 133.21(b)
• Opportunity to obtain release
  19 CFR § 133.21(b)(2)(i) [7 day period – proof of authorization]
• Seizure authority
  19 U.S.C. § 1526(e)
• Post- seizure disclosure
  19 CFR § 133.21(e)
Comprehensive importation information
• Penalty
  19 U.S.C. § 1526(f)
“Confusingly similar” trademark violation

- Detention authority
  19 CFR § 133.22
- Opportunity to obtain release
  19 CFR § 133.22(c) [obliteration/removal, right holder consent]
- Seizure authority
- Post- seizure disclosure
  None
- Penalty
  None
Gray market restricted/\textit{Lever}-rule protected

- Detention authority
  19 CFR § 133.23
- Opportunity to obtain release
  19 CFR § 133.23(d) [obliteration/removal, right holder consent]
  19 CFR § 133.23(b) [\textit{Lever}-rule labels, obliteration/removal, right holder consent]
- Seizure authority
  19 U.S.C. § 1526(b) [restricted gray market]
- Post- seizure disclosure
  None
- Penalty
  None
Piratical Copyright violation

• Detention authority

• Opportunity for release

• Seizure authority

• Post-seizure disclosure
 19 CFR § 133.42

Comprehensive import information

• Penalty
  None
Digital Millennium Copyright Act

Prohibits importation of devices primarily designed for circumventing copyright controls, and have no commercially significant purpose otherwise

- Seizure authority
- Post-seizure disclosure
  None *
- Penalty
  None
If the U.S. International Trade Commission finds violation of 19 U.S.C. § 1337 ("Section 337") it may issue an exclusion order.

Two types of exclusion orders:

- **Limited Exclusion Order** ("LEO"): All goods of a certain description imported by a certain company or companies must be denied entry.

- **General Exclusion Order** ("GEO"): All goods of a certain description must be denied entry, with specified exceptions.

[Links to the USITC website and EDIS system]
Exclusion

- Importer will receive a Notice of Exclusion indicating available remedies, such as exportation, entry into a FTZ, or bonded warehouse.
- Right holder ("Complainant") is not notified of the exclusion.
- ITC may issue a Seizure & Forfeiture Order (SFO) against the importer applicable to future importations.
- All SFOs are posted on the ITC website, accessible through the Electronic Document Information System (EDIS).
- EDIS accounts are free, and can be obtained at: https://edis.usitc.gov/external/register/registration.html
19 CFR Part 177 Ruling Request

• CBP “will give full and careful consideration to written requests from importers and other interested parties for rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law, or other appropriate information.”

• “Generally, a ruling may be requested under the provisions of this part only with respect to prospective transactions - that is, transactions which are not already pending,” or before an office of CBP.

HQIPRBranch@cbp.dhs.gov
IPRBranch.ITC337.Admin@cbp.dhs.gov
QUESTIONS?
Intellectual Property Rights Branch

Regulations & Rulings Directorate
Office of Trade, Washington DC

- Branch Chief: Alaina.vanhorn@cbp.dhs.gov
- Recordation Questions: IPRRQuestions@cbp.dhs.gov
- IP Enforcement Matters: HQIPRBranch@cbp.dhs.gov
Web resources for IPR Recordation

FAQs on CBP recordation: https://iprr.cbp.gov/Content/Docs/instruction.pdf

CBP Recordation application: https://iprr.cbp.gov/

IPR Search: https://iprs.cbp.gov/#/

Informed Compliance Publication, CBP Enforcement of IPR
https://www.cbp.gov/sites/default/files/assets/documents/2017-Feb/enforce_ipr_3_0.pdf
How to update recordation information

• To update contact information, please submit a request on your firm/company’s letterhead via email to iprrquestions@cbp.dhs.gov

• To change the ownership of a recordation, access the IPRR application at https://iprr.cbp.gov and use the CHANGE OF OWNERSHIP online application form/button.

• To makes changes to licensees, countries of manufacture and/or ‘additional information,’ please submit a request on your firm/company’s letterhead, specifying the recordation number(s) you are seeking to modify, to iprrquestions@cbp.dhs.gov
Applicable IPR Regulations

19 CFR Part 133 - TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

• § 133.0 Scope.
• Subpart A - Recordation of Trademarks (§§ 133.1 - 133.7)
• Subpart B - Recordation of Trade Names (§§ 133.11 - 133.15)
• Subpart C - Importations Bearing Recorded Marks or Trade Names (§§ 133.21 - 133.27)
• Subpart D - Recordation of Copyrights (§§ 133.31 - 133.37)
• Subpart E - Importations Violating Copyright Laws (§§ 133.41 - 133.46)
• Subpart F - Procedure Following Forfeiture or Assessment of Liquidated Damages (§§ 133.51 - 133.53)
• Subpart G [Reserved]
• Subpart H - Donations of Intellectual Property Rights Technology and Related Support Services (§ 133.61)
Enforcement of Copyrights and the Digital Millennium Copyright Act

Publication Date: 10/16/2019
Comments Closed on 12/16/2019

Document Type: Proposed Rule

Document Citation: 84 FR 55251

Page: 55251-55265 (15 pages)


Document Number: 2019-21980

Major CBP Publications

- **Federal Register** (daily) “Official Notice to Public”
  - Guidance: Statements of General Policy; Interpretations of General Applicability
  - General Announcements

- **Customs Bulletin and Decisions** (weekly)
  - Reprints CBP Documents Published in FR (Rulemakings and Notices)
  - Specific CBP Documents (Recordations; Quota; Currency Rates; Ruling Revocations under § 1625)
  - Slip Opinions—CIT, Federal Circuit Court of Appeals

- **CROSS**—Customs Rulings Online Search System (Over 200,000 Rulings)
Resources

- Electronic ("FOIA") Reading Room
  - Records Posted When Two or More Requests for the Same Document are Received
- PODS -- Internal Policy, Handbooks, and CBP Directives
- ICPs—Informed Compliance Publications
- www.regulations.gov
  - Public Comments Submitted for Rulemakings
Jeff P. Hardy
Director-General
Transnational Alliance to Combat Illicit Trade (TRACIT)
INTRODUCTION

ABOUT TRACIT
Why TRACIT?

• Aggregated approach
• Business can be a better, smarter partner to government
• Governments can be more effective though a more holistic approach
Address common vulnerabilities

• Air, sea, land transport
• Express carriers
• Internet platforms
• Border control
• Corruption in customs
• Free trade zones
• Regulatory gaps
OUR ROLE

COMBATTING ONLINE FRAUD AND COUNTERFEITING
Consumer protection

Intergovernmental Group of Experts on Consumer Protection

Committee on Consumer Policy

The New Consumer Agenda: open public consultation
Fraudulent Advertising Online

Emerging Risk and Consumer Fraud
WORKING WITH OTHER STAKEHOLDERS
Collaboration

National Association of Attorneys General
Advocacy
Brian Weinhaus
Unit Chief
Intellectual Property Rights Unit
Homeland Security Investigations (HSI)
The IPR Center Mission: To promote national security by protecting the public's health and safety, the U.S. economy, our war fighters, and to stop predatory and illegal trade practices that threaten the U.S. and global economies.
IPR Center Organizational Chart

IPR Center Director
(Assistant Director, Global Trade Investigations Division)
Homeland Security Investigations (HSI)

Deputy Director
CBP

Deputy Director
HSI

Deputy Director
FBI

25 US Federal and International Agencies

Intellectual Property Unit (IPU)

Commercial Fraud Unit (CFU)

Intellectual Property Rights Unit

IP Crimes

Intelligence

HSI Trade Programs

Outreach & Training
• 130+ Attaché Offices
• 8 DOD Liaisons
• Coverage in 180 countries, territories, and islands
IT’S A MATTER OF NATIONAL SECURITY

Public Health & Safety

Warfighters

U.S. Economy
**The current estimate of $461 billion in international trade in counterfeit and pirated products is projected to reach $991 billion in total counterfeit goods by 2022.**

<table>
<thead>
<tr>
<th>Crime</th>
<th>For each $1,000 invested, here’s the return on investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counterfeit Money</td>
<td>$3,000 = 300%</td>
</tr>
<tr>
<td>*Source- Secret Service</td>
<td></td>
</tr>
<tr>
<td>Credit Card Fraud</td>
<td>$6,700 = 570%</td>
</tr>
<tr>
<td>*Source- MC, Visa, Discover</td>
<td></td>
</tr>
<tr>
<td>Heroin</td>
<td>$19,860 = 1,886%</td>
</tr>
<tr>
<td>*Source- DEA</td>
<td></td>
</tr>
<tr>
<td>Tobacco Smuggling</td>
<td>$43,000 = 4,200%</td>
</tr>
<tr>
<td>*Source- Major Tobacco Companies (2)</td>
<td></td>
</tr>
<tr>
<td>Software Piracy</td>
<td>$40,000 - $100k = 3,900% - 9,900%</td>
</tr>
<tr>
<td>*Microsoft</td>
<td></td>
</tr>
<tr>
<td>Fake Pharmaceuticals</td>
<td>$300,000 = 29,900%</td>
</tr>
<tr>
<td>*Manufacturing prices of obtaining bulk</td>
<td></td>
</tr>
</tbody>
</table>

**Source:** International Chambers of Commerce (ICC) in a report prepared for Business Action to Stop Counterfeiting and Piracy (BASCAP) and the International Trademark Association (INTA). The 2016 report is entitled The Economic Impacts of Counterfeiting and Piracy.
**LEAD INTAKE AND COORDINATION**

- Lead Intake, Deconfliction, and Validation
  - IPRC Partners
  - Industry Stakeholders
  - Public
- Intelligence
  - ATS Analysis
  - Open Source Analysis (NCFTA)
- Operational Coordination
  - POE Blitz Operations
  - CBP National Targeting Center
  - International Partners
  - Industry Support
- Industry Engagement
  - Brand POC’s
  - Trend Analysis

**IPR Center Partners**

**NCFTA**

**Consumers**

**Rights Holders**

**Industry**
OPERATION SURGE PROTECTOR

- Cell Phones / Tablets
- Batteries
- Charging Cables and Adapters
- Emerging Technology
OPERATION CHAIN REACTION

- OCR targets counterfeit items entering the supply chain of the Department of Defense (DOD) and other U.S. government agencies
- Sixteen (16) Federal Agencies participate in OCR

Chinese/Hong Kong companies involved in counterfeit integrated circuits trafficking

U.S. importers from Identified CN/HK companies

DOD prime contractors Identified domestically
Addresses the threat to health and safety posed by counterfeit products:

- Automotive
- Heavy Industry components
**OPERATION APOTHECARY**

- Counterfeit pharmaceuticals
- Counterfeit health & beauty products
- Counterfeit medical devices
Operation Apothecary

- Counterfeit Pharmaceuticals
- May contain the wrong active ingredient, the incorrect amount of the active ingredient, or dangerous ingredients
- Some counterfeits are laced with fentanyl or other opioids
• Counterfeit sporting equipment and sports branded apparel and merchandise
• Law Enforcement Cooperation
• Public Outreach
Copyright Infringement & Illicit Streaming

- Copyright Infringement accounts for $250 billion in damages per year in the U.S. alone
  - Hackers increasingly target US copyrighted works for sophisticated computer intrusions and pre-release ransoms
- Illicit Streaming Devices illegally obtain copyrighted content
  - Funds criminal organization
  - Trojan Horse: opens consumers up to malware and identify theft

Megaupload $175 Million in criminal proceeds

PIRATED IPTV BOXES SEIZED IN RAIDS ACROSS NORTH EAST
E-COMMERCE

- Targets entities and assets of infringing websites or social media links
- Educating the consumer
- Operations:
  - In Our Sites – Disruption and
  - Consumer Education
  - Transatlantic – International coordination with EUROPOL

For more information on IP theft please click on this banner

This domain name has been seized by U.S. Immigration and Customs Enforcement pursuant to a seizure warrant issued by a United States District Court under the authority of 18 U.S.C. §§ 981 and 2323.

Willful copyright infringement is a federal crime that carries penalties for first time offenders of up to five years in federal prison, a $250,000 fine, forfeiture and restitution (17 U.S.C § 506, 18 U.S.C. § 2319). Intentionally and knowingly trafficking in counterfeit goods is a federal crime that carries penalties for first time offenders of up to ten years in federal prison, a $2,000,000 fine, forfeiture and restitution (18 U.S.C. § 2320).

Viewed more than 150 Million Times

E-Commerce Strategy – IPR Center has taken a partnership versus adversarial approach with third party groups

- Online Marketplaces
- Payment Processors
- Express Consignment
Counterfeit Health & Beauty Products

These types of counterfeits can pose a significant health and safety risk due to the fact that products are often made of dangerous/substandard materials in unsanitary conditions.
A growing number of internet websites are featuring the “Report IP Theft” button to not only report IP theft but also to help deter it.
We encourage you to visit our website:

www.iprcenter.gov

...and follow us on Twitter:

@IPR Center
Questions?

Shira Perlmutter
USPTO

Alaina van Horn
CBP

Jeff P. Hardy
TRACIT

Brian Weinhaus
HSI