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Date 22 June 2009

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Dear ACG Member

Changes to the way goods suspected of infringing an Intellectual Property Right are to be dealt with at the frontier.

I am writing to inform you that with immediate effect the way we administer the intellectual property regime in respect of Trademark and Copyright infringing goods will change to comply fully with Article 13 of Council Regulation 1383/2003. We will no longer seize items based upon a witness statement alone but will detain them pending the outcome of court proceedings instituted by the right holder and only seize the goods if directed to do so by the appropriate court.

Why the change?

The UK implementation of Regulation (EC) 1383/2003 via SI 2004 No. 1473 "The Goods Infringing Intellectual Property Rights (Customs) Regulations 2004" provides for procedures similar to, but not identical with, those required under the Council Regulation. We have been advised that departure from the precise requirements of the Council Regulation is not permissible as the Regulation is directly applicable within the UK. We are therefore obliged to modify our procedures to align fully with the requirements of the Council Regulation. This change will not weaken our ability to enforce IP rights legislation at the frontier.

What does this mean for the right holder?

The change will significantly impact upon goods that may infringe either a trademark or copyright. Our practice has been to seize these items accepting a witness statement from the right holder as confirmation that the goods are infringing and therefore liable to forfeiture. Should the owner disagree with this determination they have the right to challenge this through judicial proceedings.

Information is available in large print, audio tape and Braille formats.
Type Talk service prefix number – 18001



We now accept that the burden of proof should be upon the right holder who must confirm the infringing nature of the goods by taking legal proceedings. More pertinently any proceedings must ordinarily be instituted within ten working days but no later than twenty working days after notification of detention. Right holders must therefore be prepared to institute proceedings within the time period set out in the Regulation. Goods will be seized only if the right holder gains a successful judgement and we are directed by the court to seize the items in question.

How we will administer the regime

When goods that we believe may infringe an intellectual property right are detected we will contact the right holder or the nominated representative as set out in the IP application and detain the goods for ten working days.

At the time of contact the case officer should supply to the nominated contact all the information, as set out in Article 9 of the Council Regulation, which is required to decide whether an intellectual property right has been infringed.

To maintain the detention beyond ten working days the right holder must initiate proceedings to determine whether an intellectual property right has been infringed or reach agreement with the declarant, holder or owner of the goods to abandon the goods.

The period may, upon request, be extended by a maximum of a further ten working days so it is important that right holders keep the case officer informed of any delay. Right holders should note that the detention period cannot exceed 20 working days in the absence of court action.

In the case of perishable goods the detention period set aside within which court proceedings must be initiated shall not exceed three working days and may not be extended.

The proceedings for all IP rights are those that are set out in Regulation 9 of Statutory Instrument 2004 no 1473.

Until the adoption of a new Statutory Instrument, which will set out clearly our powers of seizure in IP cases, right holders should as part of their proceedings arrange for the disposal of any infringing goods via an order of the Court.

Will Article 11 be applied?

With the agreement of the Minister we intend to introduce legislation to implement a simplified procedure based on Article 11 of the Council Regulation, however in its absence we will apply the article in the following manner.

These arrangements apply to all IP rights covered under the Council Regulation and are not limited to trademark and copyright.

The right holder may seek the permission of the declarant, holder or owner of the goods to abandon the goods.

The agreement should be in writing and must be communicated to the case officer either by the right holder or the declarant, holder or owner of the goods.

It should be noted that the time periods set out in Article 11 and Article 13 run concurrently. The owner of the goods has the certainty that steps must be taken to establish the IP status of the goods within twenty working days at most or the detention of the goods, for IP purposes, must cease. Article 7 of Commission Regulation 1891/2004 agrees that it is reasonable to accept that first seeking disposal under a simplified procedure is justification for extending the initial ten working day period but right holders must act with alacrity as goods cannot be detained for IP purposes beyond a total of twenty working days.

Destruction will be carried out at the expense and under the responsibility of the right holder. Right holders should therefore ensure that they obtain prior permission from the person with authority to abandon the goods to the Crown.

Is there a transition period?

Suspect consignments that have already been detected and action started under the old procedure will continue to be processed under the old procedure and if appropriate goods will be seized. However right holders who seek an extension of a further ten working days will be informed that they should use that period to initiate court proceedings. In absence of a court order goods will not be seized for an intellectual property breach after Friday 3 July.

Should you have any queries arising from the changes announced above, please contact:

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Yours sincerely,

PAMELA ROGERS