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Managing Trademarks in International Trade: Protecting, Clearing, and Enforcing Trademarks

WEDNESDAY, MARCH 15, 2023

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Robert M. Kossick, International Trade Attorney, **Harris Bricken Sliwoski**, Seattle

Frederic (Fred) Rocafort, Intellectual Property Attorney, **Harris Bricken Sliwoski**, Seattle & Madrid

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Managing Trademarks in International Trade: Protecting, Clearing, and Enforcing Trademarks

Robert Kossick & Fred Rocafort

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Meet Robert Kossick

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Robert Kossick is a Board Certified International Attorney, Licensed Customs Broker, and Certified Export Specialist whose practice focuses on the planning, compliance, enforcement, and security dimensions of U.S. import and export transactions. With over twenty years of professional experience, he brings seasoned, specialized, and multicultural know-how and perspective to the analysis and resolution of customs and trade issues.

Meet Fred Rocafort

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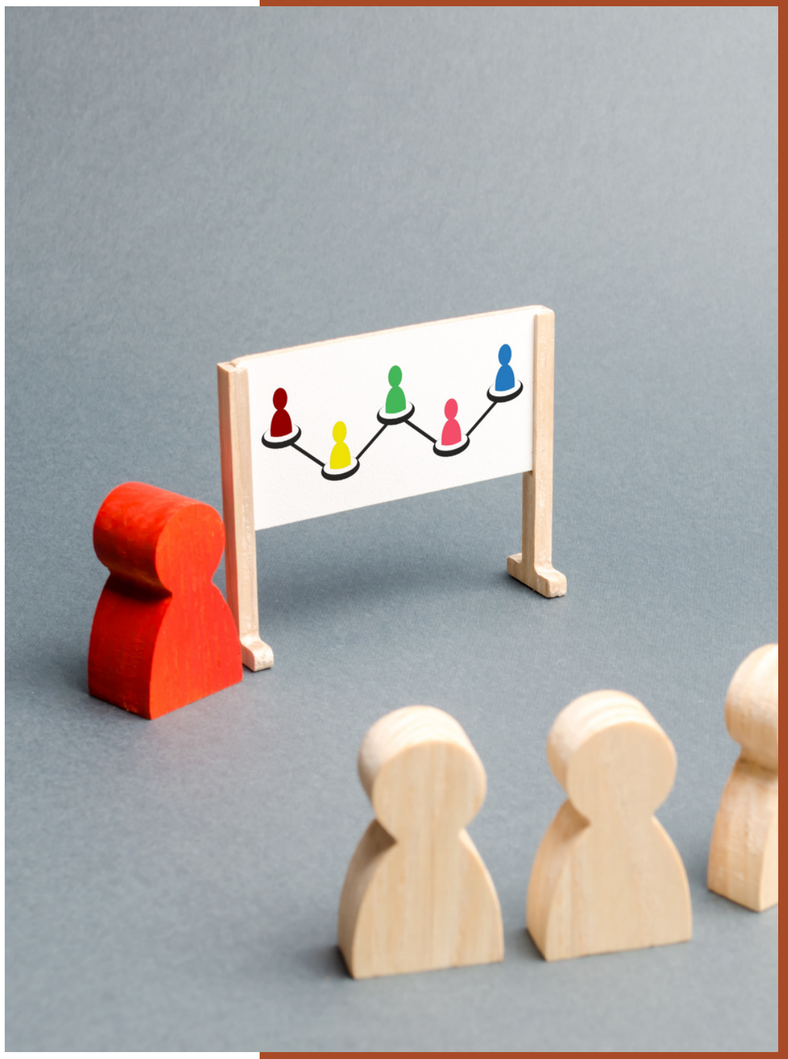
Fred Rocafort leads Harris Bricken's intellectual property practice and is the coordinator of the firm's international team. He is dedicated to helping businesses from around the world and across industries protect their brands as they grow. Prior to joining Harris Bricken, he worked overseas for more than a decade, in both government and private sector roles. Fred is a regular commentator on brand protection matters and serves as an expert witness on IP-related cases.

Roadmap

- Trademark Fundamentals
- Trademarks & Trade
- Infringement Levels & Enforcement Regime
  - Counterfeit
  - Confusingly Similar
  - Grey Market Goods
- Enforcement Relief
  - Detentions
  - Seizures
  - Penalties
- Best Practice Tips for Managing Trademarks in International Trade
  - Right Holders
  - Importers
- Summary
- Resources & Guidelines



Trademark Basics

What is a Trademark?

- **Sign capable of distinguishing the goods or services of one enterprise from those of other enterprises**
- **Trademarks can be registered with government authorities (e.g. USPTO)**
- **Registration may be a prerequisite for protection in some countries**
- **Registration valid for 10 years**
- **Use in commerce required in the U.S. for registration**

See U.S. Reg. Nos. 87628850, 87628828 and 0714399

APPLE

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Trademark Basics

- Trademark rights are national
- In the U.S., there are state trademark rights - but not enforced by CBP
- Limited protection is afforded to unregistered (i.e., common law trademarks) trademarks - but CBP enforcement requires federal registration

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U.S. Trademark Enforcement

- USPTO prevents the registration of trademarks that infringe existing trademark rights and provides administrative channels for opposing trademark applications and cancelling existing registrations
- Actions can be brought in court for trademark infringement
- CBP guards against the import and export of infringing goods

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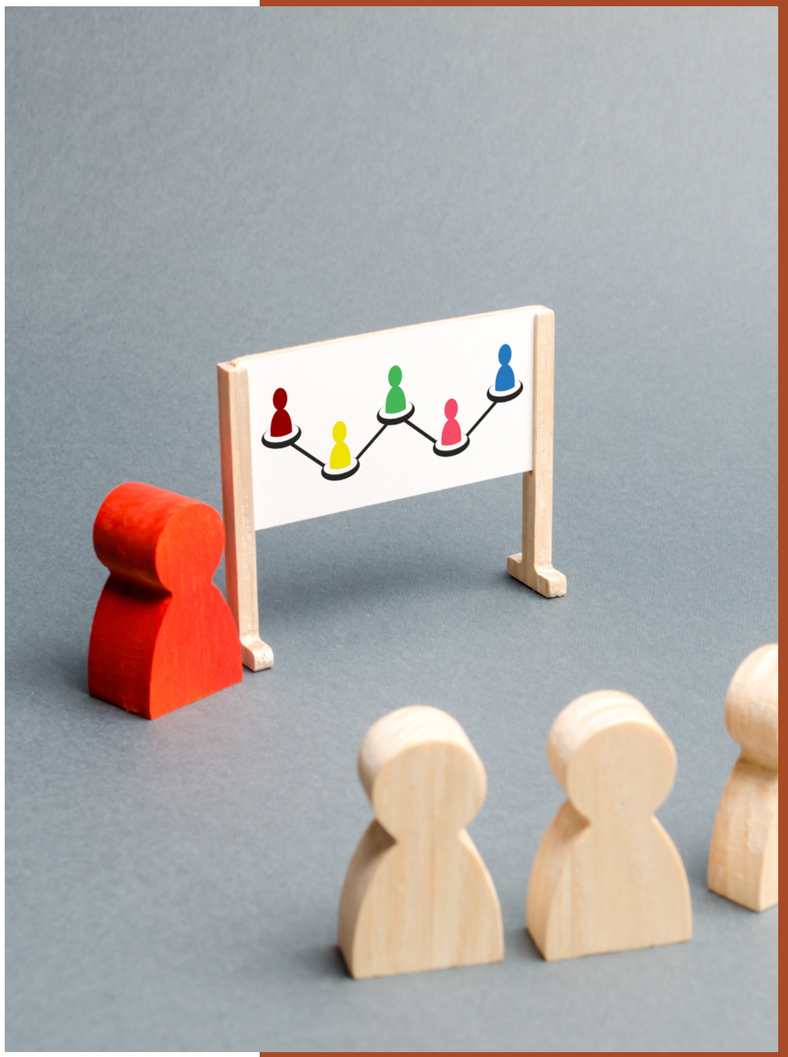

Trademarks & Trade

So, you are going to manufacture abroad or import. What could go wrong with respect to trademarks?

Infringement/Theft

- Trademarks have always been easy to create … no need to pen magnum opus or develop sophisticated patent
- Trademarks have also, thanks to advances in copying/reproducing technology, the existence of markets with cheap labor/lax enforcement, the rise of online sales platforms, the explosion of express consignments, and the increase of the de minimis value, been one of easiest forms of IPR to counterfeit/fake and commercialize
- TM theft has become an important source of revenue for cartels, gangs, even terrorist organizations the world over
- Volume of trademark theft growing over time:
  - CBP reports over 27,000 counterfeit-related seizures with an MSRP value of $3.3 B in 2021
  - This MSRP value has grown from a 2017 MSRP value of $1.2B – a 175% increase
  - 75% of the goods associated with these counterfeit-related seizures originated in China or Hong Kong
  - 90% of these counterfeit-related seizures involve high–volume, low-value international mail and express shipments

Trademarks & Trade

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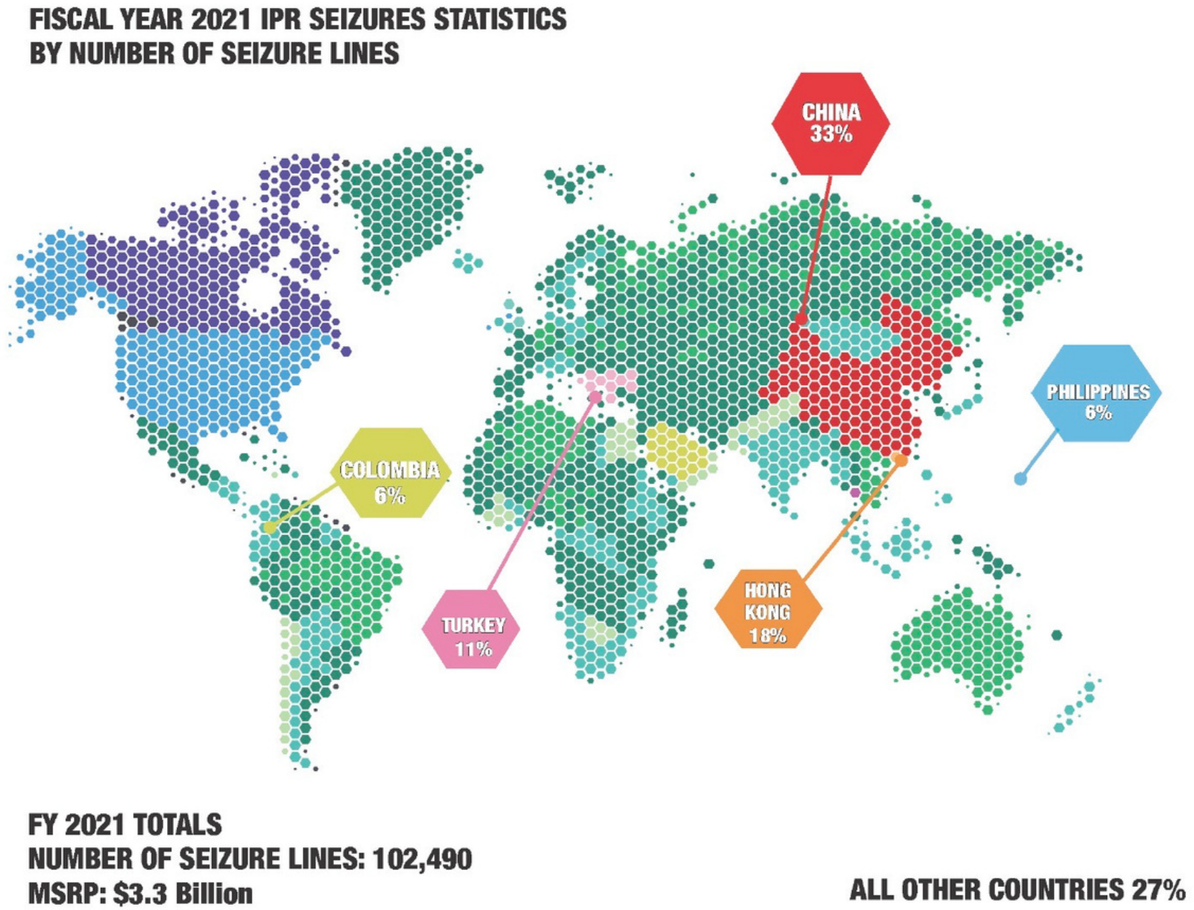
So, you are going to manufacture abroad or import. What could go wrong with respect to trademarks?

Infringement/Theft

Leading Sources of Counterfeit Goods (2021)



Trademarks & Trade

So, you are going to manufacture abroad or import. What could go wrong with respect to trademarks?

Infringement/Theft

- Locations of most important physical markets for counterfeit goods identified in the USTR's Notorious Markets Report (2022):
  - Argentina, Brazil, Cambodia, Canada, China, India, Indonesia, Kyrgyz Republic, Malaysia, Mexico, Paraguay, Peru, Philippines, Russia, Thailand, Turkey, United Arab Emirates, and Vietnam
- Most commonly counterfeited goods seized by CBP (2021):

Trademarks & Trade

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So, you are going to manufacture abroad or import. What could go wrong with respect to trademarks?

Diminished Control Pursuant to Compulsory Licensing/Forced Technology Transfers:

- Common in certain countries (China, for example)
- Cost of market access requires making IPR available to a local partner
- No guarantee that your IPR will not fall into hands of and/or be used by an otherwise unauthorized competitor
- Can become burden to police unauthorized production

Elevated Customs Compliance and Enforcement Risk

- Presence of infringing marks on imported merchandise can result in costly supply chain disruptions

Trademarks & Trade

Potential Ramifications of Foregoing?

Right Holders:

- Weakens production/distribution control
- Dilutes brand integrity and good will
- Lowers income
- Raises costs
- Reduces value of contribution made by brand to company's market capitalization
- Diminishes value of company on sale or liquidation

Consumers:

- Exposure to adulterated, misbranded, unsafe, and/or underperforming products
- Threat to public health, safety, and well-being
- Examples of problematic products include cell phones and accessories, electronic devices, auto parts, medicines, etc.

Trademarks & Trade

Potential Ramifications of Foregoing?

Importers:

- Increases administrative compliance and enforcement risk (disruptive detentions, seizures, penalties)
- Increases legal risk

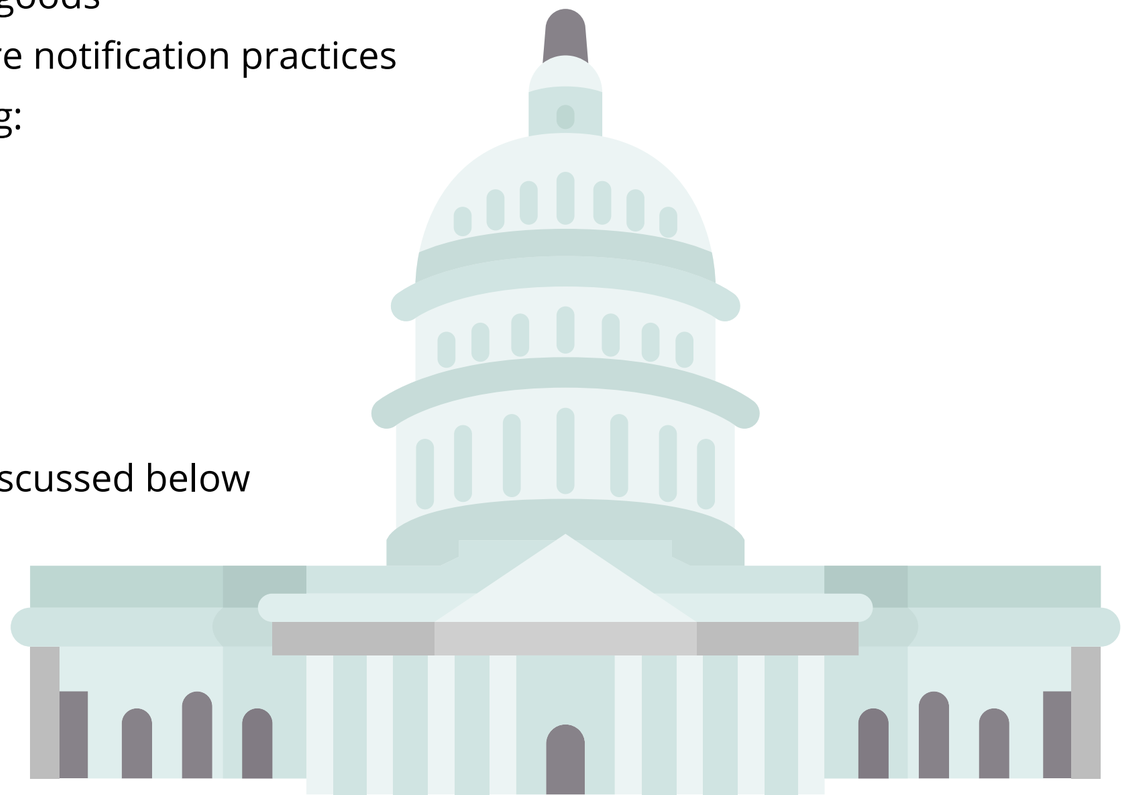
United States:

- Reduces economic competitiveness
- Disincentivizes innovation
- Weakens national security
- Degrades cybersecurity

Trademarks & Trade

U.S. Government's Response?

- Gravity of situation has led CBP to identify the protection and enforcement of IPR as a "Priority Trade Issue"
- To this end, CBP works with PGAs and the private sector to analyze, target, and enforce TM violations
  - Interagency National IPR Center
  - CBP - USPS partnership to scan de minimis value parcels for counterfeit merchandise
  - Authentication and enforcement initiatives with private sector companies (P&G, Otter, Cisco, Apple, Nike, etc.)
  - MOU with Chambers of Commerce to combat flow of counterfeit goods
  - Collaboration with COAC on development of more effective seizure notification practices
- Variety of tools and techniques used to accomplish this goal, including:
  - Data-driven risk assessments
  - Inspections and lab testing
  - Audits
  - Special operations (Stolen Promise, Warp Speed, etc.)
  - Trade community-derived e-allegations and theft reports
  - Registration, search, and collaboration mechanisms of the type discussed below
- These efforts center on three levels of infringement:
  - Counterfeit Goods
  - Confusingly Similar Goods
  - Grey Market Goods



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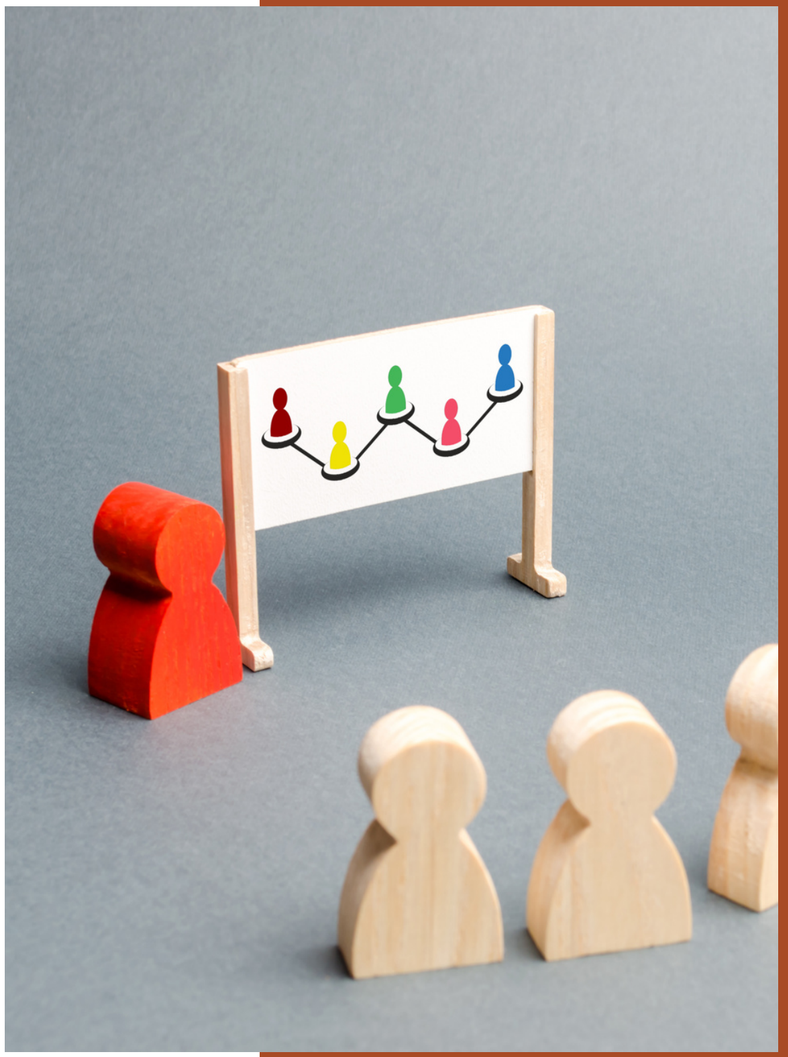

Infringement Levels & Enforcement Regimes

Counterfeit

Infringement Levels & Enforcement Regimes

Confusingly Similar

Infringement Levels & Enforcement Regimes

Gray Market Goods

“The Venezuelan sweets differ from the Italian sweets in presentation, variety, composition, and price” - Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc., 982 F.2d 633, 635 (1st Cir. 1992)

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Infringement Levels & Enforcement Regimes

CBP Infringement Levels

Infringement Level	CBP Recordation Status	Enforcement Treatment	Authority
Counterfeit 15 USC 1127	Recorded	Detain/Seize Penalty	19 CFR 133.21 19 USC 1526 19 CFR 133.27
	Not Recorded	Detain/Seize where administratively feasible Penalty	19 USC 1595a 18 USC 2320 19 CFR 133.21 19 CFR 133.27
Confusingly Similar 15 USC 1114 15 USC 1127 15 USC 1124	Recorded	Detain/Seize	19 CFR 133.22 19 CFR 133.25 19 USC 1595a 19 USC 1124
	Not Recorded	-	-
Grey Market Goods *Lever Brothers Co. v. U.S.* (981 F.2d. 1330) 19 CFR 133.23	Recorded	Detain/Seize	19 CFR 133.23 19 CFR 133.25 19 USC 1526
	Not Recorded	-	-

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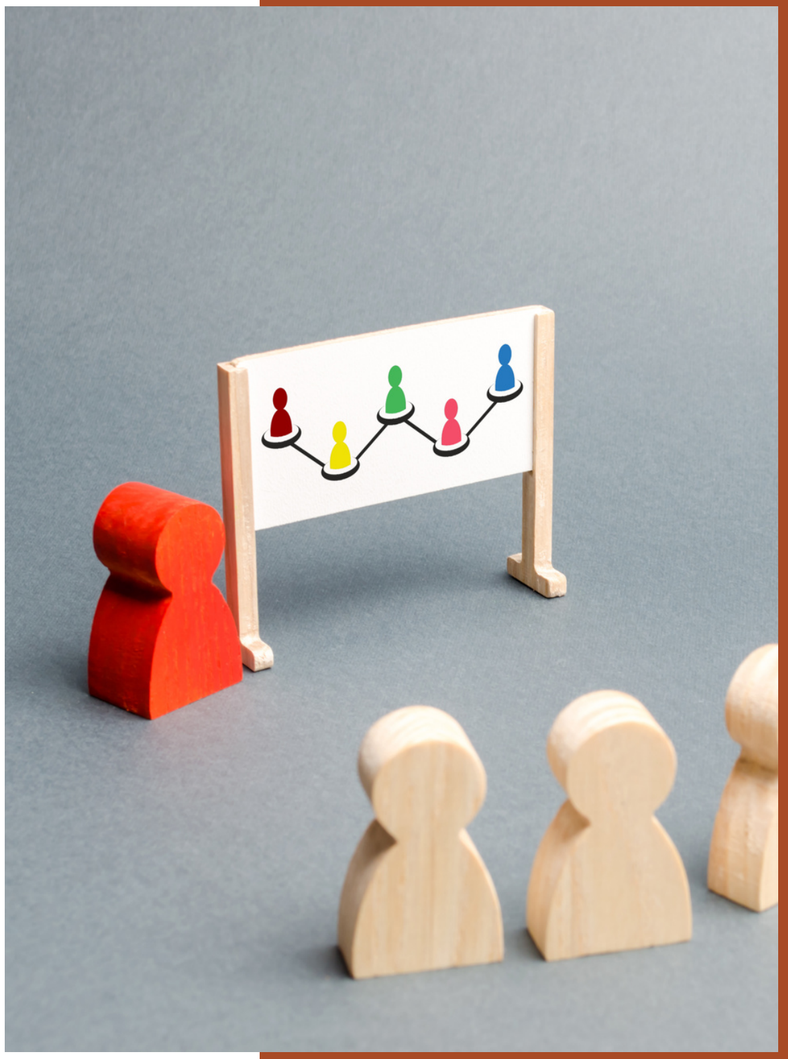


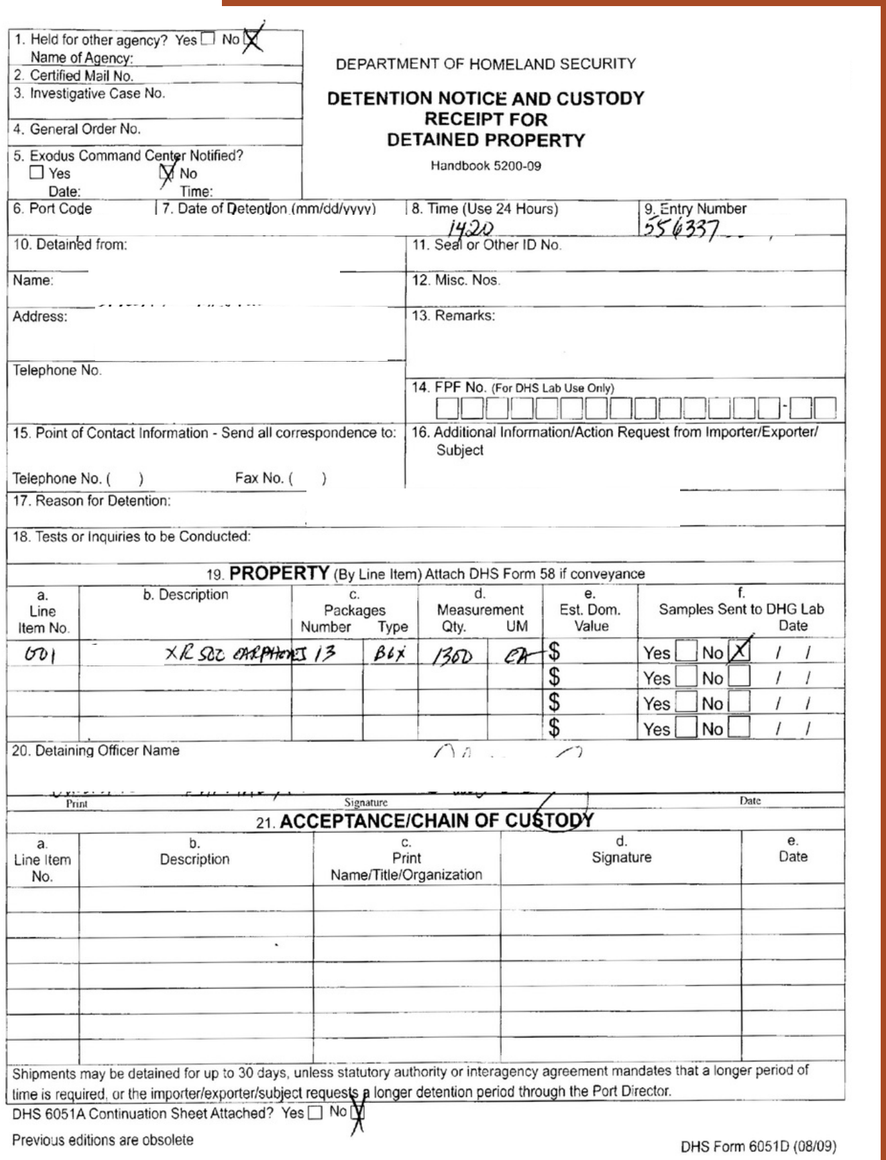
Enforcement Relief

Enforcement Relief If No Prior Criminal Referral

- Authority under 19 USC 1618 and 19 CFR 171

Detentions

- Short periods of time (7 days for counterfeits, 30 days for confusingly similar or grey market goods) provided for overcoming detentions and securing release
- Working quickly and with specialized counsel is crucial
- If provide information, take actions, or otherwise come within an exception specified in relevant CBP regulations (19 CFR 133.21, 133.22, and 133.23), it is possible to secure release of detained goods



1. Held for other agency? Yes ☐ No ☒
Name of Agency:
2. Certified Mail No.
3. Investigative Case No.
4. General Order No.
5. Exodus Command Center Notified? ☐ Yes ☒ No
Date: Time:

DEPARTMENT OF HOMELAND SECURITY

DETENTION NOTICE AND CUSTODY RECEIPT FOR DETAINED PROPERTY

Handbook 5200-09

6. Port Code	7. Date of Detention (mm/dd/yyyy)	8. Time (Use 24 Hours)	9. Entry Number
		1420	556337

10. Detained from:
Name:
Address:
Telephone No.

11. Seal or Other ID No.
12. Misc. Nos.
13. Remarks:
14. FPF No. (For DHS Lab Use Only)

15. Point of Contact Information - Send all correspondence to:
Telephone No. ( ) Fax No. ( )

16. Additional Information/Action Request from Importer/Exporter/Subject

17. Reason for Detention:

18. Tests or Inquiries to be Conducted:

19. **PROPERTY** (By Line Item) Attach DHS Form 58 if conveyance

a. Line Item No.	b. Description	c. Packages Number	c. Packages Type	d. Measurement Qty.	d. Measurement UM	e. Est. Dom. Value	f. Samples Sent to DHG Lab	Date
001	XR 502 EARPHONES	13	BOX	1300	EA	$	Yes ☐ No ☒	/ /
						$	Yes ☐ No ☐	/ /
						$	Yes ☐ No ☐	/ /
						$	Yes ☐ No ☐	/ /

20. Detaining Officer Name
Print Signature Date

21. **ACCEPTANCE/CHAIN OF CUSTODY**

a. Line Item No.	b. Description	c. Print Name/Title/Organization	d. Signature	e. Date

Shipments may be detained for up to 30 days, unless statutory authority or interagency agreement mandates that a longer period of time is required, or the importer/exporter/subject requests a longer detention period through the Port Director.

DHS 6051A Continuation Sheet Attached? Yes ☐ No ☒

Previous editions are obsolete

DHS Form 6051D (08/09)

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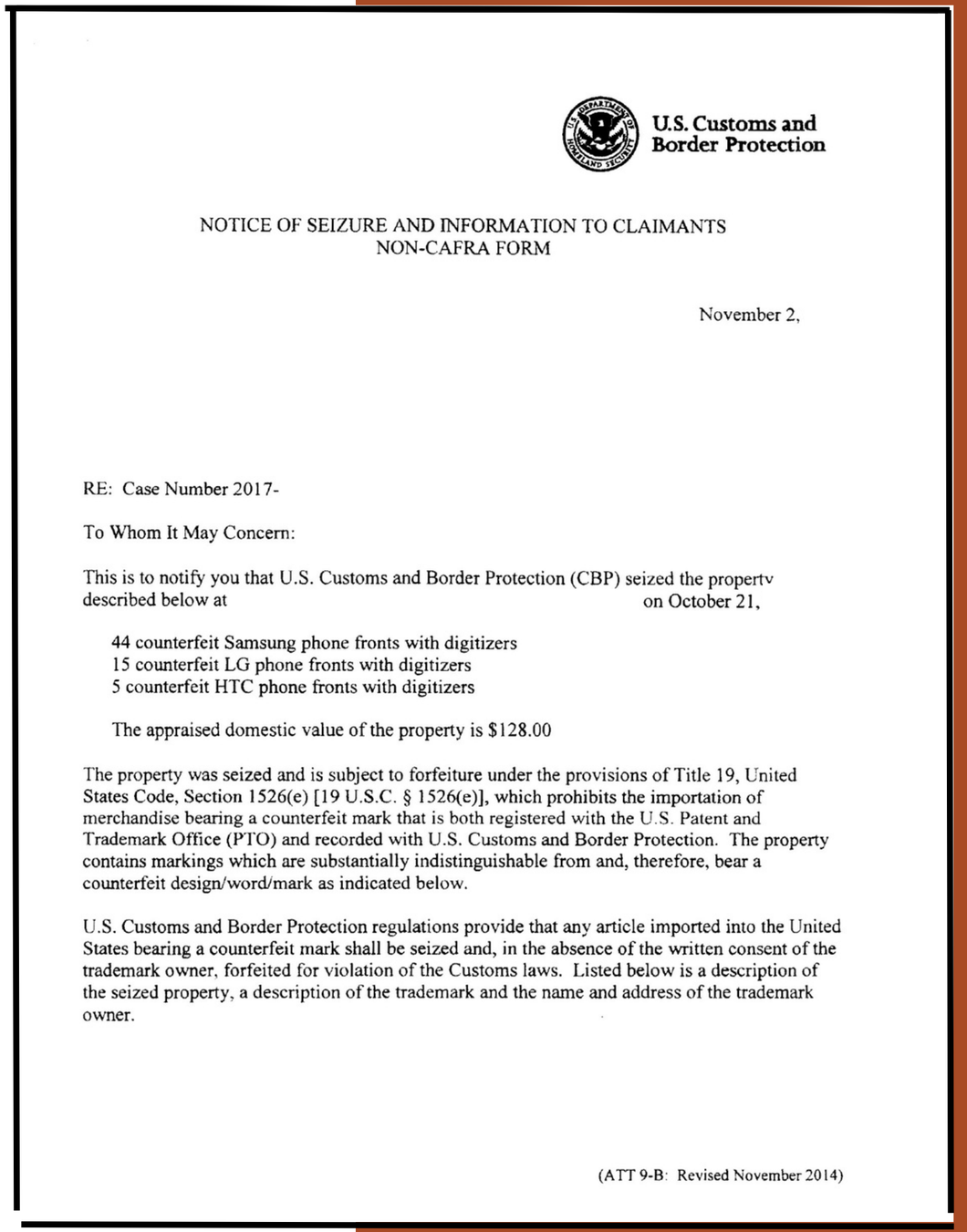
Enforcement Relief

Seizures

- Different procedural pathway options:
  - Elect administrative forfeiture proceedings
  - File claim and cost bond requesting referral to DOJ
  - Submit offer in compromise to Port Director
  - File petition for administrative relief filed with FPFO



U.S. Customs and Border Protection

NOTICE OF SEIZURE AND INFORMATION TO CLAIMANTS
NON-CAFRA FORM

November 2,

RE: Case Number 2017-

To Whom It May Concern:

This is to notify you that U.S. Customs and Border Protection (CBP) seized the property described below at on October 21,

44 counterfeit Samsung phone fronts with digitizers
15 counterfeit LG phone fronts with digitizers
5 counterfeit HTC phone fronts with digitizers

The appraised domestic value of the property is $128.00

The property was seized and is subject to forfeiture under the provisions of Title 19, United States Code, Section 1526(e) [19 U.S.C. § 1526(e)], which prohibits the importation of merchandise bearing a counterfeit mark that is both registered with the U.S. Patent and Trademark Office (PTO) and recorded with U.S. Customs and Border Protection. The property contains markings which are substantially indistinguishable from and, therefore, bear a counterfeit design/word/mark as indicated below.

U.S. Customs and Border Protection regulations provide that any article imported into the United States bearing a counterfeit mark shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violation of the Customs laws. Listed below is a description of the seized property, a description of the trademark and the name and address of the trademark owner.

(ATT 9-B: Revised November 2014)

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Enforcement Relief

Petitions for Administrative Relief from Seizure/Forfeiture

- Common arguments advanced:
  - Distinctive/non-infringing quality of merchandise
  - Prior obtainment of right holder consent
  - Controlling nature of importer's interest in the IPR
  - Availability of an exemption
- Factors which inform granting of relief:
  - USPTO registration and CBP recordation
  - Availability of grey market protection
  - Consent of right holder (and timing of consent)
  - Willingness to sign off on hold harmless agreement
  - Terms/circumstances deemed by CBP to be appropriate, reasonable, or just
- FPFO not required to grant relief
- Relief granted can deviate from guidelines, where appropriate
- FPFO relief decisions not subject to administrative protest

Enforcement Relief

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Civil Penalties

- CBP authorized to issue a civil penalty against any person who directs, assists, or aids/abets in importation of counterfeit merchandise
  - Authority is 19 USC 1526(f)
  - Follows perfection of forfeiture

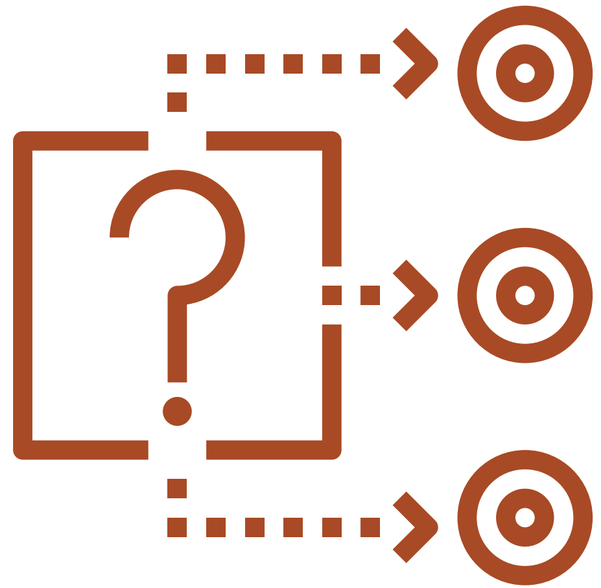
Petitions for Mitigation/Cancelation of Penalties

- Importers can seek penalty relief by filing a petition for the mitigation or cancelation of the penalty with the port-based FPFO
- Mitigating factors considered by FPFO:
  - Lack of knowledge regarding the counterfeit nature of the goods
  - Prior good record of the importer with respect to 19 USC 1526
  - Lack of import experience
  - Evidence of cooperation
  - Evidence of corrective action
  - Demonstrated inability to pay

Enforcement Relief

Petitions for Mitigation/Cancelation of Civil Penalties

- Aggravating factors, by way of contrast, include:
  - Evidence of knowledge regarding the counterfeit nature of the goods
  - Occurrence of more than two prior seizures/forfeitures
  - Criminal violation associated with the importation
  - Submission of falsified documentation or other deceptive practices
- FPFO not required to grant relief
- Relief granted can deviate from guidelines, where appropriate
- FPFO relief decisions not subject to administrative protest



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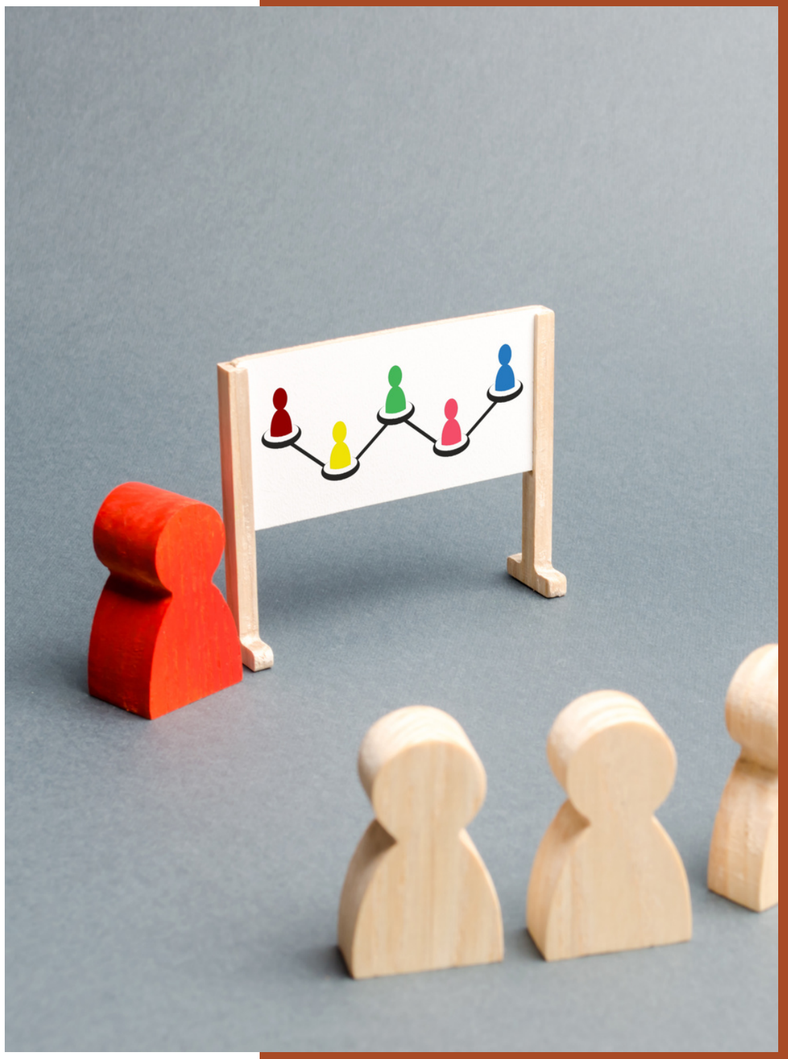

Best Practices - Right Holders

- **Register IP at home *AND* abroad - and ensure registrations are maintained**
- **CBP recordation**
- **Liaise with CBP (and other agencies at home and abroad) - educate, report infringements, cooperate**
- **Monitor online and brick-and-mortar marketplaces**
- **Complement trademark property protections with relevant contractual language**

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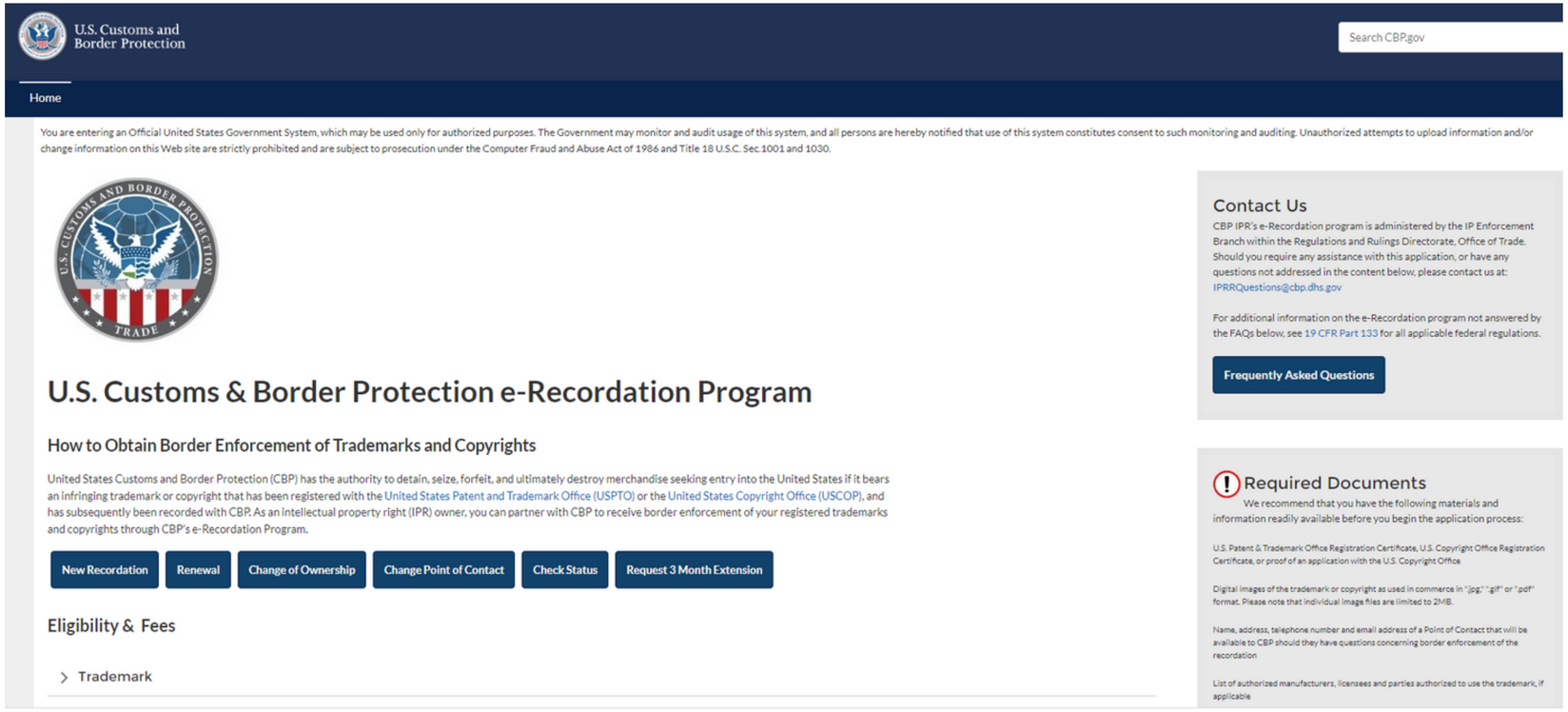
Recordation

- Different from **registration**
- Informing CBP of a registered trademark right to request enforcement of that right



The Other Side of the Equation

- U.S. protections can be enhanced by protection in other countries
- Enforcement of trademark rights in the country of export/manufacture reduces counterfeiting risks
- Recordation with customs is particularly useful in China, which carries out robust examinations of outbound shipments
- Counterfeits are not the only issue - authorized suppliers can be a problem as well, and proper contractual protections are essential to address this threat

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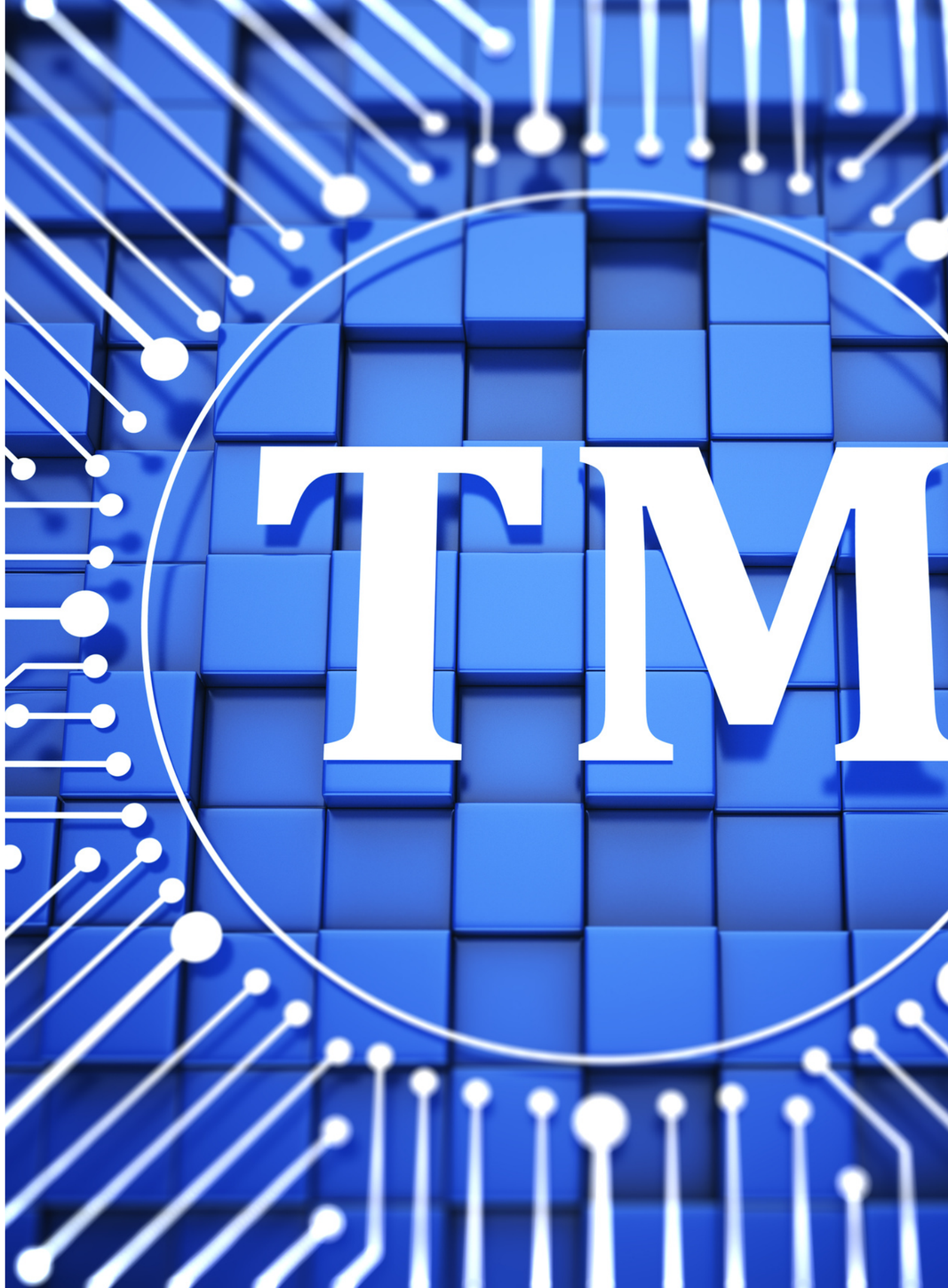
Where to Register/Protect?

- Home country
- Important sales markets
- Manufacturing locations - combat counterfeiting and prevent legal actions by bad faith actors (e.g., blocking exports)
- Remember: fakes made in a country where a brand does not sell or manufacture can still be a threat
- Brands should think of where they want to be in 5, 10, 20 years - not just where they are now



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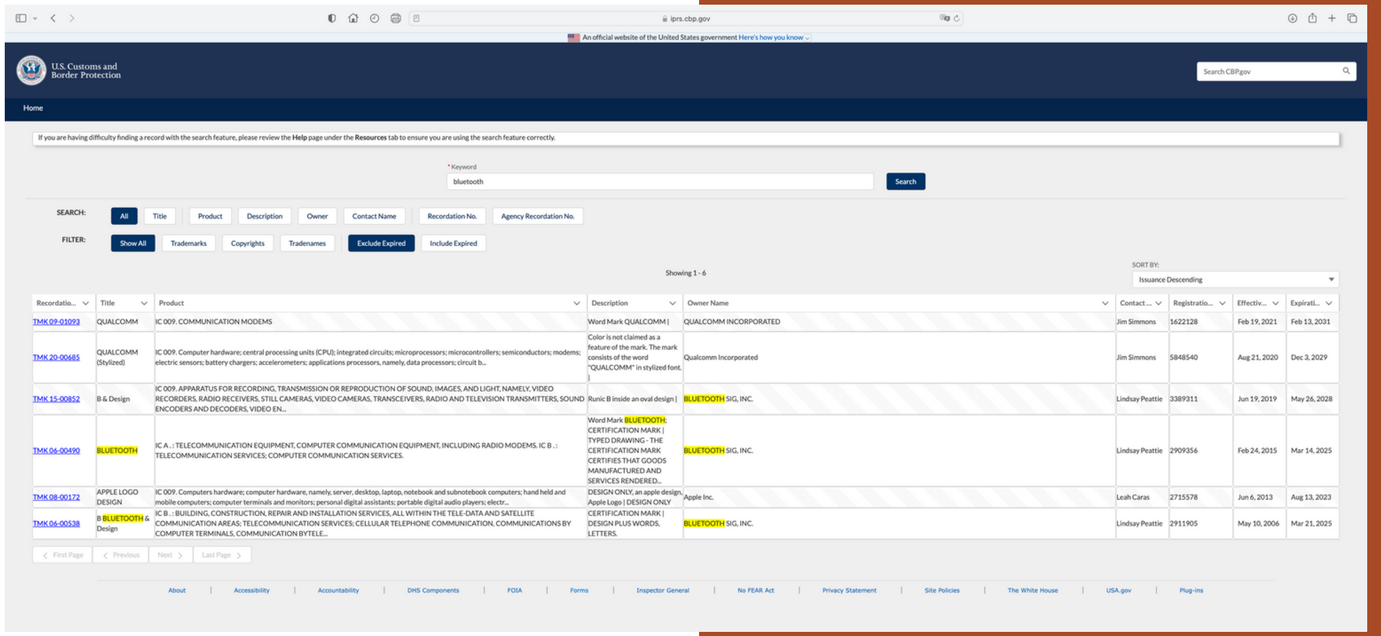
Best Practices - Importers

Measures Importers Can Take to Avoid Unwanted Scrutiny/Downstream Compliance Risk

- TM Clearance
  - Search IPRS, free of charge, prior to importation
  - Allows importers to identify potentially problematic TM issues
- Right Holder Consent
  - Obtain right holder consent prior to importation
- Pre-Importation Advisory Letter
  - Provide CBP officials at relevant port(s) or CEE with advance notice of consent obtained from right holder
  - Enhances trust between CBP and Importer
- Contractual Assurances/Provisions
  - Obtain, in advance of importing, written assurances from foreign producers/suppliers that the parts and components which go into merchandise they export do not infring the TMs of third parties



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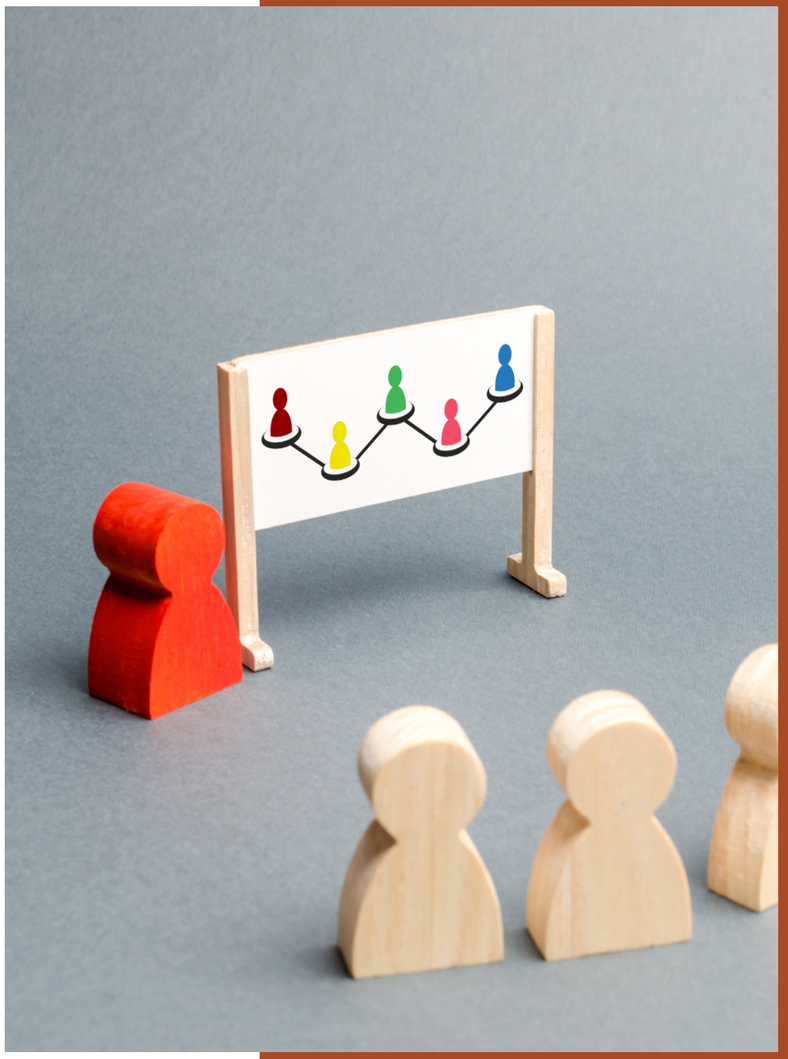

Concluding Thoughts on Trademarks & Trade

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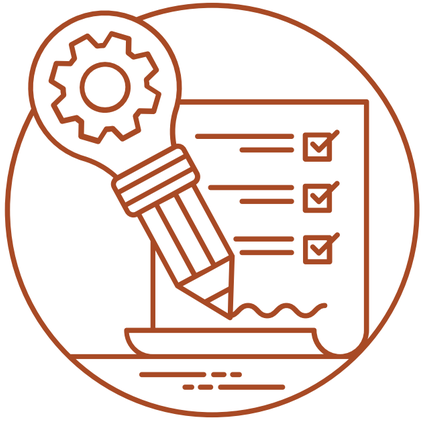
- **Conduct trademark viability analysis**
  - **Ensure trademarks are not too generic, descriptive, suggestive, etc.**
- **Conduct trademark availability search**
  - **Ascertain if trademarks are active, cancelled, abandoned, or available for all potentially relevant markets**
- **Review and understand all IGO, USG, and industry intelligence on status of IPR in foreign markets of interest with an eye to identifying risk points**
  - **USTR's Special 301 Report**
  - **USTR's Review of Notorious Markets**
  - **DOC/ITA Country Commercial Guides**
- **Understand and act in accordance with first to use/first to file distinction**
  - **In U.S., use right away**
  - **Abroad, in relevant markets, file preemptively and in advance of manufacturing/selling**



Concluding Thoughts on Trademarks & Trade

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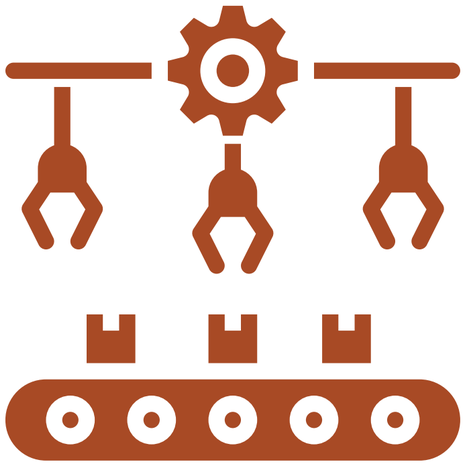
- Integrate IPR protective clauses into foreign manufacturing, distribution, and representation agreements
- Register trademarks in relevant markets and at relevant levels
  - In U.S., with USPTO and/or state(s)
  - Abroad, in all relevant markets
    - Guard against bad faith filings
    - Create possibility of pursuing enforcement action in event of downstream infringement
- Record trademarks with CBP
  - Opens door to CBP policing border for infringing goods
- Train CBP to recognize distinctions between authentic and inauthentic goods
  - Conduct product identification trainings in person or via webinar



Concluding Thoughts on Trademarks & Trade

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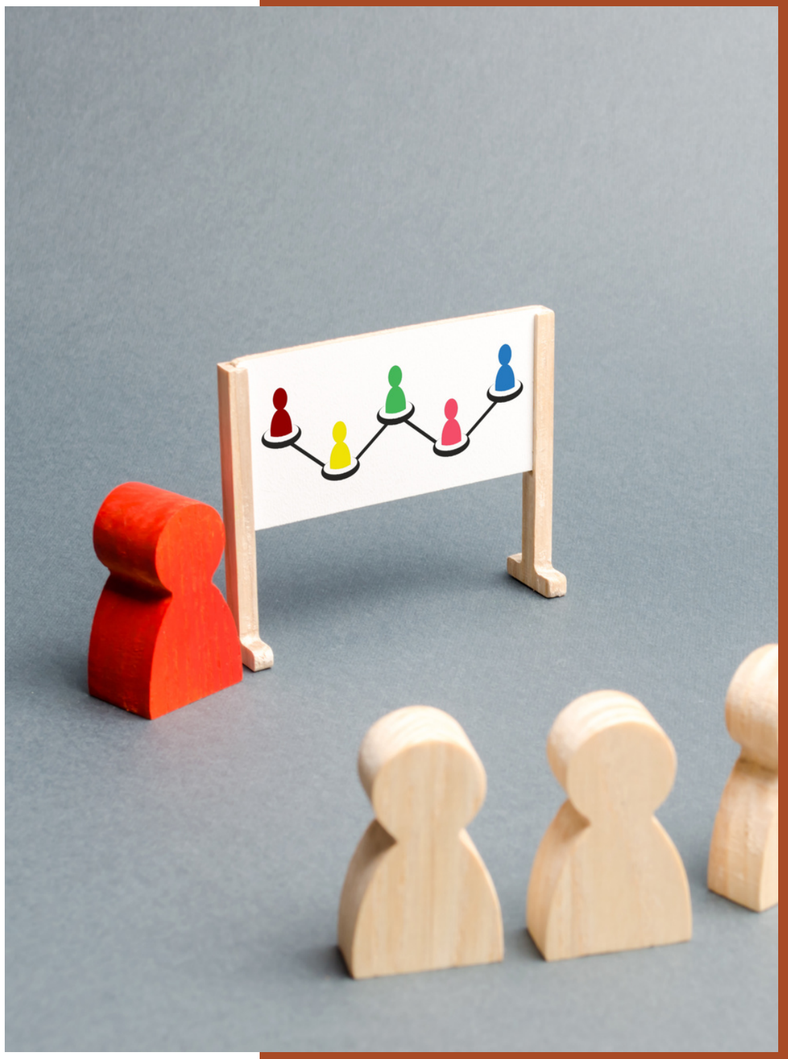
- Clear rights/obtain authorizations as appropriate if IOR
- Provide CBP with pre-importation notification of rights authorization if IOR
- Use trademarks as registered
- Use ®,™symbols properly
- Renew trademark registrations and recordations as appropriate
- Maintain up-to-date contact information on CBP recordations
- Monitor relevant physical and digital markets for unauthorized trademark use/infringement
- Uphold rights and report/enforce violations
  - Opposition/invalidation proceedings at USPTO
  - File e-Allegation with CBP and/or IPR theft report with National IPR Coordination Center
  - Judicial action

Roadmap

- Trademark Fundamentals
- Trademarks & Trade
- Infringement Levels & Enforcement Regime
  - Counterfeit
  - Confusingly Similar
  - Grey Market Goods
- Enforcement Relief
  - Detentions
  - Seizures
  - Penalties
- Best Practice Tips for Managing Trademarks in International Trade
  - Right Holders
  - Importers
- Summary
- Resources & Guidelines



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Resources

Background Information on Trademarks:

- https://www.wipo.int/trademarks/en/
- https://www.uspto.gov/trademarks
- https://www.cbp.gov/trade/priority-issues/ipr/ipr-assistance
- https://www.trade.gov/protect-intellectual-property
- https://www.stopfakes.gov/article?id=Does-a-U-S-Trademark-Registration-Protect-a-Trademark-in-a-Foreign-Country
- https://www.inta.org/fact-sheets/international-trademark-rights/
- https://www.cbp.gov/trade/fakegoodsrealdangers
- https://a-capp.msu.edu/guide-to-brand-protection-for-small-and-medium-sized-enterprises/

Laws, Treaties, Judgments, Searchable Databases, and Foreign Registration Tools (WIPO):

- https://www.wipo.int/treaties/en/index.html
- https://www.wipo.int/wipolex/en/
- https://www.wipo.int/treaties/en/ip/paris/
- https://www.wipo.int/treaties/en/registration/madrid/
- https://www.wipo.int/treaties/en/registration/madrid_protocol/
- https://www.wipo.int/treaties/en/classification/nice/
- https://www.wipo.int/treaties/en/classification/vienna/
- https://www.wipo.int/treaties/en/ip/singapore/
- https://www.wipo.int/treaties/en/ip/tlt/
- https://www.wipo.int/treaties/en/ip/nairobi/
- https://www.wipo.int/reference/en/branddb/
- https://www.wipo.int/classifications/nice/en/
- https://madrid.wipo.int/feecalcapp/
- https://www.wipo.int/directory/en/urls.jsp

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Resources

Trademark Search, Registration, and Examination Materials (USPTO):

- https://www.uspto.gov/trademarks/search (TESS)
- https://www.uspto.gov/trademarks/apply
- https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-1200d1e1.html
- https://www.uspto.gov/trademarks/laws/madrid-protocol

Laws, Regulations, Recordation and Search Resources, Directives, Guidelines, e-allegation and IPR Theft Reporting Resources, and ICPs (CBP and IPR Center):

- https://www.law.cornell.edu/uscode/text/19/1526
- https://www.law.cornell.edu/uscode/text/19/1595a
- https://www.law.cornell.edu/uscode/text/15/1114
- https://www.law.cornell.edu/uscode/text/15/1124
- https://www.law.cornell.edu/uscode/text/15/1127
- https://www.law.cornell.edu/uscode/text/18/2320
- https://www.ecfr.gov/current/title-19/chapter-I/part-133
- https://iprr.cbp.gov/s/
- https://iprs.cbp.gov/s/
- https://www.cbp.gov/sites/default/files/documents/2310-008a_3.pdf
- https://www.cbp.gov/sites/default/files/documents/2310-010a_3.pdf
- https://www.cbp.gov/document/publications/mitigation-guidelines-icp-trademark-copyright-and-other-ipr-violations
- https://www.cbp.gov/trade/priority-issues/ipr/bestpractices
- https://eallegations.cbp.gov/s/
- https://www.iprcenter.gov/referral/report-ip-theft-form
- https://www.iprcenter.gov/referral/view
- https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/ICP-IPR-Enforcement-2012-Final.pdf

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Resources

EU Trademark Resources:

- https://euipo.europa.eu/ohimportal/en/trade-marks-in-the-european-union

USMCA Trademark Resources:

- https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/20-Intellectual-Property-Rights.pdf
- https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/fact-sheets/modernizing

Reports, Plans, and Country Commercial Guides:

- https://www.wipo.int/publications/en/details.jsp?id=4571&plang=EN
- https://www.wipo.int/edocs/pubdocs/en/wipo_pub_944_2013-intro1.pdf
- https://www.oecd-ilibrary.org/sites/117e352b-en/index.html?itemId=/content/publication/117e352b-en
- https://www.trade.gov/ccg-landing-page
- https://www.whitehouse.gov/wp-content/uploads/2022/09/2021-IPEC-Annual-Report-April-2022.pdf
- https://www.whitehouse.gov/wp-content/uploads/2022/09/2020-2023-Joint-Strategic-Plan.pdf
- https://ustr.gov/issue-areas/intellectual-property/special-301/2022-special-301-review
- https://ustr.gov/sites/default/files/2023-01/2022%20Notorious%20Markets%20List%20(final).pdf

- https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf
- https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/ATAP_Intellectual%20Property%20Rights%20External%20User_QRG_508c_0_0.pdf

Guidelines for Trademark Seizures and Penalties

CBP IPR Matrices

Guidelines for Trademark Seizures Made Pursuant to 19 U.S.C. 1526(e) (or 19 U.S.C. 1595a(d) and 22 U.S.C. 401)

VIOLATION	RECOMMENDED DISPOSITION
Counterfeit Mark • Trademark registered on Principal Register of U.S. Patent & Trademark Office (USPTO) • Trademark recorded with CBP • No consent from U.S. trademark holder	No remission of forfeiture
Counterfeit Mark • Trademark registered on Principal Register of USPTO • Trademark recorded with CBP • Consent from U. S. trademark holder obtained post-seizure	Remission of forfeiture upon payment of 10% of the dutiable value of the goods, payment of all seizure costs and submission of properly executed Hold Harmless Agreement

Guidelines for Trademark Seizures and Penalties

CBP IPR Matrices

Guidelines for Trademark Seizures Made Pursuant to 19 U.S.C. 1595a(c)(2)(C) (or 19 U.S.C. 1595a(d) and 22 U.S.C. 401)

VIOLATION	RECOMMENDED DISPOSITION
Counterfeit Mark • Trademark registered on Principal Register of USPTO • Trademark NOT recorded with CBP • No consent from U.S. trademark holder	No remission of forfeiture
Confusingly Similar Mark • Trademark registered on Principal Register of USPTO • Trademark recorded with CBP • No consent from U.S. trademark holder	Remission of forfeiture upon payment of 25% of dutiable value, obliteration or removal of the offending mark and export to the country of origin under CBP supervision, payment of all seizure costs (including obliteration/removal of offending mark) and submission of properly executed Hold Harmless Agreement
Confusingly Similar Mark • Trademark registered on Principal Register of USPTO • Trademark recorded with CBP • Consent from U.S. trademark holder	Remission of forfeiture upon payment of 10% of dutiable value, payment of all seizure costs and submission of properly executed Hold Harmless Agreement

Guidelines for Trademark Seizures and Penalties

CBP IPR Matrices

Guidelines for Trademark Seizures Made Pursuant to 19 U.S.C. 1526(b) (or 19 U.S.C. 1595a(d) and 22 U.S.C. 401)

VIOLATION	RECOMMENDED DISPOSITION
Gray Market • Trademark registered on Principal Register of USPTO • Trademark recorded with CBP • Trademark has Gray Market protection	Remission of forfeiture upon payment of 10% of dutiable value, export to the country of origin under CBP supervision, payment of seizure costs and submission of properly executed Hold Harmless Agreement

Guidelines for Trademark Seizures and Penalties

CBP IPR Matrices

Guidelines for Penalties Levied Pursuant to 19 U.S.C. 1526(f)

VIOLATION	RECOMMENDED DISPOSITION
First offense, with mitigating factor(s) and no aggravating factor(s)	10-30% of the assessed penalty amount
First offense with aggravating factor(s)	30-50% of the assessed penalty amount
First offense with evidence of knowledge as to the counterfeit nature of the goods, with no aggravating factor(s)	50-80% of the assessed penalty amount
Second offense, with mitigating factor(s) and no aggravating factor(s)	10-30% of the assessed penalty amount
Second offense, with aggravating factor(s), or Third or subsequent offense	50-80% of the assessed penalty amount
Second or subsequent offense, with evidence of knowledge as to the counterfeit nature of the goods	No mitigation

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