

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

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November 4, 2004

Regulations Branch  
Office of Regulations and Rulings  
Bureau of Customs and Border Protection  
Department of Homeland Security  
1300 Pennsylvania Avenue, NW  
Mint Annex  
Washington, DC 20229

RE: Comments to Proposed Rule on Recordation of Copyrights and Enforcement Procedures to Prevent the Importation of Piratical Articles, RIN 1505-AB51

Dear Sir or Madam:

The United States Chamber of Commerce (the Chamber) appreciates the opportunity to comment on the proposed rule on recordation of copyrights that appeared in the October 5, 2004, edition of the *Federal Register*. The Chamber is the world's largest business federation, representing more than 3 million businesses and organizations of every size, sector, and region.

In reviewing the proposed rule, we believe that CBP's proposals are positive developments that will enhance the protection of copyrighted works. At the same time, we would also like to remind CBP that addressing the importation of counterfeit goods is also critically important to our Nation's competitiveness and safety.

### **Background**

As you know, U.S. law currently permits the owners of U.S.-registered trademarks and U.S.-registered copyrights to record their intellectual property with the Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security (DHS). As a result, goods being imported into the United States that bear counterfeit marks or are pirated (i.e., identical copies of copyrighted works) can be detained and seized by CBP.

The regulations governing the recordation, detention, and seizure procedures can be found at 19 C.F.R. § 133, et seq. The regulations are fairly evenly split between addressing the importation of counterfeit and gray market goods that violate U.S. trademark law (19 C.F.R. §§ 133.1-133.27) and the importation of piratical goods that violate U.S. copyright law (19 C.F.R. §§ 133.31-133.46).

### **Comments on CBP Proposals—Actions Supported by the U.S. Chamber of Commerce**

We believe that CBP's proposals are positive developments that will enhance the protection of copyrighted works.

Specifically, we applaud your proposals that:

- Allow U.S. claimants holding copyrights in sound recordings and motion pictures or similar audiovisual works to record the application for copyright registration with CBP while the registration is pending before the U.S. Copyright Office.
- Allow non-U.S. claimants holding copyrights in such works to record their claims with CBP regardless of whether they have registered their copyrights with the U.S. Copyright Office at the time of recordation.
- Remove provisions that required CBP to provide notice to the importer in cases involving imported goods suspected of being piratical.
- Allow CBP to detain, for up to 30 days, sound recordings and motion pictures or similar audiovisual works prior to registration with the U.S. Copyright Office when CBP has reasonable suspicion to believe that they constitute piratical copies.
- Allow port directors, at their discretion, to waive the requirement that copyright owners furnish a bond when seeking to obtain a sample from a detained shipment where the value of the sample is less than \$50.00.
- Disclose to the copyright owner, when a shipment of goods is seized, information from available shipping documents (e.g., manifests, air waybills, and bills of lading), including mode or method of shipping (e.g., airline carrier and flight number) and the intended final destination of the merchandise.

### **Comments on CBP Proposals—Additions Requested by the U.S. Chamber of Commerce**

While we expect that implementation of the proposed changes will improve our country's ability to prevent the importation of piratical copyrighted materials, we would also like to remind CBP that addressing the importation of counterfeit goods is also critically important to our nation's competitiveness and safety. As you are aware, such goods can, in some instances, pose a threat to the public—counterfeit pharmaceuticals, health care products, and mechanical parts are examples of this threat.

Therefore, we encourage CBP to develop proposals that would affect the manner in which it deals with counterfeit or gray market goods on the trademark side. Such proposals could simply be alterations of proposed changes to the copyright regulations. For example:

- *Provisions on disclosure of information regarding seized shipments:* In our view, the provisions concerning the disclosure of information regarding seized shipments could be revised so that trademarks are also covered. Specifically, we suggest that CBP alter this section to read “information from available shipping documents (such as manifests, air waybills, and bills of lading), including mode or method of shipping (such as airline carrier and flight number) and the intended final destination of the merchandise.” This type of information is just as critical for trademark owners as it is for copyright owners in attempting to track down the source and the final destination of illegitimate goods.
- *Bond requirement waiver:* Similarly, the ability of a port director to waive the bond requirement for samples valued at less than \$50.00 could be applied equally in the trademark portion of the regulations.
- *Detention of suspected goods:* The proposed regulations provide CBP with explicit authority to detain suspected piratical goods for up to 30 days, even though there is no underlying copyright registration or recordation on file. There is no such explicit authority contained in the trademark provisions. Rather, it appears (although the actual practices of CBP may be otherwise) that CBP's authority to seize counterfeit goods is limited to only those goods whose trademarks have been recorded. Consideration should be given to granting equal authority to act with respect to suspected counterfeit goods if possible.

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**Conclusion**

Overall, the proposed amendments to the CBP regulations are welcome changes in that they give CBP greater tools to combat the problems of international piracy. We encourage you, however, to modify the regulations so that they apply equally to trademarks in the three areas outlined on page three of these comments.

In the event that such modifications are not feasible within the current proposed rule, or would unduly delay promulgation of a final rule, we recommend that you address this proposal at the earliest opportunity. By doing so, CBP's authority to stop suspected illegitimate goods would be greatly enhanced.

Respectfully,

A handwritten signature in black ink that reads "Andrew Howell". The signature is written in a cursive, slightly slanted style.

Andrew P. Howell