

## **Process for Protecting your Trade Marks and Intellectual Property**

### **1. Registration with Customs**

Companies, who wish to register their trade marks with Customs, need to carefully choose which T/M's to register. Literally thousands of T/M's are registered with Customs so it is important to select only those that are likely to be copied or will have the greatest impact on your business if they are copied.

Secondly, a company needs to complete the Notice of Objection (discussed in the *"Trade Mark Registrations, Intellectual Property and Anti Counterfeiting Practice"* document) and submit it with the relevant details to Australian Customs. A Notice of Objection pro forma can be downloaded from [www.customs.gov.au](http://www.customs.gov.au) "Media Publications and Forms" – Forms. Download forms 1205, 1206 and 1207. Forms 1206 and 1207 provide notice for the Cash or Documentary security of AUD\$10,000.

### **2. Information and Education Pack for Customs**

For best results Companies registering their trade marks with Customs for border control, should compile an extensive Information pack on their company, their registered trade marks, photos of products covered under the trade mark and live examples of counterfeit or copied product. This pack should be distributed to the Customs office in each state either in person or via mail. It should be updated every 6 months and re-distributed.

In person seminars have been most beneficial and can be done in conjunction with other brands, in fact this is encouraged.

### **3. Process if Customs makes a Seizure**

Please note, it is imperative that a company who registers their T/M's with Customs have an automated and/or an efficient process set up and in place before the first notification of a seizure from Customs is sent. This may involve designating internal resources to manage or "own" the process, or may involve contracting external parties such as private investigators or legal firms to manage the process on behalf of the T/M owner.

- Customs identifies counterfeit product and seizes product
- Customs notify the delegated "owner" of the product (as stipulated on the Notice of Objection) – usually the T/M owner. Customs will often send electronic pictures of the product seized and ask for clarification.
- If T/M owner agrees the product is counterfeit a letter from Customs "Notice of Consent to Forfeit" is given to the importer.
- Importer can sign and return the goods, or do nothing
- T/M owner gets a "Notice of Seizure to Objector". This is when the "official process" commences.
- Usually the importer is sent an official letter from a third party, acting on behalf of the T/M owner explaining their actions and breach of the T/M Act etc
  
- If after 10 days the Importer has not agreed to forfeit the goods, the T/M owner/Objector seeks a further 10 day extension from Customs. If after 20 days Importer has not agreed to forfeit goods, the T/M owner/Objector should commence legal proceedings.
- If T/M owner/Objector does nothing, Customs releases the goods and gets very annoyed with the T/M owner.
- If Importer releases ownership of the goods, Customs treat the goods as "abandoned" stock.

**If you are serious about fighting counterfeiters and illegal importers, you get involved; if you are not serious do not go to this trouble. Customs already have enough work on their hands and will not tolerate non action by T/M owners.**



#### 4. Probable costs “to get involved”

- \$2,000 to register your trademarks with IP Australia ([www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)) if not already registered. You may need to get a license from your parent company to register in Australia
- \$10,000 security bond from the bank or cash to lodge “Notice of Objection” with Customs, which is enforced for 2 year period
- If legal proceedings take place at any stage, costs will be incurred
- Contracting a third party to follow-up on seizures to determine origin of goods and points of manufacture that could lead to closure of factory
- Costs of developing the Information Pack and then costs for presenting to Customs in each state

#### 5. Contacts

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