

Trade Mark Registrations, Intellectual Property and Anti Counterfeiting Practice

1. What is Intellectual Property?

Intellectual property, often know as IP, is defined as creations of the mind that can be protected by law once they take a tangible form. Import provisions under the *Copyright Act 1968*, *Trade Marks Act 1995* and *Olympic Insignia Protection Act 1987* allow Customs, under certain circumstances, to seize goods that infringe trade marks, copyright and protect Olympic expressions.

2. Why Protect Intellectual Property?

If you are the owner of a trade mark, a copyright work or licensed user of Olympic Insignia, protecting your IP through the border measures available will allow Customs to seize goods that infringe your IP rights when they are imported. The decision to protecting intellectual property is one that each rights owner must make based on the damage to the trade and reputation that the rights owner considers may result from infringing goods.

3. What can I do to protect Intellectual Property

To protect trade marks, copyright material or protected Olympic expressions from counterfeit, pirated or unauthorised importation, the owner, or in some cases an authorised user, must have a Notice of Objection in place with Customs.

4. What is a Notice of Objection

A Notice of Objection is a legal document that allows Customs to seize imported goods that infringe trade marks, copyright or Olympic Insignia. Forms can be downloaded from www.customs.com.au "Media Publications and Forms" – Forms. Download forms 1205, 1206, 1207.

A Notice of Objection under the Trade Marks Act or Copyright Act is valid for two years, and four years under the Olympic Insignia Protection Act. These Notices may be re-lodged to ensure ongoing protection. If the Notice is no longer required, the owner may withdraw it at any time. Separate notices are required for trade marks, copyright and Olympic Insignia.

It is important to note that a Notice of Objection only protect goods which are imported into Australia, not services.

The power of Customs is restricted to seizing infringing goods that are subject to the control of Customs and are covered by a Notice of Objection. A Notice of Objection cannot act retrospectively for goods that have already been imported.

5. How do I lodge a Notice of Objection

To lodge or re-lodge a Notice of Objection, the following documentation needs to be provided to Customs:

- A Notice of Objection form that advises the name of the intellectual property owner or authorised user and the trade marks, works where the copyright is claimed, or Olympic expressions to be protected.
- Details of each trade mark (available from www.ipaustralia.gov.au), the copyright claim, or the Olympic expressions for which coverage is required.
- A security in the form of a guarantee from an approved financial institution (documentary security) or a cheque (cash security). The security is required to reimburse the Commonwealth for costs associated with the seizure and disposal of infringing goods. Any unused portion of the security is returned when the notice is no longer in place.
- Authorised users of licensees will also need documentation to demonstrate that they are eligible to lodge a Notice.



6. What happens when Customs seizes goods?

Where a Notice of Objection is in place and Customs seizes importations that infringe IP, the seized goods are held for 10 working days. In this period:

- The objector will commence legal actions, or
- The objector will consent to the release of the goods, or
- The importer will voluntarily forfeit the goods, provided civil action has not commenced

If the rights owner does not commence legal proceedings within 10 working days of receiving the notification of seizure, or within 20 working days if Customs has agreed to extend the period, Customs must release the goods unless the importer has voluntarily forfeited them. This is subject to all other legislative requirements being met.

At the conclusion of any legal action, the court will make an order about the goods – for example, forfeiture of infringing goods to the Commonwealth. Customs disposes of forfeited goods under instruction from the court, by destruction or donation to a charity, as appropriate.

Not every consignment of goods entering Australia presents a risk in terms of the border controls that Customs administers. Customs encourages trade mark, copyright and Olympic Insignia rights owners and the public to provide information that will assist Customs to identify and intercept suspected infringing goods.

Further information can be obtained by emailing information@customs.gov.au or phone Customs Information on 1300 363 263.

Otherwise contact the Australian Sporting Goods Association's Office on (03) 9263 5394.