

By email: assistantminister@immi.gov.au

Senator Michaelia Cash
Assistant Minister for Immigration
and Border Protection
PO Box 6100
Parliament House
Canberra ACT 2600



Dear Minister Cash,

Briefing Paper: Anti-Counterfeiting

1 Formation of the Anti-Counterfeiting Project

As you are aware, counterfeiting is a significant problem that affects brand owners, suppliers, retailers and consumers across all industries in Australia.

Although the negative impact of counterfeiting is well-known, Australia's anti-counterfeiting laws have not kept pace with the various methods employed by counterfeiters. Indeed, in spite of hard work by customs officers and other enforcers, the flow of counterfeit products into Australia, and their sale in our markets, continues unabated.

In order to address this, the Australian Retailers' Association (**ARA**), the Australian Sporting Goods Association (**ASGA**) and Corrs Chambers Westgarth (**Corrs**) have commenced the Anti-Counterfeiting Project (**Project**) which is aimed at achieving law reform in the Government's approach to counterfeit products.

2 Key objectives

We set out below the Project's key objectives for law reform. Each of these objectives is supported by a broad range of brand owners, suppliers and retailers in Australia.

- 1 Improved border control measures to identify and stop the importation of counterfeits, designed to increase the efficiency of the process while simultaneously providing potential costs savings.
- 2 Measures to deter the individual importation of counterfeit products including:
 - a. the removal of the "personal use" exemption for importation of counterfeit products under the *Trade Marks Act 1995* (Cth); and
 - b. the institution of a "no counterfeits" declaration on passenger arrival cards used for entry into Australia;
- 3 Increased public awareness of the impact of counterfeit products via public campaigns.
- 4 Clarification of the statutory provisions that facilitate private prosecution for criminal cases involving counterfeit products. This would simply involve insertion of an avoidance of doubt provision in the *Trade Marks Act 1995* (Cth).

3 Supporting data

We **attach** the following data that support our concerns of the level of counterfeit activity and the limited action taken in respect of counterfeit activity.

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Annexure 1: Data taken from 10 of Corrs' clients which show the number of seizures versus the total number of products seized by Customs from 2005 until 2013. The data is presented as an aggregated graph (for all 10 companies) and as individual graphs (showing each of the 10 companies separately).

Annexure 2: US Department of Homeland Security statistics showing the increase in counterfeit seizures in the United States. While obviously not directly applicable to the Australian situation, it does paint a picture of global trends.

Annexure 3: European Union report about the numbers of counterfeit seizures at the European border.

Annexure 4: Summary of the Australian counterfeit market – data and images supplied by Nike.

Annexure 5: Statistical overview of counterfeit Nike products in the Australian market.

Annexure 6: (Not attached) The Choice Report on Counterfeits published in 2013, which discusses the prevalence, affect and origins of counterfeit products in Australia. This report is only available online at <http://www.choice.com.au/reviews-and-tests/money/shopping-and-legal/shopping/counterfeit-goods.aspx>

4 Round Table

We would welcome any invitation to convene a round table discussion to address the key objectives outlined above. We believe the best way forward, in the short-term, is to bring all the affected organisations together so we can provide the best advice possible to the Minister.

Yours sincerely



Shannon Walker (on behalf of ASGA, ARA and Corrs Chambers Westgarth).
Executive Director
Australian Sporting Goods Association Inc.
Ph: 03 9320 2655
Email: shannon@asga.com.au