

Don't become a victim – protect your intellectual property



Counterfeiting and piracy costs intellectual property (IP) owners across the globe billions of dollars annually. MICHELLE DON PAUL highlights the recent changes to IP laws that aim to strengthen Australia's anti-counterfeiting efforts and provide greater protection for IP owners.

Whether you are a small business owner or large international company, you will appreciate that getting a product on to market takes a lot of time, money and hard work. Unfortunately, counterfeiters often hit the market with “knock-off” goods, trading in on your success, depriving you of significant income and profits and destroying your brand name and reputation.

HOW CAN YOU STOP COUNTERFEIT GOODS?

For Australian IP owners, a simple and cost-effective procedure is available under the Trade Marks Act and Copyright Act, to tackle counterfeit goods that infringe intellectual property rights before they enter the Australian market. This involves working with the Australian Customs Service to seize infringing goods upon importation.

To initiate this procedure, a Notice of Objection can be lodged with Customs by a trade mark or copyright owner (or in some cases an authorised user or licensee) objecting to the importation of:

- Goods that have a trade mark applied to them which is substantially identical with or deceptively similar to a registered trade mark nominated in the Notice of Objection; and/or
- Copies of nominated copyright material, if those copies would have constituted an infringement of copyright if the copies had been made in Australia by the importer.

The recent IP law changes will hopefully result in increased forfeiture of counterfeit goods and decreased enforcement costs, as IP owners will often not need to do anything to ensure counterfeit goods never reach the market.

The Notice of Objection allows Customs to seize potentially infringing goods that are intended for commercial purpose and hold the goods for a limited period of time. Customs will then send a Notice of Seizure to the rights-holder and importer. The Notice of Objection is valid for four years (and can be re-lodged) to provide an ongoing, practical and effective means of preventing infringing goods from entering Australia.

GREATER PROTECTION FOR IP OWNERS

The Intellectual Property Laws Amendment (Raising the Bar) Act 2012, made some significant changes to the Customs seizure process to benefit IP owners.

1. The importer must claim seized goods, otherwise they are automatically forfeited to Customs. An importer of the seized goods now bears the burden of making a claim to Customs to release their seized goods. If no claim is made within a certain time period, the goods will be forfeited and disposed of.
2. More information for IP owners about the

importers and exporters of seized shipments. Customs can now provide IP Owners with additional information about a seized shipment, including:

- the name and address of persons who arranged importation (i.e. the consignor or supplier of the goods);
- any other personal information that could help identify the exporter; and
- any identifying information about the importer contained in any claim form lodged with Customs for release of the seized goods.

3. Access for IP owners to inspect the seized goods. IP owners will now be permitted to have access to seized goods and remove some samples for inspection to find out whether the goods infringe their trade mark or copyright.

The recent IP law changes will hopefully result in increased forfeiture of counterfeit goods and decreased enforcement costs, as IP owners will often not need to do anything to ensure counterfeit goods never reach the market. Don't become a victim of counterfeiting – ensure your trade mark is registered to protect your brand, reputation and investment. ■

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IP Protecting your most important business asset

Intellectual property (IP) can be the most valuable asset your business has.

Intellectual property plays an integral part in securing a leading market position and ensuring that competitors do not copy your innovations, ideas and reputation that create your competitive advantage.

Whether you have:

- a new and distinctive shape or appearance for a product to be protected by a **Design**;
- an idea or invention to be protected by a **Patent**; and/or
- a name and/or logo to be protected by a **Trade Mark**.

Adept IP takes the time to understand your business and its needs so that we can help you identify, build and protect your IP, so that you can maximize and profit from your IP and “add value” to your business.



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