

Cyndee Todgham Cherniak
PROFESSIONAL CORPORATION

Canada-U.S. Blog

LEGAL DEVELOPMENTS AFFECTING CANADA-U.S. CROSS BORDER TRADE

Get Your Intellectual Property Rights Requests For Assistance On Record At The CBSA

By Cyndee Todgham Cherniak on January 4th, 2016

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On November 2, 2015, the Canada Border Services Agency released D-Memorandum D19-4-3 “Copyright and Trade-marks”. Until recently, Canada has not had a mechanism to detain counterfeit or pirated goods at the border. On January 1, 2015, the *Combating Counterfeit Product Act* (“CCPA”), which amended sections of the *Copyright Act* and *Trade-marks Act* came into effect – and a new border measure was created. This new D-Memo sets out the CBSA’s process so that there is increased transparency. Intellectual property rights holders should file Requests for Information with the CBSA and take advantage of this important new Canadian IPR protection mechanism.

Canada now has intellectual property rights protection measures at the border in the form of an **Request for Assistance**. What is a Request for Assistance? A Request for Assistance allows an intellectual property rights holders to formally request the assistance of the CBSA in enforcing their rights under the *Copyright Act* and/or *Trade-marks Act*. A rights holder can file a Request for Assistance (in form BSF 738) with the CBSA to cause infringing goods to be detained by the CBSA. The Request for Assistance application must include:

- (a) legal name of rights holder;
- (b) rights holder’s mailing address;
- (c) rights holder’s representative for service in Canada and their contact information, which must include a Canadian address (if applicable);
- (d) indication if the Request for Assistance pertains to a trade-mark or copyright;
- (e) trade-mark and/or copyright registration number (not mandatory for Copyright); and,
- (f) rights holder’s signature and date.

This information is required to assist allow the CBSA to determine that the applicant is the rights holder. We also recommend providing the CBSA with information to assist the CBSA in identifying the goods (in the comments section of the Form BSF 738 or in an attached document). The reality is that if the CBSA is provided with the minimum information, they might not be able to act in a meaningful way. If the CBSA is provided with detailed information, they may be successful in finding infringing goods. For example, if USCBP has detained counterfeit goods shipped from Shenzhen,

China that information will be useful to the CBSA.

The Request for Assistance application can be emailed (cbsa-asfc_ipr-dpi@cbsa-asfc.gc.ca) or mailed to:

Canada Border Services Agency
Commercial Registration (HQ)
191 Laurier Avenue West, 12th Floor
Ottawa, ON K1A 0L8

If the CBSA accepts a Request for Assistance, it is valid for two years beginning on the day the RFA is accepted by the CBSA. The validity period may be extended for additional two-year periods at the request of the RH. It is up to the RH to ensure that their request for renewal is submitted to the CBSA before the current RFA expires.

The CBSA may, as a condition of accepting a RFA or of extending a RFA's period of validity, require that the RH furnish security, in an amount and form fixed by the CBSA, for the payment of an amount for which the RH becomes liable for the storage and handling charges and, if applicable, for the charges for destroying suspected counterfeit and/or pirated goods detained on their behalf.

The Request for Assistance is the **first step in the process**. If suspected counterfeit goods are intercepted by the CBSA, the rights holder who filed a Request for Assistance will be notified and given the opportunity to take appropriate action. Once the CBSA identifies potentially infringing goods during an examination of commercial goods, the CBSA will detain the goods and notify the rights holder on record. The CBSA will contact the rights holder and provided information so that the rights holder can determine if they wish to pursue a remedy under the *Copyright Act* or the *Trade-marks Act*. The rights holder will be given three (3) business days to advise the CBSA, via email, if they wish to pursue remedy or not. If the rights holder does not notify the CBSA within three (3) business days or they notify the CBSA that they will not be pursuing remedy under the *Copyright Act* or the *Trade-marks Act*, provided the suspected counterfeit and/or pirated goods meet all other import requirements they will be released.

If the rights holder notifies the CBSA that they will be pursuing a legal remedy, the goods will continue to be detained in order to give the rights holder time to commence court proceedings. The process for pursuing legal rights in Court will be discussed in a subsequent blog article.

Tags: Canada Border Services Agency, CBSA, copyright, Requests for Assistance, Trade-Marks

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Cyndee Todgham Cherniak
c/o LexSage Professional Corporation
The Gooderham "Flatiron" Building, 49 Wellington Street East, Suite 501
Toronto, Ontario
M5E 1C9
Phone: 416-307-4168
Fax: 416-760-8999

Susan Kohn Ross
c/o Mitchell Silberberg & Knupp LLP
11377 W. Olympic Boulevard
Los Angeles, California
90064
Phone: 310-312-3206
Fax: 310-231-8406

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