

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 133

RIN 1515-AC10

[T.D. 97-91]

**Anticounterfeiting Consumer Protection Act: Disposition of Merchandise Bearing Counterfeit American Trademarks; Civil Penalties**

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations.

**SUMMARY:** This document amends the Customs Regulations on an interim basis to implement two statutory changes contained in the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) enacted by Congress to protect consumers and American businesses from counterfeit copyrighted and trademarked products. In general, the amendments made by the ACPA are designed to help Customs fight counterfeiting more effectively by enhancing its information base to interdict illicit shipments of trademarked merchandise, by strengthening the civil remedies available to intellectual property owners harmed by counterfeiting, and by providing the government with additional tools to address intellectual property violations. The provisions of the ACPA addressed in this document concern the government disposition of merchandise bearing counterfeit American trademarks, and the imposition of civil penalties on any person who directs, assists financially or otherwise, or aids and abets the importation of counterfeit goods.

**DATES:** Interim rule effective November 17, 1997; comments must be submitted by January 16, 1998.

**ADDRESSES:** Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

For Entry Questions—Jerry Laderberg, Entry and Carrier Rulings Branch, (202) 927-2320, Office of Regulations and Rulings;

For Penalties and Other Legal Questions—Charles Ressin, Penalties

Branch, (202) 927-2344, or John Atwood, Intellectual Property Rights Branch, (202) 927-2330, Office of Regulations and Rulings.

**SUPPLEMENTARY INFORMATION:****Background**

Finding that counterfeit products cost American businesses an estimated \$200 billion each year worldwide, Congress enacted the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) to make sure that Federal law adequately addresses the scope and sophistication of modern counterfeiting. See, S. Rpt. No. 177, 104th Cong., 1st Sess. (1995), *reprinted in* (1996) 6 U.S.C.C.&A.N. 1074. On July 2, 1996, the President signed the ACPA into law (Pub. L. 104-153, 110 Stat. 1386). The ACPA was designed to provide important weapons against counterfeiters in four principal areas. First, it increases criminal penalties for counterfeiting and allows law enforcement to fight counterfeiters at the organizational level by making trafficking in counterfeit goods or services an offense under the Racketeer Influenced and Corrupt Organizations (RICO) Act, by providing increased imprisonment terms, criminal fines, and asset forfeiture against those involved in criminal counterfeiting enterprises. Second, the legislation enhances law enforcement's ability to fight counterfeiting more effectively by increasing the involvement of all levels of law enforcement and expanding their power to seize counterfeit goods and the tools of the counterfeit trade. Third, the legislation helps stem the flow of counterfeit goods by making it easier to find imported counterfeit goods and making it more difficult for seized goods to reenter the stream of commerce. Lastly, the ACPA, in part, strengthens the hand of businesses harmed by counterfeiters by updating existing statutes and providing additional civil penalties and remedies against counterfeiters.

Section 14 of the ACPA directs the Secretary of the Treasury to prescribe such regulations or amendments to existing regulations as may be necessary to implement and enforce particular provisions of the ACPA. Accordingly, Customs will amend its regulations as a result of the enactment of sections 8, 9, 10, 11, and 12 of the ACPA, and these changes will be implemented in several **Federal Register** documents. This document concerns sections 9 and 10 of the ACPA.

Section 9 of the ACPA pertains to government disposition of merchandise

bearing American trademark information and amends section 526(e) of the Tariff Act of 1930, as amended, (19 U.S.C. 1526(e)) to ensure that counterfeits of American products are routinely destroyed, unless there is no public safety risk and the trademark owner agrees to some other disposition of the merchandise. Thus, section 9 of the ACPA makes the destruction of forfeited counterfeit merchandise the general rule, which is necessary to ensure that counterfeited merchandise is not returned to the violator who could simply redistribute the counterfeit goods. The provisions of section 526(e) are provided for, in part, at § 133.52(c) of the Customs Regulations (19 CFR 133.52(c)), which is amended by revising the introductory text of paragraph (c) and the texts of paragraphs (c)(1) through (c)(3), and removing the provisions of paragraph (c)(4).

Section 10 of the ACPA pertains to civil penalties and further amends section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) by adding a new subsection (f). New subsection (f) provides for civil fines on persons involved in the importation of merchandise bearing a counterfeit American trademark and are in addition to any other civil or criminal penalty or other remedy authorized by law. The fine may be imposed on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized pursuant to 19 U.S.C. 1526(e). For the first seizure, the fine imposed can be an amount up to the value of the merchandise as if it were genuine, based on the manufacturer's suggested retail price (MSRP). For subsequent seizures, the fine imposed can be an amount up to twice the value of the merchandise as if it were genuine, based on the MSRP. This provision has two primary purposes. First, it will provide a deterrent to counterfeiting in cases in which resources are not available to bring a criminal case. Second, it makes penalties related to imported counterfeit products at least as stringent as those penalties applied to counterfeits made in this country. For the purposes of mitigation of these civil fines, Customs has decided to apply the guidelines for remission contained in the Appendix of Customs Directive 4400-07 (January 26, 1988). As there are currently no Customs Regulations that provide for civil fines for those involved in the

importation of counterfeit trademark goods, a new § 133.25 is created to implement the provisions of section 526(f).

#### Comments

Before adopting these interim regulatory amendments as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd floor, Washington, DC.

#### Inapplicability of Notice and Public Comment, Delayed Effective Date Requirement, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to 5 U.S.C. 553(b)(B), it has been determined that it would be contrary to the public interest to issue this rule with notice and public procedures because the rule implements statutory provisions enacted to protect trademark owners and the public from imported merchandise bearing a counterfeit American trademark. For this reason, and pursuant to 5 U.S.C. 553(d)(3), good cause exists to make this rule effective immediately without a 30-day delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

#### List of Subjects in 19 CFR Part 133

Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks, Trade names, Unfair competition.

#### Amendments to the Regulations

For the reasons stated above, part 133 of the Customs Regulations (19 CFR part 133), is amended on an interim basis as set forth below:

#### PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 continues to read as follows:

**Authority:** 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

\* \* \* \* \*

2. A new § 133.25 is added to read as follows:

#### § 133.25 Civil fines for those involved in the importation of counterfeit trademark goods.

In addition to any other penalty or remedy authorized by law, Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit American trademark as follows:

(a) *First violation.* For the first seizure of such merchandise, the fine imposed shall not be more than the domestic value of the merchandise, (see, § 162.43(a) of this chapter), as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure.

(b) *Second and subsequent violations.* For the second and any subsequent seizure of such merchandise, the fine imposed shall not be more than twice the value of the merchandise as if it had been genuine, as determined by the manufacturer's suggested retail price of the merchandise at the time of seizure.

3. Section 133.52 is amended by revising paragraph (c) as follows:

#### § 133.52 Disposition of forfeited merchandise.

\* \* \* \* \*

(c) *Articles bearing a counterfeit trademark.* Merchandise forfeited for violation of the trademark laws shall be destroyed, unless it is determined that the merchandise is not unsafe or a hazard to health and the Commissioner of Customs or his designee has the written consent of the U.S. trademark owner, in which case the Commissioner of Customs or his designee may dispose of the merchandise, after obliteration of the trademark, where feasible, by:

(1) Delivery to any Federal, State, or local government agency that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(2) Gift to any charitable institution that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(3) Sale at public auction, if more than 90 days has passed since the forfeiture and Customs has determined that no need for the merchandise has been

established under paragraph (c)(1) or (c)(2) of this section.

**George J. Weise,**

*Commissioner of Customs.*

Approved: July 3, 1997.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

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#### DEPARTMENT OF THE TREASURY

#### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 47

[T.D. ATF-393; 97-455]

RIN: 1512-AB62

#### Removal of Restrictions on Importation of Defense Articles From Specified New Independent States of the Former Soviet Union and Yugoslavia and To Amend the Term "Military Firearms and Ammunition"

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Final rule (Treasury decision).

**SUMMARY:** This final rule removes the following States of the former Soviet Union from the list of countries from which the import of defense articles into the United States is proscribed: Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Turkmenistan, Ukraine, and Uzbekistan. The rule also restricts the importation of certain firearms and ammunition located or manufactured in any of the above countries or previously manufactured in the Soviet Union to conform to limitations contained in an agreement between the United States and the Russian Federation and in accordance with advice from the Department of State. The final rule specifies the firearms that are allowed to be imported from these countries as well as ammunition that may not be imported from these countries. The final rule also revises the list of proscribed countries to reflect the lifting of the embargo on importation of defense articles and defense services from the states of the former Yugoslavia, except for Serbia and Montenegro. Finally, the regulations are being revised to require applications to import parts of military firearms or ammunition of United States manufacture to be submitted with statements certifying that the parts were not furnished to a foreign government under a foreign assistance or sales program of the United States.