

INTERNATIONAL TRADE

CANADA ACTS TO PREVENT IMPORTATION OF COUNTERFEIT GOODS INTO CANADA

by Brenda C. Swick and Eric D. Lavers

Canada has introduced enhanced border control measures to prevent counterfeit and copyright-infringing goods from being imported into and exported from Canada. Under the previous regime, a rights-holder had to obtain a court order to prevent the importation of counterfeit and copyright-infringing goods. The new rules provide the Canada Border Services Agency (CBSA) with the authority to detain suspected counterfeit and copyright infringing goods, while allowing the rights-holder time to pursue civil remedies.

DW's trade and intellectual property lawyers are able to assist rights-holders with taking the necessary action under the Canadian registration system to protect and enforce their interests.

Key Features of Canadian System

The new measures strictly prohibit importing or exporting counterfeit and copyright-infringing goods. Two important features of the Canadian regime are: (i) CBSA officers now have the authority to detain goods they suspect are counterfeit or copyright-infringing; and (ii) the establishment of a "request for assistance" (RFA) process to allow the CBSA to disclose information and samples of detained goods to a rights-holder. This detention and disclosure by the CBSA will assist rights-holders in obtaining relief including through legal action in the courts under the *Copyright Act* and *Trade-Marks Act*. However, to participate in this process, a rights-holder must apply for an RFA from the Canadian authorities prior to the importation or exportation of potentially counterfeit or copyright-infringing goods. The RFA will identify the registered trademarks or copyrights held by the applicant and must be renewed every two years.

Taking Action Within the 10-day Notification Window

Once an RFA is in place, CBSA may detain suspected counterfeit or copyright-infringing goods for 10 days from the date the rights-holder is notified of the detention. If within that 10 days, the rights-holder provides the CBSA with evidence that it has initiated enforcement proceedings in the courts to obtain relief under either the Copyright Act or the Trade-Marks Act, the goods will then be detained until the rights-holder's claim for relief is resolved or until a court orders their release. If no proceeding is commenced, the detained goods will be released at the end of the 10-day hold period. The rights-holder may also in some cases extend the hold period to 20 days upon request.

There is currently no fee for filing an RFA. However, rights-holders will be held responsible for the costs associated with the storage and handling of detained goods, and any eventual destruction. Security to cover these costs can also be required.

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