



सत्यमेव जयते

INDIA

IPR CUSTOM & BORDER PROTECTION



ALTACIT GLOBAL

Creative Enclave, III Floor, 148-150 Luz Church Road,
Mylapore, Chennai, India - 600 004.
Tel. +91 44 24984821 Tele-Fax: +91 44 42104341
Email ip@altacit.com Website: www.altacit.com

CONTENTS

DEVELOPMENTS	3
INTELLECTUAL PROPERTY COVERED UNDER THE IPR RULES, 2007	4
PROCEDURE FOR REGISTRATION	5
GEOGRAPHICAL COVERAGE	6
FORMAT OF NOTICES	7
EXCLUSION & LIMITATIONS	8
PROCEDURE AT THE TIME OF SUSPENSION OF GOODS	9
DISPOSAL OF INFRINGING GOODS	10
ABOUT US	11
ABOUT THIS PUBLICATION	12

DEVELOPMENTS

National Customs & Border protection are the first line of defense against the cross-border movements of counterfeits and pirated goods infringing intellectual property rights. Effective protection would help curtail the quantities of counterfeit goods circulating in international trade. Import of goods that infringe intellectual property into India is prohibited under the Customs Act, 1962. In view of the same, the government of India in 2007 had notified the 'Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007' [IPR Rules 2007] with a view to strengthen the statutory and executive guidelines provided for the protection of intellectual property rights at the borders. This was based on model legislation drafted by the Geneva based World Customs Organization. The IPR Rules, 2007, empowers the Custom Authorities to deal with counterfeit and pirated goods at its borders. The rules came into force on 8th May, 2007, the date it was published in the Official Gazette.

Further to the enactment of the IPR Rules 2007, The Central Board of Excise and Customs (CBEC) has implemented an IPR Module to facilitate right holders to file IPR notices which was notified to the general public vide CBEC Circular No. 41/2007-Customs, dated 29th October, 2007. The registration imposes an administrative duty on the Custom Department to protect the right-holder against violation of his IPR rights.

The IPR Rules 2007 relates to imported goods which infringe upon intellectual property rights. Infringing goods are defined as *"goods which are made, reproduced, put into circulation or otherwise used in breach of the intellectual property laws in India or outside India and without the consent of the right holder or a person duly authorized to do so by the right holder"*

INTELLECTUAL PROPERTY COVERED UNDER THE IPR RULES, 2007

The IPR Rules 2007 permits the right holders of the below mentioned intellectual property to record their rights under Indian Customs Act, 1962:

- a. Trade Mark
- b. Copyright
- c. Patent
- d. Design
- e. Geographical Indication

The IPR Rules of 2007 set out the following definitions for the functioning of the rules:

"Intellectual Property" means a copyright as defined in the Indian Copyright Act, 1957, trade mark as defined in the Indian Trade Marks Act, 1999, patent as defined in the Indian Patents Act, 1970, design as defined in the Indian Designs Act, 2000 and geographical indications as defined in the Indian Geographical Indications of Goods (Registration and Protection) Act, 1999;

"Right Holder" means a natural person or a legal entity, which according to the laws in force is to be regarded as the owner of protected intellectual property right, its successors in title, or its duly authorized exclusive licensee as well as an individual, a corporation or an association authorized by any of the aforesaid persons to protect its rights.

"Intellectual Property Law" means the Copyright Act, 1957, the Trade Marks Act, 1999, the Patents Act, 1970, the Designs Act, 2000 or the Geographical Indications of Goods (Registration and Protection) Act, 1999;

PROCEDURE FOR REGISTRATION

Notice by the Right holder

1. Right holder has to give a written notice to the Commissioner of Customs at the port of import of goods infringing IPR requesting him to suspend the clearance of such goods.
2. Documents to be attached with the notice:
 - a. Proof of existence and ownership of valid IPR;
 - b. Authorization letter from the right holder;
3. All information's required in the notice are to be furnished within 15 days.
4. Right holder is under obligation to inform customs authority when he ceases to be the right holder or when his intellectual property ceases to be valid.

Registration of Notice

1. Notice is either registered or rejected within 30 days.
2. Validity of registration of the notice is minimum one year from the date of registration.

Conditions for registration

The grant of registration is subject to following conditions:

1. The right holder or his authorized representative would be required to execute a bond with the Commissioner of Customs for such amount with such surety and security as deemed appropriate by the Commissioner, undertaking to protect the importer, consignee and the owner of the goods and the competent authorities against all liabilities and to bear the costs towards destruction, demurrage and detention charges incurred till the time of destruction or disposal, as the case may be;
2. The right holder shall execute an indemnity bond with the Commissioner of Customs indemnifying the Customs authorities against all liabilities and expenses on account of suspension of the release of allegedly infringing goods.

GEOGRAPHICAL COVERAGE

Registration can be electronically and would cover the following regions:

1. Ahmadabad Air Cargo
2. Bengaluru Air Cargo
3. CFS Mulund
4. CFS Patparganj
5. Chennai Air Cargo
6. Chennai Customs House
7. Cochin Customs House
8. Delhi Air Cargo
9. Goa Customs House
10. Hyderabad Air Cargo
11. ICD Ballabgarh
12. ICD Ludhiana
13. ICD Pitampur
14. ICD Sabarmati
15. ICD Tughlakabab
16. ICD Tuticorin
17. ICD Whitefield
18. Jaipur Air Cargo
19. Kakinada Customs House
20. Kandla Customs House
21. Kolkatta Air Cargo
22. Kolkata Customs House
23. LCS Petrapole
24. LCS Raxaul
25. Mangalore Customs House
26. Mumbai Air Cargo
27. Mumbai Customs House
28. Mundra Customs House
29. Nhava Shera Customs House
30. Trivandrum Air Cargo
31. Tuticorin Customs House
32. Visakhapatnam Customs House

FORMAT OF NOTICES

ANNEXURE

(see sub-rule(2) of rule 3)

Format for notice in respect of goods infringing intellectual property rights under Intellectual Property Rights(Imported Goods) Enforcement Rules , 2007

1. Name of the Applicant:
2. Contact Details of the applicant:
 - (A) Office address:
 - (B) Residence address
 - (C) E-mail address
 - (D) IEC No
3. Applicant's Telephone numbers(including mobile number)
4. Name and contact details of authorized representative of the right holder.
(please attach authorization from the right holder)
5. Proof of the existence and ownership of a valid intellectual property right by the right holder
6. A statement of the grounds for the notice of suspension of release of the goods allegedly infringing intellectual property rights
7. In the case of a specific consignment of goods allegedly infringing intellectual property rights, details of the consignment and a statement of the ground for the notice including prima facie evidence of infringement
8. Detailed description of the goods with Customs Tariff Heading in respect of which an intellectual property right applies, together with a sample, model or photograph of a genuine product
9. Name of customs airport/ customs port/land customs station to be covered

I/We declare that the particulars furnished above are true to the best of my/our knowledge and the documents enclosed herewith are genuine.

Signature of the right holder or his authorized representative
Office Seal

Place:

Date:

[F.No305/96/2004-FTT(part-I)]

(S.P.RAO)

Under Secretary to the Government of India

EXCLUSION & LIMITATIONS

Exclusion

Excluded from the purview of the IPR Rules 2007 are baggage and De-minimis Imports. Wherein goods of a non-commercial nature contained in personal baggage or sent in small consignments intended for personal use of the importer are not subject to the above Rules.

Limitations

Protection of action taken under the Rules.- Customs officers when acting in good faith and having followed the procedures set out in these Rules shall not be liable for:

1. any failure to detect goods infringing intellectual property rights,
2. the inadvertent release of such goods, and
3. any other action in respect of such goods.

PROCEDURE AT THE TIME OF SUSPENSION OF GOODS

- a. Customs Department can ex-officio suspend the clearance of the alleged counterfeit goods or on notice if the department has prima-facie evidence or reasonable grounds to believe the goods to be counterfeit.
- b. Customs Department is under duty to inform the right holder immediately about suspension of clearance of goods with the reasons for such suspension.
- c. Goods suspended of clearance, is to be released, on
 - i. Notice – within 10 days (extendable further with 10 days), when the right holder fails to join proceedings
 - ii. Department's own initiative – within 5 days, when the right holder fails to give notice or fails to fulfill the obligation of executing bond.
- d. Period of suspension of release of perishable goods is 3 days.
- e. Department is authorized to seize and confiscate the goods infringing intellectual property rights where it has reasons to believe that the goods are infringing intellectual property and thus liable to be confiscated under the Customs Act.
- f. Customs is under duty, upon request by the importer, to provide the name and address of the right-holder and other relevant information relating to the goods suspended from clearance.
- g. The right holder is under an obligation to provide customs authorities with the necessary information enabling them to identify infringing goods. The Custom authorities then seek information from the importer, of the person by whom the goods are consigned to India and the address of the person whom the goods are sent in India as well as ask him to produce documents relating to the goods.
- h. Right holder is authorized to examine the suspended goods and to provide samples for examination and analysis to determine whether the goods infringe intellectual property rights.
- i. Customs department is to provide, upon request by the right holder, name and address of the importer and other relevant information relating to the goods suspended from clearance.

DISPOSAL OF INFRINGING GOODS

Goods infringing intellectual property rights upon confiscation or seizure are destroyed or disposed by the Department after obtaining 'no objection' certificate from the right holder.

Period of raising objection by the right holder to the mode of disposal is 20 days.

Goods infringing intellectual property rights are not to be re-exported in unaltered state.

ABOUT US

Altacit Global are Strategic Consultants for Corporate, Legal and Intellectual Property (IP) matters. Two of the world's leading guides to the legal profession i.e. The Legal 500 & Chambers and Partners in 2008 have rated 'ALTACIT GLOBAL' amongst the top Intellectual Property Firms in India. Legal 500 has done so for the fourth consecutive year (2005/06, 2006/07, 2007/08 & 2008/09). We have a strong international flavor in our working practices addressing needs of individual industry groups. We continuously strive to help our clients identify and capitalize on value opportunities and business decisions. Our aim is to provide our clients a consistently high standard of service at competitive compensations ensuring a value for money. In our core team are professionals who come from multidisciplinary and diverse backgrounds such as science, engineering, law, chemical, pharmaceutical, medical and business administration.

Our firm is actively involved in all aspects of Intellectual Property be it registration, prosecution and enforcement. Our firm works with the entrepreneurs, small, medium and large Corporates, whom we help in registering and protecting their IP both in India and Internationally. Our office is situated proximately to Indian Patent Office Branch in Chennai and we would be able to help you even in cases of urgent filing.

ABOUT THIS PUBLICATION

EMBLEM ON COVER PAGE



The Emblem of India is an adaptation from the Sarnath Lion Capital of Emperor Ashoka. In the original there are four Asiatic lions, standing back to back, mounted on a circular abacus with a frieze carrying sculptures in high relief of an elephant, a galloping horse, a bull and a lion separated by intervening Dharmachakra or Ashoka Chakra wheels over a bell-shaped lotus. It was carved out of a single block of polished sandstone. The version used as the Emblem does not include the fourth lion (since it is hidden from view at the rear) or the bell-shaped lotus flower beneath. The frieze beneath the lions is shown with the Dharma Chakra in the center, a bull on the right and a galloping horse on the left, and outlines of Dharma Chakras on the extreme right and left. Forming an integral part of the Emblem is the motto inscribed below the abacus in Devanagari script: Satyameva Jayate सत्यमेव जयते (English: "Truth Alone Triumphs"). It was adopted as the National Emblem of India on 26 January 1950, the day that India became a republic.

LEGAL DISCLAIMER

The information contained in this publication is educational and intended for informational purposes only and does not constitute legal advice, nor does it substitute for legal advice. The law changes rapidly and can differ greatly, so contact us to ascertain what is the current status of applicable law and regulations. The information provided is of a general nature and may not apply to or be accurate in a particular case. Before taking any action, always check with an independent, trained and licensed attorney in the appropriate jurisdiction to ensure compliance with the law. The information is provided "as is" with no warranties of any kind, express or implied, including but not limited to: no warranty of merchantability, no warranty of fitness for a particular purpose, and no warranty of non-infringement. GBS or its attorneys do not warrant, express or implied, any information they may provide, nor are they creating an attorney-client relationship. Additionally, GBS makes no warranty, express or implied, as to the accuracy, reliability or completeness of any content. GBS disclaims all liability of any kind arising from the use of, or misuse, of the information contained and referenced herein and does not accept responsibility for accuracy or any errors or omissions. GBS further disclaims any damages whatsoever, be they special, consequential, incidental, indirect or otherwise arising from the use of any information provided herein. In no event shall GBS be liable for any loss, claim, liability, injury or damages suffered by any person for (but not limited to) negligence, breach of contract, loss of revenue, loss of business profits, business interruption, or loss of information.