

Customs and Border Protection Training: a Quick Wrap-Up

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- Trademark, Copyright + Advertising
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Members of the Dorsey Trademark, Copyright + Advertising team recently attended a presentation by U.S. Customs and Border Protection ("CBP"). CBP is the federal law enforcement branch responsible for keeping counterfeit and infringing products from crossing into the United States, including products that violate trademark and copyright protections. Here are a few of the highlights from the training:

- **This is the Way – Register Your IP:** just as registering your intellectual property with the Copyright Office and U.S. Patent and Trademark Office can provide stronger rights, recording copyright and trademark registrations with CBP can significantly increase protections for rights owners. Recording intellectual property with CBP provides them the authority to seize infringing merchandise, including gray market goods (see further below for an explanation of gray market goods). Once recorded, a rights owner may also request to conduct trainings to CBP personnel on how to best spot infringing goods at TradeSeminars@cbp.dhs.gov, submit allegations of infringement online at <https://www.cbp.gov/trade/e-allegations>, be given notice of

seized goods, and more.

- **You Only Get What You Give:** to register a trademark with the CBP, rights owners must own a registration on the Principal Register and pay the required fees. To register a copyright with the CBP, rights owners must similarly own a valid copyright registration with the U.S. Copyright Office and pay the required fees. Rights owners must also include an example of how the trademark or copyright appears on legitimate goods, as well as point of contact information. But this is the bare minimum. To get the most out of CBP protections, it is also important to provide a list of any authorized licensees/importers of goods, or the countries in which authorized goods typically originate. CBP can also use login information for product databases, product identification guides, and even sample products to compare imported goods with legitimate versions. CBP personnel regularly stressed that the more information they have, the better. So to maximize the value of trademark or copyright recordation or CBP, be sure to provide as much detail as possible.
- **When It Isn't Black and White – Gray Market Protections:** akin to finding a British pound coin in your change jar, “gray market goods” are legitimate products that originate in foreign countries, but are not meant to be imported to the U.S. There are two types: “pure” gray market goods that bear the same trademark as those sold by a U.S. entity, but which are completely unrelated to the U.S. entity; and gray market goods protected by the “*Lever*” The *Lever* Rule originates from a 1993 D.C. Circuit case that held goods that are physically and materially distinct from those sold in the U.S. qualify as infringing and can therefore be seized by CBP. For example, MARLBORO-branded cigarettes manufactured by a completely unrelated foreign company are “pure” gray market goods; pharmaceutical goods sold by a European subsidiary of a U.S. company, but which contain active ingredient concentrations not allowed under U.S. regulations, fall under the *Lever* Rule. Recording your trademarks with CBP can help protect against both of these types of gray market goods, and provide CBP with the ability to seize such goods before entering the United States.
- **Update Your Contact Details and Don't Leave Them on “Read”:** CBP officials may reach out to an intellectual property recordation's points of contact for clarification regarding whether seized merchandise is authentic or not. Usually in the form of email and accompanied by images of the goods in question, these are opportunities for rights owners to become familiar with active enforcement efforts and the types of infringing goods that CBP personnel are processing. Make sure your point of contact as recorded with the CBP is up to date by contacting IPRRQuestions@cbp.dhs.gov. Otherwise, you may be missing out on this type of correspondence. Be sure to respond quickly when CBP personnel email you about seized goods. Thorough responses are best within 24 hours (or at least, confirmation of receipt and that you will follow up with more detail soon).
- **Act Like You're Back in English Class:** remember when you were taught to write in complete sentences in school? The same applies in responding to CBP requests. When asked whether seized goods are infringing, don't provide conclusory or flippant responses. Provide enough detail so that personnel can act on what you are telling them. Example helpful responses could include “The goods are counterfeit because the stitching and overall quality of the merchandise is inferior to our authentic goods” or “The goods appear infringing because the format of the product number is wrong—it should be one letter followed by six numbers, not the other way around.” Unhelpful responses can be “These are counterfeit” or “We don't sell those.” Exhaustive detail may not be necessary, but no detail whatsoever is usually insufficient.
- **Remember International Registrations:** remember that the United States is not an island. Infringing goods come from somewhere, and if infringing merchandise is being imported into the United States, there's a chance it's also being sent elsewhere. Make sure your intellectual property protections are up to date with CBP, and do the same

for other countries in which you do business, and which have comparable enforcement agencies.