

The cooperation between Customs and Right Holders: from request to detention

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COUNTERFEIT IS A GLOBAL PHENOMENON

Globally

€460
billions

(\$ 509 bil)
equal to 3,3%
of global trade

2,5% in 2013

In the UE

€121
billions

(\$ 134 bil)
equal to 6,8%
of all importations in the UE

5% in 2013

COUNTERFEIT IS A GLOBAL PHENOMENON

The international framework of protection of IPR

WORLD TRADE
ORGANIZATION



«Agreement on Trade-Related Aspects of Intellectual property Rights» ([TRIPS](#)): the most important tool for global harmonisation of protection of IPR - including border enforcement

COUNTERFEIT IS A GLOBAL PHENOMENON

The international framework of protection of IPR

- Principles of IP Enforcement: effectiveness of measures but no new barriers
- IP enforcement at the borders:
 - application by right holders (RH)
 - suspension of the release of the goods by Customs
 - key role of the information by RH to Customs

WORLD TRADE
ORGANIZATION
TRIPS



COOPERATION

COOPERATION WITH RIGHT HOLDERS

Cooperation between Right Holders and Customs is based on information:

- On products
- On rights
- On supply chain
- On company's contact

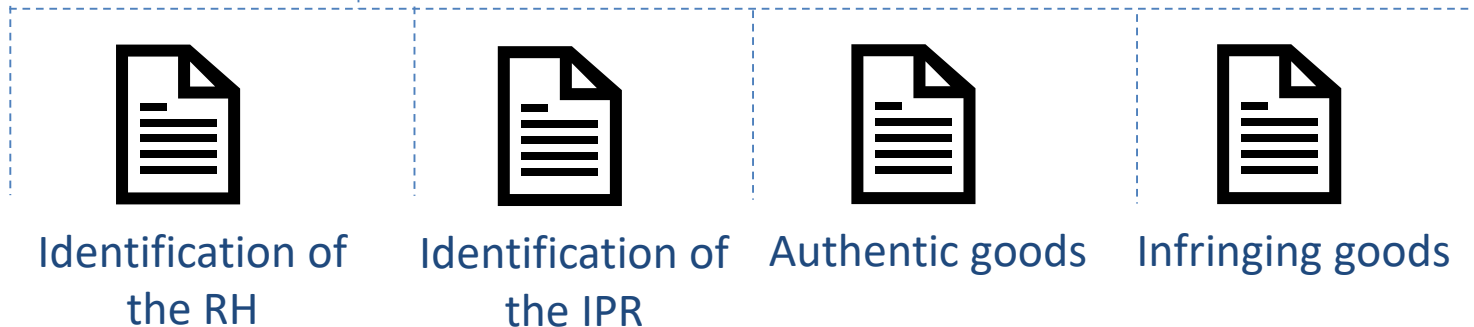


In a formal request of customs action («application for action» - AFA)

THE APPLICATION FOR CUSTOMS ACTION

A structured data set for information sharing with Customs

- the EU AFA model



- the more detailed the better

INFORMATION TO BE SHARED IN THE APPLICATION

Identification of the Right Holder [1/2]:

- identification of the applicant

EUROPEAN UNION — APPLICATION FOR ACTION

1	1. Applicant
CUSTOMS DEPARTMENT	Name (*):
	Address (*):
	Town (*):
	Postal Code:
	Country (*):
	EORI-No: (+)
	TIN No: (+)
	National registration No: (+)
	Telephone: (+)
	Mobile: (+)
	Fax: (+)
	Email (*):
	Website:

INFORMATION TO BE SHARED IN THE APPLICATION

Identification of the Right Holder [2/2]:

- the useful contact persons for the Customs

7. Representative for legal matters Company: Name (*): Address (*): Town (*): Postal Code: Country (*): Telephone: (+) Mobile: (+) Fax: (+) Email (*): Website:	8. Representative for technical matters Company: Name (*): Address (*): Town (*): Postal Code: Country (*): Telephone: (+) Mobile: (+) Fax: (+) Email (*): Website:
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- local contacts should also be requested if available

INFORMATION TO BE SHARED IN THE APPLICATION

Identification of the IPR [1/2]:

5 (*). Type of right to which the application refers

- ☐ National trademark (NTM)
- ☐ European Union trademark (EUTM)
- ☐ International registered trademark (ITM)
- ☐ Registered national design (ND)
- ☐ Registered Community design (CDR)
- ☐ International registered design (ICD)
- ☐ Unregistered Community design (CDU)

- ☐ Copyright and related right (NCPR)
- ☐ Trade name (NTN)
- ☐ Topography of semiconductor product (NTSP)
- ☐ Patent as provided for by national law (NPT)
- ☐ Patent as provided for by Union law (UPT)
- ☐ Utility model (NUM)

Geographical Indication/Designation of origin:

- ☐ for agricultural products and foodstuff (CGIP)
- ☐ for wine (CGIW)
- ☐ for aromatised drinks based on wine products (CGIA)
- ☐ for spirit drinks (CGIS)
- ☐ for other products (NGI)
- ☐ as listed in Agreements between the Union and third countries (CGIL)

Plant variety right:

- ☐ national (NPVR)
- ☐ Community (CPVR)

Supplementary protection certificate:

- ☐ for medicinal products (SPCM)
- ☐ for plant protection products (SPCP)

INFORMATION TO BE SHARED IN THE APPLICATION

Identification of the IPR [2/2]:

No	Type of right	Registration number	Date of registration	Expiry date	List of goods to which the right refers

For further rights see annex no
☐ Restricted handling

INFORMATION TO BE SHARED IN THE APPLICATION

Information on authentic goods [1/3]:

12 (*). Goods details IP right no: Goods description: CN tariff number: Customs value: European average market value: National market value:
13 (*). Goods distinctive features Position on the goods: Description:
14 (*). Place of production Country: Company: Address: Town:

including get-ups, graphic symbols and images of the goods

markings, labels, security threads, holograms, barcodes, hangtags, etc.

places of authorised manufacture

INFORMATION TO BE SHARED IN THE APPLICATION

Information on authentic goods [2/3]:

15 (*)	Involved companies Role: Name: Address: Town: Postal Code: Country:
16 (*)	Traders Name: Address: Town: Postal Code: Country:
17.	Goods clearance details and distribution information

authorised manufacturers, contractors, suppliers, importers, transporters, logistic operators, consignees, etc.

persons or entities authorised to trade in products involving the IPR

customs procedures and offices; distribution channels (transport routes to delivery, central warehouses, dispatch departments, logistic centres, etc.)

INFORMATION TO BE SHARED IN THE APPLICATION

Information on authentic goods [3/3]:

18.	Packages Kind of packages: Number of items per package: Description (incl. distinctive features):	kind of packaging used and relevant features (tapes, labels, adhesives, etc.), special packaging design (colours, shapes) including images
19.	Accompanying documents Type of document: Description:	user manual, instructions, guarantee, brochures and any other document usually accompanying the product

INFORMATION TO BE SHARED IN THE APPLICATION

Information on infringing goods [1/3]:

20. Goods details
IP right no:
Goods description:

CN tariff number:
Minimum value:

21. Goods distinctive features
Position on the goods:
Description:

22. Place of production
Country:
Company:
Address:
Town:
Postal Code:

known or suspected place of manufacture,
assembling, production, origin, provenance of
infringing products

INFORMATION TO BE SHARED IN THE APPLICATION

Information on infringing goods [2/3]:

23. Involved companies

Role:

Name:

Address:

Town:

Postal Code:

Country:

**manufacturers, contractors, suppliers, importers,
transporters, logistic operators, consignees, etc.
who are involved or are suspected to be involved in
trade of counterfeit**

24. Traders

Name:

Address:

Town:

Postal Code:

Country:

**persons or entities NOT authorised to trade in
products involving the IPR and who are involved in
or suspected of trade of counterfeit**

INFORMATION TO BE SHARED IN THE APPLICATION

Information on infringing goods [3/3]:

25.	Goods distribution information
26.	<p>Packages</p> <p>Kind of packages:</p> <p>Number of items per package:</p> <p>Description (incl. distinctive features):</p>
27.	<p>Accompanying documents</p> <p>Type of document:</p> <p>Description:</p>

28.	<p>Additional information</p> <p><input type="checkbox"/></p>
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any other information relevant for the Customs to assess the risk – including specific information on means of transport, known planned shipments, known places of delivery, consignees

COLLABORATION WITH RIGHT HOLDERS AT THE BORDER

Suspension of the release of goods suspected of infringing an intellectual property right:

- RH with an application for action must be involved
 - can be contacted prior to suspension
 - must be notified of the suspension as soon as possible, together with the importer or declarant (TRIPS)



COLLABORATION WITH RIGHT HOLDERS AT THE BORDER

Suspension of the release of goods suspected of infringing an intellectual property right:

- Which information?
 - **effective or estimated quantity and nature of goods**
 - customs procedure, consignor and consignee, origin, provenance, destination:
 - compliance with data protection rules
 - in the EU system only with suspension, “upon request” of the RH and with limited use



COLLABORATION WITH RIGHT HOLDERS AT THE BORDER

Suspension of the release of goods suspected of infringing an intellectual property right:

- sharing images extensively for reliable verification by the RH
 - packaging (outer/inner box; delivery labels...)
 - whole product (with IPR visible)
 - labels (bar-codes/QR-codes, serial/batch number...)
 - text (typos...)
 - irregular or sloppy finishes



COLLABORATION WITH RIGHT HOLDERS AT THE BORDER

Suspension of the release of goods suspected of infringing an intellectual property right:

- allow inspection of goods where necessary to substantiate the RH's claim (TRIPS)
- allow sampling
 - in the EU system: by the Customs upon request of the RH strictly for the purposes of analysis in relation to counterfeit



THE EUROPEAN UNION SYSTEM FOR BORDER ENFORCEMENT OF IP

One single administrative procedure for 27 Customs Administrations:

- a regional system – based on TRIPS principles
- an equivalent level of protection at all external borders
- the same obligations for all enterprises

National legal systems apply:

- criminal investigation powers
- obligation to prosecute IP crime ex officio in some member states
- competencies in the market
- sanctions

THE EUROPEAN UNION SYSTEM FOR BORDER ENFORCEMENT OF IP

The actors in the EU system for border enforcement of IP

- the 27 Customs Administrations
- Right holders
- the European Commission for COORDINATION:



- legislation & policy



- information management



- statistics

COPIS
data base

THE EUROPEAN UNION SYSTEM FOR BORDER ENFORCEMENT OF IP

AFA

Right
Holder



national
Customs



COPIS



STATISTICS

case details national
(no nominal data) Customs

**Yearly report on detentions of
counterfeit goods at the EU
borders**

COOPERATION THROUGH ALERTS AND SUSPICIOUS CASES IN THE EU

- RH to send **alerts** to Customs (and police authorities)
- Customs (and police authorities) to notify **suspicious cases** to RHs





The screenshot shows the EUIPO IP Enforcement Portal homepage. At the top is the EUIPO logo and the tagline "Promoting and supporting intellectual property value". Below this is a navigation bar with links: Home, About the Observatory, Intellectual property for..., Facts, Figures and Case Law, and News & events. The main heading is "IP ENFORCEMENT portal" with the subtitle "The single EU platform to deal with IPR enforcement matters" and "A free, multilingual and secure tool". A prominent blue "LOG IN" button is centered, with a link below it to "Request a [rights holder](#) or [enforcer](#) account". A dark grey banner below the login section states: "The IP Enforcement portal is the integration of the EDB, ACIST and ACRIS tools in a single platform". At the bottom, there is a section titled "Sharing your information with enforcers in the IP Enforcement Portal - Application for Action or Alert?" dated "05 February 2020", followed by the text "An EU Council regulation (Regulation (EU) No 608/2013 of the European Parliament and".

COOPERATION THROUGH ALERTS AND SUSPICIOUS CASES IN THE EU

- ALERTS**


Add ▼

-  Potential Infringement or Trend
-  Online Infringement


IPRs infringed

NAME	REFERENCE	TYPE
Name	Reference	


Copyright B AG 132165465 Copyright



Sun glasses (demo)
Sunglasses



Sun furniture (demo)
Sun loungers; Parasols



Sun hats (demo)
Sun hats; Sun headwear

Showing 1 to 1 of 1 entries

IPRs

Flight / Shipment

Consignor & Consignee Details

Attached Images

Documents Attached

Exchange Information

Answer Type* Please find additional information

Product Please find additional information

Product section Please find updated information

See comments

Add

Attached Images

+ Add File

Documents Attached

+ Add File

Download

Sender / Receiver *	
Company Contact *	
Suspected Goods *	
Attached Images	
Documents Attached	
Exchange Information	
Answer Type * Product Product section	<div> <div>Pending</div> <div> <input type="text"/> <input type="button" value="Q"/> </div> <div> <div>Pending</div> <div>Genuine goods</div> <div>Infringing goods</div> <div>More information requested</div> <div>Need to check the goods physically</div> <div>See comments</div> <div>More information re: Art 17.4 (Customs only)</div> <div>Infringing goods, we agree to destruction</div> </div> </div> <div>Comments</div> <div></div>
Documents Attached	
<div>+ Add File</div>	



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Thank you