

# CUSTOMS ENFORCEMENT IN CHINA

**Recording IP rights with Chinese Customs**

## MILESTONE IN THE INTELLECTUAL PROPERTY RIGHTS' LEGISLATION

- **2000** Chinese intellectual property legislation updated and improved to international standard
- **2004** Introduced the GACC ex-officio action
- **2006** Strengthening IPR enforcement cooperation between Customs and Public Security Authorities.
- **2010** China Customs detained about 21,000 consignments of infringing goods, involving a value of RMB 270 million
- **2009** and **2010** Customs legislation was amended

## MILESTONE IN CUSTOMS IPR PROTECTION- CHINA CUSTOMS' AWARDS

- **2006** Global Anti-Counterfeiting Award awarded to Chinese Customs
- **2007** WCO (World Customs Organization) awarded China Customs for its outstanding contributions in fighting against counterfeiting and piracy
- **2008-2009** China IPR 10 Best Practices Awards presented by an Association of Chinese Enterprises with Foreign Investment
- **2011** China Customs awarded the Prize for Outstanding Achievement in IPR Protection in China presented by an Association of Chinese Enterprises with Foreign Investment.

## **IPR CUSTOMS RECORDAL- MAIN ADVANTAGES**

**Customs will proactively take protection measures-** Chinese Customs provisionally seize suspected goods destined to import/export

**The record will facilitate local Customs identification of infringing goods**

**The IPR Holder can set up a *General Bond* with GAC to ease seizure management**

## **WHICH RIGHT CAN BE REGISTERED AND WHO CAN APPLY ?**

Trademarks, (also international trademarks extended to China), Designs, Invention Patents, Utility Models, Copyright can be recorded

Foreign Right Holder with no direct presence in China shall use a registered Chinese Agent

## DOCUMENTS REQUIRED

Power of attorney

IPR Holder's identify certificate or business license

Copy of (complete) certificate of IPR from CTMO or SIPO. For international registration the *confirmation certificate is needed*

Copy of the license/ manufacture or import/ export agreements or contracts

Photos of the original goods and packing

If available, evidence related to any know import and export of infringing goods

## HOW MUCH DOES IT COST AND HOW LONG DOES IT LAST?

Recordation fee RMB 800

Recordation lasts for the life of the right to which it refers (renewable- no fees for renewal)

## **PROCEDURE**

Application first made online

Printed copy of the application should be sent to the GACC with the required documents (POA, BR etc)

Chinese translation of documents required

Recordal process take up to two months



## **CUSTOMS EX OFFICIO SEIZURES OF SUSPECTED COUNTERFEIT GOODS**

Local Customs provisionally seize suspected goods for **3 working days** and notifies IPR Holder/his agent

IPR Holder confirms infringing nature of goods and detention of seized goods

If required, cash bond shall be paid to local Customs

Customs detains the seized goods and begins investigation to determine whether the goods are infringing or not

If Infringement is confirmed, the Customs confiscates the infringing goods and impose a fine on infringer

## WHAT HAPPENS TO THE INFRINGING GOODS ?

During investigation usually goods are stored in a 3<sup>rd</sup> party warehouse contracted by customs

Normally Customs destroys the infringing products in ceremonies where right owner may also attend

Alternatively:

IP Holder have the option to purchase the goods.

Customs donate charity (e.g. shoes, clothes) – after removing infringing labels/features etc

Custom auction of the infringing goods after removing infringing labels/features etc

Storage and disposal cost are bear by the IPR Holder

## **DIRECT APPLICATION PROCEDURE- NO PRIOR RECORDAL**

IPR Holder presents complaint to relevant local Customs providing:

- The exact location of the infringing goods within the port
- The exact number of the shipment or of the container

After goods are seized, bond is normally required

Not very common procedure due to difficulties in gathering information for activating the direct application

## **TRANSFER OF FILE FOR CRIMINAL INVESTIGATION**

Customs shall notify the local Public Security Bureau(PSB) and transfer a case for criminal prosecution when threshold for criminal actions are met (depending on the right involved)

## CUSTOMS TRAININGS

Improve front line Customs officials knowledge of foreign products/brands

Front line Customs' official are enabled to understand differences between genuine and counterfeit products

Each local Customs normally organizes one training per year



## CONCLUSION

We strongly suggested IPR Holders to get their IPR recorded at Chinese Customs since the procedure of IPR record are simple and the cost is low but also means an effective way to protect their IPRs

# THANK YOU!

For questions please contact Mr Michele Ferrante

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