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Article Content

Title： Regulations Governing Customs Measures in Protecting the Rights and Interests of Trademark CH

Amended Date： 2021-09-15

Category： Ministry of Finance（財政部）

Article 1 The Regulations are enacted pursuant to Paragraph 2 of Article 78 of the Trademark Act (hereinafter called “the Act”).

Article 2 A proprietor of a registered trademark may file an application to Customs for advice protection by submitting relevant documents when he/she deems imported or exported goods are suspected to have infringed on his/her trademark right.
The term “advice protection” used in the preceding paragraph refers to the mechanism that a proprietor of a registered trademark submits advice protection relevant information to Customs during the period of the trademark right and Customs logs the information on Customs intellectual property right database.

Article 3 While filling an application for advice protection, a proprietor of a registered trademark shall make it to Customs by one application related to one trademark registration number basis and submit an application form with the following information:
1. The sufficient text description to identify the defining characteristic of genuine goods and infringing goods.
2. The sufficient electronic image files to identify the defining characteristic of genuine goods and infringing goods, (for example, photo or catalogue of genuine goods, counterfeit goods or a comparison between both) and the image should be the designated goods of the registered trademark.
3. Registered trademark certificate.
4. Contact information.
When the application in the preceding paragraph is accepted, Customs should notify the applicant; if rejected, Customs shall notify the applicant and explain the rationales of rejection.

Article 4 The duration of advice protection approved by Customs shall take effect from the date of approval to the expiry of the period of the trademark right.
In the event that the period of the trademark right has been renewed by the Registrar Office, the proprietor of a registered trademark may file an application to Customs for extension of advice protection period till the expiry of the renewal period of the trademark right by submitting documents of renewal proof.

Article 5 Customs may terminate the advice protection period earlier under any of the following:
1. Customs can not get in contact with the proprietor of a registered trademark or his/her agent by the information in accordance with Subparagraph 4 of Paragraph 1 of Article 3 hereof.

2. The proprietor of a registered trademark who has no domicile or business establishment in the territory of the ROC, had a contract of agency with his/ her agent but the contract had been rescinded or abolished in any other circumstances which does not meet the requirement of appointing an agent in the proviso of Paragraph 1 of Article 14 hereof.

Article 6 In the event that the proprietor of a registered trademark lodges a complaint that specific imported or exported goods have infringed on his or her trademark, he/she should notify the Customs and submit the following information:
1. The fact of infringement and the sufficient description to identify the infringing goods. The proprietor of a registered trademark should also provide related data in electronic file, such as sample, picture, catalogue or photo of the genuine goods and counterfeit goods.
2. Related specific data such as names of the exporter/importer, name of the goods, import/export ports, date, number of flight or ship, number of container, storage venue of the goods.
3. Registered trademark certificate.
When the complaint is received, Customs shall scrutinize and decide whether the contents of the complaint are substantive. Once accepting the complaint, Customs should notify the proprietor of a registered trademark. In the event that the complaint is rejected, Customs shall notify the proprietor of a registered trademark and explain the rationales of rejection.

Article 7 Where Customs acts upon its own initiative and finds that imported or exported articles in respect of which it has acquired prima facie evidence that a trademark right is likely to be infringed, Customs shall give a notice to the proprietor of the trademark and the importer/exporter.
The proprietor of a registered trademark and exporter/importer should follow the procedures as below after receiving the aforementioned notification:
1. The proprietor of a registered trademark shall state their intention to and identify the items in question on-site or on the e-platform authorized by Customs within four (4) hours for export by air freight, and within twenty-four (24) hours for import/export by sea freight and import by air freight, and then submit evidence of infringement or non-infringement by means of written documents or via electronic data transmission on the e-platform within three (3) business days. Anyone failing to provide such evidence in time should apply in writing or via electronic data transmission on the e-platform with a legitimate reason for an extension of additional three (3) business days prior to the deadline. Application for extension is acceptable only once.
2. The importer/exporter should submit documents of non-infringement by means of written documents or via electronic data transmission on the e-platform within three (3) business days. Anyone failing to provide such evidence in time should apply in writing or via electronic data transmission on the e-platform with a legitimate reason for additional three (3) business days prior to the deadline. Application for extension is acceptable only once.
When dealing with the notification of Paragraph 1, Customs may make it by means of words, written document, telephone, email or facsimile and make a record attached to the file.
When dealing with the notification of Paragraph 1 and failing to obtain the contact information of the proprietor of a

registered trademark, Customs may seek assistance from the Registrar Office to provide the information within one (1) business day.
After receiving the notification of Paragraph 1, the proprietor of a registered trademark may receive the photo files of suspected infringing goods taken by Customs via the e-platform authorized by Customs so as to determine whether to identify the goods or not. Photos that Customs provided shall not be the only basis of infringement or non-infringement evidence.

Article 8

The following procedures shall apply when the proprietor of a registered trademark, in accordance with the preceding Article, has identified the goods in question that have indeed infringed on his/her trademark and has submitted evidence of infringement:
1. When the importer/exporter fails to submit documents of non-infringement prior to the deadline stated in Subparagraph 2 of Paragraph 2 of the preceding Article, Customs shall, in accordance with Article 95 or Article 97 of the Act, transfer the entire case to judicial offices for further investigation.
2. When the importer/exporter submits documents of non-infringement prior to the deadline stated in Subparagraph 2 of Paragraph 2 of the preceding Article, Customs shall notify the proprietor of a registered trademark that he/she may, in accordance with Paragraph 1 of Article 72 of the Act, apply to Customs for the detention of the goods in question within three (3) business days following the date of notification.
In the event that the proprietor of a registered trademark does not apply for detention to Customs in accordance with Subparagraph 2 of the preceding Paragraph, Customs may follow relative regulations on export/import clearance procedures after taking representative samples, provided that no other relevant regulations are violated.

Article 9

When performing protection measures set out in the preceding two Articles, Customs shall follow relative regulations on export/import clearance procedures under any of the following, provided that no other relevant regulations are violated:
1. Customs can not get in contact with the proprietor of a registered trademark or fails to obtain the contact information of the proprietor of a registered trademark prior to the deadline in accordance with Paragraph 4 of Article 7 hereof.
2. The proprietor of a registered trademark does not state their intention to and identify the goods in question on-site or on the e-platform authorized by Customs prior to the deadline in accordance with Subparagraph 1 of Paragraph 2 of Article 7 hereof.
3. The proprietor of a registered trademark does not provide evidence of infringement or non-infringement prior to the deadline in accordance with Subparagraph 1 of Paragraph 2 of Article 7 hereof.
4. No infringement was found of the import/export goods in question after identifying by the proprietor of a registered trademark.

Article 10

Application for inspection of the detained goods in accordance with Paragraph 1 of Article 76 of the Act shall be made to the Customs Office at the port of import/export.
The aforementioned inspection shall be done within the time, venue and method prescribed by the Customs authority.
Customs shall be cautious without prejudice to the protection

of confidential information of the detained goods when making the above prescription.

Article 11 While applying for relevant information in accordance with Paragraph 2 of Article 76 of the Act, the proprietor of a registered trademark shall provide an application form and attach the following documents to the Customs Office at the port of import/export:
1. Registered trademark certificate;
2. Evidence of infringement;
3. An affidavit of the proprietor of registered trademark stating that the information received from the Customs authority will be used solely for the purposes of the investigation of the case and the initiation of litigation.
After Customs reviews and approves the application of Paragraph 1, the Customs authority may provide in written form the names and addresses of the importer/exporter, consignee/consignor, and the quantity of the items in question.

Article 12 The proprietor of a registered trademark may apply to Customs for taking samples of suspected infringing goods in accordance with Paragraph 1 of Article 77 of the Act only when he/she states that there is a difficulty in identifying the goods in question on the spot and it needs equipment to identify, or when there is a special reason approved by the Customs.
The aforementioned application must be done with an application form, security deposit, and the following documents to the Customs Office where the goods were imported/exported:
1. Registered trademark certificate;
2. The ID of the borrower and the authorization document;
3. An affidavit of the proprietor of registered trademark stating that the samples borrowed will not damage the interest of the exporter/importer and use the samples for illegal purposes.
Customs may take two pieces of sample of goods from the same model and specification. Pictures must be taken for one piece before the applicant borrows it, and Customs keeps the other piece.

Article 13 When filing an application or lodging a complaint in accordance with the Regulations, the proprietor of a registered trademark may submit by means of written documents or via electronic data transmission.
If application/complaint submitted by written documents, the date of application or complaint shall be based on the time of receipt at Customs. The date of those via registered mail shall be deemed to have been duly filed on the day it is posted as shown by the postmark.
If application/complaint submitted by electronic data transmission, the date of application or complaint shall be based on the time information is recorded on customs computer files.
In order to check the identity or the qualification of the applicant, Customs may, as it deems necessary, notify the applicant to furnish with his/her identification card or relevant documents.

Article 14 A proprietor of a registered trademark may appoint an agent to apply for related matters of the Regulations. Those who have no domicile or business establishment in the territory of the ROC shall appoint an agent and the agent shall have a domicile in the ROC.

An agent who deals with the affair commissioned shall submit a power of attorney, specifying powers delegated to the agent.

Article 15 An exclusive licensee who is entered in the Register by the Registrar Office in accordance with Article 39 of the Act, within the scope of the license, may submit documents of proof to exercise and undertake duties of a proprietor of a registered trademark's responsibilities and obligations set out in the Regulations. An exclusive licensee is entitled, within the scope of the license, to exclude the proprietor of a registered trademark and any third party from filing the same applications in accordance with the Regulations unless otherwise prescribed in a licensing contract.

Article 16 A proprietor of a registered trademark shall file an application to Customs for changes to the information of the applicant, the agent, the text description of defining characteristic of genuine goods and infringing goods, electronic image files and other relevant matters in the Regulations.

Article 17 These Regulations shall take effect upon the date of promulgation.