

To: Our Clients and Friends

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NEW SEIZURE PROCEDURES INSTITUTED BY UK CUSTOMS FOR INFRINGING GOODS

The UK's HM Revenue & Customs (HMRC) has announced new detention and seizure procedures for merchandise imported into the UK that potentially infringes intellectual property rights. This announcement was made by letter to the business community. It is anticipated that a new statutory instrument will be adopted setting out the powers of seizure in intellectual property cases.

In the meantime, effective July 3, 2009, the new procedures followed by HMRC place the burden of proof on trademark and copyright holders to demonstrate the infringing nature of goods by instituting legal proceedings and obtaining a judgment against the importer. Previously, such a right holder merely had to allege that the imported goods were infringing for HMRC to detain and seize them, with court proceedings occurring only if the importer sought an appeal from the seizure. The new policy follows from a case issued by a Northern Ireland court holding that the previous rules violated an EU Council Regulation prohibiting seizure without judicial order.

Under the new procedures, if HMRC determines that imported goods might be infringing, it contacts the right holder and detains the merchandise for a period of 10 working days. The right holder must go to court within that period to initiate proceedings with a view to obtaining a judgment confirming the infringing nature of the goods. In lieu of going to court, the right holder may apply with HMRC for an extension of the ten-day period or seek a settlement with the importer. In no case can the detention period exceed 20 working days unless a court action is initiated. Only pursuant to a court order will HMRC seize the infringing goods.

HMRC also issued similar rules with an expedited time table for perishable goods and it will be issuing new procedures simplifying the settlement of cases between right holders and importers.

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