

Border Control – Special Programs to Prevent Piracy and Counterfeiting in Korea



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KIM & CHANG
INTELLECTUAL PROPERTY

Korea's Exposure to Counterfeit Products from China

China's close proximity to Korea



Active online purchases made by Korean consumers

87.4% of the total number of customs seizures of shipments related to shipments from China (9.7% for Hong Kong) in 2016

Special Characteristics of Korea Customs Service ("KCS")

Take active measures against suspicious shipment of goods

Also, take active measures even against shipment of small quantities of counterfeit goods via air post or special courier deliveries.

Ability to conduct market enforcement – Possible to take enforcement actions against imported goods distributed in marketplace

Measures Available to Trademark Owners - Authorities

Authorities

- Korea Customs Service
- Korea Trade Commission
- Police
- Prosecutor's Office
- Special Judicial Police ("SJP") of the Korean Intellectual Property Office
- Special Judicial Police ("SJP") of the Ministry of Culture, Sports and Tourism

Comments

- **Usually limited to large-scale infringement**
- **Straight forward counterfeits vs. similar marks**

Basis for Customs Actions (What Rights can be Used?)

- Trademark
- Copyright
- Plant variety right
- Geographical indications
- Patent
- Design right

Utility models are **not included (similar to EU regulation)**

Procedures for Registration with Customs

Required Documents and Information

- 1. Request for "Report of IP Rights"**
 - 2. Copy of certificate for IP right registration**
 - 3. An executed Power of Attorney to establish local representation**
- May additionally submit documents or materials which may be used to distinguish between counterfeit and genuine goods – not required

Timeframe and Cost for Filing Procedure

Timeframe

- Report of IP Rights is accepted or rejected within 4 days after the Report is submitted
- Customs recordation becomes effective immediately after the date when the Report is accepted
- The valid period of the Customs recordation is three (3) years from the recordation date

Costs

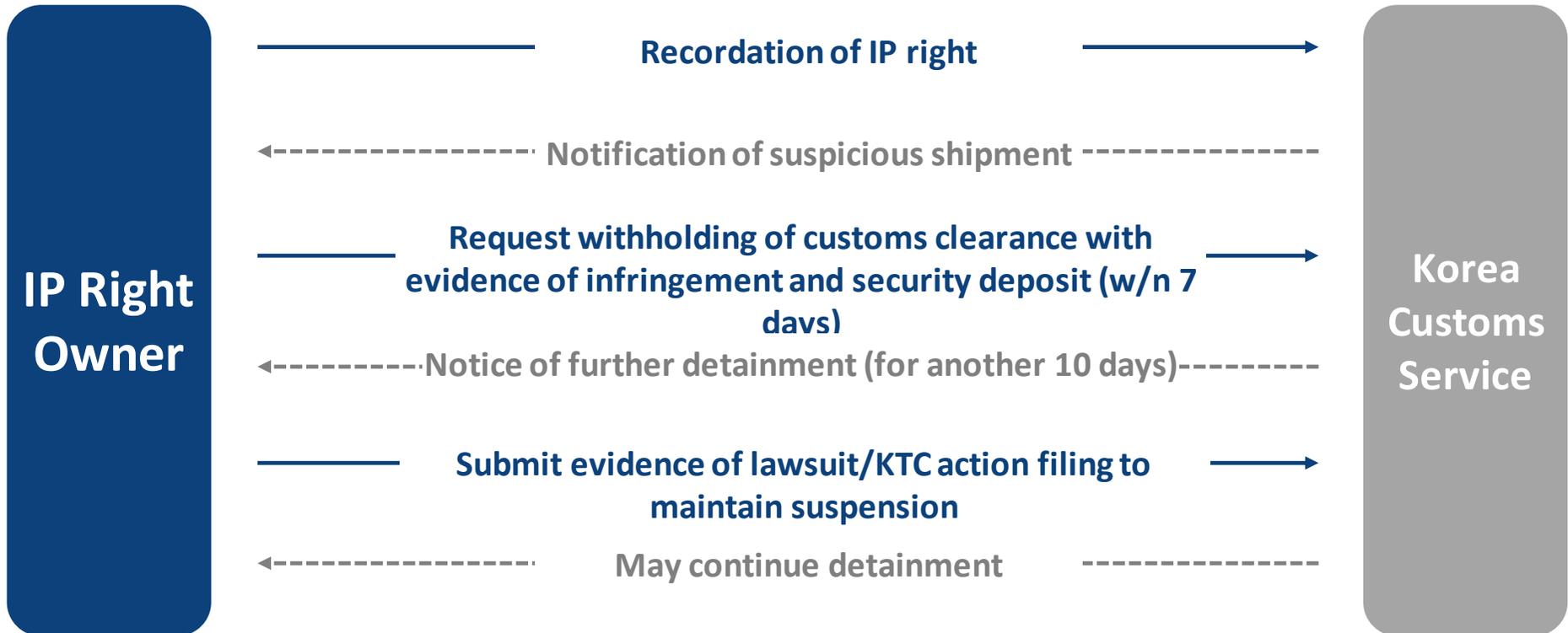
- Depending on the type of IP right recorded, the service fee can differ (USD 400 for trademark registration, while USD 800 for patent registration)
- No official fee

Customs Procedures – Case of Obvious Infringement

If infringement is obvious due to existence of court precedent, etc., Customs will seize shipment of goods at their discretion.

In actual practice, Customs will contact IP right holder and request to submit affidavit attesting counterfeit status of subject shipment in most cases, and with the submission of such affidavit, the Customs seize counterfeit goods.

Customs Procedures – Case of Disputed Infringement



Procedures after Customs Seizure

If quantity of seized goods is small, seized goods are destroyed with importer's consent (more than 90% of cases).

If extensive number of goods has been seized, etc., case is forwarded to investigation team of KCS, and criminal investigation of case starts. Afterward, case proceeds in manner similar to general criminal procedures.

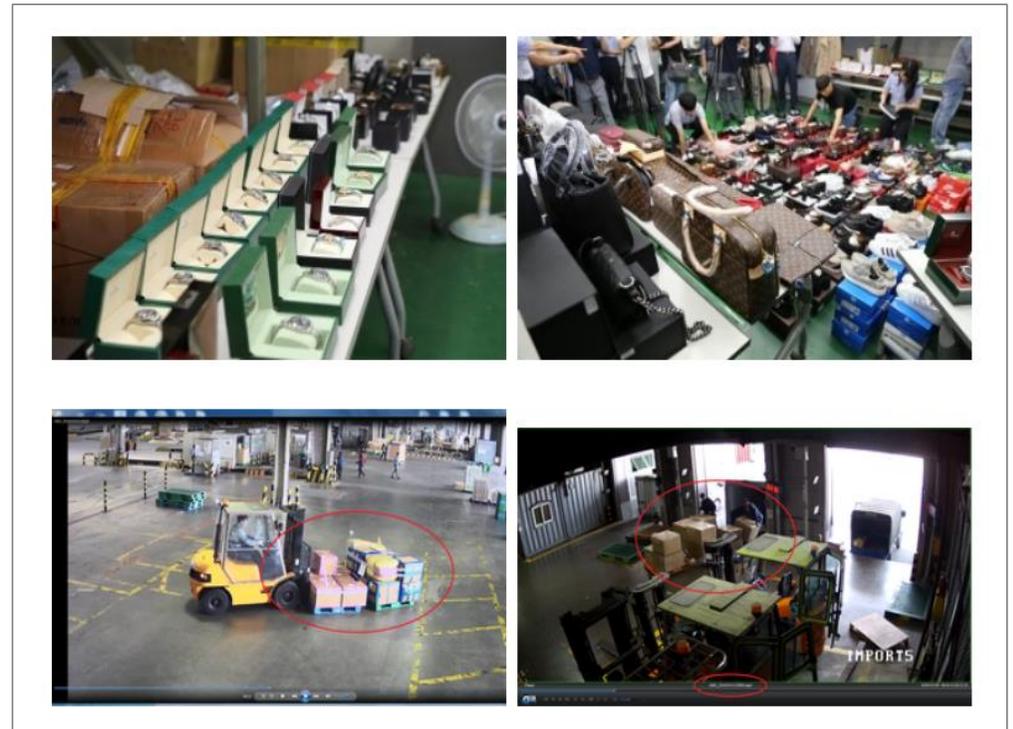
Strategy for Good Border Control

- **Need to utilize services of active KCS.**
- **Need to strongly cooperate with KCS. Should provide enough information so that the customs officers can easily distinguish between genuine and counterfeit products, such as existence of security label, requirements relating to labels, product packaging, product design, etc.**
- **Thus, need to educate customs officers about one's IP rights. Should participate in customs training sessions, which occur during the year (can also arrange separate educational session with Customs)**



Example of Recent Case – Arrests of Counterfeit Distributors Engaging in New Method of Smuggling in South Korea

- 6 people were arrested for smuggling about 6,000 pieces of counterfeit luxury goods including bags, estimated to have a total street value of around KRW 2.4 billion (approximately USD 2.1 million) from China into Korea
- The counterfeit goods were being sold through online markets, such as Alibaba, G-market, etc. to Korean consumers, who were misled to believe they were purchasing genuine products for prices, which are 30% cheaper than the retail prices of genuine goods
- Infringers used new method of smuggling counterfeits via air shipments (Infringers are conducting more sophisticated operations in effort to avoid Customs' actions)



Possible Types of Online Platform for Counterfeits in Korea

1. **Market Place – 11st, Auction, G-Market, Ebay, Coupang, etc.**
2. **Social Commerce – Ticket Monster, GS-Mall, wemakeprice.com, etc.**
3. **SNS – Facebook, Instagram, etc.**
4. **Naver Blog – Unique characteristics of Korea**
5. **Individual Website**

Possible Actions

In respect to Market Place, Social Commerce, SNS and Naver Blog, possible to investigate and send take down notice.

However, since there is difference between each type of platform, it is important to have good contact point, etc. with each platform.

Thank you

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