Border Control: Special Programmes to Prevent Piracy and Counterfeiting:
Canada – A Challenge

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Combatting Counterfeit Products Act (CCPA)

- Pre-January 2015 – Anti-counterfeit and Anti-piracy Enforcement in Canada
CCPA amended the Trademarks Act, the Copyright Act, and the Customs Act to curtail commercial activity involving counterfeit goods and pirated works.
4 Take-A-Ways

• It is now a criminal offence to import or export goods or packaging bearing unauthorized trademarks having all the essential elements of a trademark registered for such goods
  - (identical trademarks on identical goods)

• It is a criminal offence to import or export copies of works made without consent of the owner of copyright in the country where they were made that infringe copyright in Canada

• Exceptions: Did not prohibit shipments/importation for (1) personal use, (2) in-transit shipments or (3) grey market shipments of counterfeit or pirated works

• Creation of a Border Enforcement Regime
## Border Enforcement

<table>
<thead>
<tr>
<th>Power of CBSA</th>
<th>Pre-2015</th>
<th>Post-2015</th>
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<tbody>
<tr>
<td>Ex officio detention of counterfeit goods</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td>Ex officio seizure and destructions of counterfeit goods</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Provide samples and/or information to Intellectual Property Rights Holders</td>
<td>no</td>
<td>Yes (in certain circumstances)</td>
</tr>
<tr>
<td>Recordation of Trade-marks with CBSA</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td>Administrative or Simplified Procedure</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Seizure of in transit shipments</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Detention of grey market goods</td>
<td>no</td>
<td>no</td>
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</table>
What kind of copies are caught by the legislation

Trade-marks
• Goods shall not be imported or exported if the goods or their labels or packaging bear – without the consent of the owner of a registered trade-mark for such goods – a trade-mark that is identical to, or that cannot be distinguished in its essential aspects from, that registered trade-mark.

Copyrights
• Copies of a work or other subject-matter in which copyright subsists shall not be imported or exported if they were made without the consent of the owner of the copyright in the country where they were made; and they infringe copyright or, if they were not made in Canada, they would infringe copyright had they been made in Canada by the person who made them.
HOW DOES THE NEW
BORDER ENFORCEMENT REGIME WORK?
Purpose of Procedure:

Owners of Canadian trade-mark registrations or owners of copyrights can now seek assistance/information from the Canada Border Services Agency to detain suspected counterfeit and pirated goods at the border and proceed with civil enforcement of their rights.

How the New Border Enforcement System Works:

Procedure: File Request for Assistance:

- Brand Owners can “seek assistance” from Customs (by filing /registering a “Request for Assistance” document (RFA) with customs) *(Section 44.02(1) Copyright Act)*
- Cost to file/register
- Canada’s official languages – English and French
- Valid for 2 years and renewable
What is an RFA?

Who should file an RFA?

How do you file an RFA?

Email address: cbsa-asfc_ipr-dpi@cbsa-asfc.gc.ca
REQUEST FOR ASSISTANCE - DEMANDE D'AIDE

The filing of this application begins the enrollment process for the Canada Border Services Agency (CBSA) Intellectual Property Rights Program. This form has been developed by the CBSA in accordance with s. 44.02 of the Copyright Act and s. 51.04 of the Trade-marks Act to assist right owners in protecting their rights against the prohibited importation of counterfeit, trademark and pirated copyright goods into Canada.

SECTION A:

Rights Owner Information - Information sur le détenteur des droits

1. Legal name of rights holder - Nom légal du détenteur des droits

2. Rights holder address - Adresse du détenteur des droits
   Address - Adresse
   Postal code - Zip code - Code postal - Zip code

3. Representative for Service in Canada - Représentant du service à la clientèle au Canada
   Contact name - Nom du contact
   Phone number - Numéro de téléphone
   Address (street) - Adresse (rue)
   City - Ville
   Province
   Postal code - Code postal

4. E-mail address - Adresse courriel

5. Alternate e-mail address - Adresse courriel de remplacement
### Section B:

**Copyright and/or Trademark Information - Données sur l'intérêt de propriété**

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</table>
| **6. Trademark or copyright** | **7. Trademark or copyright registration number** (from CIPO) | **8. Canadian intellectual property office (CIPO) number**
Numéro de la demande de l'Office de la propriété intellectuelle du Canada (OPIC) |
| Trademark |   |   |
| Copyright |   |   |
|   |   |   |
|   |   |   |
|   |   |   |

11. Provide name and description of authentic goods, such as product features, packaging and trademark location.
Fournir le nom et la description des biens authentiques, comme les descriptifs des produits, l'emballage et l'emplacement de la marque de commerce.

### Section C: Authorization - Autorisations

**Authorizing CBSA's use and confirmation of information provided:**
**Autorisant l'usage et la confirmation de l'information fournie par l'ASFC**

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<tbody>
<tr>
<td><strong>14. Authorized signature</strong> - Signature autorisée</td>
<td><strong>15. Name (Print) - Nom (en majuscules)</strong></td>
<td><strong>16. Date of signature and application</strong> - Date de la signature et de la demande</td>
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### Section D: File data (For CBSA's Use only) - Données du fichier (pour utilisation par l'ASFC seulement)

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<tbody>
<tr>
<td><strong>17. CBSA request for assistance number</strong></td>
<td><strong>18. Urgent</strong></td>
<td><strong>19. Date of application</strong> - (YYYY-MM-DD)</td>
</tr>
</tbody>
</table>
Numéro de la demande d'aide à l'ASFC | Yes | No |
|   |   |   |
| **20. CBSA officer's user ID** |   |   |
Numéro d'identification de l'agent de l'ASFC |
|   |   |   |
| **21. Additional comments** - Commentaires supplémentaires |   |   |
Procedure: Timeframe and Steps

- If CBSA suspects counterfeit – contact representatives on RFA form filed
- 3 day period for Brand Owner to advise of intention *(Memorandum D-19-4-3, paras. 18-19)*
- Customs Can **Detain** for up to 10 days Brand Owners assess if counterfeit – Pictures? Samples? Physical Attendance?
- Customs can share Information with the Brand Owners
- If counterfeit Brand Owner can seek detention and destruction by commencing an action
If RFA is filed, then the brand/company gets:

- access to information about suspicious importations;
- if counterfeit, ability to commence proceedings and obtain seizure and destruction orders etc.
- must furnish a security*
- must pay for costs of storage and destruction of fake goods after they are determined to be illegal.

* not being requested at this time
What is Customs Doing and How are they doing it?

CBSA Training

email address: cbsa-asfc_ipr-dpi@cbsa-asfc.gc.ca

CBSA Protocol – Memorandum D19-4-3 issued - November 2, 2015

This memorandum outlines and explains the legislation governing the role of the Canada Border Services Agency (CBSA) in dealing with counterfeit trademark goods or pirated copyright goods.

http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-4-3-eng.html
Since January 1, 2015

Training of customs officers

# of Requests for Assistance filed

# of detentions

“Renewals”

Security (Bonds)?

Case Examples
The Canadian Anti-fraud Centre

- The CAFC is jointly managed by the RCMP, Competition Bureau, and the OPP.
- Works with payment processors cancelling merchant accounts.
- Purchasing counterfeit/pirated works through credit/debit card, PayPal etc.
- 2016 – CAFC received over 18,000 complaints involving cyber-related fraud
- [http://www.antifraudcentre-centreantifraude.ca](http://www.antifraudcentre-centreantifraude.ca)
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