

June 25, 2012

Mr. David V. Aguilar
Acting Commissioner, U.S. Customs and Border Protection
Trade and Commercial Regulations Branch
Office of International Trade, Regulations and Rulings
U.S. Customs and Border Protection
799 9th Street NW. (Mint Annex)
Washington, DC 20229-1179

**Re: Docket No. USCBP 2012-0011: Notice of Proposed Rulemaking
Disclosure of Information for Certain Intellectual Property Rights
Enforced at the Border**

Dear Mr. Aguilar:

The American Intellectual Property Law Association (AIPLA) appreciates the opportunity to present its views on the Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border proposed by U.S. Customs and Border Protection of the U.S. Department of Homeland Security (“CBP”).

AIPLA is a U.S.-based national bar association with approximately 14,000 members who are primarily lawyers in private and corporate practice, government service, and the academic community. AIPLA represents a diverse spectrum of individuals, companies, and institutions involved directly and indirectly in the practice of patent, trademark, copyright, unfair competition, anti-counterfeiting, and trade secret law, as well as other fields of law affecting intellectual property.

AIPLA submits these comments to aid the Agency with its proposal to amend 19 CFR Parts 133 and 151 to clarify and expand the information disclosed to intellectual property rights holders in an effort to combat counterfeiting.

While AIPLA appreciates the CBP’s efforts toward greater information disclosure, the proposed Interim Rule falls short of what is needed to fully protect intellectual property rights holders.

AIPLA’s first concern regarding the Interim Rule is that it is too limited in scope. While recognizing the inclusion of trademarks within the coverage of the Interim Rule, the proposal is insufficient protection against today’s sophisticated network of counterfeiters. Adequate protection of intellectual property rights holders must include other forms of intellectual property, such as suspected piratical (copyright infringing) goods, and suspected merchandise violating the Digital Millennium Copyright Act (“DMCA”).

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We recognize that trade secret protection is a legitimate limitation to disclosure. However, another concern is that the Interim Rule does not go far enough, as it provides for disclosure of only certain limited information appearing on the packaging of suspected merchandise. Depending on the product, the packaging may not provide an intellectual property rights holder with enough information to ascertain the true nature of the product (that is, whether it is indeed counterfeit). In addition, AIPLA is concerned that sophisticated counterfeiters will simply adopt different packaging to bypass the intent of the Interim Rule.

Finally, the Interim Rule affords the importer (suspected IP rights violator) seven (7) days notice before the information is released. This provision provides counterfeiters with the opportunity to justify importation without giving intellectual property rights holders an adequate opportunity to inspect the merchandise. Today's counterfeiters are often sophisticated enough to formulate the necessary proof to bypass the need to submit verification to intellectual property rights owners.

We greatly appreciate the opportunity to provide our comments and are available to answer any questions they may have raised.

Sincerely,

A handwritten signature in black ink, appearing to read "William G. Barber", with a long, sweeping horizontal flourish extending to the right.

William G. Barber

President

American Intellectual Property Law Association