

**New Simplified Procedure
for dealing with Counterfeit Goods detained by the UK Border Agency
as from 16 April 2010**

The United Kingdom has finally implemented a change in its laws to give full effect to Article 11 of the 'Customs' Regulation (EC 1383/2003), which provides for a 'simplified procedure' for dealing with the detention and destruction of consignments of counterfeit and pirated goods destined for the EU.

The new simplified procedure was brought into effect from **16 April 2010** by amended UK Regulations. Now, where no response is received from the importer to notification from the intellectual property rights holder, it will be much quicker and cheaper for the rights holder to achieve the seizure and destruction of goods suspected of infringing an intellectual property right.

Under the simplified procedure, the IP rights holder can still (as under the old procedure), within the specified period of 10 or (if extended) 20 working days, produce to the UK Border Agency ("UKBA") the written agreement by the declarant, the holder or the owner of the goods (the "interested parties") to the abandonment and destruction of the goods.

Now, under the amended UK Regulations:

- (i) **if** the written consent of the "interested party" to the destruction of the goods is not obtained within the specified period; and
- (ii) **if** none of the "interested parties" has specifically opposed the destruction of the goods within the time limit,

the UKBA may treat the detained goods as abandoned for destruction and it will **no longer be necessary for IP rights holders to issue court proceedings** against the "interested party/ies".

The new simplified procedure is good news for rights holders as it saves the time and expense of issuing legal proceedings **if** there is no response from "interested party" within the time given to the "interested party" to consent to destruction of the goods. In these circumstances, the "interested party's" agreement to destruction of the goods will be *presumed*.

Not such good news is that the new rules provide that, where the goods are treated as abandoned for destruction, the rights holder must bear the expense and the responsibility for the destruction of the goods, *unless otherwise specified by the UKBA*. We wait to see whether the UKBA is indeed going to start passing all destruction costs to industry.

All IP Rights now subject to the same procedure

Other good news for rights holders is that the new rules remove the difference in treatment between different classes of IP rights – so that goods which appear to infringe patent rights, supplementary protection certificates, design rights, plant breeders' rights, plant variety rights, designations of origin, geographical indications and geographical designations – in addition to those which infringe trade marks and copyright – will now all be subject to the same procedure for detention and destruction.

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