

THE CUSTOMS GUIDE

Foot Anstey IP Team

START OF PROCESS: AFA FORM

To give customs the power to detain and seize counterfeit products, a brand owner must file a form known as the 'Application for Action' ("AFA"). There are two different forms:

National application: this is submitted in a particular EU Member State requesting its national customs authorities to take action in that Member State. We would apply for a national application for the UK, which means that only UK customs authorities will be able to take action to prevent the importation of suspected counterfeit goods at UK customs ports.

Union application: this is submitted in an EU Member State (in this case it would be the UK) requesting the customs authorities of that Member State and the customs authorities of one or more other Member States to take action in their respective territories to prevent the importation of suspected counterfeit goods.

The right holder can rely on a variety of IP rights including (but not limited to) registered designs, trade marks and patents.

Once the type of AFA is selected, we would complete the form and will require further information from the right holder in relation to the authentic products and any information the right holder may have regarding the characteristics of any known counterfeit goods.

Once the AFA is completed, it will be submitted to HMRC IPRs Authorisations, which will review the form and let us know the outcome of the application within 30 working days.

The typical cost for drafting the AFA and obtaining further information from the right holder is likely to be between £1,000 to £1,500 (plus VAT) assuming that the information required is easily provided by the right holder.

INTELLIGENCE-LED SEIZURES

Once an AFA has been granted, it is important to be proactive and feed any information about suspected counterfeit/lookalike goods to the relevant customs authorities so they can intercept the suspected shipment. The more proactive a brand owner is, the more likely that customs will take action and be successful.

We assist brand owners with raising their profiles with customs and other law enforcement officers by attending various conferences, providing training days for them and proactively supporting their activities through conducting investigations into alleged infringing activities and then passing the information on to customs and other law enforcement officers. With our extensive connections and network, we are able to conduct research and investigations into the UK market and elsewhere to identify where the counterfeit products are being stored/imported into and then hand such information to customs so they can detain any suspected counterfeit products.

The more information provided to customs the better, for example:

- the name of the suspected company shipping in the counterfeit goods;
- the ports likely to receive the suspected counterfeit goods; and
- the suspected product type.

It greatly helps our efforts in combatting counterfeit goods if this information is passed to us as soon as it is available.



THE PROCESS

Customs intercept and detain goods. They send the right holder images/samples of the goods. Deadline for the right holder's response is 10 working days.

Right holder verifies if suspected goods are counterfeit.

In exceptional circumstances, an extension of 10 working days can be granted.

If the detained goods are counterfeit, the legal representative contacts customs on the day of the deadline or one day before to ask if the importer has filed an objection to the detention.

If no objection has been filed by the importer, the legal representative will complete and submit the 'Section B Form' to customs requesting destruction of the detained goods.

The goods will be destroyed.

If an objection has been filed by the importer, a claim form will have to be issued at Court to ensure the detained goods are not released.

Further correspondence with the importer to secure a signed settlement agreement may follow depending on the circumstances of the infringement.

Note

At least 95% of cases from customs are concluded quickly and the goods are destroyed without any need to issue proceedings.

KEY CONTACTS



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Paul heads up the Intellectual Property Practice at Foot Anstey. He has a wide range of experience in dealing with intellectual property matters including: filing and prosecuting trade marks and designs all around the world; conducting brand clearance searches; conducting intellectual property litigation in the High Court in relation to all intellectual property rights; devising and implementing anti-counterfeiting strategies; and drafting and negotiating licences and franchise agreements. In such matters, Paul has acted for many household names in several sectors including Retail, Professional Services, Leisure, Food and Drink, Automotive, Technology and Telecoms, and regularly deals with many international issues through our associated offices around the world.

Legal 500 2016 states that Paul "is conscious of client needs" and "is able to identify the main issue within the matter at hand". He is also regarded as a leading individual within the intellectual property field.



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Chandni has significant experience of assisting clients in enforcing their intellectual property rights in the UK through criminal and civil proceedings. Over the years, she has built up an extensive network of contacts in Trading Standards and Customs and has regularly assisted clients in devising strategies to prevent the importation, sale and distribution of counterfeit goods in the UK.

In addition, Chandni has advised clients on securing appropriate trade mark protection for their brands and designs both in the UK and overseas. Prior to joining Foot Anstey, Chandni undertook several secondments for major retailers including Cath Kidston and Jack Wills.