



CLEARANCE OF TRADEMARK AND COPYRIGHT GOODS

Issue Date: 16 April 2018

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PURPOSE

1. To clearly set out the proper process for dealing with or handling trademark or copyright infringements for goods that pass through the Samoa Customs Service.

POLICY STATEMENT

2. These procedures conform with the procedure set out under the Customs Act 2014 ('the Act').

PROCEDURES

Ex Officio Action

3. Where the Comptroller has reasonable grounds to suspect that imported goods under the control of Customs contain infringing copyright material, infringing right material, an infringing sign or design, the Comptroller must send a written notice to the agent or rightful IP holder including the Ministry of Commerce Industry and Labour ('MCIL') to inform them of suspected infringement against their products. Timeframe for submission of response is 7 working days.
4. Where the Comptroller does not receive a response from the agent or rightful IP holder, the Comptroller may suspend the customs clearance of such goods.
5. Requirements mentioned below are to be complied by the Comptroller when considering imported goods under Division 1 of the Act.

Notice received from Applicant under section 307 of the Act

6. A person may give written notice ("Notice") within timeframe noted under paragraph 3 above, to the Comptroller claiming that the person (" the Applicant") is the owner of the copyright, design, mark etc and request the Comptroller to suspend the Customs clearance procedure of any goods that the Comptroller has reasonable grounds to suspect:
 - i. are goods that infringe the Applicant's rights in copyright or design material; or
 - ii. are goods on or in physical relation to which an infringing sign or infringing design is used, that or at any time come into the control of Customs.
7. A Notice should specify the time period in which the suspension of Customs clearance procedure should be in force and be accompanied by the following:
 - i. evidence that the Applicant is the owner of the copyright, design, mark etc;
 - ii. sufficiently detail the copyright, design, mark etc;
 - iii. have the prescribed form if any; and
 - iv. any other document prescribed.
8. The Comptroller must, in relation to any Notice stated above:
 - a) either –
 - (i) accept the Notice if the Applicant complies with the requirements stated above in paragraphs 6 and 7; or
 - (ii) decline the Notice if the Applicant does not meet the requirements stated above in paragraphs 6 and 7; and
 - b) within 21 working days from receipt of the Notice advise the Applicant in writing whether the Notice has been accepted or declined, (with reasons if declined).

9. The Comptroller may require the Applicant to provide further information before deciding whether to accept or decline the Notice.
10. A Notice accepted by the Comptroller remains in force for the period specified in the Notice unless:
 - i. it is revoked by the Applicant by notice in writing; or
 - ii. the Comptroller revokes the Notice (in writing); or
 - iii. the Court orders, in infringement proceedings, that the Notice be revoked.

Security

11. The Comptroller may refuse to suspend the Customs procedures until the Applicant deposits a sum of money or security to the satisfaction of the Comptroller for the reimbursement of any expenses as a result of the suspended customs clearance. Security should not exceed the value of duties and taxes payable and no less than 50% of the total value of duties and taxes payable.

Notification to the Applicant and Importer under section 310 of the Act

12. The applicant and importer will be notified in writing of the Comptroller's decision to suspend Customs clearance as soon as possible after the suspended customs clearance.

Inspection and examination of goods

13. Both the applicant and importer can examine goods and to remove samples for examination, testing and analysis for the purpose of conducting infringement proceedings.

Detention and release of goods

14. The goods must be taken to a secure place and detained until:
 - (i) the Comptroller revokes the Notice as a result of the review; or
 - (ii) the Comptroller is served with an order of the Court that the goods be released;
or
 - (iii) any infringement proceedings are abandoned; or
 - (iv) ten (10) working days have elapsed since notification was given under section 310 of the Act and the Comptroller has not been served with a notice of infringement proceedings.
15. The period referred to in clause 15(iv) can only be extended by the Comptroller to twenty (20) working days if the Comptroller considers it appropriate to do so in the circumstances.

Forfeiture of goods by Consent

16. It is important to note that an importer may by written notice to the Comptroller consent to the detained goods being forfeited to the Comptroller.
17. If the importer gives notice before any infringement proceedings have been filed, the goods are forfeited to the State and are disposed of, as the Comptroller directs.

Destruction of Goods

18. If during the infringement proceedings the Court decides that the goods infringe the owners rights to the copyright, design, registered mark or design, the Court may order that the goods be destroyed or disposed of outside the channels of commerce in a manner as to avoid harm to the owner of the copyright, design, registered mark or design.

REFERENCES

Customs Act 2014

- Section 307 – Notification requesting suspension of customs clearance of goods may be given to Comptroller;
- Section 308 - Power to suspend customs clearance procedure;
- Section 309 – Security;
- Section 310 – Notification;
- Section 311 – Inspection and examination of goods;
- Section 312 – Detention and release of goods;
- Section 313 - Forfeiture of goods by consent;
- Section 314 – Destruction of goods.