

§ 133.11

with paragraph (a) of this section or within an extension of time granted in accordance with paragraph (b) of this section, shall deprive the trademark owner of the renewal process. A delinquent applicant will be required to apply anew to record the renewed trademark in accordance with the procedures and requirements of §§ 133.2 and 133.3.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975; T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

Subpart B—Recordation of Trade Names

§ 133.11 Trade names eligible for recordation.

The name or trade style used for at least 6 months to identify a manufacturer or trader may be recorded with the United States Customs Service. Words or designs used as trademarks, whether or not registered in the U.S. Patent and Trademark Office shall not be accepted for recordation as a trade name. Generally, the complete business name will be recorded unless convincing proof establishes that only a part of the complete name is customarily used.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

§ 133.12 Application to record a trade name.

An application to record a trade name shall be in writing addressed to the Intellectual Property Rights Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and shall include the following information:

(a) The name, complete business address, and citizenship of the trade name owner or owners (if a partnership, the citizenship of each partner; if an association or corporation, the State, country, or other political jurisdiction within which it was organized, incorporated or created);

(b) The name or trade style to be recorded;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to

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use the trade name and a statement as to the use authorized;

(d) The identity of any parent or subsidiary company, or other foreign company under common ownership or control which uses the trade name abroad (see § 133.2(d)); and

(e) A description of the merchandise with which the trade name is associated.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

§ 133.13 Documents and fee to accompany application.

(a) *Documents.* The application shall be accompanied by a statement of the owner, partners, or principal corporate officer, and by statements by at least two other persons not associated with or related to the applicant but having actual knowledge of the facts, stating that to his best knowledge and belief:

(1) The applicant has used the trade name in connection with the class or kind of merchandise described in the application for at least 6 months;

(2) The trade name is not identical or confusingly similar to any other trade name or registered trademark used in connection with such class or kind of merchandise; and

(3) The applicant has the sole and exclusive right to the use of such trade name in connection with the merchandise of that class or kind.

(b) *Fee.* The application shall be accompanied by a fee of \$190 for each trade name to be recorded. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975]

§ 133.14 Publication of trade name recordation.

(a) *Notice of tentative recordation.* Notice of tentative recordation of a trade name shall be published in the FEDERAL REGISTER and the Customs Bulletin. The notice shall specify a procedure and a time period within which interested parties may oppose the recordation.

(b) *Notice of final action.* After consideration of any claims, rebuttals, and other relevant evidence, notice of final

approval or disapproval of the application shall be published in the FEDERAL REGISTER and the Customs Bulletin.

§ 133.15 Term of Customs trade name recordation.

Protection for a recorded trade name shall remain in force as long as the trade name is used. The recordation shall be canceled upon request of the recordant or upon evidence of disuse. From time to time, the Intellectual Property Rights Branch may request the trade name owner to advise whether the name is still in use. The failure of a trade name owner to respond to such a request shall be regarded as evidence of disuse.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

Subpart C—Importations Bearing Registered and/or Recorded Trademarks or Recorded Trade Names

SOURCE: T.D. 99-21, 64 FR 9062, Feb. 24, 1999, unless otherwise noted.

§ 133.21 Articles bearing counterfeit trademarks.

(a) *Counterfeit trademark defined.* A “counterfeit trademark” is a spurious trademark that is identical to, or substantially indistinguishable from, a registered trademark.

(b) *Seizure.* Any article of domestic or foreign manufacture imported into the United States bearing a counterfeit trademark shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violation of the customs laws.

(c) *Notice to trademark owner.* When merchandise is seized under this section, Customs shall disclose to the owner of the trademark the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (4) The quantity involved;
- (5) The name and address of the manufacturer;

(6) The country of origin of the merchandise;

(7) The name and address of the exporter; and

(8) The name and address of the importer.

(d) *Samples available to the trademark owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the trademark for examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark owner, the owner shall, in lieu of return of the sample, certify to Customs that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.21(d) was (damaged/destroyed/lost) during examination, testing, or other use.”

(e) *Failure to make appropriate disposition.* Unless the trademark owner, within 30 days of notification, provides written consent to importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of in accordance with § 133.52, subject to the importer’s right to petition for relief from the forfeiture under the provisions of part 171 of this chapter.

§ 133.22 Restrictions on importation of articles bearing copying or simulating trademarks.

(a) *Copying or simulating trademark or trade name defined.* A “copying or simulating” trademark or trade name is one