

§ 133.25

19 CFR Ch. I (4-1-03 Edition)

(c) *Release of detained articles*—(1) *General.* Articles detained in accordance with paragraph (a) of this section may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction(s) set forth in § 133.22(c) or 133.23(d) of this subpart are established.

(2) *Articles accompanying importer.* Articles arriving as accompanying baggage or on the person of the importer may be exported or destroyed under Customs supervision at the request of the importer, or may be released if:

(i) The importer removes or obliterates the marks in a manner acceptable to the Customs officer at the time of examination of the articles; or

(ii) The request of the importer to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(3) *Mail importations.* Articles arriving by mail in noncommercial shipments, or in commercial shipments valued at \$250 or less, may be exported or destroyed at the request of the addressee or may be released if:

(i) The addressee appears in person at the appropriate Customs office and at that time removes or obliterates the marks in a manner acceptable to the Customs officer; or

(ii) The request of the addressee appearing in person to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(d) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.25 Procedure on detention of articles subject to restriction.

(a) *In general.* Articles subject to the restrictions of §§ 133.22 and 133.23 shall be detained for 30 days from the date on which the merchandise is presented for Customs examination. The importer shall be notified of the decision to detain within 5 days of the decision that such restrictions apply. The importer may, during the 30-day period, establish that any of the circumstances described in § 133.22(c) or § 133.23(d) are applicable. Extensions of the 30-day time period may be freely granted for good cause shown.

(b) *Notice of detention and disclosure of information.* From the time merchandise is presented for Customs examination until the time a notice of detention is issued, Customs may disclose to the owner of the trademark or trade name any of the following information in order to obtain assistance in determining whether an imported article bears an infringing trademark or trade name. Once a notice of detention is issued, Customs shall disclose to the owner of the trademark or trade name the following information, if available, within 30 days, excluding weekends and holidays, of the date of detention:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (4) The quantity involved; and
- (5) The country of origin of the merchandise.

(c) *Samples available to the trademark or trade name owner.* At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. 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 or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name 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 133.25(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement."

(d) *Form of notice.* Notice of detention of articles found subject to the restrictions of § 133.22 or § 133.23 shall be given the importer in writing.

**§ 133.26 Demand for redelivery of released merchandise.**

If it is determined that merchandise which has been released from Customs custody is subject to the restrictions of § 133.22 or § 133.23 of this subpart, the port director shall promptly make demand for the redelivery of the merchandise under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the merchandise is not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(h) of this chapter.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 99-64, 64 FR 43266, Aug. 10, 1999]

**§ 133.27 Civil fines for those involved in the importation of counterfeit trademark goods.**

In addition to any other penalty or remedy authorized by law, Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark (within the meaning of § 133.21 of this subpart) as follows:

(a) *First violation.* For the first seizure of such merchandise, the fine imposed will not be more than the domestic value of the merchandise (see § 162.43(a) of this chapter) as if it had been genuine, based on the manufac-

turer's suggested retail price of the merchandise at the time of seizure.

(b) *Second and subsequent violations.* For the second and each subsequent seizure of such merchandise, the fine imposed will not be more than twice the domestic value of the merchandise as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure.

**Subpart D—Recordation of Copyrights**

**§ 133.31 Recordation of copyrighted works.**

(a) *Eligible works.* Claims to copyright which have been registered in accordance with the Copyright Act of July 30, 1947, as amended, or the Copyright Act of 1976, as amended, may be recorded with Customs for import protection.

(b) *Persons eligible to record.* The copyright owner, including any person who has acquired copyright ownership through an exclusive license, assignment, or otherwise, and claims actual or potential injury because of actual or contemplated importations of copies (or phonorecords) of eligible works, may file an application to record a copyright. "Copyright owner," with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

(c) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with § 133.32, § 133.35, § 133.36, or § 133.37.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73-212, 38 FR 21397, Aug. 8, 1973; T.D. 87-40, 52 FR 9474, Mar. 25, 1987]

**§ 133.32 Application to record copyright.**

An application to record a copyright to secure Customs protection against the importation of infringing copies or phonorecords shall be in writing addressed to the Intellectual Property Rights Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, DC 20229, and shall include the following information:

(a) The name and complete address of the copyright owner or owners;