

§ 133.3

than 50 percent of the business entity; and

(2) *Common control* means effective control in policy and operations and is not necessarily synonymous with common ownership.

(e) *Lever-rule protection*. For owners of U.S. trademarks who desire protection against gray market articles on the basis of physical and material differences (see *Lever Bros. Co. v. United States*, 981 F.2d 1330 (D.C. Cir. 1993)), a description of any physical and material difference between the specific articles authorized for importation or sale in the United States and those not so authorized. In each instance, owners who assert that physical and material differences exist must state the basis for such a claim with particularity, and must support such assertions by competent evidence and provide summaries of physical and material differences for publication. Customs determination of physical and material differences may include, but is not limited to, considerations of:

(1) The specific composition of both the authorized and gray market product(s) (including chemical composition);

(2) Formulation, product construction, structure, or composite product components, of both the authorized and gray market product;

(3) Performance and/or operational characteristics of both the authorized and gray market product;

(4) Differences resulting from legal or regulatory requirements, certification, etc.;

(5) Other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

(f) Customs will publish in the Customs Bulletin a notice listing any trademark(s) and the specific products for which gray market protection for physically and materially different products has been requested. Customs will examine the request(s) before issuing a determination whether gray market protection is granted. For parties requesting protection, the application for trademark protection will not take effect until Customs has made and issued this determination. If protection is granted, Customs will publish in the

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Customs Bulletin a notice that a trademark will receive *Lever-rule* protection with regard to a specific product.

[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. 99-21, 64 FR 9062, Feb. 24, 1999; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

§ 133.3 Documents and fee to accompany application.

(a) *Documents*. The application shall be accompanied by:

(1) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name of the applicant; and

(2) Five copies of this certificate, or of a U.S. Patent and Trademark Office facsimile. The copies may be reproduced privately and shall be on paper approximately 8"×10½" in size. If the certificate consists of two or more pages, the copies may be reproduced on both sides of the paper.

(b) *Fee*. The application shall be accompanied by a fee of \$190 for each trademark to be recorded. However, if the trademark is registered for more than one class of goods (based on the class, or classes, first stated on the certificate of registration, without consideration of any class, or classes, also stated in parentheses) the fee for recordation shall be \$190 for each class for which the applicant desires to record the trademark with the United States Customs Service. For example, to secure recordation of a trademark registered for three classes of goods, a fee of \$570 is payable. 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. 73-174, 38 FR 16850, June 27, 1973; T.D. 75-160, 40 FR 28790, July 9, 1975; T.D. 84-133, 49 FR 26571, June 28, 1984; T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

§ 133.4 Effective date, term, and cancellation of trademark recordation and renewals.

(a) *Effective date*. Recordation of trademark and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the United States Customs Service instructing Customs officers as to the