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To Whom It May Concern,

Re: Trademark rights enforcement by the Israeli Customs Authorities

Since our firm handles many Israeli portfolios, we would like to draw your attention to a very efficient channel of trademark rights enforcement in Israel.

Following the implementation of the TRIP's agreement in the Israeli legislation, owners of trademarks registered in Israel may use the Customs Authorities ("CA") to protect their rights against importation of infringing goods (including shipments destined to the Palestinian Authority) by preventing their entrance into the country.

The legal provisions which frame the CA authorization as to imports of goods which infringe registered trademark rights were interpreted by the courts very broadly.

The CA will detain imports of infringing goods in two cases:

1. When a right holder asks to block entrance to Israel of a **specific shipment** of infringing goods.
2. When a right holder asks to **monitor and sample shipments on a constant basis** based on registered trademarks stored in the CA's data base, and to detain any infringing goods discovered.

In both cases - seizures of specific shipments or after sampling them - the procedure required for the intervention of the CA is simple. It involves filing a notification which includes the trademark registration certificate, samples of the goods, details of the infringing goods shipment, if known, and an undertaking to indemnify the importer or the CA in case of unjustified damage caused as a result of the detention.

The notification is disseminated by the CA to all the ports and Custom houses.



Also, in both cases the infringing goods will be detained for 3 days during which the right holders should notify the CA if the goods infringe their rights and if it intends to take legal action against the importer. If they do so and deposit a guarantee the infringing import will be detained for 10 days (and for additional 10 days in special cases) during which the right holders should file a court suit against the infringing importer.

The right holders are only obliged to file a law suit (which usually reaches the judge's table after several months) and it is the importer who has to file a petition to release the infringing goods before the end of the trial and to prove that they are not infringing. If the importer fails to do so, the infringing goods will automatically be detained until the trial is over.

After the right holder's law suit is filed, and as long as it fulfills the CA's requirements, the CA will not release the infringing goods until ordered to do so by the court.

The court may order the CA to destroy the infringing goods, to confiscate them or to release them under restrictive conditions, such as removal of the infringing labels, tags etc.

Also, the long and tedious procedures need to be taken by the infringing importers who try to release a detained shipment, and mainly the high storage costs at the port's warehouse, often cause them, at a very early stage, to abandon the shipment and to ask for its destruction.

In addition, involving the CA often provides the rights holder with some valuable information required for the enforcement of their rights in other arenas.

Furthermore, in both cases, regarding some shipments, the CA may take, at its sole discretion, a different course of action.

In those cases the CA will ask the right holder to provide an expert opinion (concluding that the imported goods are infringing the right holder's rights), a letter of commitment to join as a defendant in case the importer will sue the CA and a letter of indemnity. If the rights owner provides all of the above the CA will seize the shipment and after 30 days will destroy the infringing shipment.

In this procedure the CA will not reveal the importer details to the right holder. The only remedy the right holder has is the swift destruction of the shipment. Thus, in this procedure, as part of the first letter of notice it sends the rights owner, the CA gives the rights owner the option to choose to stay in the present course or to choose the former mentioned course of action, where the rights owner must file a law suit or settle with the importer in order to obtain the destruction of the infringing shipment.

Needless to mention that blocking infringing goods before they cross the borders is by far more efficient and cost effective than searching for them (and often wasting a lot of time and paying private investigators), after they reach the points of sale, and only then try to halt their marketing by court orders in legal proceedings, criminal and/or civil, at which the CA are not involved.

We also would like to note that COPYRIGHTS right's holders can also enforce their rights by using the CA in the same manner. The CA are also authorized to confiscate shipments which violate consumer protection legislation (including cases where false trademarks are involved), shipments which violate other provisions relating to importation (such as to marking of goods) and shipments involving any other criminal offence.

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Over the last two and a half decades, our office has gained extensive experience dealing with CA procedures. As a result, amongst our respected and well known clients are Nintendo, Adobe, Autodesk, Gettyimages, Microsoft and many more.

For further information please contact our firm.

Sincerely yours,

Naomi Assia, adv

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