

AIPLA

American Intellectual Property Law Association

Submitted via www.regulations.gov

November 15, 2019

Intellectual Property Branch
Trade and Commercial Regulations Branch,
Office of Trade Regulations and Rulings
U.S. Customs and Border Protection
Department of Homeland Security
90 K Street NE, 10th Floor
Washington, DC 20229-1177
Attention: Alex Bamiagis

Via Federal eRulemaking Portal: <http://www.regulations.gov>

Re: AIPLA Comments on Notice of Proposed Rulemaking to Amend U.S. Customs and Border Protection Regulations Pertaining to Disclosure of Information Regarding Abandoned Merchandise [Docket No. USCBP 2019-0031]

Dear Mr. Bamiagis:

The American Intellectual Property Law Association (“AIPLA”) is pleased to have the opportunity to present its views with respect to the Notice of Proposed Rulemaking to Amend U.S. Customs and Border Protection Regulations Pertaining to Disclosure of Information Regarding Abandoned Merchandise, 19 CFR Parts 127 and 133, dated August 27, 2019 (the NPRM).

AIPLA is a national bar association of approximately 12,000 members engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public’s interest in healthy competition, reasonable costs, and basic fairness.

The NPRM recognizes the importance of disclosing certain information to brand owners as helpful in combatting the counterfeit market.

AIPLA supports the efforts of the U.S. Customs and Border Protection, Department of Homeland Security to combat counterfeit and pirated goods. We take this opportunity to address some specific recommendations regarding this rulemaking proposal.

1. Part 127¹ – General Order, Unclaimed, and Abandoned Merchandise

AIPLA supports the adoption of the amended language in Part 127 as provided in the NPRM, with no additional comments or recommendations.

2. Part 133² – Trademarks, Trade Names, and Copyrights

AIPLA generally supports the adoption of the amendments described in the NPRM relating to §133.21 Articles suspected of bearing counterfeit marks, but with the following comments and recommendations:

Section (b)(6), should be modified as follows (changes highlighted in bold):

(b)

*(6) Voluntary abandonment and disclosure to owner of the mark of comprehensive importation information. When merchandise that bears a mark suspected by CBP of being a counterfeit version of a mark that is registered with the U.S. Patent and Trademark Office and recorded with CBP pursuant to subpart A of this part has been voluntarily abandoned under §12.12(b) of this chapter, CBP ~~may~~ **will** disclose to the owner of the mark the following comprehensive importation information, ~~if CBP determines the disclosure will assist in CBP's trademark enforcement:~~*

(i) The date of importation;

(ii) The port of entry;

(iii) The description of the merchandise;

(iv) The quantity of the merchandise;

(v) The country of origin of the merchandise;

(vi) The name and address of the manufacturer;

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

(viii) The name and address of the importer.

AIPLA recommends changing the term “may” to “will” so that it is consistent with the language in Sections 133.21(b)(4) and 133.21(e), which describes the importation that CBP **will** disclose to the owner of the mark. AIPLA believes that the consistency in language is important to define the duty owed by CBP to brand owners in case of detention of suspected merchandise.

AIPLA recommends that the phrase “if CBP determines the disclosure will assist in CBP’s trademark enforcement” be struck out. While there is no doubt that the proposed procedures are implemented to assist both the CBP’s and trademark owners’ efforts in trademark enforcement, the addition of this phrase is unnecessary as it adds uncertainty as to when the rules would apply.

¹ Part 127 of title 19 of the Code of Federal Regulations (19 CFR §127).

² Part 133 of title 19 of the Code of Federal Regulations (19 CFR §133).

AIPLA appreciates the opportunity to provide input to this Notice of Proposed Rulemaking.

Sincerely,

A handwritten signature in blue ink, reading "Barbara A. Fiocco". The signature is written in a cursive, flowing style.

Barbara A. Fiocco

President

American Intellectual Property Law Association