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Title 19: Customs Duties

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

Subpart C—Importations Bearing Recorded Marks or Trade Names

§133.23 Restrictions on importation of gray market articles.

(a) *Restricted gray market articles defined.* “Restricted gray market articles” are foreign-made articles bearing a genuine trademark or trade name identical with or substantially indistinguishable from one owned and recorded by a citizen of the United States or a corporation or association created or organized within the United States and imported without the authorization of the U.S. owner. “Restricted gray market goods” include goods bearing a genuine trademark or trade name which is:

(1) *Independent licensee.* Applied by a licensee (including a manufacturer) independent of the U.S. owner, or

(2) *Foreign owner.* Applied under the authority of a foreign trademark or trade name owner other than the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§133.2(d) and 133.12(d) of this part), from whom the U.S. owner acquired the domestic title, or to whom the U.S. owner sold the foreign title(s); or

(3) *“Lever-rule”.* Applied by the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§133.2(d) and 133.12(d) of this part), to goods that the Customs Service has determined to be physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S. (as defined in §133.2 of this part).

(b) *Labeling of physically and materially different goods.* Goods determined by the Customs Service to be physically and materially different under the procedures of this part, bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§133.2(d) and 133.12(d) of this part), shall not be detained under the provisions of paragraph (c) of this section where the merchandise or its packaging bears a conspicuous and legible label designed to remain on the product until the first point of sale to a retail consumer in the United States stating that: “This product is not a product authorized by the United States trademark owner for importation and is physically and materially different from the authorized product.” The label must be in close proximity to the trademark as it appears in its most prominent location on the article itself or the retail package or container. Other information designed to dispel consumer confusion may also be added.

(c) *Denial of entry.* All restricted gray market goods imported into the United States shall be denied entry and subject to detention as provided in §133.25, except as provided in paragraph (b) of this section.

(d) *Relief from detention of gray market articles.* Gray market goods subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following exceptions, as well as the circumstances described above in §133.22(c), are applicable:

(1) The trademark or trade name was applied under the authority of a foreign trademark or trade name owner who is the same as the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (in an instance covered by §§133.2(d) and 133.12(d) of this part); and/or

(2) For goods bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner, that the merchandise as imported is not physically and materially different, as described in §133.2(e), from articles authorized by the U.S. owner for importation or sale in the United States; or

(3) Where goods are detained for violation of §133.23(a)(3), as physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S., a label in compliance with §133.23(b) is applied to the goods.

(e) *Release of detained articles.* Articles detained in accordance with §133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark restriction set forth in §133.22(c) of this subpart or in paragraph (d) of this section are established.

(f) *Seizure.* If the importer has not obtained release of detained articles within the period of detention as provided in §133.25 of this subpart, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be notified of the seizure and liability of forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

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