§ 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.
§ 133.24 Restrictions on articles accompanying importer and mail importations.

(a) Detention. Articles accompanying an importer and mail importations subject to the restrictions of §§133.22 and 133.23 shall be detained for 30 days from the date of notice that such restrictions apply, to permit the establishment of whether any of the circumstances described in §133.22(c) or 133.23(d) are applicable.

(b) Notice of detention. Notice of detention shall be given in the following manner:

(1) Articles accompanying importer. When the articles are carried as accompanying baggage or on the person of persons arriving in the United States, the Customs inspector shall orally advise the importer that the articles are subject to detention.

(2) Mail importations. When the articles arrive by mail in noncommercial shipments, or in commercial shipments valued at $250 or less, notice of the detention shall be given on Customs Form 8.

(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 restrictions 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...