§ 133.11 Trade names eligible for recordation.

The name or trade style used for at least 6 months to identify a manufacturer or trader may be recorded with the United States Customs Service. Words or designs used as trademarks, whether or not registered in the U.S. Patent and Trademark Office shall not be accepted for recordation as a trade name. Generally, the complete business name will be recorded unless convincing proof establishes that only a part of the complete name is customarily used.


§ 133.12 Application to record a trade name.

An application to record a trade name shall be in writing addressed to the IPR & Restricted Merchandise Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and shall include the following information:

(a) The name, complete business address, and citizenship of the trade name owner or owners (if a partnership, the citizenship of each partner; if an association or corporation, the State, country, or other political jurisdiction within which it was organized, incorporated or created);  
(b) The name or trade style to be recorded;  
(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trade name and a statement as to the use authorized;  
(d) The identity of any parent or subsidiary company, or other foreign company under common ownership or control which uses the trade name abroad (see §133.2(d)); and  
(e) A description of the merchandise with which the trade name is associated.


§ 133.13 Documents and fee to accompany application.

(a) Documents. The application shall be accompanied by a statement of the owner, partners, or principal corporate officer, and by statements by at least two other persons not associated with or related to the applicant but having actual knowledge of the facts, stating that to his best knowledge and belief:

(1) The applicant has used the trade name in connection with the class or kind of merchandise described in the application for at least 6 months;  
(2) The trade name is not identical or confusingly similar to any other trade name or registered trademark used in connection with such class or kind of merchandise; and

(3) The applicant has the sole and exclusive right to the use of such trade name in connection with the merchandise of that class or kind.  
(b) Fee. The application shall be accompanied by a fee of $190 for each trade name to be recorded. A check or money order shall be made payable to the U.S. Customs and Border Protection.


§ 133.14 Publication of trade name recordation.

(a) Notice of tentative recordation. Notice of tentative recordation of a trade name shall be published in the FEDERAL REGISTER and the Customs Bulletin. The notice shall specify a procedure and a time period within which interested parties may oppose the recordation.

(b) Notice of final action. After consideration of any claims, rebuttals, and other relevant evidence, notice of final approval or disapproval of the application shall be published in the FEDERAL REGISTER and the Customs Bulletin.

§ 133.15 Term of CBP trade name recordation.

Protection for a recorded trade name shall remain in force as long as the trade name is used. The recordation shall be canceled upon request of the recordant or upon evidence of disuse.
From time to time, the IPR & Restricted Merchandise Branch may request the trade name owner to advise whether the name is still in use. The failure of a trade name owner to respond to such a request shall be regarded as evidence of disuse.


Subpart C—Importations Bearing Recorded Marks or Trade Names

From time to time, the IPR & Restricted Merchandise Branch may request the trade name owner to advise whether the name is still in use. The failure of a trade name owner to respond to such a request shall be regarded as evidence of disuse.


§ 133.21 Articles suspected of bearing counterfeit marks.

(a) Counterfeit mark defined. A “counterfeit mark” is a spurious mark that is identical with, or substantially indistinguishable from, a mark registered on the Principal Register of the U.S. Patent and Trademark Office.

(b) Detention. CBP may detain any article of domestic or foreign manufacture imported into the United States that bears a mark suspected of being a counterfeit version of a mark that is registered with the U.S. Patent and Trademark Office and is recorded with CBP pursuant to subpart A of this part. The detention will be for a period of up to thirty days from the date on which the merchandise is presented for examination. The 30-day time period may be extended for up to an additional thirty days for good cause shown by the importer. In accordance with 19 U.S.C. 1499, if after the detention period and any authorized extensions the article is not released the article will be deemed excluded for the purposes of 19 U.S.C. 1514(a)(4).

(1) Notice to importer of detention and possible disclosure. Within five days (excluding weekends and holidays) from the date of a decision to detain, CBP will notify the importer in writing of the detention. The notice will inform the importer that a disclosure of information concerning the detained merchandise may be made to the owner of the mark to assist CBP in determining whether any marks are counterfeit, unless the importer presents information within seven days of the notification (excluding weekends and holidays) establishing to CBP’s satisfaction that the detained merchandise does not bear a counterfeit mark. CBP may disclose information appearing on the merchandise and/or its retail packaging, images (including photographs) of the merchandise and/or its retail packaging in its condition as presented for examination, or a sample of the merchandise and/or its retail packaging in its condition as presented for examination. The release (disclosure) of a sample is subject to the bond and return requirements of paragraph (c) of this section. Where the importer does not timely provide information or the information provided is insufficient for CBP to determine that the merchandise does not bear a counterfeit mark, CBP may proceed with the disclosure to the owner of the mark, and will so notify the importer. Disclosure under this section may include any serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, or other identifying marks appearing on the merchandise or its retail packaging, in alphanumeric or other formats.

(2) Notice to owner of the mark and disclosure of information. From the time merchandise is presented for examination until the time a notice of detention is issued, CBP may disclose to the owner of the mark any of the following information in order to obtain assistance in determining whether an imported article bears a counterfeit mark. Once a notice of detention is issued, CBP will disclose to the owner of the mark the following information, if available, within thirty days (excluding weekends and holidays) from the date of detention:

(i) The date of importation;
(ii) The port of entry;
(iii) The description of the merchandise from the entry;
(iv) The quantity involved; and
(v) The country of origin of the merchandise.

(3) Redacted images and samples made available to the owner of the mark. Notwithstanding the notice and seven-day response procedure of paragraph (b)(1) of this section, CBP may, at any time after presentation of the merchandise for examination, provide to the owner of the mark images or a sample of the detained merchandise or its retail packaging.