

merchandise, the Acknowledgement of Delivery by Postal Service must be signed by him and returned to the port director. Such Acknowledgment of Delivery by Postal Service shall be in the following form:

ACKNOWLEDGMENT OF DELIVERY BY POSTAL
SERVICE

In consideration of the fact that certain articles in a mail importation consisting of

(state number) packages mailed to me by _____ (name of sender) of _____ (address) on _____ (date of mailing), are subject to quota restrictions under which only a portion of such articles may be admitted to entry at one time, and the Postal Service permits no division of the importation before delivery thereof, and since I am desirous of receiving the packages of such importation which are admissible to entry under the quota administered by the United States Customs, I hereby agree and acknowledge that delivery of the package or packages to the United States Customs shall be regarded as delivery by the Postal Service to me.

(Signature of addressee)

(c) *Agreement to less than full delivery.* If, in any case, the sender of a mail package has indicated his agreement to the delivery of less than the entire importation at one time, an Acknowledgment of Delivery by Postal Service need not be secured from the addressee.

(d) *Deposit required.* If a portion of a mail shipment may be released, the port director may require a deposit of an amount sufficient to defray the expenses of repacking merchandise for shipment by mail to the addressee. The shipment shall be under Government frank without new postage.

§ 132.24 Entry.

Unless a formal entry or entry by appraisalment is required, a mail entry on Customs Form 3419 shall be issued and forwarded with the package to the postmaster for delivery to the addressee and collection of any duties in the same manner as for any other mail package subject to Customs treatment.

§ 132.25 Undeliverable shipment.

If within a reasonable time, but not to exceed 30 days, the addressee fails to indicate to the port director an intention to receive delivery of the packages

or a portion thereof in accordance with the notice on Customs Form 3509 which was sent to him by the port director, the importation shall be treated in the same manner as other undeliverable mail.

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

Sec.

133.0 Scope.

Subpart A—Recordation of Trademarks

133.1 Recordation of trademarks.

133.2 Application to record trademark.

133.3 Documents and fee to accompany application.

133.4 Effective date, term, and cancellation of trademark recordation and renewals.

133.5 Change of ownership of recorded trademark.

133.6 Change in name of owner of recorded trademark.

133.7 Renewal of trademark recordation.

Subpart B—Recordation of Trade Names

133.11 Trade names eligible for recordation.

133.12 Application to record a trade name.

133.13 Documents and fee to accompany application.

133.14 Publication of trade name recordation.

133.15 Term of CBP trade name recordation.

Subpart C—Importations Bearing Recorded Marks or Trade Names

133.21 Articles bearing counterfeit trademarks.

133.22 Restrictions on importation of articles bearing copying or simulating trademarks.

133.23 Restrictions on importation of gray market articles.

133.24 Restrictions on articles accompanying importer and mail importations.

133.25 Procedure on detention of articles subject to restriction.

133.26 Demand for redelivery of released merchandise.

133.27 Civil fines for those involved in the importation of merchandise bearing a counterfeit mark.

Subpart D—Recordation of Copyrights

133.31 Recordation of copyrighted works.

133.32 Application to record copyright.

133.33 Documents and fee to accompany application.

133.34 Effective date, term, and cancellation of recordation.

§ 133.0

- 133.35 Change of ownership of recorded copyright.
- 133.36 Change in name of owner of recorded copyright.
- 133.37 Renewal of copyright recordation.

Subpart E—Importations Violating Copyright Laws

- 133.41 [Reserved]
- 133.42 Piratical articles; Unlawful copies or phonorecords of recorded copyrighted works.
- 133.43–133.45 [Reserved]
- 133.46 Demand for redelivery of released articles.

Subpart F—Enforcement of the Prohibition on Importation of Merchandise Capable of Circumventing Technological Measures for Protection of Copyright

- 133.47 Articles suspected of violating the Digital Millennium Copyright Act.
- 133.48 Demand for redelivery of released articles.

Subpart G—Procedure Following Forfeiture or Assessment of Liquidated Damages

- 133.51 Relief from forfeiture or liquidated damages.
- 133.52 Disposition of forfeited merchandise.
- 133.53 Refund of duty.

Subpart H—Donations of Intellectual Property Rights Technology and Related Support Services

- 133.61 Donations of intellectual property rights technology and related support services.

AUTHORITY: 15 U.S.C. 1124, 1125, 1127; 17 U.S.C. 101, 104, 106, 601, 602, 603; 18 U.S.C. 1905; 19 U.S.C. 66, 1202, 1499, 1526, 1595a, 1623, 1624, 1628a; 31 U.S.C. 9701.

Section 133.47 also issued under 17 U.S.C. 1201.

Section 133.61 also issued under Sec. 308(d), Pub. L. 114–125; Sec. 507, Pub. L. 108–90; Sec. 2, Pub. L. 114–279.

SOURCE: T.D. 72–266, 37 FR 20678, Oct. 3, 1972, unless otherwise noted.

§ 133.0 Scope.

This part provides for the recordation of trademarks, trade names, and copyrights with the U.S. Customs and Border Protection for the purpose of prohibiting the importation of certain articles. It also sets forth the procedures for the disposition, including release to the importer in appropriate circumstances, of articles bearing pro-

19 CFR Ch. I (4–1–25 Edition)

hibited marks or names, piratical articles, and prohibited circumvention devices, as well as the disclosure of information concerning such articles when such disclosure would not compromise an ongoing law enforcement investigation or national security.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by CBP Dec. 24–03, 89 FR 52373, June 24, 2024]

Subpart A—Recordation of Trademarks

§ 133.1 Recordation of trademarks.

(a) *Eligible trademarks.* Trademarks registered by the U.S. Patent and Trademark Office under the Trademark Act of March 3, 1881, the Trademark Act of February 20, 1905, or the Trademark Act of 1946 (15 U.S.C. 1051 *et seq.*) except those registered on the supplemental register under the 1946 Act (15 U.S.C. 1096), may be recorded with the U.S. Customs and Border Protection if the registration is current.

(b) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with §§ 133.2, 133.5, 133.6, and 133.7 of this subpart.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.2 Application to record trademark.

An application to record one or more trademarks shall be in writing, addressed to the Intellectual Property Rights (IPR) & Restricted Merchandise Branch, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and shall include the following information:

(a) The name, complete business address, and citizenship of the trademark 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 places of manufacture of goods bearing the recorded trademark;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and

(d) The identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad. For this purpose:

(1) *Common ownership* means individual or aggregate ownership of more than 50 percent of the business entity; and

(2) *Common control* means effective control in policy and operations and is not necessarily synonymous with common ownership.

(e) *Lever-rule protection*. For owners of U.S. trademarks who desire protection against gray market articles on the basis of physical and material differences (see *Lever Bros. Co. v. United States*, 981 F.2d 1330 (D.C. Cir. 1993)), a description of any physical and material difference between the specific articles authorized for importation or sale in the United States and those not so authorized. In each instance, owners who assert that physical and material differences exist must state the basis for such a claim with particularity, and must support such assertions by competent evidence and provide summaries of physical and material differences for publication. CBP determination of physical and material differences may include, but is not limited to, considerations of:

(1) The specific composition of both the authorized and gray market product(s) (including chemical composition);

(2) Formulation, product construction, structure, or composite product components, of both the authorized and gray market product;

(3) Performance and/or operational characteristics of both the authorized and gray market product;

(4) Differences resulting from legal or regulatory requirements, certification, etc.;

(5) Other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

(f) CBP will publish in the Customs Bulletin a notice listing any trade-

mark(s) and the specific products for which gray market protection for physically and materially different products has been requested. CBP will examine the request(s) before issuing a determination whether gray market protection is granted. For parties requesting protection, the application for trademark protection will not take effect until CBP has made and issued this determination. If protection is granted, CBP will publish in the Customs Bulletin a notice that a trademark will receive *Lever-rule* protection with regard to a specific product.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 99-21, 64 FR 9062, Feb. 24, 1999; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

§ 133.3 Documents and fee to accompany application.

(a) *Documents*. The application shall be accompanied by:

(1) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name of the applicant; and

(2) Five copies of this certificate, or of a U.S. Patent and Trademark Office facsimile. The copies may be reproduced privately and shall be on paper approximately 8" × 10½" in size. If the certificate consists of two or more pages, the copies may be reproduced on both sides of the paper.

(b) *Fee*. The application shall be accompanied by a fee of \$190 for each trademark to be recorded. However, if the trademark is registered for more than one class of goods (based on the class, or classes, first stated on the certificate of registration, without consideration of any class, or classes, also stated in parentheses) the fee for recordation shall be \$190 for each class for which the applicant desires to record the trademark with the United States Customs Service. For example, to secure recordation of a trademark registered for three classes of goods, a fee of \$570 is payable. A check or money

§ 133.4

order shall be made payable to the United States Customs Service.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73-174, 38 FR 16850, June 27, 1973; T.D. 75-160, 40 FR 28790, July 9, 1975; T.D. 84-133, 49 FR 26571, June 28, 1984; T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

§ 133.4 Effective date, term, and cancellation of trademark recordation and renewals.

(a) *Effective date.* Recordation of trademark and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the U.S. Customs and Border Protection instructing U.S. Customs and Border Protection Officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation or renewal of an existing recordation of a trademark shall remain in force concurrently with the 20-year current registration period or last renewal thereof in the U.S. Patent and Trademark Office.

(c) *Cancellation of recordation.* Recordation of a trademark with the U.S. Customs and Border Protection shall be canceled if the trademark registration is finally canceled or revoked.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

§ 133.5 Change of ownership of recorded trademark.

If there is a change in ownership of a recorded trademark and the new owner wishes to continue the recordation with the United States Customs Service, he shall apply therefor by:

- (a) Complying with § 133.2;
- (b) Describing any time limit on the rights of ownership transferred;
- (c) Submitting a status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name of the new owner; and
- (d) Paying a fee of \$80, which covers all trademarks included in the application which have been previously recorded with the United States Customs Service. A check or money order shall

19 CFR Ch. I (4-1-25 Edition)

be made payable to the United States Customs Service.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975; T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

§ 133.6 Change in name of owner of recorded trademark.

If there is a change in the name of the owner of a recorded trademark, but no change in ownership, written notice thereof shall be given to the IPR & Restricted Merchandise Branch, CBP Headquarters, accompanied by:

(a) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name as changed; and

(b) A fee of \$80, which covers all trademarks included in the application which have been previously recorded with the U.S. Customs and Border Protection. A check or money order shall be made payable to the U.S. Customs and Border Protection.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975; T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

§ 133.7 Renewal of trademark recordation.

(a) *Application to renew.* To continue uninterrupted CBP protection for trademarks, the trademark owner shall submit a written application to renew CBP recordation to the IPR & Restricted Merchandise Branch not later than 3 months after the date of expiration of the current 20-year trademark registration issued by the U.S. Patent and Trademark Office. A timely application to renew a CBP recordation must include the following:

(1) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing renewal of the trademark and title to be in the name of the applicant;

(2) A statement describing any change of ownership or in the name of owner, in compliance with §§ 133.5 and 133.6 of this part, and any change of addresses of owners or places of manufacture; and

(3) A fee of \$80 for each renewal of a trademark recordation. Where the trademark covers several classes, a fee of \$80 is required for each class. A

check or money order shall be made payable to the U.S. Customs and Border Protection.

(b) *Delayed application.* Upon request made during the grace period of 3 months afforded by paragraph (a) of this section, a trademark owner whose application for renewal of recordation is unavoidably delayed may be afforded a reasonable extended period within which to comply with the requirements of paragraph (a) of this section. The request shall be in writing, addressed to the IPR & Restricted Merchandise Branch, and shall set forth the circumstances due to which application is delayed.

(c) *Untimely application.* Failure of the trademark owner to submit a renewal application within the 3-month grace period afforded in accordance with paragraph (a) of this section or within an extension of time granted in accordance with paragraph (b) of this section, shall deprive the trademark owner of the renewal process. A delinquent applicant will be required to apply anew to record the renewed trademark in accordance with the procedures and requirements of §§ 133.2 and 133.3.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975; T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

Subpart B—Recordation of Trade Names

§ 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.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

§ 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.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

§ 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.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975]

§ 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.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

Subpart C—Importations Bearing Recorded Marks or Trade Names

SOURCE: T.D. 99-21, 64 FR 9062, Feb. 24, 1999, unless otherwise noted.

§ 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 reg-

istered on the Principal Register of the U.S. Patent and Trademark Office.

(b) *Detention, notice, and disclosure of information—*(1) *Detention period.* CBP may detain any article of domestic or foreign manufacture imported into the United States 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 is recorded with CBP pursuant to subpart A of this part. The detention will be for a period of up to 30 days from the date on which the merchandise is presented for examination. In accordance with 19 U.S.C. 1499(c), if, after the detention period, the article is not released, the article will be deemed excluded for the purposes of 19 U.S.C. 1514(a)(4).

(2) *Notice of detention to importer and disclosure to owner of the recorded mark—*(i) *Notice and seven business day response period.* Within five business days from the date of a decision to detain suspect merchandise, CBP will notify the importer in writing of the detention as set forth in § 151.16(c) of this chapter and 19 U.S.C. 1499. CBP will also inform the importer that for purposes of assisting CBP in determining whether the detained merchandise bears counterfeit marks:

(A) CBP may have previously disclosed to the owner of the recorded mark, prior to issuance of the notice of detention, limited importation information concerning the detained merchandise, as described in paragraph (b)(4) of this section, and, in any event, such information may be released to the owner of the recorded mark, if available, no later than the date of issuance of the notice of detention; and

(B) CBP may disclose to the owner of the recorded mark information that appears on the detained merchandise and/or its retail packaging, including unredacted photographs, images, or samples, as described in paragraph (b)(3) of this section, unless the importer presents information within seven business days of the notification establishing that the detained merchandise does not bear a counterfeit mark.

(ii) *Failure of importer to respond or insufficient response to notice.* Where the importer does not provide information

within the seven business day response period, or the information is insufficient for CBP to determine that the merchandise does not bear a counterfeit mark, CBP will proceed with the disclosure of information as described in paragraph (b)(3) of this section to the owner of the recorded mark if CBP concludes that the disclosure would assist CBP in its determination, and provided that the disclosure would not compromise an ongoing law enforcement investigation or national security. CBP will notify the importer in case of any such disclosure.

(3) *Disclosure to owner of the recorded mark of information appearing on detained merchandise and/or its retail packaging, including unredacted photographs, images or samples.* CBP will disclose information appearing on the merchandise and/or its retail packaging (including labels) and images (including photographs) of the merchandise and/or its retail packaging in its condition as presented for examination (*i.e.*, an unredacted condition) if CBP concludes that the disclosure of information to the owner of the recorded mark as described in paragraph (b)(2)(ii) of this section would assist CBP in its determination, and provided that disclosure would not compromise an ongoing law enforcement investigation or national security. CBP may also provide a sample of the merchandise and/or its retail packaging in its condition as presented for examination to the owner of the recorded mark. The release of a sample will be in accordance with, and subject to, the bond and return requirements of paragraph (c) of this section. The disclosure may include any serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, or other identifying markings appearing on the merchandise or its retail packaging (including labels), in alphanumeric or other formats.

(4) *Disclosure to owner of the recorded mark of limited importation information.* From the time merchandise is presented for examination, CBP may disclose to the owner of the recorded mark limited importation information in order to obtain assistance in determining whether an imported article bears a counterfeit mark. CBP may release the information prior to the

issuance of the notice of detention, concurrently with the notice of detention, or, if the information is unavailable at the time the notice of detention is issued, CBP may release the information after issuance of the notice of detention. The limited importation information CBP may disclose to the owner of the recorded mark consists of:

- (i) The date of importation;
- (ii) The port of entry;
- (iii) The description of the merchandise, for merchandise not yet detained, from the paper or electronic equivalent of the entry (as defined in §142.3(a)(1) or (b) of this chapter), the CBP Form 7512, cargo manifest, advance electronic information or other entry document as appropriate, or, for detained merchandise, from the notice of detention;
- (iv) The quantity, for merchandise not yet detained, as declared on the paper or electronic equivalent of the entry (as defined in §142.3(a)(1) or (b) of this chapter), the CBP Form 7512, cargo manifest, advance electronic information, or other entry document as appropriate, or, for detained merchandise, from the notice of detention; and
- (v) The country of origin of the merchandise.

(5) *Disclosure to owner of the recorded mark of redacted photographs, images and samples.* Notwithstanding the notice and seven business day response procedure of paragraph (b)(2) of this section, CBP may, in order to obtain assistance in determining whether an imported article bears a counterfeit mark and at any time after presentation of the merchandise for examination, provide to the owner of the recorded mark photographs, images, or a sample of the suspect merchandise or its retail packaging (including labels), provided that identifying information has been removed, obliterated, or otherwise obscured. Identifying information includes, but is not limited to, serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, the name or address of the manufacturer, exporter, or importer of the merchandise, or any markings that could reveal the name or address of the manufacturer, exporter, or importer of the merchandise, in alphanumeric or

other formats. CBP may release a sample under this paragraph (b)(5) when the owner of the recorded mark furnishes to CBP a bond in an amount specified by CBP and containing the conditions set forth in §113.70(a) of this chapter. CBP may demand the return of the sample at any time. The owner of the recorded mark must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the recorded mark, the owner must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.21(b)(5) was (damaged/destroyed/lost) during examination, testing, or other use.”

(c) *Conditions of disclosure to owner of the recorded mark of information appearing on detained merchandise and/or its retail packaging, including unredacted photographs, images and samples*—(1) *Disclosure for limited purpose of assisting CBP in counterfeit mark determinations.* In order to obtain assistance in determining whether an imported article bears a counterfeit mark, CBP may disclose to the owner of the recorded mark, prior to seizure, information appearing on the merchandise and/or its retail packaging (including labels), unredacted photographs or images of the merchandise and/or its retail packaging in its condition as presented for examination, or an unredacted sample of the imported merchandise and/or its retail packaging in its condition as presented for examination, in accordance with paragraphs (b)(2)(ii) and (3) of this section. Upon release of such information, photographs, images, or samples, CBP will notify the owner of the recorded mark that some or all of the information being released may be subject to the protections of the Trade Secrets Act, and that CBP is only disclosing the information to the owner of the recorded mark for the purpose of assisting CBP in determining whether the merchandise bears a counterfeit mark.

(2) *Bond.* CBP may release a sample under paragraph (b)(3) of this section when the owner of the recorded mark

furnishes to CBP a bond in an amount specified by CBP and containing the conditions set forth in §113.70(a) of this chapter. CBP may demand the return of the sample at any time. The owner of the recorded mark must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the recorded mark, the owner must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.21(c) was (damaged/destroyed/lost) during examination, testing, or other use.”

(d) *Disclosure to importer of unredacted photographs, images, and samples.* CBP will disclose to the importer unredacted photographs, images, or an unredacted sample of imported merchandise suspected of bearing a counterfeit mark at any time after the merchandise is presented to CBP for examination. CBP may demand the return of the sample at any time. The importer must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample. In the event that the sample is damaged, destroyed, or lost while in the possession of the importer, the importer must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.21(d) was (damaged/destroyed/lost) during examination, testing, or other use.”

(e) *Seizure and disclosure to owner of the recorded mark of comprehensive importation information.* Upon a determination by CBP, made any time after the merchandise has been presented for examination, that an article of domestic or foreign manufacture imported into the United States bears a counterfeit mark, CBP will seize such merchandise and, in the absence of the written consent of the owner of the recorded mark, forfeit the seized merchandise in accordance with the customs laws. When merchandise is seized under this section, CBP will disclose to

the owner of the recorded mark the following comprehensive importation information, if available, within 30 business days from the date of the notice of the seizure:

- (1) The date of importation;
- (2) The port of entry;
- (3) The description of the merchandise from the notice of seizure;
- (4) The quantity as set forth in the notice of seizure;
- (5) The country of origin of the merchandise;
- (6) The name and address of the manufacturer;
- (7) The name and address of the exporter; and
- (8) The name and address of the importer.

(f) *Disclosure to owner of the recorded mark, following seizure, of unredacted photographs, images, and samples.* At any time following a seizure of merchandise bearing a counterfeit mark under this section, and upon receipt of a proper request from the owner of the recorded mark, CBP may provide, if available, photographs, images, or a sample of the seized merchandise and its retail packaging, in its condition as presented for examination, to the owner of the recorded mark. CBP may release a sample under this paragraph (f) when the owner of the recorded mark furnishes to CBP a bond in an amount specified by CBP and containing the conditions set forth in §113.70(b) of this chapter. CBP may demand the return of the sample at any time. The owner of the recorded mark must return the sample to CBP upon demand or at the conclusion of the examination, testing, or other use, such as pursuit of a related civil remedy for infringement, whichever occurs sooner. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the recorded mark, the owner must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.21(f) was (damaged/destroyed/lost) during examination, testing, or other use.”

(g) *Consent of the mark owner; failure to make appropriate disposition.* The owner of the recorded mark, within thirty days from notification of sei-

zure, may provide written consent to the importer allowing the importation of the seized merchandise in its condition as imported or its exportation, entry after obliteration of the mark, or other appropriate disposition. Otherwise, the merchandise will be disposed of in accordance with §133.52 of this part, subject to the importer's right to petition for relief from forfeiture under the provisions of part 171 of this chapter.

[CBP Dec. 12–10, 77 FR 24379, Apr. 24, 2012, as amended by CBP Dec. 15–12, 80 FR 56379, Sept. 18, 2015; CBP Dec. 24–03, 89 FR 52374, June 24, 2024]

§ 133.22 Restrictions on importation of articles bearing copying or simulating trademarks.

(a) *Copying or simulating trademark or trade name defined.* A “copying or simulating” trademark or trade name is one which may so resemble a recorded mark or name as to be likely to cause the public to associate the copying or simulating mark or name with the recorded mark or name.

(b) *Denial of entry.* Any articles of foreign or domestic manufacture imported into the United States bearing a mark or name copying or simulating a recorded mark or name shall be denied entry and subject to detention as provided in §133.25.

(c) *Relief from detention of articles bearing copying or simulating trademarks.* Articles 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 circumstances are applicable:

(1) The objectionable mark is removed or obliterated as a condition to entry in such a manner as to be illegible and incapable of being reconstituted, for example by:

(i) Grinding off imprinted trademarks wherever they appear;

(ii) Removing and disposing of plates bearing a trademark or trade name;

(2) The merchandise is imported by the recordant of the trademark or trade name or his designate;

(3) The recordant gives written consent to an importation of articles otherwise subject to the restrictions set

forth in paragraph (b) of this section or § 133.23(c) of this subpart, and such consent is furnished to appropriate Customs officials;

(4) The articles of foreign manufacture bear a recorded trademark and the one-item personal exemption is claimed and allowed under § 148.55 of this chapter.

(d) *Exceptions for articles bearing counterfeit trademarks.* The provisions of paragraph (c)(1) of this section are not applicable to articles bearing counterfeit trademarks at the time of importation (see § 133.26).

(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 or trade name restriction set forth in paragraph (c) 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 promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

[T.D. 99–21, 64 FR 9062, Feb. 24, 1999, as amended at CBP Dec. 12–10, 77 FR 24380, Apr. 24, 2012]

§ 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.

[T.D. 99-21, 64 FR 9062, Feb. 24, 1999, as amended at CBP Dec. 12-10, 77 FR 24380, Apr. 24, 2012]

§ 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 restriction(s) 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

§ 133.25

19 CFR Ch. I (4–1–25 Edition)

\$250 or less, may be exported or destroyed at the request of the addressee or may be released if:

(i) The addressee appears in person at the appropriate Customs office and at that time removes or obliterates the marks in a manner acceptable to the Customs officer; or

(ii) The request of the addressee appearing in person 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.

(d) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.25 Procedure on detention of articles subject to restriction.

(a) *In general.* Articles subject to the restrictions of §§133.22 and 133.23 shall be detained for 30 days from the date on which the merchandise is presented for CBP examination. The importer shall be notified of the decision to detain within 5 days of the decision that such restrictions apply. The importer may, during the 30-day period, establish that any of the circumstances described in §133.22(c) or §133.23(d) are applicable. Extensions of the 30-day time period may be freely granted for good cause shown.

(b) *Notice of detention and disclosure of information.* From the time merchandise is presented for CBP examination until the time a notice of detention is issued, CBP may disclose to the owner of the recorded mark or trade name any of the following information in order to obtain assistance in determining whether an imported article bears an infringing trademark or trade name. Once a notice of detention is issued, CBP shall disclose to the owner of the recorded mark or trade name the following information, if available, within 30 days, excluding weekends and holidays, of the date of detention:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (4) The quantity involved; and
- (5) The country of origin of the merchandise.

(c) *Disclosure to the owner of the recorded mark or trade name.* At any time following presentation of the merchandise for CBP's examination, but prior to seizure, CBP may release a sample of the suspect merchandise to the owner of the recorded mark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. CBP may release a sample under this paragraph (c) when the owner of the recorded mark or trade name furnishes to CBP a bond in an amount specified by CBP and containing the conditions set forth in §113.70(a) of this chapter. CBP may demand the return of the sample at any time. The owner must return the sample to CBP upon demand or at the conclusion of the examination or testing, whichever occurs sooner. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the recorded mark or tradename, the owner must, in lieu of returning the sample, certify to CBP that: "The sample described as [insert description] and provided pursuant to 19 CFR 133.25(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement."

(d) *Form of notice.* Notice of detention of articles found subject to the restrictions of §133.22 or §133.23 shall be given the importer in writing.

[T.D. 99–21, 64 FR 9062, Feb. 24, 1999, as amended by CBP Dec. 15–15, 80 FR 70170, Nov. 13, 2015; CBP Dec. 24–03, 89 FR 52374, June 24, 2024]

§ 133.26 Demand for redelivery of released merchandise.

If it is determined that merchandise which has been released from CBP custody is subject to the restrictions of §133.21, §133.22 or §133.23 of this subpart, an authorized CBP official shall promptly make demand for the redelivery of the merchandise under the terms of the bond on CBP Form 301, containing the bond conditions set forth in §113.62 of this chapter, in accordance

with § 141.113 of this chapter. If the merchandise is not redelivered to CBP custody, a claim for liquidated damages shall be made in accordance with § 141.113(h) of this chapter.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 99-64, 64 FR 43266, Aug. 10, 1999; CBP Dec. 12-10, 77 FR 24380, Apr. 24, 2012; CBP Dec. 16-26, 81 FR 93018, Dec. 20, 2016]

§ 133.27 Civil fines for those involved in the importation of merchandise bearing a counterfeit mark.

In addition to any other penalty or remedy authorized by law, CBP may impose a civil fine under 19 U.S.C. 1526(f) on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that bears a counterfeit mark resulting in a seizure of the merchandise under 19 U.S.C. 1526(e) (see § 133.21 of this subpart), as follows:

(a) *First violation.* For the first seizure of merchandise under this section, the fine imposed will not be more than the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

(b) *Subsequent violations.* For the second and each subsequent seizure under this section, the fine imposed will not be more than twice the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

[CBP Dec. 03-12, 68 FR 43637, July 24, 2003]

Subpart D—Recordation of Copyrights

§ 133.31 Recordation of copyrighted works.

(a) *Eligible works.* Claims to copyright which have been registered in accordance with the Copyright Act of July 30, 1947, as amended, or the Copyright Act of 1976, as amended, may be recorded with Customs for import protection.

(b) *Persons eligible to record.* The copyright owner, including any person who has acquired copyright ownership through an exclusive license, assignment, or otherwise, and claims actual

or potential injury because of actual or contemplated importations of copies (or phonorecords) of eligible works, may file an application to record a copyright. "Copyright owner," with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

(c) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with § 133.32, § 133.35, § 133.36, or § 133.37.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73-212, 38 FR 21397, Aug. 8, 1973; T.D. 87-40, 52 FR 9474, Mar. 25, 1987]

§ 133.32 Application to record copyright.

An application to record a copyright to secure customs protection against the importation of infringing copies or phonorecords shall be in writing addressed to the IPR & Restricted Merchandise Branch, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, Washington, DC 20229, and shall include the following information:

(a) The name and complete address of the copyright owner or owners;

(b) If the applicant is a person claiming actual or potential injury by reason of actual or contemplated importations of copies or phonorecords of the eligible work, a statement setting forth the circumstances of such actual or potential injury;

(c) The country of manufacture of genuine copies or phonorecords of the protected work;

(d) The name and principal address of any foreign person or business entity authorized or licensed to use the protected work, and a statement as to the exclusive rights authorized;

(e) The foreign title of the work, if different from the U.S. title; and

(f) In the case of an application to record a copyright in a sound recording, a statement setting forth the name(s) of the performing artist(s), and any other identifying names appearing on the surface of reproduction of the sound recording, or its label or container.

[T.D. 87-40, 52 FR 9474, Mar. 25, 1987, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

§ 133.33

19 CFR Ch. I (4-1-25 Edition)

§ 133.33 Documents and fee to accompany application.

(a) *Documents.* The application for recordation shall be accompanied by the following documents:

(1) An “additional certificate” of copyright registration issued by the U.S. Copyright Office. If the name of the applicant differs from the name of the copyright owner identified in the certificate, the application shall be accompanied by a certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing that the applicant has acquired copyright ownership in the copyright.

(2) Five photographic or other likenesses reproduced on paper approximately 8" × 10½" in size of any copyrighted work. An application shall be excepted from this requirement if it covers a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author or if it covers a sound recording. Five likenesses of a component part of a copyrighted work, together with the name or title, if any, by which the part depicted is identifiable, may accompany an application covering an entire copyrighted work.

(b) *Fee.* Each application shall be accompanied by a fee of \$190 for each copyright to be recorded. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1973, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975; T.D. 84-133, 49 FR 26571, June 28, 1984; T.D. 87-40, 52 FR 9475, Mar. 25, 1987]

§ 133.34 Effective date, term, and cancellation of recordation.

(a) *Effective date.* Recordation of copyright and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the United States Customs Service instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation of copyright shall remain in effect for 20 years unless the copyright ownership of the recordant expires before that time. If the ownership expires in less than 20 years, recordation shall remain in ef-

fect until the ownership expires. If the ownership has not expired after 20 years, recordation may be renewed as provided in § 133.37.

(c) *Cancellation.* Recordation of a copyright with the United States Customs Service shall be canceled upon request of the recordant, or if the registration in the U.S. Copyright Office is finally canceled or revoked.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 87-40, 52 FR 9475, Mar. 25, 1987]

§ 133.35 Change of ownership of recorded copyright.

(a) *Application.* If the ownership of a recorded copyright is transferred and the owner wishes to continue the recordation with the CBP, he shall make written application to the IPR & Restricted Merchandise Branch as follows:

(1) Comply, as appropriate, with § 133.32; and

(2) Describe any time limit on the rights of ownership transferred.

(b) *Document and fee.* The application shall be accompanied by:

(1) A certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing the applicant has acquired an ownership interest in the copyright; and

(2) A fee of \$80, which covers all copyrights included in the application which have been previously recorded with the U.S. Customs and Border Protection. A check or money order shall be made payable to the U.S. Customs and Border Protection.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975; T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

§ 133.36 Change in name of owner of recorded copyright.

If there is a change in the name of the owner of a recorded copyright, but no transfer of ownership, written notice specifying the change shall be given to the IPR & Restricted Merchandise Branch accompanied by the following:

(a) A certified copy of any document recorded in the U.S. Copyright Office showing the change in the name of the owner; and

(b) Payment of a fee of \$80, which covers all copyrights included in the application which have been previously recorded with the CBP. A check or money order shall be made payable to U.S. Customs and Border Protection.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975; T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

§ 133.37 Renewal of copyright recordation.

(a) *Term of renewal.* If a recorded copyright has a term which exceeds the original 20-year recordation, continued Customs protection may be obtained by renewing the recordation. The renewed recordation shall remain in effect for 20 years, unless the recordant's copyright ownership expires sooner, in which case it shall remain in effect until the ownership expires. There is no limit to the number of times recordation of a subsisting copyright may be renewed.

(b) *Application for renewal.* An application to renew recordation shall be made no later than 3 months before the date the recordation then in effect expires. The application shall be in writing addressed to the IPR & Restricted Merchandise Branch.

(c) *Materials to be submitted with application.* An application to renew Customs recordation shall include:

(1) Proof that the recordant's copyright ownership is valid. The proof required shall vary with the date that the work was first copyrighted as follows:

(i) *Works in which copyright subsists on or after January 1, 1978.* An affidavit signed by the recordant attesting to the continued validity of the copyright, stating the date the copyright was registered with the U.S. Copyright Office, whether the author of the work is still alive and, if not, the date of his death, and any additional information that Customs may require of the recordant.

(ii) *Works under statutory copyright on December 31, 1977.* If the copyright is still in its first term when recordation expires, a certificate of registration issued by the U.S. Copyright Office or, if the copyright has been renewed, a certificate of renewal registration issued by the U.S. Copyright Office.

(2) A statement describing any change of ownership or name of owner, in compliance with §§ 133.35 and 133.36, and any change of address of the owner.

(3) Payment of a fee of \$80. A check or money order shall be made payable to the U.S. Customs and Border Protection.

(d) *Untimely application.* If the recordant fails to submit a renewal application at least 3 months before the recordation expires, he may not renew the recordation. The recordant shall be required to reapply to record the copyright in accordance with the procedures and requirements of §§ 133.32 and 133.33.

[T.D. 87-40, 52 FR 9475, Mar. 25, 1987, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

Subpart E—Importations Violating Copyright Laws

§ 133.41 [Reserved]

§ 133.42 Piratical articles; Unlawful copies or phonorecords of recorded copyrighted works.

(a) *Definition.* A “piratical article,” for purposes of this part, is an unlawfully made (without the authorization of the copyright owner) copy or phonorecord of a recorded copyrighted work, importation of which is prohibited by the Copyright Act of 1976, as amended.

(b) *Detention, notice, and disclosure of information—*(1) *Detention period.* CBP may detain any article of domestic or foreign manufacture imported into the United States that is suspected of constituting a piratical article in violation of a copyright recorded with CBP. The detention will be for a period of up to 30 days from the date on which the merchandise is presented for examination. In accordance with 19 U.S.C. 1499(c), if, after the detention period, the article is not released, the article will be deemed excluded for purposes of 19 U.S.C. 1514(a)(4).

(2) *Notice of detention to importer and disclosure to owner of the recorded copyrighted work—*(i) *Notice and seven business day response period.* Within five business days from the date of a decision to detain suspect merchandise, CBP will notify the importer in writing

of the detention as set forth in §151.16(c) of this chapter and 19 U.S.C. 1499. CBP will also inform the importer that for purposes of assisting CBP in determining whether the detained merchandise is a piratical article:

(A) CBP may have previously disclosed to the owner of the recorded copyright, prior to issuance of the notice of detention, limited importation information concerning the detained merchandise, as described in paragraph (b)(4) of this section, and, in any event, such information may be released to the owner of the recorded copyright, if available, no later than the date of issuance of the notice of detention; and

(B) CBP may disclose to the owner of the recorded copyright information that appears on the detained merchandise and/or its retail packaging, including unredacted photographs, images, or samples, as described in paragraph (b)(3) of this section, unless the importer provides information within seven business days of the notification establishing that the detained merchandise is not piratical.

(ii) *Failure of importer to respond or insufficient response to notice.* Where the importer does not provide information within the seven business day response period, or the information provided is insufficient for CBP to determine that the merchandise is not piratical, CBP will proceed with the disclosure of information as described in paragraph (b)(3) of this section to the owner of the recorded copyright, if CBP concludes that the disclosure would assist CBP in its determination, and provided that disclosure would not compromise an ongoing law enforcement investigation or national security. CBP will notify the importer in case of any such disclosure.

(3) *Disclosure to owner of the recorded copyright of information appearing on detained merchandise and/or its retail packaging, including unredacted photographs, images, or samples.* CBP will disclose information appearing on the merchandise and/or its retail packaging (including labels), and images (including photographs) of the merchandise and/or its retail packaging in its condition as presented for examination (*i.e.*, an unredacted condition) if CBP concludes that the disclosure of information to

the owner of the recorded copyright as described in paragraph (b)(2)(ii) of this section would assist CBP in its determination, and provided that disclosure would not compromise an ongoing law enforcement investigation or national security. CBP may also provide a sample of the merchandise and/or its retail packaging in its condition as presented for examination to the owner of the recorded copyright. The release of a sample will be in accordance with, and subject to, the bond and return requirements of paragraph (c) of this section. The disclosure may include any serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, or other identifying markings appearing on the merchandise or its retail packaging (including labels), in alphanumeric or other formats.

(4) *Disclosure to owner of recorded copyright of limited importation information.* From the time merchandise is presented for examination, CBP may disclose to the owner of the recorded copyright limited importation information to obtain assistance in determining whether an imported article is a piratical article. CBP may release the information prior to the issuance of the notice of detention, concurrently with the notice of detention, or, if the information is unavailable at the time the notice of detention is issued, CBP may release the information after issuance of the notice of detention. The limited importation information CBP may disclose to the owner of the recorded copyright consists of:

(i) The date of importation;

(ii) The port of entry;

(iii) The description of the merchandise, for merchandise not yet detained, from the paper or electronic equivalent of the entry (as defined in §142.3(a)(1) or (b) of this chapter), the CBP Form 7512, cargo manifest, advance electronic information or other entry document as appropriate, or, for detained merchandise, from the notice of detention;

(iv) The quantity, for merchandise not yet detained, as declared on the paper or electronic equivalent of the entry (as defined in §142.3(a)(1) or (b) of this chapter), the CBP Form 7512, cargo

manifest, advance electronic information, or other entry document as appropriate, or, for detained merchandise, from the notice of detention; and

(v) The country of origin of the merchandise.

(5) *Disclosure to owner of recorded copyright of redacted photographs, images and samples.* Notwithstanding the notice and seven business day response procedure of paragraph (b)(2) of this section, CBP may, in order to obtain assistance in determining whether an imported article is a piratical article and at any time after presentation of the merchandise for examination, provide to the owner of the recorded copyright photographs, images, or a sample of the suspect merchandise or its retail packaging (including labels), provided that identifying information has been removed, obliterated, or otherwise obscured. Identifying information includes, but is not limited to, serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, the name or address of the manufacturer, exporter, or importer of the merchandise, or any markings that could reveal the name or address of the manufacturer, exporter, or importer of the merchandise, in alphanumeric or other formats. CBP may release a sample under this paragraph (b)(5) when the owner of the recorded copyright furnishes to CBP a bond in an amount specified by CBP and containing the conditions set forth in § 113.70(a) of this chapter. CBP may demand the return of the sample at any time. The owner of the recorded copyright must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample, whichever occurs sooner. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the recorded copyright, the owner must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.42(b)(5) was (damaged/destroyed/lost) during examination, testing, or other use.”

(c) *Conditions of disclosure to owner of recorded copyright of information appearing on detained merchandise and/or its retail packaging, including unredacted pho-*

tographs, images and samples—(1) Disclosure for limited purpose of assisting CBP in piratical merchandise determinations. In accordance with paragraphs (b)(2)(ii) and (b)(3) of this section, when CBP discloses information to the owner of the recorded copyright prior to seizure, CBP will notify the owner of the recorded copyright that some or all of the information being released may be subject to the protections of the Trade Secrets Act, and that CBP is only disclosing the information to the owner of the recorded copyright for the purpose of assisting CBP in determining whether the merchandise is a piratical article.

(2) *Bond.* CBP may release a sample under paragraph (b)(3) of this section when the owner of the recorded copyright furnishes to CBP a bond in an amount specified by CBP and containing the conditions set forth in § 113.70(a) of this chapter. CBP may demand the return of the sample at any time. The owner of the recorded copyright must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample, whichever occurs sooner. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the recorded copyright, the owner must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.42(c) was (damaged/destroyed/lost) during examination, testing, or other use.”

(d) *Disclosure to importer of unredacted photographs, images, and samples.* CBP will disclose to the importer unredacted photographs, images, or an unredacted sample of imported merchandise suspected of being a piratical article at any time after the merchandise is presented to CBP for examination. CBP may demand the return of the sample at any time. The importer must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample, whichever occurs sooner. In the event that the sample is damaged, destroyed, or

lost while in the possession of the importer, the importer must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.42(d) was (damaged/destroyed/lost) during examination, testing, or other use.”

(e) *Seizure and disclosure to owner of the recorded copyright of comprehensive importation information.* Upon a determination by CBP, made any time after the merchandise has been presented for examination, that an article of domestic or foreign manufacture imported into the United States is a piratical article, CBP will seize such merchandise and, in the absence of the written consent of the owner of the recorded copyright (see paragraph (g) of this section), forfeit the seized merchandise in accordance with the customs laws. When merchandise is seized under this section, CBP will disclose to the owner of the recorded copyright the following comprehensive importation information, if available, within 30 business days from the date of the notice of the seizure:

- (1) The date of importation;
- (2) The port of entry;
- (3) The description of the merchandise from the notice of seizure;
- (4) The quantity as set forth in the notice of seizure;
- (5) The country of origin of the merchandise;
- (6) The name and address of the manufacturer;
- (7) The name and address of the exporter; and
- (8) The name and address of the importer.

(f) *Disclosure to owner of recorded copyright, following seizure, of unredacted photographs, images, and samples.* At any time following a seizure of a piratical article under this section, and upon receipt of a proper request from the owner of the recorded copyright, CBP may provide, if available, photographs, images, or a sample of the seized merchandise and its retail packaging, in its condition as presented for examination, to the owner of the recorded copyright. CBP may release a sample under this paragraph (f) when the owner of the recorded copyright furnishes to CBP a bond in the

amount specified by CBP and containing the conditions set forth in §113.70(b) of this chapter. CBP may demand the return of the sample at any time. The owner of the recorded copyright must return the sample to CBP upon demand or at the conclusion of the examination, testing, or other use, such as pursuit of a related civil remedy for infringement, whichever occurs sooner. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the recorded copyright, the owner must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.42(f) was (damaged/destroyed/lost) during examination, testing, or other use.”

(g) *Consent of the owner of the recorded copyright; failure to make appropriate disposition.* The owner of the recorded copyright, within 30 days from notification of seizure, may provide written consent to the importer allowing the importation of the seized merchandise in its condition as imported or its exportation, entry after obliteration of the recorded copyright, if practicable, or other appropriate disposition. Otherwise, the merchandise will be disposed of in accordance with §133.52, subject to the importer’s right to petition for relief from forfeiture under the provisions of part 171 of this chapter.

[CBP Dec. 24–03, 89 FR 52375, June 24, 2024]

§§ 133.43–133.45 [Reserved]

§ 133.46 Demand for redelivery of released articles.

If it is determined that articles which have been released from Customs custody are subject to the prohibitions or restrictions of this subpart, an authorized CBP official shall promptly make demand for redelivery of the articles under the terms of the bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, in accordance with §141.113 of this chapter. If the articles are not redelivered to Customs custody, a claim for liquidated damages shall be made

in accordance with §141.113(h) of this chapter.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973; T.D. 74-227, 39 FR 32023, Sept. 4, 1974; T.D. 84-213, 49 FR 41183, Oct. 19, 1984; T.D. 99-64, 64 FR 43266, Aug. 10, 1999; CBP Dec. 16-26, 81 FR 93018, Dec. 20, 2016]

Subpart F—Enforcement of the Prohibition on Importation of Merchandise Capable of Circumventing Technological Measures for Protection of Copyright

SOURCE: CBP Dec. 24-03, 89 FR 52376, June 24, 2024, unless otherwise noted.

§ 133.47 Articles suspected of violating the Digital Millennium Copyright Act.

(a) *Definitions*—(1) *Copyright protection measure*. A technological measure that effectively controls access to, or effectively protects a right of a copyright owner in, a copyrighted work for which the copyright has been recorded with CBP.

(2) *Articles that violate the DMCA*. Articles that violate the importation prohibitions of the Digital Millennium Copyright Act (DMCA), 17 U.S.C. 1201, consist of products, devices, components, or parts thereof primarily designed or produced for the purpose of circumventing a copyright protection measure, or which have only a limited commercially significant purpose or use other than such circumvention, or which are knowingly marketed by the manufacturer, importer, consignee, or other trafficker in such articles, or another acting in concert with the manufacturer importer, consignee, or trafficker for use in such circumvention.

(3) *Eligible person*. The owner of a recorded copyright, who employs a copyright protection measure that may have been circumvented or attempted to be circumvented by articles that violate the importation prohibitions of the DMCA.

(4) *Injured person*. The owner of a recorded copyright, who employs a copyright protection measure that has been circumvented or attempted to be circumvented by articles seized for violation of the importation prohibitions of

the DMCA, and who has successfully applied to CBP for DMCA protections pursuant to paragraph (b)(2)(iii) of this section.

(b) *Detention, notice, and disclosure of information*—(1) *Detention period*. CBP may detain any article of domestic or foreign manufacture imported into the United States that it suspects is in violation of the DMCA, as described in paragraph (a)(2) of this section. The detention will be for a period of up to 30 days from the date on which the merchandise is presented for examination. In accordance with 19 U.S.C. 1499(c), if, after the detention period, the article is not released, the article will be deemed excluded for the purposes of 19 U.S.C. 1514(a)(4).

(2) *Notice of detention to importer and disclosure to eligible persons*—(i) *Notice and seven business day response period*. Within five business days from the date of a decision to detain suspect merchandise, CBP will notify the importer in writing of the detention as set forth in §151.16(c) of this chapter and 19 U.S.C. 1499. CBP will also inform the importer that for purposes of assisting CBP in determining whether the detained merchandise violates the DMCA:

(A) CBP may have previously disclosed to the eligible person, prior to issuance of the notice of detention, limited importation information concerning the detained merchandise, as described in paragraph (b)(4) of this section, and, in any event, such information may be released to the eligible person, if available, no later than the date of issuance of the notice of detention; and

(B) CBP may disclose to the eligible person information that appears on the detained merchandise and/or its retail packaging, including unredacted photographs, images, or samples, as described in paragraph (b)(3) of this section, unless the importer provides information within seven business days of the notification establishing that the detained merchandise does not violate the DMCA.

(ii) *Failure of importer to respond or insufficient response to notice*. Where the importer does not provide information within the seven business day response period, or the information provided is insufficient for CBP to determine that

the merchandise does not violate the DMCA, CBP will proceed with the disclosure of information, as described in paragraph (b)(3) of this section, to the eligible person if CBP concludes that the disclosure would assist CBP in its determination, and provided that the disclosure would not compromise an ongoing law enforcement investigation or national security. CBP will notify the importer in case of any such disclosure.

(iii) *Request for DMCA protections and establishment of a list of persons approved for post-seizure disclosures.* Eligible persons may apply to receive post-seizure disclosures from CBP by attaching a letter requesting such disclosures to an application to record or renew a copyright. Owners of existing copyright recordings may similarly apply for protection by submitting a letter requesting such disclosures to CBP. CBP will add those persons CBP approves for such disclosures to a list that CBP will maintain. CBP will provide the post-seizure disclosures described in this section to injured persons, as defined in this part, appearing on the list. CBP will publish a notice, signed by the Executive Director, Regulations and Rulings, of the establishment of the list in the FEDERAL REGISTER. After the list has been established, CBP will publish a notice of revisions to the list, signed by the Executive Director, Regulations and Rulings, in the FEDERAL REGISTER.

(3) *Disclosure to eligible persons of information appearing on detained merchandise and/or its retail packaging, including unredacted photographs, images or samples.* CBP will disclose information appearing on the merchandise and/or its retail packaging (including labels) and images (including photographs) of the merchandise and/or its retail packaging in its condition as presented for examination (*i.e.*, an unredacted condition) if CBP concludes that the disclosure of information to the eligible person as described in paragraph (b)(2)(ii) of this section would assist CBP in its determination, and provided that the disclosure would not compromise an ongoing law enforcement investigation or national security. CBP may also provide a sample of the merchandise and/or its retail pack-

aging in its condition as presented for examination to the eligible person. The release of a sample will be in accordance with, and subject to, the bond and return requirements of paragraph (c) of this section. The disclosure may include any serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, or other identifying markings appearing on the merchandise or its retail packaging (including labels), in alphanumeric or other formats.

(4) *Disclosure to eligible person of limited importation information.* From the time merchandise is presented for examination, CBP may disclose to the eligible person limited importation information in order to obtain assistance in determining whether an imported article violates the DMCA. CBP may release the information prior to the issuance of the notice of detention, concurrently with the notice of detention, or, if the information is unavailable at the time the notice of detention is issued, CBP may release the information after issuance of the notice of detention. The limited importation information CBP may disclose to the eligible person consists of:

- (i) The date of importation;
- (ii) The port of entry;
- (iii) The description of the merchandise, for merchandise not yet detained, from the paper or electronic equivalent of the entry (as defined in §142.3(a)(1) or (b) of this chapter), the CBP Form 7512, cargo manifest, advance electronic information or other entry document as appropriate, or, for detained merchandise, from the notice of detention;
- (iv) The quantity, for merchandise not yet detained, as declared on the paper or electronic equivalent of the entry (as defined in §142.3(a)(1) or (b) of this chapter), the CBP Form 7512, cargo manifest, advance electronic information, or other entry document as appropriate, or, for detained merchandise, from the notice of detention; and
- (v) The country of origin of the merchandise.

(5) *Disclosure to eligible person of redacted photographs, images and samples.* Notwithstanding the notice and seven business day response procedure of paragraph (b)(2) of this section, CBP

may, in order to obtain assistance in determining whether an imported article violates the DMCA and at any time after presentation of the merchandise for examination, provide to the eligible person photographs, images, or a sample of the suspect merchandise or its retail packaging (including labels), provided that identifying information has been removed, obliterated, or otherwise obscured. Identifying information includes, but is not limited to, serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, the name or address of the manufacturer, exporter, or importer of the merchandise, or any markings that could reveal the name or address of the manufacturer, exporter, or importer of the merchandise, in alphanumeric or other formats. CBP may release a sample under this paragraph (b)(5) when the eligible person furnishes to CBP a bond in an amount specified by CBP and containing the conditions set forth in §113.70(a) of this chapter. CBP may demand the return of the sample at any time. The eligible person must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample, whichever occurs sooner. In the event that the sample is damaged, destroyed, or lost while in the possession of the eligible person, the eligible person must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.47(b)(5) was (damaged/destroyed/lost) during examination, testing, or other use.”

(c) *Conditions of disclosure to eligible person of information appearing on detained merchandise and/or its retail packaging, including unredacted photographs, images and samples*—(1) *Disclosure for limited purpose of assisting CBP in DMCA determinations.* In accordance with paragraphs (b)(2)(ii) and (b)(3) of this section, when CBP discloses information to an eligible person prior to seizure, CBP will notify the eligible person that some or all of the information being released may be subject to the protections of the Trade Secrets Act, and that CBP is only disclosing the information to the eligible person for the purpose of assisting CBP in deter-

mining whether the merchandise violates the DMCA.

(2) *Bond.* CBP may release a sample under paragraph (b)(3) of this section when the eligible person furnishes to CBP a bond in an amount specified by CBP and containing the conditions set forth in §113.70(a) of this chapter. CBP may demand the return of the sample at any time. The eligible person must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample, whichever occurs sooner. In the event that the sample is damaged, destroyed, or lost while in the possession of the eligible person, the eligible person must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.47(c) was (damaged/destroyed/lost) during examination, testing, or other use.”

(d) *Disclosure to importer of unredacted photographs, images or samples.* CBP will disclose to the importer unredacted photographs, images, or an unredacted sample of imported merchandise suspected of violating the DMCA at any time after the merchandise is presented to CBP for examination. CBP may demand the return of the sample at any time. The importer must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample, whichever occurs sooner. In the event that the sample is damaged, destroyed, or lost while in the possession of the importer, the importer must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.47(d) was (damaged/destroyed/lost) during examination, testing, or other use.”

(e) *Seizure and disclosure to injured person of comprehensive importation information.* Upon a determination by CBP, made any time after the merchandise has been presented for examination, that an article of domestic or foreign manufacture imported into the United States violates the DMCA as described in paragraph (a)(2) of this section, CBP will seize such merchandise and, in the absence of written consent

§ 133.48

19 CFR Ch. I (4–1–25 Edition)

of the injured person (*see* paragraph (g) of this section), forfeit the seized merchandise in accordance with the customs laws. When merchandise is seized under this section, CBP will disclose to the injured person the following comprehensive importation information, if available, within 30 business days from the date of the notice of the seizure:

- (1) The date of importation;
- (2) The port of entry;
- (3) The description of the merchandise from the notice of seizure;
- (4) The quantity as set forth in the notice of seizure;
- (5) The country of origin of the merchandise;
- (6) The name and address of the manufacturer;
- (7) The name and address of the exporter; and
- (8) The name and address of the importer.

(f) *Disclosure to injured person, following seizure, of unredacted photographs, images and samples.* At any time following a seizure of DMCA-violative merchandise under this section, and upon receipt of a proper request from the injured person, CBP may provide, if available, photographs, images, or a sample of the seized merchandise and its retail packaging or labels, in its condition as presented for examination, to the injured person. CBP may release a sample under this paragraph (f) when the injured party furnishes to CBP a bond in an amount specified by CBP and containing the conditions set forth in §113.70(b) of this chapter. CBP may demand the return of the sample at any time. The injured person must return the sample to CBP upon demand or at the conclusion of the examination, testing, or other use, such as pursuit of a related civil remedy for infringement, whichever occurs sooner. In the event that the sample is damaged, destroyed, or lost while in the possession of the injured person, the injured person must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.47(f) was (damaged/destroyed/lost) during examination, testing, or other use.”

(g) *Consent of the owner of the recorded copyright; failure to make appropriate*

disposition. The owner of the recorded copyright, within 30 days from notification of seizure, may provide written consent to the importer allowing the importation of the seized merchandise in its condition as imported or its exportation, or other appropriate disposition. Otherwise, the merchandise will be disposed of in accordance with §133.52, subject to the importer’s right to petition for relief from forfeiture under the provisions of part 171 of this chapter.

§ 133.48 Demand for redelivery of released articles.

If it is determined that articles which have been released from CBP custody are subject to the prohibitions or restrictions of this subpart, an authorized CBP official will promptly make demand for redelivery of the articles in accordance with §141.113 of this chapter. If the articles are not redelivered to CBP custody under the terms of the bond on CBP Form 301, containing the bond conditions set forth in §113.62 of this chapter, a claim for liquidated damages will be made in accordance with §141.113 of this chapter.

Subpart G—Procedure Following Forfeiture or Assessment of Liquidated Damages

SOURCE: T.D. 72–266, 37 FR 20678, Oct. 3, 1972, unless otherwise noted. Redesignated by CBP Dec. 24–03, 89 FR 52376, June 24, 2024.

§ 133.51 Relief from forfeiture or liquidated damages.

(a) *Petition for relief.* The importer may petition in accordance with parts 171 and 172 of this chapter for relief from, or cancellation of, a forfeiture incurred for violation of the trademark or copyright laws, including the DMCA, or a claim for liquidated damages for failure to redeliver released merchandise incurred under the provisions of §133.24, §133.46, or §133.48.

(b) *Conditioned relief.* In appropriate cases, except for articles bearing a counterfeit trademark, relief from a forfeiture may be granted pursuant to a petition for relief upon the following conditions and such other conditions as

may be specified by the appropriate Customs authority:

(1) The unlawfully imported or prohibited articles are exported or destroyed under Customs supervision and at no expense to the Government;

(2) All offending trademarks or trade names are removed or obliterated prior to release of the articles;

(3) In the case of books or periodicals manufactured abroad contrary to the terms of the “American manufacturing clause” of the Copyright Act of 1976 (17 U.S.C. 602, 603):

(i) Satisfactory evidence is submitted that a statement of abandonment has been filed and recorded in the Copyright Office by the copyright owner in accordance with the procedures of the Copyright Office; and

(ii) The notice of copyright is completely obliterated prior to release of the books or periodicals.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979; T.D. 87-40, 52 FR 9476, Mar. 25, 1987; CBP Dec. 24-03, 89 FR 52378, June 24, 2024]

§ 133.52 Disposition of forfeited merchandise.

(a) *Trademark (other than counterfeit) or trade name violations.* Articles forfeited for violation of the trademark laws, other than articles bearing a counterfeit trademark, shall be disposed of in accordance with the procedures applicable to forfeitures for violation of the Customs laws, after the removal or obliteration of the name, mark, or trademark by reason of which the articles were seized.

(b) *Copyright violations.* Articles forfeited for violation of the copyright laws shall be destroyed except as provided in §§ 133.42(g) and 133.47(g).

(c) *Articles bearing a counterfeit trademark.* Merchandise forfeited for violation of the trademark laws shall be destroyed, unless it is determined that the merchandise is not unsafe or a hazard to health and the Commissioner of Customs or his designee has the written consent of the U.S. trademark owner, in which case the Commissioner of Customs or his designee may dispose of the merchandise, after obliteration of the trademark, where feasible, by:

(1) Delivery to any Federal, State, or local government agency that, in the

opinion of the Commissioner or his designee, has established a need for the merchandise; or

(2) Gift to any charitable institution that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(3) Sale at public auction, if more than 90 days has passed since the forfeiture and Customs has determined that no need for the merchandise has been established under paragraph (c)(1) or (c)(2) of this section.

[T.D. 79-159, 44 FR 31969, June 4, 1969, as amended by T.D. 94-90, 59 FR 55997, Nov. 10, 1994; T.D. 97-91, 62 FR 61232, Nov. 17, 1997; CBP Dec. 24-03, 89 FR 52378, June 24, 2024]

§ 133.53 Refund of duty.

If a violation of the trademark or copyright laws is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation and the duty refunded as an erroneous collection upon exportation or destruction of the prohibited articles in accordance with § 158.41 or § 158.45 of this chapter.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973]

Subpart H—Donations of Intellectual Property Rights Technology and Related Support Services

SOURCE: CBP Dec. 17-21, 82 FR 59513, Dec. 15, 2017, unless otherwise noted.

§ 133.61 Donations of intellectual property rights technology and related support services.

(a) *Scope.* The Commissioner of U.S. Customs and Border Protection (CBP) is authorized to accept donations of hardware, software, equipment, and similar technologies, as well as related support services and training, from private sector entities, for the purpose of assisting CBP in enforcing intellectual property rights. Such acceptance must be consistent with the conditions set forth in this section and section 308(d) of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. 4301 note), as well as either section 482 of the Homeland Security Act of 2002, as

amended by section 2 of the Cross-Border Trade Enhancement Act of 2016 (6 U.S.C. 301a), or section 507 of the Department of Homeland Security Appropriations Act of 2004 (Pub. L. 108–90). However, this section does not apply to merchandise provided to CBP as samples, *e.g.*, as referenced in §§ 151.10 and 177.2 of this chapter.

(b) *Donation offer.* A donation offer must be submitted to CBP either via email, to dap@cbp.dhs.gov, or mailed to the attention of the Executive Assistant Commissioner, Office of Field Operations, or his/her designee. The donation offer must describe the proposed donation in sufficient detail to enable CBP to determine its compatibility with existing CBP technologies, networks, and facilities (*e.g.* operating system or similar requirements, power supply requirements, item size and weight, *etc.*). The donation offer must also include information pertaining to the donation's scope, purpose, expected benefits, intended use, costs, and attached conditions, as applicable, that is sufficient to enable CBP to evaluate the donation and make a determination as to whether to accept it. CBP will notify the donor, in writing, if additional information is requested or if CBP has determined that it will not accept the donation.

(c) *Agreement to accept donation.* If CBP accepts a donation of hardware, software, equipment, technologies, or related support services and training, for the purpose of enforcing intellectual property rights, CBP will enter into a signed, written agreement with an authorized representative of the donor. The agreement must contain all applicable terms and conditions of the donation. An agreement to accept a donation must provide that the hardware, software, equipment, technologies, or related support services and training are offered without the expectation of payment, and that the donor expressly waives any future claims, except those expressly reserved in the agreement, against the government related to the donation.

PART 134—COUNTRY OF ORIGIN MARKING

Sec.

134.0 Scope.

Subpart A—General Provisions

134.1 Definitions.

134.2 Additional duties.

134.3 Delivery withheld until marked and redelivery ordered.

134.4 Penalties for removal, defacement, or alteration of marking.

Subpart B—Articles Subject to Marking

134.11 Country of origin marking required.

134.12 Foreign articles reshipped from a U.S. possession.

134.13 Imported articles repacked or manipulated.

134.14 Articles usually combined.

Subpart C—Marking of Containers or Holders

134.21 Special marking.

134.22 General rules for marking of containers or holders.

134.23 Containers or holders designed for or capable of reuse.

134.24 Containers or holders not designed for or capable of reuse.

134.25 Containers or holders for repacked J-list articles and articles incapable of being marked.

134.26 Imported articles repacked or manipulated.

Subpart D—Exceptions to Marking Requirements

134.31 Requirements of other agencies.

134.32 General exceptions to marking requirements.

134.33 J-List exceptions.

134.34 Certain repacked articles.

134.35 Articles substantially changed by manufacture.

134.36 Inapplicability of marking exception for articles processed by importer.

Subpart E—Method and Location of Marking Imported Articles

134.41 Methods and manner of marking.

134.42 Specific method may be required.

134.43 Methods of marking specific articles.

134.44 Location and other acceptable methods of marking.

134.45 Approved markings of country name.

134.46 Marking when name of country or locality other than country of origin appears.

134.47 Souvenirs and articles marked with trademarks or trade names.