

Is Your Trademark Being Counterfeited?

U.S. Customs and Border Protection Stands Ready to Assist the Marine Industry

Why Should I Care About Counterfeiting?

NMMA members have become victims of product counterfeiting. Inferior products such as boat components or accessories are made to look like the real McCoy. Only when these products fail, do holders of the trademarks learn about the fake product. Counterfeiting affects your bottom line causing lost sales and hurt brand reputations. Accessory and component manufacturers must protect their brands. Boat manufacturers must be diligent in choosing components since they will be left holding the bag when the counterfeiter disappears.

Background:

The U.S. Customs and Border Protection Agency (CBP) can seize counterfeit products at the border, but first the agency must know that your products are at risk for a counterfeit shipment. In general, CBP does not randomly detain shipments to specifically examine product for intellectual property right infringement without some reason to believe that the shipment is a risk. CBP's challenge then is to identify the small number of transactions posing a high-risk of significant non-compliance and requiring the dedication of limited resources. **CBP has asked the recreational marine industry for help to identify these high-risk shipments.**

So you know your product is being counterfeited – What do you do?

- 1. Record IP Rights with CBP** -- First and foremost, you must not only have a registered trademark, copyright or other intellectual property but, also take the second step of recording intellectual property rights (IPR) with U.S. Customs and Border Protection (CBP).
- 2. Train CBP Field Agents** -- Second, take the time to familiarizing CBP field officers with the characteristics of genuine products through product identification training so that they will be able to better distinguish genuine articles from infringing goods. The CBP agent assigned to the marine industry can help you set up a training program to teach field agents on how to spot counterfeits of your product. Training can provide an intellectual property right holder with the opportunity to communicate concerns and circumstances surrounding any alleged infringement directly to officers at high-risk ports.
- 3. Help CBP Identify High Risk Shipments** – Third, recordation and product identification training are maximized only when applied to high-risk shipments and suspected violators. **CBP wants any information, such as suspected or alleged infringers, from the recreational marine industry that might help CBP target shipments of infringing goods and better distinguish genuine articles from infringing goods.** Any proprietary information submitted to CBP, such as allegations of infringement or IP licensee lists are not to be disclosed in any manner to any entity outside of the U.S. Department of Homeland Security (DHS) unless so authorized and will be used strictly to enforce IPR.

Some caveats -- Unlike the areas of trademark and copyright infringement, CBP has no legal authority to make patent infringement determinations. **Patents may not be recorded with CBP but exclusion orders can.** CBP enforces exclusion orders issued by the United States International Trade Commission (USITC). USITC exclusion orders are issued, among other things, for findings of infringement of a patent.

Just as allegation information submitted to CBP by a right holder is protected from disclosure to third-parties, commercial information submitted to CBP by the trading community, to include alleged IPR infringers, is protected. As a result, CBP personnel are strictly limited by statute as to what information regarding its enforcement activities can be disclosed. CBP typically are unable to provide progress reports or details of its enforcement activities in response to an allegation of IPR infringement and can disclose certain infringement information only where goods are detained and/or seized for specific violations of the trademark and copyright laws. However, CBP reports to NMMA that it routinely follow-ups with right holders on submitted allegations by informing them in general terms of the usefulness of the submitted information.

For more information contact:

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Information relating to exclusion orders may be obtained from:

U.S. International Trade Commission
Washington, D.C. 20436
www.usitc.gov