Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007

[Notification No. 47/2007-Cus. (N.T.), dated 8-5-2007]

In exercise of the powers conferred by sub-section (1) of section 156 of the Customs Act,1962(52 of 1962), read with clauses (n) and (u) of sub- section (2) of section 11 of the said Act, the Central Government hereby makes the following rules, namely:-

1. Short title, commencement and application. -

(i) These may be called the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

(ii) They shall come into force on the date of their publication in the Official Gazette.

(iii) They shall apply to imported goods.

2. Definitions.

(a) " goods infringing intellectual property rights" means any goods which are made, reproduced, put into circulation or otherwise used in breach of the intellectual property laws in India or outside India and without the consent of the right holder or a person duly authorized to do so by the right holder;

(b) "intellectual property" means a copyright as defined in the Copyright Act, 1957, trade mark as defined in the Trade Marks Act,1999, patent as defined in the Patents Act, 1970, design as defined in the Designs Act, 2000 and geographical indications as defined in the Geographical Indications of Goods (Registration and Protection) Act, 1999;

(c) " Intellectual property law" means the Copyright Act, 1957, the Trade Marks Act,1999, the Patents Act, 1970, the Designs Act, 2000 or the Geographical Indications of Goods (Registration and Protection) Act, 1999 ;

(d) " right holder" means a natural person or a legal entity, which according to the laws in force is to be regarded as the owner of protected intellectual property right, its successors in title, or its duly authorized exclusive licensee as well as an individual, a corporation or an association authorized by any of the aforesaid persons to protect its rights.

3. Notice by the right holder. -

(1) A right holder may give notice in writing to the Commissioner of Customs or any Customs officer authorised in this behalf by the Commissioner, at the port of import of goods infringing intellectual property rights in accordance with the procedures and under the conditions as set out in these Rules, requesting for suspension of clearance of goods suspected to be infringing intellectual property right.

(2) The notice in respect of goods infringing intellectual property rights shall be given in the format prescribed in the Annexure to these Rules.

(3) Every such notice shall be accompanied by a document as specified by the Commissioner, evidencing payment of application fee of Rs. 2000 (two thousand rupees only).

(4) If any of the information as required in the format under sub-rule (2) is not provided, the Deputy Commissioner of Customs or Assistant Commissioner of Customs may, as the case may be, ask the right holder or his authorised representative to provide the same within 15 days, which may be extended on sufficient reasons being shown.

(5) The right holder shall inform customs authority when his intellectual property ceases to be valid or if he ceases to be the owner of such intellectual property right

4. Registration of notice by the Commissioner. -

(1) Within 30 working days from the date of receipt of the notice under sub-rule(1) of Rule 3, or from the date of expiry of the extended time as contemplated in sub-rule (4) of Rule3, as the case may be, the Commissioner shall notify the applicant whether the notice has been registered or rejected.

(2) In a case where the notice has been registered, the Commissioner shall indicate the validity period of the registration during which assistance by Customs shall be rendered. The minimum validity period shall be one year unless the noticee or right holder requests for a shorter period for customs assistance or action.

(3) The Commissioner granting the registration of the notice under sub-rule (2) shall inform, immediately through a letter by speed post or through electronic mode, all Custom offices covered by the notice of the details of the notice.

5. Conditions for registration. -

The grant of registration under rule 4 shall be subject to following conditions, namely: -

(a) the right holder or his authorised representative shall execute a bond with the Commissioner of Customs for such amount with such surety and security as deemed appropriate by the Commissioner, undertaking to protect the importer, consignee and the owner of the goods and the competent authorities against all liabilities and to bear the costs towards destruction, demurrage and detention charges incurred till the time of destruction or disposal, as the case may be;

(b) the right holder shall execute an indemnity bond with the Commissioner of Customs indemnifying the Customs authorities against all liabilities and expenses on account of suspension of the release of allegedly infringing goods.

6. Prohibition for import of goods infringing intellectual property rights.-

After the grant of the registration of the notice by the Commissioner on due examination, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962.

7. Suspension of clearance of imported goods.-

(1)(a) Where the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, based on the notice given by the right holder has a reason to believe that the imported goods are suspected to be goods infringing intellectual property rights, he shall suspend the clearance of the goods.

(b)The Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, may, on his own initiative, suspend the clearance of goods , in respect of which he has prima-facie evidence or reasonable grounds to believe that the imported goods are goods infringing intellectual property rights.

(2) The Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, shall immediately inform the importer and the right holder or their respective authorised representatives through a letter issued by speed post or through electronic mode of the suspension of clearance of the goods and shall state the reasons for such suspension.

(3) Where clearance of the goods suspected to be infringing intellectual property has been suspended and the right holder or his authorised representative does not join the proceedings within a period of ten working days from the date of suspension of clearance leading to a decision on the merits of the case, the goods shall be released provided that all other conditions of import of such goods under the Customs Act, 1962, have been complied with:

Provided that the above time-limit of ten working days may be extended by another ten days in appropriate cases by the Commissioner or an officer authorized by him in this behalf.

(4) Where the Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, has suspended clearance of goods on his own initiative and right holder does not give notice under rule 3 of the Rules or does not fulfill the obligation under Rule 5, within five days from the date of suspension of clearance, the goods shall be released provided that all other conditions of import of such goods under the Customs Act, 1962, have been complied with.

(5) Where the clearance of goods has been suspended, customs may, where it acts on its own initiative, seek from the right holder any information or assistance, including technical expertise and facilities for the purpose of determining whether the suspect goods are counterfeit or pirated or otherwise infringe an intellectual property right.

(6) Where the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, has suspended clearance of goods on his own initiative and right holder has given notice under rule 3 of the Rules and fulfilled the obligations under Rule 5, but , the right holder or his authorised representative does not join the proceedings within a period of ten working days from the date of suspension of clearance leading to a decision on the merits of the case, the goods shall be released provided that all other conditions of their import under the Customs Act, 1962, have been complied with:

Provided that the above time- limit of ten working days may be extended by another ten working days in appropriate cases by the Commissioner or an officer authorized by him in this behalf.

(7) In the case of perishable goods suspected of infringing intellectual property rights, the period of suspension of release shall be three working days which may be extended by another four days subject to the satisfaction of the Commissioner or the officer authorized by him in this behalf that such extension shall not affect the goods.

(8) Notwithstanding anything contained in these Rules, in the case of suspension of clearance of perishable goods on the basis of notice of the right holder or his authorized representative, the right holder or his authorized representative shall join the proceedings as required under these Rules within three working days or the extended period as provided in sub-rule (7) and in case of suspension of clearance of perishable good by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, on

his own initiative, the right holder shall give notice, execute a bond and join the proceedings as required under these Rules within three working days or the extended period as provided in sub-rule (7) , as the case may be, failing which the goods shall be released.

(9) If within ten working days or the extended period under sub-rule (6), as the case may be, and within three working days or the extended period as provided in sub-rule (7) of this rule in the case of perishable goods, the right-holder or his authorized representative joins the proceedings, the Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, having reasons to believe that the goods are goods infringing intellectual property rights and liable to confiscation under section 111 (d) of the Customs Act, may seize the same under section 110 of the Customs Act.

8. Examination of goods by right holder.-

The Commissioner or the officer duly authorized in this behalf shall allow a right holder and the importer or their duly authorized representatives to examine the goods, the clearance of which has been suspended, and may provide representative samples for examination, testing and analysis to assist in determining whether the goods are pirated, counterfeit or otherwise infringe an intellectual property right, without prejudice to the protection of confidential information.

9. Supply of information to the right holder. -

At the request of the right holder , the Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, shall inform the name and address of the importer and without prejudice to the protection of confidential information the Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, may also provide additional relevant information relating to the consignment which has been suspended from clearance.

10. Supply of information to the importer. -

At the request of the importer or his duly authorized representative, Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, shall inform the name and address of the right holder and without prejudice to the protection of confidential information the Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, may also provide additional relevant information relating to the consignment which has been suspended from clearance .

11. Disposal of infringing goods. -

(1). Where upon determination by the Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, it is found that the goods detained or seized have infringed intellectual property rights, and have been confiscated under section 111 (d) of the Customs Act, 1962 and no legal proceedings are pending in relation to such determination, the Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, shall, destroy the goods under official supervision or dispose them outside the normal channels of commerce after obtaining "no objection" or concurrence of the right holder or his authorized representative:

Provided that if the right holder or his authorized representative does not oppose or react to the mode of disposal as proposed by the Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, within twenty working days after having been informed, or within such extended period as may have been granted by the Commissioner at the request of the right holder, not exceeding another twenty working days, he shall be deemed to have concurred with the mode of disposal as proposed by the Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be:

Provided further that the costs toward destruction, demurrage and detention charges incurred till the time of destruction or disposal, as the case may be, shall be borne by the right holder.

(2) There shall not be allowed the re-exportation of the goods infringing intellectual property rights in an unaltered state.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, may on his own, or at the request of the right holder, retain samples of goods infringing intellectual property rights prior to their destruction or disposal and provide the same to the right holder or importer if such samples are needed as evidence in pending or future litigations.

12. Exclusion of baggage and De-minimis Imports.-

Goods of a non-commercial nature contained in personal baggage or sent in small consignments intended for personal use of the importer are not subject to the above Rules.

13. Protection of action taken under the Rules.-

Customs officers when acting in good faith and having followed the procedures set out in these Rules shall not be liable for:

(a) any failure to detect goods infringing intellectual property rights,

(b) the inadvertent release of such goods, and

(c) any other action in respect of such goods.

ANNEXURE

(see sub-rule(2) of rule 3)

Format for notice in respect of goods infringing intellectual property rights under Intellectual Property Rights (Imported Goods) Enforcement Rules , 2007

1 Name of the Applicant:

2 Contact Details of the applicant:

(A) Office address:

(B) Residence address

(C) E-mail address

(D) IEC No

3 Applicant's Telephone numbers(including mobile number)

4 Name and contact details of authorized representative of the right holder. (please attach authorization from the right holder)

5 Proof of the existence and ownership of a valid intellectual property right by the right holder

6 A statement of the grounds for the notice of suspension of release of the goods allegedly infringing intellectual property rights

7 In the case of a specific consignment of goods allegedly infringing intellectual property rights, details of the consignment and a statement of the ground for the notice including prima facie evidence of infringement

8 Detailed description of the goods with Customs Tariff Heading in respect of which an intellectual property right applies, together with a sample, model or photograph of a genuine product

9.Name of customs airport/ customs port/land customs station to be covered

I/We declare that the particulars furnished above are true to the best of my/our knowledge and the documents enclosed herewith are genuine.

Signature of the right holder or his authorized representative

Office Seal

Place:

Date: