



## Getting U.S. Customs to Work for You in Unfair Import Investigations

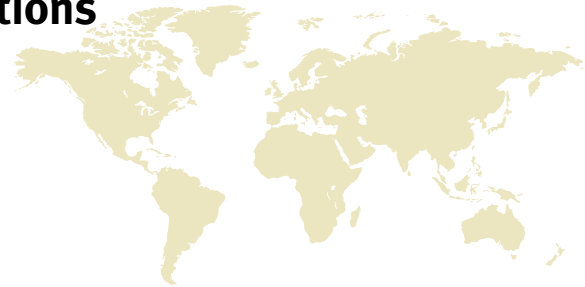
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If someone illegally copies and attempts to import into the United States a product with a trademark or patent registered with the U.S. Patent and Trademark Office, most lawyers would run to Federal Court, and obtain an injunction ordering the U.S. Marshal to confiscate the counterfeit merchandise. Federal Court litigation may be an expensive and frustrating process, moreover, it is often unnecessary. You should kick back, relax, and let U.S. Customs and Border Protection do the work for you.

When trademark or patent owners are repeatedly confronted with someone stealing their intellectual property rights, rather than going to Court, get an Exclusion Order from the United States International Trade Commission (ITC), a Federal agency based in Washington, D.C. In what is often referred to as “Section 337 investigations” because the governing statute is 19 U.S.C. § 1337, the Office of Unfair Import Investigations, ITC, investigates allegations of patent or registered trademark infringement. When the ITC determines that Section 337 has been violated, the ITC will issue an Exclusion Order barring the product from entry into the United States, as well as a cease and desist order directing the known violating parties to cease certain actions.

Although the Exclusion Order may be issued by the ITC, the enforcement is through the Intellectual

Property Rights (IPR) Branch of the U.S. Customs and Border Protection (U.S. Customs). The IPR Branch drafts instructions based upon the Exclusion Order, and directs U.S. Customs officers at over 300 border points of entry throughout the United States to stop, detain, and exclude from entry into the United States whatever the subject of the Exclusion Order may be. U.S. Customs does this at no additional cost to the trademark or patent owner, and will do so as often and wherever required.

Exclusion Orders may be obtained for common every day items such as Sharpies®, video game machines, pet feeders, etc., and are obtained from large companies such as Nintendo®, Samsung®, and Nokia® as well as small companies which most people have never heard of before. The ITC process is generally faster and less expensive than repeated Federal Court litigation.

Working with U.S. Customs in drafting the directions from U.S. Customs Headquarters in Washington, D.C. to its thousands of officers located around the United States, especially at the international airports and seaports, is important. Working with U.S. Customs officers at any particular port of entry to assist in targeting suspect shipments and answering any resulting questions increases the odds of U.S. Customs successfully examining, detaining and excluding merchandise from entering the United States.

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The subject of this article is part of a presentation I am giving in Washington, D.C., on January 27-28, 2009 at the “American Conference Institute’s Advanced Forum on ITC Litigation: Section 337 Actions”. For more information or to attend, please feel free to call me or click on [www.AmericanConference.com/ITCLitigation](http://www.AmericanConference.com/ITCLitigation). For general questions regarding registering trademarks or patents with the U.S. Patent and Trademark Office, filing or opposing a Complaint in a Section 337 Investigation, and working with U.S. Customs to enforce Exclusion Orders, please feel free to contact me directly. ■

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