

## ENFORCEMENT & LITIGATION

***Please note that you should generally take legal advice before launching enforcement action.***

## BACKGROUND

### Legal framework

We have summarised the different types of infringements and the recommended course of action in the WHO CAN HELP [\[link to pdf\]](#) guide.

### Types of enforcement action

There are several types of enforcement action that can be taken against counterfeiters: criminal actions by the authorities, private criminal prosecutions, civil actions and (in some countries) administrative actions.

### Criminal actions by the authorities

#### *Customs*

- HM Revenue & Customs (HMRC) enforce IP rights in the UK, both at the borders (through the new UK Border Agency) and at their postal hub in Coventry. It has authority to inspect and detain goods imported into the UK for a wide range of infringements including counterfeit goods, pirated goods and goods infringing patents, Supplementary Protection Certificates, plant variety rights, geographical indications/designations and designations of origin (see HMRC - Customs Notice 34).
- HMRC cannot detain parallel imported goods unless they are placed on the market by you outside the EEA and imported into the UK without your consent. Even then, they can only detain the goods if you notify them in advance that a specific consignment will be entering the UK.
- Recording your rights with Customs in key jurisdictions will help Customs target shipments. If you do not record your rights, HMRC may detain consignments on their own initiative, but this should not be relied upon. The law governing the submission of customs notifications with the HMRC is contained in:
  - Section 89 of the Trade Marks Act 1994, which permits the owners of registered marks and their licences to lodge a notice in respect of infringements of such marks;

- Section 111 of the Copyright, Designs and Patents Act 1988, which permits the owner of copyright in certain types of work to lodge a notice in respect of infringements of such copyright; and
  - The EU Customs Regulation (1383/2003) [[Link to Regulation](#)], which allows notifications in respect of counterfeit goods and pirated goods and goods infringing patents, plant variety rights, geographical indications/designations and designations of origin.
- Note that there are various exemptions and that the HMRC now largely exercises its rights under the Regulation. Also note that the definition of counterfeit and pirated goods is broad.
  - Action following a Customs detention varies depending on the rights infringed and country involved. Until recently, HMRC would normally seize and destroy goods if the rights owner provided a written opinion that the goods were infringing and the importer/owner did not appeal. As from 19 June 2009, HMRC will no longer seize goods based on a written opinion from the right's owner. Instead, the procedure will be changed to comply fully with Article 13 of the Regulation. This means that:
    - Once goods have been detained, the rights holder (or its nominated representative) will be notified and be given relevant information about the suspect goods, as well as a sample of the goods if requested.
    - The brand owner is given a maximum of 20 days from detention (an initial 10-day period, plus a possible 10-day extension) to launch court proceedings alleging that the goods infringe its IP rights.
    - If HMRC is supplied with proof that proceedings have been launched, it will detain the suspect goods pending the outcome of those proceedings. Thereafter, it will only seize the goods if directed to do so by the court.
    - The changes will be reflected in a new Statutory Instrument (SI) later in the year.
  - Meanwhile, a simplified version of the procedure under Article 11 of the Regulation will also be available under which HMRC will be able to destroy suspect goods if the brand owner obtains the written agreement of the importer/owner to abandon the goods within the 10/20 day time-frame. For now, consent must be express, but a summary procedure based on implied consent may also be enshrined in the new SI.
  - Where the goods concerned are perishable, court proceedings must be initiated (or consent to abandonment must be obtained) within 3 working days and this time-frame cannot be extended.

- For detailed information on Customs, including filing Customs applications and the detention process, see Chapter 3, Implementation, Law Enforcement Agencies and the Useful Links (Customs) section below.

### ***Trading Standards & the Police***

- Trading Standards and the Police have power to seize goods and/or or to bring criminal prosecutions for:
  - Trade mark infringement under sections 92 & 93 of the Trade Marks Act 1994;
  - Copyright infringement under section 107 of the Copyright, Designs & Patents Act 1988; and
  - Breach of the Consumer Protection from Unfair Trading Regulations 2008 (which replaces the old Trade Descriptions Act offences). Note that a private criminal prosecution cannot be brought by right's owners for breach of these Regulations.

The Proceeds of Crime Act may also be used to trace and confiscate the defendant's assets. This should be explored at an early stage.

- The Police also have power to seize goods and/or to bring criminal prosecutions for various other offences (see UK IPO guide to criminal IP infringement offences [<http://www.ipo.gov.uk/crime/crime-resources/crime-offenceguide.htm>], as well as to search premises for infringing goods in certain circumstances.
- Trading Standards and the Police may act on their own initiative or in response to complaints. On discovering traders dealing in infringing goods, Trading Standards or the Police will seize the goods and try to obtain supplier information (which is notoriously difficult to obtain). Retailers may be formally warned or, in serious or repeat cases, a criminal prosecution may commence.
- Working with Trading Standards can be a cheap and effective way of removing goods from the market, making a noise and impacting on infringers' bottom lines. Criminal prosecution often has a deterrent effect and helps to educate the public.
- Remember that Law enforcement authorities have many responsibilities and only limited budgets and your matter may not be their number one priority. It is therefore important to i) develop good relationships with Trading Standards' Officers (TSOs), ii) focus on important cases and iii) support Trading Standards by providing test purchases, witness statements, assistance during raids, storage and the like. If you want greater control over the case, you may prefer to bring your own civil action or private criminal prosecution.

- For detailed guidance on how and when to notify Trading Standards and the Police of suspect goods, see Chapter 3, Implementation, Law Enforcement Agencies section [\[hyperlink\]](#).

### **UK civil action**

- In some circumstances, civil proceedings may be preferable. Whilst they are usually the most expensive option, this is not always the case, especially if an early settlement is reached.
- One attraction of civil litigation is the range of interim remedies available, potentially on short notice, including injunctions to restrain dealings in infringing goods, search and seizure orders to secure goods and evidence, freezing injunctions to prevent the defendant's assets from being dissipated and injunctions to prevent the defendant from leaving the jurisdiction.
- In addition, whilst a criminal prosecution may punish the defendant for wrong doing, the civil courts can order an injunction to cease the infringing activity; awards of damages or an account of profits; and/or recovery of your legal costs (although the defendant may not be solvent). Civil proceedings also allow you to be in control of the case.
- The burden of proving your case is lower in civil (compared to criminal) litigation, being determined on a balance of probabilities rather than beyond reasonable doubt.
- Most civil actions are based on trade mark, copyright and design infringement and passing-off. UK targets tend to be importers or those further down the supply chain, rather than manufacturers.
- Typical stages of civil litigation involve:
  - Cease and desist letter - UK civil procedure rules require parties to make reasonable efforts to settle matters prior to issuing proceedings. This is likely to be in your interests in all but the urgent cases. A typical letter will set out in plain English, your rights, the activities you are objecting to (being as specific as possible), the steps you require to resolve the matter and the consequences of failure to comply (usually threats of civil proceedings and cost consequences).
  - Typically, you will be asking the target to provide some/all of the following:
    - Written undertakings regarding future conduct.
    - Delivery up/destruction of stock - but consider how/where the goods will be stored or destroyed.
    - Full disclosure/evidence of the target's dealings and those involved in the chain of supply, including invoices, purchase orders and

delivery notes. You could also try to obtain a commitment from the target to assist you in any action you take against others in the supply chain (including the provision of witness statements and documents) and to notify you if they are offered counterfeit goods in the future.

- Confidentiality restrictions.
- Costs and damages (with penalty clauses and interest for late or non-payment).
- Unjustified threats - suggesting to a third party that you are considering litigation in the UK for infringement of registered trade marks, designs or patents may amount to an unjustified threat. Anyone harmed by a threat can bring proceedings for unjustified threats which can include an award of damages. To avoid making an unjustified threat, make sure that your evidence is sound and word your cease and desist letters to fall within the statutory exceptions. That means complaining about acts of manufacture and importation rather than retail.
- Pre-action correspondence - depending on the target's response to your cease and desist letter, you may wish to negotiate 'without prejudice', by telephone or in open correspondence.
- Issuing proceedings - if the offender remains uncooperative, and the size of the offender warrants it, you may need to issue proceedings to secure their full cooperation. It is important to keep in mind the goals as costs in UK litigation can mount quickly as the court system encourages early exchange of disclosure and evidence. Offers to settle and/or mediate should be considered early, and reviewed once the parties have exchanged disclosure and/or evidence.
- Judgment can be sought early in proceedings in some cases, saving costs e.g. if the other side fails to file a Defence (via an application for Default Judgment) or where there is no real dispute about the facts of the case and the defendant has no real prospect of defending the claim (via an application for Summary Judgment).

### **Private criminal prosecutions**

- The right to bring a private prosecution is a historical right enshrined in UK case law and preserved by section 6(1) of the Prosecution of Offences Act, 1985. However, the Magistrates Court may refuse to issue a summons if the claim is frivolous, vexatious or abusive. Further, the Director of Public Prosecutions can take over conduct of any case.
- A private prosecution is generally cheaper and quicker than a civil action. In particular, there is no liability to pay the defendant's costs (unless the action was abusive) and the costs of a private prosecution can be recovered from central Crown funds. The trade-off is that you

won't be able to recover any damages (although you may be able to share in a confiscation or compensation order), there is no interim relief (although this may not matter if goods have been seized), it is not possible to withdraw from the prosecution unless it is in the public interest to do so (and so the case cannot be settled part way through), you will have to prove your case beyond a reasonable doubt and there are broad disclosure requirements on you but very limited requirements on the defendant.

- A schedule of criminal offences can be found at: **UK IPO guide to criminal IP infringement offences** [<http://www.ipo.gov.uk/crime/crime-resources/crime-offenceguide.htm>]. Most of the offences are triable either way (i.e. in the Magistrates Court or Crown Court). The sentence for the main offences is up to 6 months imprisonment and/or a maximum of £5,000 fine on summary conviction and up to 10 years' imprisonment and/or an unlimited fine on indictment.
  - It is possible to bring civil and criminal proceedings at the same time, although the civil proceedings will normally be stayed pending completion of the criminal action (so that the prosecution cannot benefit from the wide ranging disclosure available in civil claims). Urgent interim relief through the Civil courts can generally be obtained at the same time as a criminal action.
  - In the UK, recent court decisions have made clear that criminal prosecutions should be reserved for clear cases of counterfeiting or piracy (see *Nottinghamshire County Council v Woolworths plc* [2007] FSR 19). The civil courts may therefore be the appropriate forum for other types of IPR infringement.
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## Quick Hits (how do I get some quick results in the short term)

The following section sets out what enforcement actions you can take in the short-term that are reasonably easy, straight-forward and cheap.

### Legal protection

Make sure you have the right IPR in place, in the right countries and can easily obtain copies or certificates of the relevant rights quickly (for more details, see the [Chapter 3, Analysis, IP Portfolio Analysis](#)) [[hyperlink to the section](#)].

### Readiness

- Put in place an internal task force that can respond rapidly to urgent new cases. The task force should include experts in identifying counterfeit goods, in-house lawyers (if any), data controllers and those in the business who can provide specification sheets, product codes and the like.
- Set up standard procedures for handling new cases and start to collate useful information and documents. These should include how to set up new matters, the handling and storage of evidence (see below), the timelines you must respond within (see below), available actions in each country, template documents, any customs applications lodged and useful contact information.

### Get outside support

- Retain service providers, such as investigators, specialist lawyers and (if relevant) a forensic team, in your key jurisdictions so that you know where to turn to at short notice. Seek recommendations from any organisations you are part of (such as the ACG) or from trading standards. Consider asking recommended firms to pitch for your work, especially if they will be handling high volumes.
- Make sure your preferred agents do not have any conflicts in acting for you and give you a frank appraisal of the sort of activity (and costs) involved in taking action in their country before retaining or engaging them.
- Find out what steps need to be taken to engage your chosen service providers (sometimes a Power of Attorney will be required).
- Get involved with relevant organisations such as the ACG.

### Product identification & storage

- Learn about your products and how to identify counterfeits. Identify (or train, if necessary) people within the business who can provide expert determination of samples and who are willing, and have the time, to prepare statements and to give evidence in court if necessary.

- Prepare template witness statements for the product experts to use when reviewing samples. This will save time when having to respond to Customs and Trading Standards within tight deadlines. Some rights owners also have shorter templates that are quicker to complete, which can save time if the case does not ultimately proceed to court. [ACG Witness Statement Guidelines](#)
- Remember that the witness will be giving evidence as an expert and must be prepared to justify everything in the statement, including his/her standing as an expert in identifying counterfeit goods of the type in question. Expertise may have been gained by training, reviewing product guides and working with genuine products.
- Some rights owners prepare product guides to help identify counterfeit goods, although these may only be developed as you gather more experience about the sorts of problems you are facing. Sometimes these guides (or abbreviated versions of them) are provided to Trading Standards and Customs to help them to spot counterfeit goods. Sample product guides are available in the members' area of the ACG's webs-site. [Product Guides](#)
- Implement a system for handling and storing evidence. Maintaining the integrity and continuity of samples is very important. You should ensure that any sealed bags containing evidence reaches the person carrying out the examination in tact. That person should keep a written record (sometimes called a continuity of evidence log) to prove that the sample has been correctly handled and stored.

#### Continuity of Evidence Log

The log should cover the following information:

- when the sample was received and examined
- how it was stored before and after examination
- the reasons for any delay in examination
- the exhibit number and the general appearance of the sample and bag/ties before and after examination.

The log should be completed every time the sample is examined or moved. Evidence should be stored in sealable bags and a lockable compartment. Remember that the log will probably need to be disclosed to the defendant, along with details of any tests that were carried out and anything else used to assist in the examination process (such as specification sheets, style records, bar code information, product guides and genuine product).

- The [ACG's Witness Statement Guidelines](#) provide useful information on handling and giving evidence and include a sample witness statement [ACG Witness Statement Guidelines](#)

## Border measures

- You can record your trade mark registrations (and some other IP rights) with Customs officials in most countries around the world who will then monitor consignments for infringing goods. It is also possible to record your rights on an EU-wide basis. It is worth keeping a list of all the Customs applications you have in place and any renewal dates, as well as periodically reviewing information in the applications to ensure it is current.

[Link to Regulation](#)

[Link to current version of Notice 34](#)

[Link to ACG Guidance Note](#)

If your goods are detained in the UK, you will be notified by Customs and will need to act quickly. You will need to commence court proceedings in respect of the suspect goods and prove to HMRC that this has been done or obtain written consent from the importer/owner of the goods to abandon them, in each case within a maximum of 20 days from the date on which the goods were detained. You will therefore need to put in place a procedure which sets out how notifications received from HMRC should be dealt with.

- Consider adopting border protection measures covering:
  - (i) countries well-known for manufacturing counterfeit goods
  - (ii) 'choke points' or transit hubs such as Dubai and Hong Kong and
  - (iii) your key markets (likely to include the UK, EU and US).
- Make sure you ask local lawyers whether their Customs measures require:
  - (i) you to bring a civil action or support a criminal prosecution following the detention of counterfeit goods
  - (ii) the provision of a bond or surety in case the goods are not counterfeit and/or
  - (iii) fees for the translation of documents or for the storage and/or destruction of any goods detained.
- As well as filing applications, you should notify Customs of any suspect goods you believe will be arriving, as well as new trends (send to the Southend-on-Sea team or, if urgent, the detention team at the expected port of arrival). UK Customs circulate up-dated information about brands in a weekly news bulletin. You will therefore be able to disseminate any relevant information to Customs quite quickly. [Contact link](#)
- Customs procedures vary from country to country. In the UK, the old customs detention procedure used to provide a relatively cheap method of preventing counterfeit goods hitting the market. With the recent changes to that procedure, it

is no longer as attractive. However, customs detentions are still a good source of information on major distributors. In fact, brand owners should find it easier under the new procedures to obtain and use information disclosed to them by HMRC. Under the old UK procedure, disclosure to and use by brand owners of information provided by HMRC was prohibited under the Enterprise Act 2002 and SI 2007/2193. These issues have largely gone away as Customs will now release all required information to brand owners in order for them to commence proceedings or obtain the importer's/owner's consent to abandonment. Whether brand owners will be able to use this information for pre-action steps, foreign proceedings or for future cases (whether or not it was used in the original case) remains to be seen when the SI has been drafted. Meanwhile, brand owners should be cautious about using any information disclosed by HMRC other than in the original court proceedings for risk of breaching the provisions of the Enterprise Act 2002.

- More detailed information about UK and EU border protection measures including how to interact with Customs and what to do if your goods are detained can be found in Chapter 3, Implementation, Law Enforcement Agencies section [\[hyperlink\]](#).

#### **Contact and inform law enforcement authorities**

- Make initial contact with Customs and Trading Standards, especially those in key points of entry and/or retail areas. See Chapter 3, Implementation, Law Enforcement Agencies section [\[hyperlink\]](#)
- Educate the authorities (on an on-going basis) about your priority products, tell-tale signs for spotting counterfeits and details of who to contact if they have concerns (including out-of-hours contact details). This could be done by providing a Product Guide of the type referred to above as well as supplying information on an ad hoc basis.

#### **Product Guides**

#### **Start to work with law enforcement agencies**

- Information about counterfeit goods can be reported to Trading Standards, the Police and Customs, as appropriate. You can also offer to accompany TSOs on visits to areas where counterfeit goods are known to be sold. This is a good way to develop contacts and get a feel for the extent of the problem you are tackling.
- You should be ready to support the authorities in any action they take by providing opinions, witness statements, expert information and administrative assistance, if possible. These may be required at short notice.
- Keeping constant pressure on infringers may persuade them to switch to sales of counterfeit goods of other brand holders. It can also (on occasion) help to identify evidence of those further up the supply chain.

### **Start to monitor the Internet**

- This is dealt with in greater detail in Chapter 3, Implementation, Technology (virtual world) section [\[hyperlink\]](#). Briefly, internet adverts for the sale of counterfeit goods can often be removed quickly and cheaply. Monitoring online activity can also help you gather information about those dealing in counterfeit goods and spot trends in the market, especially which products are being targeted by counterfeiters.

### **Management systems**

- Put in place systems to record all your cases in order to help you (and your service providers) manage cases, follow up leads between different countries, identify repeat offenders and trends and measure your results over time.

While the steps above may be effective in removing some counterfeit goods from the market, they rarely make a dent in the budget of manufacturers and major suppliers of counterfeit goods. To deter the larger targets, a longer-term approach will be required.



## Other medium- to long-term action

The following section sets out the medium to long-term measures that can be adopted over time to maximise the effectiveness of your enforcement programme.

### Law enforcement

Pro-actively build on your relationships with Trading Standards and Customs Officers by:

- Attending events such as Trading Standards Institute (TSI) events or ACG road shows and conferences – see the [Trading Standard's and ACG's web-sites](#)  
  
[www.a-cg.org](http://www.a-cg.org)  
  
[www.tradingstandards.gov.uk](http://www.tradingstandards.gov.uk)
- Keeping in contact about priority products and known infringers.
- Providing annual updates about your IPR, ways to spot counterfeits and the trends you are seeing, including up-dated product guides.
- Nurturing relationships with officers who are interested in counterfeiting issues by being contactable, responsive and speedy with witness statements (based on your templates already developed).

### Record and review your experiences

- Develop and maintain your systems/records, including any challenging cases, trends in the market and your experiences and successes to date. Start to use this data to target your resources as outlined below.
- Your enforcement records will be important to help review areas dealt with elsewhere in this Guide, for example, getting the right IP protection in place, product security features, policies for hiring and terminating contracts with employees and business partners, correct level of internal support and communication, appropriate use of PR, intelligence gathering priorities and lobbying for changes in law and policy.

### Targeted action

- Use your intelligence and investigations to target those towards the top of the supply chain. The greatest impact you can make will come from attacking the major manufacturers, exporters/importers and repeat/large-scale offenders, cutting off the source of counterfeit goods.
- Small retailers and market traders may do less damage to your business, but working with the law enforcement authorities, you can take some cost-effective action to remove goods from the market and educate the public/traders.

- Increasingly, brand owners are seeking to take action against those who facilitate the supply of counterfeit goods, such as on-line auction houses, market owners and courier companies. This is a difficult area and independent advice should be sought.
- You will need to proactively manage your investigators and lawyers in multiple jurisdictions to make sure priority cases get the attention they warrant, leads are captured, passed on and explored promptly and costs are kept under control.
- Always try to obtain disclosure from counterfeiters so that you can take action against those up (and down) the supply chain. Remember that there are rules prohibiting you from recovering damages greater than the amount to which you are entitled (called "double recovery").
- Keep in mind what your goals are and communicate these clearly to investigators and local lawyers. In order to obtain supplier evidence from the offender quickly, you should consider waiving/reducing some of your earlier demands e.g. for costs and damages. If you can settle the matter promptly, it is important to follow up the supply chain quickly, before a supplier has been tipped off.

### **Civil/criminal actions**

- Consider using a mix of civil actions along side criminal actions as part of a wider enforcement programme.
- Develop precedent documents, such as cease and desist letters, undertakings/settlement agreements, claim forms, particulars of claim and consent orders.
- Defendants often raise similar arguments or defences and it can be useful to develop standard responses. Common issues raised by defendants include that there was no knowing infringement, that the defendant has lost the will to trade or is insolvent and that they do not accept that the goods are counterfeit or would like to inspect the goods. Developing stock answers to these questions can save time. Defendants also often ask how damages/costs have been calculated and so it can be useful to prepare brief explanations.
- Consider the availability of summary judgment and judgment in default (see above).

### **Legal protection**

- Make sure that you continue to review your IP coverage to ensure that you have adequate protection both geographically and for all of your goods/services. For more information on this see Chapter 3, Analysis, IP Portfolio Analysis section [\[hyperlink\]](#). Continue to up-date and renew customs applications as necessary.

## Budget

### Border protection measures

- Lodging customs notifications tends to be free or low cost for most countries.
  - Lawyers' fees for preparing a UK notification should be fairly modest – in the hundreds of pounds assuming you can provide sufficient information.
  - Some local lawyers may agree a capped fee to file the Customs application, or even no fee provided they are nominated as the local contact and assist you with any follow up work.
- Keep costs under control by starting with a UK/EU Customs application and extending the application to other countries over time, once you have a streamlined procedure to handle Customs detentions and an idea of the costs involved.
- Costs of dealing with UK Customs detentions will now be substantially higher than in the past since court proceedings will generally need to be commenced by the brand owner.
- Further costs may be incurred for:
  - Putting together a Product Guide and the associated translation costs.
  - Paying a bond or destruction costs in some countries.
  - Supporting Customs activities by reviewing samples promptly, providing supporting statements and attending court to give evidence.
  - Having to bring and/or support a criminal or civil prosecution in some countries.

### Law enforcement

- Supporting law enforcement seizures can be handled in-house if you have enough resources to review samples, liaise with TSOs and draft witness statements.
- Costs can be kept under control by preparing template statements in advance.
- If your lawyers handle law enforcement matters for you, you can control their costs by setting up a streamlined procedure for handling matters and recording information gathered.
- Straight forward seizure cases with few samples to review are likely to be handled within 5-10 hours of a lawyers' time. Explore whether fixed fees or discounts for handling a large volume of work are on offer.
- Additional time and costs will be incurred if you, or one of your team, attends raids with TSOs, or has to support a later prosecution.

## **Civil proceedings**

- UK civil litigation is usually expensive. Costs will vary depending on the complexity of the matter, if the defendant takes the proceedings seriously and does not cause unnecessary delay, and at what point the proceedings come to an end.
- Preparing and serving the Claim Form and Particulars of Claim will likely cost in the thousands of pounds. Exchange of disclosure lists and reviewing the other side's disclosure tends to be labour intensive and will be much more costly, as will preparing your evidence and reviewing the other side's evidence.
- If you make any substantial applications, such as applications for Summary Judgment, an Interim Injunction or a Search & Seizure Order, this is likely to cost in the tens of thousands of pounds.
- While the cost of bringing a civil action through to a first instance decision will vary wildly, it would be wise to budget six figures, incurred over a period of eighteen months.
- Costs can be reduced by handling some of the process in-house and by developing precedent documents and agreed systems. The ready availability of sales information to support any damages claim will also be key.
- You should not expect to recover more than about 60% of the costs of a successful civil action and even then the defendant may not be able to pay. Explore obtaining an injunction to prevent dissipation of assets.
- Consider trying to obtain insurance for large cases.

## **Reducing costs**

- Pick your cases. Targeting infringers with significant assets can be a good way to make litigation self-funding. Private investigators can be used to help determine if the defendant owns a house or other assets such as a car. Make sure that your investigators do not commit any offences whilst conducting investigations though and always seek legal advice if in doubt.
- Use local authorities for enforcement action, where appropriate.
- Consider private criminal prosecutions where your costs will be reimbursed.
- Consider whether you can take some enforcement action, or share information, with other rights-holders or industry coalitions in order to save costs.

## **Justifying costs**

- Gather measurable results of enforcement activity to date. This should be straight forward headline news for those in the business. This can include records of goods destroyed or delivered up and their market value to show 'sales saved' to the business, as well as sums

recovered. Ideally, sums recovered should be kept by the legal department and used for further enforcement action.

- Try to track and record the scale of infringing activity so that you can inform the business about the level of sales lost and the impact on the brand.
- If possible, gather information beyond the amount of goods seized. While this statistic is helpful, it doesn't show if you are reducing the size of the problem.
- Prepare summaries of high-impact actions taken such as
  - ii) public awareness campaigns
  - iii) trends in the market such as the number of repeat offenders found, whether raids are seizing more or less goods year-on-year, results from periodic 'market sweeps' and/or details of the types of infringement you encounter.

Keep the business up-dated so that they can use any useful information and feel involved.

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## Glossary (hyperlink to PDF)

## Useful Links (hyperlink to pdf)

### UK Judicial System

Direct Gov Basic introduction to the UK judicial system

HMCS Her Majesty's Court Service website

### Giving evidence

Direct Gov - Witness Guide Basic introduction to being a witness

HMCS - Witness Guide (Magistrates) Her Majesty's Court Service guidance for witnesses in the Magistrates Court

HMCS - Witness Guide (Crown Court) Her Majesty's Court Service guidance for witnesses in the Crown Court

[Insert pdf link to ACG Guide – Witness Statement Guidelines]

### Customs

Council Regulation 1383/2003 EC Regulation 1383/2003 on goods infringing intellectual property rights (Customs)

[http://www.acg.org/members/useful\\_info/members\\_information\\_uk\\_enforcement\\_customs.php](http://www.acg.org/members/useful_info/members_information_uk_enforcement_customs.php) - ACG guide (in members area) to Customs enforcement

HMRC - Customs Notice 34 UK Customs Notice 34 – How UK Customs currently act against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

Europa - Customs guide Practical information on how rights' holders can protect themselves from counterfeiting and piracy. Includes model forms for European and National monitoring applications.

Europa - Customs statistics Detailed statistics of EU Customs seizures by country and product type

UKIPO - Customs introduction

UK Intellectual Property Office introduction to UK Customs

Business Link - Customs applications

Business Link guide to filing a UK Customs Monitoring Application

Business Link - Customs Guide

Business Link guide to working with UK Customs on detentions

### **Trading Standards**

Trading Standards

Website for the UK Trading Standards Institute. Search function provides links for different councils Trading Standards Offices.

[http://www.acg.org/members/useful\\_info/members\\_information\\_uk\\_enforcement\\_trading\\_standards\\_working\\_ts.php](http://www.acg.org/members/useful_info/members_information_uk_enforcement_trading_standards_working_ts.php)

ACG guide (in members area) to working with Trading Standards

[http://www.acg.org/members/useful\\_info/members\\_information\\_POCA.php](http://www.acg.org/members/useful_info/members_information_POCA.php)

ACG guide (in members area) to recovery of assets under the Proceeds of Crime Act

### **Offences**

[insert pdf link to ACG guide on relevant UK law]

<http://www.ipo.gov.uk/crime/crime-resources/crime-offenceguide.htm>

UK IPO guide to criminal IP infringement offences

### **Enforcement Guides**

IPR Helpdesk

IPR Helpdesk Guide to Border Enforcement of IPR

UKIPO - IP Crime

The UK Intellectual Property Office IP Crime Group

IP Crime Group - Supply Chain Toolkit

Aimed more at SMEs, this guide provides practical advice on tackling counterfeit goods.

### **Enforcement associations**

IFPI International Federation of the Phonographic Industry (IFPI) is the organisation that represents the interests of the recording industry worldwide.

SNB-REACT European anti-counterfeiting network.

BSA Business Software Alliance

Alliance Against IP Theft UK-based coalition of trade associations and enforcement organisations

FACT Federation Against Copyright Theft

<http://www.aim.be/> Association representing European rights-holders

#### **Useful contacts**

INTERPOL the International Police Association

INTA International Trademark Association

WIPO World Intellectual Property Organisation