

**TRADEMARK,
COPYRIGHT
AND OTHER IPR
VIOLATIONS**

GUIDELINES FOR REMISSION OF FORFEITURES AND MITIGATION OF PENALTIES FOR TRADEMARK, COPYRIGHT AND OTHER IPR VIOLATIONS

Section 1526 of Title 19, United States Code (19 U.S.C. 1526) and 19 U.S.C. 1595a(c)(2)(C) provide U.S. Customs and Border Protection (CBP) with the authority to seize and forfeit merchandise imported into the United States which bears counterfeit trademarks, marks that are confusingly similar to protected trademarks, and marks that are piratical copies of protected copyrights. Title 19 U.S.C. 1595a(d) and 22 U.S.C. 401(a) provide CBP with the authority to seize and forfeit goods that are exported contrary to law, including violations involving intellectual property rights (IPR). 19 U.S.C. 1526(f) also provides CBP with the authority to assess a monetary penalty against parties who direct, assist financially or otherwise, or aid and abet the importation of goods bearing counterfeit trademarks which are seized and forfeited pursuant to 19 U.S.C. 1526(e). These authorities, as implemented by Part 133 of Title 19, Code of Federal Regulations (19 C.F.R. Part 133), apply to importations and exportations, including Transportation and Exportation (T&E) and Importation and Exportation (IE) entries, with limited exceptions.

Additionally, CBP administers and enforces exclusion orders issued pursuant to 19 U.S.C. 1337 by the U.S. International Trade Commission (ITC). Such orders involve a range of unfair trade practices including but not limited to trademarks, copyrights, trade secrets and patents; however, most ITC exclusion orders are patent-based.

Although CBP is not required to grant relief in any specific case, CBP may reference these guidelines when deciding whether to grant relief in a specific case and, if CBP deems that relief is appropriate, to determine the mitigation, remission, or cancellation amount. CBP reviews the specific facts and circumstances of each case individually and may deviate from these guidelines if CBP determines that such deviation is appropriate. Pursuant to 19 U.S.C. 1618, 1623, as well as other applicable regulatory authorities, duly authorized CBP officials are entitled to grant relief under such terms and conditions as they deem appropriate, sufficient, reasonable and/or just.

These guidelines apply to violations that occur on or after May 1, 2019. For violations that occur before May 1, 2019, reference the guidelines at <https://www.cbp.gov/document/publications/mitigation-guidelines-icp-trademark-copyright-and-other-ipr-violations>

IPR Matrices

Guidelines for Trademark Seizures Made Pursuant to 19 U.S.C. 1526(e) (or 19 U.S.C. 1595a(d) and 22 U.S.C. 401)

VIOLATION	RECOMMENDED DISPOSITION
Counterfeit Mark <ul style="list-style-type: none"> • Trademark registered on Principal Register of U.S. Patent & Trademark Office (USPTO) • Trademark recorded with CBP • No consent from U.S. trademark holder 	No remission of forfeiture
Counterfeit Mark <ul style="list-style-type: none"> • Trademark registered on Principal Register of USPTO • Trademark recorded with CBP • Consent from U. S. trademark holder obtained post-seizure 	Remission of forfeiture upon payment of 10% of the dutiable value of the goods, payment of all seizure costs and submission of properly executed Hold Harmless Agreement

Guidelines for Penalties Levied Pursuant to 19 U.S.C. 1526(f)

VIOLATION	RECOMMENDED DISPOSITION
First offense, with mitigating factor(s) and no aggravating factor(s)	10-30% of the assessed penalty amount
First offense with aggravating factor(s)	30-50% of the assessed penalty amount
First offense with evidence of knowledge as to the counterfeit nature of the goods, with no aggravating factor(s)	50-80% of the assessed penalty amount
Second offense, with mitigating factor(s) and no aggravating factor(s)	10-30% of the assessed penalty amount
Second offense, with aggravating factor(s), or Third or subsequent offense	50-80% of the assessed penalty amount
Second or subsequent offense, with evidence of knowledge as to the counterfeit nature of the goods	No mitigation

Examples of potentially mitigating factors include, but are not limited to:

- a. Lack of knowledge of the counterfeit nature of the trademark.
- b. Prior good record of importation under 19 U.S.C. 1526.
- c. Inexperience in importing.
- d. Extraordinary cooperation with CBP officers in ascertaining the facts establishing the violation.
- e. Inability to pay as determined by the CBP Office of Regulatory Audit.

Examples of potentially aggravating factors include, but are not limited to:

- a. More than two prior importations of merchandise seized and forfeited under 19 U.S.C. 1526(e).
- b. Criminal violation relating to the subject transaction.
- c. Submission of falsified documentation (i.e., false description, false country of origin, etc.), or other deceptive practices in connection with the subject importation.

Guidelines for Trademark Seizures Made Pursuant to 19 U.S.C. 1595a(c)(2)(C) (or 19 U.S.C. 1595a(d) and 22 U.S.C. 401)

VIOLATION	RECOMMENDED DISPOSITION
<p>Counterfeit Mark</p> <ul style="list-style-type: none"> • Trademark registered on Principal Register of USPTO • Trademark NOT recorded with CBP • No consent from U.S. trademark holder 	<p>No remission of forfeiture</p>
<p>Confusingly Similar Mark</p> <ul style="list-style-type: none"> • Trademark registered on Principal Register of USPTO • Trademark recorded with CBP • No consent from U.S. trademark holder 	<p>Remission of forfeiture upon payment of 25% of dutiable value, obliteration or removal of the offending mark and export to the country of origin under CBP supervision, payment of all seizure costs (including obliteration/removal of offending mark) and submission of properly executed Hold Harmless Agreement</p>
<p>Confusingly Similar Mark</p> <ul style="list-style-type: none"> • Trademark registered on Principal Register of USPTO • Trademark recorded with CBP • Consent from U.S. trademark holder 	<p>Remission of forfeiture upon payment of 10% of dutiable value, payment of all seizure costs and submission of properly executed Hold Harmless Agreement</p>

Guidelines for Trademark Seizures Made Pursuant to 19 U.S.C. 1526(b) (or 19 U.S.C. 1595a(d) and 22 U.S.C. 401)

VIOLATION	RECOMMENDED DISPOSITION
Gray Market <ul style="list-style-type: none"> • Trademark registered on Principal Register of USPTO • Trademark recorded with CBP • Trademark has Gray Market protection 	Remission of forfeiture upon payment of 10% of dutiable value, export to the country of origin under CBP supervision, payment of seizure costs and submission of properly executed Hold Harmless Agreement

Guidelines for Copyright Seizures Made Pursuant to 19 U.S.C. 1595a(c)(2)(C) (or 19 U.S.C. 1595a(d) and 22 U.S.C. 401)

VIOLATION	RECOMMENDED DISPOSITION
Clearly Piratical <ul style="list-style-type: none"> • Copyright registered with the U.S. Copyright Office • Copyright recorded or not recorded with CBP • No consent from U.S. copyright holder 	No remission of forfeiture
Clearly Piratical <ul style="list-style-type: none"> • Copyright registered with the U.S. Copyright Office • Copyright recorded or not recorded with CBP • Consent from U.S. copyright holder obtained post-seizure 	Remission of forfeiture upon payment of 10% of dutiable value, payment of all seizure costs and submission of properly executed Hold Harmless Agreement
Possibly Piratical <ul style="list-style-type: none"> • Copyright registered with the U.S. Copyright Office • Copyright recorded with CBP • No consent from U.S. copyright holder • Found infringing 	No remission of forfeiture

Guidelines for Seizures Involving an ITC Exclusion Order Made Pursuant to 19 U.S.C. 1337(i)

VIOLATION	RECOMMENDED DISPOSITION
ITC Exclusion Order <ul style="list-style-type: none"> • Article falls within scope of ITC exclusion order • Article previously denied entry • Written notice provided that any further attempts would result in seizure and forfeiture 	No relief shall be afforded from the seizure of any articles found to be within the scope of an ITC seizure order.