



Trade Marks Act 1995

SECURITY UNDER SECTION 133 - DEED OF UNDERTAKING

THE DEED IS MADE

on the _____ day of _____ 20 _____

BY _____
Company

of _____ hereinafter referred to as the Undertaking giver.
Address

Recital

- A. The Undertaking Giver is the registered owner or authorised user of a trade mark whose particulars are entered into the Register under the *Trade Marks Act 1995* (the Act).
- B. The Undertaking Giver has given to the Chief Executive Officer of Australian Customs and Border Protection Service (the CEO) a written notice, under s132 of the Act, stating that they object to the importation of goods that infringe the trade mark.
- C. Pursuant to s133(2) of the Act the CEO must seize the goods unless they are satisfied that there are no reasonable grounds for believing that the notified trade mark is infringed by the importation of the goods.
- D. Pursuant to s133(3) of the Act, the CEO has decided not to seize the goods unless the Undertaking Giver has given a written undertaking, in the terms of this Deed, to repay the Commonwealth the expenses of seizing the goods.

The Deed Witnesses:

- 1. Where, after the date of the execution of this Deed, the CEO seizes goods pursuant to s133(2) of the Act, the Undertaking Giver shall, upon demand, pay to the Commonwealth the expenses of seizing the goods.
- 2. The expenses of seizing the goods are defined in s133(5) of the Act as being the expenses that may be incurred by the Commonwealth if the goods were seized.
- 3. Any demand made under this Deed upon the Undertaking Giver shall be deemed to have been duly made if it is in writing and signed by the CEO, or a delegate, and sent by prepaid post as a letter to the Undertaking Giver, or their nominated legal representative, or left by hand, at the address set forth in this Deed or at the address last notified to the Australian Customs and Border Protection Service under clause 5 of this Deed. Any such demand sent by prepaid post shall be deemed to have been received by the Undertaking Giver, at the time when such demand could in the ordinary course of post have been delivered.
- 4. An amount not paid under this Deed is a debt due by the Undertaking Giver to the Commonwealth and may be recovered by an action taken in a court of competent jurisdiction.
- 5. If there is an alteration to the name or address of the Undertaking Giver or their nominated legal representative, then the Undertaking Giver shall give to Australian Customs and Border Protection Service written notice of the fact within seven (7) working days after the date on which the alteration takes place.

OR

- 5. If there is an alteration to the name or address of the Undertaking Giver or their nominated legal representative, or if the Undertaking Giver ceases to carry on business, or there is an alteration to the ownership or control of the Undertaking Giver, then the Undertaking Giver shall give to Customs written notice of the fact within seven (7) working days after the date on which the alteration or cessation takes place.

[**NOTE:** This clause 5 may vary depending on whether the Undertaking Giver is a natural or corporate person.]

- 6. A reference in this Deed to a provision of the *Trade Marks Act 1995* shall be read as a reference to that provision as in force as amended at the date of execution of this Deed, and to any provision re-enacting or replacing the same.

Executed as a Deed

[Note: Where Undertaking Giver is a natural person]

Signed, sealed and delivered by:

Signature:

Name of Undertaking Giver

In the presence of:

Signature:

Name of witness

OR**Executed as a Deed**

[Note: Where executed for a proprietary company that has a sole Director where that Director is also the sole Company Secretary]

Signed, sealed and delivered by:

Signature:

Name of sole Director / Company Secretary

Signature:

Name of witness

OR**Executed as a Deed**

[Note: Where executed by 2 Directors of a company, or a Director and a company secretary]

Signed, sealed and delivered by:

Signature:

Name of Director

Signature:

Name of witness

Name of Director / Secretary

Signature:

Name of witness

Signature:

OR**Executed as a Deed**

[Note: Where executed by a proprietary company with a common seal or where executed by a proprietary company with a common seal that has a sole Director who is the company secretary]

Signed, sealed and delivered by:

Company Seal

Witnessed By:

Signature:

Name of Director or sole Director/Company Secretary

Signature:

Name of Director / Secretary (not required where executed by sole Director who is the company secretary)

Note: Please check advice on the correct form of execution on a case basis.