



Australian Government


Australian Customs and
Border Protection Service

*Guide to lodging a
Notice of Objection
under the
Trade Marks Act 1995*

Contents

1.	Notice of Objection Form – <i>Trade Marks Act 1995</i> (B1025)	3
2.	Trade Mark Schedule.....	5
3.	ATMOSS Report	5
4.	Authorisation Letter/s.....	5
5.	Security.....	5
6.	Authorised Importers	8
7.	Infringing Information.....	8
8.	Additional Assistance	8

1. Notice of Objection Form – Trade Marks Act 1995 (B1025)



Australian Government
Australian Customs Service

Trade Marks Act 1995
NOTICE OF OBJECTION

To: The Chief Executive Officer
Australian Customs Service
Customs House
CANBERRA ACT 2601

Attention: Intellectual Property Rights

TIME SAVER

If this form was completed by a business with fewer than 20 employees, please provide an estimate of the time taken to complete this form.

Hours Minutes

1. Full name of the Company lodging the Notice.

2. Company ABN or Customs Client ID (CCID), if known.

I, ABN, CAC or CCID (if applicable)

of

(Please place an X in appropriate box)

being the registered owner an authorised user under the Trade Marks Act 1995

3. Full address of the Company lodging the Notice.

4. Indicate if the Company lodging the Notice is the Registered Owner or Authorised User of the Trade Marks being covered by the Notice. (Both boxes may be selected).

of the registered trade mark(s) described in the schedule overleaf hereby notify you, pursuant to section 132 of that Act, that I object to the importation of goods that are:

(a) goods manufactured outside Australia and having applied to them, or in relation to them, a trade mark that is substantially identical with, or deceptively similar to, one or more of those trade marks listed in the schedule overleaf; and

(b) goods in respect of which the notified trade mark is registered; and request you seize any such goods under subsection 133(2) of the Act.

5. Signature, Title and Full Name of an appropriately authorised person on behalf of the Company lodging the Notice.

Signature(s) Title/Position of Signatory(s)

Printed Name(s) Date / /20

Legal Representatives (if applicable) Address Phone/Fax Number

Contact for seizures Address Phone/Fax Number

6. Contact details of the Legal Representative for the Company lodging the Notice, optional information.

7. Contact Details for the person and/or Company for any Seizures made on behalf of the Company lodging the Notice.

The schedule overleaf should be completed and must contain all information requested in the schedule.

This Notice must be accompanied by:

(a) a copy of the registration details of the trade mark, and

(b) if an authorised user is lodging this form, documents that establish:

(i) the authorised user has the authority to lodge a notice of objection; or

(ii) the authorised user asked the registered owner to give the notice, and the registered owner gave no response within the 2 month period.

Notice: If this form is completed by an individual, then the Privacy Act 1988 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We require this information under the Trade Marks Act 1995 to allow us to seize goods which are imported and may contravene s133 of that Act if not seized. The Australian Customs Service is not permitted to disclose this information or any supplementary information you give, except when required or authorized by law.

B1025 (SEP 2005)

1.1. Details for completing the Notice of Objection Form B1025:

1.1.1. Full name of the Company lodging the Notice of Objection (Notice):

- When the Notice is filed in the name of the registered owner this should be the same name as appears on the trade mark registration details.

Example:

Owner:	Australian Customs Service 5 Constitution Ave CANBERRA ACT 2601
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- When the Notice is filed in the name of the authorised user it should reflect the same name as appears in the Authorisation letter/s issued by the Trade Mark owner/s.

1.1.2. Company ABN or Customs Client ID (CCID), if known:

- Australian owned companies should have an ABN;
- International companies will have a Customs Client ID (CCID).

1.1.3. Full address of the Company lodging the Notice:

- This must match the address registered against the ABN with the Taxation Office; or
- The address registered with Customs against the CCID.

1.1.4. Indicate if the Company lodging the Notice is the Registered Owner or Authorised User of the Trade Marks being covered by the Notice.

- Select the box/boxes, which accurately reflect/s the ownership status of the trade marks. The Notice may cover Trade Marks the Objector owns as well as trade marks that they are authorised to use. In these instances both boxes should be selected.

1.1.5. Signature, Title and Full Name of an appropriately authorised person on behalf of the Company lodging the Notice.

- This may be the Legal Representative, however the Company Representative is always preferred.

1.1.6. Details of the Legal Representative for the Company lodging the Notice:

- Contact details for the Law Firm and contact person representing the Company lodging the Notice, where applicable.
- The address provided must be the physical address.

1.1.7. Details for the person and/or Company for any Seizures made on behalf of the Company lodging the Notice:

- Details for the Company and contact person that should be advised by Customs of any seizures made.
- The address provided must be the physical address.
- Please provide an email address, if available.

2. Trade Mark Schedule

- 2.1. The Schedule should be listed on the reverse side of the Notice of Objection form (B1025).
 - 2.1.1. Information regarding trade mark details, registration number, expiry date, class and description of goods for each trade mark to be covered by the Notice should be included.

3. ATMOSS Report

- 3.1. Evidence of Registration for the trade marks to be covered. This information can be downloaded from the IP Australia website (www.ipaustralia.gov.au) select the Trade Marks tab, then click on Search On Line Database, then select the link to ATMOSS.
 - 3.1.1. If you need help using this system you can contact IP Australia on 1300 651 010;
- 3.2. This report should then be emailed to iprights@customs.gov.au.

4. Authorisation Letter/s

- 4.1. For any trade mark that is not owned by the Company lodging the Notice, a letter authorising them to file the Notice on the trade mark owner's behalf must be provided to Customs, in some cases this may require several letters from the various trade mark owners.

5. Security

- 5.1. The Objector must provide a Deed of Undertaking (Deed) to Customs. The Deed must be executed by the Company lodging the Notice;
 - 5.1.1. The Deed is a formal undertaking from the Objector that they will pay any costs incurred by Customs while enforcing the Notice of Objection.
 - 5.1.2. Details for completing the Deed of Undertaking Form (B1029) (please refer to example on pages 6 & 7):
 - The Date the Deed is signed (executed);
 - Full name of the Company providing the Deed;
 - Full address of the Company providing the Deed;
 - There are four options in which to execute the Deed:
 - Option 1: If an individual is lodging the Notice of Objection and Deed;
 - Option 2: If the Company lodging the Notice has a sole Director who is also the sole Company Secretary;
 - Option 3: When the Company lodging the Notice has 2 Directors or 1 Director and a Company Secretary; or
 - Option 4: If the Company lodging the Notice has a common seal or the Company is a proprietary company with a Seal and a sole Director that is also the Company Secretary.

All signatures must be witnessed.



Trade Marks Act 1995

SECURITY UNDER SECTION 133 - DEED OF UNDERTAKING

1. The Date the Deed of Undertaking is executed.

2. Full name of the Company providing the Deed. MUST BE THE COMPANY LODGING THE NOTICE

3. Full address of the Company providing the Deed.

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 Customs (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 Service (Customs) 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 Customs 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.

Option 1

Executed as a Deed

[Note: Where Undertaking Giver is a natural person]

Signed, sealed and delivered by: _____ Name of Undertaking Giver	Signature: _____
In the presence of: _____ Name of witness	Signature: _____

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: _____ Name of sole Director / Company Secretary	Signature: _____
_____ Name of witness	Signature: _____

Option 2

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: _____ Name of Director	Signature: _____
_____ Name of witness	Signature: _____
_____ Name of Director / Secretary	Signature: _____
_____ Name of witness	Signature: _____

Option 3

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: _____ 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)	Signature: _____

Option 4

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

B1029 (FEB 07)

Page 2 of 2

6. Authorised Importers

6.1. A list of Companies or Individuals authorised to import goods bearing the trade marks covered by the Notice of Objection may be provided.

6.1.1. This will assist Customs to target alleged infringing shipments on your behalf more effectively.

7. Infringing Information

7.1. If any information comes to hand, which may assist Customs to enforce this Notice (e.g. Companies or Individuals importing alleged infringing goods into Australia, including any particulars of shipments due to arrive), please email the details to iprights@customs.gov.au.

8. Additional Assistance

8.1. If you require assistance or information regarding the lodgement of notices please contact iprights@customs.gov.au or phone (02) 6275 6157.