



AUSTRALIAN CUSTOMS NOTICE 2001/56

TRADE MARKS ACT 1995 TRADE MARKS REGULATIONS

This Customs notice is to provide advice to owners and authorised users of trade marks registered in Australia, and to importers who may import goods to which trade marks have been applied. The operation of the Customs seizure provisions of the Act was most recently published in ACN 2000/79.

This notice gives a brief outline of amendments to the *Trade Marks Act 1995* (the Act) and the *Trade Marks Regulations* (the Regulations). Amendments to the Act were passed by Parliament on 22 August 2001 and will come into effect on 19 September. Additionally, changes to the regulations also took effect on 19 September. The changes to the import provisions summarised below

Subsection 132(3) - changes the conditions under which an authorised user may lodge a Notice of Objection.

Under previous provisions, if, within the prescribed period (2 months), a registered owner did not comply with a request to lodge a Notice of Objection, the authorised user could lodge the Notice. Where the registered owner gave permission within that prescribed period, the previous provision did not allow the authorised user to lodge the notice until the expiration of the 2 month period.

The amendments allow the authorised user to lodge the Notice during the prescribed period if the consent of the registered owner is obtained, or where, within that period, an owner refuses a request to give a Notice.

Section 137(5) – changes the period within which an Objector must obtain a court order to prevent the CEO from releasing the goods.

The provision relates to the period during which Customs holds goods seized under the Act when an objector has initiated civil action. Under previous provision, if, after a period of three weeks there is no order from the court preventing the goods from being released, the CEO must release them to the designated owner.

The amendments change the statutory period for holding the goods from 3 weeks to 20 working days. "Working days" is defined as not including a Saturday, Sunday or a public holiday in the ACT. The change also makes it clear that the court's order in relation to the goods must be directed at the CEO.

Regulation 13(1) – changes the prescribed documents required to accompany a Notice of Objection.

This regulation prescribes the documents that must accompany a Notice of Objection. Previously it required that a certified copy of the Trade Mark Certificate, not more than 2 months old, be provided to Customs. In the current environment where the Trade Marks register is available on-line, this requirement places an unnecessary burden on trade marks owners.

The amended regulation prescribes that the particulars of registration of the registered trade mark are to be provided with the Notice of Objection.

Where appropriate existing forms will be updated and re-issued shortly.

Further information regarding the operation of the Customs seizure provisions can be obtained on ACN 2000/79. Further information on the changes to the Act and Regulations may be obtained from:

- IP Australia on 1300 651 010; or
- Intellectual Property Rights Group of the Australian Customs Service:
 - telephone (02) 6275 6577
 - facsimile (02) 6275 6699
 - mail Australian Customs Service
Customs House,
5 Constitution Avenue,
Canberra City, ACT 2601.

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For Chief Executive Officer
September 2001