

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: OR&R DISTRIBUTION: S-01 CUSTOMS DIRECTIVE NO. 2310-011A DATE: JANUARY 24, 2000 SUPERSEDES: 2310-11 July 30, 1991 REVIEW DATE: JANUARY 2002

PERSONAL USE EXEMPTION: UNAUTHORIZED TRADEMARKS

1. PURPOSE. To clarify Customs policy with respect to the proper application of the personal use exemption.

2. AUTHORITY. Generally, Section 526 of the Tariff Act of 1930, as amended (19 U.S.C. §1526) and section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. §1124) (the Lanham Act) proscribe the importation of goods bearing counterfeits of trademarks which have been registered with the U.S. Patent & Trademark Office and recorded with U.S. Customs.

3. BACKGROUND. According to the statute (19 U.S.C. §1526(d)(1)), such restrictions do not apply to the importation of articles accompanying any person arriving in the United States, when such articles are for his personal use and not for sale, provided such articles have been approved and enumerated by Customs, and that such person has not been granted a 1526(d) exemption within 30 days immediately preceding his arrival. However, 19 U.S.C. §1526(d)(4) also authorizes the Secretary of the Treasury to prescribe such rules and regulations as may be necessary to carry out that law.

3.1 At 19 CFR §148.55, Customs has promulgated regulations which provide for the importation of one article of a type bearing an unauthorized protected trademark. Importations of quantities greater than one article of a type bearing an unauthorized trademark are subject to the provisions of 19 CFR §133.24.

4. ACTION. Customs officers shall permit any person arriving in the United States, to import one article, which must accompany the person, bearing a counterfeit, confusingly similar, or restricted gray market trademark, provided that the article is for personal use and not for sale.

4.1 Customs officers shall permit the arriving person to retain one article of each type accompanying the person. For example, an arriving person who has three purses, whether each bears a different unauthorized trademark or whether all three bear the same unauthorized trademark, is permitted one purse.

4.2 Imported items over and above one article are subject to disposition under either 19 CFR § 133.21 (counterfeit) or 19 CFR § 133.24 (gray market and confusingly similar). Under 19 CFR § 133.21, counterfeit items, in the absence of permission from the trademark owner, must be seized and forfeited. Gray market or confusingly similar goods are subject to detention under 19 CFR §133.24(a). Upon such a detention, Customs officers should orally advise the person(s) arriving that the articles are subject to detention and that in accordance with 19 CFR §133.24(c)(2), such articles may be:

4.2.1 Exported or destroyed under Customs supervision; or

4.2.2 Imported if the mark is removed or obliterated to Customs satisfaction; or

4.2.3 Released if permission to import the goods is obtained from the trademark holder.

4.3 Where the trademark holder consents to the importation of goods bearing unauthorized trademarks in quantities above the regulatory exemption, Customs officers shall allow the greater quantity to be imported.

4.4 Where the importer has failed to obtain release of such detained goods after 30 days from the date of presentation to Customs, said goods shall be seized and forfeiture proceedings instituted.

4.5 In the past, there has been confusion over whether the personal use exemption contained in 19 CFR §148.55 applies equally to crew members. 19 CFR §148.55, and its governing statute, 19 U.S.C. §1526(d), state that the personal use exemption is available to "any person." This includes crew members.

5. RESPONSIBILITIES. Customs field officers are responsible for following these guidelines. Area/Port directors, assistant port directors (trade operations), supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs are aware of the content of this Directive and adhere to the guidelines provided.

Commissioner of Customs