

The Customs Request for Assistance Regime for Counterfeit Goods May Be in Force in Early 2015

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Authors: [Scott MacKendrick](#) and [Tamara Céline Winegust](#)

Bill C-8, the *Combating Counterfeit Products Act* (the “Act”), received Royal Assent on December 9, 2014. The law is intended to give trademark and copyright owners additional options for dealing with the importation and sale of counterfeit goods. The Bill passed through its required three readings in the House of Commons on October 2, 2014, before being passed by the Senate on December 8, 2014.

Once proclaimed into force, the Act will amend the *Trademarks Act* and *Copyright Act* to provide a new procedure by which customs authorities may detain goods at the border that are suspected of being counterfeit products. The “Request for Assistance” procedure is rumoured to be coming into force in January 2015, with implementation of the remaining amendments to the *Trademark Act* and *Copyright Act* provided for in the Act expected at a later date.

The “Request for Assistance” procedure will provide owners of Canadian copyrights and Canadian trademark registrations with an important and new option for addressing the import of counterfeit goods. The procedure allows the owner of a Canadian trademark registration or Canadian copyright to file a request for assistance from customs authorities. Requests will be good for two years, although renewable for additional two year periods on request. Requests for assistance will need to include the Rights Holder’s name, and address in Canada, as well as any other information required by the Minister; the specific request form is not yet known. Further, the current rumour is that that there will be no government fee, at least initially, for such recordal.

Customs officers will provide the Rights Holder with a sample of the detained goods and information about the goods. The Act prohibits the Rights Holder from using the provided information for any reason *other* than to pursue remedies under the Act.

Detention is limited and goods will only be detained for up to 10 days (or 5 days in the case of perishable goods) following notification of the detention to the Rights Holder, and for an additional 10 days upon request from the Rights Holder, and at the discretion of the customs officer. To detain the counterfeit goods for a longer period, the Rights Holder must commence court proceedings and notify the Minister of the proceedings; otherwise, the goods will be released into the market at the expiry of the initial detention period.

Importantly, Rights Holders, not the government, will bear the costs of handling, detaining, and destroying any goods seized by customs authorities pursuant to a request for assistance once they have been given notification of the detained goods. Neither the Crown, nor any customs officer shall be liable for any damage or loss arising from the detention or release of detained goods.

The Act does not apply to “in transit” counterfeit goods or to goods imported substantially through the internet and in small mail packages.

Since a trademark registration is a condition precedent to request “assistance” from customs officers, trademark owners should review their portfolios to ensure that steps are being taken to arm themselves with registrations, as soon as possible, especially for brands that could be potential counterfeit targets. Trademark owners should also ensure that the list of goods covered by their trademarks registrations includes goods likely to be counterfeited, and if not, should consider filing for an updated list to take advantage of the new procedure and thereby combat counterfeiters.

For further information, please contact [Cynthia Rowden](#) or [Scott MacKendrick](#).

