

# **Announcement on Accepting the General Guarantee for the Customs Protection of Intellectual Property**

## **Full text**

1. Within a certain period, if an intellectual property right holder has submitted several applications to the customs for detaining the import and export goods suspected of infringing on the exclusive right of its trademark which has been put on record in the General Administration of Customs (hereinafter referred to as goods suspected of infringement), it may submit an application to the General Administration of Customs for providing a general guaranty for the customs protection of intellectual property (hereinafter referred to as the general guarantee).

2. If an intellectual property right holder applies for providing a general guarantee, it shall submit a written application to the General Administration of Customs (see the format in Annex 1) and shall accompany it with the materials as follows:

(1) A letter of general guaranty (see the format in Annex 2) issued by a bank (hereinafter referred to in general as guarantor), which has obtained an approval to undertake the financial business within the territory of China mainland, on bearing the several and joint liabilities for the general guaranty application of the intellectual property right holder; and

(2) A checklist of the storage and disposal fees incurred in the previous year after the intellectual property right holder requested the customs to detain the goods suspected of infringement (see the format in Annex 3).

3. The amount of general guaranty shall be equivalent to the aggregate amount of the fees incurred for the storage, preservation and disposal of the goods (hereinafter referred to as the storage and disposal fees) which are suspected of infringement and which were detained by the customs in the previous year upon application of the intellectual property right holder. If the aggregate amount of the aforesaid fees incurred in the previous year is less than 200, 000 yuan, the amount of general guaranty shall be 200, 000 yuan.

The period of validity of a letter of the general guaranty shall be from the date of issuance by the guarantor to June 30 of the next year.

4. During the period from the date on which the General Administration of Customs grants an approval of its using a general guaranty to December 31 of the current year, the intellectual property right holder is not required to provide any guaranty to the customs again if it requests the customs to detain any goods suspected of infringement. However, according to Article 31 of the Implementation Measures, the relative storage and disposal fees shall still be paid by the intellectual property right holder. If the loss is caused to the consignee or consignor on account of an improper application, the intellectual property

right holder shall assume the civil compensation liabilities.

5. Under any of the circumstances as follows, the General Administration of Customs may notify in a written form to the guarantor that it should pay the relative customs a sum of money which does not exceed the amount of guaranty within 10 working days:

(1) If the intellectual property right holder fails to pay the storage and disposal fees as required by the customs within 10 working days after the date of the notice received in written form, it shall pay the relevant fees according to Article 31 of the Implementation Measures.

(2) If the intellectual property right holder fails to assume the compensation liabilities according to Article 29 of the Regulation and if the people's court demands the customs to help enforce the relevant judgment within the valid period of the letter of general guaranty.

From the day when the GAC issues a notice of performance of guaranty liabilities to the guarantor, the intellectual property right holder requests the customs to detain any goods suspected of infringement, it shall provide a guaranty to the custom at the same time.

6. This Notice shall enter into effect as of the day of July 1, 2006.

Annexes

Annex 1:

Application for General Guaranty for the Customs Protection of Intellectual Property Right (Format)

General Administration of Customs of the People's Republic of China,

In light of the Announcement No. ( ), 2006 of the General Administration of Customs of the People's Republic of China, an application is hereby submitted to you for a general guaranty for the customs protection of intellectual property rights.

This intellectual property right holder guarantees that the contents of the application and the documents attached thereto are genuine and valid, and that it will strictly perform its statutory obligations.

Please grant an approval.

Applicant:

Agent:

Guarantor:

Legal representative:

Address:

Post code:

(Seal):

Application date:

Annex 2:

Letter of General Guaranty (Format)

Date of issuance: \_\_\_\_\_ No. \_\_\_\_\_

Beneficiary: General Administration of Customs of the People's Republic of China

No. 6 Jianguomennei Street, Beijing (Post code: 100730)

This bank, namely the bank located at No. ( ) ( ) Road, ( ) City, issues this letter of guaranty whereby you are the beneficiary to guarantee the intellectual property right holder to perform the obligations described in Article 14 of the Regulation of the People's Republic of China on the Customs Protection of Intellectual Property Rights (hereinafter referred to as the Regulation) at the request of ( ) (hereinafter referred to as the intellectual property right holder),.

If the applicant files an application with the customs house for detaining any import and export goods suspected of infringing on the exclusive right of its trademark according to Article 16 of the Regulation and if the intellectual property right holder fails to pay the relevant fees as required by the customs within 10 working days after it receives a written notice about the fees mentioned in Article 25 of the Regulation, or if it fails to perform the compensation liabilities as prescribed in Article 29 of the Regulation in compliance with the judgment of the people's court, this bank promises to transfer the money you demand to the bank account designated by you within 10 working days after the receipt of the payment demand notice.

The amount of guaranty in this letter of guaranty is not more than RMB ( ) Ten Thousand Yuan (RMB in Arabic numerals).

This letter of guaranty shall enter into effect as of the date of issuance and shall be valid till the day of December 31, (year). If you fails to issue to this bank a payment demand notice within 180 days after the expiration of this letter of guaranty, this bank will no longer assume the payment liabilities as described in this letter of guaranty.

Guarantor: \_\_\_\_\_ Bank \_\_\_\_\_ Issuer of the letter of guaranty: \_\_\_\_\_

(Seal)

(Seal)

Date: \_\_\_\_\_