

CABINET OF MINISTERS OF UKRAINE
RESOLUTION
No. 622 of 13 April 2007

Kyiv

On Registration of Objects of Intellectual Property Law in Customs Register, Gathering of Information, and Interaction of Customs Authorities with Other Law Enforcement and Controlling Authorities and Owners of Rights to Objects of Intellectual Property Law in the Event of Suspension of Customs Clearance of Goods at the Discretion of the Customs Authority

Pursuant to Articles 256 and 257-1 of the Customs Code of Ukraine the Cabinet of Ministers of Ukraine hereby d e c r e e s:

1. To approve the Procedure of Registration of Objects of Intellectual Property Law in Customs Register, Gathering of Information, and Interaction of Customs Authorities with Other Law Enforcement and Controlling Authorities and Owners of Rights to Objects of Intellectual Property Law in the Event of Suspension of Customs Clearance of Goods at the Discretion of the Customs Authority, enclosed herewith.

2. To invalidate resolutions of the Cabinet of Ministers of Ukraine according to the list attached hereto.

3. To establish that measures on the prevention of infringement of intellectual property laws during movement of goods across the customs border of Ukraine which contain objects of intellectual property law and are registered according to the Regulations on the Procedure of Registration of Goods Containing Objects of Intellectual Property and Movement of Said Goods Across the Customs Border of Ukraine approved pursuant to Resolution of the Cabinet of Ministers of Ukraine No. 412 of 28 April 2001 shall be taken by customs authorities according to the Customs Code of Ukraine before expiration of the deadline for registration of said goods.

4. This Resolution shall enter into force on the day of its publication.

Prime Minister of Ukraine

V. YANUKOVYCH

Ind. 42

ENACTED

pursuant to Resolution of the Cabinet of Ministers of Ukraine No. 622 of 13 April 2007

PROCEDURE

of Registration of Objects of Intellectual Property Law in Customs Register, Gathering of Information, and Interaction of Customs Authorities with Other Law Enforcement and Controlling Authorities and Owners of Rights to Objects of Intellectual Property Law in the Event of Suspension of Customs Clearance of Goods at the Discretion of the Customs Authority

General provisions

1. This Procedure is devised according to the Customs Code of Ukraine and legislative acts in sphere of protection of intellectual property laws.

2. Customs register of objects of intellectual property law (hereinafter referred to as Customs Register) is maintained by the State Customs Service of Ukraine to assist in protecting

ownership rights to objects of intellectual property law at the time of customs control and customs clearance of goods containing said objects based on applications of entities which have proprietary rights to objects of intellectual property law according to Ukrainian law (hereinafter referred to as Right Holder) or their representatives, and contains information which helps prevent movements of goods across the customs border of Ukraine in violation of intellectual property laws.

Information contained in the customs register constitutes part of the central information database maintained by the State Customs Service of Ukraine.

3. Customs authorities:

take actions to prevent movement of pirated goods across the customs border of Ukraine after registration of objects of intellectual property law in the customs register and based on the data contained therein;

have right to suspend at their discretion customs clearance of goods concerning which the right holder had failed to file application for the protection of his proprietary rights to the object of intellectual property law (hereinafter referred to as object), but there are sufficient reasons to believe that proprietary rights to said object may be violated as a result of movement of said goods across the customs border of Ukraine.

4. For the period of filing of the object in the customs register the right holder or his representative shall provide pledge or other equivalent guarantee to the State Customs Service of Ukraine, sufficient to compensate damages to customs authorities, owners of temporary storage facilities, declarant, recipient, or sender of cargo and the owner of goods.

Amount and procedure of making the pledge, types thereof, and also types and procedure of issuance of equivalent guarantees are determined by the State Customs Service of Ukraine.

Registration of objects and maintenance of the customs register

5. To file an object in the customs register, the right holder or his representative files application with the State Customs Service of Ukraine for the protection of proprietary rights to the object according to the form enclosed in the appendix hereto.

The following shall be enclosed with the application:

abstract from the appropriate register of the Ministry of Education and Science of Ukraine about registration of the intellectual property law in Ukraine, which certifies the validity of the act of said registration at the time of filing the application (abstract from the International Register of the International Bureau of Intellectual Property along with Ukrainian translation thereof, and information of the Ministry of Education and Science of Ukraine about validity of international registration in Ukraine are required for trademarks which have international registration. For such objects as objects of copyright and related rights, information about the documents which confirm existence of said rights are required);

detailed description of the object and goods containing the object, which enables the customs authority identify the object and the goods and determine the product codes under UKTZED;

samples of goods containing the object or their photographic image;

notarized copy of the license agreement on use of the object (if application is filed by the entity authorized to use the object and empowered to prevent the unlawful use of the object on behalf of the right holder, including power to prohibit such use according to law).

6. The State Customs Service of Ukraine notifies the right holder or his representative in writing about results of review of his application within 30 calendar days after receiving the application and materials enclosed therewith. The notice contains information about possibility of including, or denial of inclusion of the object to the customs register and the reasons for such denial.

The State Customs Service of Ukraine may deny inclusion of the object to the customs register in case of unavailability of documents and materials required pursuant to subparagraph 5 hereof and characteristic features which may be controlled by customs authorities at the time of identification of goods containing the objects during their movement across the customs border of Ukraine.

7. After receiving notice about possibility of including the object to the customs register, the right holder or his representative must make pledge or provide other equivalent guarantee according to the procedure determined by the State Customs Service of Ukraine. In the event of the failure to make pledge or provide other equivalent guarantee within the required timeframe the application and the materials enclosed therewith will be returned to the right holder or his representative.

8. After making pledge or providing other equivalent guarantee by the right holder or his representative, the State Customs Service of Ukraine carries out registration of the object within ten days and issues the right holder or his representative a reference according to form established by the State Customs Service of Ukraine on inclusion of the object to the customs register, which states the registration date, number in the customs register, and expiration date of registration.

9. The right holder or his representative must inform the State Customs Service of Ukraine within three days about any changes in information provided for registration of the object or previously filed in the customs register.

10. The State Customs Service of Ukraine strikes out the object from the customs register:

upon expiration of registration;

upon application of right holder or his representative;

upon court ruling;

upon expiration of period of legal protection of the object;

in the event revocation of the pledge or other equivalent guarantee provided by the right holder or his representative before expiration of registration;

if information provided by the right holder or his representative concerning the object included in the customs register will turn out to be unreliable.

11. Objects are registered in the customs register for the period of six months or one year. Registration effective date shall be considered the day when the object was included in the customs register.

Period of registration of object may be extended for six months or for one year based on the written application filed by the right holder or his representative at least one month prior to the expiration of the previous registration.

12. The object may be included in the customs register again according to subparagraphs 5 to 8 hereof.

Gathering of information and interaction of customs authorities with other law enforcement and controlling authorities and right holders in the event of suspension of customs clearance of goods at the discretion of the customs authority

13. In order to exercise the right to suspend (at the discretion of the customs authority) customs clearance of goods containing objects and concerning which there are reasons to believe that intellectual property laws may be violated as a result of the movement of said goods across the customs border of Ukraine, customs authorities take actions aimed at the gathering, verification, and storage of information about the right holder.

14. Customs authorities gather information about right holders, goods, objects contained in said goods, and other information which may be used to prevent violation of intellectual property laws when goods containing objects are moved across the customs border of Ukraine:

from manufacturers of goods containing objects;

from law enforcement and controlling authorities;

from customs authorities of other countries, including open databases of said authorities;

from international organizations, including open databases of said organizations;

from the customs register;

from other sources.

15. Information gathered, preliminarily processed, and formed by the customs authority is then forwarded to the State Customs Service of Ukraine together with the conclusions and proposals concerning possibility of using said information when customs control is carried out.

16. The State Customs Service of Ukraine analyzes and verifies this information while interacting with right holders, customs authorities of other countries, international organizations, law enforcement and controlling authorities according to the procedure established by law. The State Customs Service of Ukraine then forwards the processed information to all customs authorities to be used when making decision to suspend customs clearance of goods containing objects at their discretion. The State Customs Service of Ukraine ensures storage of verified information about right holders, goods, and objects contained in said goods.

17. If, in course of the customs control and customs clearance of goods containing objects the customs authority will discover the evidence of violation of intellectual property law based on said information, said customs authority will suspend customs clearance of said goods at its discretion.

The same day the customs authority will send notice to the right holder, in which it will propose to file a written request for the protection of intellectual property laws and make a pledge or provide other equivalent guarantee of compensating the expenses and damages in the event of suspension of customs clearance of goods containing objects to the customs authority within three days after receiving said notice.

Information about such suspension of customs clearance of goods shall be immediately communicated to the State Customs Service of Ukraine.

18. After receiving information about suspension of customs clearance of goods containing objects at the discretion of the customs authority, the State Customs Service of Ukraine verifies the timeliness of making pledge or providing other equivalent guarantee by the right holder and immediately informs the customs authority which suspended customs clearance of said goods about it.

Specimen

Appendix
to the Procedure

APPLICATION

for protection of proprietary rights to object of intellectual property law

(full name of individual / name of legal entity)

who (which) owns proprietary rights to the object of intellectual property law according to Ukrainian law (hereinafter referred to as right holder)/representative of right holder (cross out the non-applicable) pursuant to _____,
(name and details of the document)

hereby requests to include the following to the customs register of objects of intellectual property law _____

(name of the object of intellectual property law)

1. General information about right holder

1.1. Status of right holder (mark the appropriate):

- individual

- legal entity

a) information about individual:

full name _____

passport series _____ No. _____, issued _____,
(date of issue and issuing authority)

registration address _____

actual place of residence _____

identification code (Ukrainian citizens only) _____

telephone/fax _____

other information _____

b) information about legal entity:

name (full and short name according to the certificate of state registration)

location _____

actual location _____

banking details _____

EDRPOU code (residents only) _____

telephone/fax _____

1.2. Information about the entities authorized to represent the interests of right holder in the event of suspension of customs clearance of goods containing objects of intellectual property law upon availability of sufficient reasons to believe that intellectual property laws may be violated as a result of the movement of said goods across the customs border of Ukraine:

full name _____

telephone/fax _____

address _____

2. General information about representative of right holder, if application is filed by the former

2.1. Status of representative of right holder (mark the appropriate):

- individual

- legal entity

a) information about individual:

full name _____

passport series _____ No. _____, issued _____
(date of issue and issuing authority)

registration address _____

actual place of residence _____

identification code (Ukrainian citizens only) _____

telephone/fax _____

b) information about legal entity:

name (full and short name according to the certificate of state registration)

location _____

actual location _____

banking details _____

EDRPOU code _____

telephone/fax _____

3. Document confirming proprietary rights to object of intellectual property law (hereinafter referred to as object):

(document name, number, date of issue and issuing authority –

certificate, patent, abstract from the International Register of

the International Bureau of Intellectual Property and information of the Ministry

of Education and Science of Ukraine about validity of international registration in Ukraine;

if license to use the object is available –

details of the license agreement)

Period of validity of the document _____

4. Information about object:

information about object _____

name of goods containing object _____

product code under UKTZED _____

Product class under the International Classification of Goods and Services (if trademark is registered): _____

5. Period of registration

Registration is requested for the period of (mark the appropriate):

- 6 months

- 1 year

6. Information available about the goods containing object

6.1. Manufacturer of goods containing object _____

6.2. Name and details of legal entities carrying on:

a) export of goods containing object _____

b) import of goods containing object _____

6.3. Customs authorities carrying out customs clearance of goods containing object

6.4. Method of transportation (cross out the non-applicable):

transportation by air

transportation by sea

transportation by road

transportation by rail

6.5. Exclusive routes of delivery of goods containing object (name of carrier and crossing points at the state border of Ukraine) _____

6.6. Delivery countries _____

6.7. Characteristic features directly present in goods containing object (label, processing, container, etc.)

6.8. Information about unit cost of goods containing object, indicated separately for each commodity

6.9. Other information about goods containing object, which may be used by customs authorities for the identification purpose, enclosed herewith

7. Information available about pirated goods

7.1. According to the available information, the following Ukrainian business entities are exporting/importing pirated goods:

7.2. According to the available information, the following foreign business entities are exporting/importing pirated goods:

7.3. Customs authorities which may carry out customs clearance of pirated goods

7.4. Possible method of transporting pirated goods (cross out the non-applicable):

transportation by air

transportation by sea

transportation by road

transportation by rail

7.5. Possible routes of delivery of pirated goods _____

7.6. Characteristic features of pirated goods (label, processing, container, etc.)

7.7. Information about the unit cost of pirated goods _____

7.8. Other information which may be used by customs authorities, enclosed herewith

8. Appendixes

The following documents and samples are enclosed with the application (cross out the non-applicable):

copy of document confirming availability of proprietary rights to the object;

copy of document confirming power to represent the right holder;

appendixes to subparagraph 6 of the application;

appendixes to subparagraph 7 of the application;

materials containing depiction of goods containing object (photographs, booklets, etc.);

samples of goods containing object;

materials containing depiction of pirated goods (photographs, booklets, etc.);

samples of pirated goods;

other documents:

I confirm that all information contained in the application

is true

I am aware of requirements of the Procedure of Registration of Objects of Intellectual Property Law in Customs Register, Gathering of Information, and Interaction of Customs Authorities with Other Law Enforcement and Controlling Authorities and Owners of Rights to Objects of Intellectual Property Law in the Event of Suspension of Customs Clearance of Goods at the Discretion of the Customs Authority approved pursuant to Resolution of the Cabinet of Ministers of Ukraine No. ___ of _____ 2007.

_____ 200__

(signature)

Seal

ENACTED

pursuant to Resolution of the Cabinet of Ministers of Ukraine No. 622 of 13 April 2007

LIST

of invalidated Resolutions of the Cabinet of Ministers of Ukraine

1. Subparagraph 1-1 of Resolution of the Cabinet of Ministers of Ukraine No. 65 of 27 January 1997 *On Customs Duty Rates* – as amended pursuant to Resolution of the Cabinet of Ministers of Ukraine No. 413 of 28 April 2001 (The Official Journal of Ukraine, 2001, No. 18, page 791), and Appendix 2 thereto.

2. Resolution of the Cabinet of Ministers of Ukraine No. 412 of 28 April 2001 *On the Approval of the Regulations on the Procedure of Registration of Goods Containing Objects of Intellectual Property and Movement of Said Goods Across the Customs Border of Ukraine* (The Official Journal of Ukraine, 2001, No. 18, page 790).

3. Point "b" of subparagraph 1 of Resolution of the Cabinet of Ministers of Ukraine No. 413 of 28 April 2001 *On the Amendment of Resolution of the Cabinet of Ministers of Ukraine No. 65 of 27 January 1997* (The Official Journal of Ukraine, 2001, No. 18, page 791).

4. Subparagraph 14 of amendments introduced to resolutions of the Cabinet of Ministers of Ukraine, approved pursuant to Resolution of the Cabinet of Ministers of Ukraine No. 1493 of 11 October 2002 (The Official Journal of Ukraine, 2002, No. 42, page 1925).
