



2010/03/31 Edited by: Han Kun Newsletter Working Group

● Top News

China Amends Regulations of Customs Protection of Intellectual Property Rights

● Inside the News

On March 24, 2010, the State Council promulgated the *Decision to Amend the Regulations of Customs Protection of Intellectual Property Rights of the People's Republic of China* (the "**Decision**"), which amends and supplements certain articles of the *Regulations of Customs Protection of Intellectual Property Rights of the People's Republic of China* effective as of March 1, 2004 (the "**Regulations**"). The Decision will come into force on April 1, 2010.

The key articles of the Regulations amended by the Decision are as follows:

1. The Decision adds a second paragraph to Article 11 of the Regulations, providing that if an intellectual property right ("**IP right**") holder does not go through the procedures to alter or cancel the recordation in a timely manner pursuant to the Regulations and thus affects seriously others' legal import and export or the Customs' performance of its supervision duties, the General Administration of Customs may revoke the relevant recordation based on the application of interested parties or revoke the relevant recordation initiatively. This amendment sets forth the aftereffect of failing to alter or cancel recordation in a timely manner and grants to interested parties the right to apply for revocation of the relevant recordation, which urges the IP right holders to complete the procedures in time when the recorded IP right changes, otherwise, the IP right holders may bear the risk of losing customs protection of their IP rights.
2. The Decision revises the first paragraph of Article 23 of the Regulations to read as "an IP right holder may, after applying for customs protection measures to be taken by the Customs,

apply to the people's court for an injunction of stopping infringing acts or property preservation measures with regard to the detained suspected infringing goods in accordance with the *Trademark Law of the People's Republic of China*, the *Copyright Law of the People's Republic of China*, the *Patent Law of the People's Republic of China* or other relevant laws. This amendment extends the scope of legal basis for IP right holders to apply for the courts' injunctive measures. It also deletes the timing requirement of applying to the court "before bringing a lawsuit" as stipulated in the Regulations.

3. The Decision adds a paragraph to Article 24 of the Regulations as Article 24(5), providing that "an IP right holder withdraws the application for detaining suspected infringing goods before the Customs identifies the suspected infringing goods that are detained as infringing goods," which is added as one of the conditions under which the Customs shall release the suspected infringing goods that are detained.
4. The decision amends the third paragraph of Article 27 of the Regulations, providing that the Customs may legally auction the imported goods with counterfeit trademark after removing all the infringing features on such goods. However, such goods are not allowed to be traded after only removing their counterfeit trademark labels except under special circumstances. The Customs shall destroy the infringing goods with counterfeit trademark if the infringing features on such goods cannot be removed. This amendment clarifies that the Customs shall adopt all reasonable protection measures to remove the infringing features on the infringing goods with counterfeit trademark besides removing the counterfeit trademark labels before auctioning such goods to protect the legal interests of trademark owners and to ensure such goods no longer commit infringement in all respects when being auctioned.
5. The Decision moves Article 28 of the Regulations to Article 31 to read as: if the articles carried or mailed in or out the border by an individual are beyond the personal use and the reasonable quantity and have infringed others' IP rights, the Customs may treat such articles as infringing goods and may confiscate such articles.

If you have any questions regarding the foregoing, please feel free to contact us. Thank you!

Important Announcement

This Legal Update has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

If you have any questions regarding this publication, please contact:

Contact Us

Beijing Office

Tel.: +86-10-8525 5500
Suite 906, Office Tower C1 Oriental Plaza
1 East Chang An Ave.
Beijing 100738, P. R. China

Wenyu JIN Attorney-at-law

Tel.: +86-10-8525 5557
Email: wenyu.jin@hankunlaw.com

Shanghai Office

Tel.: +86-21-6080 0919
Suite 5709, Tower 1, Plaza 66, 1266 Nanjing
West Road,
Shanghai 200040, P. R. China

Yinshi CAO Attorney-at-law

Tel.: +86-21-6080 0980
Email: yinshi.cao@hankunlaw.com

Shenzhen Office

Tel.: +86-755-2681 3854
Suite 4715, Diwang Commercial Centre,
Shun Hing Square, 5002 Shennan Dong Lu,
Luohu District, Shenzhen, P. R. China

Jason WANG Attorney-at-law

Tel.: +86-755-2681 3854
Email: jason.wang@hankunlaw.com