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Swiss IP News We provide you with updates on new decisions, the relevant legislative process and other trends in the fields of intellectual property and unfair competition law from a Swiss perspective.

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Update on the Revision of Customs Assistance in IP Matters

In December 2023, the Swiss Parliament passed the Federal Act on the Introduction of a Simplified Procedure for Destroying Small Consignments in Intellectual Property Law. The new simplified procedure will make enforcement of IP rights more efficient.

Background

Customs authorities play a pivotal role in the fight against infringements of intellectual property rights such as trademarks, copyrights, patents, or designs. Today, more than 90 percent of counterfeit goods intercepted at the Swiss border arrive in small consignments of up to three items.

In our [Newsletter of June 2023](#), we reported on the Federal Council's proposal to introduce a simplified procedure for the destruction of counterfeits arriving in small consignments. The Federal Parliament adopted the law in December 2023.

Simplified Procedure for Destroying Small Consignments

Right holders may apply for customs assistance in Switzerland. Under the new law, right holders may choose between two procedures when goods detained by the customs authorities arrive in small consignments: the existing ordinary procedure and a new simplified procedure.

Under the simplified procedure, when goods are detained by the customs authorities, in a first step, only the recipient (declarant, holder or owner) of the goods is notified of the detention and given a deadline of ten working days to object to their destruction. Such objections are likely to be the exception. In the absence of an objection, the goods are destroyed or, if requested in the application for customs assistance, released to

the right holder for destruction. The authorities inform the right holder of the quantity and type of goods destroyed and their sender, but not their recipient. Claims for damages against the recipient are excluded. If the recipient objects to the destruction of the detained goods, the goods are released to the recipient, unless the right holder obtains a seizure order from the civil courts or criminal authorities in due time.

The Federal Office for Customs and Border Security remains the competent authority for customs assistance. However, it may delegate simplified procedures relating to small consignments to the Federal Institute of Intellectual Property.

The Federal Council will define what constitutes a small consignment in an ordinance. It will also decide on the entry into force of the new law.

Comment

The new simplified procedure for destroying small consignments addresses some of the shortcomings of customs assistance in IP matters. It will improve the efficiency of IP rights enforcement.

However, right holders are well advised to carefully weigh the pros and cons of the new simplified procedure. For example, unlike under the ordinary procedure, right holders will not be informed of the details of the recipient when goods are destroyed in the simplified procedure.

This prevents right holders from obtaining additional information from the recipient, such as the websites from which the counterfeits were ordered, or from taking action against repeat infringers.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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