

§ 133.13

§ 133.13 Documents and fee to accompany application.

(a) *Documents.* The application shall be accompanied by a statement of the owner, partners, or principal corporate officer, and by statements by at least two other persons not associated with or related to the applicant but having actual knowledge of the facts, stating that to his best knowledge and belief:

(1) The applicant has used the trade name in connection with the class or kind of merchandise described in the application for at least 6 months;

(2) The trade name is not identical or confusingly similar to any other trade name or registered trademark used in connection with such class or kind of merchandise; and

(3) The applicant has the sole and exclusive right to the use of such trade name in connection with the merchandise of that class or kind.

(b) *Fee.* The application shall be accompanied by a fee of \$190 for each trade name to be recorded. A check or money order shall be made payable to the U.S. Customs and Border Protection.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975]

§ 133.14 Publication of trade name recordation.

(a) *Notice of tentative recordation.* Notice of tentative recordation of a trade name shall be published in the FEDERAL REGISTER and the Customs Bulletin. The notice shall specify a procedure and a time period within which interested parties may oppose the recordation.

(b) *Notice of final action.* After consideration of any claims, rebuttals, and other relevant evidence, notice of final approval or disapproval of the application shall be published in the FEDERAL REGISTER and the Customs Bulletin.

§ 133.15 Term of CBP trade name recordation.

Protection for a recorded trade name shall remain in force as long as the trade name is used. The recordation shall be canceled upon request of the recordant or upon evidence of disuse. From time to time, the IPR & Restricted Merchandise Branch may re-

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quest the trade name owner to advise whether the name is still in use. The failure of a trade name owner to respond to such a request shall be regarded as evidence of disuse.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

Subpart C—Importations Bearing Recorded Marks or Trade

SOURCE: T.D. 99-21, 64 FR 9062, Feb. 24, 1999, unless otherwise noted.

§ 133.21 Articles suspected of bearing counterfeit marks.

(a) *Counterfeit mark defined.* A “counterfeit mark” is a spurious mark that is identical with, or substantially indistinguishable from, a mark registered on the Principal Register of the U.S. Patent and Trademark Office.

(b) *Detention.* CBP may detain any article of domestic or foreign manufacture imported into the United States that bears a mark suspected of being a counterfeit version of a mark that is registered with the U.S. Patent and Trademark Office and is recorded with CBP pursuant to subpart A of this part. The detention will be for a period of up to thirty days from the date on which the merchandise is presented for examination. The 30-day time period may be extended for up to an additional thirty days for good cause shown by the importer. In accordance with 19 U.S.C. 1499, if after the detention period and any authorized extensions the article is not released the article will be deemed excluded for the purposes of 19 U.S.C. 1514(a)(4).

(1) *Notice to importer of detention and possible disclosure.* Within five days (excluding weekends and holidays) from the date of a decision to detain, CBP will notify the importer in writing of the detention. The notice will inform the importer that a disclosure of information concerning the detained merchandise may be made to the owner of the mark to assist CBP in determining whether any marks are counterfeit, unless the importer presents information within seven days of the notification (excluding weekends and holidays) establishing to CBP’s satisfaction that the detained merchandise does not bear