



European Communities Trade Mark Association

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ECTA PROPOSAL FOR CHANGES TO EU LEGISLATION ON TRAVELLERS' PERSONAL ALLOWANCE

There has been much discussion in business circles and in associations of brand owners and in associations of IP practitioners about the anomalous provision in EU law, which allows travellers, returning from holiday, to import counterfeit and pirated goods into the countries of their residence in the EU.

The Anti-Counterfeiting Committee of the European Communities Trade Mark Association has deliberated this issue and has come to the conclusion that it is totally illogical, on the one hand, to make stringent laws against counterfeiting and piracy (for very good reasons) and, on the other hand, to allow a small amount of counterfeiting and piracy to occur through travellers' personal baggage.

Consequently, in response to the European Commission's consultation paper on the review of legislation on customs enforcement of IP rights, the ECTA Anti-Counterfeiting Committee puts forward the following proposals for amendments to the EU Customs Border Measures Regulation 1383/2003 and the Trademark Directive 89/104/EEC.

The proposed amendments would have the effect of removing the derogation concerning small quantities of goods of a non-commercial nature contained in travellers' personal baggage. It is clear that importing any counterfeit or pirated products is illegal and is, indeed, a criminal offence. Why should the law allow the commission of criminal offences by a large number of travellers?

Further, a practical issue arises when it comes to customs officers having to decide whether or not there are "material indications to suggest the goods are part of commercial traffic". At present, it seems that, as this is such a difficult decision to make, that Customs officers very rarely detain goods carried in personal baggage. Thus, it is possible for goods which are part of commercial traffic to be imported.

A strong signal is required to make it clear that all counterfeiting and piracy is illegal and an infringement of rights. The current derogation gives the false signal to everyone that counterfeiting and piracy is not a problem if it concerns small quantities for personal use. There is every reason why there should be a total ban on such importation. The derogation should be withdrawn.

The ECTA Anti-Counterfeiting Committee proposes changes in **Article 3, paragraph 2** of the Council Regulation (EC) No 1383/2003 of 22 July 2003 as follows (see red for addition and blue for deletion):

*“Where a traveller’s personal baggage contains **suspected counterfeit or pirated** goods, **whether or not** of a non-commercial nature **and whether or not** within the limits of the duty-free allowance, ~~and there are no material indications to suggest the goods are part of commercial traffic~~ Member States shall, in accordance with their national legislation, provide for a simplified procedure to be used which enables customs authorities to detain such goods and, with the traveller’s consent, or where a traveler refuses to give such consent and has failed within 10 days to establish that the goods are not counterfeit or pirated, to have such goods treated as abandoned for destruction under customs control, without there being any need to determine whether an intellectual property right has been infringed under national law. ~~consider such goods to be outside the scope of this Regulation.~~”*

The Article 3, paragraph 2 of the Regulation, or, rather the equivalent provision of the new consolidated Council Regulation on Customs action should then be read as follows:

“Where a traveller’s personal baggage contains suspected counterfeit or pirated goods, whether or not of a non-commercial nature and whether or not within the limits of the duty-free allowance, Member States shall, in accordance with their national legislation, provide for a simplified procedure to be used which enables customs authorities to detain such goods and, with the traveller’s consent, or where a traveller refuses to give such consent and has failed within 10 days to establish that the goods are not counterfeit or pirated, to have such goods treated as abandoned for destruction under customs control, without there being any need to determine whether an intellectual property right has been infringed under national law.”

The ECTA Anti-Counterfeiting Committee also proposes changes in **Article 5(3)** of the First Council Directive 89/104/EEC of 21 December 1988 as follows (see red for addition):

“The following, inter alia, may be prohibited under paragraphs 1 and 2:

- (a) affixing the sign to the goods or to the packaging thereof;*
- (b) offering the goods, or putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder;*
- (c) importing or exporting the goods under the sign, **even if those goods are of a non-commercial nature**;*
- (d) using the sign on business papers and in advertising.”*