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Canada strengthens the protection of copyright and trademark rights with the enactment of new border enforcement measures

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Since January 1st 2015, the sections of the *Act to amend the Copyright Act and the Trade-marks Act and to make consequential amendments to other Acts* ("the Act") with respect to the new border enforcement measures have come into force in Canada.

The purpose of the Act is to help Canadian copyright or trademark owners in curtailing the exportation and importation of counterfeit goods that violate their intellectual property rights. For this purpose, the Act creates new measures, specifically enabling customs officers to detain goods that they suspect infringe copyright or trademark rights.

The Act also establishes a mechanism of sharing of information (for example the name and address of the owner of the goods, the name of the importer, the name of the exporter, etc.) and sharing of samples between customs officers and copyright and trademark owners who have filed a Request For Assistance to the Canadian Border Services Agency (CBSA) Intellectual Property Rights Program ("Request for Assistance") which can be found on Canada Border Services Agency's website at the following address: http://www.cbsa-asfc.gc.ca/security-securite/ipr-dpi/app-dem-eng.html. With the sharing of information and samples, right owners can more easily pursue a remedy in court against those persons who have violated their rights.

It is important to note that the Request for Assistance Form only covers registered trademarks, while both registered and non-registered copyrights are included.

The Request for Assistance must include the legal name of the right holder, the right holder's address, the contact information of the right holder's representative for service in Canada (if applicable), the trademark or copyright (if the latter is registered) registration number, the Harmonized System Code maintained by the World Customs Organization, the name and description of authentic goods, a list of known authorized importers permitted to bring these goods into Canada (if applicable) and of known distributors of illegitimate or suspect goods. The

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Request For Assistance is valid for a 2-year period and can be renewed on demand.

It is essential that copyright and trademark owners be aware that the government can require (1) that the copyright or trademark owner furnish security as a condition of accepting a Request for Assistance or for extending a request's period of validity, and (2) that if they receive a sample they are liable for storage and handling charges for detained goods and, if applicable, for charges for destroying them. If the right holder decides not to obtain a remedy in court with respect to the information or samples received, then the right holder will not be liable for any charges.

In order to keep goods from being released, the right holder who filed a Request for Assistance at the CBSA must file a civil suit in the 10 days following the notice of detention received from the CBSA, and therefore must be responsible in contacting their lawyers in Canada promptly in order to obtain a remedy when appropriate.

Should you have any questions, please contact a member of our firm.

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