

Enforcement of customs notices FAQs

JAMES & WELLS

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OF INNOVATION.**

How do I lodge a Customs Notice?

See our information sheet "FAQ – Lodging Customs Notices with the New Zealand Customs Service"

How does Customs know when to detain suspected infringing goods?

Once a Notice is lodged, Customs will detain any goods it suspects of infringing the relevant trade marks and/or copyright works. If necessary, it will confirm with the trade mark owner (usually by way of digital photograph) that the goods are in fact counterfeit.

If Customs decides to stop suspect goods what does it do?

It sends a letter to the importer advising that the goods have been detained and allowing the importer the opportunity to consent to forfeit the counterfeit goods direct to Customs.

When will I hear about the detained goods?

Once Customs has given the importer the opportunity to forfeit the goods it will send you (or more usually our firm as representative) a letter identifying the importer and, usually, the source of the infringing goods. The letter will advise whether or not the importer has consented to forfeit the goods.

What happens if the importer has not agreed to forfeit the goods?

If the goods have not been forfeited, there is a 10 day working period (extendable to 20 working days in certain circumstances) in which to get the importer to forfeit the goods. If the importer elects not to relinquish the goods for destruction or, if they are not able to be contacted, then the goods may be released –

unless the rights owner institutes legal proceedings.

What can I do to get the importer to forfeit the goods?

Usually when notice is received that the goods have not been forfeited, we will seek your instructions to send a "cease and desist" letter to the importer demanding immediate forfeiture and payment in contribution to the costs incurred. In the majority of cases, we are able to convince the importers to forfeit the goods. The goods are then destroyed at the cost of the Crown.

Will infringing goods still come into New Zealand even when I have filed a Customs Notice?

Customs obviously cannot search every box in every shipment entering New Zealand. Inevitably, a certain quantity of counterfeit or infringing goods will always get past the border even if Notices are lodged with Customs. However, Customs do have a database of previous infringers and are particularly helpful when advised of suspected suppliers and/or importers.

How can I assist Customs?

It is helpful to provide Customs of details as to where genuine products are being sourced from and/or imported by. If you have reason to suspect a particular company is importing infringing products then you should also provide those details to Customs.

How effective is a Customs Notice?

In our experience, approximately 70% of importers will agree to forfeit upon detention by Customs and of the remainder most of these will forfeit on receipt of a "cease and desist" letter from a lawyer. We also find that the Notices have a deterrent effect where importers review the Notices lodged and avoid importing goods where the requisite Notices are in place. Over the last 10 years, Customs Notices have proven to be a very cost effective and efficient means of stopping the importation of infringing goods into New Zealand.

Can you lodge Customs Notices overseas?

We are also able to lodge border protection notices in Australia. Customs "Notices of Objection" lodged in Australia operate on basically the same system as in New Zealand.

THE ABOVE IS PROVIDED FOR GENERAL INFORMATION PURPOSES ONLY AND DOES NOT TAKE THE PLACE OF SPECIFIC LEGAL ADVICE.

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