

## Supporting Statement

### Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights (Part 133 of the CBP Regulations) 1651-0123

#### A. Justification

1. 19 U.S.C. § 1526(e) prohibits the importation of articles that bear a mark counterfeit of a trademark that is registered with the United States Patent and Trademark Office (USPTO) and recorded with U.S. Customs and Border Protection (CBP). 15 U.S.C. § 1124 prohibits the importation of articles that copy or simulate the name of a manufacturer or trader, or copy or simulate a trademark registered with the USPTO. 17 U.S.C. § 602 and 17 U.S.C. § 603 prohibit the importation of articles that constitute an infringement of copyright in protected copyrighted works.

To this end, 15 U.S.C. § 1124 and 17 U.S.C. § 602-603 authorize the Secretary of the Treasury through Customs (now CBP) to promulgate regulations for the enforcement of these provisions that require, among other things, that the party seeking exclusion of merchandise furnish proof that the right in which such party claims an interest is valid and that the importation of specified articles would violate these provisions of law. Such information is to be “recorded in books” maintained by the Department of the Treasury through Customs (now CBP) and used by CBP to aid CBP officers in enforcing these rights at the borders. These requirements are provided for under 19 CFR 133.7, 133.31 and 133.37.

Because trademark owners and claimants to copyright are not required to seek the assistance of CBP to protect against infringing imports, the information provided by trademark and trade name owners and claimants to copyright under 19 CFR 133 is provided voluntarily.

2. Trademark and trade name owners and those claiming copyright protection must provide information sufficient to enable CBP officers to identify violative articles at the borders. In addition, parties seeking to have merchandise excluded from entry must provide proof of the validity of the rights they seek to protect. The information collected by CBP is used to ensure that CBP has adequate information to identify infringing goods at the borders and that such goods infringe on intellectual property rights for which federal law provides import protection.

3. CBP developed an on-line recordation system which allows respondents to apply for recordations using the internet. The CBP recordation site is located at <https://apps.cbp.gov/e-recordations/>
4. This information is collected once and is not duplicated elsewhere.
5. The collection of information necessary to provide trademark and trade name protection and copyright protection is the same for all businesses regardless of size. There is no significant impact on small business or entities.
6. CBP cannot effectively provide protection against imports that infringe trademarks and trade names, and copyrights without requiring this information. Individual trademark owners and users of trade names and individuals claiming copyright protection will suffer the effects of increased numbers of infringing importations without this collection of information.
7. This information is collected in a manner consistent with the guidelines of 5 CFR 1320.5(c)(2).
8. Two notices were published in the Federal Register. A 60-day notice was published on March 15, 2007, Volume 72, Page 12180, and a 30-day notice was published on June 11, 2007, Volume 72, Page 32133. Two comments were received.

The CBP Program Office that handles Copyrights and Trademarks met with both commenters (attorneys Diaz and Quinter) to discuss these comments. The following issues were discussed:

With regard to the statement in the March 20, 2007 letter that more could be done to deter counterfeiting by conducting educational seminars at major ports of entry, we noted at the meeting that CBP maintains, under my direction, a vigorous program of IPR training at CBP ports of entry through an established course of training established through the Office of Training and Development. Each year, IPR training is provided to over 900 at over 35 ports of entry through this program through 4-hour courses of instruction provided by IPR experts from CBP's IPR Branch.

With regard to the delay of several weeks between the time when an IPR recordation is submitted to CBP for approval and the time when the recordation is actually approved and made available to the public online, we explained that applications for recordation, online or paper, must be processed by IPR Branch paralegals and approved by the IPR Branch Chief before they become "official". Once recordation applications are approved by

the IPR Branch Chief, they are posted to the CBP website the following day. Pendency of approvals can fluctuate, however, depending upon the numbers of applications received and resources available to review and approve the applications. We endeavor to process applications as quickly as possible given available resources and demands.

With regard to the input of digital pictures to publicly available IPR recordations, we explained that given resource and technological restraints, CBP is not currently in a position to engineer this new system to provide such imagery to the public. Even if CBP were able to do so, however, we have concerns that uploading such imagery to publicly available databases may hinder law enforcement efforts and actually serve to exacerbate counterfeiting and piracy by providing would be infringers with ready access to protected works.

With regard to providing importers the opportunity to make written and oral presentations to CBP before any decision is made to seize merchandise for an IPR violation, CBP is concerned about the detrimental effect such a process would have upon law enforcement measures. CBP's IPR regulatory and statutory authorities contemplate detentions based upon the "reasonable suspicion" standard, and seizures based upon the "probable cause" standard. CBP officers utilize a number of tools in arriving at IPR enforcement actions including accessing the CBP recordation database, referring to IPR training materials and handbooks, use of internal enforcement information housed at the CBP IPR Intranet pages, and direct accessing to IPR attorneys at the IPR Branch. Our enforcement system incorporates, therefore, access to a number of resources which are available in a pre-detention or pre-seizure environment. Importers may petition a CBP action after goods have been seized, in accordance with regulation and statute. It was explained that providing written and oral hearings to importers prior to CBP action is therefore largely unnecessary and ultimately, counter productive as it would likely greatly impact, in a negative way, CBP enforcement efforts.

With regard to the March 29, 2007, which recommends that the on line system include a section where an applicant may inform CBP of infringing goods just as the former application did, we note that the online application system does provide for the provision of such information. In the "additional information" section, recordants can, and often do, provide CBP with information about alleged infringers, to include images of suspected violators. In any event, even though under considerable resource constraints, the IPR Branch is in the midst of developing an online "IPR Allegation" interface which would allow rights owners to provide CBP with information, photos, etc., relative to alleged violators via the internet.

With regard to the concern about the "timing out" of the on-line system after periods of inactivity, we are aware of a number of technical glitches in the system which have surfaced since its introduction in December of 2005. We are diligently working, again with available resources, to remove such "bugs" from the system and we hope to alleviate this specific problem of "timing out" in the near future.

Finally, with regard to the remaining availability of the printable recordation template. We created the template prior to the development of the online recordation system. Our goal is to encourage the use of the paperless online system which adds great efficiency to the process for both recordants and the government. For that reason, and to avoid confusion on the part of the public and to eliminate the occurrence of our receiving redundant paper copies, we removed the template from our online webpage. In reality, people with internet access record online. Those without may still submit a paper application in accordance with existing regulations at 19 CFR 133.

9. There is no offer of a monetary or material value for this information collection.
10. This information collection involves questions of a commercially sensitive nature. Records received from respondents are stored in a secure file room, as well as a proprietary electronic database. Access to this information is limited, and protection of commercially sensitive information generally is provided for by the agency.
11. This information collection does not involve information of a personal or sensitive nature.
12. Estimated Annualized Burden on the Public is 4,000 hours, based on an estimated 2,000 responses each year. Each response requires an estimated 2 hours to complete.

Estimated Cost to the Public is \$ 300,000.00 based on 4,000 burden hours at an average rate of \$75.00 per hour.

13. Estimated Record Keeping Burden on the Public- There is no record-keeping burden associated with this information collection.

Estimated Capitalization Cost Burden on the Public associated with this information collection; however, there is a fee collection of \$190 for each application to record copyright and \$190 for each class of goods for which an applicant seeks trademark protection against infringing imports. Based on an annual average of 2,000 responses and a fee of \$190.00 per response the average annual fee collection associated with this information collection is \$380,000.

14. Estimated Annual Cost to the Federal Government in handling, processing and recording the information collected is \$ \$100,000 based on the following: 2000 responses requiring 1 hour of processing time each at \$50.00 / hour.
15. There are no changes to this information collection.
16. This information will not be published for statistical purposes.
17. There is no form associated with this collection. CBP will put the expiration date on the website when we receive a notice of action.
18. There are no exceptions to the certification statements.

**B. Collection of Information Employing Statistical Methods**

No statistical methods were employed.