

**Business Facilitation Advisory Committee  
Wholesale and Retail Task Force**

***Enforcement Actions of Customs & Excise Department  
in the Protection of Intellectual Property Rights***

**Background**

- The Commerce and Economic Development Bureau (CEDB), Intellectual Property Department (IPD) and Customs and Excise Department (C&ED) are the government agencies responsible for Intellectual Property Right (IPR) protection in Hong Kong. CEDB is the policy bureau responsible for policy making and overseeing the related IPR work. IPD is responsible for providing policy advice; legislation to protect IPR in Hong Kong; registration of trademarks, patents, designs and copyright licensing bodies; as well as public education, while C&ED is responsible for criminal enforcement to combat IPR crimes in Hong Kong.
- There are two IPR crimes subject to criminal enforcement, namely copyright infringement and trademark counterfeiting.
- To effectively protect the IPR in Hong Kong, it is necessary to establish comprehensive and full scale strategies and take enforcement actions at all fronts, including legislation, enforcement, international cooperation, cooperation with traders as well as publicity and education.

**Legislation**

- There are two main ordinances for tackling IPR crimes, namely, Copyright Ordinance and Trade Descriptions Ordinance;
- Copyright Ordinance is enacted for the protection of original literary, dramatic, musical or artistic works; sound recordings, films, broadcasts or cable programmes; typographical arrangement of published editions; and others.
- Trade Descriptions Ordinance is enacted against goods bearing forged trademark or goods bearing false trade descriptions.

### **Assessment Process and Recordation Procedure**

- Upon receipt of complaints alleging suspected infringement of trademark or copyright, C&ED will conduct preliminary assessment to determine whether it involve any criminal infringement or only involve civil infringement. Then C&ED will verify whether the alleged trademark or copyright work has completed the recordation clearance. If negative, C&ED will invite the relevant right owner to complete the recordation procedure and take criminal enforcement actions upon completion.
- To commerce the recordation clearance, C&ED will approach the right owner concerned for recordation and request for the provision of relevant documents for recordation purpose and appointment of competent examiner. C&ED will examine all the information and assess the competency of the appointed examiner so as to determine whether the recordation can be completed successfully.
- When the recordation procedure has been completed, C&ED will take criminal investigation against the alleged infringement.

### **Criminal Enforcement**

- C&ED always takes stringent enforcement actions against the infringing activities at the border and in the inland, including transnational transportation and physical market, such as all border control points, black spots at different districts, shopping malls, retail shops and hawkers, etc.
- Besides, C&ED will also enhance the punishment and confiscate crime proceeds by prosecuting offenders with elements of conspiracy and organized and serious crime.
- Online IPR crimes mainly include distributing an infringing copy of the work in the internet to such an extent as to affect prejudicially the copyright owner, sharing of an infringing copy by BT or using cyberlocker, and selling of counterfeit or infringing article in auction sites or other platforms.

### **Cooperation with the Trade**

- The relevant trademark and copyright owners are advised to lodge complaint to C&ED proactively in order to protect their interest. If the alleged trademark or copyright work has not been completed the recordation clearance, they should approach C&ED for the commencement of recordation procedure at once.
- After the enforcement actions have been taken by C&ED, the appointed examiner is required to provide assistance in verifying the genuineness of the products and testifying in court as prosecution witness, if necessary.
- Wholesale and retail traders are reminded to be cautious about the authenticity and origin of their purchased goods. In case of doubt, they should verify with the relevant trademark and copyright owners or their agents.

### **Intellectual Property Rights Protection Alliance**

- Intellectual Property Rights Protection Alliance (IPRPA) was established in March 2004 which provided a platform for communication and sharing of information between C&ED and the IPR traders. Currently, there are 78 members assisting in monitoring and reporting the piracy and counterfeiting situation.

### **Fast Action Scheme**

- Fast Action Scheme (FAS) was launched by C&ED with an aim to combat IPR infringement articles at large-scale exhibitions. Exhibitors have to provide information on brands and copyrights of their products in advance for record-keeping in C&ED. Once infringing activities have been detected in the exhibitions, C&ED will conduct verification immediately and kick-start investigation within 24 hours

### **"No Fakes Pledge" Scheme**

- "No Fakes Pledge" Scheme was launched by IPD with the goal of enhancing consumer confidence in Hong Kong and strengthening the City's reputation as a "Shopping Paradise" for genuine products.

- C&ED fully supports the Scheme and will inform IPD immediately if any enforcement action is taken by C&ED against any member company of the Scheme.

### **Advice Sought**

- Members are invited to note the content of this paper and give comments, if any.

Customs and Excise Department  
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