



MASTER CUSTOMS SPECIALIST (MCS) COURSE

Part 2: Compliance | Module 7: Intellectual Property Rights (IPR)

List of Lessons:

- INTRODUCTION
- Lesson 1: Global Dangers of Counterfeits
- Lesson 2: Priority Trade Issue
- Lesson 3: Enforcement Efforts
- Lesson 4: Global Partners
- Lesson 5: Restrictions on Importation of Gray Market Articles
- Lesson 6: SCENARIO 1
- Lesson 7: Counterfeit Marks
- Lesson 8: SCENARIO 2
- Lesson 9: Protecting Your IPR

INTRODUCTION

In the NEI's CCS Course, intellectual property rights (IPR) were discussed throughout multiple modules. In this course, we will look at IPR as a single issue.

According to Webster's Dictionary, intellectual property is property, such as an idea, invention, or process that derives from the work of the mind or intellect.

Protecting the intellectual property of Americans is of such importance to CBP that it is designated as a Priority Issue.

Lesson 1: Global Dangers of Counterfeits

While purchasing counterfeit goods may seem to save consumers money, those goods come at a staggering price. Some key areas of global impact include:

- It can weaken economies by evading taxes and reducing the drive to innovate.
- Counterfeit goods circumvent quality control measures which can lead to dangerous goods in the marketplace – think improper medicine dosages and products that catch fire.
- Counterfeit networks are used to fund criminal activities, including terrorist organizations.
- Due to the underground nature of the enterprise, worker exploitation including human trafficking occurs.



Lesson 2: Priority Trade Issue

CBP is at the front of enforcing Intellectual Property Rights (IPR) and interdicting products that infringe on U.S. trademarks, copyrights, or exclusion orders issued by the U.S. International Trade Commission (ITC). The enforcement of IPR supports public health and safety, promotes economic prosperity, and preserves domestic and international security.

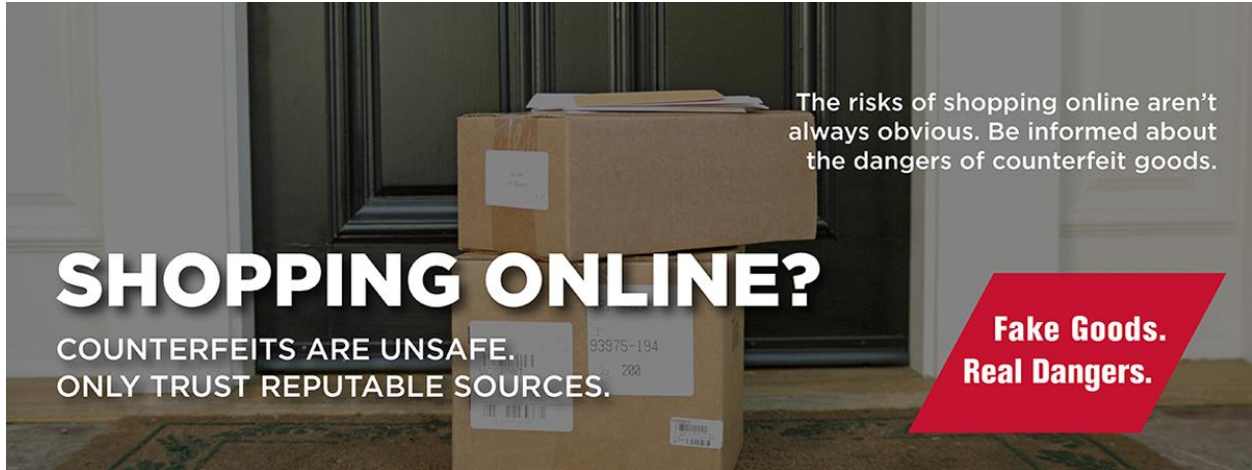
CBP has identified Intellectual Property Rights as a Priority Trade Issue (PTI). PTIs represent high-risk areas that can cause significant revenue loss, harm the U.S. economy, or threaten the health and safety of the American people. CBP focuses its actions and resources around PTIs to better direct an effective trade facilitation and enforcement approach.

CBP has developed a strategic approach that focuses on collaborative efforts to educate and engage stakeholders to deter the importation of illicit goods and employs innovative approaches to enforce IPR law at all ports of entry.

PTIs have their own page on CBP.gov – in this case [Priority Trade Issue: Intellectual Property Rights](#) website.

There they highlight top concerns such as shown on the following banners from the CBP website.



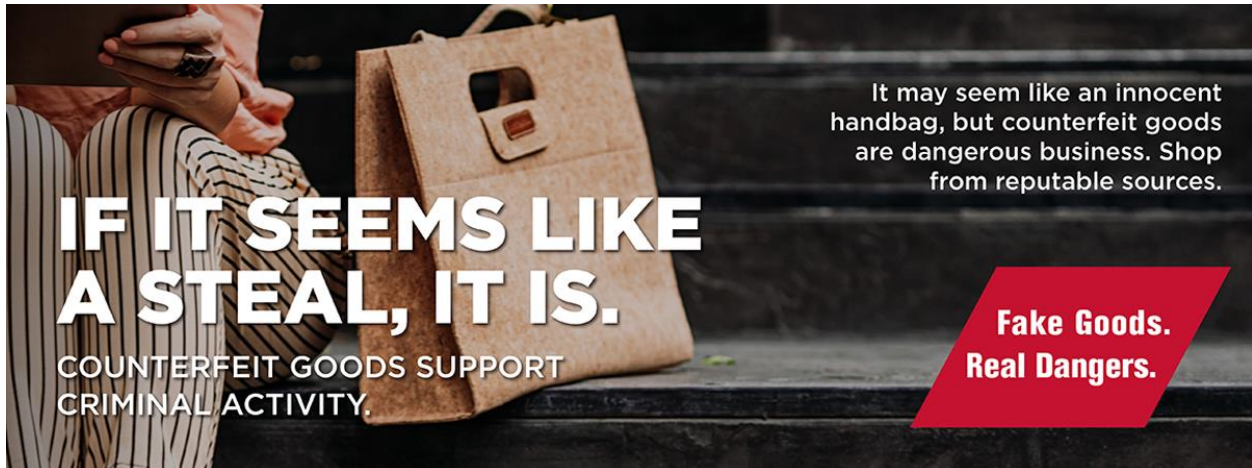
A photograph of several cardboard shipping boxes stacked in a hallway. The boxes are brown and have shipping labels with tracking numbers like "93975-194" and "200".

The risks of shopping online aren't always obvious. Be informed about the dangers of counterfeit goods.

SHOPPING ONLINE?

COUNTERFEITS ARE UNSAFE.
ONLY TRUST REPUTABLE SOURCES.

**Fake Goods.
Real Dangers.**

A photograph of a brown leather handbag with a gold-colored clasp, sitting on a dark surface. A person's hand is visible in the background, holding a phone.

It may seem like an innocent handbag, but counterfeit goods are dangerous business. Shop from reputable sources.

IF IT SEEMS LIKE A STEAL, IT IS.

COUNTERFEIT GOODS SUPPORT CRIMINAL ACTIVITY.

**Fake Goods.
Real Dangers.**

A close-up photograph of a person's hand holding several yellow, oval-shaped pills. The background is blurred.

The risks of shopping online aren't always obvious. Be informed about the dangers of counterfeit goods.

A PRESCRIPTION FOR DISASTER.

BEWARE OF COUNTERFEIT GOODS.
THEY CAN BE HARMFUL TO YOUR HEALTH.

**Fake Goods.
Real Dangers.**



Lesson 3: Enforcement Efforts

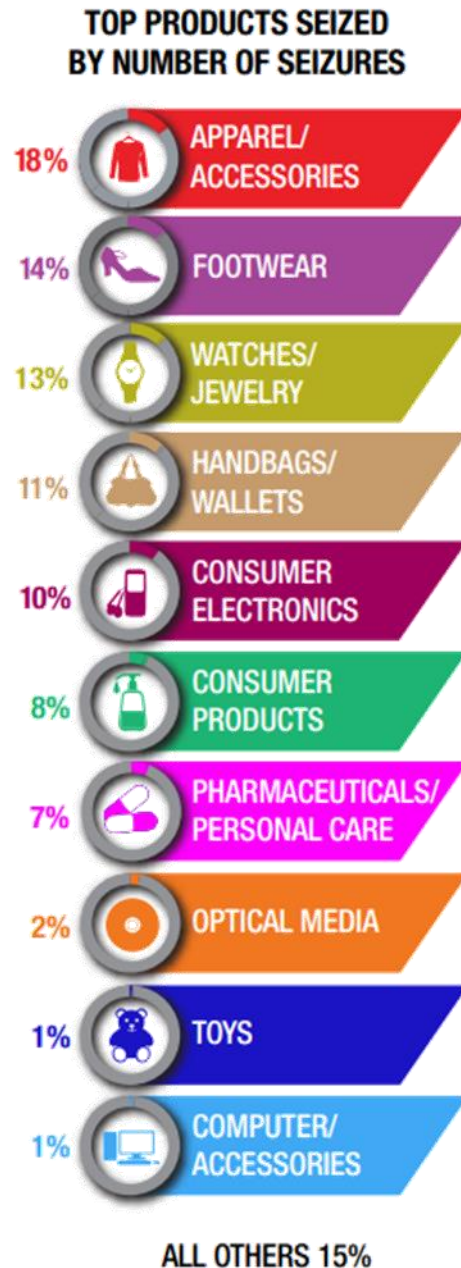
CBP releases periodic updates pertaining to enforcement of intellectual property rights.

- FY2018 resulted in an estimated \$1.4 billion in seized goods, up from over \$1.2 billion in FY2017.
- In joint operation with ICE, Operation Team Player focused on importations leading up to Super Bowl LII. This resulted in over 171,926 counterfeit sports and entertainment-related items worth an estimated \$15.7 million.
- 33,810 shipments containing products violating Intellectual Property Rights were seized

Per [CBP's Intellectual Property Rights Fiscal Year 2018 Seizure Statistics](#) →

According to their [Intellectual Property Rights brochure](#), CBP employs a multi-layered, risk-based approach to enforce IPR at the border. This includes CBP's ability to:

- Target shipments based on intelligence to better prevent the importation of merchandise that infringes on trademarks, copyrights, and exclusion order issued by the ITC.
- Use its Mobile Intellectual Property Enforcement Team, a special task force of top IPR enforcement experts within CBP, to conduct IPR enforcement operations preventing the entry of illicit goods into the United States.
- Deploy IPR Strike Units, audit-centered teams, focusing on real-time enforcement and improving compliance.





Lesson 4: Global Partners

CBP engages with foreign governments, federal agencies, state and local authorities, and private industry to protect America's innovation and competitiveness.



As stated in their [Intellectual Property Rights brochure](#), to ensure effective IPR enforcement at the border, CBP:

- Works with rights holders to deliver technical product training and updated Product Identification Guides to officers in the field.
- Coordinates with the National Intellectual Property Rights Coordination Center (IPR Center), which CBP cofounded, to actively exchange valuable enforcement, targeting, and intellectual data with other IPR Center partners.
- Partners closely with its sister agency, Immigrations and Customs Enforcement (ICE) and Homeland Security Investigations (HSI) – the investigative arm of the Department of Homeland Security – to combat criminal organizations that illegally exploit American trade.
- Pursues agreements with foreign counterparts to conduct joint customs IPR enforcement operations, share effective enforcement practices, and exchange information on violations to identify illicit trade trafficking.
- Works with the Office of the U.S. Intellectual Property Enforcement Coordinator, an office dedicated to the protection of America's IPR and to ensuring a coordinated U.S. government response to IPR theft, as envisioned in the PRO-IP Act of 2008.



Because of the global threats, the U.S. State Department takes a strong interest in counterfeit goods. They have created an education program. They also include intellectual property protection in global trade agreements. The CCS Course offered by NEI highlighted some of these agreements:

- Caribbean Basin Economic Recovery Act (CBERA) was the first U.S. trade program to contain IPR related provisions. The U.S.-Caribbean Basin Trade Partnership Act (CBTPA) requires that each participating country must meet all the CBERA IPR criteria as well as satisfying the CBTPA's criteria that the country is meeting or exceeding its WTO trade-related aspects of intellectual property rights obligations and is taking steps to provide protection equivalent to standards found in bilateral IPR agreements.
- The U.S.-Jordan Free Trade Area Agreement (General Note 18) includes, among its major provisions, the most up-to-date international standards for copyright, patent, and trademark-related commitments.

Lesson 5: Restrictions on Importation of Gray Market Articles

The importation of counterfeit or “gray market” articles are prohibited in the CBP regulations.

- 19 CFR 133.23 defines gray market articles as “foreign-made articles bearing a genuine trademark or trade name identical with or substantially indistinguishable from one owned and recorded by a citizen of the United States or a corporation or association created or organized within the United States and imported without the authorization of the U.S. owner.”
- 19 CFR 133.23(b) states that “goods determined by the Customs Service to be physically and materially different under the procedures of this part, bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner shall not be detained...where the merchandise or its packing bears a conspicuous and legible label designed to remain on the product until the first point of sale to a retail consumer in the United States stating that: “This product is not a product authorized by the United States trademark owner for importation and is physically and materially different from the authorized product.””

Lesson 6: SCENARIO 1

Which of the following is true?

Gray market articles, bearing a trademark registered with the U.S. Patent and Trademark Office, and recorded with CBP, whose importation is restricted by CBP pursuant to regulation on the basis of physical and material differences:



- A. Can never be imported.
- B. Can only be imported with the consent of the U.S. trademark owner.
- C. Can be imported, after detention, if information appearing on the merchandise or its retail packaging, including, but not limited to, serial numbers, dates of manufacture, lot codes, batch numbers, and universal product codes, is disclosed to the U.S. trademark owner within five days of the date of importation.
- D. Can be imported notwithstanding any physical and material differences, if it bears a conspicuous and legible label designed to remain on the imported articles in order to indicate that they are physically and materially different from the product authorized for sale in the U.S.
- E. All of the above.

The correct answer is D—*Can be imported notwithstanding any physical and material differences, if it bears a conspicuous and legible label designed to remain on the imported articles in order to indicate that they are physically and materially different from the product authorized for sale in the U.S.*

As long as there is a label that will remain on the product until the time of sale that states that the item is different from the authorized product, the product can be imported.

This question was taken from the April 2019 Brokers' Exam.

Lesson 7: Counterfeit Marks

According to 19 CFR 133.21, “A counterfeit mark is a spurious mark that is identical with, or substantially indistinguishable from a mark registered on the Principal Register of the U.S. Patent and Trademark Office.”

Per 19 CFR 133.21(g), CBP reserves the right to detain any merchandise bearing a counterfeit mark. The owner of the mark, within 30 days from notification of seizure, may provide written consent to the importer:

- allowing the importation of the seized merchandise in its condition as imported
- its exportation
- entry after obliteration of the mark,
- or other appropriate disposition.



Lesson 8: SCENARIO 2

A shipment of imported merchandise valued in excess of \$50,000.00 is detained on suspicion that the merchandise bears a suspect version of a federally registered trademark that is recorded with CBP. The importer is notified of the detention and given seven days to provide information that would establish that the merchandise does not bear a counterfeit mark. No information is timely provided. Accordingly, CBP provides the owner of the recorded trademark with digital images of the merchandise and its retail packaging, to include images that feature universal product codes that appear on the merchandise. Following receipt of the images, the trademark owner advises CBP that the suspect marks were not applied to the merchandise with authorization. CBP seizes the merchandise on the basis that it bears a counterfeit trademark.

Within thirty days from notification of seizure, the importer may:

- A. Secure release of the shipment, regardless of whether the trademark owner objects, by removing or obliterating the counterfeit mark in such a manner as to render the mark illegible or incapable of being reconstituted.
- B. Secure release of the shipment by establishing that the personal use exemption allowed under 19 C.F.R. § 148.55 is applicable in this situation.
- C. Secure release of the shipment by obtaining the trademark owner's written consent to allow entry of the seized merchandise in its condition as imported or its exportation, entry after obliteration of the mark or other appropriate disposition.
- D. Secure release of the shipment, provided the trademark owner does not object in writing, by exporting the merchandise bearing the counterfeit mark to the country of exportation.
- E. Secure release of the shipment, provided the trademark owner does not object, by removing or obliterating the counterfeit mark in such a manner as to render the mark illegible or incapable of being reconstituted provided, thereafter, that the merchandise is exported to the country of exportation.

The correct answer is C—*Secure release of the shipment by obtaining the trademark owner's written consent to allow entry of the seized merchandise in its condition as imported or its exportation, entry after obliteration of the mark or other appropriate disposition.*

Remember, the trademark owner has 30 days to respond to the seizure and to basically decide what can be done with the seized merchandise.

This question was taken from the April 2019 Broker Exam.



Lesson 9: Protecting your IPR

CBP recommends a five-step process to help protect your IPR.

Step 1: CBP Education

CBP has created two publications to assist importers with IPR protection. They recommend reading these publications first.

- [How to Work with CBP to Protect Your Intellectual Property](#)
- [CBP Enforcement of Intellectual Property Rights](#)

Step 2: Record your registered property with CBP

CBP maintains an online recordation system, Intellectual Property Rights E-Recordation, which allows rights owners to electronically record their trademarks and copyrights with CBP: <http://apps.cbp.gov/e-recordations/>

There are three types of Intellectual Property Rights (IPR) infringements:

1. Counterfeit marks
2. Copying or simulating marks
3. Restricted gray market goods

Step 3: Educate CBP personnel about your intellectual property

CBP has provided a template for creating a [Product ID Guide](#) (Training Guide). This allows importers to, among other things:

- Provide product descriptions
- Provide images of valid IPR and of previously identified invalid IPR
- Specify approved manufacturers
- List genuine licensees

CBP also recommends producing a [Product ID Webinar](#). This allows for multiple port participation as well as recording for future use.

Step 4: Provide CBP with updated information to alert CBP of any changes to your products.

For CBP to be able to identify and intercept counterfeit goods, the IPR holder needs to update CBP as their IPR changes.

CBP provides a searchable database showing public versions of all recorded IPR at [IPRS](#).

Step 5: Submit any information to CBP that you have regarding suspect shipments or parties through e-Allegations.