

# Protecting Against Importation of Counterfeit Pesticide and Other Products

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The importation of products bearing counterfeit trademarks trades on the goodwill and consumer recognition symbolized by the legitimate mark and can lead to product liability claims. These claims can be difficult to defend if the counterfeit product has been destroyed as a result of fire or some major malfunction. Counterfeit pesticide products may contain more toxic active ingredients and thus can be dangerous to people, animals and the environment.

There are several steps companies should take to protect themselves against such counterfeits. A key one is to record federal trademark registrations with U.S. Customs and Border Protection. Once a mark is recorded, Customs should detain shipments and contact the trademark owner to determine whether the detained product is counterfeit or genuine. Customs also is responsive to requests from companies to be on the lookout for specific infringements.

Once U.S. Customs and Border Protection has determined that a product is counterfeit, they will issue a Seizure Order and notify the trademark owner of that action. The notification will identify the exporter and the U.S. importer as well as the volume of the seized products. That information can be very important in taking effective legal action against the U.S. importer and possibly the foreign exporter/manufacturer of the product.

Once the U.S. importer of counterfeit products has been identified, the company whose trademark has been infringed can file a suit seeking, in addition to injunctive and monetary relief, an *ex parte* Seizure Order. That Order enables the U.S. Marshals Service to seize the inventory of counterfeit products and the paper and electronic records relating to the importation, distribution and sale of those products. Among products that have been removed from the marketplace in this way are counterfeit automotive products, electronic parts, photocopying toner, luxury handbags, apparel and cosmetics.

Another tactic available to trademark owners arises from the fact that trafficking in counterfeit products is subject to criminal prosecution under 18 U.S.C. § 2320. That provision imposes potentially high maximum fines and the risk of imprisonment. Local U.S. Attorneys often can be persuaded to prosecute an importer of counterfeit products, particularly where the product is defective in some way that poses a threat to human safety or the environment. But this is not just a local issue: the U.S. Attorney's office in Washington, DC, has been assigned responsibility for prosecuting importers of counterfeit products sold to the Department of

Defense or to private companies that supply defense products. And, where even nondefense counterfeit products pose some human safety or environmental concern, that office will provide assistance in contacting local U.S. Attorney's offices and urging that a criminal prosecution be initiated.