

New Customs Proceedings in Romania Regarding the Protection of Intellectual Property Rights

The Law no. 344 of 2005 on Measures for Insuring the Compliance with the Intellectual Property Rights within Customs Proceedings (“Law no. 344”) entered into force on February 3, 2006. Law no. 344 brought significant amendments to the procedure introduced by Law no. 202 of 2000.

According to Law no. 344, in order to have an intellectual property right monitored by the customs, the owner of an intellectual property right (“IP Owner”) must file with the Customs Authority a special Declaration whereby:

1. it assumes responsibility towards all the parties involved, if the legal action is not continued because an action or omission of the trademark owner, or if the court decides that the products do not infringe on an intellectual property right; and
2. it accepts to bear all the costs caused by the storage of the products under customs supervision, including the expenses related to the destruction of the products.

According to Law no. 344, there it is no longer required to file a bond in respect of the seized products.

Art. 6 (7) of Law no. 344 provides that the IP Owner must inform the National Customs Authority with respect to the termination of the protection of the intellectual property right on the Romanian territory, within 15 (fifteen) days as from such termination. In case of non-compliance with this obligation, the IP Owner may be fined as provided by Art. 17 of Law no. 344.

Art. 13 of Law no. 344 provides that the customs authority must inform the IP Owner, upon written request of the latter, about the name and address of the products’ recipient, and the origin and country of origin of the products suspected to infringe on an intellectual property right. The IP Owner who receives such information, may use it only in connection with the application for the Customs’ intervention.. The IP Owner may be held liable if it uses that information for other purposes. Furthermore, the Customs may refuse the renewal of the application for Customs’ intervention.

In case of seizure of products suspected to infringe on an intellectual property right by the Customs, there are two possibilities:

1. Either the products are destroyed, if the following conditions are met:
 - i. the IP Owner informs the Customs in writing, within 10 (ten) days from receipt of the Customs notice regarding the seizure that the seized products infringe on its intellectual property rights; in case of perishable products, the IP Owner must notify the Customs within 3 (three) days from receipt of the Customs notice; and

- ii. there is the written consent of the products' recipient in respect of abandonment of the products for destroying; such consent is deemed to be given if within the 10 (ten) or 3 (three) days terms mentioned above the products' recipient does not oppose in writing the seizure/suspension of customs proceedings/destruction of the products.

OR

2. If the conditions mentioned at point 1 above are not met, the IP Owner must submit proof of filing a civil action or a criminal complaint against the infringer. The term of 10 (ten) days may be extended upon a motivated request. However, in case of perishable products, the IP Owner must file a legal action within the term of 3 (three) days, which cannot be extended.

In case of products suspected to infringe upon industrial designs and models, patents, certificates for supplementary protection or plant variety patents, the recipient of the products may obtain the customs clearance upon the following conditions:

1. the recipient of the products files a bond representing the value of the products as shown in the customs declaration, ;
2. the IP Owner filed with the Customs proof that it filed a civil action or a criminal complaint;
3. no judicial sequester or seizure was ordered by the court with regard to the products, prior to the expiration of the 10 (ten) or 3 (three) days term;
4. all other customs formalities were carried out according to the law.

The bond will be held until the court takes a final decision with respect to the civil action or criminal complaint.

The applications filed with the Customs Authority prior to the entering into force of Law no. 344 remain valid, if the IP Owner files with the Customs Authority the above-mentioned Declaration.

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