fairings and fasteners to ensure correct installation and for cracks or damage, and if cracked or damaged, replace with serviceable parts. Torque all the fasteners to the increased torque value, in accordance with BRR Service Bulletin (SB) BR700–72–900062, Revision 1, dated October 29, 1998, or Revision 2, dated November 3, 1998.

(b) Thereafter, at intervals not to exceed 50 hours time in service (TIS) since last inspection, visually inspect the engine compressor and combustion core fairings and fasteners to ensure correct installation and for cracks or damage and, if cracked or damaged, replace with serviceable parts. Torque all the fasteners to the increased torque value, in accordance with BRR SB BR700–72–900062, Revision 2, dated November 3, 1998.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) The actions required by this AD shall be done in accordance with the following BRR SB:

Document No.	Pages	Revision	Date
BR700–72–900062 ..... Total pages: 8.	1–8	2	November 3, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BMW Rolls-Royce GmbH, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 011–49–33–7086–1883; fax 011–49–33–7086–3276. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective March 11, 1999, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–24–03, issued November 12, 1998, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on February 16, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–4368 Filed 2–23–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

[T.D. 99–21]

RIN 1515–AB49

Gray Market Imports and Other Trademarked Goods

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations in light of *Lever Bros. Co.* v. *United States* (D.C. Cir. 1993). In line with that decision, the rule will, upon application by the U.S. trademark owner, restrict importation of certain gray market articles that bear genuine trademarks identical to or substantially indistinguishable from those appearing on articles authorized by the U.S. trademark owner for importation or sale in the U.S., and that thereby create a likelihood of consumer confusion, in circumstances where the gray market articles and those bearing the authorized U.S. trademark are physically and materially different. These restrictions apply notwithstanding that the U.S. and foreign trademark owners are the same, are parent and subsidiary companies, or are otherwise subject to common ownership or control. The restrictions are not applicable if the otherwise restricted articles are labeled in accordance with a prescribed standard under the rule that eliminates consumer confusion.

In addition, the Customs Regulations are reorganized, with respect to importations bearing recorded trademarks or trade names, in order to clarify Customs enforcement of trademark rights as they relate to products bearing counterfeit, copying, or simulating marks and trade names, and to clarify Customs enforcement against gray market goods.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Intellectual Property Rights Branch, (202–927–2330).

SUPPLEMENTARY INFORMATION:

Background

Section 42 of the Lanham Act, 15 U.S.C. 1124, protects against consumer deception or confusion concerning an article's origin or sponsorship by restricting the importation of trademarked goods under certain circumstances. When an article is the domestic product of the U.S. trademark owner, that owner exercises control over the use of the trademark and the resulting goodwill. Similarly, Customs has taken the position that an article bearing an identical trademark and produced abroad by the U.S. trademark owner, a parent or subsidiary of the U.S. trademark owner, or a party subject to common ownership or control with the U.S. trademark owner, would be under the constructive control of either the U.S. trademark owner or a party who owned or controlled the U.S. trademark owner.

Customs has long taken the position that enforcement of the distribution rights of a gray market article produced abroad by a party related to the U.S. trademark holder was a matter to be addressed through private remedies. This is known as the ''affiliate exception'' to Customs enforcement of restrictions under section 42 of the Lanham Act against the importation of gray market goods. Thus, Customs Regulations do not provide for restrictions on the importation of such gray market articles.

In this regard, ''gray market'' articles, in general, are articles that the U.S. trademark owner has not authorized for importation or domestic sale, although the articles in fact bear genuine trademarks that are identical to or substantially indistinguishable from those appearing on articles that the U.S. trademark owner has so authorized.

Until *Lever Bros. Co.* v. *United States*, 981 F.2d 1330 (D.C. Cir. 1993) (*Lever*), the applicability of the affiliate exception depended simply on the presence of the genuine trademark and the existence of the relevant relationship between the companies, and was not contingent on whether the gray market articles were the same as, or different from, the articles that the U.S. trademark holder had authorized for importation or domestic sale.

In *Lever*, the court drew a distinction between identical goods produced abroad under the affiliate exception and goods produced abroad under the affiliate exception that were physically and materially different from the goods authorized by the U.S. trademark owner.

The court in *Lever* found that section 42 of the Lanham Act precluded Customs application of the affiliate exception with respect to physically, materially different goods.

Accordingly, by a document published in the **Federal Register** (63 FR 14662) on March 26, 1998, Customs proposed to make its regulations (19 CFR part 133, subpart C) consistent with *Lever* to protect against consumer confusion as to the source or sponsorship of imported gray market goods, even if the goods were produced by the owner of the U.S. trademark or by a party related to the U.S. trademark owner.

Under the proposed rule, however, the trademarked gray goods would not be restricted from importation, if they bear a prescribed label, informing the ultimate retail purchaser that they were not authorized by the U.S. trademark owner and were physically and materially different from the goods that were so authorized.

To enable and assist Customs in determining the scope of what is physically and materially different, a U.S. trademark owner under the proposed regulatory changes would need to submit an application for ''Lever-rule'' protection (§ 133.2(e)), including a summary of the physical and material differences between the gray market goods and those goods authorized by the U.S. trademark owner for importation or sale. This would result in Customs publishing a notice in the **Federal Register**, giving interested parties an opportunity to comment on the request for protection, before making a final determination in the matter. If Customs determined to grant protection, a notice to this effect would likewise be published in the **Federal Register**.

In addition to these proposed changes, Customs also proposed to reorganize and renumber the remainder of subpart C, part 133, for editorial clarity. None of the proposed clerical changes, other than those relating to the *Lever* decision, would alter Customs enforcement practices.

Discussion of Comments

Twenty commenters responded to the notice of proposed rulemaking. The major issues raised by the commenters, together with Customs analysis, are presented below.

Labeling Provision

Comments

The label in proposed § 133.23(b) is not consistent with the *Lever* decision's rationale, language, or spirit. Customs does not have jurisdiction to establish a consumer labeling requirement of this type under that decision.

Because the proposed label fails to meet the court's disclosure standard for genuine gray market imports, it is inadequate to eliminate consumer confusion and protect the trademark owner in the case of non-genuine (*i.e.*, materially different) imports. Generally, case law under the Lanham Act has explicitly rejected the notion that disclaimers absolve infringing conduct. Courts dealing with this issue have rejected such disclaimer language.

The *Lever* decision does not indicate that a labeling statement, such as the one proposed by Customs, would be adequate to cure potential consumer confusion. In any event, the label as proposed does not provide enough information to the consumer to eliminate the likelihood of confusion as to the nature and quality of the goods. The label exception ignores trademark owners' rights. Even if the product reaches the consumer with the label intact, the trademark owner's reputation and goodwill are likely to suffer.

Physically and materially different gray market goods bearing the proposed label are not equal to the goods that are perceived as ''genuine'' by the American consumer. Thus, an unfair burden is placed on U.S. trademark owners to correct any confusion caused by the label. Even if it were otherwise acceptable, the language of the label would have to be changed to provide that the product is not genuine. The label exception amounts to unfair competition and represents an undue emphasis on price as just one of the many factors entering into a consumer's purchasing decision.

The label is not permanent and could be removed after importation. If a label is allowed, it should be affixed in the same manner as a country of origin label under the marking law (19 U.S.C. 1304). Customs should specify what civil penalties would be imposed on persons intentionally removing, obliterating, or concealing the labels prior to sale to retail customers. Customs should also consider seeking authority to impose criminal penalties for such intentional acts.

Alternatively, the proposed rule should be changed to provide that Customs will review alternative labels. The proposed ''label'' should be presented merely as an acceptable form of labeling, not the exclusive form of labeling, allowable to permit importation. Importers should be permitted to affix labels after importation. Consumer confusion is eliminated by affixing the labels prior to distribution into commerce; the absence of labels on products at the time they arrive in the U.S. is of no consequence.

The label should not be required in order to import gray market goods in situations where the sale of the goods with the prescribed label would violate some state or Federal law. In particular, the label provision could result in violation of Food and Drug Administration (FDA) or other Federal labeling requirements, such as those of the Bureau of Alcohol, Tobacco and Firearms (BATF). Such violations could place the public at risk. In such instances, the labeling provision under the proposed rule as a prelude to importation should be excused.

Customs Responses

The court in *Lever* provided that confusion will be caused in the absence of some ''specially differentiating feature'' that will distinguish gray market articles that are physically and materially different from articles authorized by the U.S. trademark holder. Customs is of the opinion that the label as prescribed in § 133.23(b) constitutes a specially differentiating feature under *Lever.* The *Lever* decision does not specifically address labeling, an issue that was not before the court. Customs does not believe that the absence of language in the opinion expressly sanctioning the use of a label precludes Customs, as the agency responsible for enforcing the statute, from exercising its rule making authority to interpret the statute so as to permit the use of a label to identify a physically and materially different gray market good, to differentiate it from the authorized product, and thus dispel consumer confusion.

Customs believes that a label that makes clear that the gray market product is physically and materially different from the U.S. trademark owner's product is an appropriate means of dispelling consumer confusion and eliminating potential harm, for purposes of importation. This is for Customs entry purposes only. It is emphasized that Customs is not making an infringement decision. The language of the label is intended to inform the consumer that the product is not authorized by the U.S. trademark owner for importation and that the product is physically and materially different from the authorized product. To accomplish this purpose, the required label language in § 133.23(b) is slightly revised by this final rule. Customs is of the opinion that this language is sufficient to alert the U.S. consumer to the fact that the product is not authorized by the U.S. trademark owner.

Customs believes that legitimate gray market goods are ''genuine'' in the sense that the goods were produced and marketed abroad by authority of the trademark owner. Customs' role is limited. The rule, as proposed and adopted, imposes an import restriction; it is not intended to address all infringement and consumer protection issues. Customs is of the opinion that informing the U.S. consumer that the product is not authorized by the U.S. trademark owner for importation and that the product is physically and materially different provides sufficient information to alert U.S. consumers to such differences and satisfies the obligation of Customs with regard to regulation of importation. As indicated in § 133.23(b), other information designed to further dispel consumer confusion may be added to the standard language.

The label should help protect U.S. trademark owners because it should put consumers on notice that the imported article is not authorized by the U.S. trademark owner. Currently, Customs position is that physically and materially different goods could enter U.S. commerce where the trademark does not qualify for gray market protection. Under the amended regulation, where *Lever*-rule protection is granted, such goods may enter the U.S. only if they are labeled as required by this rule. To this extent, greater protection and product differentiation is provided under the new regulation.

The primary purpose of the label is not to promote price competition. Previously, where trademarks did not qualify for gray market protection, physically and materially different goods were imported into the U.S. without any differentiating information to inform the consumer. Because these products contained no specially differentiating feature prior to the labeling provision in this regulation and were permitted to be imported, the amended regulation provides the consumer with information that differentiates the imported physically and materially different product from the authorized product of the U.S. trademark owner. To this extent, any burden on the trademark owner is lessened by the labeling provision in the regulation. For additional clarity, the language on the label in § 133.23(b) is slightly changed to read as follows: ''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.''

Because it is within Customs' jurisdiction to enforce gray market restrictions, the label informs the consumer that the imported product is not the product authorized by the U.S. trademark owner. Customs is implementing the *Lever* decision, relating to the importation of physically and materially different goods, by adopting a prescribed label as the ''specifically differentiating feature''. Customs is of the opinion that it has the authority to establish a label that will avoid the *Lever*-rule prohibition. The label is not a requirement, but rather a ''safe harbor'' option.

With regard to removal of the label, the regulation provides that the label is to remain on the product until the first point of sale to a retail consumer in the U.S. The requirement that the label be placed next to the trademark in its most prominent location insures that the consumer is alerted to the label and the physical and material difference between the products. The labeling provision is not governed by the regulations on country of origin marking. With regard to penalties for intentionally removing, obliterating, or concealing the label prior to the first sale to retail customers, the removal of the label after importation and prior to retail sale could result in seizure and forfeiture of the goods (19 U.S.C. 1595a(c)(2)(C)).

Imported goods that are subject to *Lever*-rule protection must have a label conforming to § 133.23(b) applied *prior* to release of the goods by Customs. The label may be applied after the articles are presented for entry but prior to release of the goods. To clarify this point, § 133.23(d) is revised to indicate that if goods are detained under *Lever*-rule protection, the label must then be placed on the goods before they are entered.

The labeling provision does not supersede any Federal or state labeling requirement. Additionally, the Bureau of Alcohol, Tobacco and Firearms laws make an exception for other labels required by Federal law. The label provision does not nullify or supersede any Federal statute or regulation regarding the article or its labeling.

Physical-and-Material-Differences Standard

Comment

The physical and material differences standard in proposed § 133.2(e) should be broadened. Later court decisions following *Lever* have spoken only of ''materially different goods'', and have held that ''any difference'' between the product authorized by the trademark owner and the unauthorized goods creates a presumption of consumer confusion sufficient to support a trademark infringement claim. Although the *Lever* decision did involve products which were both physically and materially different from the product authorized for sale in the U.S., no rationale exists for confining the import restriction to physically and materially different goods, while allowing goods that are physically similar, but different in other material respects, to be freely imported. A number of courts have found that a difference can be ''material'' without having to also be a ''physical'' difference. The proposed rule ignores the importance of material differences such as packaging, quality control, and handling. Nothing in the *Lever* decision suggests that only physically different imports are subject to seizure. The proposed rule should be withdrawn and a revised materiality test should be issued that encompasses the full range of physical and non-physical differences deemed relevant under the Lanham Act.

Customs Response

The *Lever* court applied a standard using both physical and material differences. The regulation, applying the *Lever* standard, is the extent to which Customs will enforce such protection. However, the *Lever* court did not set out the parameters of the ''physically and materially different'' standard. In setting out categories that fall within the standard set by the *Lever* court, Customs will use the guidelines contained in § 133.2(e) as a starting point for determining if protection is warranted under the *Lever* decision. In particular, § 133.2(e)(5) provides that Customs will consider other characteristics that can be described with particularity and that would likely result in consumer deception or confusion under the law. The bases explicitly enumerated for granting *Lever*-rule protection are not all inclusive.

Application for ''Lever-Rule'' Protection

Comments

Interested (third) parties should not be involved in an application for protection. Application for *Lever* protection could likely turn into a contested adversarial proceeding. Customs should use the same or similar procedures used to record trademarks to process applications for *Lever* protection. Customs currently makes its own decision whether gray market protection should be granted. Similarly, there is no reason to give third parties a role in the application process.

The burden should be on the ''gray marketeer'' to rebut a presumption of

infringement. The proposed rule is unsound in shifting to the trademark owner the burden of demonstrating that the gray market import infringes the owner's trademark rights. The proposed rule should be withdrawn and re-issued to provide that once the U.S. trademark owner has shown a material difference, whether physical or not, the burden is on the ''gray marketeer'' to rebut a presumption of infringement.

The comment period provided in proposed § 133.2(f) is too long for applications for *Lever*-rule protection. By publishing in the **Federal Register**, at approximately 30-day intervals, a list of those trademarks for which gray market protection has been requested, followed by another 30-day period for comments, and then allowing time for a Customs determination of eligibility and subsequent publication in the **Federal Register** of a notice to this effect, a full calendar quarter will have gone by before protection may be afforded. This amounts to a virtual public invitation to import surges of a product that ultimately is excluded. No more than half this time should be tolerated.

Customs Responses

As part of the application process provided in § 133.2(f), as proposed, Customs would have published in the **Federal Register**, at thirty-day intervals, a list of trademarks for which *Lever*-rule protection was requested. After a thirty-day comment period, Customs would determine whether to grant *Lever*-rule protection. If *Lever*-rule protection was granted, Customs would then publish in the **Federal Register** a notice that the trademark would receive *Lever*-rule protection.

However, in response to the comment regarding the length of the application process, Customs has determined to revise the application process in § 133.2(f) by eliminating the thirty day comment period. To further expedite the application process while safeguarding the rights of the parties involved, Customs will publish a list of trademarks and the specific products for which *Lever*-rule protection was requested in the Customs Bulletin, rather than in the **Federal Register**. Customs will endeavor to process applications for *Lever*-rule protection as promptly as possible. Where *Lever*-rule protection is granted, Customs will publish in the Customs Bulletin a notice that the trademark will receive *Lever*-rule protection. Section 133.2(f) is revised accordingly.

If a trademark owner has applied for and received *Lever*-rule protection, goods that bear the protected trademark and are physically and materially different from the U.S. trademark owner's product initially will be detained. The trademark owner is not required to demonstrate that the gray market import infringes its trademark rights. Once the goods have been detained, the burden is on the importer to show either that the goods are identical and *Lever*-rule protection should not apply, or that an exception is applicable. With regard to the disclosure of proprietary information, upon application for *Lever*-rule protection, in addition to specific physical and material differences, the trademark owner must submit a summary of the physical and material differences, which need not disclose proprietary information.

Effect of Rule on Exclusion Orders

Comment

The proposed rule should not have any retroactive effect or affect general exclusion orders issued by the U.S. International Trade Commission (USITC), cease and desist orders of the USITC, or Customs enforcement of existing orders. Trademark owners who have obtained injunctions or exclusion orders relating to the importation and sale in the United States of gray market goods should not be forced to apply for protection under the proposed rule. In addition, no ''gray marketeer'' previously enjoined or excluded by court order from importing or selling gray market goods in the United States should be able to circumvent the injunction or exclusion order through Customs proposed labeling exception.

Customs Response

The regulation is prospective only and will not be applied retroactively. The rule should not undermine exclusion orders or court orders enjoining the importation of goods. Customs expects that the courts and the USITC will take the rule into consideration when fashioning injunctions or exclusion orders that are relevant to the regulations.

Conclusion

In view of the forgoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments, with the changes discussed above, should be adopted.

Additional Changes

For greater clarity: in § 133.2(e), in the first sentence, the word ''specific'' is added after the words ''between the'' and before the words ''articles authorized for importation or sale in the United States''; and, in § 133.2(e)(1) the word ''specific'' is added after the word ''The'' and before the words ''composition of both the authorized and gray market products''. For enhanced editorial accuracy, the heading of subpart C, part 133, is slightly revised.

Regulatory Flexibility Act and Executive Order 12866

This final rule document implements a court decision intended to protect products with valid U.S. trademarks against infringing imports. For this reason, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the rule does not have a significant economic impact on a substantial number of small entities. Any economic impact is a consequence of the *Lever* decision. Accordingly, it is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. Nor does the rule meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information related to this final rule has been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1515–0114. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collection[s] of information without substantive change.

Comments concerning suggestions for reducing the burden of the collections of information should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

List of Subjects in 19 CFR Part 133

Copyrights, Customs duties and inspection, Fees assessment, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise (counterfeit goods), Seizures and forfeitures, Trademarks, Trade names, Unfair competition.

Amendments to the Regulations

Part 133, Customs Regulations (19 CFR part 133), is amended as set forth below.

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 continues to read as follows, and the specific sectional authority for part 133 is revised to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 133.1 also issued under 15 U.S.C. 1096, 1124;

Sections 133.2 through 133.7, 133.11 through 133.13, and 133.15 also issued under 15 U.S.C. 1124;

Sections 133.21 through 133.25 also issued under 15 U.S.C. 1124, 19 U.S.C. 1526;

Sections 133.26 and 133.46 also issued under 19 U.S.C. 1623;

Sections 133.27 and 133.52 also issued under 19 U.S.C. 1526;

Section 133.53 also issued under 19 U.S.C. 1558(a).

2. Section 133.2 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 133.2 Application to record trademark.

* * * * *

(e) *''Lever-rule'' protection.* For owners of U.S. trademarks who desire protection against gray market articles on the basis of physical and material differences (see *Lever Bros. Co. v. United States*, 981 F.2d 1330 (D.C. Cir. 1993)), a description of any physical and material difference between the specific articles authorized for importation or sale in the United States and those not so authorized. In each instance, owners who assert that physical and material differences exist must state the basis for such a claim with particularity, and must support such assertions by competent evidence and provide summaries of physical and material differences for publication. Customs determination of physical and material differences may include, but is not limited to, considerations of:

(1) The specific composition of both the authorized and gray market product(s) (including chemical composition);

(2) Formulation, product construction, structure, or composite product components, of both the authorized and gray market product;

(3) Performance and/or operational characteristics of both the authorized and gray market product;

(4) Differences resulting from legal or regulatory requirements, certification, etc.;

(5) Other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

(f) Customs will publish in the Customs Bulletin a notice listing any trademark(s) and the specific products for which gray market protection for physically and materially different products has been requested. Customs will examine the request(s) before issuing a determination whether gray market protection is granted. For parties requesting protection, the application for trademark protection will not take effect until Customs has made and issued this determination. If protection is granted, Customs will publish in the Customs Bulletin a notice that a trademark will receive *Lever*-rule protection with regard to a specific product.

3. Part 133 is amended by revising subpart C to read as follows:

Subpart C—Importations Bearing Registered and/or Recorded Trademarks or Recorded Trade Names

Sec.

133.21 Articles bearing counterfeit trademarks.
133.22 Restrictions on importation of articles bearing copying or simulating trademarks.
133.23 Restrictions on importation of gray market articles.
133.24 Restrictions on articles accompanying importer and mail importations.
133.25 Procedure on detention of articles subject to restriction.
133.26 Demand for redelivery of released merchandise.
133.27 Civil fines for those involved in the importation of counterfeit trademark goods.

Subpart C—Importations Bearing Registered and/or Recorded Trademarks or Recorded Trade Names

§ 133.21 Articles bearing counterfeit trademarks.

(a) *Counterfeit trademark defined.* A ''counterfeit trademark'' is a spurious trademark that is identical to, or substantially indistinguishable from, a registered trademark.

(b) *Seizure.* Any article of domestic or foreign manufacture imported into the United States bearing a counterfeit trademark shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violation of the customs laws.

(c) *Notice to trademark owner.* When merchandise is seized under this section, Customs shall disclose to the owner of the trademark the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved;

(5) The name and address of the manufacturer;

(6) The country of origin of the merchandise;

(7) The name and address of the exporter; and

(8) The name and address of the importer.

(d) *Samples available to the trademark owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the trademark for examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark owner, the owner shall, in lieu of return of the sample, certify to Customs that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.21(d) was (damaged/destroyed/lost) during examination, testing, or other use.''

(e) *Failure to make appropriate disposition.* Unless the trademark owner, within 30 days of notification, provides written consent to importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of in accordance with § 133.52, subject to the importer's right to petition for relief from the forfeiture under the provisions of part 171 of this chapter.

§ 133.22 Restrictions on importation of articles bearing copying or simulating trademarks.

(a) *Copying or simulating trademark or trade name defined.* A ''copying or simulating'' trademark or trade name is one which may so resemble a recorded mark or name as to be likely to cause the public to associate the copying or

simulating mark or name with the recorded mark or name.

(b) *Denial of entry.* Any articles of foreign or domestic manufacture imported into the United States bearing a mark or name copying or simulating a recorded mark or name shall be denied entry and subject to detention as provided in § 133.25.

(c) *Relief from detention of articles bearing copying or simulating trademarks.* Articles subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following circumstances are applicable:

(1) The objectionable mark is removed or obliterated as a condition to entry in such a manner as to be illegible and incapable of being reconstituted, for example by:

(i) Grinding off imprinted trademarks wherever they appear;

(ii) Removing and disposing of plates bearing a trademark or trade name;

(2) The merchandise is imported by the recordant of the trademark or trade name or his designate;

(3) The recordant gives written consent to an importation of articles otherwise subject to the restrictions set forth in paragraph (b) of this section or § 133.23(c) of this subpart, and such consent is furnished to appropriate Customs officials;

(4) The articles of foreign manufacture bear a recorded trademark and the one-item personal exemption is claimed and allowed under § 148.55 of this chapter.

(d) *Exceptions for articles bearing counterfeit trademarks.* The provisions of paragraph (c)(1) of this section are not applicable to articles bearing counterfeit trademarks at the time of importation (see § 133.26).

(e) *Release of detained articles.* Articles detained in accordance with § 133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction set forth in paragraph (c) of this section are established.

(f) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.23 Restrictions on importation of gray market articles.

(a) *Restricted gray market articles defined.* ''Restricted gray market articles'' are 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. ''Restricted gray market goods'' include goods bearing a genuine trademark or trade name which is:

(1) *Independent licensee.* Applied by a licensee (including a manufacturer) independent of the U.S. owner, or

(2) *Foreign owner.* Applied under the authority of a foreign trademark or trade name owner other than 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 (see §§ 133.2(d) and 133.12(d) of this part), from whom the U.S. owner acquired the domestic title, or to whom the U.S. owner sold the foreign title(s); or

(3) ''*Lever-rule*''. Applied by 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 (see §§ 133.2(d) and 133.12(d) of this part), to goods that the Customs Service has determined to be physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S. (as defined in § 133.2 of this part).

(b) *Labeling of physically and materially different goods.* 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 (see §§ 133.2(d) and 133.12(d) of this part), shall not be detained under the provisions of paragraph (c) of this section where the merchandise or its packaging 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.'' The label must be in close proximity to the trademark as it appears in its most prominent location on the article itself or the retail package or container. Other information designed to dispel consumer confusion may also be added.

(c) *Denial of entry.* All restricted gray market goods imported into the United States shall be denied entry and subject to detention as provided in § 133.25, except as provided in paragraph (b) of this section.

(d) *Relief from detention of gray market articles.* Gray market goods subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following exceptions, as well as the circumstances described above in § 133.22(c), are applicable:

(1) The trademark or trade name was applied under the authority of a foreign trademark or trade name owner who is the same as 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 (in an instance covered by §§ 133.2(d) and 133.12(d) of this part); and/or

(2) For goods 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, that the merchandise as imported is not physically and materially different, as described in § 133.2(e), from articles authorized by the U.S. owner for importation or sale in the United States; or

(3) Where goods are detained for violation of § 133.23(a)(3), as physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S., a label in compliance with § 133.23(b) is applied to the goods.

(e) *Release of detained articles.* Articles detained in accordance with § 133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark restriction set forth in § 133.22(c) of this subpart or in paragraph (d) of this section are established.

(f) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be notified of the seizure and liability of forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.24 Restrictions on articles accompanying importer and mail importations.

(a) *Detention.* Articles accompanying an importer and mail importations subject to the restrictions of §§ 133.22 and 133.23 shall be detained for 30 days from the date of notice that such

restrictions apply, to permit the establishment of whether any of the circumstances described in § 133.22(c) or 133.23(d) are applicable.

(b) *Notice of detention.* Notice of detention shall be given in the following manner:

(1) *Articles accompanying importer.* When the articles are carried as accompanying baggage or on the person of persons arriving in the United States, the Customs inspector shall orally advise the importer that the articles are subject to detention.

(2) *Mail importations.* When the articles arrive by mail in noncommercial shipments, or in commercial shipments valued at $250 or less, notice of the detention shall be given on Customs Form 8.

(c) *Release of detained articles.* (1) *General.* Articles detained in accordance with paragraph (a) of this section may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction(s) set forth in § 133.22(c) or 133.23(d) of this subpart are established.

(2) *Articles accompanying importer.* Articles arriving as accompanying baggage or on the person of the importer may be exported or destroyed under Customs supervision at the request of the importer, or may be released if:

(i) The importer removes or obliterates the marks in a manner acceptable to the Customs officer at the time of examination of the articles; or

(ii) The request of the importer to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(3) *Mail importations.* Articles arriving by mail in noncommercial shipments, or in commercial shipments valued at $250 or less, may be exported or destroyed at the request of the addressee or may be released if:

(i) The addressee appears in person at the appropriate Customs office and at that time removes or obliterates the marks in a manner acceptable to the Customs officer; or

(ii) The request of the addressee appearing in person to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(d) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.25 Procedure on detention of articles subject to restriction.

(a) *In general.* Articles subject to the restrictions of §§ 133.22 and 133.23 shall be detained for 30 days from the date on which the merchandise is presented for Customs examination. The importer shall be notified of the decision to detain within 5 days of the decision that such restrictions apply. The importer may, during the 30-day period, establish that any of the circumstances described in § 133.22(c) or § 133.23(d) are applicable. Extensions of the 30-day time period may be freely granted for good cause shown.

(b) *Notice of detention and disclosure of information.* From the time merchandise is presented for Customs examination until the time a notice of detention is issued, Customs may disclose to the owner of the trademark or trade name any of the following information in order to obtain assistance in determining whether an imported article bears an infringing trademark or trade name. Once a notice of detention is issued, Customs shall disclose to the owner of the trademark or trade name the following information, if available, within 30 days, excluding weekends and holidays, of the date of detention:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved; and

(5) The country of origin of the merchandise.

(c) *Samples available to the trademark or trade name owner.* At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name owner, the owner shall, in lieu of return of the sample, certify to Customs that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.25(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement.''

(d) *Form of notice.* Notice of detention of articles found subject to the restrictions of § 133.22 or § 133.23 shall be given the importer in writing.

§ 133.26 Demand for redelivery of released merchandise.

If it is determined that merchandise which has been released from Customs custody is subject to the restrictions of § 133.22 or § 133.23 of this subpart, the port director shall promptly make demand for the redelivery of the merchandise under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the merchandise is not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(g) of this chapter.

§ 133.27 Civil fines for those involved in the importation of counterfeit trademark goods.

In addition to any other penalty or remedy authorized by law, Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark (within the meaning of § 133.21 of this subpart) as follows:

(a) *First violation.* For the first seizure of such merchandise, the fine imposed will not be more than the domestic value of the merchandise (see § 162.43(a) of this chapter) as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure.

(b) *Second and subsequent violations.* For the second and each subsequent seizure of such merchandise, the fine imposed will not be more than twice the domestic value of the merchandise as if it had been genuine, based on the

manufacturer's suggested retail price of the merchandise at the time of seizure.

Raymond W. Kelly,

Commissioner of Customs.

Approved: February 19, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–4531 Filed 2–23–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 256, 270, 282

Outer Continental Shelf Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Correcting amendments.

SUMMARY: This document corrects various regulations that were published in several **Federal Registers** and are codified in the July 1, 1998, edition of Title 30—Mineral Resources, Parts 200–699, Code of Federal Regulations (CFR). These regulations relate to operations, leasing, and nondiscrimination in the Outer Continental Shelf (OCS). Many of the sections being corrected have been amended or redesignated several times. The primary dates of publication are: April 1, 1988 (53 FR 10690); June 29, 1979 (44 FR 38276); May 22, 1985 (50 FR 21048); and January 18, 1989 (54 FR 2067). The CFR references all of the **Federal Register** publication dates and page numbers that amended or redesignated each section.

EFFECTIVE DATE: February 24, 1999.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

The final rules that are being corrected affect persons holding leases and operating in the OCS, or who have violated the OCS Lands Act. The corrections cover a variety of miscellaneous administrative amendments resulting from the following:

(a) Recent redesignation of the entire 30 CFR 250 regulations (5/29/98, 63 FR 29477) makes citation references in other parts of the CFR incorrect. In addition, several citation references in 30 CFR 250 were overlooked in the redesignation rulemaking. This document corrects the redesignated regulatory citations.

(b) Changes to the 30 CFR 250, Subpart O, regulations on Training (2/5/97, 62 FR 5322), make obsolete the reference to a training standard in the Subpart D regulations on Drilling. This document deletes the reference to the obsolete training standard.

(c) Elimination of the former MMS OCS Atlantic regional office requires the removal of references to that Region. The area offshore the Atlantic Coast is now included with the OCS Gulf of Mexico Region. This document corrects references to the OCS Regions.

(d) Revised 30 CFR 250, Subpart N, regulations on OCS Civil Penalties (8/8/97, 62 FR 42688), contain typographical errors and an incorrect reference to ''alleged'' violations. This document corrects the errors and deletes the reference.

(e) Revisions to 30 CFR 256.52(c) in 1997 changed the status of operators' areawide bonds to exclude coverage of lessees (5/22/97, 62 FR 27955). This document returns the regulation to its historical position.

Need for Correction

As published, the final regulations contain errors or incorrect references that are misleading and need to be clarified.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Geological and geophysical data, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

List of Subjects in 30 CFR Part 256

Administrative practice and procedures, Continental shelf, Environmental Protection, Government contracts, Mineral royalties, Oil and gas exploration, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

List of Subjects in 30 CFR Part 270

Civil rights, Continental shelf, Environmental Protection, Government contracts, Oil and gas exploration.

List of Subjects in 30 CFR Part 282

Continental shelf, Prospecting, Public lands—mineral resources, Reporting and recordkeeping requirements, Research.

Accordingly, 30 CFR Parts 250, 256, 270, and 282 are revised by making the following correcting technical amendments:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for Part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

§ 250.204 [Corrected]

2. In § 250.204(b)(1)(vii), the citation ''250.139'' is revised to read ''250.909''.

§ 250.413 [Corrected]

3. In § 250.413, the first sentence in paragraph (c) is revised to read as follows:

§ 250.413 Supervision, surveillance, and training.

* * * * *

(c) Lessee and drilling contractor personnel must be trained and qualified according to Subpart O of this part.

* * *

§ 250.604 [Corrected]

4. In § 250.604, the citation ''250.67'' is revised to read ''250.417''.

§ 250.900 [Corrected]

5. In § 250.900(b), the citation ''250.131'' is revised to read ''250.901''.

§ 250.901 [Corrected]

6. In § 250.901(b)(3)(iv), the citation ''250.139'' is revised to read ''250.909''.

§ 250.911 [Corrected]

7. In § 250.911(b)(4)(ii), the citation ''250.137(a)(4)'' is revised to read ''250.907(a)(4)''.

§ 250.1009 [Corrected]

8. In § 250.1009, paragraph (b)(2) is revised to read as follows:

§ 250.1009 General Requirements for a pipeline right-of-way grant.

* * * * *

(b) * * *

(2) For the purpose of this paragraph, there are three areas:

(i) The areas offshore the Gulf of Mexico and Atlantic Coast;

(ii) The area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii; and

(iii) The area offshore the Coast of Alaska.

* * * * *

§ 250.1403 [Corrected]

9. Section 250.1403 is revised to read as follows:

§ 250.1403 What is the maximum civil penalty?

The maximum civil penalty is $25,000 per day per violation.