RULES AND REGULATIONS IMPLEMENTING R.A. 8293, ALSO KNOWN AS THE INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES (“IP CODE”) IN RELATION TO SECTIONS 51-60 OF THE TRADE RELATED ASPE...

CUSTOMS ADMINISTRATIVE ORDER NO. 6-2002, SEPTEMBER 23 2002, September 23, 2002

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By authority of Section 608 of the Tariff and Customs Code of the Philippines, as amended, in relation to the IP Code, the following rules and regulations are hereby prescribed:

I. Objectives

1. To give meaning and substance to laws prohibiting the importation of goods or products that infringe upon all intellectual property rights as defined in the law.

2. To enhance existing procedures (CAO 7-93), in conformity with international standards specifically set in the TRIPS Agreement on special border control, to prevent the entry into the country of certain prohibited merchandises.

3. To set up administrative guidelines to expedite the handling and disposition of goods the importation of which is prohibited under the IP Code and other related laws.

4. To stress the seriousness of the government, more particularly the Bureau of Customs ("Bureau"), in its drive to combat piracy and counterfeiting in violation of the IP Code and other related laws.

II. Administrative Provisions

A. Definition of Terms

1. "Intellectual Property Rights" consists of the following:

1.1 Copyright and Related rights

1.2 Trademarks and Service Marks

1.3 Geographic Indication

1.4 Patents for invention, utility model and industrial design

1.5 Lay-out Designs (Topographies) of Integrated Circuits

1.6 Protection of Undisclosed Information

(hereafter to be referred to singly or collectively as "IPR")

2. "Infringing Goods" as used in this Order means articles imported in violation of the IP Code and other related laws.

3. "Mark" means any visible sign capable of distinguishing the goods (trademarks) or services (service marks) of an enterprise and shall include a stamped or marked container of good.

4. "Collective Mark" means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristics, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark.

5. "Trade Name" means the name or designation identifying or distinguishing an enterprise.

6. "Copyrighted Work" refers to any of those works whether published or unpublished, mentioned under Sections 172 and 173 of the IP Code.

7. "Patented Invention" refers to any technical solution of a problem in any field of human activity which is new, involves an inventive step, and is industrially applicable. It may be or may relate to a product, a process, or an improvement of any of the foregoing, including microorganism, non-biological and microbiological processes for which a patent has been duly issued by the Intellectual Property Office.

8. "Utility Model" refers to any new model of implements or tools or of any industrial product or of part of the same, which does not possess the quality of invention but which is of practical utility by reason of its form, configuration, construction or composition.

9. "Industrial Design" refers to any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors; provided that such composition or form gives a special appearance to and can serve as a pattern for an industrial product or handicraft.

10. "Lay-out Design", which is synonymous with "'Topography", means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture.

11. "Geographical Indication" are indications which identify a good as originating in the territory of a country, or a region or locality in the territory, where a given quality, reputation, or other characteristics of the good are essentially attributable to its geographical origin.

B. What Are Prohibited

1. Those which shall copy or simulate any mark or trade name registered with the Intellectual Property Office ("IPO") in accordance with the IP Code, without the authorization or consent of the registrant or its duly authorized agent.

2. Those which shall copy or simulate any well-known mark as determined by competent authority, without the authorization or consent of the owner or its duly authorized agent.

3. Those which are judicially determined to be unfairly competing with products bearing marks whether registered or not.

4. Those which constitute as a piratical copy or likeness of any work, whether published or unpublished, on which a copyright subsists.

5. Those which present themselves as a substantial simulation of any machine, article, product, or substance duly patented under the IP Code, without the authorization or consent of the patentee or its duly authorized agent.

6. Those which use false or misleading description, symbol, or label that is likely to cause confusion, mistake, or

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deception as to the affiliation, connection, or association of the imported goods with another person's goods; or those which misrepresent their nature, characteristics, qualities, or geographic origin.

C. Who May Request for Suspension of Release

1. IPR Recorded with BOC

The Bureau shall maintain an IPR Registry where IP Holders may record their IPR, together with other relevant information that the Bureau may use for the effective implementation and enforcement of this Order.

An IPR Holder/Owner, or his agent, may apply with the Commissioner of Customs for the recording of his IPR and the product/s covered by such rights upon the submission of the following requirements:

1.1 An affidavit attesting that the applicant is the rightful owner of the IPR sought to be recorded, or in case of a representative or an agent, that he is duly authorized by the IPR Holder/Owner to make the application, and that the person or other entities in the submitted list, if any, are so authorized or not so authorized to make the importation or distribution of such products covered by the IPR, together with a sufficient description of the products covered by the IPR sought to be recorded, together with samples thereof, if possible, to aid the Bureau in implementing this Order.

1.2 Documentary Requirements

1.2.1 In the case of IPR registered with the IPO, three (3) certified true copies of the Certificate of Registration issued by the said office.

1.2.2 In the case of IPR not registered with the IPO, three (3) certified true copies of a decision or resolution of a court or other competent authority declaring or recognizing the claim to an IPR.

1.2.3 In the case of copyright and related rights, an Affidavit executed by the IPR Holder/Owner or his duly authorized representative stating that:

1.2.3.1 At the time specified therein, copyright subsists in the work or other subject matter;

1.2.3.2 He or the person named therein is the owner of the copyright; and

1.2.3.3 The copy of the work or other subject matter annexed thereto is a true copy thereof.

1.3 Payment of recordation fee of PHP Two Thousand (P2,000.00) per product but in no case to exceed PHP Twenty Thousand (P20,000) per IPR Holder/Owner.

The foregoing documentary requirements are solely for the purpose of identifying the IPR Holder/Owner and providing the Bureau with minimum information that will help its officers in effectively monitoring and evaluating infringing goods at the border. Such requirements therefore may in certain meritorious circumstances be liberalized for as long as the basic purposes for which the above requirements are imposed are achieved. The IPR Holder/Owner or his representative shall be notified of the time and place of examination.

The recordation of IPRs and product or products covered therein shall be valid for two (2) years from date of the recording and renewable every two years thereafter.

On the basis of the recordation, the Bureau shall monitor and inspect on its own initiative suspect imports to determine whether or not they are liable to seizure and forfeiture pursuant to law. However, the exercise of such power shall be governed and circumscribed by existing rules and regulations on the issuance of alert or hold orders.

2. IPR not Recorded with BOC

The IPR Holder/Owner, or his duly designated agent, who has not recorded in accordance with Section II.C.1 of this Order his IPR and the product or products protected thereunder, may request the Commissioner of Customs or the District Collector of Customs concerned in case of ports of entry outside of Metro Manila (outports) to issue an alert or hold order against any importation suspected to contain infringing goods upon submission of the documents enumerated in Section II.C.1.1 to 2.

In meritorious cases, the Commissioner of Customs or the District Collector of Customs concerned in case of ports of entry outside of Metro Manila (outports) shall issue the alert or hold order; the goods shall be examined in the presence of the IPR Holder/Owner or his duly authorized agent who shall be accordingly notified of the time and place of the examination. Notwithstanding the absence of the IPR Holder/Owner or his agent who has been notified of the scheduled date and time of examination, the inspection shall proceed and the examining official shall, through proper channel, make his findings and recommendation to the Commissioner or District Collector of Customs, as the case may be.

D. Random checks

Section II paragraph C.1 and C.2 hereof notwithstanding, the Bureau reserves the right to conduct, on its own initiative, random inspection of goods/shipments under existing regulations on the issuance of alert or hold orders, in connection with the discharge of its police functions over imports and exports.

E. Creation of an Intellectual Property Unit

To more effectively implement border control measures for the protection and enforcement of IPR, the Commissioner of Customs shall study and submit to the Secretary of Finance a work plan for the creation of a permanent intellectual property service or division, identifying its organizational set up and alignment, powers and functions, logistical requirements and support, and personnel complement. In the meantime, the Commissioner of Customs is hereby enjoined to establish an interim intellectual property unit with the following interim functions:

1. To handle all application for recordation of IPRs and product or products covered therein.

2. To receive requests for issuance of alert or hold order addressed to the Commissioner of Customs and to record similar requests addressed to the District Collector of Customs in case of outport.

3. To investigate, and in case of seizure, to prosecute IPR violations in the appropriate forfeiture proceedings.

4. To gather and manage data relating to IP enforcement and run in coordination the Management Information Systems and Technology Group the IP database system to be put up for the purpose.

5. To coordinate all BOC activities relating to IPR matters.

6. To draw up in coordination with the Human Resource Management Division an appropriate training program on IPR border control enforcement.

7. To act as the liaison office of BOC for IPO and other agencies of government control with IP enforcement.

F. Intellectual Property Rights Risk Management and Database Support System

The Bureau of Customs is hereby enjoined to establish a risk assessment program and a management information system where all relevant data for the effective enforcement of the IP Code shall be gathered, stored and utilized to monitor, screen out, and interdict infringing goods at the border and on a post entry basis. For the purpose, it shall establish appropriate linkages with the Intellectual Property Office, other concerned law enforcement agencies, and the private sector.

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III. Operational Provisions

A. Steps to be taken for the recordation pursuant to Section II C.1 of this Order of IPR and product or products covered therein.

1. Applicant shall accomplish the prescribed application form before the Intellectual Property Unit (IPU) or, pending creation of such unit, the Legal Service.

2. The application shall be accompanied by the Affidavit referred to in Section II.C.1.1 and other relevant information, as required in Section II.C.1.2.

3. Applicant shall pay the recordation fee.

4. Upon compliance with the above requirements, the IPU, or the Legal Service pending the creation of said unit, shall prepare for the Commissioner's signature a Customs Memorandum Circular addressed to all Collectors of Customs setting forth the fact of recordation together with a description or model of the registered product or products.

5. After receipt of the Circular, the Collectors of Customs concerned shall distribute copy or copies of documents containing relevant data on the IPR and covered product or products among the front-line customs assessment officers, and to direct them to monitor imports accordingly.

B. Procedure on the request for issuance of alert or hold order pursuant to Section II C.2 of this Order.

1. The IPR Holder/Owner or his agent shall request in writing the Commissioner of Customs, or the District Collector of Customs in the case of outports, for the issuance of an alert or hold order on goods suspected to be infringing.

The applicant shall attach all documentary requirements and other relevant information about his IPR and the product or products covered therein, as provided in Section II.C.1.1 and 1.2.

C. Guidelines on the issuance of alert or hold orders for suspect goods.

1. On the basis of reliable information, BOC may on its own initiative issue alert or hold order against imports suspected to contain infringing goods pursuant to Section II.C.1 of this Order.

2. An alert or hold order may also be issued upon the request of an IPR Holder/Owner pursuant to Section II.C.2 of this Order.

3. Articles placed under Hold or Alert Orders under this Order shall be examined by the assigned examiner in the presence of the IPR Holder/Owner or his agent and the consignee or his duly authorized representative/s within twenty-four (24) hours from receipt of notice of the alert or hold order.

4. If, upon examination of the goods, no basis is found to subject the goods to seizure proceedings, the alert or hold order shall immediately be lifted, and the processing of the import entry shall immediately continue.

5. In case there is prima facie basis to subject the goods to seizure proceedings, the matter shall, within twenty-four (24) hours, be referred to the Collector of Customs for the issuance of a Warrant of Seizure and Detention against the shipment.

D. Special provisions relating to seizure proceedings involving infringing goods.

1. Upon seizure, the Collector shall, within five (5) working days from date of seizure, give the claimant, importer or the owner of the seized article or his agent a written notice of the seizure and shall give him the opportunity to

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be heard. For the purpose of giving such notice, the importer, consignee, or person holding the bill of lading shall be deemed the owner of the seized property described in the bill of lading. For the same purpose, "agent" shall be deemed to include not only the agent in fact of the owner of the seized property but also any person having legal possession of the property at the time of the seizure, if the owner or his agent in fact is unknown or cannot be reached.

2. In case of an unknown owner or claimant, the notice shall be effected posting for five (5) days in public corridor of the customhouse of the district in which the seizure is made, and, in the discretion of the Commissioner, by publication in a newspaper, or by such other means as he shall deem desirable.,

3. If within ten (10) days after due notification prescribe in the preceding paragraph, no claimant, owner or agent appears or can be found, the Collector shall declare the property forfeited in favor of the government.

4. After due notice is served, the Collector shall immediately set the case for hearing. The case shall be decided within Twenty (20) working days from the date the case is set for hearing.

5. The provisions of the Tariff and Customs Code of the Philippines on appeal and automatic review shall be applicable in these cases.

6. The disposition of goods forfeited by final decree shall be governed by existing laws and regulations applicable in the premises with due regard to the statutory policy on IPR protection. To expedite action on the disposition of forfeited articles, the Bureau, through the IPU, shall within 30 days from creation issue supplemental guidelines relating to the handling and safekeeping of these goods, including provisions for internal and external coordination, and logistical support.

IV. Authority of the Commissioner to Promulgate Additional Rules

The Commissioner of Customs is hereby authorized to issue additional rules and regulations to more effectively implement this Order.

V. Repealing Clause

All Orders, Memoranda or Circulars, inconsistent herewith are hereby repealed and/or deemed modified accordingly.

VI. Effectivity

This Order shall take effect upon the approval by the Secretary of Finance and thirty (30) days after publication hereof in a newspaper of general circulation in the Philippines.

Adopted: 23 September 2002

(SGD.) ANTONIO M. BERNARDO
Commissioner of Customs

Approved:

(SGD.) JOSE ISIDRO CAMACHO
Secretary of Finance

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