

# Border Enforcement Best Practices: Experiences, Legal Framework and Risk Analysis



J. Todd Reves  
Office of Intellectual Property Policy and Enforcement  
United States Patent and Trademark Office



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October 9, 2007

MOTOROLA® ORIGINAL

Bluetooth™ Headsets

FAKE



- 1 Motorola original has a narrow step around the volume buttons, the fake has a wide step
- 2 Motorola original grooves are not as deep or wide as the fake
- 3 Motorola original has more detail



**COUNTERFEIT**

1

2



Cardas

Counterfeit

Counterfeit Johnnie Walker Black Label Scotch Whisky found in North East London



No "UCP" logo on side of closure

"UCP" logo

DISTILLERS incorrectly spelled as DISTILLERIES"

Fake lot code L04P24878342 printed on rear of centre label

No E mark on base between "700ml and 73mm"

Genuine

Counterfeit



Authentic

Fake



real





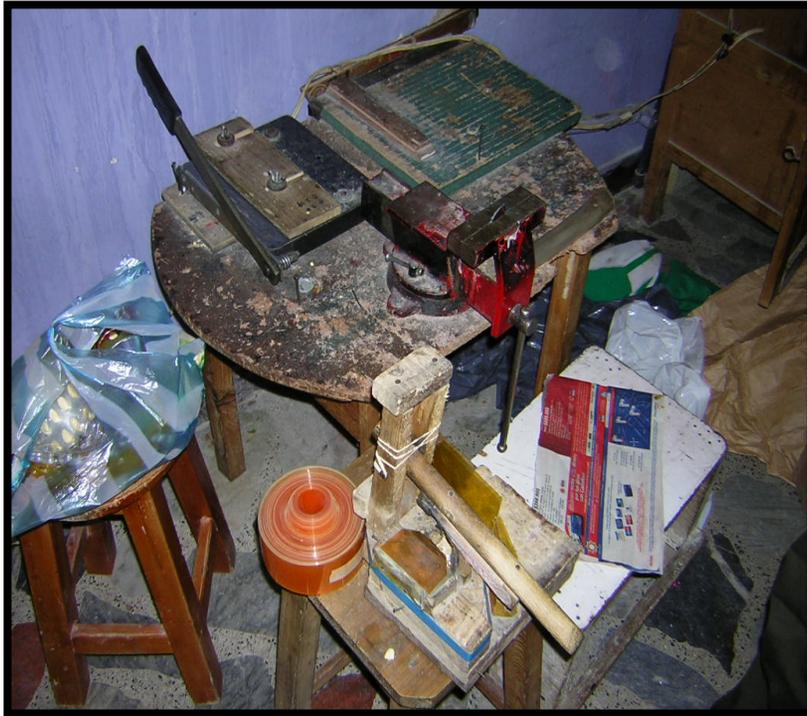
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# CBP Secures America's Borders



- 1,900 miles of border with Mexico
- 5,000 miles of border with Canada
- 95,000 miles of coast
- 326 ports of entry
- 142 Border Patrol stations



# Ensure border security while facilitating legitimate trade and travel



*Last year, at ports of entry, officers:*

- Processed 423 million incoming travelers, 26 million containers, 30 million entries of goods
- Arrested 6,000 on drug-related charges; 8,100 on warrants
- Seized 646,000 pounds of illegal drugs, \$155 million in IPR violative goods
- Intercepted about 1.7 million prohibited agriculture products



## ...and patrol the borders in between.



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*Last year, CBP's Border Patrol agents:*

- Arrested 1.1 million illegal aliens, including 433 from special interest countries
- Seized 1.4 million pounds of illegal drugs worth \$1.8 billion



# CBP is the frontline of Homeland Security

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- 18,000 CBP officers
- 12,300 CBP Border Patrol agents
- 2,000 ag specialists
- 650 air and marine officers
- 42,000+ other



## On A Typical Day CBP Deploys:



- 1,264 canine teams
- 8,075 automobiles
- 260 aircraft
- 215 marine craft
- 202 horses
- New technologies – X-ray/gamma imaging, infrared and radiation detection devices, sensors



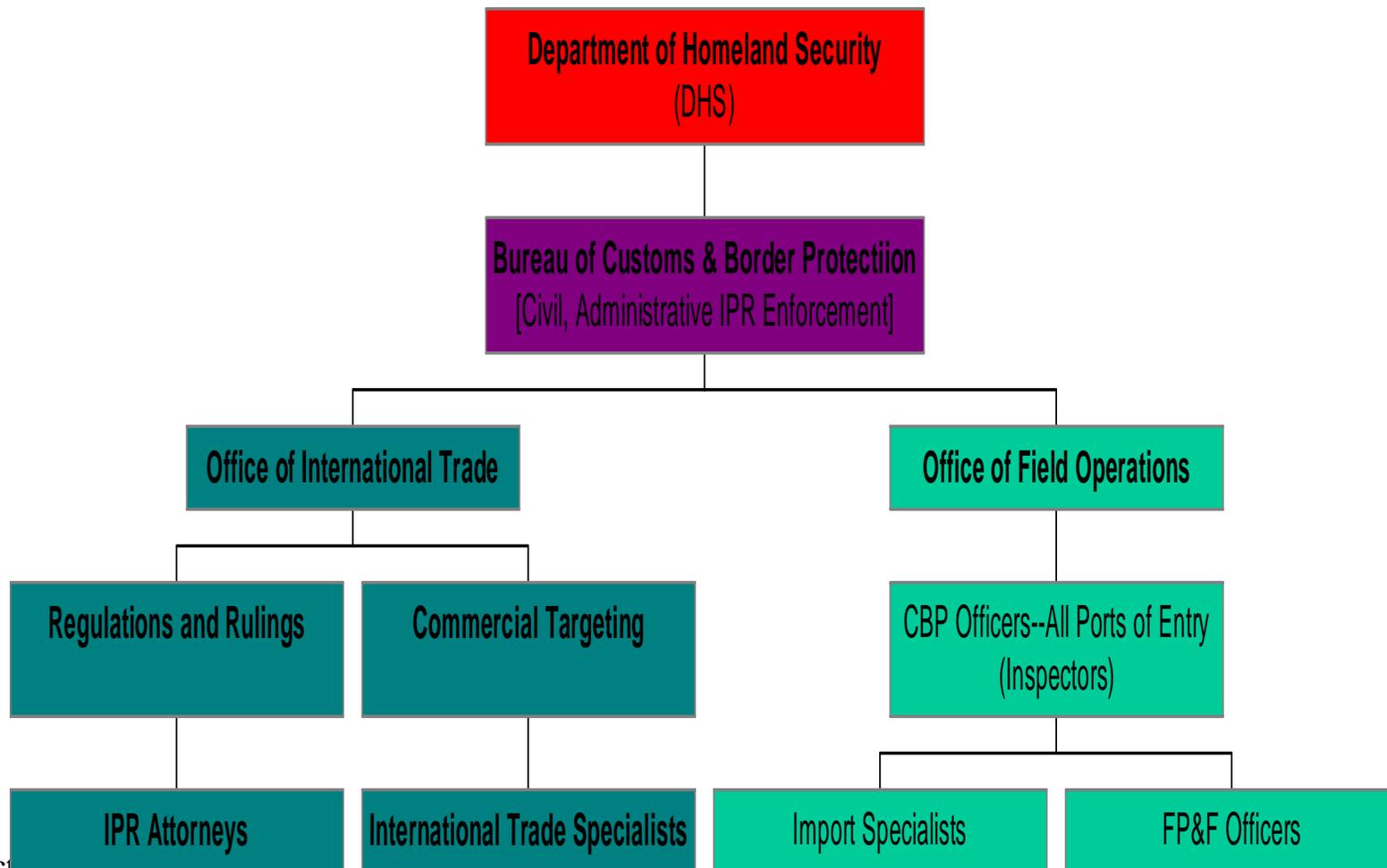
## On A Typical Day, CBP Processes:

- 1.1 million passengers and pedestrians
- 70,900 truck, rail and sea containers
- 240,737 international air passengers
- 71,151 ship passengers
- 327,042 privately owned vehicles
- \$84,400,000 in duties and fees



# CBP

## IPR Border Enforcement Structure

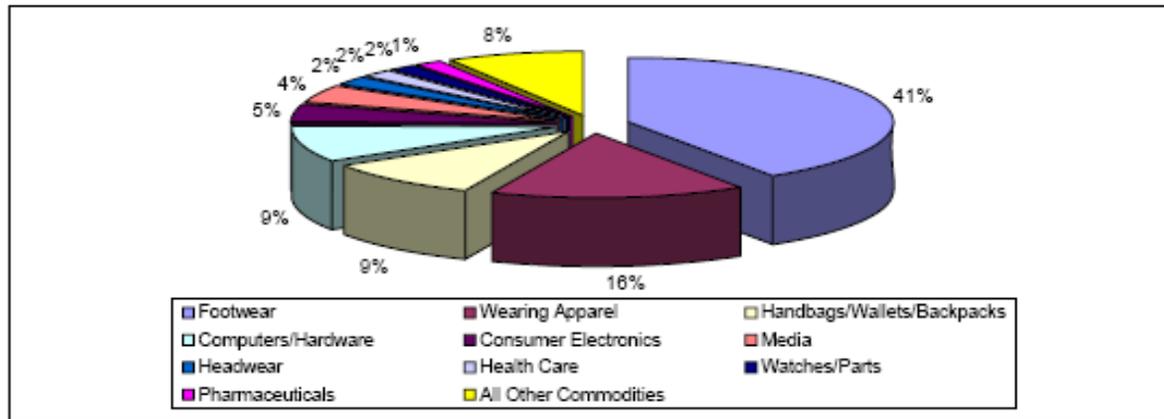


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# FY 2006 IPR Statistics

Department of Homeland Security  
 U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement  
 FY 2006 Top IPR Commodities Seized



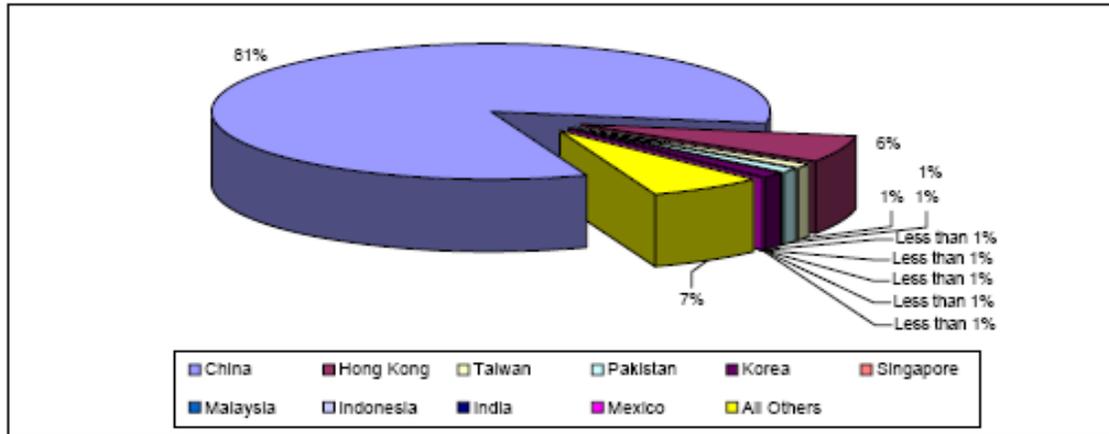
Commodity	Domestic Value	Percent of Total
Footwear	\$ 63,445,619	41%
Wearing Apparel	\$ 24,320,976	16%
Handbags/Wallets/Backpacks	\$ 14,750,201	9%
Computers/Hardware	\$ 14,287,989	9%
Consumer Electronics	\$ 7,057,034	5%
Media	\$ 6,965,156	4%
Headwear	\$ 3,257,963	2%
Health Care	\$ 3,092,919	2%
Watches/Parts	\$ 2,832,364	2%
Pharmaceuticals	\$ 2,298,694	1%
All Other Commodities	\$ 13,060,321	8%
<b>Total FY 06 Domestic Value</b>	<b>\$ 155,369,236</b>	
<b>Number of Seizures</b>	<b>14,675</b>	

Note: **Media** includes motion pictures on tape, laser disc, and DVD; interactive and computer software on CD-ROM, and floppy discs; and music on CD or tape. **Consumer Electronics** includes cell phones and accessories, radios, power strips, electrical tools and appliances.

Source: U.S. Customs and Border Protection,  
 L.A. Strategic Trade Center,  
 11-07-06



**Department of Homeland Security  
U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement  
FY 2006 Top Trading Partners for IPR Seizures**



Trading Partner	Domestic Value	Percent of Total
China	\$ 125,595,844	81%
Hong Kong	\$ 9,389,464	6%
Taiwan	\$ 1,843,764	1%
Pakistan	\$ 1,838,815	1%
Korea	\$ 1,810,140	1%
Singapore	\$ 1,198,735	Less than 1%
Malaysia	\$ 1,174,071	Less than 1%
Indonesia	\$ 983,425	Less than 1%
India	\$ 832,541	Less than 1%
Mexico	\$ 535,826	Less than 1%
All Others	\$ 10,166,811	7%
<b>Total FY 06 Domestic Value</b>	<b>\$ 155,369,236</b>	
<b>Number of Seizures</b>	<b>14,675</b>	

Figures for trading partners are based on country of origin and/or country of export as listed in the seizure report.

Source: U.S. Customs and Border Protection,  
L.A. Strategic Trade Center,  
11-07-06

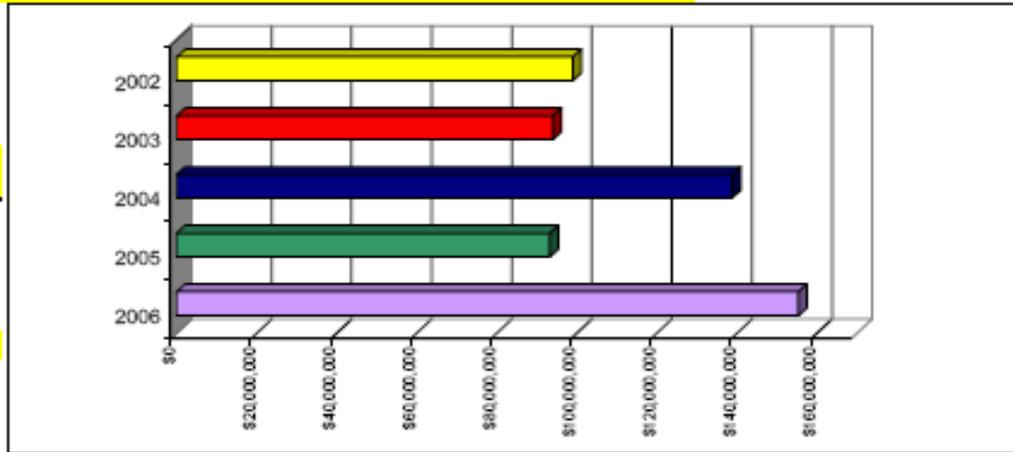
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### Comparison of Yearly Domestic Values of IPR Seizures

The value of IPR seizures in FY 2006 increased by 67%, from the value in FY 2005. The FY 2006 domestic value is the highest in the history of Customs/ Department of Homeland Security

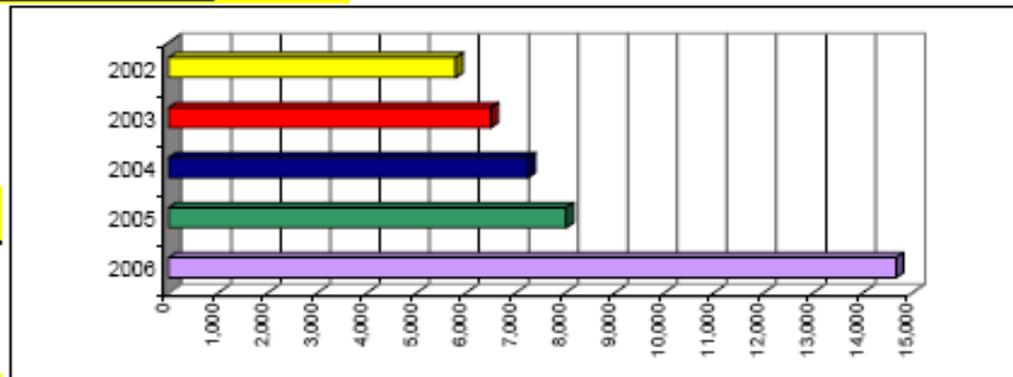
Fiscal Year	Overall Total Values (IPR)
2002	\$ 98,990,341
2003	\$ 94,019,227
2004	\$ 138,767,885
2005	\$ 93,234,510
2006	\$ 155,369,238
<b>Total</b>	<b>\$ 580,381,199</b>



### Comparison of Yearly Seizure Totals

The number of seizures in FY 2006, reflects an increase of almost 83% over the number of seizures in FY 2005, and is the highest number of seizures in the history of Customs/Dept. of Homeland Security. The port of JFK accounted for more than 48% of the total seizures.

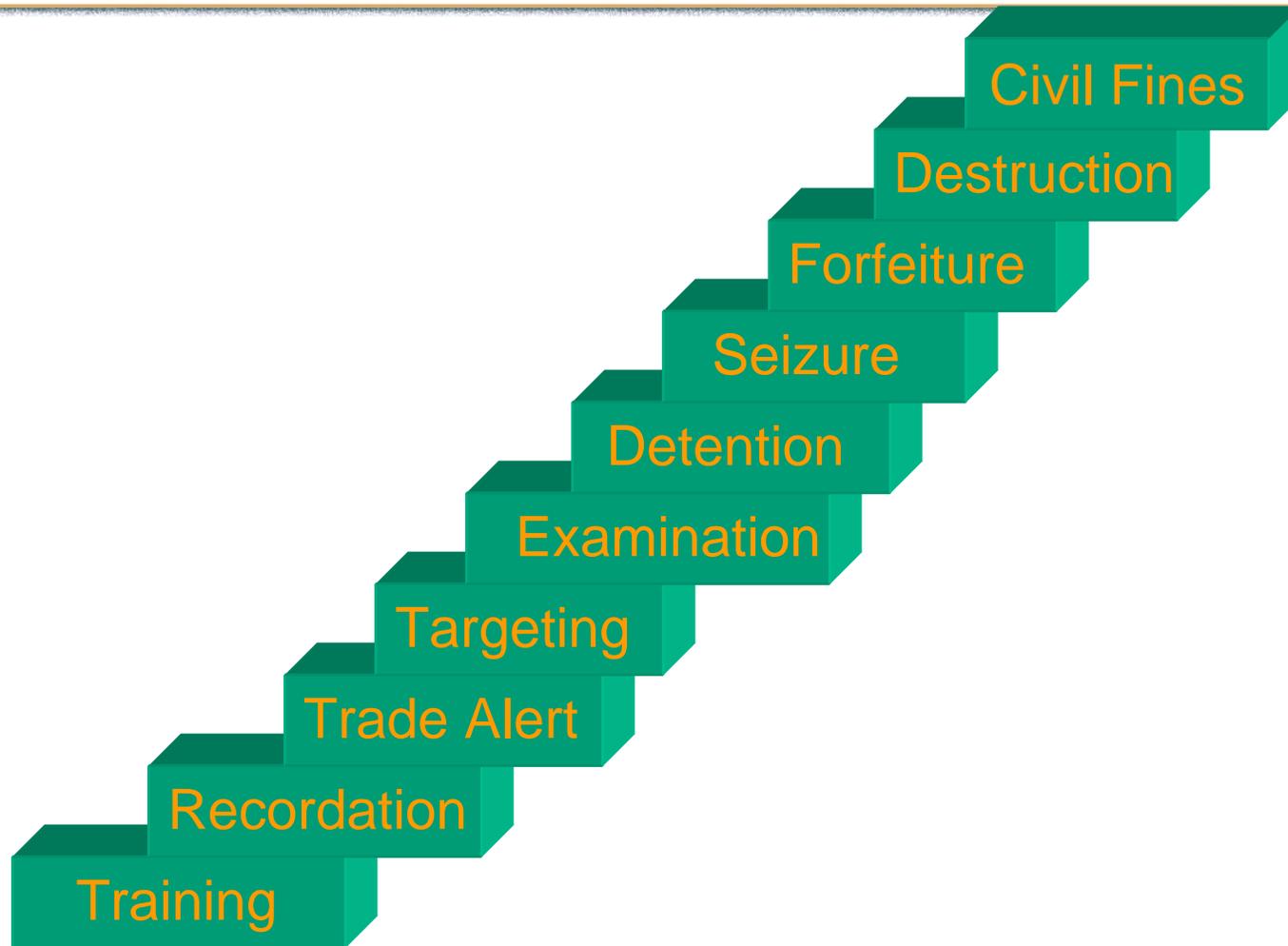
Fiscal Year	Number of Seizures
2002	5,793
2003	6,500
2004	7,255
2005	8,022
2006	14,675
<b>Total</b>	<b>42,245</b>



Source: U.S. Customs and Border Protection,  
L.A. Strategic Trade Center,  
11-07-08



# Steps to IPR Enforcement



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# TRAINING

- Focus on high-volume ports
- Conduct annual training
- Address legal and operational concepts and developments
- Show examples of suspect articles and encourage officers to make infringement determinations
- Constantly update the training program to reflect shifts in trends and new legal developments



# RECORDATION

## *TRIPS Art. 51*

### *Application for the suspension of the release of goods bearing counterfeit trademarks and pirated copyrights*

The U.S. System in a nutshell:

- Must have a valid registration from either the USPTO or Copyright Office
- Payment of \$190 for each trademark per class of goods, or for each copyright.
- Application describing the trademarks or copyrights in detail, I.e., ownership, class of goods, licensees, point of contact, foreign ownership of the marks, countries of manufacture and export, etc.
- The recordation lasts the life of the underlying registration (USPTO or Copyright Office); not limited to a particular importation.



# RECORDATION

## *What happens next?*

**Automatic Mode:** The recordation is added to the IPR Module of the Automated Commercial System (“ACS”) for use by field CBP Officers.

Typical scenario—CBP Officer examines a shipment of handbags from China, and notices that the bags closely resemble the registered and recorded Coach trademark. He takes a sample back to the commodity team for further review. The team, after comparing the mark on the handbags to the imagery found in the recordation file in the IPR database, determines the use of the mark to be counterfeit and seizes the shipment. Notices are sent to the consignee (or other party in interest) and trademark owner—Coach in this case. If Coach does not consent to the importation (most likely), the handbags are forfeited and either destroyed, given to charity, or put into official use. The latter two generally involve removing the offending mark.



# IPRS

(Intellectual Property Rights Search)

- New format is web-based
- Appearance and function is similar to CBP Rulings Online Search System (CROSS)
- Updated nightly

File Edit View Favorites Tools Help

← Back → × Home Search Favorites Media

Address <http://iprs.cbp.gov/>

Links [CBP Library](#) [CBP](#) [Customs Bulletins](#) [Lexis](#) [DHS](#) [IPRS](#) [USPTO](#) [WX](#) [EPP](#) [FedNews](#) [Google](#) [pdaPortal.com](#) [GovExec.com](#)



**IPRS** INTELLECTUAL PROPERTY RIGHTS SEARCH

Keyword

[HELP](#) | [ABOUT](#) | [PRINT](#) |  [KEYBRD SHORTCUTS](#)

Search  |  |  |  |  |  |  |  |

Filter  |  |  |  |  |  |

### What's New

IPRS was last updated 4/16/2004 with 8 recordations.  
 The total number of searchable IPR recordations in this database is 27501.  
 The most recent recordation effective date is 4/13/2004  
 The oldest recordation effective date is 12/26/1945.

### About the Intellectual Property Rights Search (IPRS)

IPRS is a searchable database containing public versions of U.S. Customs and Border Protection intellectual property rights recordations. Recordations can be retrieved based on simple or complex search characteristics using keywords and Boolean operators. IPRS has the added functionality of restricting searches to specific fields and record types. IPRS contains expired as well as current records and by default excludes expired records. For more information about features or how to use IPRS, please visit the [HELP section](#).

**Note:** The IPRS database is updated nightly (except Saturday and Sunday) at approx. 4:00 a.m. eastern standard time. Those basing import/exports transactions based upon data contained within IPRS are reminded that recordation information is updated by CBP IPR Branch personnel daily.

### Related IPRS Information

[U.S Customs & Border Protection \(CBP\) IPR Enforcement](#)

**IPRS INTELLECTUAL PROPERTY RIGHTS SEARCH** Keyword  

[HELP](#) | [ABOUT](#) | [PRINT](#) |  [KEYBRD SHORTCUTS](#)

Search

Filter

Results [ 1 - 10 ] of 37 records | Search took 0.81 Seconds

Effective Date	Title Product	Description	Owner	Contact Name	Firm Name	Recordation No. Agency No.	Type
2005/2015	<a href="#">SWOOSH DESIGN</a> IC 025. FOOTWEAR.	DRAWING MARK, SWOOSH DESIGN	NIKE, INC.	LORI L. COLBERT	NIKE, INC.	TMK 05-00585 1323343	Trademark
2005/2015	<a href="#">JUST DO IT</a> IC 025. CLOTHING, NAMELY T-SHIRTS, SWEATSHIRTS AND CAPS.	WORD MARK, TYPED DRAWING	NIKE, INC.	LORI L. COLBERT	NIKE, INC.	TMK 05-00584 1875307	Trademark
2005/2012	<a href="#">NIKE GOLF AND DESIGN</a> FOOTWEAR 477328 CLOTHING SPORTING GOODS ALL PURPOSE BAGS CLASSES 18 24, 25 28	WORD MARK WITH DESIGN, CLOTHING, FOOTWEAR, SPORTING GOODS	NIKE INC.	LORI L. COLBERT, ESQ.	NIKE, INC.	TMK 05-00183 2,628,587	Trademark
2005/2014	<a href="#">NIKE SPHERE</a> CLOTHING 477330	WORD MARK, CLOTHING	NIKE INC.	LORI L. COLBERT, ESQ.	NIKE, INC.	TMK 05-00184 2,804,865	Trademark
2005/2011	<a href="#">NIKE AND SWOOSH DESIGN</a> SPORTS BALLS 477325 SOFTBALL BATS COVER FOR GOLF CLUBS ICE SKATES GOGGLES	WORD WITH DESIGN, LIFTING BELTS, PADDING, GUARDS, SPORTS BALLS	NIKE INC.	LORI L. COLBERT, ESQ.	NIKE, INC.	TMK 05-00172 2,473,828	Trademark
2005/2012	<a href="#">NIKE AND SWOOSH DESIGN</a> TIMEPIECES 477327 STOPWATCHES	WORD MARK WITH DESIGN, STOPWATCHES, TIMEPIECES	NIKE INC.	LORI L. COLBERT, ESQ.	NIKE, INC.	TMK 05-00174 2,534,358	Trademark
2005/2013	<a href="#">SWOOSH AND GOLF CLUB DESIGN</a> SPORTS BAGS 477329	DESIGN, FOOTWEAR, CLOTHING, SPORTS BAGS, SPORTING GOODS	NIKE INC.	LORI L. COLBERT, ESQ.	NIKE, INC.	TMK 05-00175 2,753,357	Trademark

IPRS INTELLECTUAL PROPERTY RIGHTS SEARCH Keyword  GO HELP | ABOUT | PRINT |  KEYBRD SHORTCUTS

Search ALL Title Product Description Owner Contact Name Firm Name Recordation No. Agency Registration No.

Filter Show All Trademarks Copyrights Tradenames Exclusion Orders Exclude Expired Include Expired

Effective Date: 10/24/2002  
Expiration Date: 6/9/2008

Trademark Customs Recordation Number: TMK 02-00840 [BACK](#)

Mark	SWOOSH
Product	FOR CLOTHING, NAMELY SOCKS AND T-SHIRTS 473101
Description	WORD MARK, FOR CLOTHING, NAMELY SOCKS AND T-SHIRTS
Owner Name	NIKE, INC.
Priority Market Importations Restricted	NO
U.S. Patent and Trademark Office Registration Number	2,164,810
Applicant Name	NIKE, INC.
Contact Name	DAVID W. SIMPSON ONE BOWERMAN DRIVE BEAVERTON, OR 97005
Phone Number	(503) 671-2087



# TRADE ALERTS

- Issued when the right holder provides specific information on infringing imports. For example:
- Identity of the importer, distributor, manufacturer, or exporter
- Port of entry
- Estimated date of entry
- Exemplar of the suspected infringing mark
- Mode of transportation –vessel line





# TARGETING

Entering intelligence provided by the right holder and other sources into customs' computer system for accurate identification of potentially infringing importations.





# EXAMINATION

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Customs laboratory examinations



Examination of containers and freight



Mail facility examinations



# EXAMINATION

## Elements of an Exam

- Entry documentation
- Manifest Information
- Cartons or other containers
- Packing/Packaging
- Imported Merchandise



# EXAMINATION

## Responsibilities and Expertise

- Document Examination
  - Customs Inspector
  - Import Specialist
- Physical Examination
  - Customs Inspector
  - Import Specialist
  - Customs Laboratory
  - Customs HQ
  - Rights Holder
  - Other law enforcement authorities



# EXAMINATION

## Document Examination – Customs Entry

### CUSTOMS ENTRY

- Entry includes Handbags and DVDs – both top commodities for seizure
- Shipment from China – #1 country of origin for IPR seizures
- Importer used Social Security # as Importer of Record

U.S. DEPARTMENT OF HOMELAND SECURITY  
Bureau of Customs and Border Protection

Form Approved  
OMB No. 1551-0024

### ENTRY/IMMEDIATE DELIVERY

ABX LOGISTICS (USA) INC. DFW  
747 PORT AMERICA, #300  
GRAPEVINE, TEXAS 76051

ABI CERTIFIED  
ENTRY DOCUMENTS REQUIRED

19 CFR 142.3, 142.16, 142.22, 142.24 CST: 682 BOX NO. 18

1. ARRIVAL DATE 2006	2. ELECTED ENTRY DATE 501	3. ENTRY TYPE CODE/NAME 01 CNSMPTN-FR	4. ENTRY NUMBER [REDACTED]
5. PORT 501	6. SINGLE TRANS. BOND N: 421	7. BROKER/IMPORTER FILE NUMBER [REDACTED]	9. IMPORTER NUMBER SAME
8. CONSIGNEE NUMBER [REDACTED]	10. CONSIGNEE NAME [REDACTED]	11. IMPORTER OF RECORD NAME SAME	
12. CARRIER CODE SINTU SINOTRANS SHIPPIN	13. VOYAGE/FLIGHT/TRIP V41	14. LOCATION OF GOODS CODE(S)/NAME(S) V276 ST GEORGE WAREHOUSE-CFS/G	
15. VESSEL CODE/NAME SINOTRANS QINGDAO	16. U.S. PORT OF UNLOADING 2704	17. MANIFEST NUMBER	18. G.O. NUMBER
19. TOTAL VALUE 3669	20. DESCRIPTION OF MERCHANDISE HANDBAGS, MAGAZINES ARTIF JEWELRY		
21. SALUS CODE/22. ITC/AWB NO. [REDACTED]	23. MANIFEST QUANTITY 26	24. H.S. NUMBER 6202321000 6117907500 9403200020 9923210095 902902060 6524398000	25. COUNTRY OF ORIGIN CN CN CN CN CN CN
26. MANUFACTURER NO. CNBEIDAIBEI		26. MANUFACTURER NO. CNBEIDAIBEI	

27. CERTIFICATION  
I hereby make application for entry/immediate delivery. I certify that the above information is accurate, the bond is sufficient, valid, and current, and that all requirements of 19 CFR Part 142 have been met.

SIGNATURE OF APPLICANT: *Sharon Thompson* LOGISTICS (U) ATTORNEY IN-FACT  
PHONE NO: 817-488-2801 DATE: 3/17/06  
FAX: 817-488-4120

28. CBP USE ONLY  
 OTHER AGENCY ACTION REQUIRED, NAMELY:  
 CBP EXAMINATION REQUIRED.  
 ENTRY REJECTED, DETAIL:

EXAM SITE: ST GEORGE WAREHOUSE-C (Sign and date all sites)

Johnston  
Asst. Customs Officer Bordered Customs & TD's  
Shirley  
St George

DELIVERY AUTHORIZED: SIGNATURE: *Shirley Johnston* DATE: 3/31/06  
16 DVD's and other chinese medication seized from shipment.  
SZ# 2006520048916801

Paperwork Reduction Act Notice: This information is to determine the admissibility of imports into the United States and to provide the necessary information for the examination of the cargo and to establish the liability for payment of duties and taxes. Your response is necessary. The estimated average burden associated with this collection of information is 15 minutes per respondent depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Bureau of Customs and Border Protection, Information Services Branch, Washington, DC 20229 and to the Office of Management and Budget, Paperwork Reduction Project (1551-0024), Washington, DC 20503.



# EXAMINATION

## Document Examination - Invoice

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INVOICE  
 发票  
 NIA  
 DATE: FEB. 5, 2006

- Vague descriptions
- Commodities that are higher risk for counterfeiting/piracy
- No letterhead
- Although this is a small shipment we would not discount it because of the possibility of smuggled merchandise or misdescribed merchandise.

Shipped from: XINGANG, CHINA To: DALLAS USA

Account To: [REDACTED]

Marks & Nos.	Description	Quantity	Unit (USD)	Total Amount (USD)
[REDACTED]	FASHION HANDBAGS	1280 PCS	USD2.14	USD2739.20
DALLAS	KID'S FASHION HANDBAGS	620 PCS	USD0.75	USD465.00
	FASHION EARRINGS	1620 PCS	USD0.07	USD113.40
	FASHION NECKLACE	840 PCS	USD0.13	USD109.20
	FASHION BRACELET	1150 PCS	USD0.24	USD276.00
	EARRING DISPLAY	4 PCS	USD4.15	USD16.60
	FASHION JEWELRY PARTS	1000 PCS	USD0.05	USD50.00
	FASHION BELT	900 PCS	USD0.35	USD315.00
	SMALL PLASTIC BAGS	3000 PCS	USD0.005	USD15.00
	PERSONAL GOODS (NOT FOR SELL)	402 PCS	USD0.10	USD40.20
	CHINESE MAGAZINE	7 PCS	USD1.25	USD8.75
	CHINESE MOVIES	15 PCS	USD3.00	USD45.00
	DICTIONARY	2 PCS	USD225.00	USD450.00
	TOTAL	7345 PCS	NET	USD3868.50

(26 CARTONS)

16 DVD's w/ IPR violations  
 SZ # 200652 [REDACTED] / 4/20/06  
 3/21/06  
 AG

Inv 1/9/1

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# EXAMINATION

## Physical Examination

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# EXAMINATION

## Customs Laboratory

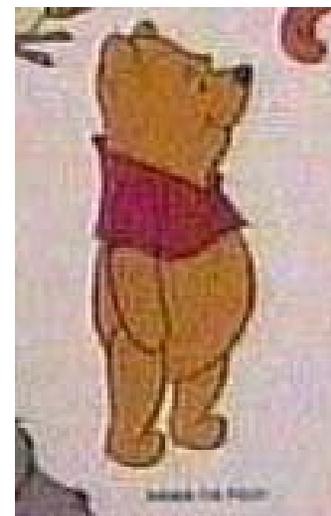
- CDs/DVDs - Look for incriminating “fingerprints”
- Analyzes ingredients in drugs
- Tests video games
- Tests toys for health and safety issues.
- May conduct post seizure testing to effect a recall of merchandise on a health and safety issue



# EXAMINATION

## Customs HQ

- Inspectors and other trade specialists may seek advice from Customs HQ when making an infringement determination.
- Consider Recordation No: COP 84-00308





# EXAMINATION

Customs HQ

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# EXAMINATION

## Rights Holder

For verification of authenticity, Customs may e-mail digital imagery to the rights holder for analysis.

In this example, the rights holder was able to respond that the item was counterfeit because:

- Genuine Chanel shirts are not shipped directly into Hanoi
- Lettering is incorrect
- Hangtags are incorrect
- Inferior Quality





# SMUGGLING TECHNIQUES

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# SMUGGLING TECHNIQUES

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# SMUGGLING TECHNIQUES

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# Infringing goods inside generic goods

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# More concealed trademarks

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# Adhesive generic brand labels used to cover infringing labels or logos...





# Adhesive generic brand labels...

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## ...or generic plastic coverings

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# More generic plastic coverings:



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## Other snap-off coverings:



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# Generic metal brand coverings:



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# Generic brand peel-off labels:

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# Generic brand paper coverings:



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## Country of origin placed on logo:

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# Packaging quality often is suspect...

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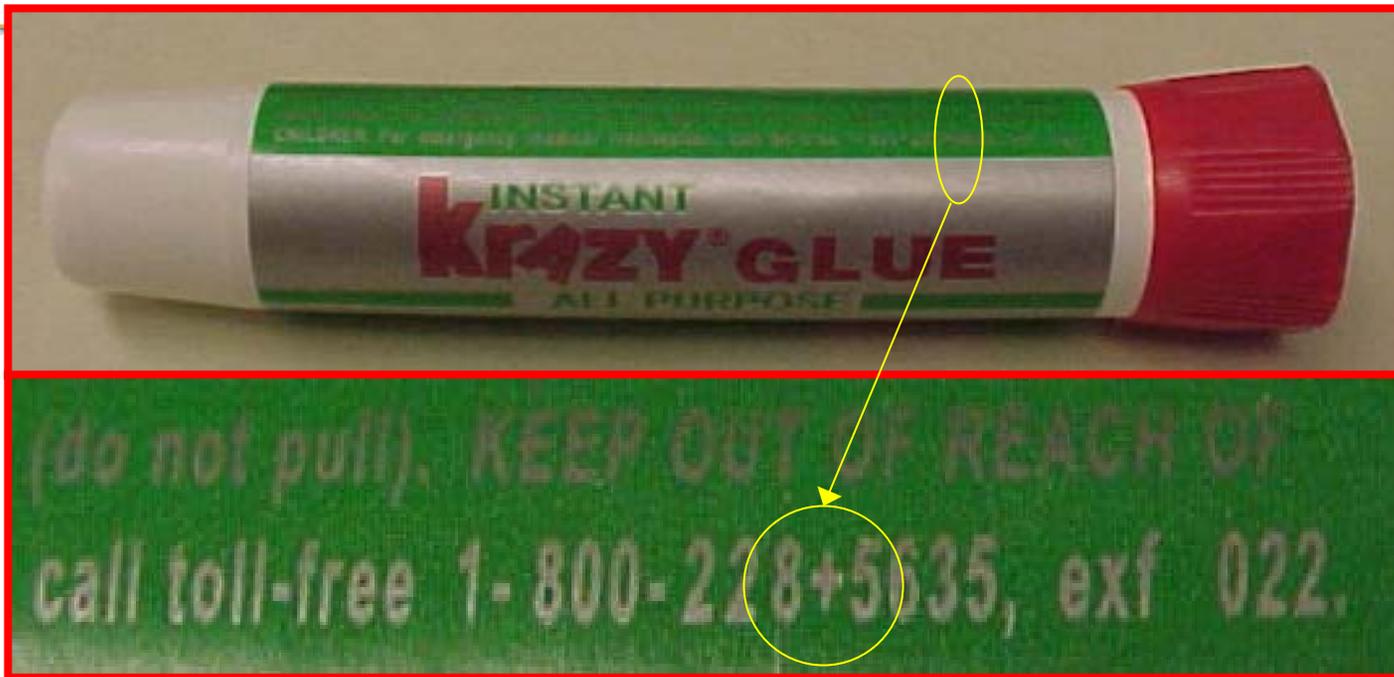


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...because of misspellings...



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...or because it's non-standard and unusual  
for the type of product:

Watches shipped in plastic or  
cellophane





# DETENTION

A temporary suspension of release until Customs can make an infringement determination.



# SEIZURE

- Violation is substantiated and the government moves to forfeit the property.
- Due process rights extended, e.g., notice of seizure and ability to petition for relief from forfeiture, right to remove from the administrative process and take the case to court, etc.
- Right holder is notified of the seizure and provided the following information:
  - 1)Date of importation
  - 2)Port of entry
  - 3)Description of the merchandise
  - 4)Quantity
  - 5)Name and address of the manufacturer
  - 6)Country of origin
  - 7)Name and address of the exporter
  - 8)Name and address of the importer
- Right holder may also request a sample of the seized merchandise



# Two Tracks of CBP IPR Enforcement

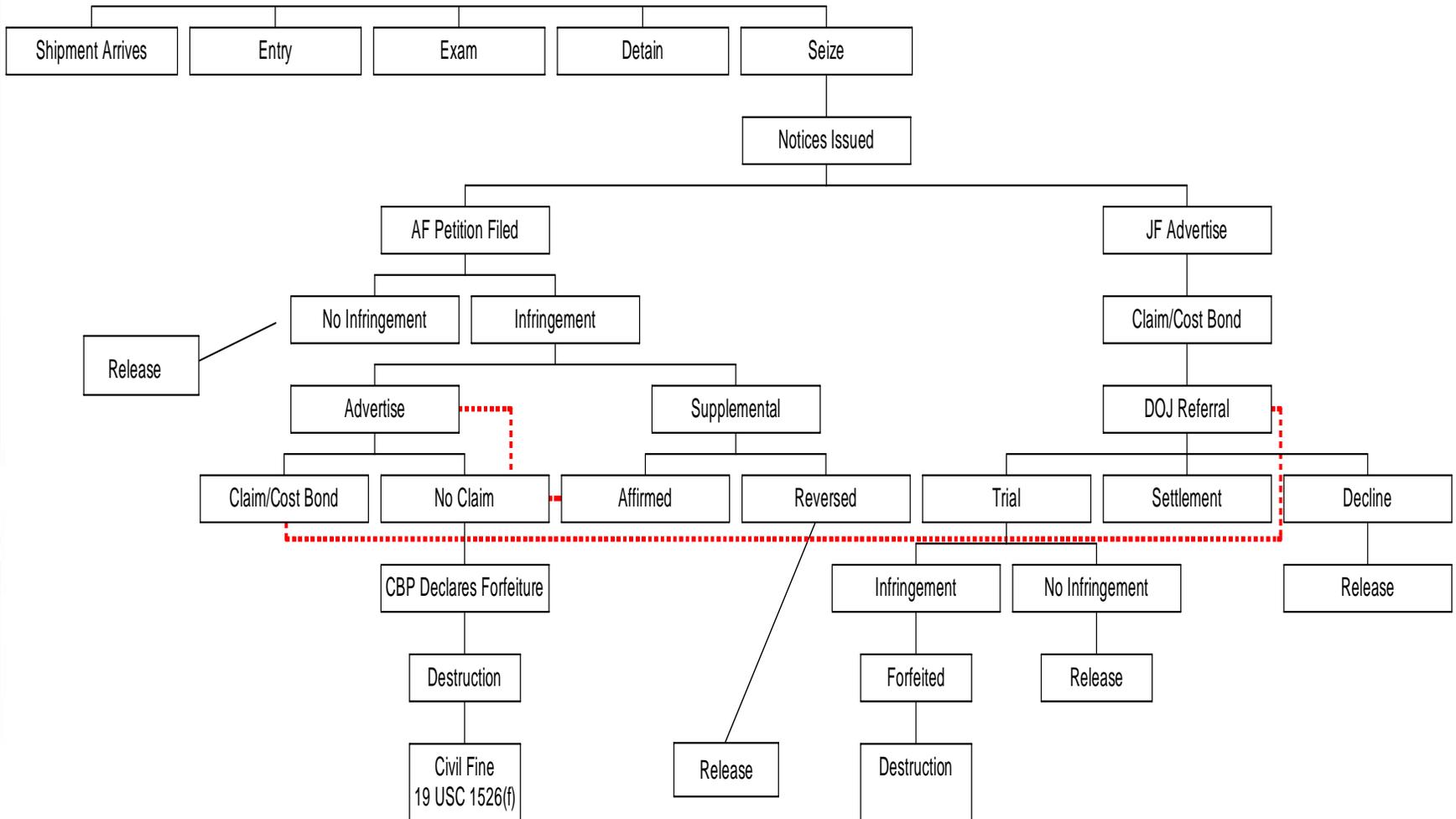
- Civil Administrative Seizure and Forfeiture
  - Title 19 U.S.C. § 1526 / 19 U.S.C § 1595a
- Criminal Case Development
  - Title 18 violations



# Enforcement Process

## Counterfeit Trademark - 19 USC 1526(e)

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# FORFEITURE

- If the importer is unable to rebut the contention that the marks are counterfeit, the goods are forfeited through the administrative process (Note that at any time during the forfeiture proceedings, the importer may opt to go “judicial”)
- Customs is the competent authority under TRIPS to make infringement determinations



# DESTRUCTION

- Once the property is legally forfeited either through the administrative process or by court order, Customs moves to destroy the property as soon as possible. Samples are retained for purposes of issuing civil penalties.
- Costs of destruction are paid by the Forfeiture Fund.
- On rare occasions, Customs – generally with the consent of the right holder – has donated forfeited property to charitable organizations



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Thank you

[todd.reves@uspto.gov](mailto:todd.reves@uspto.gov)