

Best Practices for Intellectual Property Rights (IPR) Product Identification Training

The purpose of IPR product identification trainings is for the right holder to educate CBP about its specific products and to familiarize CBP employees with the characteristics of the genuine product such that CBP employees are able to distinguish between authentic and inauthentic products. A copy of any presentation accepted by CBP for training will be maintained in a database accessible to CBP Officers, Import Specialists, and other CBP field employees. Accordingly, be sure that any information to be conveyed is appropriately displayed on the slides (not just in notes) and that written explanations of all images are included.

CBP will vet every presentation to determine whether to accept or decline a request for training. The presentation should not include legal conclusions, such as determinations that something is “counterfeit” or “infringing,” and your presentation should not direct CBP employees to take any action regarding particular goods. You should use terms like “suspect” or “allegedly infringing” to describe risk indicators of inauthenticity. Do not include any information that could be construed as legal advice which may include, but is not limited to, standards relevant to detention, probable cause, seizure, or knowledge. CBP will deny any training request that includes legal advice and right holders that address legal authorities or direct action may be barred from future training. Note, CBP may accept or decline training from IPR holders at its discretion.

Questions related to IPR enforcement may be directed to the Intellectual Property Enforcement (IPE) Branch, Regulations and Rulings, Office of Trade at HQIPRBranch@cbp.dhs.gov.

Your presentation should include:

(1) a copy of the following disclaimer statement after the title page of the presentation;

The opinions expressed herein are those of the right owner and do not necessarily reflect the position of U.S. Customs and Border Protection (CBP). Decisions as to whether or not merchandise should be detained or seized for infringing protected intellectual property rights are to be made in accordance with established procedures by CBP personnel at the appropriate management level of the concerned field office and in accordance with national policy. CBP personnel who have questions arising from this document should contact the Intellectual Property Enforcement Branch of Regulations and Rulings (IPE), at HQIPRBranch@cbp.dhs.gov

(2) a list of trademark and copyright registrations that have been recorded with CBP;

For ease of reference, please include the relevant TMK and COP reference numbers for each recordation, images of all trademarks and copyrighted works, as appropriate, and descriptions of the right if it is not immediately obvious from viewing the image. Do not include unrecorded rights.

CBP only enforces patent rights through exclusion orders. If there is an exclusion order applicable to the patent, it may be noted in the presentation. Otherwise, patent rights should not be discussed in the presentation.

(3) photographs of authentic products and packaging;

Include photographs of both current and former authentic products and packaging, along with written indications of when various products and packaging were released and/or ceased production. If there

are any unique features of the products that distinguish them from third party products and might not be obvious from a cursory review, include photographs and explanations of those features.

(4) photographs and written explanations of authenticity indicators; and

The information in the presentation should be limited to indicators of authenticity or inauthenticity that are present on the products or their packaging.

It is often helpful to include photographs of inauthentic products in order to demonstrate the differences between authentic and inauthentic products. However, do not include trade allegations, for example, do not reference suspected bad actors. Parties suspected of importing merchandise with trademark and/or copyright violations should instead be reported through CBP's e-Allegations portal along with any supporting actionable intelligence: <https://eallegations.cbp.gov/Home/Index2>. In addition, do not include information relevant to any matters involving your products that remain pending with CBP.

(5) tips for working with the right holder Point of Contact.

Each CBP recordation includes a Point of Contact ("POC") that CBP will reach out to for assistance with authenticity determinations. Ensure that the POC listed in any CBP recordation is up to date and include the POC contact information on the last slide of the presentation. If there are particular images that would assist the POC to make an authenticity determination, such as a serial number on the inside of a seam, please include this information in the presentation.