

The EU Commission publishes its report on customs enforcement of IP rights in 2015

Kluwer Trademark Blog

October 4, 2016

Bartosz Krakowiak (POLSERVICE)

Please refer to this post as: Bartosz Krakowiak, 'The EU Commission publishes its report on customs enforcement of IP rights in 2015', Kluwer Trademark Blog, October 4 2016, <http://trademarkblog.kluweriplaw.com/2016/10/04/the-eu-commission-publishes-its-report-on-customs-enforcement-of-ip-rights-in-2015/>

On September 23, 2016 the EU Commission published its Report on EU customs enforcement of intellectual property rights for 2015 – the annual publication of the result of customs actions at the EU external borders. As in previous years, the Report contains statistical information about the detentions made under customs procedures and includes data on the description, quantities and value of the goods, their provenance, the means of transport and the type of intellectual property rights that may have been infringed. The statistics were established by the Commission, based on the data transmitted by the Member States' administrations, in accordance with the Customs Enforcement Regulation (No. 608/2013).

According to the Report, customs authorities across the EU seized an estimated 5 million more potentially infringing items in 2015 than the previous year. This means that the number of intercepted goods grew by 15% compared to 2014. On the other hand, the total number of cases (each case representing an interception by customs) went down in 2015, with a decrease of 15% compared to 2014. In total, in 2015, EU customs authorities made over 81,000 detentions, consisting of a total of 43.7 million articles. The domestic retail value of the detained articles represented over 640 million euros.

The abovementioned decrease in the number of cases is explained by the

Commission by the smaller number of detentions in postal traffic. The new procedure on **small consignments**, as introduced by the Customs Enforcement Regulation (No. 608/2013) - where goods transported in small consignments can be destroyed without the need of notifying the right-holder for every shipment, provided that the right-holder has asked customs authorities in his application for action to apply this procedure - appears to have gone down by 5% compared to 2014. In this context, the Commission noted the fact that right-holders simply do not want or have renounced to apply the small consignments procedure, which may have resulted in an overall decrease of cases. No doubt, this is something which requires further analysis and discussion between the Commission and right-holders.

As in previous years, the vast majority of articles (i.e. 94% by number) detained by EU customs in 2015 were suspected of infringing a trademark. The top category of detained articles were cigarettes, which accounted for 27% of the overall amount of detained articles. Compared with 2014, there can be found a new category in the top 5, namely **labels, tags and stickers**. This is quite interesting information in the context of the new solutions provided by the new EU Trademark Directive and the revised EU Trademark Regulation in connection with so-called **preparatory acts** (including import or export of packaging, labels, tags or any other means to which a trademark is affixed), which in 2015 were of course not yet applicable.

Products for daily use and products that would be potentially dangerous to the health and safety of consumers (i.e. suspected trademark infringements concerning food and beverages, body care articles, medicines, electrical household goods and toys) accounted for a total of 25.8% of the total amount of detained articles.

No surprise, China continues to be the main country of provenance from where goods suspected of infringing IP rights were sent to the EU, followed by Montenegro (leader in cigarettes), Hong Kong (co-leader in computer equipment, mobile phones and accessories), Malaysia (leader in body care items) and Benin (leader in foodstuff). India continues to be the leader for suspected medicines.

In over 85% of all cases, customs action was started whilst the goods concerned were under an import procedure. In more than 11% of the cases, goods were discovered whilst being in transit with a destination in the EU. Standard transit and

transshipment procedures (with a final destination outside the EU) accounted altogether for only 0.41% of all cases. It can be expected that this number will significantly increase in 2016 and in the coming years, when the new solutions against **counterfeit goods in transit**, as provided by the new EU Trademark Directive and the revised EU Trademark Regulation, will be fully applicable (you can also read about the EU Commission's Transit Guidelines).

In almost 91% of the detentions, the goods were either destroyed under the standard procedure, destroyed under the procedure for small consignments or a legal action was initiated to determine the infringement. In almost 6% of the procedures, the goods were released because no action was undertaken by the right-holder after receiving the notification by the customs authorities, of which 1% concerned ex-officio procedures (without a prior application for action). In less than 3% of the detentions, customs authorities released the goods because they appeared to be non-infringing original goods.