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Law on Counterfeiting 2004 (PPG 2004)

Federal Law with which supplementing provisions on action by customs authorities concerning the circulation of goods infringing an intellectual property right are promulgated

Federal Law Gazette I No. 56/2004

The National Council has decided:

Sec.1. (1) Applications for action according to Article 5 Subsec. 1 of Council Regulation (EC) No. 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (in the following EC Counterfeiting Regulation 2004) OJ No. L 196 of August 2, 2003 p. 7 shall be received and processed by the Customs Office Villach.

(2) As far as not provided for otherwise in this Federal Law, the law on customs according to Sec.2. Subsec. 1 of the Customs Law Implementing Act (ZollR-DG) shall apply.

Sec.2. (1) In the case of an application according to Article 5 Subsec. 4 of EC Counterfeiting Regulation 2004 (Community application) which shall also be applicable in Austria and has not been filed in the German language, the right-holder shall provide the Customs Office Villach with the necessary translations at the cost of the right-holder.

(2) Costs arising to the Federation from maintaining the goods under customs control according to Article 9 or 11 of EC Counterfeiting Regulation 2004, shall be compensated for by the right-holder to the Federation.

(3) Where temporarily detained goods are stored at a customs office in the implementation of a measure according to Article 9 or 11 of the EC Counterfeiting Regulation 2004, the administrative fees to be paid according to Sec.104 Subsec. 1 of the Customs Law Implementing Act shall be paid by the right-holder.

Sec.3. (1) When the requirements according to Article 4 of the EC Counterfeiting Regulation 2004 are met, the Customs Office Villach shall inform the right-holder, provided that the latter is known or can easily be ascertained.

(2) Subsec. 1 shall also be applicable, if it is obvious for the customs authorities in their course of action within the frame of the tasks due to them that the goods are such that infringe an intellectual property right. In such cases Article 4, Article 9, Article 11 and Article 13 Subsec. 1 of the EC Counterfeiting Regulation 2004 shall be applied.

Sec.4. (1) Where release of the goods has been suspended, or the goods seized according to Article 9 Subsec. 1 of the EC Counterfeiting Regulation 2004, the declarant (Article 4 Para 18 Customs Code) or the holder of the goods in the sense of Article 38 of the Customs Code, shall be informed thereof in writing. This notification according to Article 9 Subsec. 2 of the EC Counterfeiting Regulation 2004 shall contain the following information:

a) that there shall be no need for criminal or civil court proceedings to determine whether these goods actually infringe an intellectual property right, provided that the declarant, the holder or owner of the goods and the right-holder agree to an immediate destruction of the goods under customs control according to Article 11 Subsec. 1 of the EC Counterfeiting Regulation 2004;

b) that this agreement to destruction by the declarant, holder or owner of the goods shall be presumed to have been granted, if destruction is not opposed in writing by the declarant or the holder or the owner within ten working days or in the case of easily perishable goods within three working days, calculated from receipt of the notification.

The declarant, holder or owner of the goods can directly provide the customs authorities with the declaration that an immediate destruction under customs control according to Article 11 Subsec. 1 of EC Counterfeiting Regulation 2004 is expressly agreed to.

(2) If there is no agreement to an immediate destruction under customs control, the goods shall be released according to the provisions of Article 13 of EC Counterfeiting Regulation 2004.

(3) The Customs Office Villach shall inform the right-holder as to whether the declarant, holder or owner of the goods has agreed to an immediate destruction under customs control, or whether the term within which the declarant, holder or owner may oppose destruction has elapsed unused.

(4) Subsecs 1 to 3 shall also be applied in the cases of Article 4 of EC Counterfeiting Regulation 2004, if the right-holder timely files an application for customs action according to Article 5 of the EC Counterfeiting Regulation 2004.

Sec.5. A security provided according to Article 14 Subsec. 1 of EC Counterfeiting Regulation 2004 shall be subject to forfeiture in place of the goods, where the authority competent for rendering a material decision finally determines that the goods infringe a design right, a patent, a supplementary protection certificate according to Regulation (EC) No 1768/1992 on the creation of a supplementary certificate on drugs, OJ No. L 182 of July 2, 1992 p. 1, or the Regulation (EC) No. 1610/1996 on the creation of a supplementary protection certificate for plant protection products, OJ No. L 198 of August 8, 1996 p. 30, or a plant variety right.

Sec.6. (1) In cases where the goods are to be destroyed according to Sec. 4, the customs authority shall take samples and shall keep them as evidence for possible court proceedings for the duration of six months. The remaining goods shall be destroyed at the cost and the responsibility of the right-holder, or removed from market circulation in another way, without cost to the Exchequer.

(2) With the consent of the right-holder, the goods can also be given for charitable purposes, or be utilized in another way.

Sec.7. (1) A person who transfers goods having been determined as goods infringing an intellectual property right on the basis of the proceedings according to Article 9 of EC Counterfeiting Regulation 2004 into the customs area of the Community, releases them for free circulation, takes them out of the customs area of the Community, exports or re-exports them, places them under a suspensive procedure or in a free zone, or free warehouse, commits a financial offence and shall be punished by the financial criminal authority, in the case of an intentional offence, with a fine of up to EUR 15,000.--, in the case of a negligent offence with a fine of up to EUR 4,000.--. In the case of an intentional offence, in addition to the fine, the goods shall be forfeited according to Sec. 17 of the Financial Criminal Law.

(2) A person who intentionally violates an obligation to declare and disclose according to EC Counterfeiting Regulation 2004, without hereby fulfilling another financial offence, commits the breach of financial regulations and shall be punished with a fine of up to EUR 3,625.-- by the financial criminal authority.

Sec.8. In charge of the enforcement of this Federal Law, with regard to Sec. 5, shall be the Federal Minister of Justice in agreement with the Federal Minister of Finance and, with regard to all other provisions, the Federal Minister of Finance.

Sec.9. (1) As far as this Federal Law refers to provisions of other Federal Laws, this shall be understood as a reference to the version in force at the given point.

(2) All personal indications used in this Federal Law shall equally hold for persons of both, the female and the male sex.

Sec.10. (1) This Federal Law shall enter into force on July 1, 2004.

(2) With the entering into force of this Federal Law, the Law on Counterfeiting, Federal Law Gazette I No. 65/2001, in the version of Federal Law Gazette I No. 71/2003, shall lose force. The provisions of the Counterfeiting Law shall lastly be applicable to all those cases in which the release of the goods, according to Article 4 or Article 6 Subsec. 1 of the Regulation (EC)

No. 3295/1994 on measures concerning the transfer of goods infringing certain intellectual property rights into the Community, as well as their export and re-export from the Community, OJ No. L 341 of December 30, 1994 p. 8, in the wording of the Regulation (EC) No. 241/1999, OJ No. L 27 of February 2, 1999 p. 1, has been suspended or in which the goods have been seized according to these provisions.