

Official Journal No. 5400 of 1 Safar 1427 (March 2, 2006)

Joint Order of the Minister of Finance and Privatization and the Minister of Industry, Trade and Economic Development No. 206-06 of 7 moharrem 1427 (February 6, 2006) laying down the conditions for implementation of Chapter VII relating to border measures of Law No. 17-97 on the Protection of Industrial Property.

(English version*)

The Minister of Finance and Privatization,

The Minister of Industry, Trade and Economic Development,

Considering Law No. 17-97 on the Protection of Industrial Property enacted by Dahir **No. 1-00-19** of 9 Kaada 1420 (February 15, 2000), as amended and supplemented;

Considering the Customs and Excise Code of the Customs and Excise Authority approved by the Dahir relating to Law **No. 1-77-339** of 25 Chaoual 1397 (October 9, 1977), as amended and supplemented;

Considering Decree **No. 2-00-368** of 18 Rabii II 1425 (June 7, 2004) for the application of Law No. 17-97 on the Protection of Industrial Property, as amended and supplemented,

Order:

Article 1: The application to suspend the release into free circulation of merchandise suspected of being counterfeit, provided for in Article 176-1 of Law No. 17-97 on the Protection of Industrial Property as amended and supplemented, shall be drawn up based on the model adopted by the Customs and Excise Authority.

The owner of the registered trademark or the beneficiary of an exclusive exploitation right shall prove his/her rights by all means on that mark and attach to his/her application all documents enabling that merchandise to be identified. He/she shall specify the date when the rights protection expires.

* Courtesy translation provided by WIPO.

At any time, the applicant shall provide any other useful information he/she may have to allow the Customs and Excise Authority to make an informed decision.

Where the suspension application is filed by a representative, he/she shall attach proof of proxy to the application.

The suspension application shall be valid for a period of one year or for the period of protection that remains where this is less than one year.

The interested party may file, 30 days before the expiry of the above-mentioned deadline, an application to renew the suspension of the release into free circulation for a maximum period of one year, provided that this does not exceed the remaining term of protection.

Article 2: The application shall be filed with the Customs and Excise Authority, which shall process the file and inform the applicant of the outcome of his/her application, within no more than 30 days.

While the file is being processed, the Customs and Excise Authority may demand from the applicant any proof likely to establish his/her rights in the mark.

The applicant shall sign an undertaking based on the model adopted by the Customs and Excise Authority to:

- inform the Customs and Excise Authority of any change to the elements that gave rise to the application and, in particular, the loss of his/her right;
- communicate as soon as possible to the Customs Department that implemented the suspension of the release into free circulation of suspected counterfeit merchandise, the decisions of the legal authority ruling on the counterfeiting, as well as any other decision relating to the settlement of the case;
- provide proof to the department that implemented the suspension of the release into free circulation of suspected counterfeit merchandise, within 10 working days of the notification of the measure taken:
 - of provisional measures ordered by the President of the court;
 - or of legal actions brought and the provision of security fixed by the court.

Failure to submit documents proving the above measures or actions within the above-mentioned deadline shall result in the merchandise being released *ipso jure*.

At the request of the owner of the recorded mark or the beneficiary of an exclusive exploitation right, the suspension measure shall also be lifted if the latter produces, within 10 working days of the suspension date, any document likely to call into question the above-mentioned measure.

Article 3: Where the Customs and Excise Authority, upon application, suspends the release into free circulation of suspected counterfeit merchandise, it shall communicate to the interested party, at his/her request, the information referred to in Article 176.3 of the above-mentioned Law No. 17-97.

Article 4: Where the Customs and Excise Authority suspends the release into free circulation of suspected counterfeit merchandise as of right, it shall without delay inform the holder of the rights or his/her representative of the measure taken and shall invite him/her to file, within 10 working days, proof of the provisional measures or the legal action brought and the provision of security to the court.

The declarant or the holder of rights shall also be informed without delay of the suspension measure taken.

In order to bring legal action, the rights holder or his/her representative may, upon request, obtain from the Customs and Excise Authority the information needed for that purpose.

If the rights holder or his/her representative fails to submit the documents providing proof of the measures or actions referred to above within the above-mentioned deadline, the merchandise shall be released *ipso jure*.

Article 5: The Authority shall check with the Moroccan Industrial and Commercial Property Office the registration of the mark, its term of protection and the rights of the mark owner.

Article 6: The owner of the rights or his/her representative shall communicate to the Customs and Excise Authority an extract of the court decision that has become final as soon as notification thereof is received.

The above-mentioned court decision shall be implemented in accordance with the rules of ordinary law.

Article 7: The Customs and Excise Authority and the Moroccan Office of Industrial and Commercial Property shall be responsible for implementing this Order which shall take effect from the date of its publication in the *Official Journal*.

Rabat, 7 Moharrem 1427 (February 6, 2006).

The Minister of Finance and Privatization,

Fathallah Oualalou

The Minister of Industry, Trade and Economic Development,

Salaheddine Mezouar
