

Borders Enforcement – France

Summary of legislation

In France the Custom's enforcement regime results from two legislative sources that accumulate, i.e.:

- domestic law (i)
- and European law (ii).

(i) Domestic law

The French Intellectual Property Code and the French Customs Code (*Code des Douanes*) organize two different kind of measures:

- the provisional detention of goods suspected of infringing IP rights;
- and an autonomous repression of IP infringements at the customs level.

In the French Intellectual Property Code, articles L.335-10 for author rights, L.521-14 to L.521-19 for national designs, L.716-8 to L.716-8-6 for national registered Trademarks, L.615-5-2 for patents, L.623-27-2 for Plant Varieties and L.722-5 for Geographical Indications determine the general legal regime of the provisional detention of goods suspected of infringing the above IP rights. Each time, the general framework is the following:

- the right-holder file an application to request a surveillance by the Customs of possible further infringements of one of its IP right ;
- after granting the surveillance, the Customs may report, on a case by case basis, possible and suspected infringement acts;
- if the right-holder confirms the infringement, the suspected goods are detained by the Customs during ten days;
- the right-holder must then commence Court action to keep the detention until judgement be rendered on the merit.

In addition, the French Customs Code provides an autonomous repression of certain IP infringements pursuant, in particular, to articles 38, 39, 40, 215 and 215 ter, 323, 414, 426, 428 and 437. These IP infringements are likened to the Custom offense of smuggling, enabling the Customs to seize the suspected goods and sue the alleged infringers notwithstanding the lack of any action from the right-holder.

(ii) European law

In addition to the domestic law, the European regulation n°608/2013/EC of June, 12, 2013 provides with an accumulative system of detention of goods suspected of infringing most of IP rights. The European regime is close to the domestic one, a part from a certain number of nuances, in particular with regard to the possible settlements, the destructions of the suspected goods, the goods carried by passengers in their personal luggage and the small quantities.

The European regime is exclusively applicable to goods entering or leaving the territory of the European Union (article 1.1.b of the Regulation) and, consequently, only the domestic regime can be applied to goods imported from the EU or exported within the EU. Infringement resulting from illegal parallel trade and overruns are also excluded from the protection provided by the Regulation (point 6 of the preamble) and theoretically this exclusion does not exist in French law although the French Customs appears to be extremely reluctant in this regard.

Jurisdiction

Different types of Courts may have jurisdiction depending on the subject matter of the dispute, in particular:

- *Tribunal d'Instance;*
- *Chambre civile du Tribunal de Grande Instance;*
- *Chambre correctionnelle du Tribunal de Grande Instance.*

Domestic industry Requirement

There is no domestic industry requirement in French law, nor in European law.

Parties

Different parties are involved, i.e.:

- The right-holder;
- The Customs;
- The owner or of the suspected goods or their Destinee and representatives, such as the declarant;
- The Attorney General.

Jury

There are no juries for these types of proceedings.

Procedure

With regard to the detention of goods, the following general framework is reminded:

- the right-holder file an application to request a surveillance by the Customs of possible further infringements of one of its IP right ;
- after granting the surveillance, the Customs may report, on a case by case basis, possible and suspected infringement acts;
- if the right-holder confirms the infringement, the suspected goods are detained by the Customs during ten days;

- the right-holder must then commence Court action to keep the detention until judgement be rendered on the merit.

In addition, notwithstanding any possible detention, the Customs may seize the suspected goods and sue the alleged infringers for smuggling, even without the right-holder and the Attorney General.

Remedies

In France the damages suffered by the civil party (the right-holder) because of infringing acts are henceforth more substantial by virtue of more favorable rules (with a possible cumulative compensation for moral damages, the restitutions of the profits of the infringer in addition to the losses suffered or, alternately, compensatory royalties fees exceeding contractual royalties).

Statutory Deposit of right holder

This option is theoretically available in both French and European laws and this, upon request of the owner of the suspected goods or their Destinee before the Court but, on a practical point of view, security deposits are rarely ordered.

Review

Different recourses are available depending again on the subject matter of the dispute and judgements rendered at the first instance stage are subject to appeal and, thereafter, only for noncompliance with the rules of law, before the *Cour de cassation* (the French Supreme Court).