

New Approach To Seize Containers Through Court Orders

Omar Obeidat - Partner, Head of Competition and Intellectual Property - Intellectual Property / Competition

o.obeidat@tamimi.com - Dubai International Financial Centre

In some cases, and especially with goods in transit, administrative complaints are not accommodated and hence the right holders' option is to seek a court order. The common way to stop containers by way of a court order is to seek a preventive seizure decision from the court circuit allocated to address expedited requests.

This is an ex parte procedure which is subject to a financial security to be provided by applicant seeking the attachment order. Such security, which is determined by the Judge, would be kept with the court and be used for compensating the owner of the goods seized in case the owner is awarded damages as a result of this seizure. But when it comes to counterfeit goods, it is usually difficult to determine the financial security, because either the value of goods are difficult to determine, whether due to the counterfeit goods stuffed into container are mixed with genuine goods or with unrelated goods, or as in other cases, description of the goods on the bills of lading do not match the actual goods being shipped to avoid scrutiny by the customs authorities or to evade higher excise duties imposed to certain category of goods. Even in the event the court has determined a fixed amount as a financial security, this amount may remain on hold for several years particularly if the owner of the goods files a civil claim against the applicant on the basis of a wrongful infringement complaint. All these reasons have caused a trademark owner to rarely resort to expedited court order to stop and seize containers.

In a recent case, we had to resort to the court to stop a container in respect of goods arriving to the UAE port, the goods in transit. In order for the court to grant an expedited order to seize goods coming in transit, the court determined a substantially high financial security to be placed with the court before granting the preventive seizure. At this point, we amended our petition to the judge requesting a detailed report disclosing the types of goods and quantities subject of the container as a legal exercise is necessary to allow us to determine their estimated value of the goods in order to formally request the court to place an attachment order against each goods. Essentially this amended petition, served these same objectives as an attachment order against the container, in that it forced the customs authorities to seize the container and prevent it from being discharged, cleared or re-exported.

The order was obtained successfully from the Dubai Courts and enforced against a container for goods in transit, allowing both the trademark owner and the court to be able to receive a full report of the suspected shipment and determine whether to proceed in taking legal action to enforce trademark rights.