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January 13, 2021

Via email: ps.ministerofpublicsafety-ministredelasecuritepublique.sp@canada.ca

The Honourable Bill Blair, P.C., M.P.
Minister of Public Safety and Emergency Preparedness
House of Commons
Ottawa, ON K1A 0A6

Dear Minister Blair:

Re: CBA Support for IPIC's White Paper on CBSA / Request for Assistance Program

I write on behalf of the Intellectual Property Law Section of the Canadian Bar Association (CBA Section), and its Anti-Counterfeiting and Trade Offences Committee, to endorse the Intellectual Property Institute of Canada's (IPIC) Anti-Counterfeiting Committee's White Paper on the Canada Border Services Agency's Request for Assistance Program (RFA), submitted to you on December 17, 2020. We support IPIC's call for stronger legislation and policies to buttress the RFA system and better combat counterfeiting in Canada.

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers, and students with a mandate to seek improvements in the law and the administration of justice. The CBA Section examines ownership, licensing and transfer and protection of intellectual property rights. The Anti-Counterfeiting and Trade Offences Committee's areas of concern relate to counterfeiting, competition law and trade offenses, and their impact on intellectual property law.

Counterfeiting is a significant, global and ongoing problem. Several compelling studies outline the increasing volumes and detrimental impacts of the illicit trade in counterfeit goods and pirated works. Robust empirical evidence demonstrates the impact of illicit trade activities on governance, public safety and the rule of law, the negative effects on the legitimate competitive advantage of intellectual property rights owners (Rights Holders), and the ensuing repercussions for innovation, employment and long-term economic growth.

In 2015, Canada implemented the RFA program, a novel border enforcement protocol empowering Customs officers to detain counterfeit trademark goods and pirated copyright works at the border. The CBA Section has tracked and reviewed the effectiveness and efficiency of the RFA system, finding it to be cumbersome and placing disproportionate financial and procedural burdens on Rights Holders. We support IPIC's call for stronger legislation and policies to buttress the RFA system and better combat counterfeiting in Canada.

The CBA Section endorses the RFA Paper's submissions and recommendations including:

- Rights Holders offering direct product identification training to CBSA officers via no-charge online webinars and in-person presentations
- Appointing task dedicated customs officers with the detention of counterfeit goods being imported into, exported out of, or moving in-transit through, Canada
- Allowing Rights Holders and their representatives to review and confirm information on file with CBSA with respect to their RFA
- Simplifying renewal requests
- Ensuring predictable and consistent expiry/renewal anniversaries for RFAs
- Implementing a revenue neutral, simplified administrative procedure for abandonment and destruction, without judicial intervention, of uncontested counterfeit goods
- Facilitating coordination and information-sharing among consenting Rights Holders implicated in the same import
- Streamlining the recordal of publicly available information as between CIPO and CBSA with respect to changes in intellectual property ownership, validity and scope of rights.

We trust our comments are helpful and would be pleased to offer further clarification. You can contact me at gdanzig@ksllaw.com for further information.

Yours truly,

(original letter signed by Julie Terrien for Georgina Starkman Danzig)

Georgina Starkman Danzig
Chair, CBA Intellectual Property Section

cc. Adam Kingsley, IPIC CEO akingsley@ipic.ca
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