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**Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600**

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**INTA Submission to the Australian Senate's Legal and Constitutional Affairs Legislation Committee  
on the Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026**

**INTRODUCTION**

The International Trademark Association (INTA) welcomes the opportunity to provide input to the Australian Senate's Legal and Constitutional Affairs Legislation Committee on the Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026 (the Bill). The Bill amends the Commerce (Trade Descriptions) Act 1905 (the CTD Act) and the Customs Regulation 2015 to:

1. Establish a new strict liability offence for the importation of goods bearing false trade marks; and
2. Prescribe the new offence in the Customs Infringement Notice Scheme (INS).

INTA is a global association of brand owners and intellectual property professionals. Our members include more than 6,700 organizations across 185 jurisdictions, representing over 37,000 professionals. Many INTA members operate in, export to, or supply the Australian market, and routinely work with Australian enforcement authorities to reduce the harms caused by counterfeit trade, including consumer safety risks, lost legitimate revenue, and the diversion of resources into enforcement rather than innovation.

INTA understands the proposed amendment will create a regime that would operate alongside the existing IP Notice of Objection regime, providing the Australian Government with an additional enforcement pathway against importers of counterfeit goods. The reforms are intended to address practices where importers seek to overwhelm the ABF's screening processes by sending multiple consignments of counterfeit goods, treating forfeiture or abandonment of seized goods as a "cost of doing business", and recouping losses through consignments that evade detection.

INTA supports the objective of strengthening practical deterrence against counterfeit importation. Our comments focus on how the scheme can best deliver that deterrence while remaining targeted, transparent, and operationally workable alongside the existing Notice of Objection (NOO) framework.

INTA understands that if enacted, the amendments will confer on the ABF a discretionary power to issue an infringement notice to importers imposing a financial penalty. The proposed maximum financial penalty is 60 penalty units (AUD19, 800 which is c. USD14,000 per offence) for the importation of "goods with false trade marks". Relevant considerations in determining when to exercise their discretion include whether the importer is a first-time offender, whether there has been any genuine mistake of fact, the overall quantity of seized goods, and the type of goods seized with regard to community safety.

INTA works closely with brand owners and key enforcement stakeholders in Australia, including the Australian Border Force (ABF), on the enforcement of IP rights and advocacy initiatives seeking to combat the importation of counterfeit products into the Australian market. We have summarized our comments into three main areas:



1. Counterfeit importation into Australia
2. Practical impacts of the Customs Infringement Notice Scheme
3. Suggested Safeguards and Design Features - Recommendations

## INTA COMMENTS

### 1. Counterfeit importation into Australia

INTA members report that counterfeit importation into Australia remains a significant issue, notwithstanding the absence of comprehensive, publicly available ABF seizure data. There appears to be very limited production of counterfeit goods in Australia and relatively high demand for fake goods. The following observations support this assessment:

#### Scale and persistence of the problem

INTA notes that the ABF has not published recent, detailed statistics on counterfeit goods seizures, which itself reflects a measurement gap that hampers effective policy evaluation. However, the practical experience of brand owners and their legal advisers indicates that counterfeit importation is persistent.

- Demand from brand owners for proactive enforcement tools, including product training sessions with Customs officers, has grown noticeably in recent years. Recent training sessions were 'sold out' within weeks, and we are being called upon to assist brand owners in training presentations to Customs.
- IP Australia's recent [case study](#) on counterfeit Toyota parts reflects the urgency felt by brand owners to work with ABF, especially when it relates to goods that can directly impact consumer health and safety.

#### Primary points of entry and routes

INTA members report that counterfeits are observed coming into the main ports in Australia: Sydney, Melbourne, Perth and Brisbane. The primary methods by which counterfeit goods enter Australia are:

- International mail and express courier services: The proliferation of small-parcel e-commerce shipments has made this the dominant channel. Individual consignments are frequently below *de minimis* thresholds and are difficult to inspect at scale, making detection resource-intensive.
- Online sales platforms: Counterfeit goods are increasingly sourced through major online marketplaces and social-media-driven sales channels, with goods shipped directly to Australian consumers. This model fragments enforcement risk across a large number of individual, low-value transactions rather than concentrating it in a small number of bulk commercial shipments.
- Air freight and sea cargo remain relevant entry points for larger commercial consignments, but the trend we are seeing is towards smaller, more frequent parcels designed to reduce per-shipment exposure.

#### Trends supporting the need for stronger deterrence

Several trends support the case for enhanced deterrence:

- **Repeat importers and multiple consignments:** Brand owners and their advisers regularly observe the same entities — or entities operating under different names but with common beneficial ownership — making repeated importations after goods are seized and forfeited. The current framework, under which the principal consequence of seizure is forfeiture of the goods, functions as a business cost that sophisticated repeat importers have priced into their model. There is no financial penalty that attaches to the individual or entity personally beyond the loss of the consignment.



- **Small-parcel fragmentation:** The deliberate use of multiple small consignments — each below levels likely to trigger intensive examination — is a well-documented evasion strategy. This approach exploits the resource constraints of border inspection regimes and makes aggregate enforcement data difficult to compile.
- **Social-media-driven demand:** The use of social media platforms to market and sell counterfeit goods to Australian consumers has grown substantially. Demand is generated domestically through influencer promotion and direct-to-consumer advertising, with fulfilment occurring via international mail. This model is particularly difficult to address through trade mark owner-initiated civil litigation, given the diffuse and often anonymous nature of the sellers.
- **Counterfeit currency as a parallel indicator:** While not an IP matter, it is notable that reports indicate ABF seized large quantities of counterfeit currency in the first six weeks of 2026 alone.<sup>1</sup> This dramatic surge, while relating to a different category of contraband, illustrates both the increased sophistication and volume of goods being introduced through Australia's border, and the ABF's capacity constraints in addressing multiple concurrent enforcement priorities.
- **Increasing adoption of detection technology by brand owners:** The growing investment by brand owners in software tools designed to identify sources of online counterfeit goods reflects the inadequacy of existing enforcement mechanisms.

## 2. Practical impacts of the Customs Infringement Notice Scheme

INTA understands the Bill would provide ABF with discretion to issue infringement notices carrying a maximum penalty of 60 penalty units (AUD \$19,800) per offence for importing “goods with false trademarks.” The availability of a financial penalty has real potential to improve deterrence, particularly for repeat conduct and small-parcel strategies, because it can attach a consequence beyond loss of goods which is currently missing.

However, INTA emphasizes that deterrence will depend on implementation, including:

- Consistency and visibility of use. A penalty that exists but is rarely used is unlikely to shift importer behavior at scale.
- How does the INS interact with the NOO pathway. The scheme should not unintentionally create incentives for procedural gaming (for example, using claims-for-release dynamics to avoid financial consequences), especially in the small-parcel context where brand owner litigation is least commercially viable.
- ABF operational clarity. Clear, published criteria for when notices will be issued will help ensure predictability, fairness, and targeting.

INTA therefore supports the concept of the INS extension, while encouraging the Committee to ensure that the scheme's design will reliably reach the repeat, commercial counterfeiter — the bad actor the reform is intended to deter.

## 3. Safeguards and Design Features - Recommendations

INTA broadly supports the infringement notice mechanism as a proportionate addition to Australia's anticounterfeiting toolkit but highlights several design and safeguards issues to ensure the measure is fair, targeted, and effective in practice.

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<sup>1</sup> <https://www.abc.net.au/news/2026-03-18/counterfeit-cash-on-the-rise-throughout-australia/106419784>



#### **A. Timing and interaction with the NOO framework**

A central operational issue is sequencing: INTA understands notices are expected to be issued only after forfeiture and after the NOO process concludes.

INTA recognizes the importance of preserving the NOO pathway for matters where rights holders may wish to pursue remedies beyond forfeiture. At the same time, INTA recommends explicit public guidance on how INS and NOO will operate together in practice, particularly for small consignments, where brand owner-led proceedings are least likely to be commercially viable and procedural incentives may undermine deterrence.

**Recommendation:** publish clear operational guidance on INS/NOO interaction, including how ABF will approach small-parcel matters and repeat behavior patterns.

#### **B. Targeting: keep the scheme focused on commercial counterfeiters**

Because the offence is strict liability, INTA considers it important that ABF apply the scheme using published criteria that reflect the intended target: commercial counterfeit importation rather than inadvertent or technical cases.

**Recommendation:** ABF (with IP Australia support) should provide accessible guidance on categories of goods/circumstances where infringement notices will and will not be issued and confirm that the regime is directed at commercial counterfeiting.

#### **C. Proportionality and repeat conduct**

INTA notes the Bill's deterrent value is strongest where it addresses repeat behavior. The ability to respond to multiple consignments and patterns matters.

**Recommendation:** consider policy settings for repeat/recidivist activity (through guidance and use of discretion) that explicitly account for how prior notices or seizures will inform decisions, and how ABF can address fragmented consignments that are part of a coordinated importation approach including those impacting different brand owners.

#### **D. Procedural fairness and clarity for recipients**

INTA supports safeguards that ensure fairness, including clear information for notice of recipients and workable review pathways. The existing Customs Infringement Notice Scheme provides a recipient of an infringement notice with the right to elect to be prosecuted for the offence rather than pay the penalty, as well as to seek internal review. These features are important protections and should be preserved and clearly communicated in the context of the new offence.

**Recommendation:** infringement notices should clearly explain, in plain language, the basis for issuance (trade mark relied on, why goods are considered to bear a false trade mark, and the options available to the recipient).

#### **E. Evidentiary consistency and brand-owner engagement**

INTA members frequently support enforcement through training and authentication tools. Consistency across ports and streams is important to credibility and effectiveness.

**Recommendation:** develop and publish operational standards for evidentiary assessment, including how brand-owner information (training materials, authentication guides) will be used, and practical mechanisms for timely brand-owner input where appropriate. INTA members also report that brand owner trainings are often quickly oversubscribed and would recommend making more opportunities available. INTA is ready to support this.

#### **F. Transparency and measurement**

INTA members report that a recurring challenge in this area is the limited availability of public data needed to evaluate what the Australian border seizure picture looks like over time.



**Recommendation:** commit to collecting and publishing aggregated data on infringement notices issued, contested, and outcomes (without compromising operational security), and where feasible data that allows the INS impact and its proportionality to be evaluated.

## CONCLUSION

INTA supports the Bill's objective of strengthening deterrence against counterfeit importation by adding a practical financial consequence to complement existing border measures. The purpose is to make counterfeit importers' business model unprofitable on the basis the value of the seized goods together with the amount of the penalty specified in an infringement notice may exceed the profits realized from consignments of infringing goods that escape detection.

INTA welcomes the that no further regulatory burden is being imposed on brand owners to ensure the effectiveness of the scheme; and, that lawful importers and those who may be genuinely mistaken as to the nature of imported goods will not be targeted within the scheme.

As the new infringement notice regime will operate alongside the existing Notice of Objection (NOO) framework under the Trade Marks Act 1995, Care should be taken to ensure that the two regimes interact coherently, and that the introduction of the infringement notice pathway does not inadvertently reduce trade mark owners' incentives or ability to engage with the NOO process where that process remains the appropriate mechanism (for example, in relation to higher-value consignments or consignments where the trade mark owner wishes to pursue the importer for damages).

INTA recommends that the Australian Government provides explicit guidance on how the two regimes are intended to interact in practice, and in particular on whether and how a trade mark owner's engagement (or non-engagement) with the NOO process will affect the ABF's decision to issue an infringement notice.

In conclusion, this Bill offers a practical, proportionate, and welcome mechanism to supplement the measures available to address challenges posed by counterfeit imports, supporting Australian rights owners, businesses and consumers.

## CONTACTS

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## ABOUT INTA

The International Trademark Association (INTA) is a global association of brand owners and professionals dedicated to supporting trademarks and complementary intellectual property to foster consumer trust, economic growth, and innovation. Our membership includes more than 6,700 organizations from 185 jurisdictions, representing over 37,000 professionals.