

14 April 2026

Ms Tanya Spisbah  
Committee Secretary  
The Senate Legal and Constitutional Affairs  
Legislation Committee  
Parliament House  
CANBERRA ACT 2600

### Submission to the Senate Legal and Constitutional Affairs Committee

#### Inquiry into the Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026

Dear Ms Spisbah

This submission is made in response to the letter addressed to me dated 2 April 2026 by the Senate Legal Constitutional Affairs Legislation Committee. I greatly appreciate this opportunity to make a submission in respect of the Customs Legislation Amendment (**False Trade Marks Infringement Notices) Bill 2026 (the Bill)**.

I am a partner in the national independent law firm Corrs Chambers Westgarth (**Corrs**), having commenced working at Corrs in 1999. Before that, I was a Partner in the law firm then known as Freehill Hollingdale & Page having started at that firm in 1979 and having become a partner in 1985. My work in the anti-counterfeiting area was one of the earliest work types on which I focused, commencing in this area in about May 1979. I am also and have since in or about 1985 been a member of the Intellectual Property Committee of the Law Council of Australia.

Over the last 47 years, my work has included a significant focus on assisting a very broad range of companies, including Australian and global companies, in protecting their brands against, amongst other things, the importation into and sale in Australia of products bearing counterfeit trade marks.

Since I have been at Corrs Chambers Westgarth, I estimate from our records and anti-counterfeiting database that I have sent well in excess of 15,000 letters of demand and warning notices to importers and vendors of counterfeit products.

The list of clients for which I have acted in anti-counterfeiting matters includes (but is not limited to) those companies named in the **Annexure** to this submission for which I have lodged notices with the Australian Border Force under Section 132 of the *Trade Marks Act 1995* (Cwlth). The list attached is merely of my current clients for which such notices have been lodged.

The comments and submissions below are made on my own behalf. However, in the short time allowed, I have managed to obtain instructions from the following companies and organisations. Each has instructed me to inform the Committee that they support the proposed new legalisation.

- 5.11 Inc
- Acushnet Company
- Bureau National Interprofessionnel du Cognac

- Christian Louboutin
- Crocs, Inc.
- Country Road Group (Country Road, Mimco and Witchery Clothing)
- Hugo Boss AG
- Jibbitz, Inc.
- Kering (Balenciaga, Bottega Veneta, Gucci and Yves Saint Laurent)
- LVMH
- MF Brands (Lacoste and Gant)
- NBA Properties, Inc.
- Otter Products, LLC
- Pit Viper
- SDI Limited
- Trademark Management (a firm that represents several brand owners with trade marks registered with the Australian Border Force)
- Treefrog Developments Inc
- Unifab - Union des Fabricants pour la Protection Internationale de la Propriété Intellectuelle (<https://www.unifab.com/en/history-2/> )

None of my clients listed in the Annexure have indicated that they do not support the legislation and several have understandably informed me that their internal processes will take too long to run through, meaning that the 14 April 2026 deadline for this submission is too short a time frame for them. If any extension is able to be granted, I may be able to obtain further support from my clients.

The current process for protecting trade marks at the Australian border against importation of infringements (which are invariably counterfeits) is one that has been in place since at least the 1955 Trade Marks legislation came into force. That process, as your Committee will now certainly know, requires trade mark proprietors not only to register their trade marks with the Australian Border Force but, more importantly, when informed by the Australian Border Force that a shipment into Australia of products that bear counterfeit trade marks (**counterfeit products**), to take full responsibility for preventing that importation.

When my clients (who I refer to as **brand owners**) are informed by the Australian Border Force that its officers have detained counterfeit products being imported into Australia, we send warning notices or letters of demand on behalf of the relevant brand owners to the importers, demanding that they voluntarily agree to have the counterfeit products forfeited to the Commonwealth for destruction.

If the importer does not agree to having the counterfeit products forfeited for destruction, then unless a court action is initiated taken by the brand owner within a specific deadline, the counterfeit products will be automatically released to the importer by the Australian Border Force. This is the case even where the products are clearly counterfeits and even where it is clear from the circumstances that the counterfeit products are not imported for anything other than for sale.

If the commencement of a court action by the brand owner does not result in the importer voluntarily consenting to the detained counterfeit products being forfeited for destruction, it is then an obligation on the brand owner to obtain a court injunction within a limited time frame preventing the release by the Australian Border Force of the counterfeit products to the importer or else again the Australian Border Force is required by the *Trade Marks Act 1995* to release the counterfeit products to the importer.

For the last 20 or so years, it has been the common practice of counterfeiters to import into Australia relatively small numbers of counterfeit products in each shipment, commonly less than 20 per shipment. This is done not only in Australia but also globally on the basis that it is not worth the time or money or effort for brand owners (like my clients) to have to initiate court action against every importer of detained counterfeit products.

Certainly, the brand owners for which I have acted are generally not prepared to institute a court action where there have been, say, 20 or so (or even less) counterfeit products in a shipment detained by the Australian Border Force.

Given the high number of seizures over the years, this is not at all unexpected. The costs of any court action are not insignificant. Even the slickest and fastest legal team cannot launch court proceedings (almost inevitably in the Federal Court of Australia), serve the court proceedings and then obtain an injunction for less than about \$10,000 (especially given that the court fees for launching a Federal Court action are now \$5,000). When one adds the cost of preparing, issuing and serving the court documents, making an application for injunctive relief, providing evidence in affidavit form establishing that the counterfeit products are not genuine, and then attending a court hearing seeking an injunction, the costs can readily escalate to well in excess of \$10,000 to \$15,000 (at the very least). Where 20 or even fewer counterfeit products are at stake, it is quite clear that such a cost is simply unsustainable given the number of seizures that are made of counterfeit products by the Australian Border Force.

Over the last 15 or so years, there have been a number of legal and administrative changes made to the processes that have been applicable to the detention of imported counterfeit goods. These have greatly reduced the number of persons who have refused or failed to consent to the forfeiture of the detained counterfeit goods. However, the market for counterfeit products in Australia is still booming. Moreover, the number of seizures by the Australian Border Force (in respect of which we send warning notices or letters of demand) is still not small. I set out below a table showing the number of letters of demand or warning notices that I have sent out for my clients over the last five years. As can be seen, the number of seizures is still very high.

Year	No. of cases
2019	228
2020	380
2021	1076 COVID
2022	777 COVID
2023	518
2024	446
2025	266

The overwhelming majority of these letters were in respect of seizures of less than 20 products.

It has certainly been my experience, and it is well known amongst brand owners and their respective lawyers that;

1. the number of parcels or shipments that can be inspected by the Australian Border Force (whether in Australia or elsewhere) is well less than 5% of all shipments;
2. most counterfeiters treat the prospect of seizures and the loss of counterfeit products seized simply as a cost of doing business which, given the production cost of counterfeit products, is minimal; and
3. letters of demand and warning notices from brand owners can be simply readily ignored as the cost of taking action is, as mentioned the above, simply not cost-effective.

In all of these circumstances, the cost of policing the importation of counterfeit products and the cost of taking steps to try to prevent their importation is simply not feasible especially given that brand owners of global brands are facing this problem in virtually every country of the world.

Equally importantly is the fact that importation and sale of counterfeit products is clearly a criminal offence under the Trade Marks Act 1995 Part XIV. Private criminal prosecutions have been launched on two occasions in Australia but neither has been able to be run to a conclusion as a private criminal prosecution is actually not feasible under the Australian criminal system. It is the Director of Public Prosecutions who has the final and determinative role to play in actually initiating a prosecution and,

as one can readily imagine, the DPP has minimal interest in devoting its resources to the importation of counterfeit products.

This leaves the entire burden of both protecting their own brands and protecting consumers against counterfeits in the hands of brand owners, who are faced with an importation strategy by the counterfeiters that makes such work simply impossible.

As the Committee will know, there is a very broad range of counterfeit products that are imported, ranging from pharmaceuticals through to mechanical products such as bearings through to luxury goods. Some counterfeit products pose health and safety risks for consumers such as counterfeit pharmaceuticals or counterfeit bearings. In a case for one of my clients (whose trade marks are registered for mechanical products), a wheel from a trailer fell off in traffic due to the failure of a counterfeit bearing used in the wheel hub construction.

The proposed new legislation is one that I strongly support, as do my clients listed above as well as Unifab, a very active French organisation which numbers many dozens of brand owners, not just French but globally, amongst its members. Details of its members can be obtained from the website referenced above.

The prospective legislation will hopefully serve not just to discourage those counterfeiters whose products are actually identified and seized at the Australian border by the Australian Border Force, but also other counterfeiters who have not had their products seized. If it becomes known that the seizure of counterfeit products can result in a not insignificant fine being imposed as an administrative step by the Australian Border Force that should serve as a very serious deterrent to counterfeit importers as it poses a much greater threat and risk than the mere loss of counterfeit products that might be seized.


I am prepared to give whatever further evidence or information is necessary to support the proposed legislation that I believe is a very positive and significant step forward. It is likely to have some significant economic benefits for the community at large and be a big step forward in helping to eradicate the sale within Australia of illegal goods, which all too often serve as a means of financing other criminal and illegal conduct. If information is sought by the Committee on these last two points, that is readily available from the International Trademarks Association (INTA) or from the International Anti-Counterfeiting Coalition (IACC).

Yours sincerely



**Stephen Stern**

Partner



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**CORPORATIONS FOR WHICH CORRS ACTS IN  
LODGING NOTICES PURSUANT TO  
SECTION 132 OF THE *TRADE MARKS ACT 1995*  
(CWLTH)**

- 5.11 Inc
- Acushnet Company
- Alfred Dunhill Limited
- Azzedine Alaia SAS
- Balenciaga
- BEL
- Benefit Cosmetics LLC
- Bold Strategies Inc
- Bora Creations SL
- Bottega Veneta International SRL
- Bureau National Interprofessionnel du Cognac
- Caterpillar Inc
- Calvin Klein
- Chloe SAS
- Christian Dior Couture
- Christian Louboutin SAS
- Chrome Hearts LLC
- Conex IPR Limited
- Country Road Clothing Pty Ltd
- Crocs Inc
- Crocs Trading Co. Pte. Ltd
- Exploding Kittens Inc
- Ferrari SpA
- Fox Head Inc
- Guccio Gucci SpA
- Guerlain SA
- Hermes International
- Hublot SA
- Hugo Boss AG
- Hugo Boss Trade Mark Management GmbH & Co KG
- Jibbitz Inc
- Kabushiki Kaisha Miyake Design Jimusho
- Kenzo SA
- Lacoste
- Lange Uhren GmbH
- Liverpool Football Club and Athletic Grounds Limited
- LVMH Fragrance Brands
- LVMH Swiss Manufacturers SA (TAG Heuer)
- Manchester United
- Mimco Pty Ltd
- Montblanc-Simplo GmbH
- Netflix Inc
- New Era Cap Co Inc
- Olaplex Inc
- Otter Products LLC
- Parfums Christian Dior
- Pit Viper LLC
- PVH

- Richemont International SA
- SDI Limited
- Skullcandy Inc
- Tommy Hilfiger Licensing Inc
- Treefrog Developments Inc
- Unifab - Union des Fabricants pour la Protection Internationale de la Propriété Intellectuelle  
(<https://www.unifab.com/en/history-2/>)
- Vans Inc.
- Witchery Fashions Pty Ltd
- Yves Saint Laurent