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14 April 2026

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

By email
legcon.sen@aph.gov.au

Dear Committee Secretary

Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026

Baker McKenzie is a leading global law firm with extensive experience assisting major global and Australian brand owners protect and enforce their IP assets in Australia, and internationally.

Baker McKenzie works closely with numerous brand owners and key enforcement stakeholders in Australia, including the Australian Border Force (**ABF**), on enforcement of IP rights which includes action seeking to combat the importation of counterfeit products into the Australian market.

Baker McKenzie is the Representative company on behalf of numerous brand owners in relation to Notices of Objection filed pursuant to the *Trade Marks Act 1995*.

We make the following submission in support of the *Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026 (Bill)*, having consulted with many of our clients in relation to the Bill.

The Bill represents a necessary step forward to better protect Australian consumers against the importation of counterfeit goods into Australia. By empowering the ABF to issue infringement notices, the proposed amendments to the Commerce (Trade Descriptions) Act 1905 and Customs Regulations will provide an additional deterrent measure against illicit trade in counterfeits which does not rely upon complex and expensive civil legal processes for Australian intellectual property rights holders (EM, p3).

The Bill leverages and complements the existing enforcement framework for intellectual property rights and the enforcement framework under customs legislation to create a complementary financial deterrent. 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 realised from consignments of infringing goods that escape detection (EM, p5 P13; p4 P7).

The Bill is intended to address tactics which are adopted to frustrate the current Customs seizure regime - including splitting shipments into multiple consignments, treating forfeiture (particularly of smaller, split consignments) as an acceptable business risk, and recovering losses through undetected consignments.

A targeted regime to empower ABF officers, as delegates of the Comptroller-General of Customs, to issue infringement notices should not only disrupt counterfeit importers' existing business models, but also hopefully reduce the financial burden on brand owners. Brand owners currently bear the burden of protecting their intellectual property rights, and also achieving an important associated objective of mitigating the risk of harm to Australian consumers and the Australian economy.

The Bill introduces a strict liability offence into the existing Customs Infringement Notice Scheme, which is justified given the public interest in consumer safety, supporting legitimate business, and maintaining market integrity.

Whilst importers should already be expected to understand their obligations under Australia's intellectual property laws, affording potential infringers an opportunity to claim honest and reasonable mistake as a defence will ensure fairness and ensure the strict liability offence only targets appropriate conduct (EM, p.8 P40). The proposed penalties themselves are otherwise proportionate and align with comparable offences (EM, p.7 P27).

The Bill establishes a maximum penalty, allowing for the exercise of discretion to prescribe a lower penalty. The Infringement Notice regime will be implemented at the ABF's discretion, taking into account a range of factors including the overall quantity of seized goods, the type of goods seized, community safety and the extent of recidivist activities.

As noted by the Minister in the Second Reading of the Bill: *Any goods can be counterfeited, and the potential for harm from consumer goods, such as phone chargers, beauty products, pharmaceuticals or vehicle parts, is severe.* We note these examples of the kinds of goods that will be targeted to safeguard the community from dangerous counterfeit goods, and we also trust that the proposed regime will be used more broadly to deter the importation of counterfeit consumer products that undermine investment and innovation, and also have the potential to mislead or deceive Australian consumers.

We welcome the fact 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.

We understand that delegated ABF officers will bear responsibility for making assessments under the proposed regime as to whether an offence has occurred (i.e. goods have been imported bearing a false trade mark), and exercising discretion as to whether to issue an infringement notice.

We trust that the ABF will work together with brand owners and other stakeholders to ensure that the scheme is administered appropriately and effectively. By way of example, as an operational matter, we suggest that the relevant brand owner is notified when an infringement notice is issued to a particular importer, including to facilitate ongoing effective enforcement efforts to protect intellectual property rights and protect Australian consumers.

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



This submission reflects consultation with our brand owner clients who support the Bill and proposed new regime to assist in combatting counterfeits.

Please let us know if any further information is required. Contact Elisabeth White at [REDACTED] or Dean Gerakiteys at [REDACTED].

Yours sincerely

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