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Rules of the Customs of the People's Republic of China for Implementing the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights

(Adopted at the Executive Meeting of the General Administration of Customs on February 17, 2009, promulgated by Decree No. 183 of the General Administration of Customs of the People's Republic of China on March 3, 2009, and effective as of July 1, 2009)

Chapter I General Provisions

Article 1 These Rules are formulated in accordance with the Customs Law of the People's Republic of China and other laws and administrative regulations, in order to implement effectively the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights (hereinafter referred to as the "Regulations").

Article 2 Intellectual Property rights holders (IP holders) who request the Customs to take protection measures for their Intellectual Property Rights (IPR) or go through the procedure of recording their IPR with the General Administration of Customs (GAC), may, when they are located in mainland China, file their application directly or entrust an agent established in mainland China to act on their behalf. Where such IP holders are located outside mainland China, they shall file their application through their representative office established in mainland China, or entrust an agent established in mainland China to file the application on their behalf.

Where the IP holder entrusts an agent established in mainland China to file his application in accordance with the preceding paragraph, he shall produce a power of attorney in a prescribed form.

Article 3 When an IP holder or his agent (hereinafter collectively referred to as "the IP holder") requests the Customs to detain suspected infringing goods pending import / export custom clearance, he shall file with the Customs, the application for detention of such goods in accordance with the provisions of these Rules.

Article 4 The consignee or the consignor of imported or exported goods or his agent (hereinafter collectively referred to as "the consignee or consignor") shall, to a reasonable extent, have knowledge of the IPR status of his imported or exported goods. Where the Customs require him to declare the IPR status of his imported or exported goods, the consignee or consignor shall truthfully make such declaration and present any relevant evidentiary documents to the Customs within the time limit specified by the Customs.

Article 5 If any trade secrets are involved in the relevant documents or evidence submitted to the Customs by either the IP holder, or the consignee or consignor, an explanation of such secrets in writing shall be presented to the Customs by the IP holder, or the consignee or consignor.

The Customs shall keep the confidentiality of the trade secrets of the relevant parties when operating the protection of the IPR. But the information which the Customs are obliged to disclose in accordance with the law shall not be included.

Chapter II Recordation of Intellectual Property Rights

Article 6 When going through the procedures of Customs Recordation of IPR, an IP holder shall submit an application to the GAC. The application shall include the following particulars:

(1) The business name or name, place of registration or nationality, and postal address of the IP holder, the name, telephone and fax numbers, and E-mail address of the contact person, etc.;

(2) The name of the registered trademark, the class and the name of the goods designated by the said registered trademark, the trademark specimen, the validity period of registration, any information on the assignment, modification of registration particulars and renewal, etc. of the registered trademark; The name, time of completion, type, picture, information on the assignment and modification of registration particulars, etc. of the copyright works; And, the name, type, date of application, information on the assignment and modification of registration particulars, etc. of the patent right;

(3) The name of the licensee, the goods licensed, the term of license, etc. ;

(4) The name, place of origin, the Customs at the port of entry/exit, importer/exporter, main features, price, etc. of the authentic goods over which the IP holder lawfully uses his rights; and

(5) The manufacturer, importer/exporter, the Customs at the port of entry/exit, main features, price, etc. of the goods known to the IP holder to infringe upon his intellectual property.

The IP holder shall file a separate application form for each of his IPR for which the recordation is applied. Where applying for recordation of an International Registered Trademark, the IP holder shall file a separate application form for recordation of each class of goods covered.

Article 7 An IP holder shall attach the following documents and evidence when he files the application for recordation to the GAC:

(1) A photocopy of personal identification document, or business license or other documents which identifies the IP holder;

(2) A photocopy of the Trademark Registration Certificate issued by the Trademark Office of the

Administration for Industry & Commerce under the State Council (TMO); where the applicant has been permitted to modify, renew, transfer the trademark registration, or where the application for recordation concerns an International Registered Trademark, the relevant documents confirming the trademark registration issued by the TMO shall be submitted in addition ;

A photocopy of the certificate of voluntary copyright registration issued by the copyright registration authority, and the photographs of the works confirmed by the copyright registration authority. Where the applicant has not carried out the procedures for voluntary copyright registration of his works, a sample of his works which can prove his ownership of the copyright and other related evidence shall be submitted;

A photocopy of the patent certificate issued by the Patent Administration under the State Council (SIPO). Where the grant of patent has been announced for more than one year, the applicant shall produce a duplicate of the patent register issued, within six months prior to the application for recordation, by the SIPO. Where applying for the recordation of a utility model or a design, the patent right evaluation report made by the SIPO shall also be submitted;

(3) A photocopy of the contract where the IP holder has signed a license agreement authorizing other parties to use a registered trademark, a copyright work or a patent. Where no written license has been signed, a document explaining the details of the licensee, the scope, term of the license, etc. shall be submitted;

(4) The photographs of goods and their package on which the IP holder lawfully uses his rights;

(5) Evidence of known importing or exporting of infringing goods; Where any infringement dispute between the IP holder and other parties has been ruled upon by a People's Court or by the competent IPR administration authority, a photocopy of the relevant legal document shall also be submitted; and

(6) Any other documents or evidence that the GAC considers necessary to obtain.

The documents and evidence submitted by the IP holder to the GAC in accordance with the preceding paragraph shall be complete, truthful and valid. Where the relevant documents and evidence are in a foreign language, they shall be accompanied by a Chinese translation. Where the GAC deems necessary, it may require an IP holder to submit notarization and authentication certificates of the relevant documents or evidence.

Article 8 An IP holder shall pay the recordation fee when applying for the recordation of the right to the GAC, or reapplying for recordation when the recordation has become ineffective. An IP holder shall remit, via his bank, the recordation fee to the account designated by the GAC. Upon receiving the recordation fee, the GAC shall issue a receipt. The rate of recordation fee shall be prescribed separately and announced by the GAC in conjunction with relevant authorities of the State.

When applying for the renewal or modification of his recordation, the IP holder shall not need to pay the recordation fee again.

Where the IP holder withdraws his application before it is approved by GAC or where his application for recordation is rejected, the GAC shall return the recordation fee to the IP holder. Where a recordation already approved by the GAC is revoked or cancelled by the GAC or becomes ineffective for other reasons, the recordation fee already paid for it shall not be returned.

Article 9 The Recordation of an IPR shall enter into effect on the date of approval by the GAC and shall be valid for a term of 10 years. Where the remaining term of the IPR is less than 10 years after the effective date of the recordation, the recordation term of the IPR shall be adjusted to the term of the IPR.

The terms of recordation and renewed recordation approved by the GAC prior to the effectiveness of the Regulations shall remain to be calculated in accordance with their original terms.

Article 10 An IP holder may, within six months prior to the expiration of the recordation term of the IPR, apply for the renewal of the recordation by filing a written application together with relevant documents to the GAC. The GAC shall make a decision on whether to grant renewal within 10 working days of receipt all of the renewal application documents. Where the GAC approves the renewal of the recordation, it shall notify the IP holder in writing; where it does not approve the renewal, it shall notify the IP holder in writing and explain the reason thereof.

The term of the renewed recordation shall be 10 years, calculated from the day following the expiration of the previous recordation term. Where the term of the IPR is less than 10 years after the day following the expiration of the previous recordation term, the renewal recordation term of the IPR shall be adjusted to the term of the IPR.

Article 11 After a Recordation of IPR has been approved by the GAC, if any change occurs to the information of the application submitted to the Customs in accordance with Article 6 of these Rules, the IP holder shall, within 30 working days from the date upon which the said change occurs, apply to the GAC for modifying the Recordation and submit relevant documents.

Article 12 Where an IPR is no longer protected by the law or administrative regulations prior to the expiration of the valid term of its recordation or where a recorded IPR has been transferred, the original holder of the IPR shall, within 30 working days from the date upon which the recorded IPR is no longer protected by the law or administrative regulations or from the effective date of transfer of the IPR, apply to the GAC for withdrawing the Recordation of the IPR and submit relevant documents. Where an IP holder gives up the recordation within the valid term of the recordation, he may apply to the GAC for withdrawal of the recordation.
Where an IP holder fails to apply to the GAC for modification or withdrawal of the recordation in

accordance with Article 11 of these Rules or with the preceding paragraph of this article, and causes serious effects on lawful imports/exports made by others, the GAC may revoke the recordation of the concerned IPR on its own initiative or upon the request of any interested party.

The GAC shall notify in writing to the relevant the IP holder the revocation of any recordation. The recordation of the IPR shall become ineffective as of the date of revocation by the GAC.

Article 13 Where the GAC decides to cancel a recordation of IPR in accordance with Article 9 of the Regulations, the IP holder shall be notified in writing.

Within one year from the date of cancellation of an IPR, the GAC may refuse an application for recordation of the same IPR filed by the holder of such IPR.

Chapter III Detention pursuant to an Application

Article 14 Where an IP holder discovers that suspected infringing goods are being imported or exported and requests the Customs to detain such goods, he shall file an application, in accordance with Article 13 of the Regulations, with the Customs at the port where the goods are being imported or exported. Where the relevant IPR has not been recorded with the GAC, the IP holder shall submit in addition the documents and evidence specified in Article 7, Paragraph 1, Items (1) and (2) of these Rules.

The IP holder, when he requests the Customs to detain the suspected infringing goods, shall provide sufficient evidence proving the obvious existence of the fact of infringement to the Customs. The evidence provided by the IP holder must be sufficient to prove the following facts:

(1) The goods requested to be detained by the Customs are going through import or export; and

(2) The trademark, copyright works or patent have been used on the goods without the consent of the IPR holder.

Article 15 Where applying for detaining suspected infringing goods by the Customs, the IP holder shall deposit with the Customs, within the period specified by the Customs, a bond equivalent to the value of the goods.

Article 16 Where the application filed by an IP holder is not in conformity with Article 14 of these Rules, or where the bond is not deposited in conformity with Article 15 of these Rules, the Customs shall reject the application and notify in writing the IP holder of such rejection.

Article 17 The Customs, when detaining suspected infringing goods, shall notify in writing the IP holder with such details as description, quantity and value of the goods, name of the consignee or consignor, date of import or export declaration and date of detention by the Customs, etc.

With consent of the Customs, the IP holder may inspect the goods detained by the Customs.

Article 18 Where the Customs receive, within 20 working days from the date on which they have detained suspected infringing goods, a written notice from a People's Court requesting assistance for the detention of such goods, the Customs shall provide assistance .Where they receive no such notice from a People's Court or where the IP holder requests them to release the relevant goods, the Customs shall release the goods.

Article 19 When the Customs detain suspected infringing goods, they shall serve on the consignee or consignor a written notification of detention of the suspected infringing goods and a Customs Receipt for the detention of the suspected infringing goods.
With consent of the Customs, the consignee or consignor may inspect the relevant goods detained.

Article 20 If, pursuant to Article 19 of the Regulations, the consignee or consignor requests the Customs to release the detained goods suspected of infringing a patent, he shall file a written application for releasing the goods and, in addition, deposit with the Customs a bond equivalent to the value of the goods.

Where the consignee or consignor requests the Customs to release the goods suspected of infringing the patent and such request is in conformity with the preceding paragraph, the Customs shall release the goods and notify in writing the IP holder.

Within 30 working days from the date of written notification mentioned in the preceding paragraph, the IP holder, who has brought a lawsuit before a People's Court in respect of the patent infringement, shall submit to the Customs a photocopy of the notice of case acceptance issued by the People's Court.

Chapter IV Ex Officio Action

Article 21 Where the Customs discover, when performing their supervision and control over imported or exported goods, any goods related to an IPR recorded with the GAC while no information has been recorded with the GAC concerning the authorized use of the IPR by such importer/exporter or manufacturer, they may require the consignee or consignor to declare the IPR status of the goods within the specified time limit, and to submit relevant evidentiary documents.

Where the consignee or consignor fails to declare the IPR status of the goods or fails to submit the relevant evidentiary documents in accordance with the preceding paragraph, or where the Customs have reason to believe that the relevant goods are suspected of infringing an IPR recorded with the GAC, the GAC shall suspend the release of the goods and notify the IP holder in writing.

Article 22 The IP holder shall respond, within three working days from the date of service by the Customs of the written notification mentioned in Article 21 of these Rules, in accordance with the following provisions:

(1) Where he believes that the goods infringe his IPR recorded with the GAC and requests the Customs to perform detention, he shall file with the Customs a written application for detention of the suspected infringing goods and shall deposit a bond in accordance with Article 23 or 24 of these Rules,

(2) Where he believes that the relevant goods do not infringe his IPR recorded with the GAC or does not request the Customs to perform detention, he shall explain the reasons in writing to the Customs.

With consent of the Customs, the IP holder may inspect the relevant goods.

Article 23 Where requesting the Customs to detain the suspected infringing goods in accordance with Article 22, Paragraph 1, Item (1) of these Rules, an IP holder shall deposit a bond with the Customs in accordance with the following provisions:

(1) Where the value of goods is below RMB 20,000 Yuan, a bond equivalent to the value of the goods;

(2) Where the value of goods is above RMB 20,000 Yuan but below RMB 200,000 Yuan, a bond not to be less than RMB 20,000 Yuan up to 50% of the value of the goods. or

(3) Where the value of goods is above RMB 200,000 Yuan, a bond of RMB 100,000 Yuan.

When requesting the Customs to detain goods suspected of infringing the exclusive right of a registered trademark in accordance with Article 22, Paragraph 1, Item (1) of these Rules, an IP holder may provide a general bond with the GAC in accordance with Article 24 of these Rules.

Article 24 Subject to approval by the GAC, the IP holder who has recorded a registered trademark with the GAC may submit to the GAC a letter of guarantee issued by a bank or a non-banking financial institution to provide the general bond for his applications to the Customs for taking Customs protection on his exclusive right of the registered trademark.

The amount of the general bond shall be equivalent to the sum of the expenses relating to warehousing, storage, disposal, etc. incurred in the previous year as a result of the IP holder applying to the Customs for detention of suspected infringing goods. Where the IP holder has not applied to the Customs for detention of suspected infringing goods in the previous year or where the sum of the expenses relating to warehousing, storage, disposal, etc. is less than RMB 200,000 Yuan, the amount of the general bond shall be RMB 200,000 Yuan.

During the period starting from the date of the GAC's approval of the general bond until the 31st

of December of the year concerned, the IP holder shall not need to provide a bond when he applies to the Customs for detention of imported or exported goods suspected of infringing his exclusive right to use a trademark recorded with the GAC in accordance with Article 16 of the Regulations. However, if the IP holder fails to pay the fee as stipulated in Article 25 of the Regulations or fails to undertake compensation liability as stipulated in Article 29 of the Regulations, and the GAC has served a notice of fulfillment of bond liabilities on the guarantor, the exoneration to deposit a bond stipulated in the first sentence of this article shall not apply.

Article 25 Where an IP holder has filed an application in conformity with Article 22, Paragraph 1, Item (1) of these Rules and has deposited a bond in accordance with Articles 23 and 24 of these Rules, the Customs shall detain the suspected infringing goods and notify the IP holder in writing; The Customs shall release the goods where the IP holder fails to either file an application or deposit a bond.

Article 26 When detaining suspected infringing goods, the Customs shall serve on the consignee or consignor a written notification of detention of the suspected infringing goods.
Subject to approval by the Customs, the consignee or consignor may inspect the goods detained by the Customs.

Article 27 After they have detained the suspected infringing goods, the Customs shall, in accordance with the law, conduct investigation on the suspected infringing goods as well as other relevant circumstances. The consignee or consignor and the IP holder shall cooperate with the Customs investigation and shall truthfully provide relevant information and evidence.

When investigating on the suspected infringing goods, the Customs may request the competent authorities of IPR to provide advice.

Where the IP holder reaches an agreement with the consignee or consignor over the suspected infringing goods detained by the Customs and files a written application, together with the relevant agreement, requesting the Customs to release the suspected infringing goods from detention, the Customs may terminate their investigations unless they believe the relevant goods constitute a suspected crime.

Article 28 Where they are unable to determine, after investigation, whether the detained suspected infringing goods infringe the relevant IPR, the Customs shall, within 30 working days from the date on which the suspected infringing goods are detained, inform the IP holder and the consignee or consignor by serving a written notice to this effect.

Where the Customs cannot determine whether the goods infringe the relevant patent right, the consignee or consignor may, after having provided the Customs with a bond equivalent to the value of the goods, request the Customs to release the goods. Where the Customs agree to release the goods, the matter shall be handled in accordance with Article 20, Paragraphs 2 and 3 of these Rules.

Article 29 Where the Customs are unable to determine whether the goods infringe the IPR, the IP holder may apply to a People's Court for a ruling ordering the cessation of the infringing act or a ruling of property preservation in accordance with Article 23 of the Regulations.

Where receiving, within 50 working days from the date on which the suspected infringing goods are detained, a written notice from the People's Court requesting for assistance in detaining the relevant goods, the Customs shall provide such assistance. Where the Customs receives no notice for assistance in detention from the People's Court or the IP holder requests the Customs to release the relevant goods, the Customs shall release the goods.

Article 30 Where the Customs decide to confiscate infringing goods, the IPR holder shall be informed in writing of the following known details:

(1) Description and quantity of the infringing goods;
(2) Name of the consignee or consignor;
(3) Date of import or export declaration of the infringing goods, date of detention by the Customs and date of effectiveness of the Customs' punishment decision;
(4) Place of departure and destination of the infringing goods; and
(5) Other information relating to the infringing goods that the Customs can provide.

Where a People's Court or another competent IPR administrative authority, when handling an infringement dispute between the relevant parties, requires any assistance from the Customs in obtaining evidence relating to the imported or exported goods, the Customs shall provide such assistance.

Article 31 The Customs shall detain the inward or outward articles carried or mailed by individuals which are both in excess of the reasonable quantity for personal use and suspected of infringing the IPR specified in Article 2 of the Regulations, unless the passenger or the sender or recipient declares abandonment of the goods to the Customs and the Customs agree to it.

The IP holder shall provide assistance to the Customs when they are investigating the infringing articles. When they consider that the goods detained by the Customs do not infringe the relevant IPR or are for personal use, the entering/exiting passenger or the sender or recipient of the inward/outward postal matters may explain to the Customs the relevant situation in writing and submit relevant evidence.

Article 32 In accordance with Article 27, Paragraph 1 and Article 28 of the Regulations, the Customs shall confiscate imported/exported goods or inward/outward articles which, after investigation, are determined as infringing an IPR. Where the parties concerned cannot be specified, the Customs shall confiscate the concerned goods after 3 full months of serving a relevant public notice.

Where an infringing act of import/export is suspected of crime, the Customs shall hand over the case to the public security agencies according to law.

Chapter V Disposal of Goods and Relevant Expenses

Article 33 The Customs shall dispose of the confiscated infringing goods in accordance with the following provisions:

(1) Where the relevant goods can be directly used for public welfare undertakings or if the IP holder intends to purchase the goods, they shall be handed over to the relevant public welfare organization for use in public welfare undertakings or sold to the IP holder;

(2) Where the relevant goods cannot be disposed of in accordance with Item (1) but their infringing features can be removed, the goods shall be auctioned after removal of their infringing features; the money obtained from the auction of the goods shall be turned over to the State Treasury; or

(3) Where the relevant goods cannot be disposed of in accordance with Item (1) or (2), they shall be destroyed.

The Customs shall seek the opinion of the relevant IP holder prior to auctioning the infringing goods. The IP holder shall provide necessary assistance when the Customs destroy the infringing goods. When the relevant public welfare organization uses the infringing goods confiscated by the Customs in public welfare undertakings, or when the IP holder is entrusted by the Customs, to destroy the infringing goods, the Customs shall exercise the necessary supervision.

Article 34 Where the Customs assist a People's Court in detaining suspected infringing goods or releasing detained goods, the IP holder shall pay the expenses for warehousing, storage, disposal, etc., of the goods during the period when they are detained by the Customs.

If the Customs confiscate the infringing goods, the IP holder shall pay the expenses for warehousing, storage, disposal, etc. of the goods for the actual period of time when they are stored after their detention by the Customs. However, if the Customs fail to complete the disposal of the goods within three months from the date on which the decision to confiscate the infringing goods is served on the consignee or consignor, and such failure is not due to the consignee or consignor applying for administrative reconsideration, filing administrative litigation or other special reason relating to the disposal of the goods, the IP holder shall not be required to pay the relevant expenses incurred after the three months.

If the Customs auction the infringing goods in accordance with Article 33, Paragraph 1, Item (2) of these Rules, the auction expenses shall be handled in accordance with relevant regulations.

Article 35 Where the IP holder fails to pay the relevant expenses in accordance with Article 34 of these Rules, the Customs shall be entitled to deduct the relevant expenses from the bond provided by the IP holder or demand that the guarantor performs its guaranteed obligations.
Where the Customs confiscate infringing goods, the Customs shall refund the bond to the IP holder or shall release the guarantee liabilities after disposal of the goods has been completed and the relevant expenses have been settled.

Where the Customs assist a People's Court in detaining suspected infringing goods or releasing

detained goods in accordance with Article 24 Items (1), (2) and (4) of the Regulations, the consignee or consignor may apply to the People's Court for preservation of property relating to the bond provided by the IP holder. Where, within 20 working days from the date on which the Customs assist the People's Court in detaining the suspected infringing goods or releasing the detained goods, the Customs receive no notice from the People's Court for assistance in enforcing property preservation measures relating to the bond provided by the IP holder, they shall refund the bond to the IP holder or relieve the guarantor of its guarantee liabilities. If they receive a petition for assistance in enforcement from the People's Court, they shall provide such assistance.

Article 36 Where the IP holder, in accordance with Article 20 Paragraph 3 of these Rules, presents to the Customs a photocopy of the case acceptance notice issued by a People's Court's after the Customs, in accordance with Article 19 of the Regulations, have released the detained goods suspected of infringing patent, the Customs shall, in accordance with the adjudication of the People's Court, dispose of the bond provided by the consignee or consignor; if the IP holder fails to present a photocopy of the case acceptance notice issued by a People's Court, the Customs shall refund the bond to the consignee or consignor. The consignee or consignor may apply to the People's Court for property preservation relating to the bond provided by the IP holder to the Customs. If the Customs receive no notice from the People's Court for assistance in enforcing property preservation measures relating to the bond provided by the IP holder, they shall refund the bond to the IP holder or relieve the guarantor of its guarantee liabilities within 20 working days of the disposal of the bond provided by the consignee or consignor. When receiving a notice for assistance in enforcement from the People's Court, the Customs shall provide such assistance.

Chapter VI Supplementary Provisions

Article 37 The Customs shall undertake protection of the Olympic logo and the World Expo logo with reference to these Rules.

Article 38 In these Rules, the term "bond" means money of bond or letter of guarantee provided by a bank or a non-banking financial institution.

Article 39 The value of goods in these Rules shall be examined and determined by the Customs on the basis of the transaction value of the goods. If the transaction value cannot be determined, the value of goods shall be estimated by the Customs in accordance with the law.

Article 40 Written Customs notices as specified in Articles 17, 21 and 28 of these Rules may be served directly, by mail, by facsimile or other ways.

Article 41 The time limits as specified in Article 20, Paragraph 3 and Article 22, Paragraph 1 of these Rules shall be calculated from the following day of the date upon which the written Customs notice is served. The deadline of the time limits shall be determined in accordance with the following provisions:

(1) Where the IP holder presents a document or provides bond to the Customs via the post office or a bank, the 24th hour of the date due shall be taken as the deadline; or

(2) Where the IP holder submits a document or provides bond to the Customs in person, the end of the normal office hours of the Customs on the expiry date of the time limit shall be taken as the deadline.

Article 42 Where the IP holder or a consignee or consignor is to submit a photocopy of a relevant document to the Customs pursuant hereto, he shall verify such photocopy against the original. Once the photocopy has been verified as being in order, the words "True Copy" shall be noted on the photocopy, which shall then be signed and/or sealed in confirmation.

Article 43 These Rules shall go into effect as of July 1, 2009. The Rules of the Customs of the People's Republic of China Concerning Implementing Protection of Intellectual Property Rights promulgated as Decree No. 114 of the General Administration of Customs on May 25, 2004 shall be repealed simultaneously.

** These rules are translated by Wan Hui Da, the use of this translation are permitted provided that Wan Hui Da is indicated as the source. In case of discrepancy, the Chinese version shall prevail.*