



**Australian
BORDER FORCE**

For Official Use Only

**Guide to lodging a
Notice of Objection
under the
*Trade Marks Act 1995***

For Official Use Only



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1. Requirements to lodge a Notice of Objection under the *Trade Marks Act 1995*

- 1.1 This guide provides information to assist trade mark owners and/or authorised importers to complete the required information for a Notice of Objection (Notice) to be lodged with the Australian Border Force (ABF).
- 1.2 For a Notice to be registered, the following must be provided:
 - 1.2.1 A completed *Trade Marks Act 1995* Notice of Objection form (B1025),
 - 1.2.2 Evidence of trade mark registration from IP Australia (see section 4),
 - 1.2.3 A letter of authorisation, if required (see section 5), and
 - 1.2.4 A completed *Trade Marks Act 1995* Security Under Section 133 – Deed of Undertaking form (B1029) (Deed).

PLEASE NOTE: ORIGINAL DOCUMENTS ARE NO LONGER REQUIRED

2. Completing the *Trade Marks Act 1995* Notice of Objection form (B1025)

- 2.1 Details for completing the Notice of Objection form B1025
 - 2.1.1 Full name of the company lodging the Notice:
 - When completing the Notice, the name of the owner should be the full name of the company or individual who is claiming the trade mark.
 - When completing the Notice, the name of the exclusive licensee or authorised user should reflect the name that appears in the authorisation letter/s issued by the trade mark owner/s.
 - Completed documents should be emailed to IPRights@abf.gov.au
 - 2.1.2 Full address of the company lodging the Notice must match the address registered:
 - Against the ABN with the Australian Taxation Office.
 - 2.1.3 Indicate if the company lodging the Notice is the registered owner or authorised user of the trade mark/s being covered by the Notice:
 - Place an X in the box/es which accurately reflect the ownership status of the trade marks. The Notice may cover trade marks the company owns, as well as trade marks that they are authorised to use. In these instances, both boxes should be selected.
 - 2.1.4 Signature, title, and full name of an appropriately authorised person on behalf of the company lodging the Notice:
 - This may be the legal representative or company representative.
 - 2.1.5 Details of the legal representative for the company lodging the Notice
 - Name of the company and the contact name of the person representing the company lodging the Notice.
 - The address provided must be the physical address, not a Post Office Box number.
 - Provide a current/valid email address.

2.1.6 Contact details for the person and company for any seizures made on behalf of the company lodging the Notice:

- Name of the company and contact name of the person to be notified by the ABF of any seizures made.
- The address provided must be the physical address, not only a Post Office Box number.
- Provide a current/valid email address.

2.1.7 Authorised importers:

- If there are businesses that are authorised importers of the goods incorporating the trade marks covered under the Notice the details should be provided in a separate document. Be sure to include:
 - Name of the business
 - Street address
 - Phone number

NOTE: This information will assist the ABF to target any alleged infringements on your behalf more effectively.



Australian BORDER FORCE

Trade Marks Act 1995 NOTICE OF OBJECTION

To: Australian Border Force
PO Box 25
BELCONNEN ACT 2616

Attention: Intellectual Property Rights

Please open this form using Adobe Acrobat Reader. Either type in the fields provided or print this form and complete it using a pen and BLOCK LETTERS.

Tick where applicable

I,	Full name of person or company	ABN, CAC or CCID (if applicable)
of	Address	
(tick applicable)		
being	<input type="checkbox"/> the registered owner as defined under the <i>Trade Marks Act 1995</i> (the Act)	
	<input type="checkbox"/> an authorised user	
of the registered trade mark(s) described in the schedule overleaf hereby notify you, pursuant to s132 of that Act, that I object to the importation of goods that are:		
(a) goods manufactured outside Australia and having applied to them, or in relation to them, a trade mark that is substantially identical with, or deceptively similar to, one or more of those trade marks listed in the schedule overleaf; and		
(b) goods in respect of which the notified trade mark is registered; and		
(c) request you seize any such goods under subsection 133(2) of the Act.		
Signature		Title/Position of Signatory
Printed Name		Date / / 20
Legal Representatives (provide person and company name)		Email address
Address		Phone/Fax Number
Contact for Seizures (provide person's name)		Email address (provide generic email if possible)
Address		Phone/Fax Number

The schedule overleaf should be completed and must contain all information requested in the schedule.

This Notice must be accompanied by:

- (a) a copy of the registration details of the trade mark, and
- (b) if an authorised user is lodging this form, documents that establish:
 - (i) the authorised user has the consent of the registered owner to lodge a Notice of Objection; or
 - (ii) the authorised user requested the registered owner to give the Notice; or
 - (iii) the registered owner failed to give such Notice during the prescribed period.

Notice: If this form is completed by an individual, then the *Privacy Act 1988* (the Privacy Act) says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We require this information under the *Trade Marks Act 1995* (the Act) to allow us to seize goods which are imported and may contravene s133 of that Act if not seized. The Australian Border Force is not permitted to disclose this information or any supplementary information you give, except when required or authorised by law.

3. Trade Mark Schedule

3.1 The Schedule should be listed on page 2 of the Notice of Objection form (B1025):

- 3.1.1 Information regarding trade mark details, registration number, expiry date, class, and description of goods for each trade mark to be covered by the Notice should be included.

4. Australian Trade Mark On-line Search System (ATMOSS) report

4.1 You will need to provide evidence of the registration for the trade marks covered by the Notice. (This information can be downloaded from the IP Australia website (www.ipaustralia.gov.au). Select the 'Trade Marks' tab, then click on 'Search Trade Marks'. This will open the ATMOSS logon page.)

4.1.1 If you need help using this system, contact IP Australia at IP Australia.

4.1.2 The ATMOSS report should be emailed with all documents to IPRights@abf.gov.au.

5. Authorisation letter/s

5.1 For any trade marks that are not owned by the company lodging the Notice, a letter of authorisation to file the Notice on the trade mark owner's behalf must be provided to the ABF. In some cases, this may require several letters from the various trade mark owners.

6. Completing the Security under Section 133 – Deed of Undertaking (Deed) (B1029)

6.1 The company must provide a Security under Section 133 – Deed of Undertaking form (B1029). The Deed must be executed by the company lodging the Notice.

6.1.1 The Deed is a formal undertaking from the company, acknowledging that they will pay any costs incurred by the ABF when enforcing the Notice.

6.1.2 Details for completing the Deed (B1029):

- The date the Deed is signed (executed),
- Full name of the company providing the Deed, and
- Full address of the company providing the Deed.

6.1.3 There are four options in which to execute the Deed:

- Option 1: If a company owner is lodging the Notice and the Deed (i.e. a natural person),
- Option 2: If the company lodging the Notice has a sole director who is also the sole company secretary,
- Option 3: If the company lodging the Notice has two company directors, or one company director and one company secretary, or
- Option 4: If the company lodging the Notice has a common seal, or the company is a proprietary company with a seal and has a sole director that is also the company secretary.

NOTE: Under Section 123 of the *Corporations Act 2001* (Cth) (the Act), a company may have a company seal (or common seal) to execute documents. The common seal is, in its physical manifestation, a rubber stamp carrying the words 'Common Seal' and the name and business number of the association or company.



6.1.4 All signatures must be witnessed.

- **IMPORTANT:** Persons witnessing the Deed of Undertaking cannot in any way be a party to or have any financial or other interest in the agreement except in the circumstance where the Deed is executed by a Proprietary Company with a common seal (option 4).

NOTE: If the signatory is not a company director or a company secretary, a letter of authorisation, signed by an appropriately authorised person, must be provided stipulating who is nominated as Power of Attorney to sign on their behalf.



**Australian
BORDER FORCE**

Trade Marks Act 1995
**SECURITY UNDER SECTION 133
– DEED OF UNDERTAKING**

Please open this form using Adobe Acrobat Reader.
Either type in the fields provided or print this form and complete it using a pen and BLOCK LETTERS.

THE DEED IS MADE

on the _____ day of _____ 20 _____

BY _____
Company

of _____ hereinafter referred to as the Undertaking Giver.
Address

Recital

- A. The Undertaking Giver is the registered owner or authorised user of a trade mark whose particulars are entered into the Register under the *Trade Marks Act 1995* (the Act).
- B. The Undertaking Giver has given to the Australian Border Force (Comptroller-General of Customs) a written notice, under s132 of the Act, stating that they object to the importation of goods that infringe the trade mark.
- C. Pursuant to s133(2) of the Act, the Comptroller-General of Customs must seize the goods unless they are satisfied that there are no reasonable grounds for believing that the notified trade mark is infringed by the importation of the goods.
- D. Pursuant to s133(3) of the Act, the Comptroller-General of Customs has decided not to seize the goods unless the Undertaking Giver has given a written undertaking, in the terms of this Deed, to repay the Commonwealth the expenses of seizing the goods.

The Deed Witnesses:

1. Where, after the date of the execution of this Deed, the Comptroller-General of Customs seizes goods pursuant to s133(2) of the Act, the Undertaking Giver shall, upon demand, pay to the Commonwealth the expenses of seizing the goods.
2. The expenses of seizing the goods are defined in s133(5) of the Act as being the expenses that may be incurred by the Commonwealth if the goods were seized.
3. Any demand made under this Deed upon the Undertaking Giver shall be deemed to have been duly made if it is in writing and signed by the Comptroller-General of Customs, or a delegate, and sent by prepaid post as a letter to the Undertaking Giver, or their nominated legal representative, or left by hand, at the address set forth in this Deed or at the address last notified to the Australian Border Force under clause 5 of this Deed. Any such demand sent by prepaid post shall be deemed to have been received by the Undertaking Giver, at the time when such demand could, in the ordinary course of post, have been delivered.
4. An amount not paid under this Deed is a debt due by the Undertaking Giver to the Commonwealth and may be recovered by an action taken in a court of competent jurisdiction.
5. If there is an alteration to the name or address of the Undertaking Giver or their nominated legal representative, then the Undertaking Giver shall give to the Australian Border Force written notice of the fact within seven working days after the date on which the alteration takes place.

OR

5. If there is an alteration to the name or address of the Undertaking Giver or their nominated legal representative, or if the Undertaking Giver ceases to carry on business, or there is an alteration to the ownership or control of the Undertaking Giver, then the Undertaking Giver shall give to the Australian Border Force written notice of the fact within seven working days after the date on which the alteration or cessation takes place.

[NOTE: This clause 5 may vary depending on whether the Undertaking Giver is a natural or corporate person.]

6. A reference in this Deed to a provision of the Act shall be read as a reference to that provision as in force as amended at the date of execution of this Deed, and to any provision re-enacting or replacing the same.

Executed as a Deed

[Note: Where Undertaking Giver is a natural person]

Signed, sealed and delivered by: _____	Signature: _____
Name of Undertaking Giver	
In the presence of: _____	Signature: _____
Name of witness	

OR**Executed as a Deed**

[Note: Where executed for a proprietary company that has a sole Director where that Director is also the sole Company Secretary]

Signed, sealed and delivered by: _____	Signature: _____
Name of sole Director / Company Secretary	
_____	Signature: _____
Name of witness	

OR**Executed as a Deed**

[Note: Where executed by 2 Directors of a company, or a Director and a Company Secretary]

Signed, sealed and delivered by: _____	Signature: _____
Name of Director	
_____	Signature: _____
Name of witness	
_____	Signature: _____
Name of Director / Company Secretary	
_____	Signature: _____
Name of witness	

OR**Executed as a Deed**

[Note: Where executed by a proprietary company with a common seal or where executed by a proprietary company with a common seal that has a sole Director who is the Company Secretary]

Signed, sealed and delivered by: _____	
Company Seal	
Witnessed By: _____	Signature: _____
Name of Director or sole Director / Company Secretary	
_____	Signature: _____
Name of Director / Company Secretary (not required where executed by sole Director who is the Company Secretary)	

Note: Please check advice on the correct form of execution on a case basis.



7. Information on suspected infringing goods

7.1 If any information comes to hand which may assist the ABF to enforce a Notice (e.g. companies or individuals importing alleged infringing goods into Australia, including any particulars of shipments due to arrive), please complete the form B253 'Intellectual Property Commerce and Labelling Referral Details' and email it to IPRights@abf.gov.au.

7.2 To access the B253 form, use this link: [Form B253](#)

8. Additional assistance

8.1 If you require assistance or information regarding the lodgement of Notices or Deeds, please contact IPRights@abf.gov.au