

Storage and Disposal of Forfeited Infringing Goods: The U.S. Experience



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Key IPR Result in 2012

- 22,848 shipments and 697 websites involved in trafficking the counterfeit goods were seized by U.S. Customs and Border Protection. The estimated value of total seizure was around US\$1.26 billion.
- China continues to be the primary source economy for counterfeit and pirated goods seized in the U.S., accounting for 72%, of all seizures in 2012.



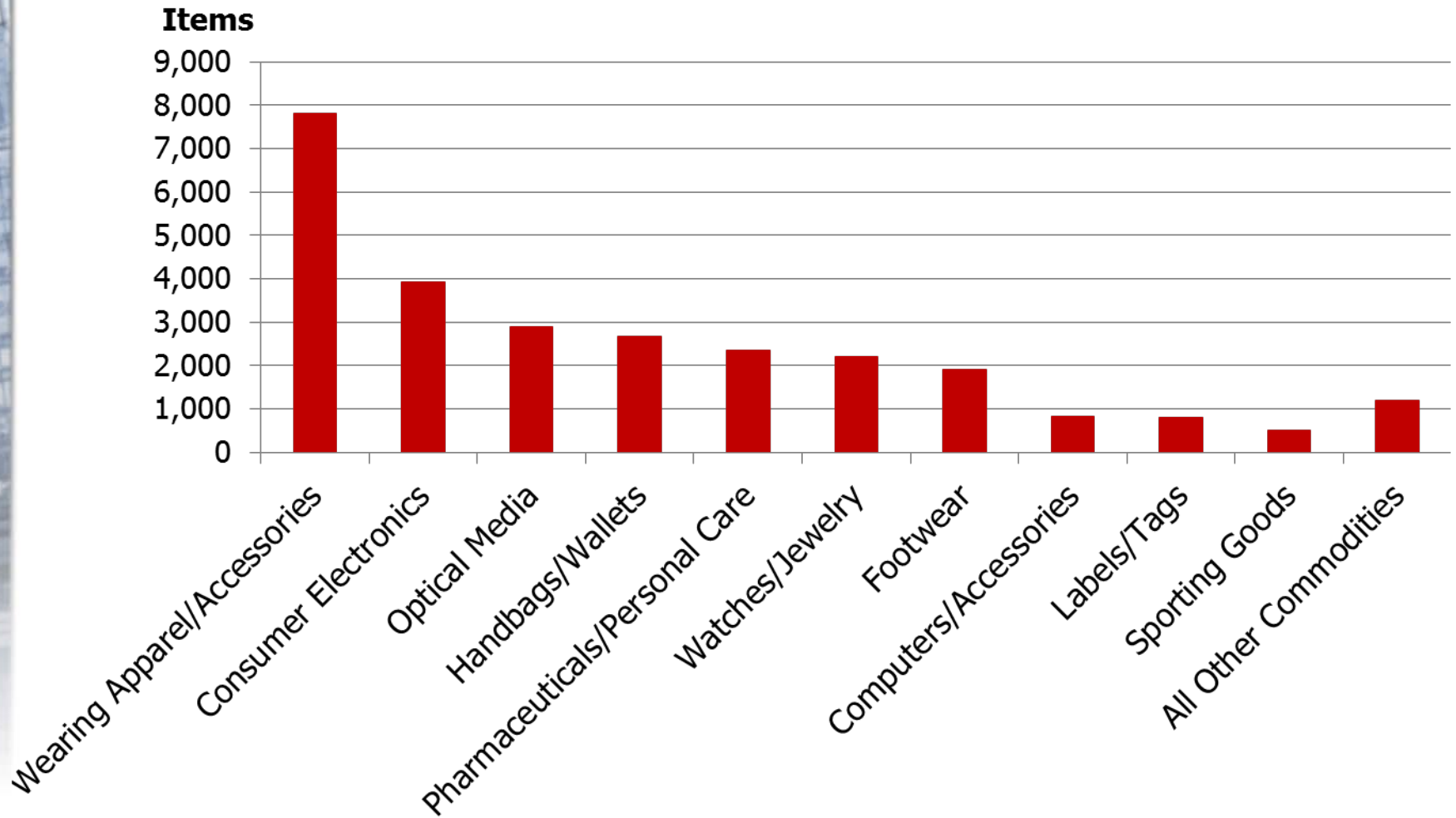
Key IPR Result in 2012

- There were a total of 27,067 counterfeit items seized in 2012, with Wearing Apparel/Accessories at the top of the list, with 7,805 items seized or 29% of total numbers.



Key IPR Result in 2012

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ROADS TO DESTRUCTION

- Administrative
 - U.S. Customs procedures
- Civil
 - Right owners may pursue civil litigation against the infringing party.
- Criminal
 - Criminal prosecution against infringing party, in which the right holder may provide testimony.



SEIZURE

- Violation is confirmed, physical possession occurs, and the government moves to forfeit the property.
- Due process rights extended, e.g., notice of seizure and ability to petition for relief from forfeiture, right to remove from the administrative process and take the case to court, etc. ("Election of Proceedings").



CUSTOMS IPR ENFORCEMENT





SEIZURE

- **Right holder is notified of the seizure and provided the following information:**
 - 1) Date of importation;
 - 2) Port of entry;
 - 3) Description of the merchandise;
 - 4) Quantity;
 - 5) Name and address of the manufacturer;
 - 6) Country of origin;
 - 7) Name and address of the exporter; and
 - 8) Name and address of the importer.



SEIZURE

- Right holder may also request a sample of the seized merchandise.



FORFEITURE

- If the importer is unable to rebut the contention that the marks are counterfeit, the goods are forfeited through the *administrative* process. Note that at any time during the administrative forfeiture proceedings, the importer may opt to go "judicial" by filing a claim and cost bond.
- Customs is the competent authority under TRIPS to make infringement determinations.



FORFEITURE

There are two types of *judicial* forfeiture available to the government:

- **Civil Forfeiture** - intended to confiscate property used or acquired in violation of the law
- **Criminal Forfeiture** - imposed on a wrongdoer as part of his/her punishment following a conviction.



FORFEITURE

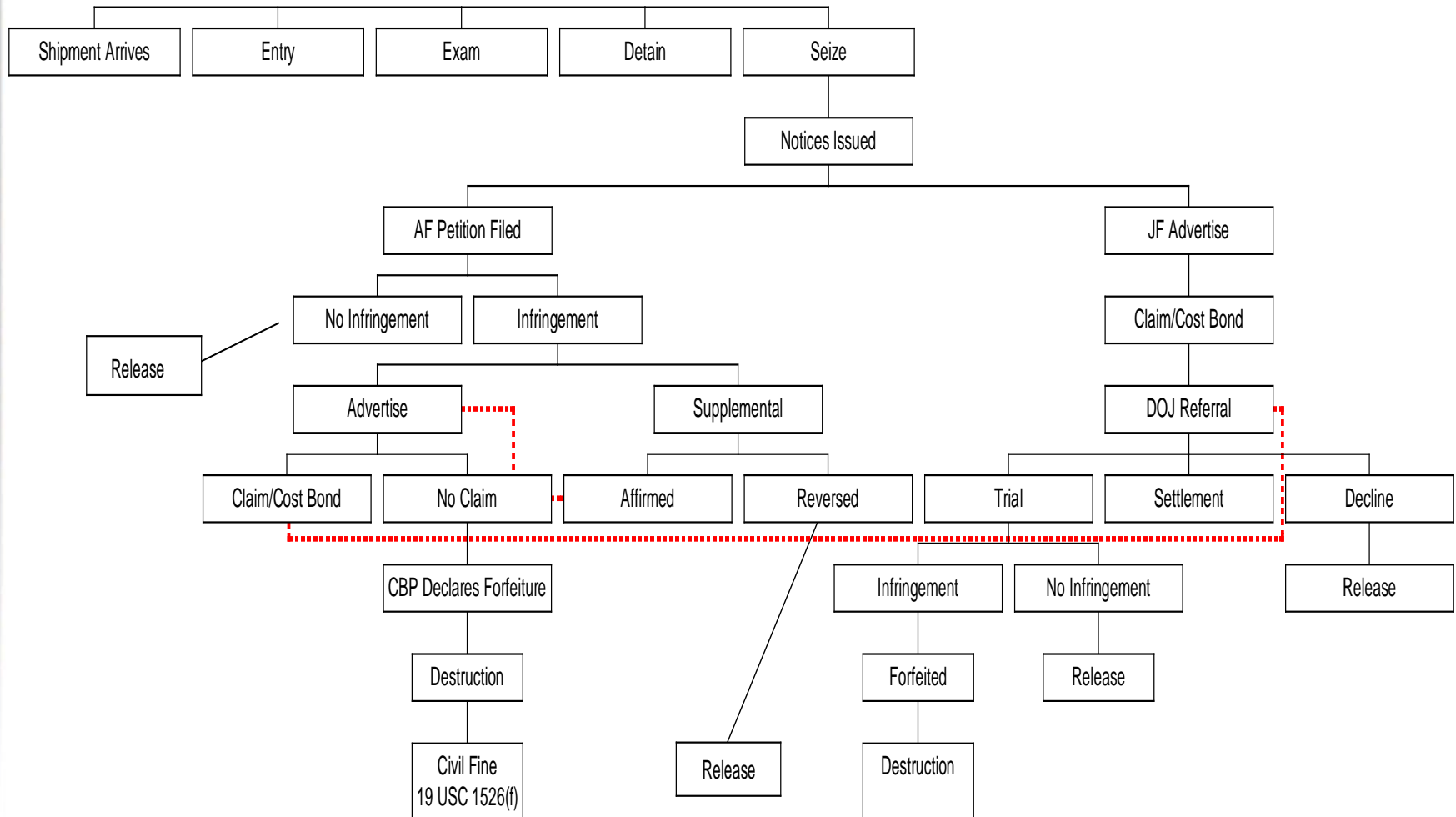
The procedures involved in these two types of forfeiture are very different; however, the results are the same, which is the transfer of rights, title, and interest of the property to the United States.

Whichever procedure is employed, a party asserting an interest in the property may petition to recover that interest.



U.S. Border Enforcement Process Counterfeit Trademark (19 U.S.C. §1526(e))

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STORAGE

- Large seizures (majority of IPR violations) are consigned to a storage contractor during the pendency of the administrative or judicial forfeiture proceedings.
- This is still considered "under customs supervision."
- Upon the final outcome of the proceedings, the contractor invoices CBP for the storage charges and any destruction charges if its personnel participate.



DESTRUCTION BY CUSTOMS

Once the property is legally forfeited - either through the administrative process or by court order - Customs moves to destroy the property as soon as possible.

Samples are retained for purposes of issuing civil penalties in counterfeit trademark cases.



DESTRUCTION

Costs of storage and destruction are paid by the Forfeiture Fund.

On rare occasions, Customs – only with the consent of the right holder – has donated forfeited property to charitable organizations for emergency relief or philanthropic reasons.



TREASURY FORFEITURE FUND (TFF)

- Created in 1992
- Effective law enforcement actions against criminal enterprises, from drug cartels to terrorist organizations, require depriving them of their enabling assets and profits that support or stem from their existence.
- The TFF is derived from the forfeited assets of criminal enterprises.



TREASURY FORFEITURE FUND (TFF)

- Use these proceeds to fund programs and activities aimed at disrupting and dismantling criminal infrastructures.
- Receipt account for the deposit of non-tax forfeitures made pursuant to laws enforced or administered by participating law enforcement bureaus:
 - Internal Revenue Service Criminal Investigation Division (IRS-CI)
 - U.S. Secret Service (USSS)
 - Immigration and Customs Enforcement (ICE)
 - Customs and Border Protection (CBP)
 - U.S. Coast Guard



CIVIL LITIGATION

- Many plaintiffs choose to proceed ex parte in infringement cases, in order to prevent infringers and third parties from concealing or destroying evidence of the counterfeit goods.
- Section 34(d) of the Lanham (Trademark) Act allows courts to grant ex parte seizures of counterfeited goods.



SEIZURE ORDERS

- The seizure order must set forth supporting findings of fact, describe the goods, specify a time for the seizure and the amount of security bond to be posted in case of any wrongful seizure, and a hearing date.



CRIMINAL PROSECUTION

- The Piracy and Counterfeiting Amendments Act of 1982 (18 U.S.C. 2320) criminalizes the intentional trafficking or attempting to traffic goods or services; or knowingly using a counterfeit mark on or in connection with such goods or services.



DESTRUCTION IN CRIMINAL CASES

- The United States may obtain an order for the destruction of goods, where a court finds by a preponderance of the evidence that the goods contain counterfeit marks.



ECO-FRIENDLY DESTRUCTION

- Methods of destruction must comply with environmental regulations in the U.S. to protect against the release of dangerous components within the goods.
- In the context of counterfeit goods, recycling may also be a challenge if the products are composed of substandard materials.



COUNTERFEIT ELECTRONICS

- There are several “electronic recycling centers” in the U.S. that have been known to export electronic parts for counterfeit reproduction.
- The Environmental Protection Agency fined a New Jersey company for exporting electronic waste to Hong Kong.



CHARITABLE DONATIONS

- The TRIPs agreement allows right holders to dispose of counterfeit goods "outside the channels of commerce."
- Although some companies have donated counterfeit goods in times of disaster, such as Nike® during Hurricane Katrina, it is often an unfavorable solution for many reasons.
 - Value of counterfeit goods
 - Devaluing recipients
 - Health risk of toxins



Cash seized in Ohio from the Lewis narcotics organization.



Two properties at 199 Ocean Lane Drive, Key Biscayne, Florida, were forfeited by Jose Battle, Jr., for criminal racketeering activity associated with the long-running criminal syndicate known as "The Corporation."



In addition, this luxury home in Florida was sold for \$1.5 million and the proceeds forfeited to the Fund.



The FY 2004 Lamborghini Murcielago, when new sold for \$280,000, was also forfeited to the Treasury Forfeiture Fund by Christopher William Smith. This vehicle hosts a V-12 (12 cylinder) engine, with 580 horsepower, and an advertised top speed of 205 miles per hour.



2001 Cessna aircraft seized in the Farrish investigation.



The 2004 Mercedes Benz "Maybach" luxury automobile, above, selling for over \$300,000 new, and the 2000 Ford Excursion limousine, below, are just two of several luxury vehicles forfeited by Christopher William Smith pursuant to Final Order of Forfeiture filed June 14, 2006.



2000 Ford Excursion Limousine forfeited to the Treasury Forfeiture Fund from Christopher William Smith pursuant to criminal charges including the unlawful distribution of prescription drugs including controlled substances.



Thank You

Questions? Comments?

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