

Original Paper

Border Measures of Trademark Enforcement in Pakistan: A Comparative Analysis with Malaysia and USA

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Abstract

Border measures of trademark enforcement is an administrative method required to be implemented through executive and administrative customs authority of Pakistan, Malaysia and United States of America (USA). Border measures of trademark enforcement runs under Customs Act 1969 and Trade Marks Ordinance 2001 in Pakistan, under Customs Act 1967 and Trade Descriptions Act 2011 in Malaysia and under Tariff Act 1930 and Lanham Trademark Act 1946 in USA. Trademark is name, mark, smell, sign, or a sound distinguishes services and goods of one undertaking from services and goods or other undertakings, it is required to be non-descriptive, distinctive and losses its distinctiveness when registered owner of trademark does not take prompt and speedy action against its infringement. The registered owner of trademark may avail administrative, civil, criminal procedures, provisional and border measure for protection of his registered trademark. Border measure is required to be adopted by registered trademark owner when there is likelihood of exportation and importation of suspected infringed goods which contains suspected identical infringed trademark. This article is qualitative method of research as it focusses on comparative analysis of border measures of trademark enforcement in Pakistan, Malaysia and USA. The purpose of border measure is to prevent importation and exportation of infringed goods through administrative customs authority on its own or on application and complaint of registered trademark owner. After comparative analysis of border measure of trademark enforcement in Pakistan, Malaysia and USA, it is found that the owner of registered trademark should be required to furnish his details and details of his registered trademark and prescribed goods or services before administrative customs authority immediately after

registration, thereupon the customs authority would promptly act on importation and exportation of counterfeiting trademark goods.

Keywords

Intellectual Property, Trademark, Enforcement, Trade Marks Ordinance 2001, Customs Act 1969

1. Introduction

Trademark is name, sign, mark, smell or a sound distinguishes goods and services of one undertaking from goods and services of other undertakings, it is required to be non-descriptive and distinctive as it loses its distinctiveness when registered owner of trademark does not take speedy and prompt action against its infringement. The registered owner of trademark may avail administrative, civil, criminal procedures, provisional and border measures for protection of his registered trademark. Border measures of trademark enforcement is an administrative method, implemented through administrative customs authority of Pakistan, Malaysia and USA. Border measures of trademark enforcement runs under Customs Act 1969 and Trade Marks Ordinance 2001 in Pakistan, under Customs Act 1967 and Trade Descriptions Act 2011 in Malaysia and under Tariff Act 1930 and Lanham Trademark Act 1946 in USA.

It is pertinent to mention here that Paris Convention of World Intellectual Property Organization (WIPO) is the first International Treaty containing provisions about border measures of Intellectual Property (IP) enforcement. Article 9 of Paris Convention states that exported and imported goods bearing an unlawful trademark or trade name for the purpose of deceiving customers of products or services should be seized in all countries of the union on the request of competent authority, public prosecutor, or on the request and complaint of an interested party under domestic legislation. It further states that if seizure is not allowed and not available under domestic legislation of the country, prohibition on importation and exportation may be invoked and if this remedy is also not available then any expedient, adequate, and sufficient remedy could be invoked which is available under domestic legislation and countries of the union are required to take steps to amend domestic law as early as possible to make it in conformity with Paris Convention.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO) also contains provisions related to border measures of IP enforcement in member states of WTO. Articles 54-56 of TRIPS state that border measures of IP enforcement are required to be implemented and enforced in a way to ensure proportionality, no compensation for defendant, no further harm to registered IP right holder and must not be contrary to constitutional requirements of member states of WTO. If legal proceedings are proved against infringer, consignee, and Importer of goods, the customs authority of member states of WTO may be asked to destruct and disposed of goods outside the course of trade to avoid further harm to IP right holder at the market place.

Border measure is required to be adopted when there is likelihood of importation and exportation of infringing goods which contains identical infringing trademark. Thus, the purpose of border measure is to prevent importation and exportation of suspected infringing goods through the customs authority on its own or on an application and complaint of the registered trademark owner. Article 52 of TRIPS states that the customs authority may suspend importation and exportation of suspected infringing goods for 10 days which can be maximized into 21 days and in case if applicant failed to start legal proceedings against an infringer, consignee, and importer of goods, the customs authority is required to release goods. When the customs authority releases seized goods, it is required to inform the applicant as well as the importer regarding the action.

After comparative analysis of border measures of trademark enforcement in Pakistan, Malaysia and USA, it is found that the owner of the registered trademark is required to apply directly to Collector of Customs for seizure of suspected infringing goods in Pakistan and the registered trademark owner is required to apply before the registrar of trademark for the prevention of import and export of suspected infringing goods in Malaysia as in USA the registered trademark owner is required to submit his details and details of his registered trademark and prescribed goods to the United States Custom and Border Protection Agency immediately after registration and there is no need to submit details and complaint time and again to customs authority thus it is suggested that the registered trademark owner should be required to furnish his details and details of his registered trademark and prescribed goods or services before the customs authority immediately after registration in Pakistan to avoid inconvenience on the part of registered trademark owner and for prompt, speedy, expedient action by customs authority to protect rights of registered trademark owners.

2. Border Measures of Trademark Enforcement under International Conventions

Counterfeit trademark goods are those goods which bear trademark without authorization and which is identical to trademark validly registered in respect of such goods or which cannot be distinguished in its essential aspects from such trademark in question under law of importation country (Peng, 1997; Schechter, 1927).

Before entering into force of TRIPS Agreement in 1995, Paris Convention was the first International Treaty contains border measures' provision. Article 9 of Paris Convention states that: (1) All goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name is entitled to legal protection. (2) Seizure shall likewise be affected in the country where the unlawful affixation occurred or in the country into which the goods were imported. (3) Seizure shall take place at the request of the public prosecutor, or any other competent authority, or any interested party, whether a natural person or a legal entity, in conformity with the domestic legislation of each country. (4) The authorities shall not be bound to effect seizure of goods in transit. (5) If the legislation of a country does not permit seizure on importation, seizure shall be replaced by prohibition of importation or by seizure inside the country. (6) If the legislation of a

country permits neither seizure on importation nor prohibition of importation nor seizure inside the country, then, until such time as the legislation is modified accordingly, these measures shall be replaced by the actions and remedies available in such cases to nationals under the law of such country (A 9, Paris Convention 1883; Bodenhausen, 1968).

Article 9 of Paris Convention contains same details as are contained in articles 51 to 60 under TRIPS Agreement. According of article 51 of TRIPS Agreement, member states are required to adopt a suitable procedure enabling right holder of trademark to apply with reasonable grounds for suspension of counterfeit trademark goods. Trademark owner is required to furnish sufficient details enabling competent authority to ascertain that applicant is real owner of trademark and suspected goods are counterfeit trademark goods. The competent authority of member state may also act on their own initiative without prior request to suspend release of goods based on prima facie evidence of infringement and right holder may be required to help authorities in ex-officio cases (Taubman, 2020; Busche, 2008).

Article 52 of TRIPS Agreement deals with application procedure against counterfeit trademark goods. According to article 52 of TRIPS Agreement, member states must designate customs authority to receive application from right holder and act as per requirements of law of the land. The applicant must provide sufficient evidence without reasonable doubt that an infringement is occurred under relevant law of the land. The applicant is also required to provide detailed description of goods to customs authority. The competent authority is required to reply to applicant for acceptance or rejection of application and how long may they act against alleged infringed trademark goods (Johnson, 1996; Ruse-Khan, 2010).

Article 53 of TRIPS Agreement deals with security or equivalent assurance. According to article 53 of TRIPS Agreement, customs authority of member state initiating border measures may demand applicant to furnish security or equal assurance that in case if apprehension of applicant is incorrect and importer, consignee, or owner of suspected seized goods suffer from action of customs authority, applicant is required to pay adequate compensation to defendant. Moreover, if trademark owner does not start legal proceedings within prescribed reasonable time, customs authority would release goods as well as security to owner, importer, or consignee (Gervais, 2021).

Article 54 of TRIPS Agreement deals with notice of suspension. According to article 54 of TRIPS Agreement, importer of counterfeit trademark goods as well as trademark owner applied for suspension to release goods would be notified. Trademark owner would then be allowed to start legal proceedings against importer, consignee, and owner of counterfeit trademark goods within prescribed reasonable time otherwise customs authorities of member states are designated to release goods to importer, consignee, or owner of goods (Taubman, 2020).

Article 55 of TRIPS Agreement deals with duration of suspension. According to article 55 of TRIPS Agreement, duration of suspension is 10 days which can be maximized into 20 days and cannot exceed 31 calendar days. In case if applicant fails to start legal proceedings, customs authority is required to

release goods and when customs authority releases seized goods, it is required to inform applicant and importer regarding the action (Seuba, 2010).

Article 56 of TRIPS Agreement deals with indemnification of importer and owner of goods provides that: “Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55”.

Article 57 of TRIPS Agreement deals with right of inspection and information. According to articles 56 and 57 of TRIPS Agreement, when legal proceedings start after seizure of counterfeit trademark goods by customs authority, defendant should be allowed to avail opportunity of judicial review for modification or suspension order of seized goods and competent authority may ask applicant to provide security or equivalent assurance sufficient to protect defendant, but it should not be in a manner to deter applicant unreasonably from having recourse to these procedures. The competent authority may also ask applicant to pay compensation to third party whose interests have been affected due to seizure of alleged infringed goods or due to delay in taking legal action (Gervais, 2005; Seuba, 2009).

Moreover, subject to protection of confidential information, right of inspection and right of information regarding infringed goods and suspended goods are available to right holder to substantiate his claim and to defendant for preparing his defense. All member states are required to make rules that in case if alleged infringement is proved, distribution channel should be traced and should be taken into legal course of action (Daško, 2014; Ilias, 2008).

Article 58 of TRIPS Agreement deals with ex officio actions. According to article 58 of TRIPS Agreement, customs authority of member state is designated to act against suspected counterfeit trademark goods on its own initiative under law of the land or on application directly received from trademark owner or received through judicial or administrative authorities of member states if they have prima facie evidence. The competent authority may ask right holder to provide sufficient details to act against counterfeit trademark goods. The competent authority acting border measures ex officio are exempted from remedial measures if acted in good faith (Kumar, 2009).

Article 59 of TRIPS Agreement deals with remedies. The competent authority would order for destruction or disposal of goods outside the course of trade if apprehension over goods proved beyond reasonable doubt against defendant. In case if proceedings upon suspected counterfeit trademark goods are not proved prima facie against defendant, competent authority would order for release of goods. If legal proceedings are proved against infringer, customs authority may be asked to destruct and dispose of goods outside the course of trade to avoid further harm to right holder at market place. The competent authority may not allow re-exportation of suspected goods after removing affixed trademarks from suspected goods except in exceptional circumstances decided by the competent authority in public interest (Trainer, 1993).

Article 60 of TRIPS Agreement deals with De Minimis Imports. According to article 60 of TRIPS Agreement, apart from general principle of border measures enforced through customs authority of member state against counterfeit trademark goods, customs authority is not empowered to seize counterfeit trademark goods destined for exportation and are in transit as well as De Minimis Imports which are goods available in traveler's luggage. Normally there are no rules for traveler's luggage but in some countries, there are rules under principle of No Tolerance Policy. It is pertinent to mention that parallel imports do not come under the ambit of infringement thus customs authority not authorized to act against them (Kumar, 2009).

3. Border Measures of Trademark Enforcement in Pakistan

If the owner of registered trademark suspects or he is in doubt that infringed goods are about to and near to arrive in Pakistan through trade importation, he may give a notice and inform to the customs officer to treat suspected goods as an infringed goods and the owner of registered trademark is required to must mention place and time of arrival of goods. The owner of registered trademark is required to submit and furnish an undertaking containing a notice acknowledging that in case if apprehension of an applicant is incorrect, he would be asked and required to compensate owner of suspected goods, importer and consignee of those goods for their loss and for that purpose, complainant is required to furnish security or an equivalent assurance to customs authority at the time of complaint (SS 53-55 Trade Marks Ordinance 2001).

The complaint against suspected infringed trademark goods is required to be made before Customs Officer in accordance with statutory requirements of Customs Act 1969 and Trade Marks Ordinance 2001. In one of the cases, Messrs Reckitt and Colman Limited appointed Messrs Reckitt and Benckiser as its sole agent for import, selling, and distributing its products. Mortein brand of insecticide spray being shipped by Reckitt and Colman Overseas to Reckitt and Benckiser Pakistan. Messrs Reckitt and Benckiser issued letter to Collector of Customs in Pakistan to stop parallel imports of Mortein brand.

Matter went to Appellate Board, which held that letter issued by the respondent was not in accordance with sections 53 to 55 of Trade Marks Ordinance 2001 as section 53 of Trade Marks Ordinance 2001 requires registered trademark owner to give a notice to Collector of Customs accompanied by undertaking to indemnify. Section 54 of Trade Marks Ordinance 2001 states that trademark owner would compensate consignee, importer, and owner of goods in case of damage due to wrongful suspension and authority of customs may ask the owner of registered trademark to provide an expedient and adequate security which would not be as such to deter recourse of border measures under section 55 of Trade Marks Ordinance 2001. Thus, the complaint by the respondent was out of statutory requirements which are required to be fulfilled therefore, authority of customs cannot invoke section 15 of Customs Act 1969 against an application and complaint made in contradiction of sections 53 to 55 of Trade Marks Ordinance 2001 hence there is no case of infringement of trademark (Collector of Customs v Messrs Decent Autos, 2015).

The applicant who is registered trademark owner is required to submit and pay security but when applicant has submitted an insufficient security and compensation amount is higher than that, the Federal Government of Pakistan is required to pay remaining amount to infringer, consignee, and importer of seized suspected infringed goods and ask the applicant to pay the remaining amount balance to the Federal Government of Pakistan thus in this case, the Federal Government of Pakistan is liable to loss, damage, destruction or delay due to seizure or failure to seize or release of suspected infringed trademark goods (S 202 Customs Act 1969).

If Collector of Customs reasonably believes that there are sufficient grounds to suspect that imported goods are infringed goods, he is required to seize them and put them in secured place. Thereafter, he is required to notify the applicant and the owner of trademark, the identity of goods and give full name and address of the importer. Thereafter, the applicant is required to start legal proceedings against the importer within 10 days from the day of receiving the notice or such other time as extended by the collector of customs otherwise the collector of customs is not bound to continue seizing goods for indefinite time and he is required to release the seized goods to the importer, consignee or the owner of goods. The collector of customs is empowered to forfeit seized goods before start of legal proceedings by the applicant (SS 56-58 Trade Marks Ordinance 2001).

The customs authority may only take an action against goods bearing counterfeited trademark under section 15 of Customs Act 1969 if there is prima facie evidence of an infringement of registered trademark. In one of the cases, the Deputy Collector of Customs issued a show cause notice to Zia Uddin Sheikh that goods bearing alleged and suspected infringed trademark “Ahmad” why not would be confiscated by custom authority and penal action would be followed. Mr. Ziauddin Sheikh filed a writ petition against the show cause notice of customs authority before Sindh High Court by taking a plea that though trademark “Ahmed” is registered with the name of Ahmed Foods Private Limited but he has been authorized importer and exporter of goods bearing trademark “Ahmed” for 16 years and the customs authority does not have any legal right to commence and start legal proceedings against him under section 15 of Customs Act 1969.

Ahmed Foods Private Limited responded that authority of importation and exportation was revoked in 2012 but the petitioner replied that the respondent did not have the authority to revoke his authority and it is illegal as who holds affairs of Ahmed Foods Private Limited is pending question before the Court of Law. Therefore, respected judges of Sindh High Court Mr. Justice S. M. Farooq Sheikh and Maqbool Babar held that the show cause notice issued by customs authority to the petitioner should immediately be withdrawn as there is no prima facie evidence that the petitioner has infringed the registered trademark of the respondent. Furthermore, the petitioner should freely be allowed to import and export goods bearing trademark “Ahmed” (Mian Ziauddin Shaikh v Federation of Pakistan, 2014).

The Collector of Customs may release goods to consignee, importer, or the owner of suspected infringed trademark goods if (i) the applicant and registered trademark owner does not start legal proceedings within a prescribed time, or (ii) the applicant withdraws legal proceedings, or (iii) the

applicant consents in writing to Collector of Customs that he does not suspect seized infringed trademark goods any more, or (iv) legal proceeding has started against importer, consignee and owner of suspected infringed trademark goods and the Court of Law orders for release of the seized goods, or (v) the Collector of Customs reasonably and sufficient cause to believes that there is no sufficient cause and ground to believe that confiscated and seized suspected infringed trademark goods are infringed goods (Khan, 2014).

The Court of Law may order forfeiture or release of seized goods but the Court of Law is not empowered and authorized to order for importation and exportation of seized imported goods or for removing of trademarks which are affixed on counterfeited goods or for local sale of seized goods. If the Court of Law decides the matter in favor of the defendant, it may ask the plaintiff to compensate and pay damages to the importer, consignee and the owner of seized goods for losses they have suffered due to seizure. If the Court of Law orders for disposal of forfeited goods, the Collector of Customs is required to comply with orders of the Court of Law but he is not required to comply orders in a manner for removal of trademark from counterfeited trademark goods, or to facilitate exportation of imported seized goods or their local sale (Tanwiri, 2011).

The registered trademark owner is required to start legal proceedings immediately after seizure of suspected counterfeited goods, and if verdict of the Court of Law is announced in favor of the registered trademark owner, he then is required to apply for implementation of the verdict of the Court of Law within 3 weeks and if the owner of trademark does not apply for the implementation of the verdict of the Court of Law within 3 weeks from the date of its making by the Court of Law, the Collector of Customs is required to release goods to consignee, importer, or the owner of such goods but the Collector of Customs may apply in the Court of Law for retaining control over suspected counterfeited goods if the disposal, release or any action against seized goods is required (SS 59-63 Trade Marks Ordinance 2001).

In one of the cases, Haji Muhammad Nabi claimed that he has been using trademark “FRUTTI” for a long period of time thus he has legal right to use it and take all its potential benefits during trade and no one has right to infringe and counterfeit his registered trademark right. Akhtar Muhammad started using trademark “FRUTTI” for his product of juice powder. Haji Muhammad Nabi applied against importation of counterfeited goods of Akhtar Muhammad before the Collector of Customs. Application was subsequently rejected by the Collector of Customs therefore appellant Akhtar Muhammad could legally import his product of juice powder under trademark “FRUTTI”.

Thereafter, Haji Muhammad Nabi adopted civil procedure of trademark enforcement and applied against infringement of his trademark “FRUTTI” before the concerned District Court and adopted provisional measures of trademark enforcement and asked the Court of Law to issue temporary injunction against defendant to prevent further infringement of his trademark. The concerned District Court allowed interim injunction and ordered Akhtar Muhammad to stop further use of trademark “FRUTTI”. Mr. Akhtar Muhammad went to Lahore High Court and applied against decision of the

District Court where Lahore High Court dismissed orders passed by District Court and gave a decision in favor of appellant Akhtar Muhammad on a ground that trademark “FRUTTI” is registered in favor of Akhtar Muhammad therefore importation of goods containing legal registered trademark cannot be stopped and no border measure can be taken against goods containing registered trademark (Messrs Akhtar Muhammad and Brother through Proprietor v Haji Muhammad Nabi and Brother, 2011).

The Collector of Customs is eligible to make and prescribe regulations for notification in respect to process of forfeiture, seizure, release, and disposal and he may require the applicant to furnish and submit evidence of his ownership and he may also require the applicant to pay fee to cover administrative costs (SS 63-66 Trade Marks Ordinance 2001).

The custom authority may ask the importer all necessary information about his imported goods. In one of the cases, Petitioner Kashif Naseem is an importer of goods, who filed a writ petition before Sindh High Court against custom authority that his products are protected under IP laws and he is not under obligation to disclose information about his goods. Justice Faisal Arab and the Chief Justice of Sindh High Court Sabihuddin Ahmad held that protection of imported goods under IP laws cannot be used as a shield to resort to under-invoicing and deprive the ex-chequer of custom duties and charge at actual transaction value.

The Court of Law further held that it is duty of an importer to deliver information about his imports so that custom authority may proceed smoothly with its obligation to ascertain actual transaction value as withholding necessary information that solely rests with importer or within his exclusive reach would recoil adversely upon intentions of an importer. The Court of Law held that the petitioner instead of providing necessary information as sought by custom authority for determining transactional value of imported goods unduly rushed to High Court and filed instant petition therefore, his petition is dismissed and he was asked to furnish information to custom authority (Kashif Naseem v the Federation of Pakistan, 2008).

4. Border Measures of Trademark Enforcement in Malaysia

According to border measures of trademark enforcement in Malaysia, if counterfeited infringed trademark goods are about to be imported in Malaysia, the registered trademark owner or his agent are required to inform the registrar through written application complaint with documented evidence and relevant information with payment of prescribed fee. The registrar of trademark either approve or disapprove written application complaint of the owner of trademark. The approval letter by the registrar of trademark upon application of the owner of trademark would remain intact for 60 days unless withdrawn by the applicant. Furthermore, the registrar of trademark may require the applicant to deposit and pay security to prevent abuse and to protect importer as well as to pay compensation for damages or to reimburse expenses likely to incur on seizure of counterfeiting infringed goods (Kandiah, 2004).

Upon receiving the application complaint, the registrar of trademark is required to notify the authorized officer to prohibit import and export of counterfeiting infringed trademark goods into or from Malaysia and to confiscate, seize and detain them and seized goods are required to be stored at secured place by authorized officer and he is liable to inform the registrar of trademark regarding it (Chong, 1998).

Authorized Officer for implementation of border measures of trademark enforcement is Custom Officer under Customs Act 1967 or any Public Officer appointed by the Minister, to work in Intellectual Property Corporation of Malaysia (My IPO). Authorized Office may issue a notice to registrar, importer, and registered trademark owner which precludes that if within a prescribed time, applicant does not start legal proceedings against counterfeiter, Authorized Officer is empowered to release suspected seized and confiscated goods. It is pertinent to mention here that prescribed time may be extended on request of applicant within 2 working days (S 31 Customs Act 1967).

Authorized Officer may give permission to importer or applicant to inspect seized and confiscated goods if they give surety that they will provide a sample to the registrar and they will not damage seized goods. The seized goods may be forfeited and disposed-off before institution of legal proceedings if it is consented by importer and he gives notice to the registrar to that effect and the Court of Law on application of importer may order for release of seized goods or may order for forfeiture of goods and thereafter for disposal of goods (Khadijah, 2016).

The registrar of trademark may issue notices for release of seized goods if legal proceedings has not been instituted against importer within prescribed time or if applicant consented for release of seized goods. Aggrieved party may apply in the Court of Law after release of seized goods for compensation and the Court of Law may order applicant to pay compensation to importer for damages and suffering, he has faced. It is pertinent to mention here that compensation granted to aggrieved party if exceeds is due upon the applicant (SS 70C-70P Trade Marks Act 976).

The minister may order to prohibit importation of goods, bearing false trade description or false trade indication to stop them from importation and any person commits or induces commission of an offence of false trade description or false trade indication outside the territory of Malaysia from Malaysia is an offender under provisions of the Trade Descriptions Act 2011 (SS 26-27 Trade Descriptions Act 2011).

5. Border Measures of Trademark Enforcement in USA

According to border measures of trademark enforcement in the United States of America (USA), any article of goods which bears trademark which is protected under International Convention for protection of trademarks if imported in USA and causes confusion in the mind of the customer whether article is manufactured in USA or not or whether it is manufactured at a place where it is actually manufactured requires an entry at customhouse of USA and required to be recorded in books kept at the Department of Treasury (S 42 Lanham Trademark Act 1946).

After registration process of trademark before the United States Patent and Trademark Office (USPTO), the applicant is required to submit description of trademark and description of prescribed goods or services under the registered trademark and details of the owner of trademark and details of the users of trademark before the United States Custom and Border Protection Agency, which is responsible for enforcement of border measures under the United States Department of Homeland Security. The primary duties of the United States Custom and Border Protection Agency is to prevent entrance of terrorists and weapons into USA and it is also responsible to protect IP rights of owners and its users while protecting businesses from IP theft and to undergo border measures of trademark enforcement in USA (Lee, 2012).

After making a comparative analysis of border measures of trademark enforcement in Pakistan, Malaysia and USA, it is found that in Pakistan, the registered trademark owner is required to directly apply before the collector of customs against importation of suspected goods and in Malaysia the owner is required to apply before the registrar of trademark, thereafter the registrar is required to direct the authorized customs officer to take action against suspected goods and in USA the registered trademark owner is required to submit his details and details of the registered trademark and prescribed goods or services to the United States Custom and Border Protection Agency immediately after the registration, thereafter the authorized agency would take prompt action in case of suspect and there is no need for the trademark owner to worry about importation and exportation of suspected goods as the authorized agency would do the rest. It is therefore recommended that this system should be adopted in Pakistan and the registered trademark owner should be directed to furnish his details and details of the registered trademark and prescribed goods or services to the customs authority, so that in case of suspect the customs authority would take prompt action against infringed goods which is better for border measures of trademark enforcement in Pakistan.

It is pertinent to mention here that there are certain authorities created under the United States Custom and Border Protection Agency for smooth implementation of IP rights generally and border measures of trademark enforcement specially in USA. The IP Help Desk is created to answer questions to the public, business entities, right owners and importers, it is specially established to receive and lodge allegations of the infringement of IP rights in USA. The report can be lodged by the public or by the right holder or by the trade association or by the law enforcement agency or by the government. The report can be lodged online through website or can be lodged through phone line (Agency, 2012).

The IP Restricted Merchandise Branch is formed to oversee e-recordation program and to provide determination and rulings over the infringement of IP rights and to give answers of legal questions for enforcement procedure of IP in USA. The IP Right Policy and Program Board is formed to provide directions to the US Custom and Border Protection Agency for smooth implementation of border measures and the National IP Coordination Center is formed to lodge complaints of IP theft (Agency, 2016).

Whether the registered trademark is recorded at the United States Custom and Border Protection Agency by the owner of trademark or not, if the customs authority has reason to believe that counterfeiting trademark has been importing to USA, it can take a serious action against it and seize suspected goods and forfeit it. After the seizure, the secretary of the United States Custom and Border Protection Agency may notify the registered trademark owner and the accused. Thereafter, the accused would be required to remove trademark from the packaging of goods and if removal of trademark is not sufficient to protect the registered trademark right, goods bearing counterfeiting trademark may be destroyed or used by the Federal Government (S 526 Tariff Act 1913 & S 1526 United States Code 1925).

6. Conclusion and Recommendations

In Pakistan, the registered trademark owner is required to apply directly to the collector of customs appointed under the Customs Act 1969 for seizure of suspected infringed goods. The applicant is required to give details of the suspected goods, time and day of arrival or departure of suspected good. In Malaysia, the registered trademark owner is required to apply before the registrar of trademark for the prevention of import and export of suspected infringed goods through the authorized customs officer under the Customs Act 1967. In USA, the registered trademark owner is required to submit his details and details of the registered trademark and prescribed goods to the United States Custom and Border Protection Agency immediately after registration of trademark and the United States Custom and Border Protection Agency is responsible for implementation of border measures in USA.

After comparative analysis of border measures of trademark enforcement in Pakistan, Malaysia and USA, it is found that USA system of border measures to give details of the owner and the registered trademark immediately after registration is good as the owner does not have to worry about import and export of counterfeiting goods as this work is smoothly done by the United States Custom and Border Protection Agency. It is therefore recommended that in Pakistan this requirement should be prescribed where the registered owner of trademark should be compelled to furnish his details and details of his registered trademark and prescribed goods or services before the customs authority immediately after registration, thereupon the customs authority would promptly act on importation and exportation of counterfeiting trademark goods.

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